



**American  
Mock Trial Association**

***2011-2012 CASE PROBLEM***

**STATE OF MIDLANDS**

**V.**

**DANNY DAWSON**

**A CRIMINAL CASE BY  
THE AMTA CRIMINAL CASE COMMITTEE**

## **ACKNOWLEDGMENTS**

The AMTA Criminal Case Committee would like to thank:

- **The American Law Institute**, whose Model Penal Code continues to serve legal education.
- **Chris Hutchison**, Assistant Commonwealth's Attorney (Louisville, KY) and Division Chief of his office's F.A.S.T. Team, which is responsible for the prosecution of individuals involved in motor-vehicle collisions in which someone has been killed, injured, or endangered.
- **Roman Kickirillo**, professional accident reconstruction expert for Kickirillo Engineering PLLC (Nashville, TN), and **Sergeant Andy Shelton** of the Tennessee State Highway Patrol.
- **Chatterbox Audio Theater** (Memphis, TN) for its assistance in recording AMTA's first audio exhibit. <http://www.chatterboxtheater.org/>
- **Carly Taylor** and **Chris Guyot** for providing background music for the audio recording. Their song, "Love the Sinner, Hate the Sin," may be heard in its entirety at:  
<http://soundcloud.com/taylorcarlyj/love-the-sinner-hate-the-sin/>

## **DISCLAIMER**

This case is a work of fiction. All characters appearing in this work are fictitious. Any resemblance to real persons, living or dead, is purely coincidental.

## **CASE SUMMARY**

On September 24, 2010, Vanessa Sullivan, daughter of Midlands' most prominent prosecutor, celebrated her 21<sup>st</sup> birthday with two friends, Taylor Hopson and Danny Dawson, at Chuggie's Sports Bar. After several hours of celebration at the bar, the three left in a car driven by Dawson. On the way home, Dawson lost control of the car, resulting in a crash in which Sullivan was killed.

A special prosecutor was appointed because of the conflict of interest in having the victim's parent's office prosecute the case. A grand jury has returned a multi-count indictment charging the defendant, Danny Dawson, with murder and driving under the influence.

## **A NOTE FROM THE CRIMINAL CASE COMMITTEE**

In 2008, 11,773 people were killed in the United States in traffic accidents where one or more of the drivers had a blood alcohol concentration (BAC) level of 0.08 or above.<sup>1</sup> The results of most such accidents are tragedies that could have been avoided by simply not driving while under the influence.

The Criminal Case Committee hopes that this year's case will spark thought and discussion among AMTA participants regarding the consequences of driving under the influence. To this end, the case materials describe an evening of heavy alcohol consumption by the defendant and other characters in the case, followed by the defendant's operating a motor vehicle while allegedly under the influence. The inclusion of descriptions of these events is in no way intended to encourage excessive alcohol consumption or drunk driving by those reading the case.

(Note: Neither the "Case Summary" nor "A Note from the Criminal Case Committee" may be referenced in any way at trial.)

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<sup>1</sup> "Fatalities and Fatality Rates in Alcohol-Impaired-Driving Crashes by State, 2007-2008." A PDF of the article is available at <http://www-nrd.nhtsa.dot.gov/pubs/811250.pdf>.

## INDEX OF CASE MATERIALS:

### SUPPORTING MATERIALS

1. Special Instructions
2. Grand Jury Indictment
3. Midlands Penal Code
4. Available Case Law
5. Order on Motions in Limine
6. Stipulations
7. Stipulation Regarding Refusal of Intoxilyzer Test (see Special Instructions)
8. Jury Instructions

### EXHIBITS

1. Voicemail Message:
  - a. Audio Recording of Voicemail Message (mp3 file on AMTA site)
  - b. Transcript of Voicemail Message
2. Bar tabs
  - a. Bar tab #1 of Danny Dawson
  - b. Bar tab #2 of Danny Dawson
  - c. Bar tab of Vanessa Sullivan
3. NHTSA list of approved BrAC units
4. Intoxilyzer 8000 Instructions
5. BrAC test form (two versions – see Special Instructions)
6. BrAC results
7. Article – “Alcohol Ingestion and the Human Body”
8. Curriculum Vitae of:
  - a. Ashley Norton
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9. Accident Photos
10. Midlands FCT Officer Report
11. FCT Diagram
12. Expert Report of Leslie Roman
13. Expert Report of Leslie Roman - Crime Scene Diagram
14. Article – “Vehicle Accident Reconstruction: A Primer”

### AFFIDAVITS

1. **London Bennett**, eyewitness
2. **Danny Dawson**, defendant
3. **Ryan Foster**, police officer
4. **Taylor Hopson**, best friend of victim
5. **Jordan James**, musician and bartender at Chuggie’s
6. **Pat Lawrence**, server at Chuggie’s
7. **Sam Lyons**, cab driver
8. **Ashley Norton**, medical expert
9. **Leslie Roman**, accident reconstruction expert
10. **Avery Smith**, Director, Midlands Department of Forensics

## **SPECIAL INSTRUCTIONS**

### **1. Witness Availability.**

- a. The following witnesses are available only to the Prosecution:  
**Taylor Hopson**, best friend of victim  
**Avery Smith**, Director, Midlands Department of Forensics  
**Ryan Foster**, police officer  
**Pat Lawrence**, server at Chuggie's
- b. The following witnesses are available only to the Defense:  
**Leslie Roman**, accident reconstruction expert  
**Danny Dawson**, defendant  
**Ashley Norton**, medical expert  
**Jordan James**, musician and bartender at Chuggie's
- c. The following witnesses are available either to the Prosecution or Defense:  
**Sam Lyons**, cab driver  
**London Bennett**, eyewitness at the scene

### **2. Witness Call Order.** The prosecution must first announce whether it will call Avery Smith. If:

- a. the prosecution elects to call Avery Smith,
  - i. the defense must call Ashley Norton;
  - ii. the following documents are not part of the available case materials for the trial:
    - 1. the version of Exhibit 5, the Breath Test Operator's Report, showing that the defendant refused the Intoxilyzer test; and
    - 2. the Stipulation Regarding Defendant's Refusal of Intoxilyzer Test.
  - iii. the remaining witnesses are selected in the following order:  
**P-D-D-P.**
- b. the prosecution elects not to call Avery Smith,
  - i. the defense cannot call Ashley Norton;
  - ii. the following documents are not part of the available case materials for the trial:
    - 1. the version of Exhibit 5, the Breath Test Operator's Report, showing that the defendant consented to and took the Intoxilyzer test; and
    - 2. Exhibit 6, the Breath Alcohol Test Results.
  - iii. the witnesses are selected in the following order:  
**P-D-D-P-D-P.**

### **3. Party Representatives at Counsel's Table.** The prosecution may have Ryan Foster at counsel's table regardless of whether Ryan Foster is called as a witness. The defense may have Danny Dawson at counsel's table regardless of whether Danny Dawson is called as a witness. No other witness or character in the case is permitted to be present at counsel's table throughout the trial.

#### 4. Indictment / Lesser Included Offenses:

- a. The charging instrument (often called the “grand jury indictment” or “trial information”) in most jurisdictions does not contain what are commonly referred to as “lesser included offenses.” Lesser included offenses are less severe conviction options that could be supported by the facts once all evidence has been entered. They are often sought by the defense for strategic reasons at the close of proof, prior to closing arguments. Since attorneys in Midlands may not argue for particular jury instructions, **all potential lesser included offenses have been incorporated into the Indictment, Jury Instructions, and Verdict Forms.**
- b. The prosecution must pursue the top count of Murder and the single count of DUI.
- c. The defense is free to argue for the defendant’s being not guilty on all charges, or for the defendant’s being not guilty of the top charge but perhaps guilty of one or more of the lesser included offenses.

#### 5. General Rules Regarding Case Materials:

- a. No witness may deny the authenticity of a document or exhibit in the case packet, though if a witness is not familiar with the document in question, that witness may testify to that fact.
- b. A witness whose affidavit or report states that the witness is familiar with a particular document or exhibit must acknowledge, if asked, that he or she is familiar with that document or exhibit, and that the document or exhibit referenced in the affidavit or report is the same version as the corresponding document in the current case materials. This does not relieve the party offering the document or exhibit of its obligation to provide sufficient foundation to establish admissibility.
- c. The only judicial decisions that may be referenced by competitors during a round are those included in the case packet. The portions of the Midlands statutes provided in the case packet under “Midlands Penal Code” represent all of the relevant statutes for this case.
- d. Revision dates in italics that may appear at the top of some documents indicate the dates on which AMTA issued that revision of the document in question. The revision date does not indicate, for purposes of the trial, anything else about the history of that document. (For example, the revision date on an affidavit cannot be offered as evidence that the witness provided an earlier version of the affidavit and subsequently changed his or her testimony in the revised version.)
- e. A number of color photographs and diagrams are included in the case packet. In recognition of the expense of photocopying – and in particular

enlarging – color prints, teams may use color or black-and-white copies of these photographs and diagrams at trial, and no objection may be raised to an exhibit or demonstrative on the ground that it has been altered by printing a color document in black-and-white.

- f. The parties have raised all objections arising under the United States Constitution prior to trial in motions in limine and preserved them for appeal. Accordingly, no party may raise any objections related to the United States Constitution at trial. All such objections have previously been overruled, and no motion for reconsideration is permitted pursuant to AMTA Rule 8.11, which forbids parties from making motions other than a motion to strike or a motion to sequester witnesses at trial.

## 6. Audio Exhibit:

An audio file (downloadable by both Macs and PCs) is available as an exhibit in this case. Assuming admission, publication of the audio file exhibit at trial is regulated as follows:

- a. The only audio recording that may be introduced at trial is Exhibit 1(a), the voicemail recording available for download on the AMTA case page.
- b. Exhibit 1(b) is the transcript of that audio recording. The transcript may be provided to judges/jurors to read along with the recording while it is being played, but the transcript itself may not be entered into evidence.
- c. The exhibit must be burned onto a compact disc (CD) and played on a portable stereo (a.k.a. "boombox" or "jam-box").
  - i. The portable stereo used to play the recording **must be run on internal battery power**, even if the device has an AC power cord. (This is designed to eliminate the risk that a team will unplug courthouse equipment to plug in its audio device.)
  - ii. The equipment may not exceed 2 feet in any dimension.
  - iii. Other types of audio or audiovisual equipment (e.g., portable MP3 players with external speakers attached, computers, media carts, or any audiovisual equipment designed to “closed-caption” or synchronize a video representation of the transcript of the recording to the audio file) are not permitted.
  - iv. The audio file may not be edited (professionally or otherwise), mixed, remixed, or truncated.
  - v. If both parties wish to use the audio recording as evidence, the prosecution will provide the copy of the recording and audio equipment for both parties, unless both parties agree to use the defense’s copy and/or audio equipment.

- vi. Time spent setting up the audio exhibit will be treated the same as any other demonstrative at trial (i.e., there are no “timeouts” in the event of difficulty operating the audio equipment during a round).



**IN THE CIRCUIT COURT OF BRECKINRIDGE COUNTY, MIDLANDS  
CRIMINAL COURT DIVISION**

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**STATE OF MIDLANDS,**

**Plaintiff,**

**v.**

**CASE NO. CR-11-1030**

**DANNY DAWSON,**

**Defendant.**

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**INDICTMENT**

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THE GRAND JURY DOES HEREBY CHARGE:

COUNT I: On or about September 24, 2010, in Breckinridge County, State of Midlands, Danny Dawson did extremely recklessly kill Vanessa Sullivan, a human being, by injuring her in a motor vehicle crash in violation of M.P.C. 210.2.

COUNT II: On or about September 24, 2010, in Breckinridge County, State of Midlands, Danny Dawson did recklessly kill Vanessa Sullivan, a human being, by injuring her in a motor vehicle crash in violation of M.P.C. 210.3.

COUNT III: On or about September 24, 2010, in Breckinridge County, State of Midlands, Danny Dawson did negligently kill Vanessa Sullivan, a human being, by injuring her in a motor vehicle crash in violation of M.P.C. 210.4.

COUNT IV: On or about September 24, 2010, in Breckinridge County, State of Midlands, Danny Dawson did operate a motor vehicle under the influence of alcohol in violation of M.P.C. 510.1.

A TRUE BILL OF INDICTMENT

\_\_\_\_\_  
Dated

\_\_\_\_\_  
Foreperson of the Grand Jury,  
Breckinridge County, Midlands

**MIDLANDS PENAL CODE**  
**(Selected Provisions)**

**PART I. GENERAL PROVISIONS**

**Article 1. Preliminary [Omitted]**

**Article 2. General Principles of Liability**

**SECTION 2.01. [Omitted]**

**SECTION 2.02. General Requirements of Culpability.**

(1) **Minimum Requirements of Culpability.** A person is not guilty of an offense unless he acted purposefully, knowingly, recklessly, or negligently, as the law may require, with respect to each material element of the offense.

(2) **Kinds of Culpability Defined.**

(a) *Purposefully.* A person acts purposefully with respect to a material element of an offense when:

- (i) if the element involves the nature of his conduct or a result thereof, it is his conscious objective to engage in conduct of that nature or to cause such a result; and
- (ii) if the element involves the attendant circumstances, he is aware of the existence of such circumstances or he believes or hopes they exist.

(b) *Knowingly.* A person acts knowingly with respect to a material element of an offense when:

- (i) if the element involves the nature of his conduct or the attendant circumstances, he is aware that his conduct is of that nature or that such circumstances exist; and
- (ii) if the element involves a result of his conduct, he is aware that it is practically certain that his conduct will cause such a result.

(c) *Recklessly.* A person acts recklessly with respect to a material element of an offense when he consciously disregards a substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such a nature and degree that, considering the nature and purpose of the actor's conduct and the circumstances known to him, its disregard involves a gross deviation from the standard of conduct that a law-abiding person would observe in the actor's situation.

- (d) *Negligently*. A person acts negligently with respect to a material element of an offense when he should be aware of a substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such a nature and degree that the actor's failure to perceive it, considering the nature and purpose of his conduct and the circumstances known to him, involves a gross deviation from the standard of care that a reasonable person would observe in the actor's situation.

## **PART II. DEFINITION OF SPECIFIC CRIMES**

### **OFFENSES INVOLVING DANGER TO THE PERSON**

#### **Article 210. Criminal Homicide**

##### **SECTION 210.1. Criminal Homicide**

- (1) A person is guilty of criminal homicide if he purposefully, knowingly, recklessly, or negligently causes the death of another human being.
- (2) Criminal homicide is murder, manslaughter, or negligent homicide.

##### **SECTION 210.2. Murder**

- (1) Except as provided in Section 210.3(1)(b), criminal homicide constitutes murder when:
  - (a) it is committed purposely or knowingly; or
  - (b) it is committed recklessly under circumstances manifesting extreme indifference to the value of human life.
- (2) Murder is a felony in the first degree.

##### **SECTION 210.3. Manslaughter**

- (1) Criminal homicide constitutes manslaughter when:
  - (a) it is committed recklessly; or
  - (b) [OMITTED].
- (2) Manslaughter is a felony of the second degree.

**SECTION 210.4. Negligent Homicide**

- (1) Criminal homicide constitutes negligent homicide when it is committed negligently.
- (2) Negligent homicide is a felony of the third degree.

**SECTION 510.1. Driving Under the Influence.**

- (1) A person shall not operate or be in physical control of a motor vehicle anywhere in this state:
  - (a) Having an alcohol concentration of 0.08 or more as measured by a scientifically reliable test or tests of a sample of the person's breath or blood taken within two (2) hours of cessation of operation or physical control of a motor vehicle; or
  - (b) While under the influence of alcohol.
- (2) Driving under the influence is a misdemeanor of the first degree.

## AVAILABLE CASE LAW

### **CRIMINAL HOMICIDE:**

#### ***State v. Jeffries* (1972)**

In a murder case, a defendant may be found guilty of murder in the absence of a specific intent to kill where an act was done with such heedless disregard of a harmful result, foreseen as a likely possibility, that it differs little in the scale of moral blameworthiness from an actual intent to cause such harm. To distinguish such a crime from “intentional murder,” it is useful to call it “extreme reckless murder” and to distinguish its *mens rea* from specific intent to kill by calling it “constructive malice.”

#### ***State v. Maddox* (1974)**

A trial court may not prevent a case of murder from going to the jury under an “extreme reckless murder” theory if the evidence, viewed as a whole, could be reasonably interpreted as showing the type of heightened recklessness that equates to purposeful or knowing homicide.

#### ***State v. Borris* (1995)**

The fact that a motorist was operating a vehicle under influence of intoxicants at the time of an accident does not, in and of itself, suffice to establish extreme recklessness under the Midlands Penal Code.

#### ***State v. Harding* (1999)**

The Midlands Supreme Court upheld a conviction for reckless murder in a vehicular-homicide case, holding that “the facts show[ed] a deviation from established standards of regard for life and the safety of others markedly different in degree from the negligence found in most vehicular homicides.”

### **BURDEN OF PROOF:**

#### ***State v. Monarch* (1904)**

In a criminal case, the burden of proof is on the State and never shifts to the defendant. The standard of proof in a criminal case is beyond a reasonable doubt with respect to each and every element of the offense(s) alleged.

#### ***State v. Sarobe* (1981)**

The State’s burden of proving its case beyond a reasonable doubt applies to each and every element of the crime charged, but this burden does not operate on the many subordinate, evidentiary, or incidental facts as distinguished from proof of the elements of the crime or of an ultimate fact. Where, however, the State relies in whole or in part on circumstantial evidence to prove an element of a crime, although each link in the chain of evidence to support it need not be proven beyond a reasonable doubt, the cumulative

impact of that evidence must, in order to support that inference, convince the finder of fact beyond a reasonable doubt that the element has been proven.

***Richey v. Bartlett* (2002)**

In all trials, fact finders may rely on both direct and circumstantial evidence. Direct evidence is testimony by a witness about what that witness personally did, saw, or heard. Circumstantial evidence is indirect evidence from which the fact finder may infer that another fact is true. Physical evidence may fall into either category. Neither type of evidence should be given categorically more weight than the other.

***State v. Tamase* (1972)**

It is up to the fact finder to determine the credibility of each witness's testimony. A fact finder, whether jury or judge, may choose to credit all, some, or none of a witness's testimony. At all times the fact finder may consider the witness's interest in the outcome of the case.

***State v. Lowe* (1985)**

A criminal defendant's decision to exercise the constitutionally protected right not to testify in his or her own defense may not be commented upon by either party either explicitly or implicitly. However, if the defendant does choose to testify, his or her credibility is to be judged like that of any other witness.

**EXPERT TESTIMONY:**

***Davis v. Adams* (1993)**

Under the Midlands Rules of Evidence, trial judges must ensure that any and all scientific testimony or evidence admitted is not only relevant but reliable. In determining whether expert testimony is sufficiently reliable to be admitted, judges should consider only the methods employed and the data relied upon, not the conclusions themselves.

***Tarot Readers Association of Midlands v. Merrell Dow* (1994)**

In assessing reliability under *Davis v. Adams*, judges should consider, among other factors, whether the theory or technique has been or can be tested, whether it has been subjected to peer review and publication, whether it has a known error rate, and whether it has gained widespread acceptance within the field. These factors, while relevant, are not necessarily dispositive. For example, lack of publication does not automatically foreclose admission; sometimes well-grounded but innovative theories will not have been published. Indeed, there is no definitive checklist in making a preliminary assessment of whether reasoning or methodology underlying expert testimony is scientifically reliable. Judges must make such assessments based on the totality of the circumstances, and the proponent of such expert testimony must meet the threshold proof requirement of a preponderance of the evidence.

***Kane Software Co. v. Mars Investigations* (1995)**

Prior to trial, the party offering an expert must provide the identity of the expert, identify the sources of information underlying the expert's conclusions (including but not limited to affidavits, depositions, and/or written reports), state the basis of the expert's conclusions and the conclusions themselves, and identify all relevant expertise that qualifies the witness to testify to such conclusions. If such disclosure to opposing counsel is not made prior to trial, or if the expert's testimony at trial is so materially different from that disclosed prior to trial that admitting it would result in unfair surprise or trial by ambush, the court may exclude the offending portion(s) of the expert's testimony at trial.

***Richards v. Mississippi BBQ* (1997)**

Midlands Rule of Evidence 703 does not afford an expert unlimited license to testify or present a chart in a manner that simply summarizes the testimony of others without first relating that testimony to some "specialized knowledge" on the expert's part as required under Midlands Rule of Evidence 702. The court must distinguish experts relying on hearsay to form scientific conclusions from conduits who merely repeat what they are told. The testimony of the former is admissible; that of the latter is not.

***Diamond Design Productions v. Fountain* (2002)**

Notwithstanding Midlands Rule of Evidence 704, witnesses may not offer legal conclusions or legal interpretations. The determination of whether a person or entity has violated the law is the exclusive province of the fact-finder—either the judge in a bench trial or the jury in a jury trial—and hearing a witness's views about the law will not "assist the trier of fact to understand the evidence or to determine a fact in issue" within the meaning of Midlands Rule of Evidence 702. For example, in a murder trial, an expert witness (with the appropriate credentials and foundation) may testify to whether the defendant fired a gun or whether the gunshot was the medical cause of a victim's death. Regardless of credentials and foundation, however, that same expert may not testify to whether the defendant committed "murder" or whether the gunshot was the "proximate cause" of the victim's death.

**BREATH ALCOHOL AND FIELD SOBRIETY TESTS:**

***State v. Harper* (1995)**

Although the Court is aware that the states are split on the issue, the Midlands Supreme Court unanimously holds that a law enforcement officer can lawfully compel an individual suspected of a DUI offense to perform a field sobriety test and/or a breath alcohol test. If the accused refuses, the State can elicit testimony regarding the individual's refusal as evidence of a person's consciousness of guilt. Like many of our sister states taking this position, we hold that the law-enforcement officer does not have to inform the accused that this refusal may be held against her.

**IN THE CIRCUIT COURT OF BRECKINRIDGE COUNTY, MIDLANDS  
CRIMINAL COURT DIVISION**

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**STATE OF MIDLANDS,**

**Plaintiff,**

**v.**

**CASE NO. CR-11-1030**

**DANNY DAWSON,**

**Defendant.**

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**ORDER ON MOTIONS IN LIMINE**

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This matter came to be heard on the 15<sup>th</sup> day of August, 2011, upon pretrial motions by counsel in the above-referenced case. Upon review of the facts and the arguments of counsel, the Court finds and orders as follows:

A. Defendant's Motion for Change of Venue or, alternatively, to Appoint Special Counsel.

1. All of the alleged conduct listed in the State's indictment occurred within Breckinridge County and venue in this jurisdiction is proper.
2. The alleged victim in this case is a close relative of the District Attorney for the county of jurisdiction in this offense, D.A. Ryan Sullivan.
3. In considering a Motion for Change of Venue, the Court is compelled to balance the factors of convenience of the parties and witnesses and the interest of justice which includes a consideration of 1) the location of the Defendant, 2) the location of possible witnesses, 3) the location of events likely to be in issue, 4) the location of documents and records likely to be involved, 5) disruption of defendant's business unless the case is transferred, 6) the docket of each



district and division involved, 7) the location of counsel, 8) relative accessibility of the place of trial, 9) expense to the parties, and 10) any other special elements which may affect the transfer.

4. This Court is persuaded by arguments from the Government that these factors on balance weigh in favor of retaining venue in Midlands Center, Breckinridge County. The only persuasive argument by the Defense for moving this case is that the victim, Vanessa Sullivan, was the only daughter of District Attorney Ryan Sullivan. Defendant's argument that Defendant resides in another city is not persuasive in light of Court's conclusion that the other witnesses, documents, and surrounding events are located in or related to this venue. This Court does, however, find that Defendant is entitled to the appointment of Special Prosecution Counsel from outside the office of District Attorney Sullivan. Therefore, Defendant's *Motion for Change of Venue* is hereby **DENIED** and the alternative *Motion by Defendant to Appoint Special Counsel* is hereby **GRANTED**.

WHEREFORE, this Court holds that upon the entry of this order, Special Counsel from Polk County shall be appointed for the purpose of representing the State of Midlands in the pursuit of justice in the foregoing matter.

B. State's Motion to Admit Audio Recordings.

1. State's counsel issued a subpoena to Midlands Global Knowledge Wireless ("MGK Wireless"), a wireless telecommunication provider, on October 12, 2010. The subpoena ordered the production of all information, text messages, voicemails, and data transmitted to and from MGK Wireless telephone number 555-272-7376, which was registered to Vanessa Sullivan, an MGK Wireless subscriber, sent or received from 1800 September 25, 2010 through 0200 on September 26, 2010.

2. MGK Wireless timely responded to the subpoena, and copies of all materials produced pursuant to the subpoena were produced upon a Motion for Discovery by the Defense.

3. Among the data received from MGK Wireless was a voicemail recording from 555-272-7376 to phone number 555-715-5507 at 12:57 a.m. on September 26, 2010.

4. Upon the sworn declaration of Olivia Wolbert, employee and record keeper with MGK Wireless, this Court is satisfied that number 555-715-5507 belongs to Francis Sullivan, parent of Vanessa Sullivan and spouse of Ryan Sullivan. This was confirmed in a sworn affidavit provided by Ryan Sullivan, who shares a family account plan with Vanessa Sullivan and Francis Sullivan.

5. State's counsel moved in limine to admit the audio recordings for use at trial.

6. Defendant has raised several objections to the introduction of this evidence by the Government at trial, including lack of authentication, hearsay, and danger of undue prejudice. Upon consideration of these objections by the Defense, this Court finds as follows:

- a. The Government has satisfied the requirements of proper authentication under M.R.E. 901 *et seq.* Specifically, the Declaration of Olivia Wolbert is sufficient to meet the standard for authentication of telephone records required by M.R.E. 901(b)(6), and the affidavit by District Attorney Sullivan sufficiently identifies the voice on the recording to be that of Vanessa Sullivan as required by M.R.E. 901(b)(5).
- b. Defendant's objections to the statements and sounds within the recording under M.R.E. 801 are wholly without merit.
- c. Defendant also objected to the introduction of the recording under M.R.E. 403, claiming that probative value of the jury hearing the recording is substantially outweighed by the danger of unfair prejudice. This Court is not persuaded that there is a danger of unfair prejudice, nor that the significant probative value in hearing what happened leading up to the crash is in any way, let alone substantially, outweighed by any danger for prejudice.

- d. Upon its first publication at trial, the audio file must be played/published in its entirety before the jury. Thereafter, should the audio be used subsequently through witnesses or in closing arguments, the audio file may be stopped/started and need not be played in its entirety.
- e. A transcript of the audio may be provided to the judge and parties during the trial, but may not be admitted as an exhibit.

WHEREFORE, State's Motion to Admit the Audio Recording is hereby **GRANTED**.

C. Defendant's Motion to Exclude Character Evidence Under Rules 404 and 608-609.

Defendant has reserved the right to object to any evidence put forth by the Government regarding the past consumption of alcohol by the Defendant, past instances of driving under the influence or driving recklessly, or any other past conduct put forth in an effort by the Government to show action in conformity therewith. The Government responded that any attempts to use such evidence would be permissible under the exceptions to Rule 404(b) to the extent such use would demonstrate knowledge, intent, or lack of mistake. The Government additionally requested notice from the Defense of any character evidence of the accused that the Defense intended to offer under M.R.E. 404(a). Defendant objects to the Government's request.

The jurisdiction of Midlands is unique in that it prohibits the Government from calling rebuttal witnesses. Normally, the Government's use of specific instances of conduct in the manner proscribed by the state would be appropriate in rebuttal form once the Defendant has alleged counter evidence in the form of mistake, lack of knowledge, or lack of intent. Similarly, the Government would be able to recall witnesses to respond to any attempts by the Defendant to demonstrate general traits for carefulness, non-recklessness, or other traits relevant to the charges.

However, since there are no rebuttal witnesses, for the purpose of this trial, the Court orders as follows:

1. The Defense must provide the Government with notice of any intent by the Defense to offer evidence of the character of the defendant related to the Defendant's general character for carefulness, safety, or other relevant traits related to the charges. This notice must be provided prior to the start of trial and must be signed by lead counsel for each party.
2. The Government must offer similar notice to the Defense regarding its intent to use specific instances of conduct for knowledge, lack of mistake, intent, or any other permissible reason set forth in 404(b).
3. Upon receipt of notice by Defendant that the Defense intends to offer evidence under 404(a), the Government may pursue "preemptory rebuttal evidence" of competing traits during its case-in-chief. If the Defendant does not provide notice of its intent to offer 404(a) evidence, neither party may introduce such evidence at trial.

The Defendant also objects to the introduction of any character evidence offered by the Government pursuant to M.R.E. 608 and 609. Since M.R.E. 608 and 609 only apply to testifying witnesses, this Court has reserved ruling on these objections as they apply to the Defendant, or any other witness, until trial but does require both parties to comply with the same notice requirements set forth in the paragraphs relating to evidence submitted under M.R.E. 404.

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED.**

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Hon. Alfred Wayne  
State of Midlands  
August 16, 2011

**IN THE CIRCUIT COURT OF BRECKINRIDGE COUNTY, MIDLANDS  
CRIMINAL COURT DIVISION**

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**STATE OF MIDLANDS,**

**Plaintiff,**

**v.**

**CASE NO. CR-11-1030**

**DANNY DAWSON,**

**Defendant.**

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**STIPULATIONS**

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1. The parties agree that the transcript of the audio recording, Exhibit 1(b), is authentic, accurate, and complete for the purpose of its being provided to judges/jurors to follow along with the audio recording itself, Exhibit 1(a), when the audio recording is published to the jury at trial. All objections to either party's providing the transcript to the judges/jurors for that limited purpose, and only for that limited purpose, are waived. The parties agree that the transcript will not be entered into evidence.
2. The signatures on the receipts from Chuggie's Sports Bar – Exhibits 2(a), 2(b), and 2(c) – are in fact those of the indicated individuals (Danny Dawson, Danny Dawson, and Vanessa Sullivan, respectively). Both parties have waived any and all objections as to the authenticity of those signatures.
3. A single-car collision that occurred at approximately 1 a.m. on the morning of September 25, 2010 was the sole cause of the death of Vanessa Sullivan. Danny Dawson was the driver of the car at the time of the collision. Vanessa Sullivan's death was not caused, in full or in part, by her own actions.
4. All photographs in Exhibit 9 are unaltered and represent what they purport to represent. Both parties waive all objections to the authenticity of the photographs and waive all objections to the captions of the photographs.
5. Danny Dawson weighed 160 pounds on September 25, 2010.
6. Danny Dawson suffered from no medical or psychological conditions that impacted Danny Dawson's ability to drive a motor vehicle on September 25, 2010.

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Attorney for the State of Midlands

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Attorney for Defendant

**IN THE CIRCUIT COURT OF BRECKINRIDGE COUNTY, MIDLANDS  
CRIMINAL COURT DIVISION**

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**STATE OF MIDLANDS,**

**Plaintiff,**

**v.**

**CASE NO. CR-11-1030**

**DANNY DAWSON,**

**Defendant.**

---

**STIPULATION REGARDING DEFENDANT'S  
REFUSAL OF INTOXILYZER TEST**

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1. The parties agree that the defendant, after being advised of the defendant's rights, was asked by Dr. Avery Smith to submit to an Intoxilyzer (breath alcohol concentration) test on the morning of September 25, 2010, and that the defendant refused to submit to the Intoxilyzer test. The parties waive all objections to the admission of Exhibit 5. If called, Dr. Smith would testify that Exhibit 5 records the defendant's refusal to submit to an Intoxilyzer, Dr. Smith's observations of the defendant, and other information collected from the defendant. Dr. Smith would further testify that Dr. Smith did not observe the defendant at the crash scene and that the defendant did not speak to Dr. Smith about the details of the single-car collision.

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Attorney for the State of Midlands

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Attorney for Defendant

**IN THE CIRCUIT COURT OF BRECKINRIDGE COUNTY, MIDLANDS  
CRIMINAL COURT DIVISION**

---

**STATE OF MIDLANDS,**

**Plaintiff,**

**v.**

**CASE NO. CR-11-1030**

**DANNY DAWSON,**

**Defendant.**

---

**JURY INSTRUCTIONS**

---

Under the evidence presented to you in this case, you shall find the Defendant, Danny Dawson, not guilty under these Instructions unless you believe from the evidence beyond a reasonable doubt that Danny Dawson is guilty of one or more of the following offenses:

1. Murder, as set out in Instruction No. 1;

OR

2. Manslaughter, as set out in Instruction No. 2;

OR

3. Negligent Homicide, as set out in Instruction No. 3;

AND/OR

4. Operating a Motor Vehicle While Under Influence of Alcohol, as set out in Instruction No.

4.

### **INSTRUCTION NO. 1: MURDER**

You will find the Defendant, Danny Dawson, guilty of Murder under this Instruction if, and only if, you believe from the evidence beyond a reasonable doubt all of the following:

- A. That in this county on or about September 24, 2010, Danny Dawson killed Vanessa Sullivan by injuring her in a motor vehicle;

AND

- B. That, in so doing, Danny Dawson was recklessly engaging in conduct which created a grave risk of death to another and thereby caused the death of Vanessa Sullivan under circumstances manifesting an extreme indifference to human life.

If you find the Defendant, Danny Dawson, guilty under this Instruction, you will say so by your verdict.

### **INSTRUCTION NO. 2: MANSLAUGHTER**

If you do not find the Defendant, Danny Dawson, guilty under Instruction No. 1, you will find the Defendant guilty of Manslaughter under this Instruction if, and only if, you believe from the evidence beyond a reasonable doubt, all of the following:

- A. That in this county on or about September 25, 2010, Danny Dawson killed Vanessa Sullivan by injuring her in a motor vehicle;

AND

- B. That, in so doing, Danny Dawson was acting recklessly.

If you find the Defendant, Danny Dawson, guilty under this Instruction, you will say so by your verdict.



**INSTRUCTION NO. 3: NEGLIGENT HOMICIDE**

If you do not find the Defendant, Danny Dawson, guilty under Instruction No. 1 or Instruction No. 2, you will find the Defendant guilty of Reckless Homicide under this Instruction if, and only if, you believe from the evidence beyond a reasonable doubt, all of the following:

- A. That in this county on or about September 25, 2010, Danny Dawson killed Vanessa Sullivan by injuring her in a motor vehicle;

AND

- B. That, in so doing, Danny Dawson was acting negligently.

If you find the Defendant, Danny Dawson, guilty under this Instruction, you will say so by your verdict.

**INSTRUCTION NO. 4: OPERATING A MOTOR VEHICLE WHILE UNDER THE INFLUENCE OF ALCOHOL**

You will find the Defendant, Danny Dawson, guilty of Operating a Motor Vehicle While Under the Influence of Alcohol if, and only if, you believe from the evidence beyond a reasonable doubt all of the following:

- A. That in this county on or about September 25, 2010, Danny Dawson operated a motor vehicle;

AND

- B. Danny Dawson was under the influence of alcohol intoxication.

If you find the Defendant, Danny Dawson, guilty under this Instruction, you will say so by your verdict.

## **INSTRUCTION NO. 5: DEFINITIONS**

**Recklessly.** A person acts recklessly with respect to a material element of an offense when he consciously disregards a substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such a nature and degree that, considering the nature and purpose of the actor's conduct and the circumstances known to him, its disregard involves a gross deviation from the standard of conduct that a law-abiding person would observe in the actor's situation.

**Negligently.** A person acts negligently with respect to a material element of an offense when he should be aware of a substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such a nature and degree that the actor's failure to perceive it, considering the nature and purpose of his conduct and the circumstances known to him, involves a gross deviation from the standard of care that a reasonable person would observe in the actor's situation.

**Intoxication** means a disturbance of mental or physical capacities resulting from the introduction of substances into the body.

**Voluntary Intoxication** means intoxication caused by substances which the Defendant knowingly introduces into his body, the tendency of which to cause intoxication he knows or ought to know (unless he introduces them pursuant to medical advice or under such threat of physical force against him that a person in the Defendant's situation could not have been expected to resist, provided that the Defendant did not, either intentionally or wantonly, place himself in a situation in which it was probable that he would be subjected to coercion).

**Evidence** means:

- first, the sworn testimony of witnesses, both on direct and cross-examination, regardless of who called the witness;
- second, the exhibits admitted by the Court;
- third, any facts to which the lawyers have agreed or stipulated or which the court has directed you to find;
- fourth, circumstantial evidence, which is evidence from which you may logically find other facts according to common knowledge and experience.

None of these types of evidence is necessarily better or worse than another. Any type of evidence can prove a fact. Anything you may have seen or heard outside the courtroom is not evidence, although you may take into account matters of your common knowledge and your observations and experience in the affairs of life.

**Reasonable doubt** means a doubt based upon reason and common sense. It is a doubt for which a reason can be given, arising from a fair and rational consideration of the evidence or lack of evidence. It is not a doubt which is based on mere guesswork or speculation. A doubt which arises merely from sympathy or from fear to return a verdict of guilt is not a reasonable doubt. A reasonable doubt is not a doubt such as may be used to escape the responsibility of a decision.

#### **INSTRUCTION NO. 7: ARGUMENTS AND REMARKS OF COUNSEL**

Remarks of the attorneys are not evidence. If the remarks suggested certain facts not in evidence, disregard the suggestion. However you are to consider carefully the closing arguments of the attorneys. Ultimately you must draw your own conclusions from the evidence, and decide upon your verdict according to the evidence, under the instructions given you by the court.

### **INSTRUCTION NO. 8: PRESUMPTION OF INNOCENCE**

The law presumes a Defendant to be innocent of a crime and the indictment shall not be considered as evidence or as having any weight against him. You shall find the defendant not guilty unless you are satisfied from the evidence alone and beyond a reasonable doubt that the defendant is guilty. If upon the whole case you have a reasonable doubt as to guilt, you shall find the defendant not guilty.

### **INSTRUCTION NO. 9: RIGHT TO REMAIN SILENT**

The Defendant is not compelled to testify, and the fact that a defendant does not cannot be used as an inference of guilt. If, however, a defendant does testify, you shall judge his credibility per Instruction NO. 10.

### **INSTRUCTION NO. 10: CREDIBILITY OF WITNESSES**

It is the duty of the jury to scrutinize and weigh the testimony of witnesses and to determine the effect of the evidence as a whole. You are the sole judges of the credibility, that is, the believability, of the witnesses and of the weight to be given to their testimony.

In determining the credibility of each witness and the weight you give to the testimony of each witness, consider these factors:

- whether the witness has an interest or lack of interest in the result of this trial;
- the witness' conduct, appearance, and demeanor on the witness stand;
- the clearness or lack of clearness of the witness' recollections;
- the opportunity the witness had for observing and for knowing the matters the witness testified about;
- the reasonableness of the witness' testimony;

- the apparent intelligence of the witness;
- bias or prejudice, if any has been shown;
- possible motives for falsifying testimony; and
- all other facts and circumstances during the trial which tend either to support or to discredit the testimony.

Then give to the testimony of each witness the weight you believe it should receive.

There is no magic way for you to evaluate the testimony; instead, you should use your common sense and experience.

### **INSTRUCTION NO. 11: UNANIMOUS VERDICT**

The verdict of the Jury must be unanimous as to guilty or not guilty, and be signed by one of you as Foreperson.

DATE: \_\_\_\_\_

\_\_\_\_\_

JUDGE

**VERDICT UNDER INSTRUCTION NO. 1: MURDER**

We, the Jury, find the Defendant, Danny Dawson, NOT GUILTY under Instruction No. 1.

---

FOREPERSON

We, the Jury, find the Defendant, Danny Dawson, GUILTY under Instruction No. 1.

---

FOREPERSON

---

**VERDICT UNDER INSTRUCTION NO. 2: MANSLAUGHTER**

We, the Jury, find the Defendant, Danny Dawson, NOT GUILTY under Instruction No. 2.

---

FOREPERSON

We, the Jury, find the Defendant, Danny Dawson, GUILTY under Instruction No. 2.

---

FOREPERSON

**VERDICT UNDER INSTRUCTION NO. 3: NEGLIGENT HOMICIDE**

We, the Jury, find the Defendant, Danny Dawson, NOT GUILTY under Instruction No. 3.

---

FOREPERSON

We, the Jury, find the Defendant, Danny Dawson, GUILTY under Instruction No. 3.

---

FOREPERSON

---

**VERDICT UNDER INSTRUCTION NO. 4: OPERATING A MOTOR  
VEHICLE WHILE UNDER INFLUENCE OF ALCOHOL**

We, the Jury, find the Defendant, Danny Dawson, NOT GUILTY under Instruction No. 4.

---

FOREPERSON

We, the Jury, find the Defendant, Danny Dawson, GUILTY under Instruction No. 4.

---

FOREPERSON

MGK WIRELESS COMMUNICATIONS

TRANSCRIPT OF AUDIO TRANSMISSION VOICE MESSAGE RETRIEVAL

FROM: ACCOUNT 555-272-7376

TO: ACCOUNT 555-715-5507

DATE OF TRANSMISSION: SEPTEMBER 25, 2010

TIME OF TRANSMISSION: 0057 HOURS

[BEGIN MESSAGE]

*MUSIC: ARTIST NOT IDENTIFIED*

VOICE ONE: HI DAD, IT'S ME. VANESSA  
*INAUDIBLE MUMBLE* ... KEEP IT DOWN ...  
*INAUDIBLE MUMBLE* ... TALK TO MY DAD  
SORRY DAD, UH, ANYWAY, HI, UH ITS ME, VANESSA  
AND, UM, I'M SORRY. I JUST SAID THAT, DIDN'T I  
UM, SORRY. ANYWAY, I WAS JUST CALLING TO LET YOU  
KNOW THAT WE'RE GONNA BE A FEW MINUTES

OTHER VOICES: *INAUDIBLE MUMBLE*

VOICE ONE: DANNY WHAT ARE YOU DOING, STAY ON THE ROAD  
UM, SORRY DAD, I'M SORRY  
WE'RE FINE, AH, DANNY IS JUST BEING AN IDIOT  
UM ANYWAYS  
WE'RE FINE AND WE SHOULD BE THERE SHORTLY  
UM, BUT ANYWAY, I WAS ASK-  
CALLING, SORRY, CALLING TO ASK IF YOU  
WOULDN'T MIND IF YOU COULD LEAVE THE GARAGE DOOR  
OPEN BECAUSE IT HAS BEEN POURING DOWN RAIN  
AND I-  
IT'S GONNA BE RIDICULOUS *INAUDIBLE*  
TRY AND WALK IN  
UM, AND I JUST WANNA LET YOU KNOW THAT I LOVE YOU  
AND WE SHOULD BE THERE SOON  
UM, I'LL TALK TO YOU LAT-  
DANNY

UNIDENTIFIED NOISE

UNIDENTIFIED SCREAM

[END OF MESSAGE]



\*\*\*\*\*Chuggie's\*\*\*\*\*

09/24/2010 000001 BILL #0114  
6:45 PM PAT0012  
CARD TYPE ACCT NUMBER  
VISA xxxxxxxxxxxxx4170  
TRANSACTION APPROVED  
AUTHORIZATION #: 040017  
REFERENCE: 62175012

Guest 1

1 Iron IPA	\$3.50
1 Deluxe Nachos	\$7.99
1 Whiskey & Ginger	\$3.00
1 Whiskey & Ginger	\$3.00
1 Whiskey & Ginger	\$3.00

Items 5	
Total	\$20.49
Tip	\$4.00
Total	\$24.49

X Danny Dawson

\*\*\*\*\*MERCHANT COPY\*\*\*\*\*

\*\*\*\*\*Chuggie's\*\*\*\*\*

09/25/2010 000001 BILL #0217  
12:37 AM PAT0012  
CARD TYPE ACCT NUMBER  
VISA xxxxxxxxxxxxx4170  
TRANSACTION APPROVED  
AUTHORIZATION #: 040017  
REFERENCE: 62178940

Guest 1

1 Big Horn Burger	
w/ extra ketchup	\$10.49
1 Johnnie Walker Black	\$8.00
2 Screwdriver @ \$3.00	\$6.00
1 XL Cheese Fries	\$7.99
2 Lemon Drop Shot @ \$5.00	
	\$10.00
1 Midtown Brown Pint	\$2.50
1 Soda	\$1.50
2 Screwdriver @ \$3.00	\$6.00
1 Soda Refill	\$0.50
1 Soda Refill	\$0.50
2 Screwdriver @ \$3.00	\$6.00
1 Soda Refill	\$0.50
2 Screwdriver @ \$3.00	\$6.00
1 Soda Refill	\$0.50
2 Screwdriver @ \$3.00	\$6.00
1 Tequila Sunrise	\$3.00
1 Soda Refill	\$0.50
1 Soda Refill	\$0.50

Items 27	
Total	\$76.48
Tip	\$20.00
Total	\$96.48

X \_\_\_\_\_ Danny Dawson

\*\*\*\*\*MERCHANT COPY\*\*\*\*\*

\*\*\*\*\*Chuggie's\*\*\*\*\*

09/25/2010 000001 BILL #0215  
12:35 AM PAT0012  
CARD TYPE ACCT NUMBER  
VISA xxxxxxxxxxxxx6169  
TRANSACTION APPROVED  
AUTHORIZATION #: 040017  
REFERENCE: 62178938

Guest 1

1 Grand Caesar Salad  
w/ chicken @ \$2.00 \$11.99  
1 Horse's Head Sauvignon Blanc  
(Glass) \$6.00  
1 High Point Merlot \$4.00  
1 High Point Merlot \$4.00

Items 4  
Total \$25.99  
Tip \$4.00  
Total \$29.99

X \_\_\_\_\_ Vanessa Sullivan

\*\*\*\*\*MERCHANT COPY\*\*\*\*\*

DEPARTMENT OF TRANSPORTATION  
NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION  
CONFORMING PRODUCTS LIST OF EVIDENTIAL BREATH MEASUREMENT DEVICES  
Issued August 7, 2011

Alcohol Countermeasure Systems Corp. Mississauga, Ontario, Canada:

Alert J3AD\* .....  
Alert J4X.ec .....  
PBA3000C .....

BAC Systems, Inc., Ontario, Canada: Breath Analysis Computer\* .....

CAMEC Ltd., North Shields, Tyne and Ware, England: IR Breath Analyzer\* .....

CMI, Inc., Owensboro, KY:

Intoxilyzer Model:

200 .....  
200D .....  
300 .....  
400 .....  
400PA .....  
1400 .....  
4011\* .....  
4011A\* .....  
4011AS\* .....  
4011AS-A\* .....  
4011AS-AQ\* .....  
4011 AW\* .....  
4011A27-10100\* .....  
4011A27-10100 with filter\* .....  
5000 .....  
5000 (w/Cal. Vapor Re-Circ.) .....  
5000 (w/3/8" ID Hose option) .....  
5000CD .....  
5000CD/FG5 .....  
5000EN .....  
5000 (CAL DOJ) .....  
5000VA .....  
8000 .....  
PAC 1200\* .....  
S-D2 .....  
S-D5 .....

Draeger Safety, Inc., Durango, CO:

Alcotest Model:

6510 .....  
7010\* .....  
7110\* .....  
7110 MKIII .....  
7110 MKIII-C .....  
7410 .....  
7410 Plus .....

Breathalyzer Model:

900\* .....  
900A\* .....  
900BG\* .....  
7410 .....  
7410-II .....

Gall's Inc., Lexington, KY: Alcohol Detection System—A.D.S. 500 .....

Intoximeters, Inc., St. Louis, MO:

Photo Electric Intoximeter\* .....  
GC Intoximeter MK II\* .....  
GC Intoximeter MK IV\* .....  
Auto Intoximeter\* .....

Intoximeter Model:

3000\* .....  
3000 (rev B1)\* .....  
3000 (rev B2)\* .....  
3000 (rev B2A)\* .....

3000 (rev B2A) w/FM option*	.....
3000 (Fuel Cell)*	.....
3000 D*	.....
3000 DFC*	.....
Alcomonitor CC	.....
Alco-Sensor III	.....
Alco-Sensor III (Enhanced with Serial Numbers above 1,200,000)	.....
Alco-Sensor IV	.....
Alco-Sensor IV–XL	.....
Alco-Sensor AZ	.....
Alco-Sensor FST	.....
RBT–AZ	.....
RBT III	.....
RBT III–A	.....
RBT IV	.....
RBT IV with CEM (cell enhancement module)	.....
Intox EC/IR	.....
Intox EC/IR II	.....
Portable Intox EC/IR	.....
Komyo Kitagawa, Kogyo, K.K.:	
Alcolyzer DPA–2*	.....
Breath Alcohol Meter PAM 101B*	.....
Lifeloc Technologies, Inc., (formerly Lifeloc, Inc.), Wheat Ridge, CO:	
PBA 3000B	.....
PBA 3000–P*	.....
PBA 3000C	.....
Alcohol Data Sensor	.....
Phoenix	.....
FC 10	.....
FC 20	.....
Lion Laboratories, Ltd., Cardiff, Wales, UK:	
Alcolmeter Model:	
300	.....
400	.....
SD–2*	.....
EBA*	.....
Intoxilyzer Model:	
200	.....
200D	.....
1400	.....
5000 CD/FG5	.....
5000 EN	.....
1400	.....
National Draeger, Inc., Durango, CO:	
Alcotest Model:	
7010*	.....
7110*	.....
7110 MKIII	.....
7110 MKIII–C	.....
7410	.....
7410 Plus	.....
Breathalyzer Model:	
900*	.....
900A*	.....
900BG*	.....
7410	.....
7410–II	.....
National Patent Analytical Systems, Inc., Mansfield, OH:	
BAC DataMaster (with or without the Delta–1 accessory)	.....
BAC Verifier DataMaster (with or without the Delta–1 accessory)	.....
DataMaster cdm (with or without the Delta–1 accessory)	.....
Omicron Systems, Palo Alto, CA:	
Intoxilyzer Model:	
4011*	.....
4011AW*	.....
Plus 4 Engineering, Minturn, CO: 5000 Plus4*	.....
Seres, Paris, France:	

Alco Master .....
Alcopro .....
Siemens-Allis, Cherry Hill, NJ:
Alcomat* .....
Alcomat F* .....
Smith and Wesson Electronics, Springfield, MA:
Breathalyzer Model:
900* .....
900A* .....
1000* .....
2000* .....
2000 (non-Humidity Sensor)* .....
Sound-Off, Inc., Hudsonville, MI:
AlcoData .....
Seres Alco Master .....
Seres Alcopro .....
Stephenson Corp.: Breathalyzer 900* .....
U.S. Alcohol Testing, Inc./Protection Devices, Inc., Rancho Cucamonga, CA:
Alco-Analyzer 1000 .....
Alco-Analyzer 2000 .....
Alco-Analyzer 2100 .....
Verax Systems, Inc., Fairport, NY:
BAC Verifier* .....
BAC Verifier Datamaster .....
BAC Verifier Datamaster II* .....

\*Instruments marked with an asterisk (\*) are instruments tested at 0.000, 0.050, 0.101, and 0.151 BAC. Instruments not marked with an asterisk were tested at BACs = 0.000, 0.020, 0.040, 0.080, and 0.160. All instruments meet the current Model Specifications currently in effect and also meet the current Model Specifications for Screening Devices to Measure Alcohol in Bodily Fluids.

This list is a complete, exclusive, and accurate copy of the instruments currently acceptable for use by local, state, and federal law enforcement. Any device not explicitly included on this list does not meet NHTSA standards and may not be used.

MIDLANDS POLICE DEPARTMENT  
FORENSICS SECTION  
INTOXYLIZER 8000 OPERATOR'S CHECKLIST

(Please Print)

09/25/10  
Test Date

Foster  
Arresting Officer

Dawson, Danny Cullen  
Driver's Name (Last, First, Middle)

5437W  
Arresting Officer's Badge #

**Operational Checklist**

X **Pre-test observational period:** The operator is certain that the subject has not ingested any substance by mouth (eating, drinking, smoking, etc.), vomited or regurgitated liquid from the stomach to the mouth for at least 15 minutes before the testing commences.

Observer Name (Print): \_\_\_\_\_

Start pre-observation time: 01:30 End pre-observation time: 01:45

Timepiece used:    Instrument X Wristwatch    Other: \_\_\_\_\_

X **Test start:** When the instrument display reads "Ready," push "Start Test" to begin testing sequence.

X Enter the operator's information and code.

X Enter the subjects information

X Select Test Mode

X Instruct subject on how to give a proper sample, have subject give first sample.

X Continue to observe for 2 minutes

X Instruct subject to give second sample, make sure machine acknowledges sample acceptance.

X Enter comments (if any) about the subject test

X Press "Print" and remove test result from printer.

Comments: \_\_\_\_\_  
\_\_\_\_\_

50-001444  
Instrument Serial #

AVERY SMITH  
Operator's Name (Print)

FORENSICS  
Operator's Department

Midlands Center  
Location

A/S  
Operator's Signature

540177  
Operator's License

**Midlands Center Department of Corrections**

**Breath Test Operator's Report**

Name: Danny Dawson Weight: 160 DOB: 9/29/1987

---

Do you have anything in your mouth at this time? YES ☒ NO  
If so, please remove it now.

---

Implied Consent Read: ☒ YES NO

Attempted to Contact Attorney: ☒ YES NO Made Contact: ☒ YES NO

Mirandized: Understood? ☒ YES NO Waived: ☒ YES NO

---

Interview:

Have you been drinking? Yes What? Mixed drinks How much? A drink an hour

When did you begin? 2 p.m. Where were you? Chuggie's

When did you have your last drink? an hour or so ago When did you get arrested? a half hour ago

Where were you going? Vanessa's Home

---

Have you used any drugs? YES ☒ NO Have you been using marijuana ? YES ☒ NO

Are you taking medication? YES ☒ NO If so, what? \_\_\_\_\_

Do you have diabetes? YES ☒ NO Are you taking insulin? YES ☒ NO

---

Are you hurt in any way? ☒ YES NO In what way? Banged up from accident

---

Have you been to the dentist or doctor today? YES ☒ NO



**I am requesting that you submit to a test of your:**

**Refused?**                      A. Breath                      B. Blood                      C. Urine

A. Yes                      B. No

**Blood test:** Drawn by: N/A

**Physical appearance (Clothing, tattoos, hygiene, etc.):**

Nothing of note.  
\_\_\_\_\_  
\_\_\_\_\_

**Remarks on speech, walk, and observations of subject:**

Consistent with moderate to heavy drinking. Stumbled slightly when  
attempting to walk. Spoke extremely deliberately.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Test Made by: (Print) Avery Smith Badge #: \_\_\_\_\_

Signature: /s/ AS

Witnessed by (if applicable): N/A Badge #: \_\_\_\_\_

I hereby confirm that this form was accurately completed.

Signature: /s/ Danny Dawson

**Midlands Center Department of Corrections**

**Breath Test Operator's Report**

Name: Danny Dawson Weight: 160 DOB: 9/29/1987

---

Do you have anything in your mouth at this time? YES ☒ NO  
If so, please remove it now.

---

Implied Consent Read: ☒ YES NO

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---

Interview:

Have you been drinking? Yes What? Mixed drinks How much? A drink an hour

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Where were you going? Vanessa's Home

---

Have you used any drugs? YES ☒ NO Have you been using marijuana ? YES ☒ NO

Are you taking medication? YES ☒ NO If so, what? \_\_\_\_\_

Do you have diabetes? YES ☒ NO Are you taking insulin? YES ☒ NO

---

Are you hurt in any way? ☒ YES NO In what way? Banged up from accident

---

Have you been to the dentist or doctor today? YES ☒ NO

**I am requesting that you submit to a test of your:**

**Refused?**                      A. Breath                      B. Blood                      C. Urine

                                    A. Yes                      B. No

**Blood test:**    Drawn by:                     N/A                   

**Physical appearance (Clothing, tattoos, hygiene, etc.):**

Nothing of note.  
\_\_\_\_\_  
\_\_\_\_\_

**Remarks on speech, walk, and observations of subject:**

Consistent with moderate to heavy drinking. Stumbled Slightly when  
attempting to walk. Spoke extremely deliberately.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Test Made by: (Print) Avery Smith                      Badge #: \_\_\_\_\_

Signature:                     /s/ AS                   

Witnessed by (if applicable):                     N/A                                          Badge #: \_\_\_\_\_

**I hereby confirm that this form was accurately completed.**

Signature: /s/ Danny Dawson

MIDLANDS POLICE DEPARTMENT  
DEPARTMENT OF FORENSICS  
BREATH TEST REPORT

TEST DATE: 09/25/2010

INSTRUMENT: INTOXILYZER — ALCOHOL ANALYZER MODEL 8000  
SN#: 50-001444 TEST LOCATION: MIDLANDS CENTER

SUBJECT NAME: DANNY DAWSON  
SUBJECT LICENSE: DAWSD137ND  
SUBJECT DOB: 09/29/1987

TEST	%BAC	STATUS	TIME
AIR BLANK	0.000	PASS	01:51
DIAGNOSTIC	OK	PASS	01:51
AIR BLANK	0.000	PASS	01:52
SUBJECT SAMPLE	0.194	OBTAINED	01:52
AIR BLANK	0.000	PASS	01:53
AIR BLANK	0.000	PASS	01:55
SUBJECT SAMPLE	0.191	OBTAINED	01:56
AIR BLANK	0.000	PASS	01:57
CONTROL SAMPLE	0.084	PASS	01:57
AIR BLANK	0.000	PASS	01:58

\*\* EXPECTED VALUE FOR CONTROL: 0.085 \*\*

**TEST RESULT: 0.19**

ADDITIONAL INFORMATION: Any observations made by the operator during the testing may be recorded in the comment section below.  
NOTES: None.

OPERATOR'S NAME: AVERY SMITH  
LICENSE #: 540177  
DEPARTMENT: FORENSICS  
METHOD: TWO SAMPLE

The above-named individual has satisfactorily met the requirements of the Midlands Department of Forensics in the chemical analysis of a person's breath and is approved to operate the above-listed equipment using the above-listed method as specified by the Midlands Department of Forensics.

COMMENTS: None.

SIGNED: \_\_\_\_\_ AS

## **Alcohol Ingestion and the Human Body**

By Dr. Becky Benton and Dr. Eve Carman

This list of the psychological and physiological effects of alcohol consumption is based on work that the authors performed at the University of Washington Medical Center over the last two decades. All information contained herein has been corroborated with several different studies run by doctors at seven different accredited medical schools across the country. This list is considered to be the authority on this subject among those in the scientific and medical communities. These effects are true across gender, age, race, ethnicity, and all other demographic factors. Some individuals may appear to be more or less intoxicated to the general observer than their BAC indicates, but this is the exception rather than the rule.

All numbers are % BAC.

0.01-0.05	Average individual appears normal
0.03-0.12	Mild euphoria, talkativeness, decreased inhibitions, decreased attention, impaired judgment
0.09-0.25	Emotional instability, loss of critical judgment, impairment of memory and comprehension, decreased sensory response, mild decrease in muscular coordination
0.18-0.30	Confusion, dizziness, exaggerated emotions, impaired visual perception, decreased pain sensation, impaired balance, staggering gait, slurred speech, moderate coordination impairment
0.27-0.40	Apathy, impaired consciousness, stupor, significantly decreased response to stimulation, severe coordination impairment, inability to stand or walk, vomiting, incontinence of urine and feces
0.35-0.50	Unconsciousness, depressed or abolished reflexes, abnormal body temperature, coma; above 0.40 death from respiratory paralysis

**DR. ASHLEY NORTON**  
**CURRICULUM VITAE**

**Education**

Bachelor of Science	Chemistry	Brown University	1986
Masters	Forensic Science	Johns Hopkins University	1990
Doctorate	Forensic Science	Johns Hopkins University	1995

**Employment History**

Professor of Medicine	Midlands State University	2005-Present
Adjunct Professor, Experimental Alcohol Research		
	Midlands State University	2001-2005
Alcohol Program Coordinator	Midlands Department of Forensics	1995 - 2005
Breath Testing Specialist	Maryland Department of Forensics	1988 - 1995
Research Assistant	Chemistry Dept., MIT	1986-1988

**Positions Held**

President, American Board of Forensic Toxicology (2010-Present)  
Member, Drug Testing Advisory Board of the United States Health & Human Services  
Department (2005-2009)

**Professional Training**

Breathalyzer Operator	(Intoxilyzer 5000, R, 8000)	current
Breathalyzer Technician	(Intoxilyzer 5000, R, 8000)	current
Alcohol Pharmacology	University of Midlands	1988

**Professional Associations**

American Board of Clinical Chemistry  
Midlands Association of Medicolegal Alcohol Researchers  
National Safety Council Committee on Alcohol & Other Drugs

### **Publications (selected)**

- Huang, Y. and Norton, A. "Applications of the Widmark Formula: Today's Chemistry." *Ethanol and Forensics Journal*, 2010, 2, 51-72.
- Norton, A. and Dubowski, K. "Breath Alcohol Research and Analysis: Biological Factors." *North American Forensics Review*, 2009, 3, 54-69.
- Norton, A. and Jones, A.W. "Temperature Fluctuations During Exhalation in Breath Alcohol Testing." *J of Ethanol Studies*, 2010, 1, 24-43.
- Norton, A., Stillman, E., and Cullen, M. "Variations in the Blood:breath Partition and Breath Alcohol Testing." *American Medical Journal*, 2006, 54, 303-17.
- Norton, A., Stillman, E. and Cullen, M. "Further studies into the Blood:breath Partition Ratio." *American Medical Journal*, 2007, 55, 312-26.
- Tuchler M. and Norton, A. "Measuring Breath Alcohol for Use in Legal Proceedings: Variability of Breath-Test Instruments." *American Medicolegal Journal*, 1998, 26, 1478-91.
- Yao, S. and Norton, A. "The Blood:breath Partition Ratio in Native Japanese." *Intra-Canadian Medical Journal*, 2003, 45, 124-52.

CURRICULUM VITAE  
**LESLIE ROMAN, P.E.**

---

**EDUCATION**

1993                      **University of Texas - Austin**  
Bachelor of Science in Mechanical Engineering

**EXPERIENCE**

2003 – Present        **Expert Accident Reconstruction Inc.**  
Principal Engineer/Owner  
Midlands Center, Midlands  
Vehicle Accident Reconstructionist

1998 – 2003          **Global Motors Manufacturing Corporation**  
Engineering Development Center  
Product Liability Investigator

1993 – 1998          **Midlands Department of Transportation**  
Midlands Center, Midlands  
Traffic Engineer

**PROFESSIONAL CERTIFICATIONS**

Professional Engineer – **P.E.**  
Accreditation Commission for Traffic Accident Reconstructionists – **ACTAR**  
Crash Data Retrieval (CDR) System Operator Certification  
Certified Fire and Explosion Investigator - **CFEI**  
Certified Vehicle Fire Investigator - **CVFI**

**CONTINUING EDUCATION**

2010 Applied Vehicle Dynamics – Society of Automotive Engineers  
2009 Commercial Vehicle Accident Reconstruction  
2008 Rollover Criteria for SUV's in Emergency Steering Maneuvers  
2007 Evaluating a Nighttime Driver Response  
2007 Human Factors in Traffic Accident Reconstruction – University of North  
2006 Crash Data Recorder Operator Certification – Collision Safety Institute  
2005 Tire and Wheel Safety Issues – Society of Automotive Engineers  
2005 Investigation of Motorcycle Crashes  
2004 Investigation of Pedestrian and Bicycle Collisions  
2003 Traffic Accident Reconstruction II – Northwestern University  
2003 Traffic Accident Reconstruction I – Northwestern University



## **AFFILIATIONS**

Society of Automotive Engineers (SAE)  
Accreditation Commission for Traffic Accident Reconstructionists (ACTAR)  
National Association of Traffic Accident Reconstructionists and Investigators (NATARI)  
National Association of Fire Investigators (NAFI)

## **OTHER**

2009 Full Scale Vehicle Crash Testing – ARC/CSI Crash Conference  
2009 Instructor –Street Survival Teen Driving School  
2008 Instructor – Vehicle Accident Reconstruction for non-Engineers  
2008 Motorcycle Crash Testing – University of North Florida  
2008 Pedestrian and Bicycle Collision Field Tests – University of North Florida  
2007 Perception and Reaction Time Field Tests – University of North Florida  
2007 Nighttime Visibility Field Testing – University of North Florida  
2006 Instructor – Automotive Technology for Passenger Cars  
2005 ARC/CSI Crash Conference

**DR. AVERY SMITH**  
**CURRICULUM VITAE**

**Education**

Bachelor of Science	Biochemistry	Gonzaga	1976
M.Sc.	Public Administration	Seattle University	1979
M.P.H.	Biostatistics	University of Washington	1982
Doctorate	Biostatistics	University of Washington	1982

**Employment**

Director	Midlands Department of Forensics	1995-Present
Director, Toxicology Department		
	Midlands Department of Forensics	1990-1995
Breath Testing Specialist	Midlands Department of Forensics	1982-Present
Toxicology Internship	MidToxx, LLC.	1976-1977

**Positions Held**

Chairman Emeritus, Board of Tests for Alcohol and Drug Influence of the State of  
Midlands (2001-Present)

State Director Emeritus of Tests for Alcohol and Drug Influence of the State of Midlands  
(2005-Present)

**Professional Training**

Breathalyzer Operator	(Intoxilyzer 5000, R, 8000)	current
Breathalyzer Technician	(Intoxilyzer 5000, R, 8000)	current
Breathalyzer Instructor	(Intoxilyzer 5000, R, 8000)	current
Breathalyzer Calibration	(Intoxilyzer 5000, R, 8000)	current
Supervision for Breath Tests	(Intoxilyzer 5000, R, 8000)	current

### **Professional Associations**

Midlands Association of Forensic Scientists

National Safety Council on Alcohol and Other Drugs

American Academy of Forensic Scientists – Toxicology Section

### **Publications (selected)**

Buchinski, L. and Smith, A. “Correctly Administering Breath Alcohol Testing.” *Journal of Forensic Science*, 1999, 44, 91-107.

Robie, J. and Smith, A. “Mouth Alcohol: The Significance of Time.” *Journal of Ethanol Testing*, 2007, 15, 47-61.

Smith, A. “Forensic Application of the Intoxilyzer 8000.” *Midlands Law Enforcement Review*, 2005, 5, 15-23.

Smith, A. and Cramer, E. “Effects of Ethanol Intoxication on the Human Body: A Forensic Scientists Guide.” *Journal of Forensic Science*, 2009, 54, 214-30.

Smith, A. and Harmon, A. “Alcohol and Driving Impairment.” *Journal of Forensic Science*, 2001, 46, 134-42.

Smith, A., Harmon, A., Strathern, E. “Prevalence of Drug Use Among Tractor-Trailer Drivers.” *Journal of Highway Safety*, 2003, 15, 92-107.



Photograph 0001: Vehicle at final rest. Rear tires remain on paved surface. Front of vehicle at rest against utility pole and right side of vehicle in contact with a tree (police photo).



Photograph 0002: Rear tires of vehicle remain on the white (fog) line (police photo).





Photograph 0003: Front of vehicle extends off pavement into ditch with the front bumper against a utility pole (police photo).



Photograph 0004: Front of vehicle contacted utility pole (police photo).

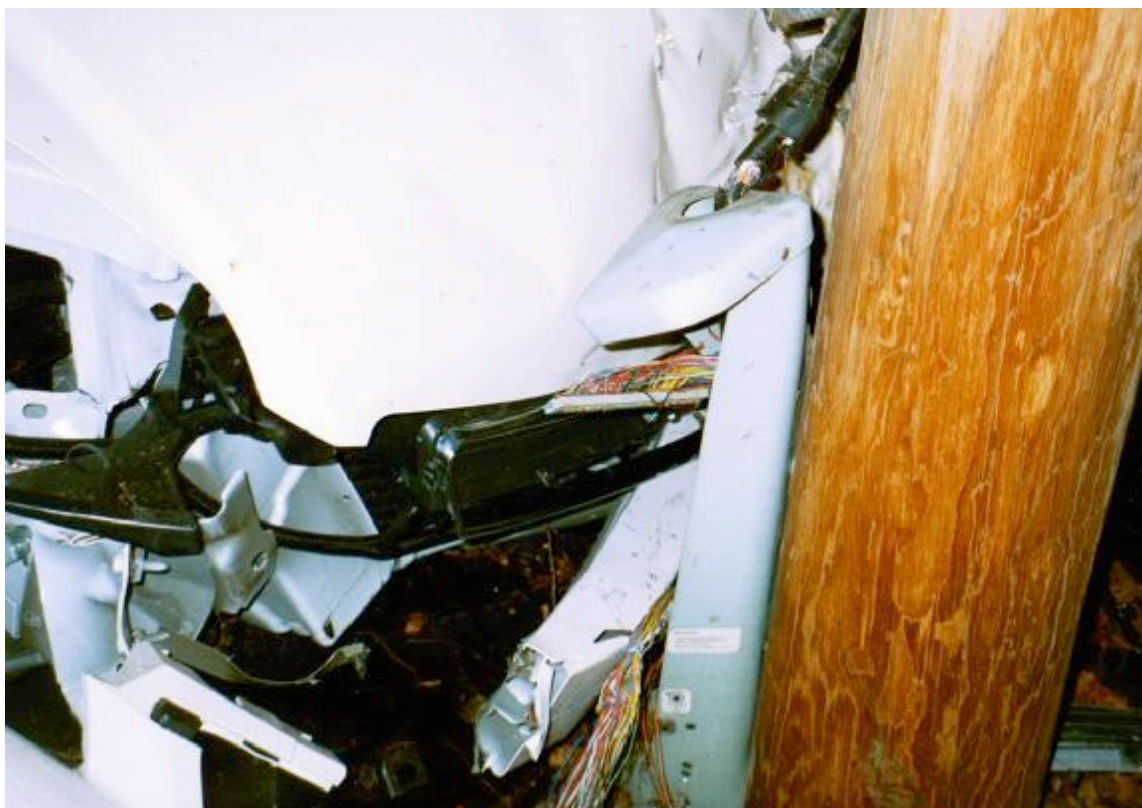


Photograph 0005: Right rear tire at final rest on the white (fog) line (police photo).



Photograph 0006: Right front tire in ditch at final rest (police photo).





Photograph 0007: Front bumper structure deformed by contact with utility pole (police photo).



Photograph 0008: Deformation evident at right front door due to contact with tree.



Photograph 0009: Deformed right front door due to contact with tree.



Photograph 0010: Northbound Canyon Road approximately 1 mile south of crash site. Deer crossing sign is visible on right side of road.





Photograph 0011: Northbound Canyon Road. Guard rail extended approximately 105 feet south after collision.



Photograph 0012: Northbound Canyon Road. Utility pole remains on the left side of the roadway. New section of guard rail is on the left side of the roadway. No tire marks are visible on the roadway.





Photograph 0013: Several trees alongside the road in the area of the collision were cut down after the incident.

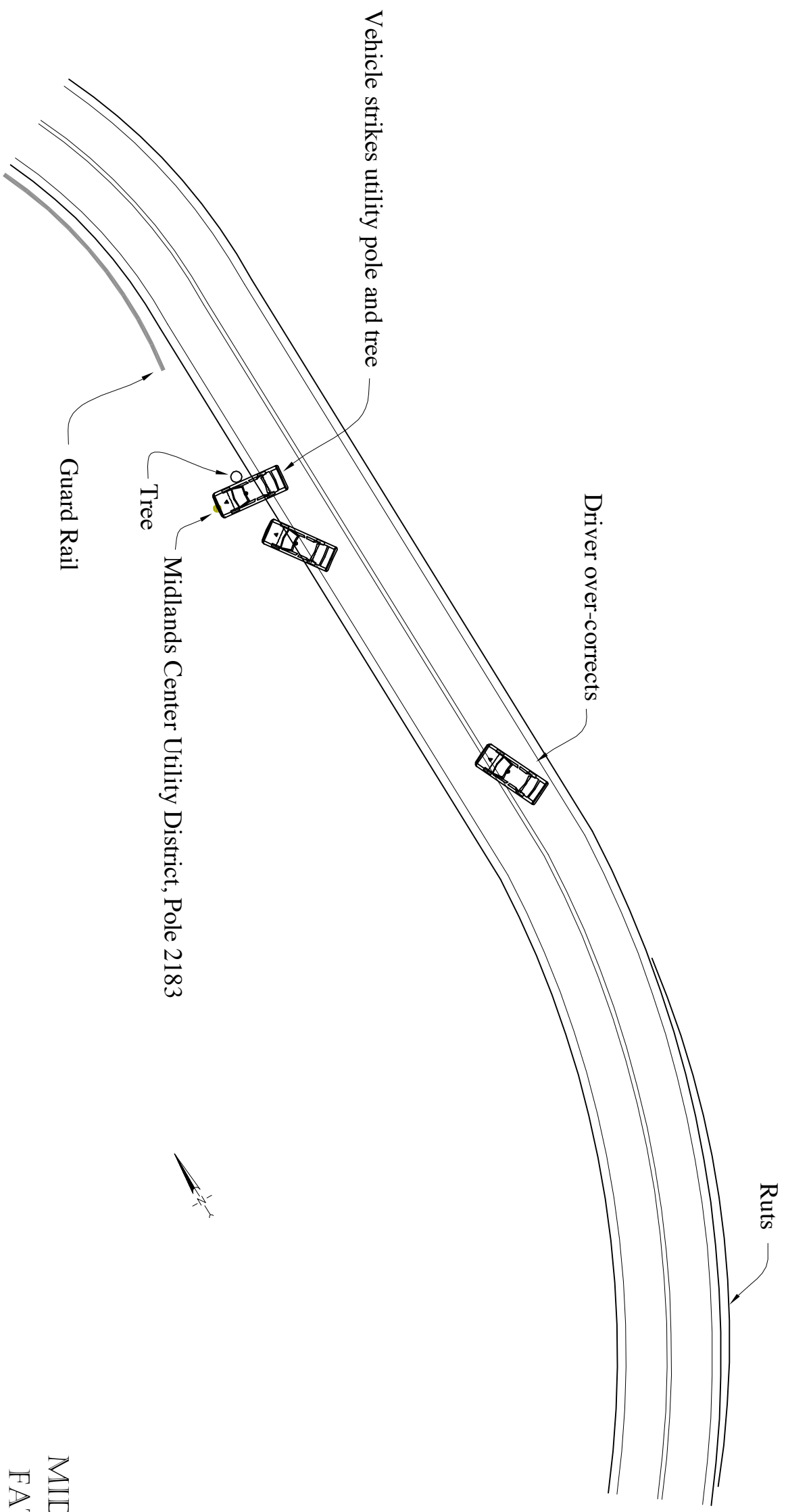


Photograph 0014: Tree struck by right side of vehicle was approximately 39 inches in diameter at the base. Tree was cut down after the collision.



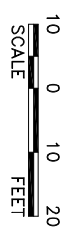


Photograph 0015: View of the new section of guard rail and the slope of terrain away from the roadway.



# Canyon Road

MIDLANDS CENTER PD  
FATAL CRASH TEAM



**MIDLANDS CENTER POLICE DEPARTMENT**

**FATAL CRASH TEAM**

**TRAFFIC COLLISION REPORT**

October 8, 2010

FCT CASE NUMBER: 061293

FCT TEAM: 3

FCT INVESTIGATOR: RYAN FOSTER

FCT CASE: 061293

Date: September 25, 2010  
Location: Canyon Road in Midlands Center  
FCT Investigating Officer: Ryan Foster

***Narrative***

The Fatal Collision Team (FCT) was requested to assist in the investigation of a single-vehicle fatal crash at approximately 1:00 a.m. on September 25, 2011 on Canyon Road near 5234 Canyon Road in Midlands Center, Midlands.

The involved vehicle is a 2009 Chevrolet Impala sedan, VIN: 1G8ZK55729Z103114. The vehicle was registered to Vanessa Sullivan, whom I later learned was the right front-seat passenger.

Danny Dawson admitted to driving the vehicle but was unable to provide details as to how the crash occurred. Dawson recalled losing control of the vehicle and striking a tree. Dawson was transported to the police station for testing to determine Dawson's BAC (Blood Alcohol Content).

The front of the vehicle was in contact with Midlands Center Utility Pole 2183 and the right side of the vehicle was against a large tree approximately 3 feet in diameter. The rear tires were on the west fog line. Once the rain stopped, the final rest position of the tires was marked with paint prior to the car being removed from the scene.

There was no alcohol or drug paraphernalia visible in the vehicle at the scene.

The right front seat occupant remained in the vehicle and was deceased upon my arrival. Another passenger, Taylor Hopson, had exited the vehicle prior to my arrival. Hopson was the rear seat passenger.

London Bennett, who resides at 5234 Canyon Road, observed part of the incident. Bennett recalled seeing the vehicle steer first one direction and then the other before leaving the road and striking the tree.

I attempted to photograph and document all evidence at the scene. Due to the heavy rains, limited roadway evidence was available and/or visible.

The vehicle was removed from the scene and the roadway reopened at approximately 3:15 a.m.

On September 25, 2010, I returned to the crash scene and surveyed the roadway, guard rail, utility pole and tree. I also identified rutting alongside the eastern edge of pavement in the curve

immediately preceding (south of) the crash site. The rutting was approximately 124 feet in length. The distance from the northernmost end of the rutting to the impacted tree was 146 feet.

On October 2, 2010 a study was made of the vehicle. The vehicle damage was measured and documented. The maximum deformation on the right passenger door was approximately 24 inches laterally. The front bumper was deformed into a V-shaped pattern with a maximum deformation of approximately 8 inches.

The Event Data Recorder (EDR), commonly referred to as a 'black box' was located under the right front passenger seat. The EDR was destroyed in the collision and the data within was unable to be collected. The EDR was removed from the vehicle and stored in Midlands PD evidence.

On October 7, 2010 the trees along the west side of the roadway were removed by Midlands Center Municipal Utility District. On October 9, 2010 the guard rail on the west side of the road was extended approximately 105 feet to the south.

The Fatal Crash Scene (FCT) Diagram is attached to this report.

(Continued on next page)

FCT CASE: 061293

DATE: September 25, 2010  
LOCATION: Canyon Road in Midlands Center  
FCT Investigating Officer: Ryan Foster

*NOTE: The following represents the opinions of the above-identified member of the Midlands Center Police Department. These opinions are based upon the evidence and information in this case and the education and experience of the individual.*

While investigating this case, I examined the scene of the crash and conducted a general vehicle inspection. The crash scene survey was used to assist in a mathematical analysis of the crash. Based on everything that is known at this time, I am of the opinion:

1. Analysis indicates Danny Dawson was traveling northbound on Canyon River Road. The posted speed limit on this section of Canyon River road is 35 mph.
2. Dawson was traveling too fast for the rainy conditions on a curved section of the roadway and failed to negotiate the curve. The right side tires exited the east edge of pavement creating a rut in the grass approximately 124 feet in length.
3. Dawson attempted to re-enter the roadway and overcorrected, causing a complete loss of control. The vehicle traveled 146 feet while spinning and exited the west edge of pavement, striking a utility pole.
4. The collision with the utility pole caused the vehicle to rotate counterclockwise whereupon the right side of the vehicle struck a tree.
5. The drag factor on the grass and a wet section of the roadway was measured to be 0.35 and 0.23, respectively. A drag sled was used to measure the drag factor.
6. The vehicle was traveling approximately 40 mph when it struck the tree. This is based upon the equivalent speed equation with a 24 inch deformation over a wide area.
7. The equivalent speed due to damage resulting from striking the utility pole resulting in a frontal deformation of 8 inches is 20 mph.
8. Using the combined speed formula (20 mph + 40 mph), the speed at impact with the utility pole is 45 mph.



9. Further using the combined speed formula over distances of 124 feet (grass) and 146 feet (spinning on road), the speed of the vehicle when it first exited the road was 66 mph.
10. The cause of the collision is excessive speed for the roadway and conditions.

Expert Accident Reconstruction Inc.

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410 Main Street, Midlands Center, Midlands

Defendant's Counsel  
55 Chambers Avenue  
East Hill, Midlands

RE: **Danny Dawson**  
Traffic Crash – Canyon Road  
Midlands Center, Midlands  
**File Number: Client File**  
EARI Project Number: 10.120A

Dear Counsel:

At your request, on October 14, 2010, a study and survey were made of the collision site referenced in the above file number, and a study was made of the involved 2009 Chevrolet Impala. The purpose of the study was to reconstruct the traffic collision. The Midlands Center Police Department investigated the collision and Officer Foster was the investigating officer at the scene. This letter, with the attached photographs and graphics, is the report of my findings and conclusions.

***Basis of Analysis***

- Study and survey of the collision site (including photographs taken at the scene) on October 14, 2010
- Examination of the involved vehicle on October 14, 2010
- Midlands Center Police Fatal Crash Team (FCT) Police Report, case number 061293
- Photographs of the crash scene taken by Midlands Center Police personnel shortly after the accident
- Affidavit of Danny Dawson
- Affidavit of London Bennett
- Affidavit of Taylor Hopson

### ***Description of the Traffic Crash***

According to the police report referenced above, the traffic crash occurred at approximately 1:00 a.m. on September 26, 2010. The collision site is located on Canyon Road approximately one mile north of Dry Fork Road in Midlands Center, Midlands. The incident is reported as a single-vehicle collision that occurred during dark hours with rainy weather conditions.

The vehicle identified by the investigating officer is as follows:

- Vehicle #1 – White Chevrolet Impala sedan, VIN: 1G8ZK55729Z103114, owned by Vanessa Sullivan and being operated by Danny Dawson of Midlands Center, Midlands.

According to the narrative contained within the Police Report, Vehicle #1 was traveling northbound on Canyon River Road when the vehicle exited the east side of the roadway. The driver attempted to re-enter the roadway and lost control of the vehicle, causing the vehicle to exit the west side of the roadway and strike a utility pole and a tree.

Information provided by your office indicates that Danny Dawson stated that Dawson observed a deer in the roadway immediately prior to the loss of control, and that Dawson claimed to swerve in an unsuccessful attempt to avoid a collision.

### ***Study of the Crash Site***

The crash site is shown in the attached Photographs 1 through 15. Photographs 1-7 were taken by the police FCT at the scene shortly after the accident. Photographs 8-15 were taken as part of my study and survey of the accident site on October 14, 2010. In the area of the collision, Canyon Road is an asphalt-surfaced rural roadway oriented generally north-to-south with one travel lane in each direction. The travel lanes are approximately 10 feet in width. Opposing lanes of travel are separated by a solid double yellow line. Paved shoulders on each side of the roadway are approximately 2 feet in width. The road is characterized with various curves and hillcrests. The speed limit on Canyon Road is 35 mph.

The collision occurred near 5234 Canyon Road. Northbound traffic experiences a curve to the west (left). Rutting is evident in the grass along the east edge of pavement. The rutting extends approximately 124 feet prior to

reentering the roadway. There are no tiremarks on the roadway which can be identified as being related to this incident.

A utility pole (ID: Midlands Center Utility District, Pole 2183) is positioned approximately 8 feet west of the west edge of pavement. Damage to the utility pole is consistent with an impact from a motor vehicle. Numerous trees have been cut down in the area near the utility pole, including the tree impacted by the vehicle. Prior to the collision, the tree impacted by the vehicle was 39 inches in diameter and positioned approximately 30 inches from the edge of pavement. The general terrain in the area where the vehicle exited the west edge of pavement is characterized by a downhill grade of approximately 40% away from the roadway. The distance from the end of the rutting to the utility pole is approximately 144 feet.

Prior to the collision, the guardrail on the west side of the road terminated approximately 32 feet north of the utility pole. Subsequent to the collision, the guard rail was extended approximately 105 feet southward to include the area where the vehicle exited the roadway.

Due to the curvature of the roadway immediately preceding the area of impact, the driver's sight distance is limited. A 'Deer Crossing' sign is present for northbound traffic approximately 1 mile south of the area of impact. There are no 'Curve Ahead' or speed-advisory road signs located within 0.5 miles south of the area of the crash.

### ***Vehicle Study***

For the purposes of this report, the driver's side of the vehicle is considered the left and the hood the front. At the time of my study, the vehicle was located at the Midlands Center Police Impound Lot. The front of the vehicle exhibits damage consistent with striking a utility pole. The front bumper structure is deformed in a V-shaped pattern with the maximum deformation of 9 inches located near the vehicle centerline. The hood is buckled and the radiator core support is deformed rearward.

The right side of the vehicle exhibits damage consistent with a near-lateral (sideways) impact with a large tree. The right door, rocker panel, and roof are deformed toward the left. The depth and width of the damaged area are 24 inches and 42 inches, respectively. The vehicle unibody frame is buckled due to

the collision. The plastic door trim on the left front door is separated from the vehicle, most likely as a result of the impact.

This vehicle is equipped with a Sensing and Diagnostic Module (SDM), commonly referred to as a 'black box.' The SDM in this vehicle contains pre-crash data including vehicle speed, accelerator pedal position, and brake position. The SDM is normally located under the right front seat. Prior to my study, the SDM was removed from the vehicle and thus was not available to attempt a download of the data contained within.

### ***Analysis of the Traffic Incident***

The collision occurred on Canyon Road approximately 1 mile north of Dry Fork road in Midlands Center, Midlands. Danny Dawson was traveling northbound on Canyon Road negotiating a curve toward the left in an area known to be populated by deer. A deer-crossing sign is present approximately 1 mile south of the crash location. As Dawson negotiated the curve, a deer became visible in the roadway. Dawson steered to the right to avoid striking the deer and the right tires of the vehicle drove off the right (east) edge of pavement. The angle at which the rutting departs from the edge of pavement is consistent with being preceded by an evasive maneuver.

Dawson attempted to re-enter the roadway and overcorrected, causing the vehicle to rotate counterclockwise and exit the west edge of pavement. The front of the vehicle struck a utility pole and the right front door struck a large tree.

The vehicle exited the west edge of pavement in an area with a grade away from the road of approximately 40%. At the time of the collision, the guard rail did not extend far enough to the south to protect vehicles from this severe drop-off. Between the time of the collision and my study on October 14, the guard rail had been extended to include this area.

Numerous trees had been cut down in the area where the vehicle exited the roadway, including the tree struck by the vehicle. This particular tree was located approximately 30 inches from the edge of pavement in an area with narrow lanes and unprotected by a guard rail.

The right side of the vehicle was deformed inward approximately 24 inches, with a damage width of 42 inches. The speed equivalent, due to the

energy crushing the side of the vehicle, is 31 mph using the energy-conservation method considering impact with a narrow object. The speed equivalent due to the damage at the front of the vehicle striking the utility pole is 16 mph. Using the combined-speed formula, the speed of the vehicle at impact with the utility pole is 35 mph.

The vehicle traveled approximately 124 feet with the right tires off the roadway, with a friction factor of approximately 0.25. The vehicle then re-entered the road and traveled an additional 144 feet while rotating with a drag factor of approximately 0.1. A low drag factor was used due to the heavy rains and slippery conditions of the road at the time of the crash. Analysis using the combined-speed formula indicates that the vehicle was traveling approximately 51 mph when it initially exited the east side of the roadway. The posted speed limit is 45 mph. The initial loss of control was caused by Dawson's attempt to avoid striking a deer in the roadway rather than by vehicle speed.

The lack of a guardrail on the west side of the roadway in an area with a steep drop-off allowed the vehicle to exit the roadway and strike a utility pole. In addition, several trees – including the large tree struck by the right side of the vehicle – had been allowed to grow in the clear zone within 30 inches of the edge of pavement. This clearly created a hazard in that any vehicle exiting the roadway in this area would be directed down the grade and unable to avoid striking the tree. Within three weeks of the collision, the guard rail had been extended to protect this area and the trees in the clear zone were cut down.

### ***Summary of Conclusions***

In summary, based on what is known at this time, I am of the opinion that:

- Dawson was traveling northbound on Canyon Road negotiating a curve toward the left and unexpectedly observed a deer in the roadway.
- Dawson steered to the right to avoid striking the deer and the right tires of the vehicle drove off the right (east) edge of pavement.
- The angle at which the rutting departs from the edge of pavement is consistent with being preceded by an evasive maneuver.

- Dawson attempted to re-enter the roadway and overcorrected, causing the vehicle to rotate counterclockwise and exit the west edge of pavement in an area unprotected by a guard rail at that time.
- The front of the vehicle struck a utility pole and the right front door struck a large tree which was approximately 30 inches from the edge of pavement.
- The vehicle was traveling approximately 51 mph when it initially exited the east side of the roadway. The posted speed limit is 45 mph.
- The initial loss of control was caused by Dawson's attempt to avoid striking a deer in the roadway rather than by vehicle speed.
- The lack of a guardrail on the west side of the roadway created a hazard in that a vehicle exiting the roadway in this area would be directed down the grade and unable to avoid striking the tree, which had been allowed to grow close to the edge of the pavement.
- Within three weeks of the collision, the guardrail had been extended to protect this area and the trees alongside the road were cut down.

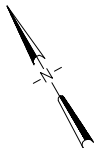
We appreciate your confidence in our professional services.

Sincerely,  
EXPERT ACCIDENT RECONSTRUCTION, INC.

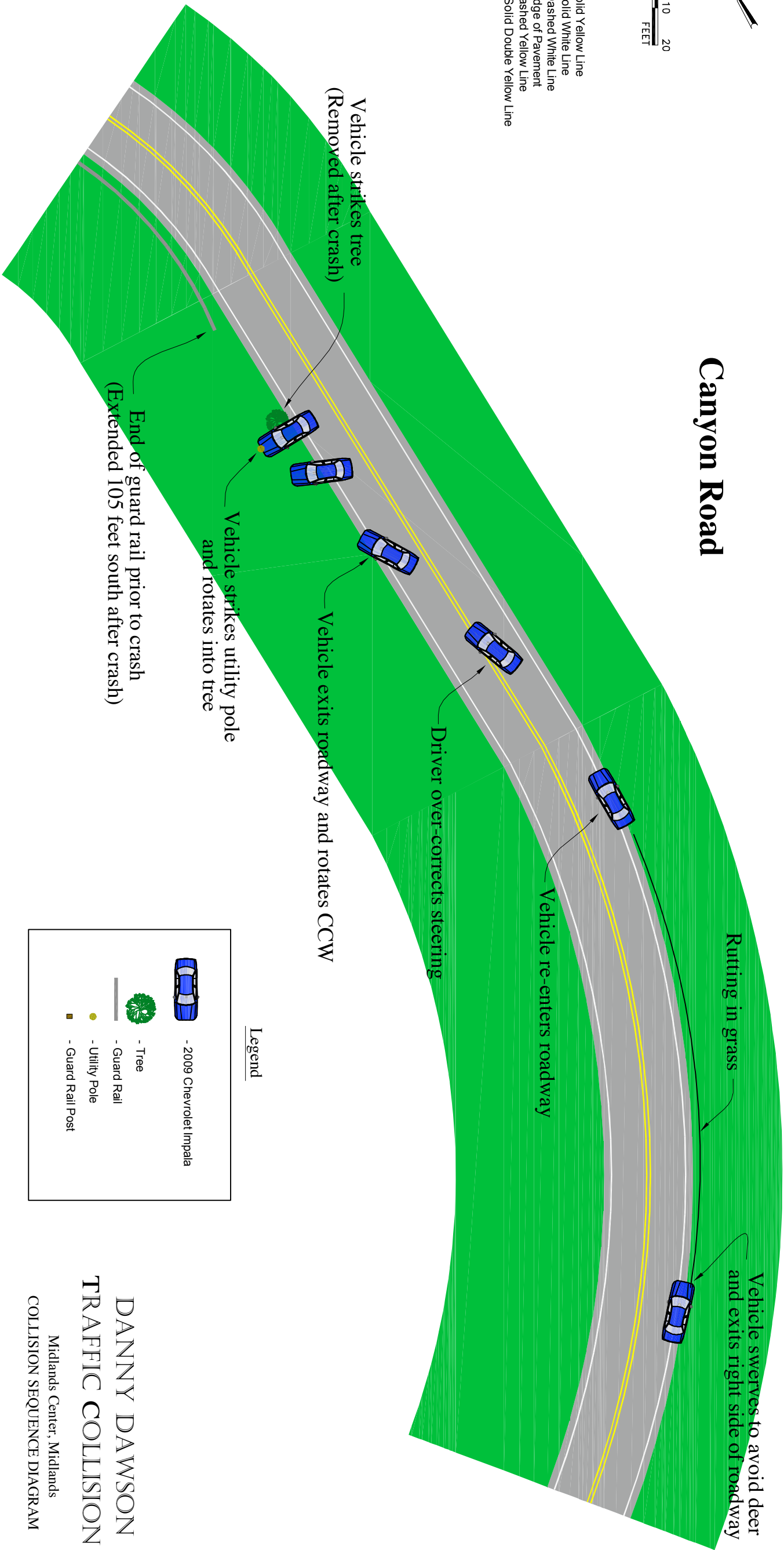
Leslie Roman, PE, ACTAR  
Senior Forensic Engineer

Attachments

Leslie Roman Expert Accident Reconstruction Inc 100 Main Street Midlands Center, Midlands		DATE
DRAWN BY LR	APPR. BY	
DRAWING NAME CSD	SHEET 1 of 2	



- SYL (TYP.) - Solid Yellow Line
- SWL (TYP.) - Solid White Line
- DWL (TYP.) - Dashed White Line
- EOP (TYP.) - Edge of Pavement
- DYL (TYP.) - Dashed Yellow Line
- SDYL (TYP.) - Solid Double Yellow Line



Legend

- 2009 Chevrolet Impala

- Tree

- Guard Rail

- Utility Pole

- Guard Rail Post

DANNY DAWSON  
TRAFFIC COLLISION  
Midlands Center, Midlands  
COLLISION SEQUENCE DIAGRAM



# Vehicle Accident Reconstruction

## A Primer

*By Michael Windsor & Danielle Strasberg*

### **Energy Speed Equivalent**

Conservation of energy can be used to calculate the speed at which a vehicle strikes an immovable object. A vehicle which is moving has a certain amount of Kinetic Energy. A higher speed means that more energy is available to deform the vehicle when it strikes an object.

Consider the simple case of a vehicle striking a concrete bridge abutment head-on, crushing the front of the vehicle rearward by 24 inches (2 feet) across the entire width of the vehicle. In this case, the full width of the front bumper would be pushed rearward 24 inches due to the collision. A formula developed empirically to calculate speed at the point of impact is:

$$V = \text{Square root of } (30 \times D \times CF)$$

**Equation 1**

V = the speed (in mph) equivalent of the energy required to crush a vehicle

D = the maximum crush depth, measured in FEET

CF = the Crush Factor

21 for frontal impacts

27 for side impacts

17 to 27 for rear impacts

In our case above, Equation 1 becomes:

$$V = \text{Square Root } (30 \times 2 \times 21)$$

$$V = \text{Square Root } (1260)$$

$$V = 35.5 \text{ mph}$$

The V which has been calculated is equivalent speed lost due to the crushing of the vehicle. If this is only one part of the collision under study, the calculated V must be used in the "Combined Speed Formula."

NOTE: If the vehicle strikes a narrow object (for example, less than 2 feet in diameter), an adjustment must be made. In this case, the crush is not across the full width of the vehicle but is concentrated in an area approximately 2 feet wide. Equation 1 then becomes:

$$V = \text{Square Root of } (30 \times D \times CF \times 0.6)$$

**Equation 2**

### **Combined Speed Formula**

It is not uncommon for a single vehicle to travel through several phases or segments of a collision. For example, a vehicle may travel on the grass for 50 feet, then slide sideways on asphalt for another 100 feet before striking an immovable object at 40 mph. The speed loss for each section must be calculated and then the speeds are combined using the combined speed formula.

First, the speed loss of each section is calculated:

$$S = \text{Square Root of } (30 \times D \times f) \quad \text{Equation 3}$$

Where

S = the speed loss in mph during that section

D = the distance traveled in that particular section, in FEET

F = the drag factor

Once the speed loss of each section is known, they are used to calculate the speed at the beginning of the first segment with the Combined Speed Formula below:

$$S = \text{Square Root of } (S_1^2 + S_2^2 + S_3^2 \dots) \quad \text{Equation 4}$$

It is NOT correct simply to add the speed loss during each segment to calculate the total speed loss. Please note the superscript '2', indicating that the value is to be squared.

Using our example above, there are three distinct segments to be analyzed. The final segment is the vehicle striking the immovable object. It has already been determined by other means that the vehicle was traveling 40 mph when it hit the object, so the speed loss of segment 3 is already known.

$$S_3 = 40 \text{ mph}$$

During Segment 2, the vehicle traveled 100 feet on asphalt on the road. Assuming a drag factor of 0.5, the speed loss during this segment (using equation 3) is:

$$S_2 = \text{Square Root of } (30 \times D \times f)$$

$$S_2 = \text{Square Root of } (30 \times 100 \times 0.5)$$

$$S_2 = \text{Square Root of } (1500)$$

$$S_2 = 38.7 \text{ mph}$$

During Segment 1, the vehicle traveled on a grass shoulder for 50 feet. Assuming a drag factor of 0.2, the speed loss during this segment (again, using equation 3) is:

$$S_1 = \text{Square Root of } (30 \times D \times f)$$

$$S_1 = \text{Square Root of } (30 \times 50 \times 0.2)$$

$$S_1 = \text{Square Root of } (300)$$

$$S_1 = 17.3 \text{ mph}$$

To determine the speed of the vehicle at the beginning of segment 1, where the car initially left the road, use Equation 4 above. For our example:

$$S = \text{Square Root of } (S_1^2 + S_2^2 + S_3^2)$$

$$S = \text{Square Root of } (17.3^2 + 38.7^2 + 40^2)$$

$$S = \text{Square Root of } (299 + 1498 + 1600)$$

$$S = \text{Square Root of } (3397)$$

$$S = 58 \text{ mph}$$

### **Drag Factors**

The drag factor can be compared to the aggregate friction between all four tires and the roadway. The drag factor is used in calculating a vehicle's speed loss during a segment of a collision, whether it is due to braking, a slide, or deceleration due to the driver taking his foot off the accelerator. There are several ways to determine the drag factor. Two common methods are outlined below.

#### **Use of Tables to Determine Drag Factor**

Published tables can be used to determine the drag factor. For example, on a level roadway the following drag factors may apply:

Dry asphalt surface with locked brakes	0.7
Dry Asphalt surface – vehicle rotates 90 degrees (no braking)	0.5
Dry road – coasting (foot off brake)	0.1 to 0.2
Coasting on soft shoulder (foot off brake)	0.2 to 0.4
Locked brakes on wet roadway	0.2 to 0.5*
*Extremely dependent upon roadway conditions	
Vehicle rotates 90 degrees on wet roadway (no braking)	0.1 to 0.4
*Extremely dependent upon roadway conditions	

### Use of Drag Sled to Determine Drag Factor

A drag sled is often constructed of a weighted section of tire with a sliding pull scale. The tire is dragged on the roadway. By making a comparison of the weight on the tire to the force required to pull the tire, the maximum drag factor of a roadway can be calculated.

There is much debate within the Vehicle Accident Reconstruction community as to the validity of results calculated with a drag sled. One of the primary concerns is that the drag sled is extremely sensitive to operator error; if the drag sled is not pulled exactly parallel to the road, an error (often a large one) will be induced.

A second major complaint about using the drag sled is more fundamental. Testing has not proven or disproven whether an old segment of tire filled with weight (concrete) pulled at a walking speed properly simulates an inflated tire supporting a 3,000 pound automobile traveling at highway speeds. Duplicating the exact weather conditions for a drag sled test, especially wet roadways, can also be problematic. Testing to compare the results of drag sleds to other methods has been inconclusive. Nonetheless, some experts continue to use the devices.

## **AFFIDAVIT OF LONDON BENNETT**

1 After being duly sworn upon oath, London Bennett hereby deposes and states as follows:

2 My name is London Bennett. I am a lifelong resident of Midlands Center, Midlands. I live  
3 at 5234 Canyon Road. My grandparents built the house I now live in and the Bennetts are the only  
4 ones who have ever occupied that ten-acre stretch of land. My family is all gone now but my dog,  
5 Peaches, and I keep a good eye on the place. My family made a lot of money in the film industry  
6 and, since I'm the only one still living, I get to live a pretty comfortable and charmed life. I have a  
7 little garden, and I love to sit on my porch and paint. Canyon Road is pretty quiet, and my house is  
8 the only one that overlooks the road. There are sometimes some wild animals that sniff around, but  
9 Peaches is pretty good at scaring them off and what her bark doesn't scare away, my shotgun turns  
10 into a pretty tasty dinner.

11 Canyon Road has a really nice view and it is great for nature watching, but it is also really  
12 dangerous. There isn't a lot of traffic on the road so people are always taking the curves a little too  
13 quickly. I can't tell you how many times I've seen people nearly fly right over the cliff when the road  
14 drops down to two lanes. I have seen a few fender-benders and too many near-misses to count, and  
15 I'm sad to say that I have seen another accident prior to this one in which two kids were killed. The  
16 speed limit on that stretch of road is 35 mph, but I have tried many times to get the city to drop it  
17 down to 25 mph. Two years ago, I went to a City Council meeting with a 50-signature petition in  
18 hand to try to get the city to change the speed limit and to extend the existing guardrails further  
19 down the road. They didn't listen, though. Apparently a couple of dead kids did not convince  
20 anyone that the road was dangerous. The City Council chose to listen to the District Attorney, Ms.  
21 Sullivan, instead of me. Ms. Sullivan argued that the road wasn't dangerous, drunk drivers were  
22 dangerous, and all the fatal accidents had involved drinking and driving. People do use Canyon  
23 Road a lot late at night after the bars in Midlands Center shut down. So instead of changing the  
24 speed limit, the City just ordered more cops to patrol the road in order to catch drunk drivers. I still  
25 see people drive through too fast, though, and more cops don't make the road any less dangerous. I  
26 hope this case and the death of Ms. Sullivan's own kid will be enough to wake people up and get the  
27 speed limit changed. They have at least extended the guard rail so people will stop hitting trees  
28 every time they swerve to avoid an animal. I guess that's better than nothing.

29 I was sitting on my front porch painting the storm on the Friday night Vanessa Sullivan died,  
30 September 24, 2010. I guess it was really Saturday morning when the accident happened. I hadn't  
31 planned on being outside so late, but I was working on this painting that required the exact coloring

of rain on a wet street, so I wanted to take advantage of the weather. The storm was predicted to hit sometime after midnight (it had been on all the news stations that day) and sure enough, around 11:45 p.m., it started to sprinkle. I got out my brushes and paints and settled myself down for what I thought would be a nice evening. I had just started painting when I saw the MCPD car make its usual pass down the road heading into town. I figured it was Officer Foster planning to set up the regular weekend post to watch cars as the late-night crowd from town started to make their way back home. I didn't have a watch on me, but I guess it was about midnight when I saw the officer drive past.

The rain was still only drizzling down when, after what I guess was about 30 minutes, I heard a siren in the distance. I figured the deputy had caught someone speeding down the road. It was then that the skies opened up and the rain started pouring down in sheets. It was like someone had turned a million buckets of water over all at once. Peaches started barking like crazy. I don't know if it was the lightning, the thunder, or an animal, but she was looking pretty intensely in the direction of the road. I looked up to see if I needed to grab my shotgun but instead of an animal, I saw a car careening down the road. I tried to yell at them to slow down, but I don't think they could've heard me. The car was going way too fast for the weather, probably at least 20 mph or more above the posted speed limit, but I wasn't clocking it. I've seen cars make it through going that quickly before, but it seems like a pretty dangerous decision to me. All of a sudden the car jerked to the right and then swerved back with a quick turn to the left and next thing I knew, it was spinning across the road and into a tree. The first thing I did was call the cops. I knew there was an officer nearby and I don't know why that cop didn't see or stop this car or what the cop was doing, but I hoped someone would get to the road fast. I told the 911 operator my address and that I had witnessed a crazy driver go flying off the road. I also told them that they are supposed to have cops on the road to stop people from speeding and now there were probably even more people dead because nobody would listen to me about adding the guardrail all the way down the curve. The dispatcher said they would send someone out. When I hung up, I ran straight down to the road to see if I could help.

From where I was sitting on my porch, about 100 feet from the road, I thought the car had just hit a tree. The car actually crashed into a utility pole too. I don't know how fast they were going, but it looked like they were speeding pretty fast and at that rate, hitting a pole and a tree. I expected everyone in the car to be dead. I was relieved when I got to the car and noticed a person

wandering around in circles in the road muttering, “Oh my God! Oh my God!” over and over again. I heard another person screaming inside the car. I was just glad people were alive.

I approached the person in the road first and I learned the person’s name was Danny Dawson. Danny’s forehead was bleeding a little, but other than that, Danny seemed to be okay. I asked Danny if anyone else was in the car and Danny said, “She’s okay. She was just talking to her dad.” Danny seemed pretty shaken up, but was not stumbling or slurring words or anything when we spoke. I’ve seen plenty of drunk people before and Danny didn’t seem to be drunk, just shaken up. I tried to tell Danny that thousands of people have had problems on that road and if anyone was to blame, it was the City of Midlands for allowing people to drive so fast on a dangerous curve with no guardrail. At that point, Danny started rambling about “Jack and Ginger.” Danny seemed to be blaming “Jack and Ginger” and muttering over and over, “So stupid, why did I let them talk me into driving when I knew I was tipsy?” I thought maybe Jack and Ginger were the other people in the car and I decided to go check on them.

As I made my way to the car, I could hear the police sirens in the background and I saw two people in the car. At first I thought maybe one of them was Jack or Ginger, but as I got closer, I recognized Taylor Hopson in the backseat, slumped over. My heart dropped. I have known Taylor since the Hopsons moved to Midlands Center. Taylor’s dad does extra work around my house sometimes. I ran at that point to check on Taylor and the other passenger, whom I then knew was definitely Vanessa Sullivan, Taylor’s best friend. Even though Danny claimed Vanessa was okay, when I got to the car, Vanessa definitely wasn’t. She wasn’t responding at all. Taylor was starting to stir, but Vanessa’s eyes were closed and no matter what I did to shake her, she wouldn’t respond. I put my hand under her nose to see if I could feel air. Instead, I felt nothing. I realized Vanessa wasn’t breathing. I yelled for Danny to come help, but Danny just said, “No, Vanessa is fine. She has to be fine, or my life is over.” I wanted to do CPR, but I was not sure how to get her out of her seatbelt or the car.

That’s when the police and the ambulance got to the scene. Officer Foster seemed to be in charge and after everything calmed down, Officer Foster asked me to step over and answer a few questions. The officer asked me what I saw and whether I had spoken to any of the people in the car. I told the officer everything I had observed and the things Danny told me when I got to the scene. I remember Officer Foster asked me if I saw anything else on the road at the time of the accident, like a deer or another car. I told the officer that I see deer on the road pretty regularly (I have a collection of paintings entitled “Deer Eyes on a Dark Street”) but that I did not see any

animals on the road that night, and I was looking pretty carefully after Peaches started raising a fuss. I did mention that Peaches had run toward the road just before the accident, but Peaches is only about 20 pounds, would never stray far from the porch on a rainy night, and could never be confused with a deer. I then asked Officer Foster if Vanessa was going to be okay, but Officer Foster would not respond. I found out the next day that Vanessa had died. I felt so awful. It was the second worst accident I've seen, next to the high-school kids that died a few years back. I hope the city learns its lesson and reduces the speed limit so no more accidents happen.

I hereby attest to having read the above statement and swear or affirm it to be my own. I also swear or affirm to the truthfulness of its content. Before giving this statement, I was told it should contain everything I knew that might be relevant to my testimony, and I followed those instructions. I also understand that I can and must update this affidavit if anything new occurs to me until the moment before I testify in this case.

/s/ LB

London Bennett

Subscribed and sworn before on this, the 3<sup>rd</sup> day of October 2010.

/s/ SS

Sarah Shelton, Notary Public



## AFFIDAVIT OF DANNY DAWSON

1 After being duly sworn upon oath, Danny Dawson hereby deposes and states as follows.

2 My name is Danny Dawson. I am currently a senior at Calkins College in East Hill,  
3 Midlands. I'm majoring in urban studies, and linguistics is my minor – not a typical combination,  
4 but I find both subjects fascinating. It's pretty easy to pick an interesting major when you can do  
5 anything you want. The pre-law advisor told me that I could pick any major I wanted—you see, I've  
6 been set on heading to Calkins Law since I was in the second grade and starred as an attorney in my  
7 class's mock trial of *The Three Little Pigs v. the Big Bad Wolf*. All I had to do was keep a high GPA and  
8 turn in a solid LSAT performance. And I was halfway there; the A- I picked up in sociolinguistic  
9 theory is the only thing that's kept me from a 4.0.

10 Before going off to college, I spent my entire life in the northern suburbs of Midlands  
11 Center. After my senior year of high school, I swore I would never go anywhere near Midlands  
12 Center again. I was a finalist for a scholarship to Pennington University. Everything changed on  
13 senior prom night. My friends and I had used our fake IDs to get into Chuggie's that night after  
14 leaving the dance. I was on my way home when a police officer pulled me over. Getting pulled  
15 over was no surprise in Midlands Center; the local police treat driving while a teenager like it's a  
16 felony. That night, the officer made me do all sorts of tests and then booked me for a DUI. Maybe  
17 I'd had a couple of beers at the bar, but that was way earlier in the evening. There's no chance that  
18 alcohol was still in my system. I pleaded the charge down to reckless driving and went through a  
19 pre-trial diversion program. My arrest record was wiped clean after I did 100 hours of community  
20 service and wore an ankle bracelet that ensured I did not go into any 21-and-over bars for a year.  
21 Unfortunately for me, Pennington University must have gotten wind of the charges and I didn't get  
22 the scholarship. Goodbye elite university, hello Calkins College.

23 I was pretty unhappy about having to stay in Midlands then, but I tried to make the best of  
24 it. I focused my efforts on academics and making Calkins a better place, and I really came to love it  
25 there. I was vice-president of student government my junior year and did some writing for the  
26 newspaper. We also have the best basketball team around, and I love to camp out with friends and  
27 go crazy at the games. I also had scheduled a meeting for the first week of October 2010 with a  
28 major donor to pitch a great idea for a new community-service organization. But, as you probably  
29 know, my life is kind of on hold after what happened to Vanessa last September. I'm taking some  
30 time off from school and gathering my thoughts. I feel like I'm constantly on trial, whether it's part

of a court proceeding or in the media. I guess that's what happens when you're behind the wheel the night that the daughter of the district attorney tragically loses her life.

Vanessa Sullivan and I met in the fall of our sophomore year. The two of us shared a major and we were taking an introductory urban-studies class together. I made a point to talk to her since I knew that her mom was one of the state's most successful attorneys. The cases Vanessa's mom prosecuted were always in the headlines. The more I chatted with Vanessa, the more I realized that she was pretty cool in her own right. We didn't really run in the same circles, but we kept ending up in the same classes. I'd say that I was in half-dozen study groups with Vanessa, and we had coffee a few times. She would always listen when I would talk about using the law as a way to help stabilize urban areas and turn them around. Most of my friends' eyes just kind of glazed over. I'd call Vanessa a pretty solid friend, but she's not somebody I called over the summer or anything.

In early September, I arrived a few minutes early to my senior seminar course for my major when I overheard Vanessa on the phone. She was talking about going to Midlands Center the weekend of the 24<sup>th</sup> for her birthday. I could barely believe it when she said that she was going to go to Chuggie's to watch the band Chatterbox that Friday night. I lived just above Chuggie's when I had an internship in Midlands Center the previous summer, and I hung out at Chuggie's just about every night. They have the best live music in town, and Chatterbox is my favorite band ever! Naturally I struck up a conversation with Vanessa about her plans, and she told me that she was headed back to town for her 21<sup>st</sup> birthday. We talked a little more and I found out that she lived in the town next to mine. It's a couple of hours from East Hill to Midlands Center, but I was willing to make the trip for Chatterbox. I hinted as much, complained about not having a car on campus, and picked up an offer from Vanessa to ride to town with her. She did say that I might have to be the designated driver on the night of the concert. That was a small price to pay for such an awesome event, and I'm a veteran when it comes to playing it safe but still having a few drinks and a good time.

Neither of us had Friday classes, so we left school after our last class on the 23rd and had an uneventful drive to Midlands Center. I was pretty shocked to see that Vanessa had a radar detector in her car with Ms. Sullivan being a prosecutor; Vanessa told me that it should be our little secret. Vanessa dropped me off at my aunt's house, and I told her that I'd meet her at Chuggie's the next night. I was already going to be in Midlands Center the next afternoon for an interview I'd lined up once I knew I was coming into town. It made sense that I would just have my aunt drop me off for my interview downtown, and I figured I'd just meet up with Vanessa and Taylor afterwards. Taylor

63 does not go to school with us, but Vanessa told me that Taylor was also planning to apply to Calkins  
64 Law, so I figured that Taylor would be pretty cool to meet.

65 My aunt drove me in to Midlands Center on Friday for a lunch interview having to do with a  
66 summer internship. The interview was right next door to Chuggie's, which is a pretty chill place  
67 during the day. I decided to head on over to Chuggie's at 2 p.m. I was happy to see that Jordan  
68 James was around for the afternoon. Jordan is a good buddy of mine, and I told Jordan that this  
69 would be a good day to make them strong and keep them coming; the interview didn't go that well,  
70 and I was hoping to forget it. Of course, I always told Jordan to make them strong, and I don't  
71 think I actually got any stronger drinks. That's when Jordan told me that the opening act for  
72 Chatterbox was actually the bartender. It took me a minute to realize what Jordan meant, but when  
73 I did, I gave Jordan a high-five and told Jordan to let me buy the bartender a shot to celebrate.  
74 Jordan told me there was no need to buy anything, and poured us each a shot of something. We  
75 tipped the drinks back in honor of Jordan's biggest gig to date.

76 A bit later that afternoon, Sam Lyons came into the bar and asked if I already had a taxi ride  
77 scheduled. I told Lyons that I was meeting two friends later in the day, and that I was pretty sure  
78 that one of them was going to be driving us home that night. I wasn't sure though, so I think I only  
79 had three whiskey-and-ginger-ales and one beer while I sat around and read for the most of the  
80 afternoon. I felt pretty confident that I'd make good decisions with Jordan around; Jordan really  
81 knows my limits. Also, there was a pocket breathalyzer around the bar the entire summer before  
82 that I used to develop a pretty good sense of my tolerance. I knew that if I stayed at a drink an hour  
83 or lower that I'd be golden.

84 I had just finished my novel around 7 p.m. when Vanessa and Taylor showed up. I think I  
85 vaguely recognized Taylor, but I'm not sure. When they arrived, I left the bar area and followed  
86 them to a table closer to the stage. Pat Lawrence, the server in that section, came to take our order.  
87 I had a whiskey on the rocks with dinner and bought shots for Taylor and Vanessa. It was a night  
88 of celebration, and it was still early in the evening so I figured it was no big deal to drink a bit. I  
89 think I heard Taylor say something about being the designated driver, so I wasn't really that worried.  
90 I don't remember exactly what I ate for dinner, but I know I had a ton of cheese fries.

91 After dinner, I went to the bar and chatted with Jordan for a while. I had enjoyed chatting  
92 with Vanessa and Taylor, and Taylor seemed pretty psyched about being possible law-school  
93 classmates, but I figured the two of them would want to catch up on old times and I wanted to  
94 compliment Jordan on a great job on the opening set. As soon as I got to the bar, Jordan and I had

a shot and chased it with a beer. I still wasn't too worried about the drinking because it did not look like I was driving, and the night was still young; it could not have been later than 9:30 at that point.

A little after 10 p.m., I made my way back over to Taylor and Vanessa's table to see if we could move a little closer to where Chatterbox was going to perform. The two of them agreed and we started to chat a bit more. Somebody sent a drink over for Vanessa since she was the birthday girl, but she did not seem interested in drinking it. Taylor and I both had a sip to finish it. Pat came by with drinks on the house for my companions and me. I think Jordan sent them over. My whiskey-and-ginger-ale was delicious, and I was sipping away on it when Chatterbox took the stage. I was psyched, and I think I spilled half of my drink from jumping up and down in excitement. Chatterbox was better than ever before. Everyone looking at me must have thought that I was dancing like I was drunk. I was maybe a little tipsy, but I am really just a terrible dancer. I am so uncoordinated; you can just ask Jordan. I try to throw darts every time I am at the bar, and Jordan usually takes them away when the place gets crowded because my aim is terrible even when I am sober. Fortunately, I didn't try to throw any darts that night. The bar was way too crowded for that.

At the end of the first set, I talked my way backstage to try to meet the band, which I had seen at a few Chuggie's performances before. The band manager wouldn't let me through until I told her it was Vanessa's birthday. When I pointed to Vanessa and Taylor, the manager smiled and called the band over and before I knew it, we had drinks in our hands to celebrate the awesomeness of the night. We toasted to great Friday nights and one of the band members made a comment about Saturday mornings, so it must have been after midnight. I wasn't slurring or anything at all, and I just loved it that I was chatting with such a great musician. I thought Vanessa and Taylor would be pretty impressed that I had gotten us in with the band, so I called them over to chat with Chatterbox too. It turns out Vanessa and Taylor knew the lead singer from high school and had met the whole band before, which is why the band manager smiled at me. Taylor got a good laugh out of making me feel silly, but nothing was going to kill my buzz on such a good night.

I was feeling pretty good at this point in time, so instead of exiting the backstage area toward the bar, I found myself walking onto the stage. Well, when in Rome... I grabbed a guitar and started strumming. Everybody was cheering like crazy for me. There's no way I could have played so well if I was drunk at the time; I'm bad enough when I'm sober. Some big guy – I guess it was a roadie or a bouncer or something – grabbed hold of me, but Vanessa was behind him and told him to lay off and apologized for me. I don't know why, the crowd loved it. The crowd cheered again for me as the guy helped me get down from the stage. It was awesome.

127 Chatterbox were back on stage, and time was just flying because we were having so much  
128 fun. Next thing I knew, I looked up and Taylor was actually on the stage singing a song with the  
129 band! I'm not sure if Taylor was invited, but I was impressed. I also realized that Taylor was pretty  
130 drunk and that I was the most likely candidate to drive. About that time, Pat walked over to see  
131 how I was doing. I ordered a tequila sunrise because I really wanted this night to last until morning,  
132 so I had the sunrise on my mind. Pat asked me if I needed help booking a cab, and I told Pat that I  
133 was driving home. Pat told me to stop kidding and said that Jordan had really been pouring my  
134 drinks strong and that I should take a taxi. I was a little tipsy still, but the tequila sunrise was going  
135 to be my last drink. I knew I would be fine when things closed down in an hour. I went ahead and  
136 asked Pat to get me some sodas and keep them coming after I finished the tequila sunrise. It was  
137 time for me to sober up, but I also needed the caffeine.

138 I was double-fisting some soda trying to stay awake when I made it back over to Vanessa  
139 and Taylor. Taylor was talking about how awesome it was to sing on stage, and I just wished it  
140 could've been me. Taylor and Vanessa were pretty drunk at that point, and I knew we would need  
141 to leave soon. When Chatterbox was done, Jordan came over and saw if we wanted to do another  
142 shot to celebrate a great night. We said yes, but I whispered to Pat to bring me water instead of  
143 liquor. I figured everyone was too drunk to notice. I think Pat might have messed that one up  
144 because Vanessa said something about water and I felt a little burn in my shot, but I was totally  
145 sober by that point. I certainly was no more than tipsy. I'd done most of my drinking during the  
146 first part of the night, and I knew I was way under the legal limit. No chance I'd let a DUI keep me  
147 out of Calkins Law.

148 As we left Chuggie's, I saw Sam Lyons parked in the usual spot outside the bar. I'd seen  
149 Lyons at the bar that night hanging around and looking for a good customer. Lyons was my regular  
150 taxi driver over the summer, and Lyons has seen me pretty wasted. I told Lyons I was doing just  
151 fine and Lyons told me to drive safely. I know Lyons would have stopped me if there was a  
152 problem. Also, Lyons was in the bar and probably saw how responsible I had been. I would have  
153 drunk way, way more if I were going to take a cab home.

154 Taylor was pretty wasted when we got to the car and started complaining about how I  
155 should not be driving in the rainstorm and how I had already made us stay out too late. I was pretty  
156 unhappy with Taylor since I think Taylor was supposed to be the designated driver. Taylor started  
157 telling me how Vanessa and Taylor promised Vanessa's mom they would be home by 1 a.m., that it  
158 was already 12:45 a.m., and that the drive would take twenty minutes. I said that I could do it in ten.

159 Taylor told me there was no way I could make that happen with all of the cops on the road. Not  
160 one to back down from a challenge, I remembered the radar detector in Vanessa's car, pulled it out  
161 of the glove compartment, turned it on, and took off. I figured nobody would pull me over for  
162 having an illegal radar detector at that time of night, and I was going to make it to Vanessa's house  
163 in ten minutes. I knew from being around the Midlands Center bar crowd over the summer that  
164 Canyon Road is the most popular route to take if you are trying to avoid cops. I remember Lyons  
165 telling me it was more heavily patrolled now, but I think Sam was just looking to maintain a regular  
166 fare. Either way, it wasn't like I was trying to avoid a DUI. Even if I got pulled over, I figured  
167 Vanessa's mom could take care of a little speeding ticket.

168 A heavy rain was pouring down in Midlands Center that night, and I was not looking  
169 forward to driving through a monsoon to get Vanessa and Taylor home. Vanessa and Taylor asked  
170 a few more times if I was good enough to drive and they kept saying it looked like I was swerving a  
171 bit, but I chalked that up to their inebriation. They probably couldn't see straight, and I was trying  
172 to live up to my promise to get there on time. I felt confident about speeding; the roads are fairly  
173 familiar to me, and I figured if there were any cops, they wouldn't pull anyone over so they wouldn't  
174 have to get out of their car and get soaked. Then the radar detector lit up, and Taylor got worried  
175 and started complaining, but I slowed down in plenty of time. Taylor started talking about how  
176 scared Taylor was, and I was a little worried, too. The police sure are blinded by the need to blame  
177 around here. Instead of showing fear, as soon as the police car was out of view, I sped up and  
178 started taking the curves a little more quickly. It was no big deal, though. I've driven faster on that  
179 road before.

180 We couldn't have been more than a couple miles from Vanessa's house when we got to the  
181 big curve on Canyon Road. Taylor was still being pretty loud in the back seat, and I could not wait  
182 to get Taylor out of the car. I knew this part of the road was especially dangerous because a few  
183 people had run off the roads and hit the unguarded trees before. Vanessa was also worried about  
184 me going too fast so she said she would just call her Dad and tell him we were almost there but the  
185 rain was going to make us a few minutes late. The whole time Vanessa was trying to talk to her  
186 parents, Taylor would not shut up and kept making the radio louder. The radio, Taylor's  
187 yammering, and the ridiculously loud music were really fraying my nerves. When I got close to the  
188 big curve, I saw that the front-porch light was on at a house to my left, which seemed odd at that  
189 time of night. Vanessa started yelling at me about something, but I wasn't sure what because I  
190 couldn't hear her over all the noise in the car. My eyes were back on the road a few seconds later

191 when I saw something coming at us. I'm pretty sure it was a deer or something; there are a lot of  
192 them on those back roads but the rain made it so hard to see. Whatever it was, it wasn't actually on  
193 my side of the road, but it had to be moving toward my lane. I had to make a split-second decision.  
194 I steered the car to the right a little harder than I should have, and I started to go down the  
195 embankment on the outside of the curve. I tried to pull us back onto the road and lost control. The  
196 car went across both lanes of traffic and before I knew what was happening, the car hit a tree or a  
197 pole or something.

198 I was panicking. Taylor had stopped talking and just seemed to be sitting in the back seat in  
199 shock. I tried to talk to Vanessa, but she was not responding at all. I remembered the front-porch  
200 light and started trying to run toward it calling for help. I was met by a person I now know as  
201 London Bennett. Bennett told me that Bennett saw everything from the front porch and had  
202 already called 911. I told Bennett that I felt so bad about what happened and that I'd never be able  
203 to be seen in Midlands Center again if anything bad happened to Vanessa or Taylor. Before I could  
204 launch into my tale of woe, I realized that Bennett was over at the car screaming that Vanessa was  
205 not breathing. When I ran over, Taylor asked for my help to get out of the car, which was crushed  
206 like a soda can. I don't know anything about rescue work, but I helped Taylor out of the car. I was  
207 so worried about Vanessa and thought something terrible might happen.

208 Unfortunately, I was right. Vanessa didn't make it to the ambulance. Nothing could be  
209 done to save her. The next thing I knew, Ms. Sullivan was there screaming at me about how she was  
210 going to do everything in her power to put me in jail for life for what I did to her daughter. I told  
211 her that I was sorry and that it was all my fault. I wanted to tell her that I wished I had taken my  
212 chances with hitting the deer or whatever was in the road. Before I could say a word, she was  
213 demanding that the police get my confession and confirm that my drunk driving caused her  
214 daughter's death. I swore that I was fine, but no one was listening. The police made me do all sorts  
215 of silly tests and Ms. Sullivan kept going on about how she saw me fail every one of them. I think I  
216 did just fine, but I have no idea. I did not give the police any statements that night beyond whatever  
217 small talk I had with the officer that was first at the scene.

218 After seeing Ms. Sullivan, I knew that nothing good would come of it. I was right. The next  
219 thing I knew I was at the police station being subjected to more tests and booked on a bogus  
220 murder charge. I have no idea when driving a little fast and swerving away from a deer in the road  
221 on a rainy night became murder, but I may never get to go to law school to find out. I was keeping  
222 pretty close track, and I don't think I had more than a drink an hour that night. Like I've said

before, I know that a drink an hour is perfectly fine for me – always has been and always will be unless a vindictive, malicious prosecutor comes after me. I feel worse than anyone about Vanessa Sullivan’s death, but her mom doesn’t need to ruin someone else’s life because of the horrible accident on the night of Vanessa’s 21<sup>st</sup> birthday.

I went to Vanessa’s funeral on September 29 to pay my respects to her and her family. I felt awful about what had happened, even though it was an accident. I skipped the church service and went to the gravesite, where I was going to try to talk to Mr. Sullivan afterward to tell him how sorry I was for what had happened. Before I had been there for two minutes, Taylor made a beeline for me and told me to leave. I was surprised because Taylor was in the car and I figured Taylor of all people had to know there was a deer in the road too, but when I tried to explain that, Taylor told me there wasn’t and once again told me to go away. I don’t know why Taylor said that, but I try to give people the benefit of the doubt. Maybe Taylor was just too drunk to remember what happened that night. Anyway, if anyone was making things at the funeral bad for the family, it was Taylor, not me. But out of respect to Vanessa and her family and other friends, I decided to leave quietly, and I haven’t tried to contact her family since. I did go visit her at the cemetery after to tell her how sorry I am, and I hope someday her family will also forgive me.

I hereby attest to having read the above statement and swear or affirm it to be my own. I also swear or affirm to the truthfulness of its content. Before giving this statement, I was told it should contain everything I knew that might be relevant to my testimony, and I followed those instructions. I also understand that I can and must update this affidavit if anything new occurs to me until the moment before I testify in this case. I have also read the opinions rendered by the experts I have hired to show my innocence in this case. They have offered all of the opinions I have requested and disclosed, and my counsel ensures me that all available information relevant to the experts’ opinions has been provided to them.

\_\_\_\_\_  
/s/ DND

Danny N. Dawson

Subscribed and sworn before me on this, the 3<sup>rd</sup> day of October, 2011.

\_\_\_\_\_  
/s/ SS

Sarah Shelton, Notary Public



## **AFFIDAVIT OF RYAN FOSTER**

1 After being duly sworn upon oath, Ryan Foster hereby deposes and states as follows:

2 My name is Ryan Foster. I am a patrol officer for the Midlands Center Police Department. I  
3 earned my Bachelor's of Science in Civil Engineering from the Georgia Institute of Technology,  
4 where I graduated with highest honors and took several courses in the field of transportation  
5 planning and design. I became a certified professional engineer (P.E.) in 1999. While I had several  
6 job offers with top civil-engineering firms, I decided that I wanted to combine my engineering  
7 education with my interest in law enforcement. I applied for a job with the Midlands Center Police  
8 Department after graduation and have been there for over ten years. I took a 22-week course at the  
9 Midlands State Police Academy, where I learned the fundamentals of police work, criminal law,  
10 criminal procedure, and investigation techniques. I have also taken several refresher seminar courses  
11 in road design and safety, and serve on the City Council's Transportation Safety Board.

12 As far as my experience goes, I wear two hats. I have been a patrol officer for my entire time  
13 at the MCPD, but since late 2004, I have also been a member of the MCPD's Fatal Crash Team  
14 (FCT). As a member of the FCT, I investigate the cause of traffic accidents with a focus on accident  
15 reconstruction. I received my certification from the Accreditation Commission for Traffic Accident  
16 Reconstructionists in May of 2004.

17 On the night of September 24, 2010, I was working solo patrol because my partner Bud  
18 Baker had come down with the "Friday night flu," which seems to be a recurring illness. I was  
19 working my usual patrol in the Canyon Road area that night, and I lucked into the 11 p.m. to 7 a.m.  
20 shift. It started drizzling around 11:30 p.m. that night, so I stopped driving around and moved my  
21 car to the fork in the road where Canyon Road and Chambers Avenue split. I wanted to be able to  
22 stop any reckless drivers coming from the city toward where I see so many accidents on Canyon  
23 Road, up near my good friend London Bennett's house. For the most part, it was a quiet night. I  
24 pulled a blue Honda over for doing 75 in a 35 at about 11:45 p.m. The driver was old Norris Eren.  
25 He's a friend of my grandpa's from college, and I don't think he should be out on the road at all, so  
26 I didn't give him any sort of a break. Reckless driving is not a joke. I was back to the fork in the  
27 road by midnight. By 12:30 a.m., the floodgates opened, and it became a little more difficult to see  
28 anything. The first few cars that passed by after the deluge started had on emergency flashers, and  
29 my radar showed that none of them were going faster than 35 miles per hour.

30 By 1 a.m., we were still in the middle of a torrential downpour, and visibility was not getting  
31 any better. I saw a newer-model Chevrolet Impala coming from the city approach the fork in the

32 road, and I got a radar reading of 54 miles an hour. My radar gun was calibrated before I went on  
33 duty that night, and I never have any problems getting an accurate reading. As the car got closer, I  
34 noticed a few things. First, the license plate on the front of the car said SULLY3, so I knew it  
35 belonged to the Sullivan family. I really appreciate all of the work Ms. Sullivan does as a prosecutor.  
36 I also noticed the car swerve a little bit. If it were a clear night, I'd probably be pulling the car over  
37 to check for a DUI, but with the downpour I figured Vanessa was just having a hard time driving or  
38 hydroplaning a little bit. I was thinking about following the car when I got a call on my radio that  
39 assistance was needed on Chambers Avenue with a motor-vehicle stop. I radioed in my location,  
40 turned on my lights, and headed that way. If I really thought the driver of SULLY3 should have  
41 been off the road, then I would have taken care of that situation first.

42 Before I got to the Chambers Avenue location, another call came in over the radio. There  
43 had been a one-car accident on Canyon Road right across from London Bennett's house.  
44 Apparently Bennett had called it in from home, and immediate assistance was needed. I was  
45 specifically told to report to the scene because it sounded like a member of the FCT might be  
46 needed. My heart sank. I knew I should have stopped that car. I took a left on Yarbough Drive  
47 and cut over to the scene of the accident. The Impala was on the side of the road. The front of the  
48 car had slammed into a utility pole, and the passenger side had hit a tree. I parked my car in  
49 Bennett's driveway so I would not block the emergency vehicles on the way and hustled down to the  
50 scene of the accident.

51 Bennett and the person I later learned to be Danny Dawson were near the automobile, but  
52 neither of them was in the car. I heard a scream for help. When I got to the car, I saw that Vanessa  
53 Sullivan was in the front seat on the side of the car that had slammed against the tree. She was still  
54 strapped into her seat belt, but she was not responding. The paramedics arrived at about that time,  
55 and I directed them to Vanessa. Another person, who I later learned was Taylor Hopson, was in the  
56 back seat of the car screaming. Hopson appeared to be bleeding from the head and Hopson's hands  
57 were covered in blood. Hopson was just screaming and screaming. I could not tell exactly what  
58 Hopson was saying; all I could really make out was, "Don't make me kill Danny for killing my best  
59 friend! Hold on, Vanessa!" Hopson also screamed something about not being able to see anything  
60 in the rain and how the city should have closed down the road.

61 I thought Hopson might be in some trouble, but the EMTs were focused completely on  
62 Vanessa at that point. When I looked beside me, I noticed that Hopson somehow had managed to  
63 get out of the car and was standing on one side of me, and Dawson was on the other. Dawson was

64 apologizing for not doing a better job of driving the car and kept blaming the rain. Dawson kept  
65 saying, “Vanessa can’t die because of me; she just can’t!” Dawson said that Dawson really did not  
66 know what happened out there on the road. Then Dawson muttered something about needing  
67 another drink, and it hit me that maybe Dawson’s speech was a little slurred. I hadn’t really noticed  
68 it before, but it made sense, especially given that Dawson had driven a car off the side of the road.

69 Before I could ask Dawson any questions, Dawson walked away from me and was standing  
70 near Vanessa. I stepped aside for a second and called Avery Smith, who handles Intoxilyzer testing  
71 for the MCPD, and asked Avery to come to the station in case an Intoxilyzer needed to be  
72 performed on Dawson. Then I walked back over to Hopson. At that point, Hopson really started  
73 to open up to me about what happened that night. Since it was raining, I wasn’t able to take notes  
74 like I’d wanted at the scene, but I’ve included everything I remember Hopson telling me in either  
75 this affidavit or the FCT report of the crash that I created. Hopson was still bleeding and the EMTs  
76 finally talked Hopson into the ambulance. That was when I heard one of the EMTs say that  
77 Vanessa had died.

78 It couldn’t have been more than ten minutes since I’d arrived at the scene by that time, but it  
79 seemed like a lifetime. At this point, it was just Dawson and I at the scene. Bennett had walked  
80 back to Bennett’s porch to give us some space. It was about that time that Vanessa Sullivan’s  
81 mother showed up on the scene. Ms. Sullivan was obviously devastated but also really, really angry.  
82 I told Ms. Sullivan that her daughter had been taken away, but Ms. Sullivan insisted that she would  
83 be going nowhere yet. I believe her words were, “My daughter is dead because of this maniac! I  
84 never should have let Dawson anywhere near her. I can’t bring Vanessa back, but I’m going to  
85 make Dawson’s life a living hell because I can still do that.” Well, when the prosecutor says those  
86 words, then you know it’s time to run a few tests. First, I advised Dawson of Dawson’s rights and  
87 Dawson said, “I’m not drunk. You’re just wasting your time making me take those stupid tests. I  
88 can pass any test. Give me an LSAT question.” I told Dawson this was no time for jokes. Dawson  
89 was a little belligerent but agreed to take the field sobriety tests.

90 I started by having Dawson say his ABCs backwards starting with the letter “Q.” While R  
91 and S are letters, they are not before the letter Q, and they are certainly not before the letter M,  
92 which is where Dawson put them. At that point, I decided it was time for a standard physical field  
93 sobriety test. I was pretty sure what the result would be. Thankfully the rain had stopped, but I still  
94 wanted to get away from the road. We went to Bennett’s driveway and I started the standard battery  
95 of field sobriety tests, which I have performed and interpreted hundreds of times, so I’m pretty

good at interpreting results. All observations and conclusions I'm writing about are based on my extensive training and experience.

I asked Ms. Sullivan to stop screaming at Dawson and making Dawson nervous, but she ignored me. I then began the horizontal gaze nystagmus (HGN) eye test. As is standard, I asked Dawson if Dawson suffered from any neurological disorder that would cause nystagmus. Dawson said "no" and added, "I can see just fine. Can we get this over with?" I then moved forward with the exam, taking my pen flashlight and shining in the defendant's left eye and waiting for sixty seconds to allow the pupil to adjust fully to the light.

Once Dawson's eye had adjusted, I moved my flashlight in the standard procedure and looked for three signs of nystagmus: pronounced jerking in eye movement instead of a smooth movement, inability to hold the eye in a set place without jerking when moved to and held at maximum deviation, and the angle at which jerking onsets when the eye is moving. I repeated this process for the right eye. I noted all of the results and indicated that there were no environmental factors that would impact the test. Based on my training, the result of this test alone was sufficient to conclude that the subject was intoxicated.

Then I went on to the second test, in which Dawson had to walk heel-to-toe in a straight line and follow my directions. Dawson stumbled several times and kept blaming it on the wet pavement, but clearly failed that test. Dawson tripped every time I tried to get Dawson to turn around and could barely walk in a straight line without falling. The ground was kind of slick. I almost fell myself, but I'm still pretty sure Dawson was walking like Dawson was drunk, not like Dawson was slipping. Finally, for the third test, I had Dawson stand on one leg and count aloud starting at one thousand. Dawson complained again about the slick ground and kept using both arms to balance. Dawson stopped counting several times and had to hop to keep from falling. All of these were signs of intoxication.

Dawson had failed all three tests, so I was confident that Dawson was drunk. Of course, Ms. Sullivan was yelling that she was going to need more evidence for her murder prosecution. Another officer had arrived on the scene at that point, so I put Dawson in the squad car and drove Dawson to the station. I asked Avery Smith to take it from there. I do not know what further tests, if any, were actually administered, and do not know the results. I did not want anyone else's tests to influence the objectivity of my firsthand observations.

I returned to the scene quickly and went into the house to speak with Bennett. Bennett seemed all out of sorts and kept talking about how we should have lowered the speed limit to 25 on

Canyon Road, but it was pretty clear from my talk with Bennett that Dawson's drunk driving caused the accident. I could barely believe how intoxicated Dawson was at the scene. I guess the rain must have made it hard to see how horribly Dawson was driving when the car went past me earlier.

I understand that Dawson is trying to blame the conditions and the design of Canyon Road for the murder that Dawson committed when Dawson drove drunk that night. I have patrolled that area for hundreds of nights, and under clear conditions, it is easy to navigate the Canyon Road curve if you are going the speed limit or even a little faster. I have chased cars going 60 miles an hour that have made the turn without even going onto the shoulder.

Sure, it was raining really hard that night. But that's no excuse not to drive safely. I was on the taskforce that surveyed the safety of Canyon Road when Bennett started raising Cain about the speed limit after those kids died when they drove off the road while intoxicated. We watched drivers go around the curve in worse rain than the night when Vanessa Sullivan died, and none of the drivers I observed had any problem navigating the curve. To go off the road like Dawson, I think a driver would have to be really distracted, going really fast, or really impaired.

My FCT report, which contains all of my conclusions about the accident reconstruction I completed for this crash, confirms this. As you can see from my report, Dawson drove off the right side of the road and made a rut of well over 100 feet. Then Dawson swerved back across to the road and hit a utility pole and tree that were a couple of feet off the other side of the road. I calculated that Dawson was driving 66 miles per hour when Dawson first lost control of the vehicle. That's more than 30 miles an hour faster than the posted speed limit. Driving that speed would be unbelievably reckless given the darkness, heavy rain, and reduced visibility due to weather conditions. I would say going that fast would essentially be a suicide attempt if Dawson was also drunk. I understand that Leslie Roman, who analyzed the crash for the defense, concluded that Dawson was only barely over the speed limit. Roman generally does good work, but Roman's assumptions on this crash are mistaken, as you can see from the differences between our reports. I agree with Roman that the article by Windsor and Strasberg entitled "Vehicle Accident Reconstruction" is the only treatise worth using in the field. My calculations and conclusions regarding the vehicle's speed are completely explained by the Windsor and Strasberg primer, and I relied on no other source in making them.

I also understand from Roman's report that Dawson is claiming that a deer was in his way. I interviewed three witnesses on the night of the crash and none of them mentioned seeing a deer that night. This includes Dawson, who kept saying that Dawson had no idea why the car behaved in the

160 way it did and gave no explanation for what happened. To be fair, I did once see a deer in that area  
161 about a year ago, but it's not like they are always on the road or anything. Based on the statements I  
162 collected immediately after the accident, and the lack of any other evidence to confirm that a deer  
163 was there that night, I do not think there was a deer on the road. I'm not surprised that Dawson  
164 claims to have seen one, though – anything to steer blame away from where it belongs, on Dawson.

165 I have seen all of the affidavits that were written in this case and all of the exhibits that were  
166 produced for trial except for the defendant's affidavit, if it exists. All I can remember from actual  
167 witness interviews is included in those affidavits. I provided a copy of the entire police file on this  
168 case to defense counsel prior to trial, and I asked defense counsel if they had any more requests for  
169 discovery. They did not. The prosecutors' office requires open-file discovery in Midlands Center,  
170 and this case was no exception. Other than this affidavit, I personally wrote the FCT Report and  
171 created the FCT Diagram. I also took all the police photographs of the scene, which were later  
172 provided to Leslie Roman and appear in Roman's expert report as Photographs 0001-0007. I did  
173 not go to Chuggie's to collect the bar tab in this case; I left that task to Officer Baker and Officer  
174 Yarbough.

175 I hereby attest to having read the above statement and swear or affirm it to be my own. I  
176 also swear or affirm to the truthfulness of its content. Before giving this statement, I was told it  
177 should contain everything I knew that might be relevant to my testimony, and I followed those  
178 instructions. I also understand that I can and must update this affidavit if anything new occurs to  
179 me until the moment before I testify in this case.

180 \_\_\_\_\_  
/s/ RKF

181 Ryan K. Foster

182 Subscribed and sworn before me on this, the 3<sup>rd</sup> day of October, 2011.

183 \_\_\_\_\_  
/s/ SS

184 Sarah Shelton, Notary Public

## **AFFIDAVIT OF TAYLOR HOPSON**

1 After being duly sworn upon oath, Taylor Hopson hereby deposes and states as follows:

2 My name is Taylor Hopson. I live in Midlands Center, Midlands, and I am a senior political  
3 science major at Midlands Center University. I was supposed to graduate in 2011, but after what  
4 happened last fall, I had to take a leave of absence from school. I had always planned to stay in  
5 Midlands and go to law school, hopefully at Calkins Law with my best friend Vanessa, but now I just  
6 want to get away from Midlands and all the awful reminders of what happened. After this  
7 experience, I don't want to be a lawyer anymore. I recently published a short story that helped get  
8 me accepted into the prestigious Wasch School of Journalism at Herndon University in California,  
9 and I can't wait to move away from Midlands after this trial. I hope to write a story about this case  
10 one day when I can come to terms with this terrible tragedy.

11 I first met the Sullivans when I was eight and my family moved into the house next door to  
12 theirs. Ms. Sullivan was just a deputy prosecutor then, not famous like she is now. Vanessa and I  
13 quickly discovered all the things we had in common and, in no time, we were inseparable.

14 Vanessa and I were both accepted to Calkins College in East Hill. I really wanted to go, but  
15 my dad lost his job in 2006 and I knew I would have to work through college just to pay for food  
16 and books, no matter what kind of scholarships I got. I was happy that Vanessa got the chance to  
17 go, though. I knew she was excited to get a little distance from Midlands Center. Vanessa's parents  
18 could be kind of strict, so they weren't really keen on her going far away to school. One time during  
19 our junior year of high school, Vanessa got a little tipsy on some spiked punch at the homecoming  
20 dance. It wasn't her fault at all, but she didn't want to drive home so she had to call her mom to  
21 come get her. When she showed up at the dance to get Vanessa, Ms. Sullivan screamed at her in the  
22 parking lot for about fifteen minutes. She told Vanessa that she had no right to embarrass her in  
23 public and asked how would it look if the D.A.'s daughter had been picked up on a public-  
24 intoxication charge. Vanessa just apologized and tried to explain that she wasn't drunk, but it didn't  
25 matter to Ms. Sullivan. It was a long time before I ever saw Vanessa drink alcohol again and,  
26 whatever happened, she definitely didn't call her mom to pick her up. Her dad came once when our  
27 designated driver got too trashed to drive home, during fall break of our freshman year of college.  
28 Usually, though, Vanessa just crashed at my house or made sure we had a good designated driver.

29 To understand what happened on the night Vanessa died, I guess it helps to know why we  
30 were even on Canyon Road at the time of the accident. Vanessa and I have a high-school friend  
31 who has a pretty good career going as a musician. Our friend's band, Chatterbox, was playing a gig

at Chuggie's, right in our hometown the night of Vanessa's 21<sup>st</sup> birthday. Jordan James tends the bar at Chuggie's and was going to be the opening act for the band. I knew James from when I worked there, so it seemed like a great way to get two great shows in one night. I called Vanessa to invite her to town for the show. She doesn't come home often, and the last few times I tried to schedule a visit with her she was too busy. This time, though, she agreed to come. I was so excited.

I was less excited when she called me back a few days later to make plans and told me her college friend Danny Dawson was coming to town with her. I met Danny once before but Danny probably doesn't remember meeting me. I had visited Vanessa at Calkins College for a weekend during our sophomore year. My last night in town, we went to a party at a local dive bar in East Hill after a basketball game. Vanessa introduced Danny as someone in a lot of her classes, and Danny sat and talked with us for a while. Danny seemed okay but was already pretty tipsy and kind of obnoxious. Later, when Vanessa and I were getting ready to drive back to campus, we ran into Danny in the parking lot. By that point, Danny was full-on hammered and barely walking straight. Some of Danny's friends tried to take Danny's keys away but Danny just shoved them off and shouted, "I'm not a baby. There are never cops on this road after a home game. They know the fans like to celebrate. Stop being a buzzkill." Danny got in the driver's seat of the car and drove away. The next day, Vanessa checked on Danny and I guess Danny made it home okay. I would never drive if I had even a single drink, but it seemed then that maybe Danny knew how much Danny could handle better than I did. I didn't see Danny again until Danny killed my best friend.

Vanessa came to pick me up around 6:45 p.m. We were supposed to drive together to Chuggie's and meet Danny there. I didn't want to drive to the concert myself because I knew I would probably want to have a drink or two to celebrate Vanessa's birthday. I don't usually drink much and I don't know my limits very well, so I never drive if I have anything to drink. I know a lot of people drive after just a couple of drinks and it isn't even illegal if you aren't drunk, but I think that's just awful. I would never risk hurting someone else by being so selfish. Plus my car only seats two people, and I would never drive Vanessa's car because Ms. Sullivan would kill me if she found out. She doesn't like anyone but Vanessa driving that car – something to do with the insurance coverage. Besides, Vanessa said that since she drove Danny all the way to town, Danny would be more than willing to be designated driver for the night. I asked Vanessa if Danny planned to drink at all, and she said Danny swore not to have a sip. Just to be sure, when we got to Chuggie's, I saw Danny and asked if Danny would play designated driver that night while Vanessa and I got drunk. Danny said, "Lighten up, Taylor. Anybody can have a drink or two and still be fine to drive.



Besides, I'm here to see an awesome band, not to get hammered. I doubt I'll have any more to drink. Don't worry about it." I was not exactly sure what Danny meant by that, because Vanessa said Danny had sworn not to drink that night. But I guess Danny had gotten to Chuggie's early and started celebrating without us. Still, I remembered the previous incident from Calkins and I believed Danny knew how to handle a night out, so I decided to take Danny's word that everything would be okay. Trusting Danny was the worst decision I have ever made.

Chuggie's is a neat little pub, about 20 minutes from my house. I actually worked there my first two years of college to help pay for things my scholarship didn't cover. I had an internship in D.C. the summer of 2010, though, and I had not started my job back up when we went there on September 24th. Some of the wait staff was new, but the old regulars were still around and they still had the same taxi sitting out front. I was shocked to learn that Danny was also familiar with Chuggie's. Apparently Danny had spent time in Midlands Center during the summer I was in D.C. and during that time, Danny practically lived at Chuggie's. Danny was more familiar with some of the new staff, including the bartender, Jordan James, than I was. Jordan and I never worked shifts together until right before I left for my internship. For the brief time we overlapped, I remember a lot of customers complained that Jordan made their drinks too weak, but that Friday night was the first time I ever tasted a drink made by Jordan and the drink seemed very strong to me.

Our table was in a perfect spot to see the stage. The lead singer of Chatterbox had actually reserved it special for us, and there was a little card for Vanessa's birthday on the table. The server, Pat Lawrence, was a really good waiter too, constantly refilling our chip basket and drinks before we could even ask for seconds. That was pretty amazing since Pat told us that it was Pat's first day on the job. It was really great service, but I eventually had to tell Pat to switch me to sweet tea. Since Pat was refreshing our drinks so fast, it was hard to tell how many I had, but I was only a little lightheaded by the time I switched to tea, and I don't think I had more than two or three full drinks with any alcohol in them. I started drinking tea about 20 minutes before the band came on. Pat was a different story. As soon as we sat down, Danny ordered straight whiskey! Then Danny tried to order shots for Vanessa and me, but I immediately declined. I never drink shots. In fact, I never drink anything alcoholic other than screwdrivers (vodka and orange juice). Vanessa agreed to do a shot with Danny, but only if it was a mild one. I think Pat brought a lemon drop shot for Vanessa and Danny, and then Danny ordered a Midlands Brown (a local beer special to the pub), and I started getting really nervous about how much Danny was drinking before we even got our cheese fries. I didn't want to keep bringing up the alcohol issue because I didn't want to spend the whole

night nagging Vanessa's friend, and I figured Danny had several hours before the drive home so I decided not to say anything. I was relieved that Danny switched to sodas when the food came and I tried to relax.

While we had dinner and waited for the band, I started to have a really good time. Danny was much nicer than I originally expected and discussed the possibility of our all being at Calkins Law the next year. Danny was even kind enough to spend a little time at the bar so Vanessa and I could catch up and not feel silly talking about high-school friends. I don't remember how long Danny was gone, but not long after Danny returned, Pat brought us a round of drinks on the house in honor of Vanessa's birthday – whiskey-and-ginger-ale cocktails. They were disgusting. I was annoyed because anybody at the bar other than Jordan would know me well enough to never bring me whiskey so I pushed mine aside. I don't know who ended up drinking it, but it definitely wasn't me and I know Vanessa isn't a fan of whiskey either. I assume it was Danny. Danny was the only person at the table ordering whiskey by choice and by the time the band finished its first song, all the drinks on the table were empty. Then Danny started ordering more drinks and told Pat to keep them coming strong. Danny kept buying me screwdriver after screwdriver. I can't recall how many, but I know two things – I didn't drink them all, and the glasses kept ending up empty in front of Danny.

When the band finished its first set, I went to the bathroom. The line was pretty long so I waited almost the whole length of the break and by the time I got back, I saw Danny was strumming one of Chatterbox's guitars! I was appalled. Who picks up a guitar from a band on break and starts pretending they're a rock star? Danny's playing was horrible, and Danny got hustled off the stage by a bouncer. It was completely embarrassing. I thought Calkins students were supposed to be smart, but Danny was acting really messed up by that point and it was all Vanessa could do to drag Danny back to the table. The band was cool about it, though, and ordered our table another round of drinks. Then my friend suggested I join the band and sing Vanessa's favorite song, Sunday Morning! I used to sing some in school, and I was really flattered that the band wanted me to sing with them. Plus, I really wanted to get away from Danny so I left my complimentary screwdriver on the table and went to warm up a little before getting on stage. Vanessa was really excited. Danny looked really annoyed.

While I was with the band, I tried to keep an eye on the table so I could see just how many more drinks Danny and Vanessa had, but the lights in the bar were pretty dim and it was hard to make out what was happening in the room. I could see the shapes of Vanessa and Danny at the

128 table, and Pat seemed to be making a lot of trips over, but I couldn't see what Pat was bringing. The  
129 crowd loved our song so much that the band asked me to do another, so I sang two more songs  
130 with them before heading back to the table.

131 By the time I got back, it was past midnight and Vanessa was pretty buzzed. My screwdriver  
132 was long gone, but I don't know if Danny drank it or if Pat just took it away. Danny looked in bad  
133 shape, but when I tried to suggest we maybe take a cab home, Vanessa shouted, "No! My mom will  
134 kill me if I leave my car here. You know how she gets when I've have even a tiny bit of alcohol and  
135 Danny's fine to drive. It'll be fine." I was really unhappy about trying to drive home and I  
136 should've fought harder to call someone or take the cab, but I could rarely say no to Vanessa so I  
137 just got in the car. Vanessa mentioned that we had to be back in ten minutes or we would miss her  
138 parents' curfew, and I was starting to freak out. I was especially worried because I know that the  
139 drive from Chuggie's to Vanessa's is easily a 20-minute trip. I started yelling at Danny that it was  
140 Danny's fault we had to stay so late, that Danny really should not be driving, and that Vanessa was  
141 never going to get home in time. Danny laughed and said, "Challenge accepted!", said that Danny  
142 had made the drive in eight minutes before, and told me to get out my watch.

143 When we were walking (or in Danny's case, stumbling) to the parking lot, we walked past the  
144 taxi stand. The taxi driver on duty, Sam Lyons, tried to get us to take the taxi home. Sam even  
145 offered to bring Danny back the next day to pick up the car. But Danny just shoved Sam away and  
146 said, "Nice try, but I'm not gonna give you two cab fares when I can manage a silly ten-minute drive.  
147 Get lost." Danny should have listened. When we got to the car, I was shaking because I was scared  
148 and I could tell Vanessa wasn't thrilled about letting Danny drive, but neither of us felt good about  
149 driving the car either. Danny leaned over to me when unlocking my door and tried to reassure me  
150 that everything was fine, but Danny's breath was awful and reeked of liquor and stale beer. Then, I  
151 saw Danny get in the car and pull out a radar detector. I could not see where it came from, but I  
152 thought that Danny must be such a crazy driver that Danny carries an illegal radar detector around  
153 in a back pocket or something. At that point, I just wanted to get home without throwing up.

154 Danny was worried about taking the main roads back, in case we saw cops. Vanessa's mom  
155 knows every cop in town and getting pulled over would be a disaster for her too, so I tried to direct  
156 Danny on how to get to Vanessa's house on the back roads. By the time we got about two miles off  
157 the main road, I knew we were in serious trouble. Danny was swerving all over the place and going  
158 way too fast. I tried to tell Danny to slow down – the speed limit was 45 MPH, and it felt like we  
159 were going at least 80 MPH – but Danny just started yelling at me for being annoying and told me to

160 stop being a nag. Canyon Road runs all the way through town, but this part of it is actually off the  
161 beaten path. There are a lot of trees around the curve and the guardrails don't extend very far, so if  
162 you take the curves too quickly, you can easily end up going off the road into the woods. Vanessa  
163 and I actually had two people from our high school get killed there when we were growing up.  
164 Everyone in town calls it the Death Zone. I tried again to tell Danny to slow down because not  
165 only was the two-lane road getting curvier, it was starting to really rain hard. I told Danny that I was  
166 scared, and that turned out to be a huge mistake. Danny responded that Danny was going to show  
167 me how Danny could really drive. I said I wasn't trying to be a nag, and that I just didn't know if  
168 Danny could see the lane change, but it didn't make a difference. Danny told me to go back to  
169 singing and said that all my talking was distracting.

170         Danny also said it was hard to see and asked why our town didn't have any lights on the  
171 road. It was true that the only light anywhere around came from London Bennett's house. It was  
172 so hard to see but there was nothing in front of the car but rain. There was definitely not a deer or  
173 anything like what Danny is claiming.

174         By this point, Vanessa was clutching the armrests of the front seat and looked pretty green.  
175 I started to worry that she was going to vomit all over the dashboard. I tried again to tell Danny to  
176 slow down because the road was going to get narrower, but Danny refused. I think Danny was  
177 swerving just to spite me. Vanessa tried to get Danny to slow down by telling him she would just  
178 call her dad to tell him we would be little late. I remember her saying, "You don't have to risk  
179 getting pulled over just to get me home by 1. I'll just call my dad, Danny. Slow down." Danny  
180 didn't seem to hear her and just turned the music up louder.

181         That's when Vanessa called her dad. The music was so loud it was hard to hear everything  
182 she said, but right in the middle of the call I remember Danny swerving the car across the road for  
183 what seemed like no reason. I was terrified and so was Vanessa and she told Danny to knock it off.  
184 But Danny started weaving again and this time it was a huge miscalculation because when Danny  
185 tried to go back on the road, the car just started sliding. I remember screaming as we spun in a  
186 circle and my stomach dropped but I couldn't tell where we were going. Then everything went  
187 black. I have heard the recording that Vanessa left for her dad that night. I can't imagine how he  
188 felt when he heard it because it is obvious from that message that Danny is to blame and that's the  
189 last thing her parents, or any of us, will ever hear her say.

190         After the crash, it is hard to remember things very clearly. I don't think I passed out but I  
191 don't really remember anything from that point on very well. I don't even know how I got out of

the car, but I do remember lots of blood everywhere. Everything was red and I was soaked from the rain. There were flashing blue lights all around us, and the sound of horns. Someone was talking to me and telling me not to move. The next thing I remember was waking up in a hospital room. My mom and dad were there. I asked them if Vanessa was okay and my mom just started crying and shaking her head. I didn't ask about Danny because I didn't care if Danny was dead. I know that sounds horrible, but this was Danny's fault.

The next time I saw Danny was on September 29<sup>th</sup> at Vanessa's funeral. There were a million people there; everybody loved Vanessa. It was a beautiful service. But when we got to the cemetery, there was Danny Dawson, standing alongside a tree overlooking the gravesite. I was furious, but I didn't want to make a scene with Vanessa's family there. I walked up to Danny and said, "I can't believe you would have the nerve to show up to Vanessa's funeral after you murdered her. You need to leave." Danny looked me in the eye and said, "Look, she was my friend, too. Besides, it's not my fault a deer ran into the road." I was shocked. I couldn't believe what I had just heard. I said to Danny, "What are you talking about? There was no deer in the road!" Danny just glared at me and said, "Prove it." I wanted to hit Danny at that point, but fortunately, Danny also chose that moment to leave the funeral and the family in peace. If anyone should have been buried in that cemetery, it was Danny, not Vanessa. Instead, I ended up in a hospital for two days and Vanessa is dead. Danny walked away without a scratch. I hope Danny goes away to jail forever. What kind of life should someone have after murdering an innocent girl?

I hereby attest to having read the above statement and swear or affirm it to be my own and consistent with the testimony provided during my grand jury testimony. I also swear or affirm to the truthfulness of its content. Before giving this statement, I was told to include everything I knew that might be relevant to the events described related to these charges. I also understand that I can and must update this affidavit if anything new occurs to me until the date of my trial in this case. I have also read and am familiar with the statements I provided to police officers and law enforcement officers related to these events and confirm that all documents showing my signature reflect my genuine signature.

/s/ TJH

Taylor J. Hopson

Subscribed and sworn before on this, the 3<sup>rd</sup> day of October 2010.

/s/ SS

Sarah Shelton, Notary Public

## AFFIDAVIT OF JORDAN JAMES

1 My name is Jordan James. I was born in Chicago, Illinois, and went to Marquette University  
2 on a music scholarship after high school. I left Marquette after three years and never earned a  
3 degree. It always seemed to me that there were better moneymaking opportunities out there for me  
4 than staying in college. For example, I found out that I was one heck of a bartender, and with my  
5 musical talents, the money made tending bar and performing on the side was incredibly good –  
6 better than almost any other job I could get. I took my talents down south to the beach and worked  
7 at a famous tourist trap. I was making phenomenal money but I was spending it faster than I could  
8 make it, so I decided to move to somewhere with a lower cost of living about three years ago. That  
9 somewhere was Midlands Center.

10 Since moving back in the spring of 2010, I have been tending bar and playing occasional  
11 gigs at Chuggie's. It's a great place to work and to hang out, if that's your thing. It's great for me  
12 because I can use my musical ability to make some extra bucks on top of bartending, and the owner  
13 lets me keep my hair any way I want as long as the customers keep coming back. Chuggie's has a  
14 little something for everyone. We have live music four nights a week (I usually do a few songs and  
15 pick up a bunch of tips before the main act), karaoke every other night, and even a 3-D TV to  
16 replace that old human darts game. The main attraction, of course, is all the liquor you can afford.  
17 From beer to the hard stuff, we've got it and we want you to buy it! That is how I make most of my  
18 money, of course; people come in to have a good time, and I make that happen by serving up strong  
19 drinks and music requests. If they have a good time and like my service, they will give me a tip. In  
20 my experience, the drunker they are, the better my songs sound and the bigger my tip gets. Every  
21 bartender knows the gulp-to-green correlation, and we do our best to make sure our bills get paid. I  
22 would never spike a drink or anything like that, of course, but it's nice that the bar doesn't make us  
23 measure our pours.

24 I met Danny Dawson at the bar during the summer of 2010. Danny came in one night with  
25 a bunch of friends. I was between sets and serving some drinks. Danny came right over to me and  
26 ordered a Blackout, our most intoxicating drink. I knew right away Danny was a "rainmaker." You  
27 see, every bartender has a pool of great customers to rely on for steady income. We keep them  
28 happy, and they keep us happy. Regular customers like Danny can account for as much as half of my  
29 tips in a month, and Danny did not disappoint. Over the past two years, I would say Danny has  
30 tipped me nearly \$2,000, though the IRS has certainly taken its share. I return the favor by making  
31 Danny's drinks just the way Danny likes them, with more liquor than the average drink. Danny says

there's no point in messing around with all the extra juice and calories in lots of mixed drinks – besides, Danny would rather drink one drink that has the liquor of two than be hassled with having to drink two drinks. In my experience, Danny's drinking habits usually coincide with that.

Aside from being a great customer, Danny has always been a very nice person to me and most of the patrons at the bar. Danny has never been involved in a fight or even so much as a shouting match with another customer. Danny also possesses one character trait that makes Danny pretty much unique at our bar – Danny is conscientious about not driving drunk. I'll put it this way: Danny may have a drinking problem, but Danny does not have a drinking and driving problem. I can't even count or remember all the times over the past two years that Danny has voluntarily handed over the keys to Danny's car to a friend or taken a taxi cab home. When I close, I am typically leaving the bar at 8 a.m., but the patrons go home much earlier. There have been dozens of occasions where Danny has left the bar in a taxi cab and I run into Danny at 8 a.m. while I am leaving and see Danny, then completely sobered up, pulling back up in a taxi cab to retrieve Danny's car that Danny left the night before because Danny was too drunk. I wish all our customers took that same approach.

I also was in a summer softball league with Danny. I signed up for a local team and lo and behold, on the first day of practice, Danny was there on the same team. We became good buddies over the course of that summer, what with all the practices, games, and pizza-and-beer celebrations after our victories. I hate to say this about Danny, but to be quite honest, sober or not, Danny is not the most coordinated person. We always joked about it on the team by asking where the other two stooges were. Danny struggled to swing a softball bat without falling down face first into the dirt. Sometimes Bosh, the captain of the team, would joke that Danny was the most likely person on the team to get a wrongful DUI conviction just because Bosh couldn't imagine Danny ever being able to pass a field sobriety test. We had a local cop named Dirk on our team who carried Bosh's joke a bit too far one day after a game and tested Danny. He never told us if Danny passed or failed the test, but it didn't look to me like Danny did too well for being stone-cold sober.

The night that poor girl died, I was working at the bar, both serving and being the opening musical act. In fact, I started serving at around noon. Danny came in pretty early that day and said something about a job interview. Danny was drinking some that afternoon, but Danny told me that Danny was not driving anywhere that night, so I was not too worried. Apparently Danny had already arranged for a ride home.

I can't say I remember the details from later that night as clearly as I wish I could. I was running around like a chicken with my head cut off keeping up with all of the drink orders. I pulled in several hundred dollars in tips that night, which is on par with New Year's Eve for me. I think Danny drank much less than usual that night. I barely remember sending any drinks over to Danny's table that evening and I don't remember anyone else getting them drinks. I know that Danny came up to the bar with a friend, and I gave those two a shot and a beer because that's what I do to keep tips high for loyal customers. I also think someone sent a round of drinks to Danny's table because it was the birthday of the girl who passed away. The only other drink I remember was when I did a shot with Danny myself. I would estimate that Danny had about two or three more drinks. Of course, Danny bought probably at least twice that much alcohol, but the other half was sent to various patrons as per Danny's typical routine. Danny was always flirting or schmoozing with someone!

I remember Danny coming to the bar and asking for some darts. I knew this was trouble, but not because Danny was drunk – in fact, Danny's speech wasn't slurred at all. I was worried because Chuggie's was so crowded. You see, Danny cannot even throw darts straight when Danny is sober, so it's a bad idea for Danny to be tossing around sharp objects in a crowd. I diplomatically took the darts away, and it was no big deal. When I took the dart, Danny laughed, "Are you sure that dart board's not moving? I guess I'm just way off tonight, Jordan." Maybe Danny was already buzzed at that point, but I could not really be sure. I remember Danny getting up and strumming the guitar at one point, and Danny was pretty good as usual. The whole crowd cheered as Danny left the stage.

From what I remember, Danny was there with two friends. One was the birthday girl, who unfortunately passed away, and the other was Taylor Hopson, who worked at Chuggie's back when I started. I never really knew Taylor that well, except I was warned that Taylor would basically take keys away from anyone who had a beer. That's not really a good fit for someone working at a bar – talk about a buzzkill! That came back to me pretty quickly when I heard Taylor and Danny arguing about who was going to drive. I think Danny was claiming that Taylor was supposed to drive, and Taylor said that was the plan before, but now Taylor was just too drunk and said they should take a cab instead. I heard Danny respond that Danny was okay and pronounce that they would be home in record time.

That happened right before the three of them left. I don't really remember what time Danny left, but I do remember Danny coming to settle up. It was well after midnight and the bar had



95 started to die down a bit. Danny came up and asked me what the damage was. I handed Danny the  
96 receipt and Danny signed it and left me a big tip, a little bit more than normal even for Danny. I do  
97 vaguely remember another patron asking if Danny wanted a shot for the road, but I can't say  
98 whether or not Danny took him up on the offer.

99 The police later came and asked for the bar's copy of Danny's and Vanessa Sullivan's tabs  
100 from that night, and I handed them over to them. I have since been shown the exhibits and they are  
101 in the same condition they were when I handed them over to the police. The tab does not include  
102 any complimentary drinks because those are not recorded. By the time the police came back and  
103 asked for everyone else's bar tab from that night, the records had been deleted. Nobody told us to  
104 hold onto them. I do remember that once Danny signed the bill, Danny winked at me and said,  
105 "Thanks again for pouring them strong and long." Danny then walked away with the two friends  
106 and, well, the rest we all know.

107 I never found out who drove that night or anything like that. I can't imagine Danny would  
108 have driven if Danny were too drunk – that would just be so out of character for Danny. Danny's  
109 always been a good customer, and hopefully once this all blows over, I'll see Danny back at  
110 Chuggie's sometime soon.

111 I hereby attest to having read the above statement and swear or affirm it to be my own. I  
112 also swear or affirm to the truthfulness of its content. Before giving this statement, I was told it  
113 should contain everything I knew that might be relevant to my testimony, and I followed those  
114 instructions. I also understand that I can and must update this affidavit if anything new occurs to  
115 me until the moment before I testify in this case.

116  
117 \_\_\_\_\_/s/ JJ  
118 Jordan James

119 Subscribed and sworn before me on this, the 10<sup>th</sup> day of October, 2011.

120 \_\_\_\_\_/s/ LJK  
121 L. James King, Notary Public

## **AFFIDAVIT OF PAT LAWRENCE**

1 After being duly sworn upon oath, Pat Lawrence hereby deposes and states as follows:

2 My name is Pat Lawrence. I lost my job in the first part of the recession, and I would rather  
3 not talk about my employment history. I always figured a college degree would be good enough to  
4 get me a solid job, but I found out that hardly anybody was hiring when I graduated. My job got  
5 outsourced, and I found myself looking for a job. I thought about running for Congress, but I  
6 decided that was beneath me. Instead, I decided to apply for a job as a server at Chuggie's. I was  
7 hired on Wednesday, September 22, 2010. My first shift was that Friday night. I showed up at work  
8 that afternoon to do a little training. That's when I first met Danny Dawson.

9 Dawson told me something about being in town for a job interview, but I figured that  
10 Dawson was interviewing to be an alcoholic. Who puts back half a dozen alcoholic drinks in the  
11 middle of the day? I did not actually serve any of them, but I saw that our bartender, Jordan James,  
12 just kept putting more liquor in front of Dawson, and the glasses kept emptying. It is possible that  
13 James was drinking some of them, but James explained to me that James never drinks on the job,  
14 especially not early in the day.

15 I actually had a long chat with James, who let me know that I really needed to keep an eye  
16 out for drunk people pushing their limits that Friday night. Apparently, the owner of Chuggie's was  
17 trying to draw in some new business since Chatterbox was going to be playing at Chuggie's that  
18 night, and asked James to pour the drinks much, much stronger than usual. It sounded to me like  
19 the drinks were usually pretty weak. On the day of my interview, I even think I heard the owner say,  
20 "We're going to serve more water and less alcohol in our drinks because we're going to make more  
21 profit. Water down those liquor bottles before the customers arrive so no one suspects anything!"

22 I did not actually start waiting tables until around 7 p.m. that night. It's a good thing it was  
23 not any sooner. Around 6:30, Dawson stumbled toward a table from the bar and dropped  
24 Dawson's drink. It spilled all over me. Luckily I had gone to buy clothes for work that morning  
25 and was able to run to my car to grab a change of clothes. I can't say I was too excited to learn after  
26 I changed that Dawson was going to be in my section. Dawson was joined by two other friends. I  
27 do not really remember much about either of them. I now know that the one celebrating her  
28 birthday was Vanessa Sullivan, and I am told that the other friend's name is Taylor Hopson. As  
29 soon as I got to the table, Dawson was ready to order more alcohol. I did not know how much  
30 longer Dawson was going to make it. Dawson ordered a whiskey on the rocks for Dawson and a  
31 round of shots for the others. Dawson also ordered appetizers for the table, including a massive

order of cheese fries. Dawson asked me to get James to make the drink on the strong side, which I already knew was going to happen.

I was relieved when the entire table switched to drinking soda and sweet tea for a while. Hopson was pretty excited that we had sweet tea and started complaining about how they should have it everywhere. I told the table that the designated driver was going to get free sodas and asked who that was going to be. It was so quiet at the table that you could hear a pin drop. Dawson raised his hand, and I laughed pretty hard. Hopson and Vanessa Sullivan must not have thought it was a very funny joke. I figured one of them had to be the DD.

I lost track of Dawson for a while as Hopson and Vanessa Sullivan kept chatting away at the table. They were starting to act pretty drunk, and I was starting to worry about the table a bit. I caught Dawson drinking a shot at the bar out of the corner of my eye I think, but I am not sure about that. When I went back over toward the bar to pick up some drinks, James handed me three whiskey-and-ginger-ale drinks “on the house” to send over to Dawson’s table. I took them over there and only Dawson really seemed excited about them. I saw Dawson drink all of one of the whiskey drinks, and I think I saw Dawson sipping on both of the others. I know the drinks were empty when I got over there later, and I never saw Hopson or Vanessa Sullivan take a sip.

Chatterbox started playing and Vanessa Sullivan and Dawson were the only two people left at the table; Hopson was on stage singing. Dawson insisted that I bring Dawson and Vanessa some mixed drinks to celebrate Vanessa’s birthday. I must have brought over three screwdrivers for each of them while Hopson was on stage. I think Dawson may have consumed a little more than Dawson’s share of them because Vanessa looked like she was struggling by the second one. I was pretty sure that Hopson was going to be the designated driver though, so it was going to be okay.

A little while later, I noticed Dawson standing over by himself in the corner of the dining area. I asked Dawson if Dawson wanted anything else, and Dawson asked for a tequila sunrise because Dawson wanted the night to never end. I could tell Dawson was pretty drunk, so I said “Okay, as long as you’re not driving home.” Dawson shot back that Dawson was not even that tipsy. Dawson said to bring a tequila sunrise and then bring sodas for the rest of the night. Dawson then started railing about how Dawson had never been so buzzed before with so few drinks and that Dawson had to be imagining it. I told Dawson that James was pouring incredibly strong drinks. Dawson laughed and said that Chuggie’s has the wateriest drinks in town, but at least Dawson got a good deal with all of the drinks that never made it on to the bar tab. Dawson informed me that Dawson always got “strong” drinks from James, which meant a normal drink at any other bar. I

64     tried to convince Dawson that Dawson was wrong, but Dawson was having none of it. I brought  
65     the tequila sunrise and started running sodas over as quickly as possible. Dawson really did not need  
66     to get behind the wheel.

67             Dawson pulled me over to the side when I brought the last soda over to Dawson. Dawson  
68     asked me if I “had any pills, you know, to help me focus on the drive home.” I had no clue what  
69     Dawson was talking about, but Dawson claimed to have heard that the servers at Chuggie’s usually  
70     had those ADD pills or something to help people focus and that Dawson was really going to need  
71     help focusing on the ride home. I had no idea what Dawson was talking about, and I did not tell  
72     anybody about that conversation, especially not the police. I was worried that they might investigate  
73     me or something, even though I did not do anything wrong.

74             The lead singer for Chatterbox and Dawson’s friends joined us about that time and Dawson  
75     went silent. Somebody from the band ordered shots for everyone. Dawson whispered to me that  
76     Dawson just wanted shots of water. I think I really, really messed that one up. I did pour one shot  
77     of water, but I forgot which one it was by the time I got back. You see, the shots were grain alcohol  
78     shots, which look just like water, but are twice as alcoholic as normal shots of liquor. Judging by  
79     everyone’s reaction, I think that Hopson got the water shot. I say that because I know grain alcohol  
80     burns, and everyone else reacted pretty visibly. Realizing my mistake, I told Dawson what happened  
81     immediately and begged Dawson not to drive. Dawson said that Dawson was just fine, that the  
82     grain alcohol would help Dawson’s driving, and that Dawson would call the bar after setting a speed  
83     record on the way back to Vanessa Sullivan’s home. I wouldn’t say that Dawson was sober before  
84     the grain-alcohol shot. In fact, I’d say Dawson was pretty drunk. But I could tell that Dawson still  
85     was kind of with it, and I could see how Dawson would think that Dawson was okay. Dawson was  
86     not acting a total fool anymore, but Dawson was slurring and stumbling a good bit before I made a  
87     huge mistake of effectively giving Dawson two shots on the way out the door.

88             Realizing my mistake could be pretty serious when I saw pictures of the heavy rain on a TV  
89     in the bar, I knew I needed to do something. It was too late by the time I got outside. I heard  
90     Dawson yell at someone that Dawson would make Richard Petty seem like he belonged in the slow  
91     lane by the time they got to Vanessa’s house. My heart sank. As you know, Richard Petty is a  
92     famous race-car driver. I expected that Hopson and Vanessa Sullivan would refuse to get in the car.  
93     Instead, Hopson just said that Hopson was pretty sure that Hopson could make the drive even  
94     faster and asked for the keys. I thought maybe Hopson was trying to trick Dawson into handing  
95     over the keys, but before I knew it I heard Dawson say, “No way,” and the car was off. I guess I

96 kind of froze while everyone was screaming. I really should have got to the car and stopped that  
97 terrible tragedy from happening. Even if the drinks served to Dawson were weak, there's no way  
98 Dawson should have been driving a car that night. As strong as they were, I am fairly surprised  
99 Dawson did not pass out before Dawson ever got in the car.

100 That Friday night was my first and last as an employee of Chuggie's. Vanessa Sullivan's  
101 mother came in and said that she was going to take the bar's liquor license for killing her daughter.  
102 The owner told Ms. Sullivan that I had confessed to messing everything up and serving way too  
103 much to Dawson. Then, the owner told Ms. Sullivan that I had been fired. Ms. Sullivan said she  
104 would make sure I never worked in Midlands Center again. I had actually never said a word to the  
105 owner. I can't believe I got thrown under the bus like that. I hope that Chuggie's goes out of  
106 business, and I have written Ms. Sullivan to tell her that I want to help her shut down Chuggie's.  
107 She has yet to return my calls, but I expect that once the people of Midlands Center hear about the  
108 strong drinks that night and the possibility that the staff was dealing drugs, I will be needed for a  
109 pretty important investigation.

110 I hereby attest to having read the above statement and swear or affirm it to be my own. I  
111 also swear or affirm to the truthfulness of its content. Before giving this statement, I was told it  
112 should contain everything I knew that might be relevant to my testimony, and I followed those  
113 instructions. I also understand that I can and must update this affidavit if anything new occurs to  
114 me until the moment before I testify in this case.

115  
116  
117  
118 Subscribed and sworn before me on this, the 3<sup>rd</sup> day of October, 2011.

\_\_\_\_\_  
/s/ PAL  
Pat A. Lawrence

\_\_\_\_\_  
/s/ SS  
Sarah Shelton, Notary Public

## AFFIDAVIT OF SAM LYONS

1 After being duly sworn upon oath, Sam Lyons hereby deposes and states as follows:

2 My name is Sam Lyons. I am currently a cab driver for the AAA Cab Company –  
3 “the first name in personal transportation services” – right here in Midlands Center. I have  
4 been driving cabs for the last four years while trying to go back and get my college degree.  
5 Of course, as one of the newer cabbies, I’ve been working the third shift, so I’ve probably  
6 slept through more classes than I’ve attended – not counting the classes I’ve attended and  
7 slept through, that is.

8 My usual pickup spot during the night is at Chuggie’s. I worked there waiting tables  
9 one summer, so I know the owner, and I’m the cabbie of choice for the more responsible  
10 falling-down drunks that frequent the establishment. I have my share of regulars that depend  
11 on me to get them home after a few too many. They make a mess of the back of my cab  
12 occasionally, but they always tip really well when that happens.

13 On September 24, 2010, I showed up to Chuggie’s at about 4:30 p.m. to grab a  
14 burger and a couple of cups of coffee while it was still too early for anyone to be too drunk  
15 to drive. Chuggie’s does a good lunch business during the day, and their coffee is surprisingly  
16 good – and they have a liquor license, so you can get your coffee Irish anytime after noon!

17 It was a Friday afternoon, so it was pretty empty except for a few stragglers from the  
18 afternoon lunch crowd and a few others there to get a jump on the night ahead. Danny  
19 Dawson was there when I arrived, and I said hello. Danny is one of my frequent flyers in the  
20 cab, especially during the summer. Danny tends to be very talkative after having a few too  
21 many, and as a result, let’s just say Danny had a lot of occasions to be very talkative in my  
22 cab over the few months prior to that night. I wouldn’t say we’re friends, but Danny has  
23 always tipped me well.

24 Danny is a student at Calkins College, and Danny had just come back from an  
25 interview for a summer internship – some friend of a friend had a connection, but  
26 apparently the interview didn’t go well, according to Danny. While I was there, Danny  
27 ordered a drink – I think it was a rum and soda. Jordan James, the bartender, came over and  
28 set it down right next to two more empty glasses just like it. Danny offered to buy me a  
29 drink, and called Jordan over. Jordan gave me a heads-up that tonight would be a busy night  
30 for me – Midlands’ own Chatterbox was playing a tune-up show before a nationwide tour,  
31 and the place was going to be packed to the rafters. I joked with Jordan that I’d better start

32 drinking then, and Jordan grabbed me a big to-go paper cup and poured me my brew of  
33 choice – a large Colombian coffee, straight, no chaser.

34 I stayed and chatted with Danny for a few more minutes. Danny definitely seemed  
35 buzzed, so when I left, I told Danny, “You know where to find me, right?” so that Danny  
36 knew I’d be outside to offer a ride home later. Danny said, “Nah, DD’s gonna be the DD  
37 tonight! Ha, get it?” I thought Danny was joking that Danny was planning to be the  
38 designated driver, since Danny’s speech was already slurred. I laughed and headed out the  
39 door, grabbing my coffee and heading out to get a newspaper to pass the time.

40 I got back to Chuggie’s around 7 p.m. and hung out at the bar for a while, watching  
41 the crowd start to gather. Chuggie’s bartender, Jordan James, was playing an opening set for  
42 the band. Apparently Chatterbox has quite a following in Midlands, because the place got  
43 pretty packed by the time they started their first set. The music wasn’t really anything  
44 exciting to me, but there were obviously some diehard fans there, including Danny.

45 By getting there early, Danny had scored a table just off to the side of the dance  
46 floor, first table from the stage. Danny had a couple of friends along for the show and was  
47 clearly enjoying the evening. One of the friends was a woman I didn’t recognize, but that I  
48 later found out was Vanessa Sullivan, the prosecutor’s daughter who died in the wreck. I  
49 recognized the other one right away as Taylor Hopson. I liked to think of Taylor as a  
50 cabbie’s perfect wingman because Taylor was paranoid about people driving after having a  
51 couple of beers. Taylor is always telling people to take a cab home, which is great for my  
52 business. Taylor can be a pain, though. One time Taylor saw me drinking a beer early in the  
53 evening, well before any of the patrons would be looking for a ride home. Taylor went right  
54 to the bartender and said I shouldn’t be served any more alcohol, and I shouldn’t be allowed  
55 to drive a cab that night! The joke was on Taylor – I was drinking a non-alcoholic brew that  
56 time. I don’t get behind the wheel if I feel even a little bit buzzed – it’s not worth the risk.

57 While the bands played, Pat was plenty busy bringing rounds of drinks and food to  
58 Danny’s table, and Danny was dancing like a demented marionette from the moment  
59 Chatterbox hit the stage. About five songs into Chatterbox’s set, I knew it was about time to  
60 be getting back to the cab to get ready for the first of the evening’s fares. I settled into my  
61 cab to read the paper and wait for business to pick up.

62 At about 11 p.m., I came back inside Chuggie’s to use the restroom, and then  
63 returned to the counter to get another cup of coffee for the road. When I got to the bar,

64 Danny was standing there, obviously having ordered something and looking anxious to get  
65 back to the band. Danny grabbed me by the arm excitedly and yelled in my ear, “Thisssh  
66 hash to be the best night of my life! Wooooo!” I thought that was weird – Danny was  
67 down about the interview before, but I guess between the band and the booze, Danny had  
68 turned it around. I smiled and said, “I guess I’ll be seeing you out front in a bit, right?”  
69 Danny just laughed loudly and didn’t answer, but from the look in Danny’s eyes and how  
70 slurred Danny’s speech was, I figured there was no way Danny was driving home that night.  
71 Danny didn’t make a habit of driving drunk – that’s why Danny was one of my best  
72 customers. I remembered Danny’s “DD” comment from when we talked earlier that  
73 afternoon, but figured maybe Danny was just making a play on words. I figured whatever  
74 the plan was, Danny was drunk now and would be in the back of the cab before the evening  
75 was through. I watched the bartender pour out three “Chuggie Bombs” – the infamous  
76 energy-drink-and-liqueur - and what I’m pretty sure was a rum and soda, though it was hard  
77 to see exactly what went into the glass because someone pushed into me at the bar. Danny  
78 gulped down one of the Chuggie Bombs, gathered up the three remaining glasses from the  
79 order, and headed back to the table by the stage.

80 I went out to the cab at about 11:20 p.m. and waited a few minutes before I got my  
81 first fare of the night. After a few round-trips shuttling home well-saturated patrons, I  
82 arrived back in front of Chuggie’s at about 12:40 a.m. to wait for another fare. There had  
83 been a thunderstorm threatening for the last hour or so, and it was clearly rolling in as the  
84 drizzle began to pick up into a steady downpour. Danny came out of the bar with two other  
85 two people that had been at Danny’s table when I saw them earlier. I called out to Danny  
86 and said, “You ready to go?” Now, my cab’s a hybrid – Midlands gave a bunch of tax  
87 incentives as part of an environmental initiative, or maybe some state rep’s brother owned a  
88 car dealership and needed some sales – so it’s not big, but there’s enough room for 3 to  
89 squeeze in the back, or two in the back and one in the front. I started shifting stuff out of  
90 the front seat to make room, but Danny looked in for a moment and appeared to be  
91 thinking, then said, “No, we’re good. Besides, you drive too slow!” Danny laughed and  
92 walked away with the two friends. Danny sounded better than earlier at the bar – I don’t  
93 think Danny could have put those sentences together a couple of hours before. Still I  
94 figured that girl Vanessa must be driving. But I saw Danny open the doors of a Chevy  
95 Impala for the two passengers before getting in the driver’s seat. The car sped off quickly,



and screeched and fishtailed on the wet pavement as it exited the parking lot with Danny behind the wheel.

I read about the accident in the paper the next day. The weather was pretty bad that night, and from what the paper said about where the crash happened on Canyon Road, they were on a pretty bad stretch of road in a wooded area. The part of Canyon Road where they crashed has a bunch of yellow reflectors on the outside of a banked curve, and there's a yellow warning sign before it that says "35 MPH". The posted speed limit there is 45 otherwise, though I have to admit I've driven it faster on a few occasions. It's a fun stretch of road when it's light outside, it's dry, and you know what you're doing – and where the speed traps are. But it is also a dangerous road and has definitely been the spot of more than a few accidents. I remember talking to Danny about it one night when taking Danny home after a particularly raucous night at Chuggie's. Danny mentioned hearing it was a good route to take if you wanted to avoid cops and were in a hurry. I told Danny that a lot of people used to use Canyon to sneak home from the bars, but too many people had died speeding down the road, so now there were always cops patrolling the road at night. Danny said, "Thanks for the tip! I guess a cab is a smarter bet," which was just what I wanted to hear.

It was pouring rain the night Vanessa died – there was actually a flash flood warning for the lower-lying areas in Midlands Center due to the torrential rainfall, and it was definitely pouring by 1 a.m., when the paper said the crash happened. If Danny was speeding on that stretch, given the conditions, it's no surprise that the car ended up off the road and wrapped around a tree.

I feel awful for Vanessa Sullivan and her family, and for Danny and the other passenger as well. I keep thinking I should have said something to Danny, or maybe jumped out and taken away the keys. But I didn't really think Danny was that bad off by the time Danny got behind the wheel. I mean, Danny wasn't sober, but most of the people who leave that bar and get behind the wheel have had a couple of drinks. I've been there myself – I mean, hasn't everybody? Still, I know they'd have been fine if they had been in my cab.

\_\_\_\_\_/s/ SL

Sam Lyons

Subscribed and sworn before me on this, the 1<sup>st</sup> day of October, 2011.

\_\_\_\_\_/s/ SS

Sarah Shelton, Notary Public

## AFFIDAVIT OF ASHLEY NORTON

1 After being duly sworn upon oath, Ashley Norton hereby deposes and states as follows:

2 My name is Ashley Norton. I am a professor of medicine at Midlands State  
3 University. I have a bachelor's degree in chemistry from Brown University, and I earned my  
4 master's degree and doctorate in forensic science from Johns Hopkins University in 1995.  
5 As stated in my curriculum vitae, I have particular expertise in alcohol testing and alcohol  
6 pharmacology.

7 I have testified in over 100 cases regarding the use of alcohol tests, most of which  
8 involved the use of various models of the Intoxilyzer breath alcohol content analysis  
9 machine. In each of those cases, I testified for the defense. I have been hired by the  
10 defense in this case to provide my expertise regarding breath alcohol and blood alcohol  
11 concentrations and the use of breath alcohol concentration (BrAC) analysis machines to  
12 determine such concentrations, and to analyze the evidence in this case regarding Danny  
13 Dawson's consumption of alcohol and resulting breath and blood alcohol concentration on  
14 September 25, 2010. I am charging my standard rate of \$250/hour for my time and  
15 expertise; to date, I have worked 20 hours on this case, for a total of \$5,000 in expert fees. I  
16 will be paid an additional flat fee of \$2,000 if I am called to testify in court.

17 Law enforcement would like you to believe that BrAC analysis machines that they  
18 use are infallible. They are not. Danny Dawson's attorneys came to me with the results of a  
19 BrAC test given the night that Dawson was involved in an accident, and wanted to know if  
20 there had been any error. I sat down with Dawson to recreate the events of that night,  
21 including a timeline of Dawson's drinking. Then I worked backwards, taking the BrAC that  
22 the police obtained (which I got from the official analysis report) and trying to match it to  
23 the number of drinks that Dawson told me Dawson had consumed. I'll walk you through  
24 that process.

25 In the early 20<sup>th</sup> century, Dr. E.M.P. Widmark developed a formula to determine the  
26 number of drinks an individual had consumed based on six other variables. These variables  
27 were 1) the amount consumed, 2) the body weight, 3) the blood alcohol concentration  
28 (BAC), 4) the alcohol elimination rate, 5) the time since the first drink, and 6) the fluid  
29 ounces of alcohol per drink. At that time, the volume of distribution was assumed to be a  
30 constant, but we'll look at that in a moment. Of course, this equation can be used to solve  
31 for any of the variables, assuming that six are known.

Dr. Widmark later observed that this equation did not apply equally to men and women, so he developed a confidence interval that took this variance into account, to the best of his ability and the available science. Unfortunately, Dr. Widmark did not have all of the research that we have today. His formula provides a good estimate, but with a margin of error that may be several drinks wide.

Although modern science has evolved beyond Widmark's equation, we still use a similar formula. Since we're trying to estimate Dawson's BAC at the time Dawson was driving, we need to look at the equation a little differently than Widmark did. An individual's blood alcohol concentration is now looked at as mostly dependent on five variables. The variables are: the total amount of alcohol consumed, the rate of absorption, the first-pass metabolism amount, the volume of distribution, and the rate of ethanol elimination. I will address each of these factors separately. The sixth variable that Widmark was concerned with – time – applies as it does in the Widmark equation.

All else being equal, the amount of alcohol consumed will have the greatest effect on an individual's peak BAC. The more that is consumed, the higher the BAC will rise. This is true across genders, ethnicities, different body-mass indices, age, and all other factors. However, exactly how high the BAC will rise is dependent on those factors.

Beyond the total amount consumed, the rate of absorption matters. The rate will be faster if the stomach is empty and is a function of the concentration of the alcohol consumed. A higher concentration of alcohol, such as a shot compared to a beer, causes a greater concentration gradient. This drives up the rate of absorption. However, if the concentrations are too high, there may be slower gastric emptying of stomach contents into the small intestines. This affects BAC because the small intestines provide quicker, more complete absorption of the alcohol. Studies done on gastric emptying rates indicate that men will absorb more alcohol than women, but this is not the only factor that impacts absorption, as I will explain.

Third, one must consider the first-pass metabolism. Before alcohol is processed by the small intestines, it is first metabolized in the stomach by the enzyme alcohol dehydrogenase (ADH). Studies that I am familiar with have demonstrated that women have less ADH than men do and that this causes them to have a lower first-pass metabolism. The lower the metabolism is, the greater the absorption. This has implications for peak BAC

that can make the gender and ethnicity of the individual relevant when estimating the time a peak BAC occurred.

Things are complicated further by an individual's level of body water. The volume of distribution is based on the overall body water of an individual. This is where gender also affects peak BAC. Typically, men have a greater water content in their body compared to women. This is because muscle tissue has a higher water content than fatty tissue. Alcohol is largely distributed into body water, which leads to lower BACs, drink-for-drink and pound-for-pound, in men compared to women.

This is where things get downright messy. The rate of elimination of alcohol matters significantly when drinks are consumed over an extended period of time. ADH, because it is found in the stomach, drives the primary process for alcohol elimination. Although other enzymes are capable of doing this, studies show that ADH is the most important enzyme in the body's processing of alcohol.

This has important implications when understanding the effects of oral ethanol consumption on different racial populations. For example, there is a common genetic polymorphism affecting the ADHB1 gene amongst various Asian ethnicities. This genetic polymorphism is especially prevalent in Japanese and Han Chinese. This polymorphism, however, is found in all ethnic populations to some extent. The mutation, identified as ADH1B Arg47His, occurs when histidine is substituted for arginine in the protein. This causes production of an enzyme with enhanced activity. The greater the activity, the higher the peak BAC will be.

Without an understanding of each of these factors, one cannot estimate what a given individual's peak BAC will be given a specific amount of alcohol consumed. When I interviewed Dawson before I performed my analysis, Dawson told me that Dawson had approximately one drink per hour that Dawson was at Chuggie's. These drinks included one beer and three mixed drinks from 2 p.m. to 6 p.m., and then a whiskey on the rocks, a shot, a beer, a whiskey-and-ginger-ale, and a tequila sunrise between 6:30 p.m. and 12:30 a.m. Dawson told me that Dawson did not drink any screwdrivers, although there were several on Dawson's bar tab. I did not corroborate Dawson's story. I operated under the assumption that each drink contained the same amount of alcohol found in a generally accepted shot, beer, or glass of wine. If the drinks that Dawson had were stronger or weaker than those standards, then my findings would be different.

Dawson also told me that the drinks Dawson had were consumed evenly over a period of nine and a half hours. Dawson also told me that Dawson ate a burger, coleslaw, and an extra-large order of cheese fries with the first drink that Dawson had. My analysis takes all of Dawson's demographic and physiological data (gender, ethnic background, age, weight, etc.) into consideration.

After reviewing all of these in relation to Dawson and the particulars of this case, I was able to reach the conclusion that Dawson's BAC at the time of the accident was around 0.08. Of course, my determination would change if it turned out that Dawson had more to drink than Dawson told me or if the drinks were stronger than the standard drink (14 grams of alcohol per drink). So if Dawson's true blood alcohol concentration was below the legal limit, how could the police analysis be so far off? After all, the final measurement is over twice the legal limit. There are several things that help explain this.

Most breath-testing devices will render a cumulative reading of all alcohols in the body (ingested and auto-generated). This means that other alcohols, like isopropyl alcohol, will be measured as if it was ethanol. Endogenous isopropyl alcohol is part of the physiological reaction to the toxicity of acetone or ketone buildup. As the ketone level rises, the body uses certain amino acids to create enzyme pathways, which remove or convert the ketones into safer compounds. Isopropyl alcohol is one of those safer compounds. One pathway uses the enzyme alcohol dehydrogenase (ADH). This is the same enzyme the liver uses to break down ethanol into acetaldehyde. Both of these pathways can cause higher BrAC readings, even if the individual being tested has not had a single drink. This is the same type of effect that persons with hypoglycemia, a condition involving low blood sugar levels, might experience. If Dawson had low blood sugar, the results could be highly skewed, too. The food that Dawson ate was consumed around six hours before the crash, plenty of time for digestion to occur and for Dawson's blood sugar to drop again. The Intoxilyzer 8000, which was used in this case, does a fairly good job at screening out substances that are not ethanol, but no machine is perfect.

The Intoxilyzer 8000, the model used by the Midlands Department of Forensics for BrAC testing, uses a set ratio of blood to air when calculating the BrAC value for any individual. This ratio is 2100:1, or the same amount (weight) of alcohol will be found in 2.1 L of deep lung breath as will be found in 1 cc of pulmonary blood. The problem with this ratio is that it varies markedly among individuals and even within a given individual over

time. Studies that are accepted and widely used in my field have routinely demonstrated that the ratio is higher during the absorption phase and lower during the elimination phase. This means that an individual will blow a higher BrAC while they are eliminating alcohol from their system than they would when they are absorbing it, even though the true blood alcohol content should be the same.

It cannot be stressed more that the breath-to-blood ratio is perhaps the most important factor in determining the validity of a BrAC result. All of the studies I have done, as well as those studies done by other doctors around the United States, two studies in the United Kingdom, as well a study in Japan that I participated in, demonstrate that an individual's true ratio can vary from 900:1 all the way to 3400:1. This range has staggering implications for all breathalyzer machines. If Dawson had a true ratio on the lower end of that spectrum, then the BrAC result obtained that night would need to be cut in half. If Dawson's true ratio were 1100:1, then Dawson's true blood alcohol concentration would be 52.38% of the BrAC obtained. That is 52.38% of 0.19, which is just below 0.1. Even so, if Dawson's ratio were lower, which I very much doubt, Dawson would be over the legal limit.

There is also the temperature of Dawson's breath to consider. The Intoxilyzer 8000 uses a value of  $34.2^{\circ} \pm .2$  C. A variation of just 1°C can skew the results by as much as 10% by making the alcohol more volatile and shifting the partition ratio further away from 2100:1. It should be noted, however, that Dawson's BrAC measurement was high enough that temperature probably played a negligible role, if indeed it played a role at all.

Lastly, however, the existence of mouth alcohol can skew a BrAC analysis. As any expert trained in the administration of a breath alcohol test can tell you, the presence of alcohol in the mouth during the sample collection phases can render any reading much higher than the true reading should be. Mouth alcohol can come from a variety of sources. It may be trapped in dental work, have come from mints or mouthwashes, be endogenous to the system (e.g., the isopropyl alcohol I talked about earlier), or be the result of vomit, a belch, a burp, or even acid reflux. Typically, the presence of mouth alcohol will cause the machine to spike before dropping down and leveling out, which will result in an error message. Still, it is possible for sufficient alcohol to be in the mouth that such a drop will not occur. If there is no drop, the machine cannot tell the difference between breath alcohol and mouth alcohol.

I asked Dawson about all of these factors. Dawson said that Dawson had not had any dental work done recently. Dawson confirmed that the arresting officer had asked Dawson if Dawson had used mouthwash or mints; Dawson had not. When I asked, Dawson told me that Dawson had not thrown up that night. I asked Dawson if the officer had told Dawson not to burp or belch or if the officer had asked about acid reflux. Dawson seemed confused and said that the officer had never mentioned that. I went back to look at the police report and at the BrAC printout, but I could not find any evidence that Dawson was ever asked about it. I asked Dawson if Dawson could remember burping or having acid reflux. Dawson said sure and told me that the burger and cheese fries that Dawson ate had given Dawson some heartburn, but Dawson couldn't remember if Dawson had burped or had any acid reflux after Dawson was arrested and before the breath test.

Why could a little bit of acid reflux affect a BrAC reading so much? Well, the air sample taken by an Intoxilyzer 8000 is only a couple of liters, and the calculations done by the machine require that initial measurement to be multiplied by a factor of 100 in order to obtain a concentration value of grams per 210 L.

Now, am I saying that Dawson had a blood alcohol concentration of less than 0.08? Absolutely not. It seems inarguable to me that Dawson was too drunk to drive. However, based on the amount of alcohol that Dawson consumed, my calculations show that Dawson should not have been anywhere near 0.19. I don't think Dawson is lying about the number of drinks Dawson had, but I suspect the drinks were stronger than the amount we use to calculate blood alcohol concentration (14 grams of alcohol per standard drink). Was Dawson drunk? Yes. Was Dawson grossly intoxicated? No. Dawson may not even have felt much effect; one of the symptoms of intoxication at that level is the underestimation of impairment. So why did the Intoxilyzer show such a high reading? There are probably several factors. I would say that the main problems with the BrAC reading that we have for Dawson that night have to do with the partition ratio and the presence of mouth alcohol.

I have included all of my conclusions and all of the bases for those conclusions in this affidavit. In coming to my conclusions, I reviewed the Intoxilyzer test results and spoke with Dawson about his experience. I had access to all of the documents obtained by the defense in this case, but I only relied on the documents that I mention using in my affidavit. When it comes to blood alcohol levels and behavior, I agree that the Benton and Carman treatise is the leading treatise and is entirely correct.

190 I hereby attest to having read the above statement and swear or affirm it to be my  
191 own. I also swear or affirm to the truthfulness of its content. Before giving this statement, I  
192 was told it should contain everything I knew that might be relevant to my testimony, and I  
193 followed those instructions. I also understand that I can and must update this affidavit if  
194 anything new occurs to me until the moment before I testify in this case.

195  
196 \_\_\_\_\_/s AN

197 Dr. Ashley Norton

198 Subscribed and sworn before me on this, the 3<sup>rd</sup> day of October, 2011.

199 \_\_\_\_\_/s SS

200 Sarah Shelton, Notary Public



## **AFFIDAVIT OF LESLIE ROMAN**

1 After being duly sworn upon oath, Leslie Roman hereby deposes and states as follows:

2 My name is Leslie Roman. I own an accident-reconstruction firm located on Main Street in  
3 Midlands Center. The firm reviews and analyzes facts regarding an accident and uses its expertise to  
4 determine, to the extent scientifically possible, what actually happened. I also help rural  
5 municipalities by reviewing road-design proposals and road-safety questions from time to time. I  
6 don't do that for the money, though. I just think it's important to have safe roads in our state.  
7 When it comes to paying the bills, I do that by reconstructing accidents for private parties.

8 Most of my work for private parties is in the context of civil cases – I have testified in over  
9 thirty civil cases – but I have also testified as an expert in seventeen criminal cases in Midlands. In  
10 civil cases, I'm equally likely to testify for the plaintiff or the defendant. In criminal cases, the state  
11 always uses personnel from its Fatal Crash Team (FCT), so I necessarily testify only for the defense  
12 if I am called. In a large number of criminal cases, I've had to turn down clients because I've found  
13 no issues at all with the FCT's work. As is common in the field, my work has regularly been  
14 reviewed by other experts in the field. I have never received a negative review. I have been  
15 accepted as an expert on accident reconstruction in court every time I have been called to testify.

16 My involvement with Danny Dawson's case started on October 14, 2010, when I was  
17 contacted by counsel for the defendant to look into the case. I was warned before I started that the  
18 victim of the crash was the daughter of the district attorney, Ms. Sullivan, and that counsel  
19 understood if I wanted to stay away from the case. This was all the more reason for me to take a  
20 look into this accident. I wanted to make sure that the government was not blinded by the need to  
21 blame. I took on the case for my standard hourly rate of \$200 per hour, which was to be paid  
22 regardless of the conclusions I reached. I should note that if I testify at trial, then I will be paid an  
23 additional flat fee of \$2,000 on top of the \$5,000 I have already been paid for compiling my expert  
24 report.

25 All of my conclusions are detailed in my report, which I provided to both parties in advance  
26 of trial. The basis of analysis listed in my expert report is a complete list of all of the information I  
27 relied upon in drawing conclusions. Before trial, I was granted access to all of the statements,  
28 affidavits, and exhibits made available in this case. Reading through all of these documents did not  
29 change any of my conclusions, nor does any of the additional evidence permit me to draw any new  
30 conclusions not already stated in my report and/or affidavit. The information included in the  
31 statements I reviewed is identical to the relevant information in the affidavits prepared for this case.

My work in this case was limited to accident reconstruction. While I am aware of statements from various individuals regarding Danny Dawson's having consumed alcohol the night of the accident, I am neither qualified nor able to give any opinion whatsoever on Danny Dawson's actual level of sobriety on the night of the crash, or on the validity or reliability of any tests used to evaluate sobriety performed by the Midlands Center Police Department. I am also in no position, based on the evidence available, to determine conclusively whether a deer in fact ran in front of Dawson's car immediately prior to the accident, as Dawson states. I can state, however, that Dawson's operation of the vehicle in the moments leading up to the accident was consistent with those of a driver swerving to avoid a suddenly appearing obstacle (such as a deer) and then overcorrecting in an attempt to regain control of the vehicle and get back on the road. Dawson could have gone off the right side of the road for any number of other reasons. I focused on the theory that a deer jumped out in the road because I was specifically asked to evaluate the plausibility of Dawson's account of the accident.

I understand that I reached a different conclusion about the speed at which Dawson was traveling when he ran off the road than the FCT member on the scene, Officer Ryan Foster. It's clearly an advantage for Foster that Foster was on the scene on the day of the crash. However, Foster's calculations appear to overestimate the speed of the vehicle prior to the accident, as stated in my expert report. I wholeheartedly agree with Foster that the primer by Windsor and Strasberg entitled "Vehicle Accident Reconstruction" is the most relied-upon and reliable treatise in the field. My calculations and conclusions regarding the vehicle's speed are completely explained by the Windsor and Strasberg primer, and I relied on no other method of calculation in making them.

I also think that Foster understates the dangers of Canyon Road in the FCT report. The road was so dangerous at the spot of the accident that a guardrail was erected right where the accident occurred extraordinarily soon after the accident. It's pretty clear to me that there always should have been a guardrail. Having trees so close to a curve on a dangerous road with wildlife often in the area, no guardrail, and a narrow shoulder is simply not acceptable. I have to believe that Vanessa Sullivan would still be alive if there was a guardrail on the side of Canyon Road that kept her side of the car from ever slamming into a tree. I guess something terrible could have happened even with a guardrail, but I'm not so sure about that.

When I worked for the Midlands Department of Transportation, I actually compiled a report of danger spots on roads that needed fixing at the direction of my supervisor, Chet Vardy. I am almost certain that this exact curve on Canyon Road was part of the report. It's sad to think that

64 Midlands did nothing for a decade about that problem, and that it took the death of a prominent  
65 prosecutor's child to bring about change.

66 I should mention that I worked for Vanessa Sullivan's father at Global Motors  
67 Manufacturing Center. While I was working there, I told him about some kids that put toilet paper  
68 on my house and threw eggs at it and that I was trying to decide whether I should press charges. He  
69 told me that his wife, a young prosecutor at the time, got some kids convicted of felonies when they  
70 did that to the Sullivan home. I thought that was pretty extreme. Ever since that day, I've been  
71 concerned about the severity of punishment in cases where the prosecutor's office is even  
72 tangentially involved. It doesn't quite seem right to me. Come to think of it, this is only the third  
73 time I have ever testified in a trial in Midlands where the plaintiff was charged with murder for  
74 drunk driving, and all three of them involved victims with close ties to the prosecutor's office.

75 The only documents and exhibits I created in this case are my expert report, my  
76 reconstruction diagram, this affidavit, and the photographs included with my expert report that are  
77 not identified as having been taken by the police department (Photographs 0008-0015). The other  
78 photographs in my expert report (Photographs 0001-0007) were taken by Officer Ryan Foster and  
79 provided to me by the police. My report and the reconstruction diagram are the most recent version  
80 of my work, and they contain my final opinions.

81 I hereby attest to having read the above statement and swear or affirm it to be my own. I  
82 also swear or affirm to the truthfulness of its content. Before giving this statement, I was told it  
83 should contain everything I knew that might be relevant to my testimony, and I followed those  
84 instructions. I also understand that I can and must update this affidavit if anything new occurs to  
85 me until the moment before I testify in this case.

86  
87 /s/ LR

88 Leslie Roman

89 Subscribed and sworn before me on this, the 3<sup>rd</sup> day of October, 2011.

90 /s/ SS

91 Sarah Shelton, Notary Public  
92  
93  
94

## **AFFIDAVIT OF AVERY SMITH**

1 After being duly sworn upon oath, Dr. Avery Smith hereby deposes and states as follows.

2 My name is Avery Smith and I am the Director of the Midlands Department of  
3 Forensic Science. I work out of our main lab at the Midlands Center Police Department  
4 Headquarters. In addition to directing the Department, I also provide research and scientific  
5 support for Midlands' breath alcohol testing program. When the need arises, I also provide  
6 interpretation of blood and breath alcohol results and testify as an expert on the subject. It is  
7 in that capacity that I offer my expertise today.

8 There are several options for law enforcement when performing alcohol level tests  
9 on individuals suspected of driving under the influence. The most common, and most  
10 widely used, testing method is breath alcohol concentration (BrAC). Here in Midlands we  
11 use the Intoxilyzer 8000, which is used by dozens of other states. The Intoxilyzer 8000 is  
12 listed on the National Highway Traffic Safety Administration's Conforming Products List as  
13 an approved device and is an industry standard.

14 The Intoxilyzer 8000 is a device that collects a series of sample breaths that are then  
15 passed through a beam of infrared light. The amount of alcohol in the sample is measured  
16 based upon the amount of light absorbed. It is more reliable than preliminary breath tests  
17 (also known as PBTs, or non-evidential test devices) that offer law enforcement a baseline  
18 reading in the field. These PBT devices are handheld and provide a BrAC reading, but the  
19 result is not admissible in court. That's why officers must bring those who are suspected of  
20 driving under the influence in for testing on an Intoxilyzer 8000 after they fail field sobriety  
21 tests or give a high reading on a PBT.

22 The Intoxilyzer 8000 uses a set ratio of blood to air when calculating the BrAC value  
23 for any individual. This ratio is 2100:1, meaning that the same amount (weight) of alcohol  
24 will be found in 2.1 L of deep lung breath as will be found in 1 cc of pulmonary blood. In  
25 this way, the BrAC can be converted into blood alcohol concentration (BAC), which is the  
26 standard measurement used for DUI under Midlands state law. This conversion method has  
27 been widely accepted in the scientific and law-enforcement communities, and it is relied  
28 upon by many states, including Midlands, as an accurate method of determining BAC from a  
29 properly administered breathalyzer test on approved equipment.

30 According to Ryan Foster, the police officer at the scene on September 25, the  
31 defendant had been driving a 2009 Chevrolet Impala when the car veered off the road and

32 into a tree, causing one fatality. The officer suspected that the defendant had been drinking  
33 and performed three field sobriety tests, as per Midlands Police Procedure. When the  
34 defendant failed all three of the field sobriety tests, the police officer that performed those  
35 tests on the scene brought Dawson to the station. Once Dawson was brought in, I gave  
36 Dawson a BrAC test using an evidential test device. I used one of our Intoxilyzer 8000s that  
37 I had just finished calibrating – that’s why I was at the office late enough to take the call.

38 In Midlands, we follow a standard procedure when using the Intoxilyzer 8000. Here  
39 at the Department of Forensics, we provide equipment, trainings, supplies, and lab support  
40 for all levels of law enforcement in the state. As the director, I am personally responsible for  
41 establishing the operating procedures for all of our breath-testing devices, including the  
42 Intoxilyzer 8000. Only testers who have been trained and certified by my department have  
43 the authority to conduct breath tests. This ensures that the machines are used properly. I  
44 am a certified operator.

45 The Intoxilyzer 8000 has many different parts of which the operator must be aware.  
46 The first is the mouthpiece that must be used. Made out of plastic, this trap is designed to  
47 keep debris and excess moisture out of the machine. Excess moisture – for example, saliva  
48 or vomit – can cause the machine to register an elevated reading. The mouthpiece connects  
49 to a heated breath tube where the sample is collected before being analyzed by the machine.  
50 There is also a simulator (i.e., a control) sample, which is used to ensure that the machine is  
51 working properly. The simulator sample, which should yield a BrAC of 0.08, is kept at a  
52 constant temperature, keeping the air-to-alcohol ratio constant. The machine is designed to  
53 tolerate temperature differences of up to 0.2 degrees Celsius, or a range of 33.8 to 34.2. This  
54 is because human breath is calculated at 34 degrees Celsius.

55 At the beginning of every test, the machine runs several blanks and simulator  
56 samples to establish an accuracy level and a precision level. If any of those tests are out of  
57 the expected range, the machine will return an "OUT OF TOLERANCE" error message  
58 and the operator must contact the Department of Forensics for diagnostic assistance and  
59 troubleshooting. Often such an error message indicates a problem with the simulator  
60 solution, not with the machine itself.

61 On the night that I tested Danny Dawson, I had just changed out the simulator  
62 solution and I did not receive an error message when I started running the machine. The

63 simulator readings were accurate, giving the expected BrAC value of 0.08, and the  
64 temperature sensors were in range.

65 I asked the police officer whether or not Dawson had been observed for 15 minutes  
66 prior to arriving at the station. The testing procedures require a subject to be observed for at  
67 least 15 minutes before any test. This part of the procedure is used to ensure that no  
68 residual mouth alcohol is present. Mouth alcohol can cause a much higher BrAC reading  
69 than would represent the amount of alcohol actually in that person's body. There can be  
70 several causes of mouth alcohol. The usual suspects are mouthwash, certain types of mints,  
71 very recent consumption of alcohol, a gastric event (such as vomiting or eructation, also  
72 know as burping or belching), and acid reflux. The observation period is meant to allow  
73 whatever alcohol could be deposited in the mouth time to evaporate.

74 The officer said that Dawson had been cuffed at the scene and that the ride to the  
75 station had been almost twenty minutes long. Since mouth alcohol dissipates well within the  
76 standard 15-minute window of required observation, there is no way that Dawson still had  
77 mouth alcohol present as a result of drinking at the bar. I checked with the officer to make  
78 sure that Dawson did not have access to alcohol, breath mints, or mouthwash during that  
79 time. The officer also said that Dawson did not appear to vomit or burp, but I don't  
80 remember if I asked Dawson whether or not this was true. Typically, you don't want to let a  
81 suspect know that burping may throw off the machine because the person might start  
82 burping on purpose, which makes it impossible to run a test. Whenever possible, I spend 15  
83 minutes talking to the suspect, just to be absolutely sure that they don't burp or belch prior  
84 to the test.

85 I did spend a couple of minutes talking to Dawson while I set up the machine and  
86 Dawson slurred words, spoke loudly, and indicated a moderate level of intoxication.  
87 Dawson told me that I was wasting my time and didn't seem happy to have to be  
88 breathalyzed, but would you be happy? Dawson was ultimately cooperative. Dawson never  
89 appeared to burp or belch. Because the officer told me that Dawson had been observed for  
90 nearly 20 minutes in the car, I only waited five minutes before starting the test. I've  
91 observed hundreds of individuals during Intoxilyzer tests, and, based on my experience and  
92 Dawson's behavior, I estimated that Dawson's breath alcohol would be around the legal  
93 limit.

94           The variable testing phase, using Dawson's breath, was run on two samples to ensure  
95 precision, as required by the standard protocol. The readings must be within 0.02 of each  
96 other for the breath test to count. I had Dawson provide two samples using the mouthpiece  
97 I described before. Dawson's readouts were 0.194 and 0.191. The machine compares the  
98 two samples, takes the lower of the two, and truncates the reading to two digits for the final  
99 result, so Dawson's official reading was 0.19.

100           I believe that these test results are accurate, though I was surprised that both of them  
101 were well over the Midlands state legal limit of 0.08. Dawson's results can't be blamed on  
102 other factors such as the mouth alcohol I mentioned above. If there were any residual  
103 alcohol left in Dawson's mouth, the machine would have picked it up. Mouth alcohol will  
104 generally cause a spike in the BrAC curve detected by the unit, followed by a marked  
105 decrease as the air from the lungs is expelled. There was no such spike in Dawson's test.

106           Using rough estimates that apply generally, we can estimate the number of drinks  
107 that Dawson consumed. The average person can process one drink per hour (14 grams of  
108 alcohol) and stay under the legal limit. Dawson told me that Dawson had approximately one  
109 drink per hour while Dawson was at the bar. If that's true, I don't know how Dawson's  
110 BrAC was still at 0.19 at two in the morning, which is when I tested Dawson. Either  
111 Dawson had more drinks than that and lied to me, or Dawson processes alcohol much  
112 slower than the average person used to calculate that rate. I never got a chance to examine  
113 Dawson as a physician, so I can't tell you Dawson's weight or family background, both of  
114 which are integral to determining how many drinks a person may have had given a certain  
115 BrAC. Just looking at someone isn't enough to estimate those factors, so even if I saw  
116 Dawson again today, I wouldn't be able to give a better opinion than that, unless I were  
117 allowed to have a medical doctor examine Dawson and obtain a medical history.

118           All of my conclusions and the bases for those conclusions are included in this  
119 affidavit. In reaching conclusions, I relied on the Intoxilyzer 8000 test results and my  
120 personal observations and training. Since I conducted the test myself, I completed all of the  
121 paperwork related to the testing such as the standard operational checklist. I can also vouch  
122 for the fact that the Benton and Carman treatise on intoxication is the leader in the field and  
123 is completely accurate.

124           I hereby attest to having read the above statement and swear or affirm it to be my  
125 own. I also swear or affirm to the truthfulness of its content. Before giving this statement,

I was told it should contain everything I knew that might be relevant to my testimony, and I followed those instructions. I also understand that I can and must update this affidavit if anything new occurs to me until the moment before I testify in this case.

\_\_\_\_\_  
/s/AS

Dr. Avery Smith

Subscribed and sworn before me on this, the 3<sup>rd</sup> day of October, 2011.

\_\_\_\_\_  
/s/SS

Sarah Shelton, Notary Public