



**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 21st 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.¹ 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.)

¹ "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
 - b. Leslie Roman
 - c. Avery Smith
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”
15. Chuggie’s Drink Menu

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. **Witnesses Not Present.** At captain's meeting, after the witness call is complete:
 - a. **If the defense has not called Danny Dawson and will not have Dawson present in the courtroom,** the defense must notify the prosecution whether Danny Dawson is male or female; then
 - b. **If the prosecution does not call Taylor Hopson,** the prosecution must notify the defense whether Taylor Hopson is male or female.

5. **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 criminal-homicide 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 criminal-homicide charges (murder, manslaughter, and reckless homicide), or for the defendant’s being not guilty of the top criminal-homicide charge but perhaps guilty of one or more of the lesser included criminal-homicide offenses.
- d. The defense is not permitted to concede the DUI charge prior to closing argument, but need not address it directly in its opening statement or case-in-chief. Thus, in an objection argument, the defense cannot claim that a certain element of the prosecution’s case is irrelevant because the defense is not contesting the DUI charge.

6. **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 specifically 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.

7. 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 (not counting the AC cord).
- 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. (This instruction does not prevent a party from playing the exhibit in part subject to the limitations detailed in the judge’s ruling on the recording in the Order on Motions in Limine.)
- 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).

8. Photograph of Vanessa Sullivan.

- a. The prosecution may provide a photograph of the deceased victim, Vanessa Sullivan, but must show that photograph at captain’s meeting prior to the trial if the prosecution intends to use it for any purpose at trial.
- b. The photograph may not contain any other person in addition to Vanessa Sullivan or anything specifically intended to evoke other persons, places, things, or events specifically mentioned or described in the case (e.g., “Chuggie’s” front window, “Chatterbox” t-shirt, sign saying “Danny is My Designated Driver,” etc.).
- c. The person portraying Vanessa Sullivan in the photograph must appear to be reasonably close to Vanessa Sullivan’s age shortly before her death (i.e., 20 years old) and must not show any signs of death or injury (i.e., these are not post-crash photographs).
- d. Any dispute about the restrictions listed herein must be addressed at the captain’s meeting. At trial, the defense may not raise objections based on the restrictions listed herein, but may still raise objections based on the Midlands Rules of Evidence.

9. Jury Instructions/Verdict Forms.

- a. **Purpose of inclusion.** Traditionally, AMTA has provided case law and statutory law; sometimes jury instructions have also been made available. Because all AMTA trials are considered jury trials and not bench trials, jury instructions/verdict forms have been provided in this year's case.
- b. **Origin of Jury Instructions/Verdict Forms.** It is presumed that the Jury Instructions/Verdict Forms included in the case packet are the product of the typical court and counsel interplay (often referred to as charging hearings) and that any objections to their final form have been preserved. **No changes to the provided Jury Instructions/Verdict Forms may be sought or made.**
- c. **Use of Jury Instructions/Verdict Forms.** For purposes of this trial, the judge will be presumed to have read the Jury Instructions/Verdict Forms included in the case packet to the jury after both sides have concluded their cases-in-chief and before either side presents its closing argument.
 - i. **Before closing arguments.** At any time before closing arguments, attorneys may reference case law and statutory law (e.g., in objection arguments). **Attorneys may not reference the Jury Instructions/Verdict Forms before closing arguments.**
 - ii. **During closing arguments.** When referring to matters of law during closing arguments, attorneys should reference the law as set forth in the Jury Instructions/Verdict Forms, not the case law or statutory law in the case packet.
- d. **Providing copies of Jury Instructions/Verdict Forms.** Either party (or both) may, but is not required to, provide complete, unedited copies of the Jury Instructions/Verdict Forms to the judges/jurors prior to closing arguments, and no objection to their being given to judges/jurors may be raised (except, of course, if the jury instructions/verdict forms being offered are not a complete and accurate copy of the Jury Instructions/Verdict Forms included in the case packet). Teams are encouraged to consult with practitioners regarding appropriate and effective use of jury instructions during closing arguments.

10. **Calculators and stopwatches**, as used by attorneys/witnesses during trial in the context of this case, do not violate the “Electronic Visual Aids” prohibition of AMTA Rule 8.5(2) as long as they do not project an image onto a screen or wall.
11. **Use of Defendant’s Affidavit During Trial.** In an actual criminal trial, a defendant cannot be compelled to provide an affidavit because of the Fifth Amendment provision regarding self-incrimination. In mock trial, such an affidavit is necessary to define and confine the defendant’s testimony and knowledge. Thus the defendant’s affidavit cannot be referenced during the testimony of a witness other than the defendant, nor at any other time during either party’s case-in-chief except during direct or cross-examination of the defendant. Use of the defendant’s affidavit during direct and cross-examination of the defendant is subject to the normal restrictions on affidavit use defined by the AMTA Rulebook and the Midlands Rules of Evidence. This rule does not prohibit reference during closing arguments to any impeachment of the defendant.
12. **Kane Software Co. v. Mars Investigations**, included in the Available Case Law, does not create any new obligation or requirement at Captains' Meeting. All information disclosed in the expert's affidavit, report, and any other documents with which the witness is familiar is presumed to have been provided to both parties prior to Captains' Meeting. Thus, for the purpose of satisfying the requirements of Kane:
 - a. no additional disclosure of the expert's conclusions, facts, etc., is necessary at Captains' Meeting; and
 - b. no disclosure of additional facts or conclusions of an expert beyond the case materials is permitted at Captains' Meeting.

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

STATE OF MIDLANDS,

Plaintiff,

v.

CASE NO. CR-11-1030

DANNY DAWSON,

Defendant.

INDICTMENT

THE GRAND JURY DOES HEREBY CHARGE:

COUNT I: On or about September 25, 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 25, 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 25, 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 25, 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.

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**

STATE OF MIDLANDS,

Plaintiff,

v.

CASE NO. CR-11-1030

DANNY DAWSON,

Defendant.

ORDER ON MOTIONS IN LIMINE

This matter came to be heard on the 15th 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 on September 24, 2010, through 0200 on September 25, 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 25, 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.

Hon. Alfred Wayne
State of Midlands
August 16, 2011

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

STATE OF MIDLANDS,

Plaintiff,

v.

CASE NO. CR-11-1030

DANNY DAWSON,

Defendant.

STIPULATIONS

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. The parties hereby stipulate that the car in accident photos 0001-0009 is the 2009 Chevrolet Impala driven by the defendant, Danny Dawson, on September 25, 2010. The parties agree that between September 25, 2010, when the police first examined the car, and October 14, 2010, when Leslie Roman examined the car, that the appearance and condition of the car did not change in any way relevant to the accident reconstruction of Ryan Foster or Leslie Roman. The parties further agree, in addition to being irrelevant, that any discrepancies in the appearance of the 2009 Impala between the police photos and Leslie Roman's photos did not occur through the fault of either party. 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.
7. Exhibit 15, the Chuggie's Drink Menu, is the menu that was in use at Chuggie's on September 24-25, 2010.

Attorney for the State of Midlands

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.

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

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.

Attorney for the State of Midlands

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 25, 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 Negligent 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 xxxxxxxxxxxx4170
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 xxxxxxxxxxxx4170
 TRANSACTION APPROVED
 AUTHORIZATION #: 040017
 REFERENCE: 62178940

Guest 1

| | |
|----------------------------|---------|
| 1 Big Horn Burger | |
| w/ extra ketchup | \$10.49 |
| 1 Whiskey - Black Label | \$8.00 |
| 2 Screwdriver @ \$3.00 | \$6.00 |
| 1 XL Cheese Fries | \$7.99 |
| 2 Lemon Drop Shot @ \$5.00 | |
| | \$10.00 |
| 1 Midlands 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 |
| 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 xxxxxxxxxx6169
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 Low Plateau Merlot (Glass) \$4.00
1 Low Plateau Merlot (Glass) \$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, 2010

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 Wear, 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
INTOXILYZER 8000 OPERATOR'S CHECKLIST

(Please Print)

09/25/10
Test Date

Foster
Arresting Officer

Dawson, Danny N.
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 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 subject's 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 #

Midlands Center

Location

AVERY SMITH

Operator's Name (Print)

A/S

Operator's Signature

FORENSICS

Operator's Department

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:

A. **Breath**

B. Blood

C. Urine

Refused?

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

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:

A. **Breath**

B. Blood

C. Urine

Refused?

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, AW. "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 Florida
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).



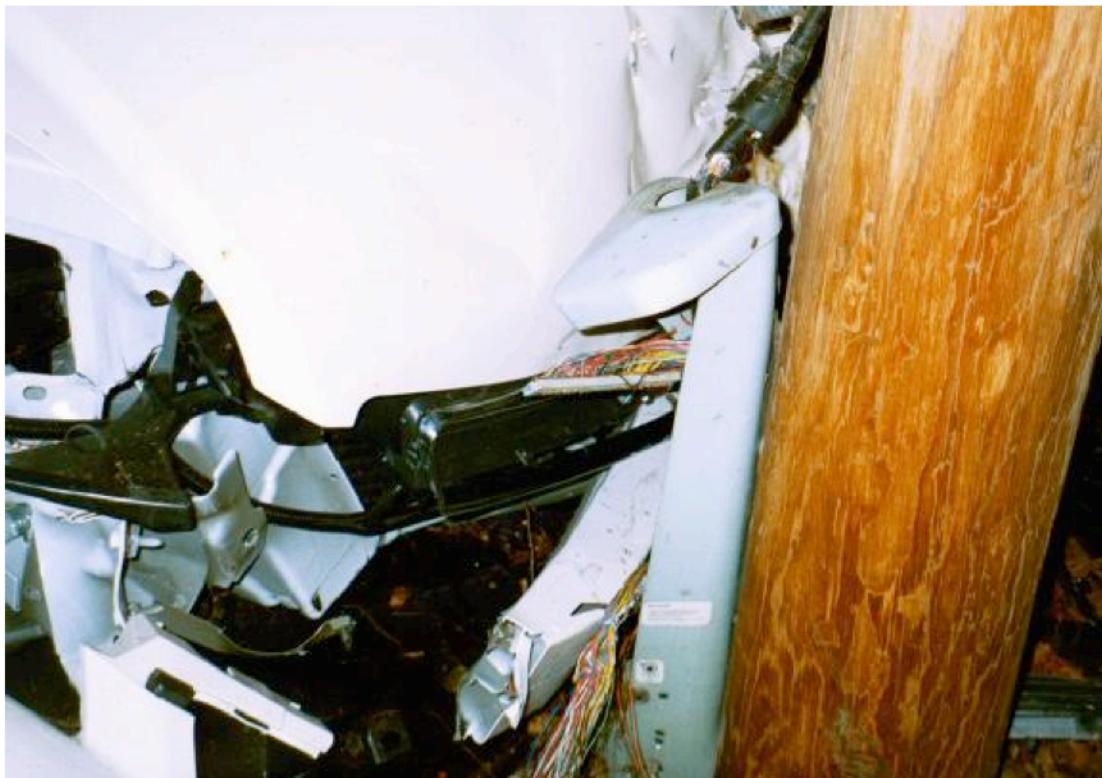
Photograph 0004: Front of vehicle contacted utility pole (police photo).



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 tiremarks are visible on the roadway.



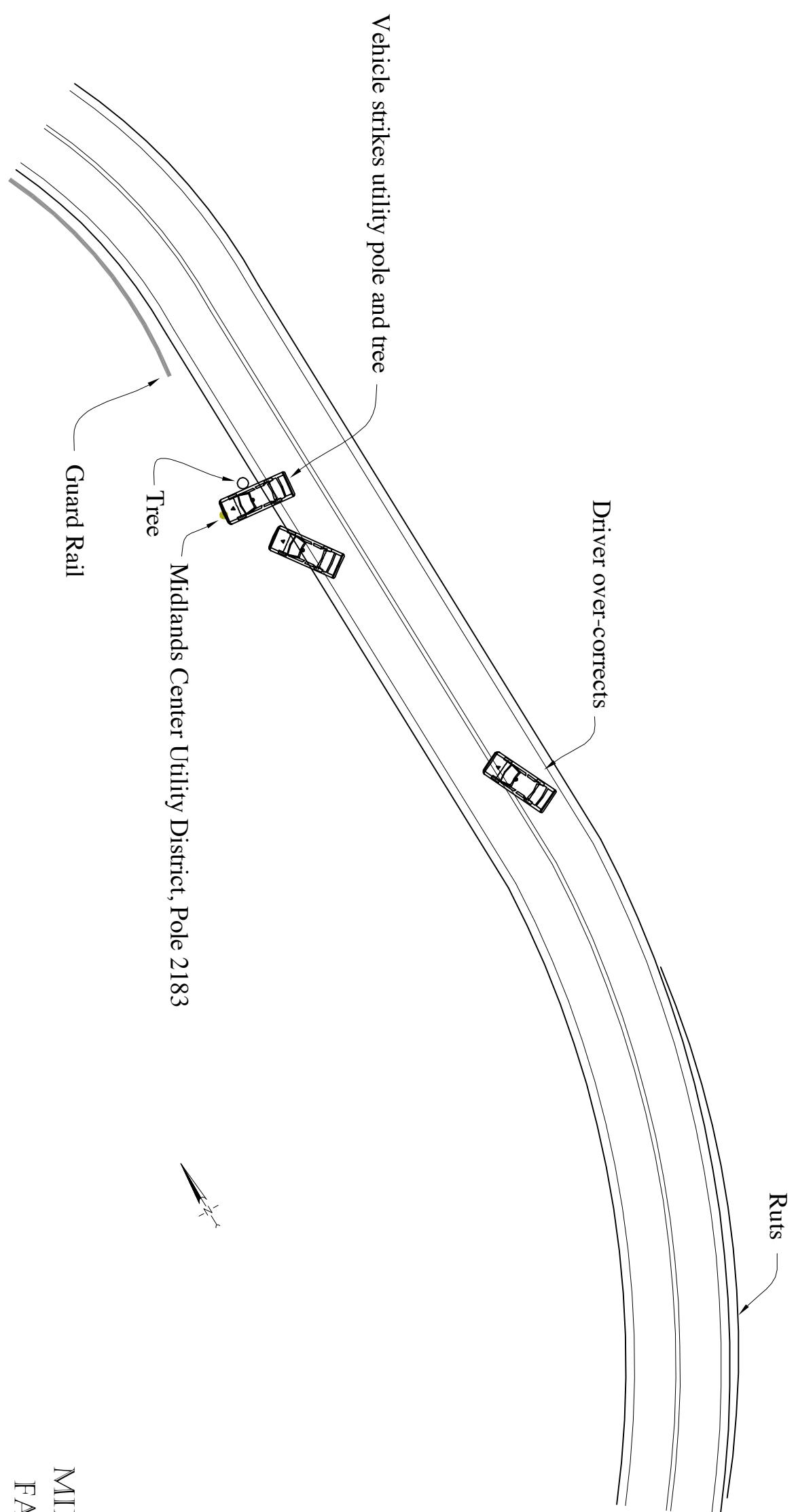
Photograph 0013: Several trees alongside the road in the area of the collision were cut down after the incident.



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

10 0 10 20
SCALE FEET

MIDLANDS CENTER POLICE DEPARTMENT
FATAL CRASH TEAM
TRAFFIC COLLISION REPORT

October 11, 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 Crash Team (FCT) was requested to assist in the investigation of a single-vehicle fatal crash at approximately 1:00 a.m. on September 25, 2010, 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, was the rear seat passenger and was dazed but conscious. Hopson was wearing a seat belt when I arrived. Hopson appeared to have suffered cuts and bruises as a result of the crash.

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, I made a study of the vehicle. I measured and documented the vehicle damage. 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. I examined the EDR and found that it had been destroyed in the collision, and thus could not collect any data from it. I removed the EDR from the vehicle and stored it 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. I used this crash scene survey 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 factors on the grass and a wet section of the roadway were 0.35 and 0.23, respectively. I used a drag sled to measure the drag factors.
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.

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 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 25, 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 an Event Data Recorder (EDR), commonly referred to as a 'black box.' The EDR in this vehicle contains pre-crash data including vehicle speed, accelerator pedal position, and brake position. The EDR is normally located under the right front seat. Prior to my study, the EDR 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 35 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 35 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.

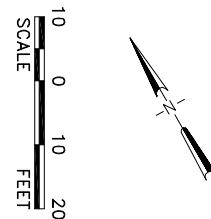
Sincerely,
EXPERT ACCIDENT RECONSTRUCTION, INC.

Leslie Roman, PE, ACTAR
Senior Forensic Engineer

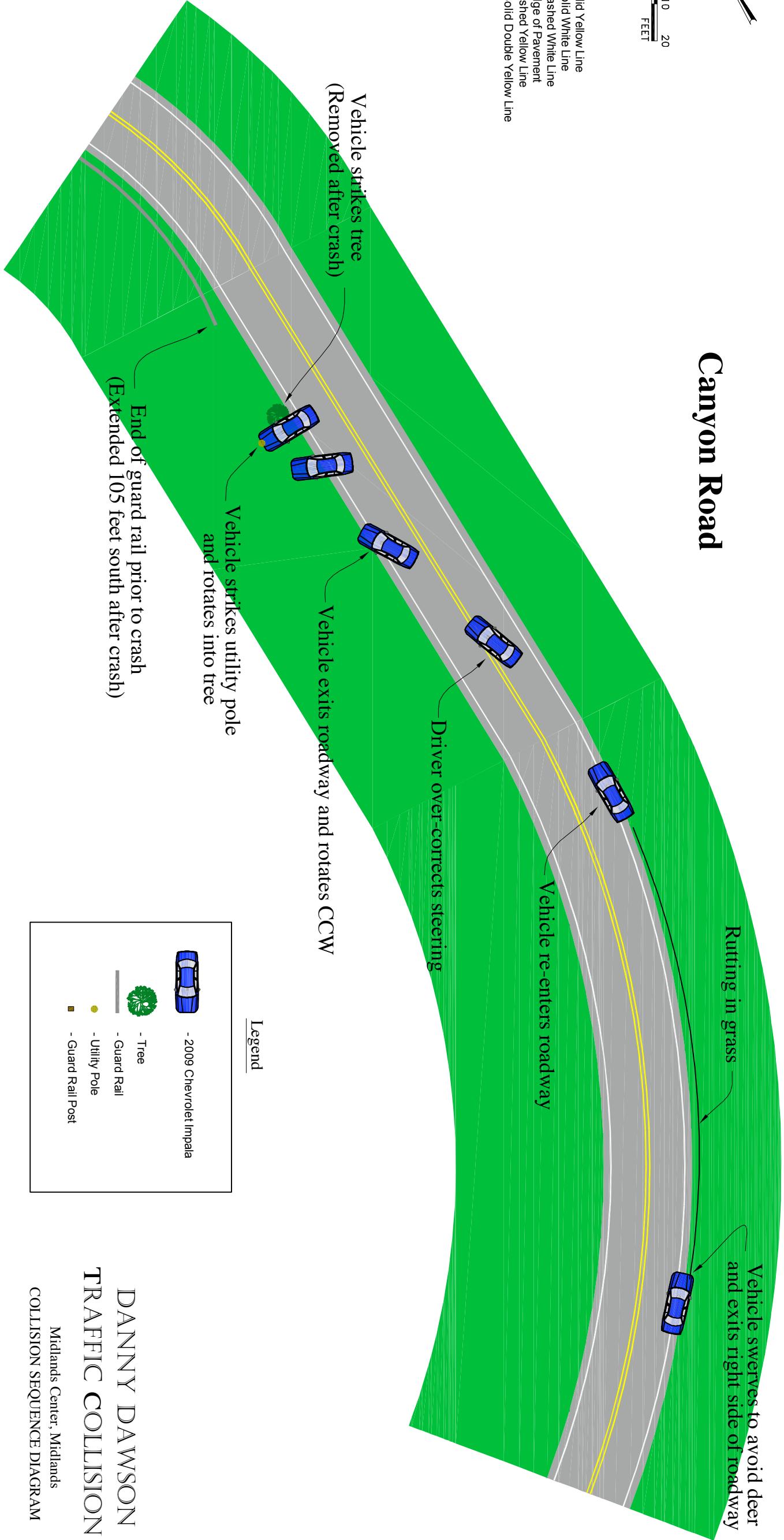
Attachments

| | |
|---|------------------|
| Leslie Roman Expert Accident Reconstruction Inc 100 Main Street Midlands Center, Midlands C 1999 E.A.R.I. | DATE |
| | DRAWN BY L.R. |
| | APPR. BY |
| DRAWING NAME CSD | SHEET 1 or 2 |

Canyon Road



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



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:

$$\begin{aligned}S_1 &= \text{Square Root of } (30 \times D \times f) \\S_1 &= \text{Square Root of } (30 \times 50 \times 0.2) \\S_1 &= \text{Square Root of } (300) \\S_1 &= 17.3 \text{ mph}\end{aligned}$$

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:

$$\begin{aligned}S &= \text{Square Root of } (S_1^2 + S_2^2 + S_3^2) \\S &= \text{Square Root of } (17.3^2 + 38.7^2 + 40^2) \\S &= \text{Square Root of } (299 + 1498 + 1600) \\S &= \text{Square Root of } (3397) \\S &= 58 \text{ mph}\end{aligned}$$

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.

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Specialty Shots
\$5.00

Chuggie Bomb – Our Signature Drink! Herbal Liqueur, Energy Drink
Lemon Drop - Vodka, Lemon Juice, sugar cube
Purple Haze – Vodka, Blue Curaçao, Cranberry Juice
Kamikaze – Vodka, Triple Sec, Lime Juice
Woo Woo – Vodka, Peach Schnapps, Cranberry Juice
Watermelon – Vodka, Melon Liquor, Cranberry Juice, Orange Juice
Blue Lagoon – Blue Curaçao, Vodka, Triple Sec, Lime Juice
Blue Slammer – Blue Curaçao, Sambuca, Vodka, Lemon Juice
Caribou Lou – Dark Rum, Coconut Rum, Pineapple Juice
Cherry Bomb – Cherry-Flavored Vodka, Energy Drink, Grenadine
Snake Bite – Bourbon, Tequila

Mixed Drinks
House \$3.00 – Top Shelf \$6.00
If You Don't See It Here, Ask - We Will Mix Anything!

Screwdriver – Vodka, Orange Juice
Jack & Ginger – Whiskey, Ginger Ale
Margarita – Tequila, Triple Sec, Lime Juice
Cosmo – Vodka, Triple Sec, Lime Juice, Cranberry Juice
Tequila Sunrise – Tequila, Orange Juice, Grenadine

Special Iced Teas
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Long Island – Gin, Vodka, Rum, Triple Sec, Cola
Miami – Gin, Vodka, Rum, Triple Sec, Pineapple Juice
Seaside – Gin, Vodka, Rum, Triple Sec, Cranberry Juice

Beers on Tap
\$3.50

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House Brews (5.5% Alcohol per Volume to 6.7% Alcohol per Volume)
IPA, Brown, Stout

Wines
Prices are by the glass; we do not sell wines by the bottle

| | |
|------------------------------|--------|
| Horse's Head Sauvignon Blanc | \$4.00 |
| Horse's Head Merlot | \$4.00 |
| Low Plateau Pinot Grigio | \$6.00 |
| Low Plateau Merlot | \$6.00 |

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

32 of rain on a wet street, so I wanted to take advantage of the weather. The storm was predicted to hit
33 sometime after midnight (it had been on all the news stations that day) and sure enough, around
34 11:45 p.m., it started to sprinkle. I got out my brushes and paints and settled myself down for what
35 I thought would be a nice evening. I had just started painting when I saw the MCPD car make its
36 usual pass down the road heading into town. I figured it was Officer Foster planning to set up the
37 regular weekend post to watch cars as the late-night crowd from town started to make their way
38 back home. I didn't have a watch on me, but I guess it was about midnight when I saw the officer
39 drive past.

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

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

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

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

76 As I made my way to the car, I could hear the police sirens in the background and I saw two
77 people in the car. At first I thought maybe one of them was Jack or Ginger, but as I got closer, I
78 recognized Taylor Hopson in the backseat, slumped over. My heart dropped. I have known Taylor
79 since the Hopsons moved to Midlands Center. Taylor’s dad does extra work around my house
80 sometimes. I ran at that point to check on Taylor and the other passenger, whom I then knew was
81 definitely Vanessa Sullivan, Taylor’s best friend. Even though Danny claimed Vanessa was okay,
82 when I got to the car, Vanessa definitely wasn’t. She wasn’t responding at all. Taylor was starting to
83 stir, but Vanessa’s eyes were closed and no matter what I did to shake her, she wouldn’t respond. I
84 put my hand under her nose to see if I could feel air. Instead, I felt nothing. I realized Vanessa
85 wasn’t breathing. I yelled for Danny to come help, but Danny just said, “No, Vanessa is fine. She
86 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
87 seatbelt or the car.

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

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

102 Of the exhibits in this case, I am familiar with the following: Accident Photos 0010-0015,
103 which were shown to me by attorneys in this case and which I agree are accurate depictions of
104 images of Canyon Road and the crash scene contained therein. I am not familiar with any other
105 exhibits or any affidavits other than my own.

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

111

112 _____ /s/ LB _____

113 London Bennett

114 Subscribed and sworn before on this, the 3rd day of October 2010.

115 _____ /s/ SS _____

116 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. Since I was 18 years old and did not want the charge on my record
19 forever, I pleaded the charge down to reckless driving and went through a pre-trial diversion
20 program. My arrest record was wiped clean after I did 100 hours of community service and wore an
21 ankle bracelet that ensured I did not go into any 21-and-over bars for a year. Unfortunately for me,
22 Pennington University must have gotten wind of the charges and I didn't get the scholarship.
23 Goodbye elite university, hello Calkins College.

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

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

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

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

56 Neither of us had Friday classes, so we left school after our last class on the 23rd and had an
57 uneventful drive to Midlands Center. I was pretty shocked to see that Vanessa had a radar detector
58 in her car with Ms. Sullivan being a prosecutor; Vanessa told me that it should be our little secret.
59 Vanessa dropped me off at my aunt's house, and I told her that I'd meet her at Chuggie's the next
60 night. I was already going to be in Midlands Center the next afternoon for an interview I'd lined up
61 once I knew I was coming into town. It made sense that I would just have my aunt drop me off for
62 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

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

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

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

120 I was feeling pretty good at this point in time, so instead of exiting the backstage area toward
121 the bar, I found myself walking onto the stage. Well, when in Rome... I grabbed a guitar and
122 started strumming. Everybody was cheering like crazy for me. There's no way I could have played
123 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
124 roadie or a bouncer or something – grabbed hold of me, but Vanessa was behind him and told him
125 to lay off and apologized for me. I don't know why, the crowd loved it. The crowd cheered again
126 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

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

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

239 Of the available exhibits in this case, I am familiar with the following: Bar Tab #1 of Danny
240 Dawson and Bar Tab #2 of Danny Dawson, which were signed by me on September 24- 25, 2010;
241 Bar Tab #3 of Vanessa Sullivan, which Vanessa signed in my presence on September 25, 2010;
242 Accident Photos 0001-0015, which were shown to me by my attorneys and which I agree are
243 accurate depictions of images contained therein; the Breath Test Operator's Report, which I
244 reviewed and signed on the date indicated; and the Voicemail Message, which was provided to me
245 by my attorneys. I can confirm that the speaking voice on the Voicemail Message belongs to
246 Vanessa Sullivan, and that the Voicemail Message is the recording of the call made by Vanessa that I
247 reference in this affidavit. I am also familiar with the Chuggie's Drink Menu and, except where
248 specifically noted elsewhere in my affidavit, I have no reason to believe that any of the drinks served
249 at Chuggie's on September 24 or 25, 2010, either omitted a component listed or added a component
250 not listed with the corresponding drink on the drink menu. I am not familiar with any other exhibits
251 or any affidavits other than my own.

252 I hereby attest to having read the above statement and swear or affirm it to be my own. I
253 also swear or affirm to the truthfulness of its content. Before giving this statement, I was told it
254 should contain everything I knew that might be relevant to my testimony, and I followed those

255 instructions. I also understand that I can and must update this affidavit if anything new occurs to
256 me until the moment before I testify in this case. I have also read the opinions rendered by the
257 experts I have hired to show my innocence in this case. They have offered all of the opinions I have
258 requested and disclosed, and my counsel ensures me that all available information relevant to the
259 experts' opinions has been provided to them.

260

261 _____ /s/ DND

262 Danny N. Dawson

263 Subscribed and sworn before me on this, the 1st day of October, 2010.

264 _____ /s/ SS

265 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. Hopson appeared to be bleeding from the head and Hopson's hands were
57 covered in blood. Hopson was just screaming and screaming. I could not tell exactly what Hopson
58 was saying; all I could really make out was, "Don't make me kill Danny for killing my best friend!
59 Hold on, Vanessa!" Hopson also screamed something about not being able to see anything in the
60 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 the 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

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

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

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

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

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

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

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

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

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

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

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

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

166 I provided a copy of the entire police file on this case to defense counsel prior to trial, and I
167 asked defense counsel if they had any more requests for discovery. They did not. The prosecutors'
168 office requires open-file discovery in Midlands Center, and this case was no exception.

169 Of the affidavits and exhibits in this case, I am familiar with the following: Midlands FCT
170 Officer Report, FCT Diagram, and Accident Photos 0001-0007, all of which I created; Bar Tab #1
171 of Danny Dawson, Bar Tab #2 of Danny Dawson, and Bar Tab of Vanessa Sullivan, which were
172 collected from Chuggie's by Officer Baker and Officer Yarbough; the article "Vehicle Accident
173 Reconstruction: A Primer," which I relied upon in coming to my conclusions regarding accident
174 reconstruction; Curriculum Vitae of Leslie Roman, Expert Report of Leslie Roman, Expert Report
175 of Leslie Roman – Crime Scene Diagram, and Accident Photos 0008-0015, which were created by
176 Leslie Roman and provided to me by counsel; the Voicemail Message, which was obtained with the
177 consent of the Sullivan family; my own affidavit; and the affidavits of London Bennett, Leslie
178 Roman, Taylor Hopson, Jordan James, Pat Lawrence, and Sam Lyons, which I was provided by
179 counsel.

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

185 _____ /s/ RKF

186 Ryan K. Foster

187 Subscribed and sworn before me on this, the 3rd day of October, 2011.

188 _____ /s/ SS

189 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. Vanesssa 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

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

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

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

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

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

81 Our table was in a perfect spot to see the stage. The lead singer of Chatterbox had actually
82 reserved it special for us, and there was a little card for Vanessa's birthday on the table. The server,
83 Pat Lawrence, was a really good waiter too, constantly refilling our chip basket and drinks before we
84 could even ask for seconds. That was pretty amazing since Pat told us that it was Pat's first day on
85 the job. It was really great service, but I eventually had to tell Pat to switch me to sweet tea. Since
86 Pat was refreshing our drinks so fast, it was hard to tell how many I had, but I was only a little
87 lightheaded by the time I switched to tea, and I don't think I had more than two or three full drinks
88 with any alcohol in them. I started drinking tea about 20 minutes before the band came on.

89 Danny was a different story. As soon as we sat down, Danny ordered straight whiskey!
90 Then Danny tried to order shots for Vanessa and me, but I immediately declined. I never drink
91 shots. In fact, I never drink anything alcoholic other than screwdrivers (vodka and orange juice).
92 Vanessa agreed to do a shot with Danny, but only if it was a mild one. I think Pat brought a lemon
93 drop shot for Vanessa and Danny, and then Danny ordered a Midlands Brown (a local beer special
94 to the pub), and I started getting really nervous about how much Danny was drinking before we
95 even got our cheese fries. I didn't want to keep bringing up the alcohol issue because I didn't want

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

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

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

125 While I was with the band, I tried to keep an eye on the table so I could see just how many
126 more drinks Danny and Vanessa had, but the lights in the bar were pretty dim and it was hard to
127 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 had 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 35 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 Danny 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

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

198 The next time I saw Danny was on September 29th at Vanessa's funeral. There were a
199 million people there; everybody loved Vanessa. It was a beautiful service. But when we got to the
200 cemetery, there was Danny Dawson, standing alongside a tree overlooking the gravesite. I was
201 furious, but I didn't want to make a scene with Vanessa's family there. I walked up to Danny and
202 said, "I can't believe you would have the nerve to show up to Vanessa's funeral after you murdered
203 her. You need to leave." Danny looked me in the eye and said, "Look, she was my friend, too.
204 Besides, it's not my fault a deer ran into the road." I was shocked. I couldn't believe what I had just
205 heard. I said to Danny, "What are you talking about? There was no deer in the road!" Danny just
206 glared at me and said, "Prove it." I wanted to hit Danny at that point, but fortunately, Danny also
207 chose that moment to leave the funeral and the family in peace. If anyone should have been buried
208 in that cemetery, it was Danny, not Vanessa. Instead, I ended up in a hospital for two days and
209 Vanessa is dead. I didn't suffer any lasting physical injuries from the crash, but the scar of losing
210 Vanessa will never heal. Danny walked away without a scratch. I hope Danny goes away to jail
211 forever. What kind of life should someone have after murdering an innocent girl?

212 Of the available exhibits in this case, I am familiar with the following: Bar Tab #1 of Danny
213 Dawson, Bar Tab #2 of Danny Dawson, and Bar Tab #3 of Vanessa Sullivan, which were signed by
214 the indicated parties in my presence on September 24-25, 2010; Accident Photos 0001-0015, which
215 were shown to me by attorneys and which I agree are accurate depictions of the images contained
216 therein; and the Voicemail Message, which was provided to me by attorneys. I can confirm that the
217 speaking voice on the Voicemail Message belongs to Vanessa Sullivan, and that the Voicemail
218 Message is the recording of the call made by Vanessa that I reference in this affidavit. I am also
219 familiar with the Chuggie's Drink Menu and, except where specifically noted elsewhere in my
220 affidavit, I have no reason to believe that any of the drinks served at Chuggie's on September 24 or
221 25, 2010, either omitted a component listed or added a component not listed on the drink menu. I
222 am not familiar with any other exhibits or any affidavits other than my own.

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

231 _____ /s/ TJH _____
232 Taylor J. Hopson

233 Subscribed and sworn before on this, the 3rd day of October 2010.
234 _____ /s/ SS _____
235 Sarah Shelton, Notary Public

AFFIDAVIT OF JORDAN JAMES

1 After being duly sworn upon oath, Jordan James hereby deposes and states as follows:

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

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

25 I met Danny Dawson at the bar during the summer of 2010. Danny came in one night with
26 a bunch of friends. I was between sets and serving some drinks. Danny came right over to me and
27 ordered a Blackout, our most intoxicating drink. I knew right away Danny was a "rainmaker." You
28 see, every bartender has a pool of great customers to rely on for steady income. We keep them
29 happy, and they keep us happy. Regular customers like Danny can account for as much as half of my
30 tips in a month, and Danny did not disappoint. Over the summer when Danny was in town, I
31 would say Danny tipped me nearly \$750, though the IRS has certainly taken its share. Danny was
32 probably my biggest tipper. I returned the favor by making Danny's drinks just the way Danny likes

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

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

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

60 The night that poor girl died, I was working at the bar, both serving and being the opening
61 musical act. In fact, I started serving at around noon. Danny came in pretty early that day and said
62 something about a job interview. I tried my best to listen, but I was pretty busy that afternoon
63 training Pat Lawrence for the evening shift. Pat did not stick around the job very long, and I do not
64 remember anything about Pat other than the fact that I trained Pat that afternoon. Danny was

65 drinking some that afternoon, but Danny told me that Danny was not driving anywhere that night,
66 so I was not too worried. Apparently Danny had already arranged for a ride home.

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

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

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

95 That happened right before the three of them left. I don't really remember what time Danny
96 left, but I do remember Danny coming to settle up. It was well after midnight and the bar had
97 started to die down a bit. Danny came up and asked me what the damage was. I handed Danny the

98 receipt and Danny signed it and left me a big tip, a little bit more than normal even for Danny. I do
99 vaguely remember another patron asking if Danny wanted a shot for the road, but I can't say
100 whether or not Danny took him up on the offer.

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

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

113 Of the affidavits and exhibits in this case, I am familiar with the following: Bar Tab #1 of
114 Danny Dawson, Bar Tab #2 of Danny Dawson, and Bar Tab #3 of Vanessa Sullivan, which were
115 provided by me to the Midlands Police Department and which I can identify as standard Chuggie's
116 receipts. I am also familiar with the Chuggie's Drink Menu and, except where specifically noted
117 elsewhere in my affidavit, I have no reason to believe that any of the drinks served at Chuggie's on
118 September 24 or 25, 2010, either omitted a component listed or added a component not listed on
119 the drink menu. I am not familiar with any other exhibits or affidavits other than my own.

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

125

126

/s/ JJ

127

Jordan James

128

Subscribed and sworn before me on this, the 3rd day of October, 2010.

129

/s/ LJK

130

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

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

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

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

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

54 A little while later, I noticed Dawson standing alone over in the corner of the dining area. I
55 asked Dawson if Dawson wanted anything else, and Dawson asked for a tequila sunrise because
56 Dawson wanted the night to never end. I could tell Dawson was pretty drunk, so I said "Okay, as
57 long as you're not driving home." Dawson shot back that Dawson was not even that tipsy.
58 Dawson said to bring a tequila sunrise and then bring sodas for the rest of the night. Dawson then
59 started railing about how Dawson had never been so buzzed before with so few drinks and that
60 Dawson had to be imagining it. I told Dawson that James was pouring incredibly strong drinks.
61 Dawson laughed and said that Chuggie's has the wateriest drinks in town, but at least Dawson got a
62 good deal with all of the drinks that never made it on to the bar tab. Dawson informed me that
63 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 Of the exhibits in this case, I am familiar with the following: Bar Tab #1 of Danny Dawson,
111 which I can identify as a standard Chuggie's receipt; and Bar Tab #2 of Danny Dawson and Bar Tab
112 of Vanessa Sullivan, which I can identify as standard Chuggie's receipts for orders placed through
113 me on September 24-25, 2010. I am also familiar with the Chuggie's Drink Menu and, except where
114 specifically noted in my affidavit, I have no reason to believe that any of the drinks served on the
115 night of September 24 either omitted a component listed or added a component not listed on the
116 drink menu. I am not familiar with any other exhibits or affidavits other than my own.

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

122 _____ /s/ PAL _____

123 Pat A. Lawrence

124 Subscribed and sworn before me on this, the 3rd day of October, 2010.

125 _____ /s/ SS _____

126 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. Jordan
19 James, the bartender, was working the bar and training a new server named Pat Lawrence.
20 Danny Dawson was there when I arrived, and I said hello. Danny is one of my frequent
21 flyers in the cab, especially during the summer. Danny tends to be very talkative after having
22 a few too many, and as a result, let’s just say Danny had a lot of occasions to be very
23 talkative in my cab over the few months prior to that night. I wouldn’t say we’re friends, but
24 Danny has always tipped me well.

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

32 and the place was going to be packed to the rafters. I joked with Jordan that I'd better start
33 drinking then, and Jordan grabbed me a big to-go paper cup and poured me my brew of
34 choice – a large Colombian coffee, straight, no chaser.

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

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

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

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

63 At about 11 p.m., I came back inside Chuggie's to use the restroom, and then
64 returned to the counter to get another cup of coffee for the road. When I got to the bar,
65 Danny was standing there, obviously having ordered something and looking anxious to get
66 back to the band. Danny grabbed me by the arm excitedly and yelled in my ear, "Thisssh
67 hash to be the best night of my life! Wooooo!" I thought that was weird – Danny was
68 down about the interview before, but I guess between the band and the booze, Danny had
69 turned it around. I smiled and said, "I guess I'll be seeing you out front in a bit, right?"
70 Danny just laughed loudly and didn't answer, but from the look in Danny's eyes and how
71 slurred Danny's speech was, I figured there was no way Danny was driving home that night.
72 Danny didn't make a habit of driving drunk – that's why Danny was one of my best
73 customers. I remembered Danny's "DD" comment from when we talked earlier that
74 afternoon, but figured maybe Danny was just making a play on words. I figured whatever
75 the plan was, Danny was drunk now and would be in the back of the cab before the evening
76 was through. I watched the bartender pour out three "Chuggie Bombs" – the infamous
77 energy-drink-and-liqueur - and what I'm pretty sure was a rum and soda, though it was hard
78 to see exactly what went into the glass because someone pushed into me at the bar. Danny
79 gulped down one of the Chuggie Bombs, gathered up the three remaining glasses from the
80 order, and headed back to the table by the stage.

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

95 figured that girl Vanessa must be driving. But I saw Danny open the doors of a Chevy
96 Impala for the two passengers before getting in the driver's seat. The car sped off quickly,
97 and screeched and fishtailed on the wet pavement as it exited the parking lot with Danny
98 behind the wheel.

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

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

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

124 Of the exhibits in this case, I am familiar with the following: Accident Photos 0010-
125 0015, which were shown to me by attorneys in this case and which I agree are accurate
126 depictions of images contained therein of Canyon Road. I am also familiar with the

127 Chuggie's Drink Menu and, except where specifically noted in my affidavit, I have no reason
128 to believe that any of the drinks served on September 24 either omitted a component listed
129 or added a component not listed on the drink menu. I am not familiar with any other
130 exhibits or affidavits other than my own.

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

136

137 _____ /s/ SL _____

138 Sam Lyons

139 Subscribed and sworn before me on this, the 1st day of October, 2010.

140 _____ /s/ SS _____

141 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 20th 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.

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

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

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

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

58 Third, one must consider the first-pass metabolism. The rate of elimination of
59 alcohol matters significantly when drinks are consumed over an extended period of time.
60 Before alcohol is processed by the small intestines, it is first metabolized in the stomach by
61 the enzyme alcohol dehydrogenase (ADH). ADH, because it is found in the stomach, drives
62 the primary process for alcohol elimination. Although other enzymes are capable of doing

63 this, studies show that ADH is the most important enzyme in the body's processing of
64 alcohol.

65 Studies that I am familiar with have demonstrated that women have less ADH than
66 men do and that this causes them to have a lower first-pass metabolism. The lower the
67 metabolism is, the greater the absorption. This has implications for peak BAC that can
68 make the gender of the individual relevant when estimating the time a peak BAC occurred.

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

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

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

91 After reviewing all of these in relation to Dawson and the particulars of this case, I
92 was able to reach the conclusion that Dawson's BAC at the time of the accident was around
93 0.08. Of course, my determination would change if it turned out that Dawson had more to
94 drink than Dawson told me or if the drinks were stronger than the standard drink (14 grams

95 of alcohol per drink). So if Dawson's true blood alcohol concentration was below the legal
96 limit, how could the police analysis be so far off? After all, the final measurement is over
97 twice the legal limit. There are several things that help explain this.

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

113 The Intoxilyzer 8000, the model used by the Midlands Department of Forensics for
114 BrAC testing, uses a set ratio of blood to air when calculating the blood alcohol content
115 (BAC) value for any individual. This allows the machine to convert BrAC into BAC for the
116 read out, but this is where one major problem with BrAC to BAC conversion lies. This ratio
117 is 2100:1, or the same amount (weight) of alcohol will be found in 2.1 L of deep lung breath
118 as will be found in 1 cc of pulmonary blood. The problem with this ratio is that it varies
119 markedly among individuals and even within a given individual over time. Studies that are
120 accepted and widely used in my field have routinely demonstrated that the ratio is higher
121 during the absorption phase and lower during the elimination phase. This means that an
122 individual will blow a higher BrAC while they are eliminating alcohol from their system than
123 they would when they are absorbing it, even though the true BAC should be the same.

124 It cannot be stressed more that the breath-to-blood ratio is perhaps the most
125 important factor in determining the validity of a BrAC result. All of the studies I have done,
126 as well as those studies done by other doctors around the United States, two studies in the

127 United Kingdom, as well a study in Japan that I participated in, demonstrate that an
128 individual's true ratio can vary from 900:1 all the way to 3400:1. This range has staggering
129 implications for all breath alcohol test machines. If Dawson had a true ratio on the lower
130 end of that spectrum, then the BrAC result obtained that night would need to be cut in half.
131 If Dawson's true ratio were 1100:1, then Dawson's true blood alcohol concentration would
132 be 52.38% of the BrAC obtained. That is 52.38% of 0.19, which is just below 0.1. Even so,
133 if Dawson's ratio were lower, which I very much doubt, Dawson would be over the legal
134 limit.

135 There is also the temperature of Dawson's breath to consider. The Intoxilyzer 8000
136 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%
137 by making the alcohol more volatile and shifting the partition ratio further away from
138 2100:1. It should be noted, however, that Dawson's BrAC measurement was high enough
139 that temperature probably played a negligible role, if indeed it played a role at all.

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

151 I asked Dawson about all of these factors. Dawson said that Dawson had not had
152 any dental work done recently. Dawson confirmed that the arresting officer had asked
153 Dawson if Dawson had used mouthwash or mints; Dawson had not. When I asked,
154 Dawson told me that Dawson had not thrown up that night. I asked Dawson if the officer
155 had told Dawson not to burp or belch or if the officer had asked about acid reflux. Dawson
156 seemed confused and said that the officer had never mentioned that. I went back to look at
157 the police report and at the BrAC printout, but I could not find any evidence that Dawson
158 was ever asked about it. I asked Dawson if Dawson could remember burping or having acid

159 reflux. Dawson said sure and told me that the burger and cheese fries that Dawson ate had
160 given Dawson some heartburn, but Dawson couldn't remember if Dawson had burped or
161 had any acid reflux after Dawson was arrested and before the breath test.

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

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

177 I have included all of my conclusions and all of the bases for those conclusions in
178 this affidavit. In coming to my conclusions, I reviewed the Intoxilyzer test results and spoke
179 with Dawson about Dawson's experience. When reaching my conclusions, I only relied on
180 the documents that I mention using in my affidavit. When it comes to blood alcohol levels
181 and behavior, I agree that the Benton and Carman treatise is the leading treatise and is
182 entirely correct.

183 Of the available exhibits, I am familiar with the following: Bar Tab #1 of Danny
184 Dawson, Bar Tab #2 of Danny Dawson, and Bar Tab of Vanessa Sullivan; Intoxylizer 8000
185 Instructions; BrAC testing form; BrAC results; the article "Alcohol Ingestion and the
186 Human Body," which I relied upon in reaching my conclusions in this case; and the
187 Curriculum Vitae of Ashley Norton, which I wrote myself. I am also familiar with the
188 Chuggie's Drink Menu and, except where specifically noted in my affidavit, I have no reason
189 to believe that any of the drinks served at Chuggie's on September 24 or 25, 2010, either
190 omitted a component listed on the drink menu or added a component not listed on the

191 drink menu. I am not familiar with any of the other available exhibits or affidavits other
192 than my own.

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

198

199

200

/s AN

201

Dr. Ashley Norton

202

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

203

/s SS

204

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 that defense counsel told me could be relevant to my work in this case.
29 Reading through all of these documents did not change any of my conclusions, nor does any of the
30 additional evidence permit me to draw any new conclusions not already stated in my report and/or

31 affidavit. The information included in the statements I reviewed is identical to the relevant
32 information in the affidavits prepared for this case.

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

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

54 I also think that Foster understates the dangers of Canyon Road in the FCT report. The
55 road was so dangerous at the spot of the accident that a guardrail was erected right where the
56 accident occurred extraordinarily soon after the accident. It's pretty clear to me that there always
57 should have been a guardrail. Having trees so close to a curve on a dangerous road with wildlife
58 often in the area, no guardrail, and a narrow shoulder is simply not acceptable. I have to believe that
59 Vanessa Sullivan would still be alive if there was a guardrail on the side of Canyon Road that kept
60 her side of the car from ever slamming into a tree. I guess something terrible could have happened
61 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 Midlands did nothing for a decade about that problem, and that it took the death of a prominent prosecutor's child to bring about change.

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

76 Of the affidavits and exhibits in this case, I am familiar with the following and only the
77 following: Curriculum Vitae of Leslie Roman, Expert Report of Leslie Roman, Expert Report of
78 Leslie Roman – Crime Scene Diagram, and Accident Photos 0008-0015, all of which I created; the
79 article “Vehicle Accident Reconstruction: A Primer,” which I relied upon in reaching my
80 conclusions; Voicemail Message, Midlands FCT Officer Report, FCT Diagram, and Accident
81 Photos 0001-0007, all of which I received from the police; the affidavits of London Bennett and
82 Taylor Hopson, which I was provided by counsel; and my own affidavit.

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

88 _____ /s/ LR

89 Leslie Roman

90 Subscribed and sworn before me on this, the 1st day of October, 2011.

91 _____ /s/ SS

92 Sarah Shelton, Notary Public

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 BAC 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 breath alcohol 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 known 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 tested, but
88 would you be happy? Dawson was ultimately cooperative. Dawson never appeared to burp
89 or belch. Because the officer told me that Dawson had been observed for nearly 20 minutes
90 in the car, I only waited five minutes before starting the test. I've observed hundreds of
91 individuals during Intoxilyzer tests, and, based on my experience and Dawson's behavior, I
92 estimated that Dawson's breath alcohol would be around the legal limit.

93 The variable testing phase, using Dawson's breath, was run on two samples to ensure
94 precision, as required by the standard protocol. The readings must be within 0.02 of each

95 other for the breath test to count. I had Dawson provide two samples using the mouthpiece
96 I described before. Dawson's readouts were 0.194 and 0.191. The machine compares the
97 two samples, takes the lower of the two, and truncates the reading to two digits for the final
98 result, so Dawson's official reading was 0.19.

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

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

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

123 Of the available exhibits, I am familiar with the following and only the following;
124 NHTSA list of approved BrAC units; Intoxilyzer 8000 Instructions; BrAC testing form;
125 BrAC results; the article "Alcohol Ingestion and the Human Body," which I relied on in
126 coming to my conclusions in this case; and "Curriculum Vitae of Avery Smith," which I

127 wrote myself. I am also familiar with the Chuggie's Drink Menu, and unless specifically
128 noted elsewhere in my affidavit, I have no reason to believe that any of the drinks served on
129 September 24 or 25, 2010, either omitted a component listed on the drink menu or added a
130 component not listed on the drink menu. I am not familiar with any other available exhibits
131 or affidavits other than my own.

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

137

138

139

/s/AS

140

Dr. Avery Smith

141

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

142

/s/SS

143

Sarah Shelton, Notary Public