



## **Alabama Caselaw Update: Wantonness and Cell Phone Usage**

***Tutor v. Sines*, So.3d, 1210037 (Ala., Feb. 17, 2023).**

The Alabama Supreme Court recently issued an opinion establishing that cell phone use in an automobile can constitute “substantial evidence” of wantonness in Alabama. While cell phone use has long been a factor in case evaluation, this opinion shows that phone use (distinguished from other types of distracted driving) can support a punitive award.

In this case, Jessica Tutor was driving passengers Jack Sines and Devan Frazier. Sines asked Tutor to change the song playing in the car and Tutor looked down at her phone which was controlling the music. When she looked up, she realized she was going to rear-end the vehicle in front of her and turned her car sharply to the left and into oncoming traffic. Her passengers sued for negligence and wantonness. Tutor moved for summary judgment citing Alabama’s guest passenger statute (which bars negligence, but not wantonness, claims in certain circumstances), which was granted as to the negligence claim. The case proceeded to trial on the wantonness claim alone and the jury returned a verdict exceeding \$500,000 collectively. Tutor filed a renewed motion for judgment as a matter of law, which was denied. Tutor appealed.

On appeal, the Alabama Supreme Court affirmed the trial court’s denial of Tutor’s renewed motion. Tutor maintained that the Alabama Supreme Court has declined to find wantonness merely on the ground of distracted driving. Specific to the cell phone usage, the Supreme Court stated “evidence of distracted driving can be evidence of wantonness when the distraction results from ‘the conscious doing of some act or omission of some duty.’” *Tutor* at \*4. The Supreme Court went on to explain “for that reason, active phone use like texting, browsing the Internet, or engaging with a music app is qualitatively different from distractions that are not the result of a conscious act or that arise from an inadvertent reaction to some external event or stimulus.” *Id.* Tutor made the conscious decision to pick up her phone to change the song, which was sufficient to support the jury’s award for wantonness.

Practice Note: Wantonness claims are not barred by the Guest Passenger defense — the *Tutor* opinion, considered in conjunction with the prevalence of distracted driving, significantly weakens this otherwise strong statutory defense. Further, this development opens the door to possible coverage litigation.

If you wish to further discuss this case or have any questions, please contact a Swift, Currie, McGhee & Hiers attorney at 205.314.2401 or via our website, [swiftcurrie.com](http://swiftcurrie.com).

*The foregoing is not intended to be a comprehensive analysis of the full effect of these changes. Nothing in this notice should be construed as legal advice. This document is intended only to notify our clients and other interested parties about important recent developments. Every effort has been made to ascertain the accuracy of the information contained within this notice.*

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