

2013 EMPIRE CITY INVITATIONAL



STATE

v.

DAWSON

By the American Mock Trial Association Criminal Case Committee

Edited by the Empire Mock Trial Association

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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 AMERICAN MOCK TRIAL ASSOCIATION 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>.

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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. **Sam Lyons**, cab driver
7. **Ashley Norton**, medical expert
8. **Leslie Roman**, accident reconstruction expert
9. **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
Ryan Foster, police officer
Avery Smith, Director, Midlands Dept. of Forensics
Sam Lyons, cab driver
- 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
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 may choose whether or not to 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:
D-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. 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.
- e. 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. **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.

8. **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.

**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

October 27, 2010

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 purposefully 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 in 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 in 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.”

State v. Redd (1979)

The Midlands Supreme court upheld a ruling that a defendant manifested an extreme indifference to human life by randomly firing a loaded gun into a crowd. Even though the defendant contended that he did not believe he would cause anyone harm, the court found that his actions presented such an unreasonable risk of loss of life to others that his actions manifested an extreme indifference to human life despite his beliefs.

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.

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.

OTHER EVIDENTIARY ISSUES:

***State v. Chenault* (1990)**

In a criminal case, a police officer is not considered a "party opponent" for the purpose of admissibility of a statement made by that officer under Midlands Rule of Evidence 801(d)(2). This does not preclude the admissibility of the officer's statement under other applicable provisions of the Midlands Rules of Evidence.

***State v. Spears* (1992)**

In a criminal case, the defendant sought introduction of a statement made by an Assistant District Attorney to an officer involved in the investigation of the crime at issue. The statement was made prior to the filing of an indictment, and the Assistant District Attorney was no longer employed by the State at the time of indictment. The State objected to admission of the statement as hearsay, and the trial court overruled the objection, admitting the statement as an admission by a party opponent under Midlands Rule of Evidence 801(d)(2). On interlocutory appeal, the Midlands Court of Appeals overturned the ruling, expanding its prior ruling in State v. Chenault to encompass statements by any state official not currently involved in the prosecution of the criminal matter at trial. Finding insufficient evidence in the record to consider other grounds for admissibility, the Midlands Court of Appeals instructed the trial court to consider whether the statement was admissible under any other provision or theory under the Midlands Rules of Evidence.

**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. 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 traits relevant 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, accurately and completely reflects the content of the phone call made by Vanessa Sullivan to her father at approximately 1 a.m. on September 25, 2010. The parties waive all objections to Exhibit 1, including (but not limited to) objections to foundation, authenticity, hearsay, relevance, and unfair prejudice. The parties agree that Exhibit 1 may be offered into evidence without objection at any point during trial prior to closing arguments.
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 150 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;

AND

C. That, through said reckless action, Danny Dawson manifested 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. 6: 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. 7: 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. 8: 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. 9.

INSTRUCTION NO. 9: 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, or 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 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. 10: 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 xxxxxxxxxxxxxx4170
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	<u>\$4.00</u>
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
2 Screwdriver @ \$3.00	\$6.00
1 Tequila Sunrise	\$3.00
1 Soda Refill	\$0.50
1 Soda Refill	\$0.50

Items 27

Total	\$76.48
Tip	<u>\$20.00</u>
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 xxxxxxxxxxxx6169
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 Ware, England: IR Breath Analyzer*	
.....	
CMI, Inc., Owensboro, KY:	
Intoxilyzer Model:	
200	.....
200D	.....
300	.....
400	.....
400PA	.....
1400	.....
4011*	.....
4011A*	.....
4011AS*	.....
4011AS-A*	.....
4011AS-AQ*	.....
4011 AW*	.....
4011A27-10100*	.....
4011A27-10100 with filter*	.....
5000	.....
5000 (w/Cal. Vapor Re-Circ.)	.....
5000 (w/3/8" ID Hose option)	.....
5000CD	.....
5000CD/FG5	.....
5000EN	.....
5000 (CAL DOJ)	.....
5000VA	.....
8000	.....
PAC 1200*	.....
S-D2	.....
S-D5	.....
Draeger Safety, Inc., Durango, CO:	
Alcotest Model:	
6510	.....
7010*	.....
7110*	.....
7110 MKIII	.....
7110 MKIII-C	.....
7410	.....
7410 Plus	.....
Breathalyzer Model:	
900*	.....
900A*	.....
900BG*	.....
7410	.....
7410-II	.....
Gall's Inc., Lexington, KY: Alcohol Detection System—A.D.S. 500	
.....	
Intoximeters, Inc., St. Louis, MO:	
Photo Electric Intoximeter*	
.....	
GC Intoximeter MK II*	
.....	
GC Intoximeter MK IV*	
.....	
Auto Intoximeter*	
.....	
Intoximeter Model:	
3000*	.....
3000 (rev B1)*	.....
3000 (rev B2)*	.....
3000 (rev B2A)*	.....
3000 (rev B2A) w/FM option*	.....
3000 (Fuel Cell)*	.....
3000 D*	.....
3000 DFC*	.....
Alcomonitor CC	.....

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

<u>09/25/10</u>	<u>Foster</u>
Test Date	Arresting Officer
<u>Dawson, Danny N.</u>	<u>5437W</u>
Driver's Name (Last, First, Middle)	Arresting Officer's Badge #

Operational Checklist

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

Observer Name (Print):

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

Timepiece used: ___ Instrument X Wristwatch ___ Other: _____

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

X Enter the operator's information and code.

X Enter the 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: _____

<u>50-001444</u>	<u>Midlands Center</u>
Instrument Serial #	Location
<u>AVERY SMITH</u>	<u>A/S</u>
Operator's Name (Print)	Operator's Signature
<u>FORENSICS</u>	<u>540177</u>
Operator's Department	Operator's License

Midlands Center Department of Corrections

Breath Test Operator's Report

Name: Danny Dawson Weight: 150 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: 150 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, A.W. "Temperature Fluctuations During Exhalation in Breath Alcohol Testing." *J of Ethanol Studies*, 2010, 1, 24-43.
- Norton, A., Stillman, E., and Cullen, M. "Variations in the Blood:breath Partition and Breath Alcohol Testing." *American Medical Journal*, 2006, 54, 303-17.
- Norton, A., Stillman, E. and Cullen, M. "Further studies into the Blood:breath Partition Ratio." *American Medical Journal*, 2007, 55, 312-26.
- Tuchler M. and Norton, A. "Measuring Breath Alcohol for Use in Legal Proceedings: Variability of Breath-Test Instruments." *American Medicolegal Journal*, 1998, 26, 1478-91.
- Yao, S. and Norton, A. "The Blood:breath Partition Ratio in Native Japanese." *Intra-Canadian Medical Journal*, 2003, 45, 124-52.

CURRICULUM VITAE
LESLIE ROMAN, P.E.

EDUCATION

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

EXPERIENCE

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

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

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

PROFESSIONAL CERTIFICATIONS

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

CONTINUING EDUCATION

2010 Applied Vehicle Dynamics – Society of Automotive Engineers
2009 Commercial Vehicle Accident Reconstruction
2008 Rollover Criteria for SUV's in Emergency Steering Maneuvers
2007 Evaluating a Nighttime Driver Response
2007 Human Factors in Traffic Accident Reconstruction – University of North
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 tire marks are visible on the roadway.



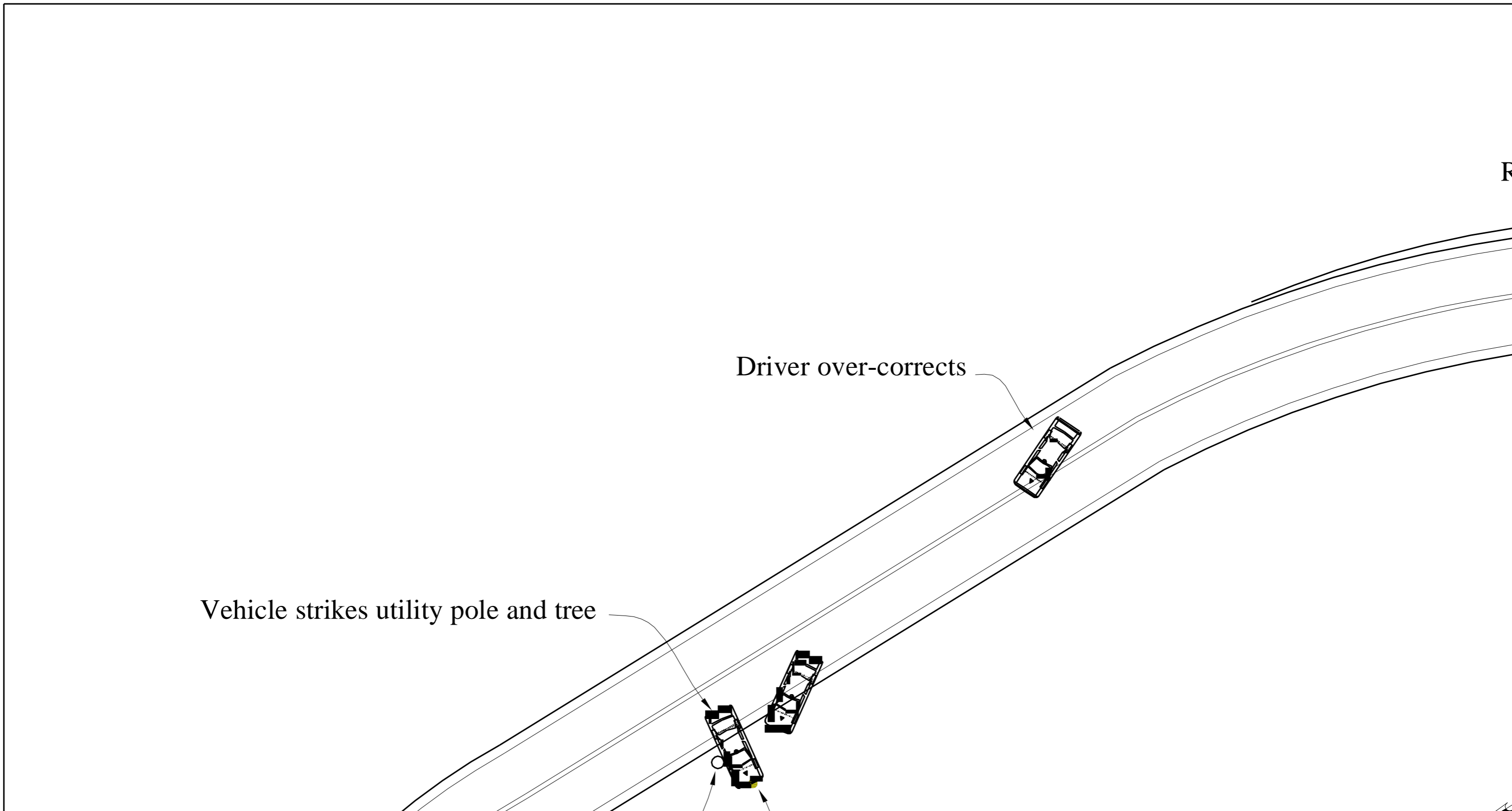
Photograph 0013: Several trees alongside the road in the area of the collision were cut down after the incident.



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



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



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 tire marks 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.

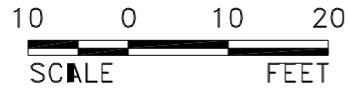
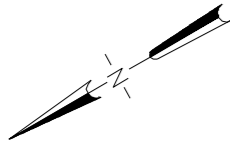
Leslie Roman, PE, ACTAR
Senior Forensic Engineer

Attachments

Leslie Roman
Expert Accident Reconstruction Inc
100 Main Street
Midlands Center, Midlands

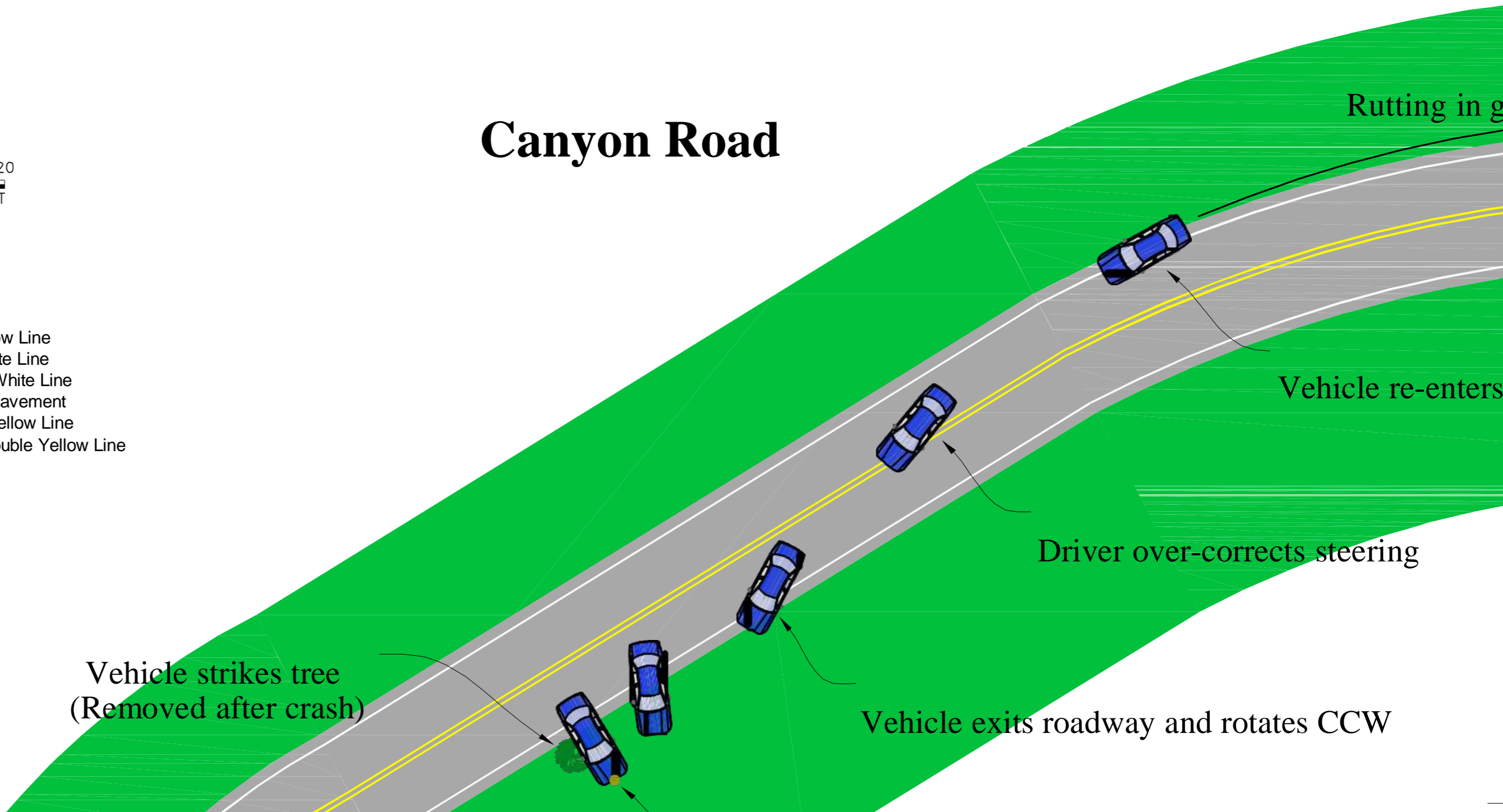
DATE	
DRAWN BY	LR
APPR. BY	
DRAWING NAME	CSD
SHEET	1 of 2

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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



Rutting in g

Vehicle re-enters

Driver over-corrects steering

Vehicle strikes tree
(Removed after crash)

Vehicle exits roadway and rotates CCW

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:

$$V = \text{Square root of } (30 \times D \times CF) \qquad \text{Equation 1}$$

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:

$$V = \text{Square Root of } (30 \times D \times CF \times 0.6) \qquad \text{Equation 2}$$

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:

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

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:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Drag Factors

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

Use of Tables to Determine Drag Factor

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

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

Use of Drag Sled to Determine Drag Factor

A drag sled is 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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\$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

\$6.00

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

We regret to inform you that we no longer serve non-alcoholic beer

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

1 **AFFIDAVIT OF LONDON BENNETT**

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

3 My name is London Bennett. I have lived for many years in Midlands Center, Midlands. I
4 live at 5234 Canyon Road. The Bennetts are the only ones who have ever occupied that ten-acre
5 stretch of land. My family is all gone now except for my dog, Peaches, and I keep a good eye on
6 the place. My family made a lot of money in the film industry and, since I'm the only one still
7 living, I get to live a pretty comfortable and charmed life. I have a little garden, and I love to sit on
8 my porch and paint. Canyon Road is pretty quiet, and my house is the only one that overlooks the
9 road. I see lots of deer sniff around the road, but Peaches is pretty good at scaring them off and
10 what her bark doesn't scare away, my shotgun turns 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. The road doesn't have a lot of traffic, 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 Road
23 a lot late at night after the bars in Midlands Center shut down. So instead of changing the speed
24 limit, the City just ordered more cops to patrol the road in order to catch drunk drivers. I still see
25 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 every
28 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

33 hit 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
43 someone had turned a million buckets of water over all at once. Peaches started barking like crazy.
44 I don't know if it was the lightning, the thunder, or an animal, but she was looking pretty intensely
45 in the direction of the road. I looked up to see if I needed to grab my shotgun since I've seen deer
46 near the road on other occasions. But instead of an animal, I saw a car careening down the road. I
47 tried to yell at them to slow down, but I don't think they could've heard me. The car was going
48 way too fast for the weather, probably at least 20 mph or more above the posted speed limit, but I
49 wasn't clocking it. I've seen cars make it through going that quickly before, but it seems like a
50 pretty dangerous decision to me. All of a sudden the car jerked to the right and then swerved back
51 with a quick turn to the left and next thing I knew, it was spinning across the road and into a tree.
52 The first thing I did was call the cops. I knew there was an officer nearby and I don't know why
53 that cop didn't see or stop this car or what the cop was doing, but I hoped someone would get to
54 the road fast. I told the 911 operator my address and that I had witnessed a crazy driver go flying
55 off the road. I also told them that they are supposed to have cops on the road to stop people
56 from speeding and now there were probably even more people dead because nobody would listen
57 to me about adding the guardrail all the way down the curve. The dispatcher said they would send
58 someone out. When I hung up, I ran straight down to the road to 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 going,
61 but it looked like they were speeding pretty fast and at that rate, hitting a pole and a tree. I expected
62 everyone in the car to be dead. I was relieved when I got to the car and noticed a person wandering
63 around in circles in the road muttering, "Oh my God! Oh my God!" over and over again. I heard
64 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
77 two people in the car. At first I thought maybe one of them was Jack or Ginger, but as I got closer,
78 I recognized Taylor Hopson in the backseat, slumped over. My heart dropped. I have known
79 Taylor since the Hopsons moved to Midlands Center. Taylor's dad does extra work around my
80 house sometimes. I ran at that point to check on Taylor and the other passenger, whom I then
81 knew was definitely Vanessa Sullivan, Taylor's best friend. Even though Danny claimed Vanessa
82 was okay, when I got to the car, Vanessa definitely wasn't. She wasn't responding at all. Taylor was
83 starting to stir, but Vanessa's eyes were closed and no matter what I did to shake her, she wouldn't
84 respond. I put my hand under her nose to see if I could feel air. Instead, I felt nothing. I realized
85 Vanessa wasn't breathing. I yelled for Danny to come help, but Danny just said, "No, Vanessa is
86 fine. She has to be fine, or my life is over." I wanted to do CPR, but I was not sure how to get her
87 out of her 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
96 fuss. I did mention that Peaches had run toward the road just before the accident, but Peaches is

97 only 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-
103 0015, which were shown to me by attorneys in this case and which I agree are accurate
104 depictions of images of Canyon Road and the crash scene contained therein. I am not familiar
105 with any other 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.
107 I also swear or affirm to the truthfulness of its content. Before giving this statement, I was told
108 it 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
110 to me until the moment before I testify in this case.

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116

_____/s/ LB_____
London Bennett

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

_____/s/ SS_____
Sarah Shelton, Notary Public

AFFIDAVIT OF DANNY DAWSON

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

My name is Danny Dawson. I am currently a senior at Calkins College in East Hill, Midlands. I'm majoring in urban studies, and linguistics is my minor – not a typical combination, but I find both subjects fascinating. It's pretty easy to pick an interesting major when you can do anything you want. The pre-law advisor told me that I could pick any major I wanted—you see, I've been set on heading to Calkins Law since I was in the second grade and starred as an attorney in my 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 turn in a solid LSAT performance. And I was halfway there; the A- I picked up in sociolinguistic theory is the only thing that's kept me from a 4.0.

Before going off to college, I spent my high-school years in the northern suburbs of Midlands Center. After my senior year of high school, I swore I would never go anywhere near Midlands Center again. I was a finalist for a scholarship to Pennington University. Everything changed on senior prom night. My friends and I had used our fake IDs to get into Chuggie's that night after leaving the dance. I guess it wasn't the smartest idea, but senior prom only happens once, right? I was on my way home when a police officer pulled me over. Getting pulled over was no surprise in Midlands Center; the local police treat driving while a teenager like it's a felony. That night, the officer made me do all sorts of tests and then booked me for a DUI. I'll admit I'd had a couple of beers at the bar, but that was way earlier in the evening. There's no chance that alcohol was still in my system.

Since I was 18 years old and did not want the charge on my record forever, I pleaded the charge down to reckless driving and went through a pre-trial diversion program. My arrest record was wiped clean after I did 100 hours of community service and wore an ankle bracelet that ensured I did not go into any 21-and-over bars for a year. Unfortunately for me, Pennington University must have gotten wind of the charges and I didn't get the scholarship. Goodbye elite university, hello Calkins College. Pretty high price to pay for a dumb decision. My parents were livid, and I swore I'd never touch alcohol again before I turned 21; it just wasn't worth the risk.

I was pretty unhappy about having to stay in Midlands then, but I tried to make the best of it. I focused my efforts on academics and making Calkins a better place, and I really came to love it there. I was vice-president of student government my junior year and did some writing for the newspaper. We also have the best basketball team around and I love to camp out with friends and go crazy at the games. I also had scheduled a meeting for the first week of October 2010 with a

33 major donor to pitch a great idea for a new community-service organization. But, as you probably
34 know, my life is kind of on hold after what happened to Vanessa last September. I'm taking some
35 time off from school and gathering my thoughts. I feel like I'm constantly on trial, whether it's part
36 of a court proceeding or in the media. I guess that's what happens when you're behind the wheel the
37 night that the daughter of the district attorney tragically loses her life.

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

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

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

65 once I knew I was coming into town. It made sense that I would just have my aunt drop me off for
66 my interview downtown, and I figured I'd just meet up with Vanessa and Taylor afterwards. Taylor
67 does not go to school with us, but Vanessa told me that Taylor was also planning to apply to Calkins
68 Law, so I figured that Taylor would be pretty cool to meet.

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

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

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

95 After dinner, I went to the bar and chatted with Jordan for a while. I had enjoyed chatting
96 with Vanessa and Taylor, and Taylor seemed pretty psyched about being possible law-school

97 classmates, but I figured the two of them would want to catch up on old times and I wanted to
98 compliment Jordan on a great job on the opening set. As soon as I got to the bar, Jordan and I
99 had a shot and chased it with a beer. I still wasn't too worried about the drinking because it did
100 not look like I was driving, and the night was still young; it could not have been later than 9:30 at
101 that point.

102 A little after 10 p.m., I made my way back over to Taylor and Vanessa's table to see if we
103 could move a little closer to where Chatterbox was going to perform. The two of them agreed and
104 we started to chat a bit more. Somebody sent a drink over for Vanessa since she was the birthday
105 girl, but she did not seem interested in drinking it. Taylor and I both had a sip to finish it. Our
106 server came by with drinks on the house for my companions and me. I think Jordan sent them over.
107 My whiskey-and-ginger-ale was delicious, and I was sipping away on it when Chatterbox took the
108 stage. I was psyched, and I think I spilled half of my drink from jumping up and down in excitement.

109 Chatterbox was better than ever before. Everyone looking at me must have thought that I
110 was dancing like I was drunk. I was maybe a little tipsy, but I am really just a terrible dancer. I am
111 so uncoordinated; you can just ask Jordan. I try to throw darts every time I am at the bar, and
112 Jordan usually takes them away when the place gets crowded because my aim is terrible even when I
113 am sober. Fortunately, I didn't try to throw any darts that night. The bar was way too crowded for
114 that.

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

126 I was feeling pretty good at this point in time, so instead of exiting the backstage area
127 toward the bar, I found myself walking onto the stage. Well, when in Rome... I grabbed a guitar
128 and started strumming. Everybody was cheering like crazy for me. There's no way I could have

129 played so well if I was drunk at the time; I'm bad enough when I'm sober. Some big guy – I guess
130 it was a roadie or a bouncer or something – grabbed hold of me, but Vanessa was behind him and
131 told him to lay off and apologized for me. I don't know why, the crowd loved it. The crowd
132 cheered again for me as the guy helped me get down from the stage. It was awesome.

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

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

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

160 Taylor was pretty wasted when we got to the car and started complaining about how I should

161 not be driving in the rainstorm and how I had already made us stay out too late. I was pretty
162 unhappy with Taylor since I think Taylor was supposed to be the designated driver. Taylor started
163 telling me how Vanessa and Taylor promised Vanessa's mom they would be home by 1 a.m., that it
164 was already 12:45 a.m., and that the drive would take twenty minutes. I said that I could do it in ten.
165 Taylor told me there was no way I could make that happen with all of the cops on the road.

166 Not one to back down from a challenge, I remembered the radar detector in Vanessa's car,
167 pulled it out of the glove compartment, turned it on, and took off. I figured nobody would pull me
168 over for having an illegal radar detector at that time of night, and I was going to make it to Vanessa's
169 house in ten minutes. I knew from being around the Midlands Center bar crowd over the summer
170 that Canyon Road is the most popular route to take if you are trying to avoid cops. I remember
171 Lyons telling me it was more heavily patrolled now, but I think Sam was just looking to maintain a
172 regular fare. Either way, it wasn't like I was trying to avoid a DUI. Even if I got pulled over, I
173 figured Vanessa's mom could take care of a little speeding ticket.

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

186 We couldn't have been more than a couple miles from Vanessa's house when we got to
187 the big curve on Canyon Road. Taylor was still being pretty loud in the back seat, and I could not
188 wait to get Taylor out of the car. I knew this part of the road was especially dangerous because a
189 few people had run off the roads and hit the unguarded trees before. Vanessa was also worried
190 about me going too fast so she said she would just call her Dad and tell him we were almost there
191 but the rain was going to make us a few minutes late. The whole time Vanessa was trying to talk
192 to her parents, Taylor would not shut up and kept making the radio louder. The radio, Taylor's

193 yammering, and the ridiculously loud music were really fraying my nerves. When I got close to
194 the big curve, I saw that the front-porch light was on at a house to my left, which seemed odd at
195 that time of night. Vanessa started yelling at me about something, but I wasn't sure what because
196 I couldn't hear her over all the noise in the car. My eyes were back on the road a few seconds
197 later when I saw something coming at us. I'm pretty sure it was a deer or something; there are a
198 lot of them on those back roads but the rain made it so hard to see. Whatever it was, it wasn't
199 actually on my side of the road, but it had to be moving toward my lane. I had to make a split-
200 second decision. I steered the car to the right a little harder than I should have, and I started to go
201 down the embankment on the outside of the curve. I tried to pull us back onto the road and lost
202 control. The car went across both lanes of traffic and before I knew what was happening, the car
203 hit a tree or a pole or something.

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

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

224 After seeing Ms. Sullivan, I knew that nothing good would come of it. I was right. The

225 officer at the scene threw me in the back of the police car, and the next thing I knew, I was at the
226 police station being booked on a bogus murder charge. My mind was reeling at that point. The
227 two officers at the station grabbed me roughly and tossed me into a holding cell like a bag of
228 potatoes.

229 I have no idea when driving a little fast and swerving away from a deer in the road on a
230 rainy night became murder, but I may never get to go to law school to find out. I was keeping
231 pretty close track, and I don't think I had more than a drink an hour that night. Like I've said
232 before, I know that a drink an hour is perfectly fine for me – always has been and always will be
233 unless a vindictive, malicious prosecutor comes after me. I feel worse than anyone about Vanessa
234 Sullivan's death, but her mom doesn't need to ruin someone else's life because of the horrible
235 accident on the night of Vanessa's 21st birthday.

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

248 Of the available exhibits in this case, I am familiar with the following: Bar Tab #1 of
249 Danny Dawson and Bar Tab #2 of Danny Dawson, which were signed by me on September 24-
250 25, 2010; Bar Tab #3 of Vanessa Sullivan, which Vanessa signed in my presence on September 25,
251 2010; Accident Photos 0001-0015, which were shown to me by my attorneys and which I agree are
252 accurate depictions of images contained therein; the Breath Test Operator's Report, which I
253 reviewed and signed on the date indicated; and the Voicemail Message, which was provided to me
254 by my attorneys. I can confirm that the speaking voice on the Voicemail Message belongs to
255 Vanessa Sullivan, and that the Voicemail Message is the recording of the call made by Vanessa that
256 I reference in this affidavit. I am also familiar with the Chuggie's Drink Menu and, except where

257 specifically noted elsewhere in my affidavit, I have no reason to believe that any of the drinks
258 served at Chuggie's on September 24 or 25, 2010, either omitted a component listed or added a
259 component not listed with the corresponding drink on the drink menu. I am not familiar with any
260 other exhibits or any affidavits other than my own.

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

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/s/ DND

Danny N. Dawson

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

/s/ SS

Sarah Shelton, Notary Public

1 **AFFIDAVIT OF RYAN FOSTER**

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

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

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

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

32 By 1 a.m., we were still in the middle of a torrential downpour, and visibility was not getting

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

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

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

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

65 was apologizing for not doing a better job of driving the car and kept blaming the rain. Dawson
66 kept saying, “Vanessa can’t die because of me; she just can’t!” Dawson said that Dawson really did
67 not know what happened out there on the road. Then Dawson muttered something about
68 needing another drink, and it hit me that maybe Dawson’s speech was a little slurred. I hadn’t
69 really noticed it before, but it made sense, especially given that Dawson had driven a car off the
70 side of the road. I asked Dawson if Dawson wanted the EMTs to see if Dawson was injured, but
71 Dawson said no.

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

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

93 I started by having Dawson say the ABCs backwards starting with the letter “Q.” While R
94 and S are letters, they are not before the letter Q, and they are certainly not before the letter M,
95 which is where Dawson put them. At that point, I decided it was time for a standard physical field
96 sobriety test. I was pretty sure what the result would be. Thankfully the rain had stopped, but I

97 still wanted to get away from the road. We went to Bennett's driveway and I started the standard
98 battery of field sobriety tests, which I have performed and interpreted hundreds of times, so I'm
99 pretty good at interpreting results. All observations and conclusions I'm writing about are based
100 on my extensive training and experience.

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

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

114 Then I went on to the second test, in which Dawson had to walk heel-to-toe in a straight line
115 and follow my directions. Dawson stumbled several times and kept blaming it on the wet pavement,
116 but clearly failed that test. Dawson tripped every time I tried to get Dawson to turn around and
117 could barely walk in a straight line without falling. The ground was kind of slick. I almost fell
118 myself, but I'm still pretty sure Dawson was walking like Dawson was drunk, not like Dawson was
119 slipping. Finally, for the third test, I had Dawson stand on one leg and count aloud starting at one
120 thousand. Dawson complained again about the slick ground and kept using both arms to balance.
121 Dawson stopped counting several times and had to hop to keep from falling. All of these were signs
122 of intoxication. Dawson had failed all three tests, so I was confident that Dawson was drunk. Of
123 course, Ms. Sullivan was yelling that she was going to need more evidence for her murder
124 prosecution. Officer Brady had arrived on the scene at that point, so I asked Brady to keep the scene
125 secure until I got back, and I drove Dawson to the station myself.

126 It took me about ten minutes to get to the station. When I arrived at the station with
127 Dawson, I helped Dawson into the station and onto a bench. I quickly briefed Captain Morrison
128 on the situation, but it seemed like Morrison had already been brought up to speed. Once they had

129 checked Dawson in, Captain Morrison and I came out and helped Dawson back to a holding cell.
130 Dawson was a mess at this point, even worse than at the scene – trying to pull away from us as we
131 helped Dawson up, yelling angrily, and stumbling all over the place. Officer Ingman (the junior
132 officer on duty) and I managed to get Dawson back to the first holding cell after some effort. Soon
133 Smith and Ingman came and took Dawson, presumably for the Intoxilyzer screen. I do not know
134 what further tests, if any, were actually administered, and do not know the results. I did not want
135 anyone else’s tests to influence the objectivity of my firsthand observations.

136 I returned to the scene immediately after that and went into the house to speak with Bennett.
137 Bennett seemed all out of sorts and kept talking about how we should have lowered the speed limit
138 to 25 on Canyon Road, but it was pretty clear from my talk with Bennett that Dawson’s drunk
139 driving caused the accident. I could barely believe how intoxicated Dawson was at the scene. I guess
140 the rain must have made it hard to see how horribly Dawson was driving when the car went past me
141 earlier.

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

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

153 My FCT report, which contains all of my conclusions about the accident reconstruction I
154 completed for this crash, confirms this. As you can see from my report, Dawson drove off the
155 right side of the road and made a rut of well over 100 feet. Then Dawson swerved back across to
156 the road and hit a utility pole and tree that were a couple of feet off the other side of the road. I
157 calculated that Dawson was driving 66 miles per hour when Dawson first lost control of the
158 vehicle. That’s more than 30 miles an hour faster than the posted speed limit. Driving that speed
159 would be unbelievably reckless given the darkness, heavy rain, and reduced visibility due to weather
160 conditions. I would say going that fast would essentially be a suicide attempt if Dawson was also

161 drunk.

162 I understand that Leslie Roman, who analyzed the crash for the defense, concluded that
163 Dawson was only barely over the speed limit. Roman generally does good work, but Roman's
164 assumptions on this crash are mistaken, as you can see from the differences between our reports. I
165 agree with Roman that the article by Windsor and Strasberg entitled "Vehicle Accident
166 Reconstruction" is the only treatise worth using in the field. I used the methods and drag sled
167 described in the Windsor and Strasberg primer. My calculations and conclusions regarding the
168 vehicle's speed are completely explained by the Windsor and Strasberg primer, and I relied upon
169 and agree with the information contained within the primer in its entirety. I relied on no other
170 source in making my calculations.

171 I also understand from Roman's report that Dawson is claiming that a deer was in the car's
172 way. I interviewed three witnesses on the night of the crash and none of them mentioned seeing a
173 deer that night. This includes Dawson, who kept saying that Dawson had no idea why the car
174 behaved in the way it did and gave no explanation for what happened. To be fair, I did once see a
175 deer in that area about a year ago, but it's not like they are always on the road or anything. Based
176 on the statements I collected immediately after the accident, and the lack of any other evidence to
177 confirm that a deer was there that night, I do not think there was a deer on the road. I'm not
178 surprised that Dawson claims to have seen one, though – anything to steer blame away from where
179 it belongs, on Dawson.

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

183 Of the affidavits and exhibits in this case, I am familiar with the following: Midlands FCT
184 Officer Report, FCT Diagram, and Accident Photos 0001-0007, all of which I created; Bar Tab
185 #1 of Danny Dawson, Bar Tab #2 of Danny Dawson, and Bar Tab of Vanessa Sullivan, which
186 were collected from Chuggie's by Officer Baker and Officer Yarbough; the article "Vehicle
187 Accident Reconstruction: A Primer," which I relied upon in coming to my conclusions regarding
188 accident reconstruction; Curriculum Vitae of Leslie Roman, Expert Report of Leslie Roman,
189 Expert Report of Leslie Roman – Crime Scene Diagram, and Accident Photos 0008-0015, which
190 were created by Leslie Roman and provided to me by counsel; the Voicemail Message, which was
191 obtained with the consent of the Sullivan family; my own affidavit; and the affidavits of London
192 Bennett, Leslie Roman, Taylor Hopson, Jordan James, Pat Lawrence, and Sam Lyons, which I

193 was provided by counsel.

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

199 _____ /s/ RKF

200 Ryan K. Foster

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

202 _____ /s/ SS

203 Sarah Shelton, Notary Public

1 **AFFIDAVIT OF TAYLOR HOPSON**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

158 Danny was worried about taking the main roads back, in case we saw cops. Vanessa's mom
159 knows every cop in town and getting pulled over would be a disaster for her too, so I tried to direct
160 Danny on how to get to Vanessa's house on the back roads. By the time we got about two miles

161 off the main road, I knew we were in serious trouble. Danny was swerving all over the place and
162 going way too fast. I tried to tell Danny to slow down – the speed limit was 35 MPH, and it felt like
163 we were going at least 80 MPH – but Danny just started yelling at me for being annoying and told
164 me to stop being a nag. Canyon Road runs all the way through town, but this part of it is actually
165 off the beaten path. There are a lot of trees around the curve and the guardrails don't extend very
166 far, so if you take the curves too quickly, you can easily end up going off the road into the woods.
167 Vanessa and I actually had two people from our high school get killed there when we were growing
168 up. Everyone in town calls it the Death Zone. I tried again to tell Danny to slow down because not
169 only was the two-lane road getting curvier, it was starting to really rain hard. I told Danny that I
170 was scared, and that turned out to be a huge mistake. Danny responded that Danny was going to
171 show me how Danny could really drive. I said I wasn't trying to be a nag, and that I just didn't
172 know if Danny could see the lane change, but it didn't make a difference. Danny told me to go
173 back to singing and said that all my talking was distracting.

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

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

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

193 that's the last thing her parents, or any of us, will ever hear her say.

194 After the crash, it is hard to remember things very clearly. I don't think I passed out but I
195 don't really remember anything from that point on very well. I don't even know how I got out of the
196 car, but I do remember lots of blood everywhere. Everything was red and I was soaked from the
197 rain. There were flashing blue lights all around us, and the sound of horns. Someone was talking to
198 me and telling me not to move. The next thing I remember was waking up in a hospital room. My
199 mom and dad were there. I asked them if Vanessa was okay and my mom just started crying and
200 shaking her head. I didn't ask about Danny because I didn't care if Danny was dead. I know that
201 sounds horrible, but this was Danny's fault.

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

216 Of the available exhibits in this case, I am familiar with the following: Bar Tab #1 of Danny
217 Dawson, Bar Tab #2 of Danny Dawson, and Bar Tab #3 of Vanessa Sullivan, which were signed
218 by the indicated parties in my presence on September 24-25, 2010; Accident Photos 0001-0015,
219 which were shown to me by attorneys and which I agree are accurate depictions of the images
220 contained therein; and the Voicemail Message, which was provided to me by attorneys. I can
221 confirm that the speaking voice on the Voicemail Message belongs to Vanessa Sullivan, and that the
222 Voicemail Message is the recording of the call made by Vanessa that I reference in this affidavit. I
223 am also familiar with the Chuggie's Drink Menu and, except where specifically noted elsewhere in
224 my affidavit, I have no reason to believe that any of the drinks served at Chuggie's on September 24

225 or 25, 2010, either omitted a component listed or added a component not listed on the drink menu.
226 I am not familiar with any other exhibits or any affidavits other than my own.

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

235 _____ /s/ TJH
236 Taylor J. Hopson

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

238 _____ /s/ SS
239 Sarah Shelton, Notary Public

1 **AFFIDAVIT OF JORDAN JAMES**

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

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

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

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

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

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

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

61 The night that poor girl died, I was working at the bar, both serving and being the opening
62 musical act. In fact, I started serving at around noon. Danny came in pretty early that day and said
63 something about a job interview. I tried my best to listen, but I was pretty busy that afternoon
64 training a new server for the evening shift. Danny was drinking some that afternoon, but Danny told

65 me that Danny was not driving anywhere that night, so I was not too worried. Apparently Danny
66 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 Danny's
71 table that evening and I don't remember anyone else getting them drinks. I know that Danny came
72 up to the bar with a friend, and I gave those two a shot and a beer because that's what I do to keep
73 tips high for loyal customers. I also think someone sent a round of drinks to Danny's table because it
74 was the birthday of the girl who passed away. The only other drink I remember was when I did a
75 shot with Danny myself. I would estimate that Danny had about two or three more drinks. Of
76 course, Danny bought probably at least twice that much alcohol, but the other half was sent to
77 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, but
79 not because Danny was drunk – in fact, Danny's speech wasn't slurred at all. I was worried because
80 Chuggie's was so crowded. You see, Danny cannot even throw darts straight when Danny is sober,
81 so it's a bad idea for Danny to be tossing around sharp objects in a crowd. I diplomatically took the
82 darts away, and it was no big deal. When I took the dart, Danny laughed, "Are you sure that dart
83 board's not moving? I guess I'm just way off tonight, Jordan." Maybe Danny was already buzzed at
84 that point, but I could not really be sure. I remember Danny getting up and strumming the guitar,
85 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

107 started to die down a bit. Danny came up and asked me what the damage was. I handed Danny the
108 receipt and Danny signed it and left me a big tip, a little bit more than normal even for Danny. I do
109 vaguely remember another patron asking if Danny wanted a shot for the road, but I can't say
110 whether or not Danny took him up on the offer. Danny wasn't slurring words or stumbling from
111 what I saw.

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

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

124 Of the affidavits and exhibits in this case, I am familiar with the following: Bar Tab #1 of
125 Danny Dawson, Bar Tab #2 of Danny Dawson, and Bar Tab #3 of Vanessa Sullivan, which were
126 provided by me to the Midlands Police Department and which I can identify as standard Chuggie's
127 receipts. I am also familiar with the Chuggie's Drink Menu and, except where specifically noted
128 elsewhere in my affidavit, I have no reason to believe that any of the drinks served at Chuggie's on
129 September 24 or 25, 2010, either omitted a component listed or added a component not listed on
130 the drink menu. I am not familiar with any other 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 own. I
132 also swear or affirm to the truthfulness of its content. Before giving this statement, I was told it
133 should contain everything I knew that might be relevant to my testimony, and I followed those
134 instructions. I also understand that I can and must update this affidavit if anything new occurs to me
135 until the moment before I testify in this case.

136
137
138

_____/s/ JJ_____
Jordan James

129

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

130

/s/ LJK_____

131

L. James King, Notary Public

1 **AFFIDAVIT OF SAM LYONS**

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

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

8 My usual pickup spot during the night is at Chuggie’s. I worked there waiting tables one
9 summer, so I know the owner, and I’m the cabbie of choice for the more responsible falling-down
10 drunks that frequent the establishment. I have my share of regulars that depend on me to get them
11 home after a few too many. They make a mess of the back of my cab occasionally, but they always tip
12 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 burger and
14 a couple of cups of coffee while it was still too early for anyone to be too drunk to drive.
15 Chuggie’s does a good lunch business during the day, and their coffee is surprisingly good – and
16 they have a liquor license, so you can get your coffee Irish any time 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 James, the
19 bartender, was working the bar and training a new server named Pat Lawrence. Danny Dawson
20 was there when I arrived, and I said hello. Danny is one of my frequent flyers in the cab, especially
21 during the summer. Danny tends to be very talkative after having a few too many, and as a result,
22 let’s just say Danny had a lot of occasions to be very talkative in my cab over the few months prior
23 to that night. I wouldn’t say we’re friends, but Danny has always tipped me well.

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

33 large Colombian coffee, straight, no chaser.

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

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

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

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

62 At about 11 p.m., I came back inside Chuggie’s to use the restroom, and then returned to the
63 counter to get another cup of coffee for the road. When I got to the bar, Danny was standing there,
64 obviously having ordered something and looking anxious to get back to the band. Danny grabbed

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

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

94 I read about the accident in the paper the next day. The weather was pretty bad that night,
95 and from what the paper said about where the crash happened on Canyon Road, they were on a
96 pretty bad stretch of road in a wooded area. The part of Canyon Road where they crashed has a

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

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

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

117 Of the exhibits in this case, I am familiar with the following: Accident Photos 0010-0015,
118 which were shown to me by attorneys in this case and which I agree are accurate depictions of
119 images contained therein of Canyon Road. I am also familiar with the Chuggie's Drink Menu and,
120 except where specifically noted in my affidavit, I have no reason to believe that any of the drinks
121 served on September 24 either omitted a component listed or added a component not listed on the
122 drink menu. I am not familiar with any other exhibits or affidavits other than my own.

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

128

129

_____/s/ SL

130

Sam Lyons

131

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

132

_____/s/ SS

133

Sarah Shelton, Notary Public

1 **AFFIDAVIT OF ASHLEY NORTON**

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

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

8 I have testified in over 100 cases regarding the use of alcohol tests, most of which
9 involved the use of various models of the Intoxilyzer breath alcohol content analysis machine. In
10 each of those cases, I testified for the defense. I have been hired by the defense in this case to
11 provide my expertise regarding breath alcohol and blood alcohol concentrations and the use of
12 breath alcohol concentration (BrAC) analysis machines to determine such concentrations, and to
13 analyze the evidence in this case regarding Danny Dawson's consumption of alcohol and resulting
14 breath and blood alcohol concentration on September 25, 2010. I am charging my standard rate
15 of \$500/hour for my time and expertise; to date, I have worked 20 hours on this case, for a total
16 of \$10,000 in expert fees. I will be paid an additional flat fee of \$8,000 if I am called to testify in
17 court.

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

25 In the early 20th century, Dr. E.M.P. Widmark developed a formula to determine the number
26 of drinks an individual had consumed based on six other variables. These variables were 1) the
27 amount consumed, 2) the body weight, 3) the blood alcohol concentration (BAC), 4) the alcohol
28 elimination rate, 5) the time since the first drink, and 6) the fluid ounces of alcohol per drink. At that
29 time, the volume of distribution was assumed to be a constant, but we'll look at that in a moment.
30 Of course, this equation can be used to solve for any of the variables, assuming that six are known.
31 Dr. Widmark later observed that this equation did not apply equally to men and women, so he
32 developed a confidence interval that took this variance into account, to the best of his ability and the

33 available science. Unfortunately, Dr. Widmark did not have all of the research that we have today.
34 His formula provides a good estimate, but with a margin of error that may be several drinks wide.

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

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

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

55 Third, one must consider the first-pass metabolism. The rate of elimination of alcohol
56 matters significantly when drinks are consumed over an extended period of time. Before alcohol is
57 processed by the small intestines, it is first metabolized in the stomach by the enzyme alcohol
58 dehydrogenase (ADH). ADH, because it is found in the stomach, drives the primary process for
59 alcohol elimination. Although other enzymes are capable of doing this, studies show that ADH is the
60 most important enzyme in the body's processing of alcohol.

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

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

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

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

85 I can say to a reasonable degree of medical certainty that Dawson's BAC at the time of the
86 accident was around 0.08. Of course, my determination would change if it turned out that Dawson
87 had more to drink than Dawson told me or if the drinks were stronger than the standard drink (14
88 grams of alcohol per drink). So if Dawson's true blood alcohol concentration was below the legal
89 limit, how could the police analysis be so far off? After all, the final measurement is over twice the
90 legal limit. There are several things that help explain this.

91 Most breath-testing devices will render a cumulative reading of all alcohols in the body
92 (ingested and auto-generated). This means that other alcohols, like isopropyl alcohol, will be
93 measured as if it was ethanol. Endogenous isopropyl alcohol is part of the physiological reaction
94 to the toxicity of acetone or ketone buildup. As the ketone level rises, the body uses certain amino
95 acids to create enzyme pathways, which remove or convert the ketones into safer compounds.
96 Isopropyl alcohol is one of those safer compounds. One pathway uses the enzyme alcohol

97 dehydrogenase (ADH). This is the same enzyme the liver uses to break down ethanol into
98 acetaldehyde. Both of these pathways can cause higher BrAC readings, even if the individual being
99 tested has not had a single drink. This is the same type of effect that persons with hypoglycemia, a
100 condition involving low blood sugar levels, might experience. If Dawson had low blood sugar, the
101 results could be highly skewed, too. The food that Dawson ate was consumed around six hours
102 before the crash, plenty of time for digestion to occur and for Dawson's blood sugar to drop again.
103 The Intoxilyzer 8000, which was used in this case, does a fairly good job at screening out
104 substances that are not ethanol, but no machine is perfect.

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

116 It cannot be stressed more that the breath-to-blood ratio is perhaps the most important
117 factor in determining the validity of a BrAC result. All of the studies I have done, as well as those
118 studies done by other doctors around the United States, two studies in the United Kingdom, as well
119 a study in Japan that I participated in, demonstrate that an individual's true ratio can vary from
120 900:1 all the way to 3400:1. This range has staggering implications for all breath alcohol test
121 machines. If Dawson had a true ratio on the lower end of that spectrum, then the BrAC result
122 obtained that night would need to be cut in half. If Dawson's true ratio were 1100:1, then
123 Dawson's true blood alcohol concentration would be 52.38% of the BrAC obtained. That is
124 52.38% of 0.19, which is just below 0.1. Even so, if Dawson's ratio were lower, which I very much
125 doubt, Dawson would be over the legal limit.

126 There is also the temperature of Dawson's breath to consider. The Intoxilyzer 8000 uses a
127 value of $34.2^{\circ} \pm .2$ C. A variation of just 1° C can skew the results by as much as 10% by making the
128 alcohol more volatile and shifting the partition ratio further away from 2100:1. It should be noted,

129 however, that Dawson's BrAC measurement was high enough that temperature probably played a
130 negligible role, if indeed it played a role at all.

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

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

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

156 Now, am I saying that Dawson had a blood alcohol concentration of less than 0.08?
157 Absolutely not. In my professional medical opinion, it seems inarguable to me that Dawson was
158 too intoxicated to drive. However, based on the amount of alcohol that Dawson consumed, my
159 calculations show that Dawson should not have been anywhere near 0.19. I don't think Dawson is
160 lying about the number of drinks Dawson had, but I suspect the drinks were stronger than the

161 amount we use to calculate blood alcohol concentration (14 grams of alcohol per standard drink).
162 Was Dawson intoxicated? Yes. Was Dawson grossly intoxicated? No. Dawson may not even
163 have felt much effect; one of the symptoms of intoxication at that level is the underestimation of
164 impairment. So why did the Intoxilyzer show such a high reading? There are probably several
165 factors. I would say that the main problems with the BrAC reading that we have for Dawson that
166 night have to do with the partition ratio and the presence of mouth alcohol.

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

172 Of the available exhibits, I am familiar with the following: Bar Tab #1 of Danny
173 Dawson, Bar Tab #2 of Danny Dawson, and Bar Tab of Vanessa Sullivan; Intoxilyzer 8000
174 Operator's Checklist; BrAC testing form; BrAC results; the article "Alcohol Ingestion and the
175 Human Body," which I relied upon in reaching my conclusions in this case; and the Curriculum
176 Vitae of Ashley Norton, which I wrote myself. I am also familiar with the Chuggie's Drink Menu
177 and, except where specifically noted in my affidavit, I have no reason to believe that any of the
178 drinks served at Chuggie's on September 24 or 25, 2010, either omitted a component listed on the
179 drink menu or added a component not listed on the drink menu. I am not familiar with any of the
180 other available exhibits or affidavits other than my own.
181
182

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

188 _____ /s AN
189 Dr. Ashley Norton
190

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

192 _____ /s SS
193 Sarah Shelton, Notary Public

1 **AFFIDAVIT OF LESLIE ROMAN**

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

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

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

17 My involvement with Danny Dawson's case started on October 14, 2010, when I
18 was contacted by counsel for the defendant to look into the case. I was warned before I
19 started that the victim of the crash was the daughter of the district attorney, Ms. Sullivan,
20 and that counsel understood if I wanted to stay away from the case. This was all the more
21 reason for me to take a look into this accident. I wanted to make sure that the government
22 was not blinded by the need to blame. I took on the case for my standard hourly rate of
23 \$500 per hour, which was to be paid regardless of the conclusions I reached. I should note
24 that if I testify at trial, then I will be paid an additional flat fee of \$5000 on top of the
25 \$12,500 I have already been paid for compiling my expert report.

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

33 relevant information in the affidavits prepared for this case.

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

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

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

65 fixing at the direction of my supervisor, Chet Vardy. I am almost certain that this exact curve on
66 Canyon Road was part of the report. It's sad to think that Midlands did nothing for a decade about
67 that problem, and that it took the death of a prominent prosecutor's child to bring about change.

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

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

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

89 _____ /s/ LR
90 Leslie Roman

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

92 _____ /s/ SS
93 Sarah Shelton, Notary Public

1 **AFFIDAVIT OF AVERY SMITH**

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

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

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

15 The Intoxilyzer 8000 is a device that collects a series of sample breaths that are then passed
16 through a beam of infrared light. The amount of alcohol in the sample is measured based upon the
17 amount of light absorbed. It is more reliable than preliminary breath tests (also known as PBTs, or
18 non-evidential test devices) that offer law enforcement a baseline reading in the field. These PBT
19 devices are handheld and provide a BrAC reading, but the result is not admissible in court. That’s
20 why officers must bring those who are suspected of driving under the influence in for testing on an
21 Intoxilyzer 8000 after they fail field sobriety 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 for any
23 individual. This ratio is 2100:1, meaning that the same amount (weight) of alcohol will be found in
24 2.1 L of deep lung breath as will be found in 1 cc of pulmonary blood. In this way, the BrAC can be
25 converted into blood alcohol concentration (BAC), which is the standard measurement used for
26 DUI under Midlands state law. This conversion method has been widely accepted in the scientific
27 and law-enforcement communities, and it is relied upon by many states, including Midlands, as an
28 accurate method of determining BAC from a properly administered breath alcohol test on approved
29 equipment.

30 Shortly before 1 a.m. on September 25, Officer Ryan Foster called me at the station.
31 According to Foster, the defendant had been driving a 2009 Chevrolet Impala when the car veered
32 off the road and into a tree, causing one fatality. The officer suspected that the defendant had been

33 drinking 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 tests on
35 the scene brought Dawson to the station.

36 Before Foster arrived with Dawson, we got a call from Ryan Sullivan, the District Attorney
37 in Midlands Center. Captain Morrison and I took the call on speakerphone. Sullivan was distraught
38 and told us that her daughter was dead, and that I would need to run an Intoxilyzer test on a DUI
39 suspect involved in the crash. Sullivan reminded me to be careful running the tests, though I didn't
40 need any reminding, especially under the circumstances. I had been calibrating one of our Intoxilyzer
41 8000s, which are evidential test devices, just before Sullivan's call in response to Foster's earlier
42 heads-up. I went back and finished the calibration while Foster watched Dawson in the holding cell.

43 As soon as I was finished calibrating the Intoxilyzer, I gave Dawson a BrAC test using the
44 device. In Midlands, we follow a standard procedure when using the Intoxilyzer 8000. Here at the
45 Department of Forensics, we provide equipment, trainings, supplies, and lab support for all levels of
46 law enforcement in the state. As the director, I am personally responsible for establishing the
47 operating procedures for all of our breath-testing devices, including the Intoxilyzer 8000. Only
48 testers who have been trained and certified by my department have the authority to conduct breath
49 tests. When conducting a breath test using the Intoxilyzer 8000, all certified operators are required to
50 follow and completely fill out all parts of the Intoxilyzer 8000 Operator's Checklist. This ensures that
51 the machine is used properly. I am a certified operator.

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

61 At the beginning of every test, the machine runs several blanks and simulator samples to
62 establish an accuracy level and a precision level. If any of those tests are out of the expected range,
63 the machine will return an "OUT OF TOLERANCE" error message and the operator must contact
64 the Department of Forensics for diagnostic assistance and troubleshooting. Often such an error

65 message indicates a problem with the simulator solution, not with the machine itself.

66 On the night that I tested Danny Dawson, I had just changed out the simulator solution and
67 I did not receive an error message when I started running the machine. The simulator readings were
68 accurate, giving the expected BrAC value of 0.08, and the temperature sensors were in range.

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

78 The officer said that Dawson had been cuffed at the scene and that the ride to the station
79 had been approximately ten minutes long, and that Foster had been standing outside Dawson's cell
80 for approximately 10 minutes since Dawson was put in the cell. Since mouth alcohol dissipates well
81 within the standard 15-minute window of required observation, there is no way that Dawson still
82 had mouth alcohol present as a result of drinking at the bar. I checked with the officer to make sure
83 that Dawson did not have access to alcohol, breath mints, or mouthwash during that time. The
84 officer also said that Dawson did not appear to vomit or burp, but I don't remember if I asked
85 Dawson whether or not this was true. Typically, you don't want to let a suspect know that burping
86 may throw off the machine because the person might start burping on purpose, which makes it
87 impossible to run a test. Whenever possible, I spend 15 minutes talking to the suspect, just to be
88 absolutely sure that they don't burp or belch prior to the test.

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

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

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

109 Using rough estimates that apply generally, we can estimate the number of drinks that
110 Dawson consumed. The average person can process one drink per hour (14 grams of alcohol) and
111 stay under the legal limit. Dawson told me that Dawson had approximately one drink per hour while
112 Dawson was at the bar. If that's true, I don't know how Dawson's BrAC was still at 0.19 at two in
113 the morning, which is when I tested Dawson. Either Dawson had more drinks than that and lied to
114 me, or Dawson processes alcohol much more slowly than the average person used to calculate that
115 rate.

116 I never got a chance to examine Dawson as a physician, so I can't tell you Dawson's weight
117 or family background, both of which are integral to determining how many drinks a person may
118 have had given a certain BrAC. Just looking at someone isn't enough to estimate those factors, so
119 even if I saw Dawson again today, I wouldn't be able to give a better opinion than that, unless I were
120 allowed to have a medical doctor examine Dawson and obtain a medical history.

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

126 Of the available exhibits, I am familiar with the following and only the following: NHTSA
127 list of approved BrAC units; Intoxilyzer 8000 Operator's Checklist; BrAC testing form; BrAC
128 results; the article "Alcohol Ingestion and the Human Body," which I relied on in coming to my

129 conclusions in this case; and “Curriculum Vitae of Avery Smith,” which I wrote myself. I am also
130 familiar with the Chuggie's Drink Menu, and unless specifically noted elsewhere in my affidavit, I
131 have no reason to believe that any of the drinks served on September 24 or 25, 2010, either omitted
132 a component listed on the drink menu or added a component not listed on the drink menu. I am not
133 familiar with any other available exhibits or affidavits other than my own.

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

139 _____/s/AS_____

140 Dr. Avery Smith

141

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

143 _____/s/SS_____

144 Sarah Shelton, Notary Public

145

146