

**STATE BAR ASSOCIATION OF NORTH DAKOTA
HIGH SCHOOL
*MOCK TRIAL***

**2018-19
CASE MATERIALS & COMPETITION RULES**

**State of Independence
vs.
Dustin Beaver**

We extend gratitude to the Minnesota State Bar Association Mock Trial Program on the Problem who originally authored this fact pattern. It has been adapted for our use by the SBAND Law Related Education Committee for use in North Dakota.

Date: December 20, 2018

On behalf of the State Bar Association of North Dakota and the Law Related Education Committee, welcome to the FIRST ever SBAND High School Mock Trial Program! We are proud to present to you these case materials and look forward to seeing the arguments you develop.

SBAND hopes that all the benefits of the Mock Trial Program will go far beyond the rewards associated with competing against one's peers, winning a round or two, or even the state title. The goals of Mock Trial include:

- 1) To develop a practical understanding of the way in which the American legal system functions.
- 2) To enhance cooperation and respect among educators, students, legal professionals, and the general community.
- 3) To help students increase basic life and leadership skills such as critical and creative thinking, effective communication, and analytical reasoning.
- 4) To heighten appreciation for academic studies and promote positive scholastic achievement.

The success of this program relies heavily on the volunteers acting as coaches and judges; be sure to extend your gratitude to these individuals whenever given the chance throughout the season! Best of luck and enjoy the case!

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**DISTRICT COURT OF INDEPENDENCE
LAKOTA COUNTY
LAW DIVISION
(CRIMINAL)**

The State of INDEPENDENCE

INDICTMENT NO. 2000-07000500-I

vs.

Aggravated Manslaughter
Independence Statute 2C:11-4a
(First Degree)

Dustin Beaver,

Defendant

Death By Vehicular Homicide
Independence Statute 2C: 11-5
(Second Degree)

Note: All Characters, institutions, names, events, circumstances and places are fictitious.

INTRODUCTION AND DIRECTIVES

Dustin Beaver would have started his college career in September of 2012. Instead, he faces criminal prosecution for death by vehicular homicide. If convicted on either charge, he will likely be sentenced to a significant term of imprisonment. The Lakota County Prosecutor has assigned her three top trial attorneys to prosecute Dustin. The county prosecutor believes that Dustin should be appropriately punished for causing the senseless and untimely death of high school sophomore Freddy Ferris. The prosecutor also believes that a conviction in this “high publicity” case will help other teenagers to understand the seriousness of underage drinking and perhaps deter such underage drinking in the future. Dustin’s parents, who are distraught over Dustin’s drinking within hours of the death of Freddy Ferris, realize that a conviction will ruin his life. They have hired three of the top criminal attorneys in the state to defend him.

Please follow these directives:

- The witnesses in the case may be either male or female.
- All witness statements are signed and certified. If asked, a witness must acknowledge that s/he signed the statement and certification on the date indicated.
- The parties may not contest the qualifications of the two experts in the field of alcohol and its effects on human behavior, the central nervous system and motor and other functional skills. However, for this year’s case, objections can and should be made if the experts attempt to testify outside of their area of expertise. Student lawyers may establish the qualifications of an expert during direct examination if they decide it is tactically advantageous to do so.

Detective Evans is a fact witness, not an expert. However, the detective may testify to the autopsy results and cause of death and to the results of the blood test of Dustin Beaver.

- The only permissible exhibits are the charts (Blood Alcohol Curves) of the respective experts; the chart entitled “Relationship between Alcohol Intoxication and Behavior;” and excerpts from *Drugs, the Brain, and Behavior: The Pharmacology of Abuse and Dependence*, authored by John Brick, Ph.D., FAPA, DABFM, and Carlton K. Erickson, Ph.D. The exhibits may be photocopied, but not enlarged.

(Two things to note with regard to Exhibits 1 and 2: First, they contain different BAC results. This is because they use different rates of elimination; the two experts must make different assumptions about the quantity of alcohol consumed by Dustin Beaver to support their respective opinions. Second, the peak BACs are accurate. The computations are not subject to dispute. Peak blood alcohol levels do NOT usually correspond to the moment of total alcohol absorption. Therefore, it is incorrect to simply calculate back from the blood test result to the peak and assume that the difference is a linear function of the rate of elimination.)

- The experts must acknowledge the excerpted material from Drs. Brick’s and Erickson’s textbook, and the chart (“Relationship between Alcohol Intoxication and Behavior”) as reliable authority. An expert who has given a witness statement or direct testimony contradictory to the authoritative text may be contradicted by the text. If a competition judge determines that the student playing the role of an expert is deliberately attempting to avoid acknowledging the text excerpts or chart as reliable authority, then points should be deducted from the performance score of that witness.
- Student attorneys may not ask experts questions about alcohol from materials or information not included in the 2012-13 Mock Trial Workbook.
- The defense may not move for a dismissal at the close of the prosecution’s case or at the conclusion of the defense’s case.
- The defendant has a constitutional (Fifth Amendment) privilege against self-incrimination. No adverse inference may be drawn from his refusal to testify, and no one may comment on his silence or on his failure to testify. Schools may have a student sit at the defense counsel table to play the defendant. The defendant must remain silent at all times during the trial.
- Alex Alvaro may not suggest or admit that his/her boat struck Freddy Ferris; to do so will be considered a violation of the rules against unfair extrapolation and should result in a significant deduction of points by the judges.
- All witnesses are aware of the Point Douglas Beach Ordinance and may testify to its contents. The attorneys may refer to the Ordinance at any time during the trial if they choose to do so.
- The primary purpose of the Mock Trial Jury Charge is to assist students in understanding legal issues and in preparing the case. Mock trial judges may, in their discretion, modify the charge or forego reading it to the jury.

STATEMENT OF FACTS

Saturday night, May 20, 2012 was the night of the senior prom at Liberty High School. The prom was held from 8 p.m. to 11:30 p.m. in the luxurious midtown facility of Liberty Catering. Dustin Beaver, Lee Lincoln, Alex Alvaro and Rene/Renee Robbins were among the many students who attended the prom. The students were greeted at the door by teacher and parent chaperones. There is no evidence that any students were drinking before or during the prom. The previous day all students who intended to attend the prom were required to sign a declaration not to use drugs or alcohol before or after the prom. Students acknowledged in the declaration that violation of their promise would result in suspension, not graduating with the senior class and delay in the award of a diploma until September 1, 2012.

Following the prom, an all-night “after prom” providing substance-free entertainment was held in the gym of the high school. The “after-prom,” which was chaperoned by parents of the students, had become a popular tradition at Liberty High School. Unfortunately, a significant number of students did not attend the chaperoned “after prom.” Dustin Beaver was one such student.

Dustin Beaver and Lee Lincoln were students who lived in the riverside community of Point Douglas Beach. The entire community is not much more than 160 upscale private residences, tucked away between two major resort communities bordering Wisconsin and Independence. Both ends of the little town are connected across the St.Croix River, to other communities by long wooden bridges on pilings. The bridge at the north end of town is named “Prescott Bridge,” and the bridge at the south end of town is named “Railroad Bridge.” Small beaches exist at the end of each bridge, both on the Wisconsin side and Independence side and extend slightly beneath the bridges. A Point Douglas Beach Ordinance prohibits swimming after dark and prohibits the use of beaches for any purpose after 10 p.m. However, because of its undeveloped surroundings and isolation, teenagers often use the beach at the northern end of Railroad Bridge at night. The beach on the Wisconsin side is very rugged, with bushes coming down to the water’s edge, teeming with small rodents, called Packers, that frequent that side of the river. The rodent’s scat is so bothersome that no one, except Cat fishermen (with stink bait) ever wander along that area. There have also been reports of Otter attacks on swimmers and random fishermen.

Dustin Beaver, and Lee Lincoln and other students thought that boating near Railroad Bridge following the prom would be romantic, adventurous and fun. Following the prom, Dustin and other students drove to the Shelly Beach Marina, entered their parents’ powerboats, and piloted the boats to the vicinity of Railroad Bridge. Some of the students brought beer and champagne. Many of the students, including Dustin, were drinking. A sophomore named Freddy Ferris, who had come to Point Douglas Beach with a group of his friends to hang out and swim, disappeared after two boats piloted by Dustin Beaver and Alex Alvaro sped by the area where he was swimming. His body was found several days later.

Following an investigation into the circumstances of Freddy Ferris’s death, the Lakota County Prosecutor scheduled a court hearing to have the court order Dustin Beaver, who was 17 years old, to stand trial as an adult. The prosecutor was successful and Dustin, who is facing trial as an adult, has been indicted by a Lakota Grand Jury. In a series of pre-trial rulings, the trial judge has determined that Dr. Shelly Storm and Dr. Chris Carson are qualified to testify as experts about alcohol and its

effects; that the sample of blood taken from Dustin Beaver at the hospital on the morning of May 21, 2012 is admissible; and that the facts upon which experts relied in forming their opinion, as set forth in their respective witness statements, are admissible during their testimony at trial.

STIPULATIONS

1. Dr. Storm and Dr. Carson are experts in the field of alcohol and its effects.
2. The exhibits are authentic. Their admission into evidence cannot be objected to based on lack of authenticity.
3. Witness statements are signed and certified by the witnesses.
4. The blood sample taken from Dustin Beaver at the hospital was properly drawn, preserved and analyzed. Parties may not dispute either the reliability of the sample or the blood alcohol concentration. The results of the sample may be admitted at trial through the testimony of the experts, through the testimony of Detective Evans or by stipulation of counsel.
5. The results of the autopsy are stipulated. Detective Evans, who was present at the autopsy, may testify about the autopsy results.
6. To the extent recited in their witness statements, the experts' reliance upon the investigation conducted by Detective Evans, the other witness statements and the 2:20 a.m. time reported by toll tender Denise Gant may not be objected to as hearsay during the testimony of the experts.

WITNESSES

Prosecution

Lee Lincoln

Detective Eric(a) Evans

Dr. Shelly Storm

Defense

Alex Alvaro

Rene(e) Robbins

Dr. Chris Carson

EXHIBITS

1. Blood Alcohol Curve for Dustin Beaver- Prosecution Expert's Exhibit
2. Blood Alcohol Curve for Dustin Beaver- Defense Expert's Exhibit
3. Relationship between Alcohol Intoxication and Behavior Chart©
4. *Drugs, the Brain and Behavior; The Pharmacology of Abuse and Dependence* ©
Excerpts from Chapter 6 (reprinted with permission)
5. Map of St. Croix River between Prescott and Railroad Bridge

**DISTRICT COURT OF INDEPENDENCE
Lakota COUNTY
LAW DIVISION
(CRIMINAL)**

INDICTMENT NO. 2000-07-00500-I

The State of Independence

vs.

Dustin Beaver,

Defendant

Aggravated Manslaughter
Independence statute 2C:11-4a
(First degree)

Death by Vehicular Homicide
Independence Statute 2C: 11-5
(Second Degree)

COUNT ONE

The Grand Jurors of the State of Independence for the County of Lakota, upon their oaths present that Dustin Beaver, on or about May 21, 2012, in the waters off of Point Douglas Beach, County of Lakota, State of Independence ,and within the jurisdiction of this Court, did recklessly cause the death of Freddy Ferris under circumstances manifesting extreme indifference to the value of human life; contrary to the provisions of Independence Statute 2C 11-4a and against the peace of this State, the Government and dignity of the same.

COUNT TWO

The Grand Jurors of the State of Independence for the County of Lakota, upon their oaths present that Dustin Beaver, on or about May 21, 2012, in the waters off of Point Douglas Beach, County of Lakota, State of Independence and within the jurisdiction of this Court, did cause the death of Freddy Ferris by recklessly operating a vessel; contrary to the provisions of Independence 1 Statute 2C: 11-5 and against the peace of this state, the Government and dignity of the same.

Note: In Independence a person who, while operating a motor vehicle or boat while intoxicated, causes an accident resulting in a death may be prosecuted for vehicular homicide, aggravated manslaughter or both. Death by vehicular homicide is a crime of the second degree and is punishable by a term of imprisonment of 5 to 10 years. Aggravated manslaughter is a crime of the first degree and is punishable by a term of imprisonment of 10 to 30 years.

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AFFIDAVIT OF ERIC(A) EVANS

(Testifying for the Prosecution)

My name is Eric(a) Evans. I am 32 years old. I am a detective in the Independence State Police-Marine Bureau. It is the responsibility of the Independence State Police to patrol inland lakes and waterways areas in order to enforce applicable Independence laws relating to the safe and prudent operation of powerboats. We have become quite busy in the last 10 years, due to the ever-increasing number of boats on Independence waters, specifically the St.Croix River, as well as people who unfortunately don't know how to operate them. As with automobiles, it seems that the younger individuals have a higher proportional number of boating accidents.

On May 21 at approximately 3:00 a.m., I received an emergency pager call. I returned the call to our marine headquarters, and learned that a frantic family was at the State Police Barracks in Loondale, claiming that a group of kids had been swimming at the Railroad Bridge in Point Douglas Beach and one of them had disappeared. My first thought was that a tragedy was inevitable. We chase kids off that beach at night at least 20 times every summer season. Usually the kids are partying and are drunk. I always thought that sooner or later some kid would drown late at night. I jumped into my jeep and drove directly to Railroad Bridge, approximately seven miles away. As a result of a series of telephone calls, I had three State Police marine boats meet me at the location, and I was informed that the Sheriff's Water Patrol from both Independence and Wisconsin was also sending a watercraft.

By 3:30 a.m. I was at the bridge. I was somewhat surprised to see that no fishing boats were in the area and no one was fishing from the bridge. I guess the catfish weren't running well because usually Railroad Bridge and the Wisconsin shore around it are busy with people fishing through the summer nights. I made some inquiries and was provided with information indicating that a number of high school students had decided to go for a swim off the small beach adjacent to the Railroad Bridge at the Point Douglas Beach side of the St.Croix River. Apparently, two boats had approached the bridge at high speed and at the last minute had gone under the bridge between the pilings closest to the beach, rather than the properly marked channel in the middle of the span. This was incredibly stupid- at high winds with waves and fast running current ,there isn't enough room for boats to clear the underside of the bridge; at low winds ,waves, and slow current, the propeller of a speeding boat, and possible the boat itself would run aground. Also, the bridge pilings at the end of the bridge are not very far apart and a speeding boat could easily strike them. In the 10 years that I have patrolled that area I have never seen any boat go under the bridge at that spot . Anyway, immediately after the boats passed, the other high school students noticed that Freddy Ferris, nephew of our cemetery custodian, Skeeter Ferris, was nowhere to be found. Fearing that he might have drowned or been struck by one of the boats, three of the young people immediately left to get help, while the other two began searching desperately in the dark waters for their friend.

Next I spoke to the Prescott bridge toll tender, 38-year old Denise Gant. Denise is a local resident who is a stickler for detail. She despises the teenagers who party on the beach after dark

and she always marks the time of unusual events. She told me that only two boats approached the pilings closest to the Point Douglas Beach since she had started her shift at 10:00 p.m. The boats were speeding and people on the beach were screaming hysterically, trying to wave the boats away. The boats turned back toward the marina and several frantic teenagers came running up to her to call the police -- someone had been run over by a boat and was missing. The time was 2:20 a.m.

The three marine police boats were searching the area with spotlights when I arrived. The Sheriff's Water Patrol had two boats patrolling the west side of the river, in that a now fast-moving current was racing downstream. Despite our best efforts, including the use of the helicopter that had now been added to the search, we were unable to locate this young man. The Wisconsin Sheriff's Water Patrol cooperated with our efforts as well as Sheriff Bart Favre directed the shore craft on the east side of the river. Although I tried to remain optimistic in front of Freddy Ferris's guardian, Skeeter Ferris, who found Freddy's favorite dog and constant companion, Wolf, running up and down the shoreline, whining, I felt in my heart that the end result was not going to be a good one. Skeeter had become Freddy's guardian shortly after his parents were tragically killed after their car had driven off the Prescott Bridge, into the St. Croix River just two years previously. How sad if the river would once again claim another life in the Ferris family.

Four days later I was on duty in one of our patrol craft when I received a call that a local fisherman had located a human body in a marshy area in the back eddy of the river approximately one-half mile from the Railroad Bridge. I was the first law enforcement officer to arrive. My partner and I carefully lifted the body into our boat. The body had just started to decompose and the ears, eyes and lips were missing. However, it was apparent from the design of the bathing trunks and a distinctive Viking tattoo on the upper right arm that it was the young man we had been looking for. Dental records later confirmed Freddy Ferris's identity.

We raced the body immediately to the nearest hospital with autopsy facilities. Although I did not take any photographs at the scene, I alerted our office so that photographs might be taken immediately prior to the autopsy and during the autopsy. After the body was delivered to the hospital, I took it upon myself to drive personally to the Ferris residence and informed Skeeter as to what we had found.

One hour later I returned to the hospital to witness the autopsy. The medical examiner confirmed that there was a skull fracture in the rear of Freddy's head. In addition, there were three deep cuts down his back and his thigh consistent with a spinning propeller blade. The lacerations were similar to those found on Channel Catfish and Sturgeon that had been driven over by boats, during low water, in the fall on the St. Croix River. Lastly, the left foot was completely missing. This kid never had a chance. The medical examiner concluded that the cause of death was blunt force trauma resulting in a fracture of the skull, splitting of the brain, and massive hemorrhaging -- all consistent with being struck by a boat.

Approximately two days after the autopsy was completed, we were finally able to ascertain what two boats may have been involved in this incident. We had received an anonymous tip that a group of high school seniors had taken their parents' boats out immediately after the prom at Liberty High School. As luck would have it, the two teenagers driving the two boats in question had already retained attorneys and we were advised that neither boy would speak with us. This

did not surprise me about the Beaver kid. Twice last summer I charged him for swimming off of that beach after midnight. Apparently, his father is some local bigwig because the charges I issued against Beaver were dropped.. I was determined that he would not get away with killing Freddy Ferris.

Relying upon further tips from other high school students, we learned that Beaver went to Liberty Hospital in the early morning hours of May 21. Further investigation revealed that a doctor, suspicious that Beaver had been drinking, drew a blood sample at 3:45 a.m. that was later tested and determined to contain a blood alcohol concentration of .057%. The records also indicated his height and weight. I also learned that the first boat had been piloted by Beaver and had been moved from its normal slip at the Shelly Beach Marina to a friend, Matt Mahoney's dock approximately 1 1/2 miles downriver. I was familiar with the Mahoney residence as his father, Slip Mahoney, gained notoriety as the dock boom loader for the last journey of the Edmund Fitzgerald before it sunk in Lake Superior back in the 70's. A search warrant was executed at the Mahoney residence and out buildings for the seizure and examination of the boat. Nothing of an evidential nature was recovered. The propeller on the boat looked new, but even if it wasn't, the time it sat in the water, attracting minnows, crayfish, etc., would have destroyed any blood or body tissue evidence remaining.

I also learned that a kid named Lee Lincoln had been in the boat with Beaver. I paid Lincoln a visit. After giving Lincoln Miranda warnings and explaining that an accessory to a homicide could end up in prison for a long time, Lincoln was inclined to cooperate. Lincoln's father hired a criminal lawyer who insisted on a grant of immunity. I conferred with the local prosecutor and immunity was granted with the consent of the State Attorney General's Office. After Lincoln told us what happened, there was no need to conduct any further investigation and we cleared the case. Searching the other kid's boat would have been a waste of time. Beaver was obviously the person who ran over Freddy Ferris.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

August 1, 2012

/s/Eric(a) Evans
Eric(a) Evans

AFFIDAVIT OF LEE LINCOLN

(Testifying for the Prosecution)

My name is Lee Lincoln. I'm 17. I graduated from Liberty High School in June and in September I will be going to National University in Washington, D.C. I got an academic scholarship, otherwise I could never have afforded to go to college. Unlike a lot of the rich kids in Point Douglas Beach, I have to work for everything I get in life. My father had to take out a loan to pay for my lawyer in this case. I'm going to have to pay him back. I used to be a close friend or rather a very close friend of Dustin Beaver. I guess you could say that up until the night of the prom, there was a group of us who were best friends.

Dustin's father seems to make a ton of money doing some kind of consulting. He has a house in Point Douglas Beach. In addition to owning two very nice boats, he has his own airplane. During the beginning of our senior year, Dustin told me that his father let him use the smaller boat (the ski boat) but wouldn't let him touch the 40-foot Silverton. In the weeks before the prom, Dustin and I, as well as other friends had spent a lot of good times on the ski boat; it was sweet the way the boat could zip in and out of the various sand bars and channels. I'm a pretty decent water skier and felt safe with Dustin since he passed his DNR boating course and obtained his boating license. One of the biggest thrills for all of us was swimming and skiing off of Point Douglas Beach at the Railroad Bridge, especially at night. Partying with friends, swimming and skiing in the dark, and lying on the beach under the stars is more fun that you can ever imagine. I guess that's now finished forever.

About a week before the prom, Dustin suggested that a group of us spend a romantic evening on the water after the prom. At first I thought the idea sounded stupid, but after further thought I began to like the idea. Spending the whole night after the prom on the water under a starlit sky, drinking champagne and swimming would be the perfect ending to a perfect night. We arranged for our other friends to accompany us with two other boats, and we would spend the evening floating off of Point Douglas Beach and drinking champagne. If we were lucky, we might even see some shooting stars. Dustin told me that he obtained permission from his parents to use their boat and everything was set.

The evening started off great. Dustin's date was my twin sister, Laurie. Everyone was dressed to the hilt, and we hired a limousine to take us to the prom. The prom was held at a local catering company, and to the credit of the student council, the catering hall had been decorated beautifully. The music and dancing were great, and it was almost everything you would want out of your high school prom.

Toward the end of the prom, Dustin excused himself to go to the bathroom. When he didn't return in 10 minutes, I went outside to look for him. That's when I saw Dustin in the back of a car with Janet Johnson. Although I couldn't see them too well, it was pretty obvious that they were hooking up. When they saw me, they both sort of jumped apart. I didn't even give Dustin a chance to explain. I just walked back into the catering hall.

Janet cornered me about a half-hour later. She told me that it “wasn’t what it seemed,” and that she had to speak to Dustin because, at the last minute, her mother didn’t want her going out boating after the prom. Apparently she was trying to get in touch with her mother to see if she would change her mind. When she couldn’t reach her mother, she decided she was going to go anyway and was telling Dustin this. Although I still suspected that Dustin had betrayed my sister, I let it go because I didn’t want to spoil the night for my date and the other kids who were going boating with us.

We left the prom and drove to the Shelly Beach Marina to get the boat. I brought champagne and a case of beer (12 oz. cans) which Dustin put in a cooler in the cutty cabin. As we pulled out of the slip, Dustin opened the first bottle of beer. I looked at my watch and noticed it was midnight. I said to Dustin, “I hope that stuff doesn’t turn you into a pumpkin.” Janet, who was in another boat, was with her date. After finding a nice spot along the river, we dropped anchor. For the next hour and a half, we sipped champagne or drank beer and hung out under the stars. At about 1:30 in the morning we were out of beer. Dustin drank at least two six-packs. He was also guzzling champagne. I am not certain about exactly how much alcohol Dustin had to drink because I also was drinking beer and champagne. Dustin was showing off by swigging from the bottle of champagne. Anyway, we stayed and talked. We talked about high school, we talked about college, and Dustin said we should all make a pact to stay tight after graduation. I thought the jerk was a hypocrite after what happened with Janet earlier, but everyone was so happy and mellow that I just kept my mouth shut.

Janet then decided she wanted to go tubing. Alex Alvaro, who was driving the boat she was in, said the boat had dual ski clips and ropes. Janet and Rene(e) Robbins hopped overboard, two tubes were hooked to the back of the boat, and Alex started pulling up the anchor. I turned to talk to Dustin and saw him smiling and gawking at Janet as she sat in the tube waiting to be towed. I got very angry and I let Dustin know it.

The next thing I knew, Alex had the boat in gear and took off across the back bay with Janet and Rene(e) in tow. Dustin started chasing them. I yelled to Dustin to slow down, that it was pitch black, that we were going to hit something, why was he checking out some other guy’s girlfriend. He just laughed and started going faster. Although Dustin drinks almost every weekend and I have seen him hold a lot more, I thought he was feeling the alcohol.

After about 10 minutes of this, both boats started heading toward the Railroad Bridge. This is one of those old bridges with lots of wooden pilings. There are also sandbars in the area as well as a small beach, Point Douglas Beach, where kids like to swim. Dustin knew this because he and I went swimming there many times. Both boats are now speeding toward the Railroad Bridge with Dustin in the lead. I couldn’t imagine that Alex would risk pulling a tuber under the bridge in the middle of the night and I guess Dustin didn’t think so either. We swung suddenly in a high-speed turn heading toward the beach. At the last minute, I saw that Alex’s boat was not slowing and was coming straight toward us, apparently intent on going under the bridge. At the same time, I saw swimmers in the water and on the beach waving their hands frantically. It seemed like in a split second we just missed hitting the other boat and almost ran aground. I felt a jolt like we had just hit a sandbar and slid right off. By now I was screaming and yelling at Dustin, “Stop! Stop!” He was speeding back the other way, back toward the marina. I kept screaming, “There were swimmers back there! We have to go back.” “Why,” he shouted back,

“so the police can show up and find out we were drinking and boating? No way!” I looked at my watch again. It was 2:20 a.m.

Instead of going back to the marina where his father kept the ski boat, Dustin kept going down the river to his friend Matt Mahoney’s house. Dustin pulled the ski boat up to Matt’s dock and it soon became apparent that absolutely nobody was home. Dustin then raised the propeller of the outboard motor out of the water and said something about running over one of the ropes at the dock. After a couple of minutes, he screamed and jerked back his left hand. We got out of the boat and went up to the house under a floodlight. Dustin’s left hand had a deep cut and he wrapped it up in his shirt. Dustin used his cell phone to call his cousin. When his cousin arrived, his hand was still bleeding and he thought he needed stitches. His cousin took him to the hospital and I went home.

That Monday word was out all over school that a sophomore by the name of Freddy Ferris had drowned during the night of our prom. Some boat had run him over. I was scared to death and didn’t say anything. When I tried to talk to Dustin about it in the hallway between classes, he said, “Don’t even think about it. Just keep your mouth shut.” I haven’t discussed it with him since. I was afraid to go to the police because I thought that I might get in trouble for buying the beer and champagne. All I could think about was going to jail, missing college and screwing up my whole life.

A week or so later Detective Evans appeared at my door. I had to go to the police station, where Evans and another cop told me that a number of witnesses implicated Dustin and me. They said it looked to them like I was an accessory to a homicide and that I could go away for a long time. They told me they would work with me if I cooperated with them in their case against Beaver. I was scared to death, and I was afraid to say anything more without talking to my dad. Once I was convicted for shoplifting in juvenile court and I knew I should get a lawyer before talking to the police. My dad got a lawyer for me and told me if the lawyer could get me immunity, I should tell the police everything I knew about what Dustin did. Why should I ruin my life and let him get off?

I hear that Dustin and Janet are engaged and that Dustin’s parents have already bought them a condo near Point Douglas Beach. For some strange reason, I hear the ski boat has been sold. I am happy where I am, and despite what people might think, I hold no grudges against anyone. The fact that Dustin is facing a long jail term is his own fault. I guess he’ll get whatever he deserves.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment

August 8, 2012

/s/Lee Lincoln
Lee Lincoln

AFFIDAVIT OF DR. SHELLY STORM

(Testifying for the Prosecution)

My name is Shelly Storm. I am 34 years old. I am a toxicologist. I received a bachelor of science degree from Ivy League University, where my major was chemistry and my minor was biology. Next I attended Bailey University of Massachusetts where I received my Master of Science in chemistry. I was prepared to make my fortune with one of the large national chemical companies when tragedy struck and forever changed my life. Two months before completing my work for my masters, my older brother, whom I idolized, was killed in an automobile accident – the victim of a drunk driver. For nearly six months after his funeral I was so depressed that I couldn't think about work or school. Then, with the help of a counselor who finally got through to me, I realized I could put my talents to work educating people about the devastating consequences of alcohol abuse and addiction. I finished the master's program and then went on to receive a Ph.D. in toxicology from the University of Independence. Now I teach there and do federally funded research at the University's Institute for Drug and Alcohol Research and Rehabilitation.

I have conducted extensive studies on the effects of alcohol on human behavior and performance. Of particular interest have been my studies on blood alcohol levels and impairment of functional ability with respect to the operation of simple and complex machinery. I have published more than 90 articles in nationally recognized journals and my work has been recognized and utilized by more than 30 blue chip companies. I have also been recognized as an authority on alcohol and human behavior in the municipal, state and federal courts of 13 states. I have testified for the prosecution in more than 100 DUI, vehicular homicide and manslaughter cases. Although I have occasionally testified for the defense, I only do so when it is entirely clear that alcohol is not involved in aberrant or damaging behavior.

Earlier this month I was contacted by the Independence State Police-Marine Bureau in Loondale, Independence, and asked to review the investigation into the death of a young man named Freddy Ferris. I spoke to Detective Eric(a) Evans and carefully reviewed the detective's investigation summarized in a witness statement. Next I interviewed Denise Gant to confirm the times of her observations as reported in Evans's reports. I then read the witness statements of Lee Lincoln, Alex Alvaro and Rene/Renee Robbins. Finally, I went to Lakota Hospital to confirm the time blood was drawn from defendant Beaver on the night of the homicide, his blood alcohol level, and his weight. After carefully studying all of the information available to me, I can testify with reasonable scientific certainty that defendant Beaver's blood alcohol at the time he sped toward Railroad Bridge and then suddenly swerved at 2:20 in the morning of the homicide was at or above 0.08%; that he was operating his vessel under the influence of intoxicating liquor; and that his consumption of alcohol and consequent reckless behavior was a proximate cause of the death of Freddy Ferris.

Alcohol is absorbed rather quickly through the stomach and intestines, and into the bloodstream. Absorption generally exceeds elimination for 30 to 90 minutes after the last drink. Although if one has eaten recently the food in the stomach may slow the rate that alcohol passes through the

stomach and into the bloodstream, this is not a consideration in this case because we know what Mr. Beaver's blood alcohol level was from the hospital sample. Once alcohol enters the body through the stomach and intestines, it is distributed throughout the water in the body. Some studies suggest that the same amount of alcohol can result in slightly different blood alcohol levels in different individuals because of body weight. Heavier people have a lower percentage of water per body weight so there is less water through which alcohol is absorbed, thereby resulting in a higher blood alcohol concentration. Similarly, women generally have more body fat than men, which means the same quantity of alcohol may cause a slightly higher blood alcohol concentration in women. Generally though, such variations are insignificant.

Alcohol is eliminated from the body through the liver, through one's breath, and through one's urine. The rate of discharge of alcohol can vary; however, it is generally accepted in the scientific and medical community that the average rate of discharge is 0.015% to 0.017% per hour. In this case I used 0.017% because there is evidence that the defendant drank on a number of occasions before May 21, and some literature suggests that people who drink habitually have a higher than average rate of elimination.

In this case, we know the defendant had his last drink at approximately 1:30 on the morning of the Homicide/Vehicular Operation. We also know that he raced toward Railroad Bridge, then swerved toward the beach at 2:20 a.m. His blood alcohol level when his blood was taken in the hospital at 3:45 a.m. was 0.057%. Therefore, the defendant's BAC was at or above 0.08% when his boat struck Freddy Ferris. I have charted the BAC of the defendant in Exhibit 1.

Even if one assumes that Beaver's BAC was below 0.08% at the time of Freddy Ferris's death, in my opinion he was still operating a vessel recklessly while under the influence of alcohol. Exhibit 3 shows the relationship between alcohol intoxication and behavior. If one assumes that the defendant's rate of elimination of alcohol was 0.015% per hour, his BAC would have been at or near 0.08% at 2:20 a.m. on May 21. Clearly, he would have experienced divided attention failure and impaired judgment. He may have been experiencing impaired muscular coordination and some impaired vision. As shown on Exhibit 1, the likelihood of a person with a BAC of 0.06% being involved in a motor vehicle accident is twice that of a person who has consumed no alcohol. The likelihood of a person with a BAC of 0.08% being involved in a motor vehicle accident is six times that of a person who has consumed no alcohol.

I know that some of the people with the defendant on prom night have given statements that he only had three or four beers but this is impossible in light of the BAC determined from his blood sample taken at 3:45 a.m. He would have consumed the equivalent of five or six beers. I also am aware that no one observed any bloodshot eyes, slurred speech, balance problems or other visible signs of intoxication. But Beaver's friends weren't trained observers.

Many people, especially teenagers, think that because one is legally intoxicated in Independence if they operate a motor vehicle with BAC of 0.08%, they may safely operate a motor vehicle when their BAC is below 0.08%. This is simply untrue. A person can be convicted of driving when intoxicated if a trained observer such as a police officer sees that the driver's coordination and motor functions are impaired. This can occur in some people with blood alcohol levels as low as 0.05%. Moreover, it is now generally accepted that the majority of people cannot safely operate a motor vehicle when their BAC reaches 0.08%. This is why there was a movement

nationally to lower to 0.08% the BAC for driving while intoxicated. The defendant's BAC was, undisputedly, above 0.08% at 2:20 a.m. on May 21, 2012.

It is ironic that while many of the northern states talked about getting tough on impaired drivers they were the last ones to come on board to pass the .08% law with Independence being the last one to pass it.

It is also sad that with the .08% law being in place for several years now the average BAC reading nationally is still at or above .15%. It appears that while one famous beer distributor used to advertise "Know When To Say When" that America never has learned when "When" is! I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

August 30, 2012

/s/Shelly Storm
Shelly Storm, Ph.D.

AFFIDAVIT OF ALEX ALVARO

(Testifying for the Defense)

I am 17 years old. I will be attending Midwest University in September.

I went to the prom with my date, Pat Painter. A group of us had decided that we would end the evening with a scenic boat ride and a champagne toast on the St. Croix River near Point Douglas Beach. I knew that a lot of my friends were going drinking after the prom, and some had even rented suites at various local motels. I didn't want any part of that. Neither did Pat.

Like many other families here at Point Douglas Beach, our family keeps a small boat at Shelly Beach Marina. It is a 24-foot inboard/outboard with a cutty cabin. I have been boating regularly since I was 14 and have all necessary credentials as well as a boating license. I pride myself on being a safe boater.

The prom was really nice and Pat and I had a good time. Originally, there were supposed to be three boats involved in our private party, but one boat canceled at the last minute, so I agreed to take some of our friends in our boat after the prom. Janet was one of the people who came in my boat.

As we were leaving Shelly Beach Marina, Janet confided to me that she had an argument with her parents over this little boating trip. She seemed upset over this fact, and told me that she had decided to go anyway. She also told me that as she was telling Dustin Beaver all of this midway through the prom, Lee Lincoln, whose twin sister Laurie was Dustin's prom date, had gotten upset, thinking that "something was going on." I told Janet not to worry about it and no one should ruin what was turning out to be one of the best nights of high school and one that we would always remember. That turned out to be true, except for the wrong reasons.

We spent an hour or so sitting in our boats on the river sipping champagne. Janet had brought some of those plastic champagne glasses from her house, and it all seemed quite elegant. I know I only had a glass. I was anchored next to Dustin's boat. I didn't see him drink even a full glass of champagne. He and Lee Lincoln are beer drinkers and they split a six-pack that Lee brought to the marina. Since I am aware that Dustin is a careful boater, I'm sure he had no more than three or four beers.

Things began to drag a little bit, so in the spur of the moment, I suggested that we all go swimming. Janet said she really didn't want to swim at night, but told me that she would like to go tubing. Rene(e) Robbins agreed that tubing was a great idea; Pat said s/he was too tired. We still had two inner tubes in the boat from the previous weekend. I gave it a moment's thought and agreed. I yelled over to Dustin as to what we planned to do and he thought the idea was hilarious. Lee Lincoln, who was in Dustin's boat, seemed a little surprised, but that's just Lee.

I have boated these waters for the last two years and I am very familiar with the river, both in the day and at night. I safely pulled Janet and Rene(e) back and forth through the river channels for about 20 minutes with Dustin following at a safe distance behind. As I slowed at one point, he

pulled up next to me and offered to “take it to the bridge.” I accepted this challenge, and we both floored our boats and headed down the river towards Railroad Bridge.

Janet and Rene(e) were having a great time, but I didn’t want to approach the bridge with the other boat running alongside. I slowed somewhat and let Dustin get ahead of me. I figured he would cut between the pilings and I would simply follow behind him.

I’m not quite sure what happened next, but I remember seeing Dustin’s boat turning and cutting in front of me. I cut my boat sharply in order to avoid hitting him. I was now afraid that Janet or Rene(e) would be whipped from the inner tubes and get thrown into either Dustin’s boat or the bridge. I don’t know how I missed Dustin’s boat, the bridge or the shore.

After I recovered, I slowed the boat to a stop and quickly got Janet and Rene(e) back on board. They had no idea how close we had come to having an accident and simply thought I was giving them an extra thrill. I don’t think Pat had any idea either. I didn’t tell them why, but told them we had to go back to the marina.

I never saw any swimmers in the water that night. If they were swimming under or near the bridge in the dark that night, they shouldn’t have been there. Swimming isn’t permitted and I know there is a town ordinance that specifically forbids it. I know a lot of people are asking why Dustin didn’t stop that night, but there is no way he would have known whether or not his boat hit a swimmer. Like I said, I didn’t see any swimmers so no one driving a boat would have expected to run over one. When I was speeding toward that bridge, the water was just a little bit choppy. The bow of my boat would hit the chop and slap down pretty hard. Once it thumped down unusually hard, but that’s to be expected. No one could tell the difference between the thudding of the boat on the river and the bow of the boat striking something. After I got Janet, Rene(e) and the tubes back in the boat, I also headed toward the marina. Coming so close to colliding with Dustin’s boat, striking the bridge, hitting a sand bar, or running ashore was very sobering. The thought of how easily an accident could have happened put a damper on what otherwise had been a great night. I headed home, never thinking that anyone had been injured.

I know Dustin wasn’t drunk and I know he is one of the safest boaters in our area. There is no way he could have navigated the river channels or sand bars in that part of the river if he had been drunk. You can’t see the channel markers very well in the dark and you need to be very alert, have very good boating skills, and use very sharp judgment to get through the river channels safely at night. That same Sunday I learned that Dustin had not returned to the marina, but instead headed down the river, past “No Name Island” and docked his boat at a friend’s house. It further confirms that he could not have been drunk. I have been up and down that river hundreds of times. It curves and winds sharply. No one with even a slight buzz from booze could navigate that river at night. I am still in disbelief that he would be criminally charged for what was a terrible accident, especially one that was not his fault.

A week or so after the accident, I heard that the police were looking for Dustin and for I. The local newspapers had run several stories about the brutal death of Freddy Ferris. I never saw any other boats so close to Railroad Bridge when we were there the night after the prom so I figured that the police would suspect either Dustin or I of running over Ferris with our boats. I knew I didn’t do it. There is no way I could have struck that kid or hit him with my prop and not realized it. I only had a few drinks and I wasn’t anywhere near intoxicated. Anyway, when I read about the story in the newspaper, I pulled our boat out of the water. There wasn’t any

damage to the boat or to the props. There wasn't any blood anywhere near the boat. If the police had inspected my boat, they would have seen that there was no evidence that I ran over that kid. Also, if I hit somebody, Janet and Rene(e) would have known it as soon as it happened. I just didn't want to talk to the police because I didn't want to get caught up in something this terrible.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

August 14, 2012

/s/Alex Alvaro
Alex Alvaro

AFFIDAVIT OF RENE(E) ROBBINS

(Testifying for the Defense)

My name is Rene(e) Robbins. I am 18 years old. I'll be starting classes in a couple of weeks at Evergreen Community College. I'm dating Janet Johnson's cousin and will be in Janet's wedding party when she and Dustin Beaver get married next July.

I went to the prom on May 20, 2012 and after the prom I went with the others to drink champagne on the water under a starlit sky. I expected an evening filled with fun and romance. I always thought of myself as a romantic at heart. Isn't it funny that I was one of the people in the tube that night?

Janet was really upset with her parents. Frankly, Janet's cousin told me her parents wanted Janet home right after the prom. They didn't want her going drinking, going to motels, going out or going anywhere for that matter. I don't know what they were so concerned about. I was at their house when, at the last moment, they told Janet she could not go on this boat excursion, but she wore her bathing suit under her prom gown anyway. She was determined to go.

I wanted to go on the boat with Dustin, Laurie and Lee, but after what happened at the prom, I figured I better go with someone else so I went with Alex. It seemed like everything was patched up and we had a very pleasant time sipping champagne while the boats were anchored in the river. The moon was full and I have a vivid memory of the moonlight on the water. You could see across the river. As I recall, I was the one who suggested that we go tubing and Alex volunteered because there were tubes on his/her boat. Janet loved the idea. She went tubing too. That's when all the action began. Although I couldn't hear what was going on, from my perspective, both boats were behaving responsibly. I had quite the ride and invited others to join in. No one wanted to. I remember that at one point, both boats were going to the Railroad Bridge and both boats turned, giving me "the whip." Alex's boat turned so sharply that his /her motor sputtered and almost stalled. Although I was swung around near the bridge, I really wasn't in danger of hitting the bridge or anything else for that matter.

As we swerved away from the bridge, I saw two other kids on Point Douglas Beach and one kid in the water, all waving at me. I waved back. I didn't think that anything was wrong whatsoever. We've all been to the beach at Point Douglas after dark to party lots of times. It's not unusual to wave at passing boats. I did think it was somewhat unusual for a swimmer to be out in the water at that time of night. Although occasionally kids go skinny-dipping beneath the bridge after dark, you have to be an idiot to do that. Fisherman use that bridge almost every night to go catfish fishing, although the mosquitos must have been biting that night, because I didn't see any fishermen on the night of the prom. Anyway, there have been reports in the news lately about river otters biting swimmers out in the water, and so people have been warned to stop swimming in the area. The reports said there are likely a lot of protective mama otters right now over their babies, and the pictures of the otter bites they have shown on the news have been nasty! Anyway, there is also an ordinance against swimming in the water after dark and although the DNR doesn't enforce it much, occasionally they do come by and chase the kids off of the beach at night. Anyway, with the moonlight that night you could clearly see the kids on

the beach and the swimmers waving, but I never thought a thing of it. I'm sure that Dustin Beaver would have thought that they were waving us in so they could have a boat ride.

I cannot believe that Lee ratted out Dustin. I saw the witness statement that Lee gave. The prosecutor's office had to give a copy of all witness statements to Dustin's lawyers. Alex and I saw the statements when we went to the law office and talked to the investigator working for Dustin's lawyers. I know Lee made the crack to Dustin about turning into a pumpkin at midnight, but don't you think it is a little bit funny that Lee was clock-watching when we all ran out of beer, and again when Dustin swerved his boat near the bridge and beach?

Lee felt friendless after ratting out Dustin. One day after school, I asked Lee about it. Lee felt that Mr. and Mrs. Lincoln, the lawyer they hired and the police were all pressuring Lee to implicate Dustin. They said Lee could be arrested as an accessory to a homicide, which would ruin college, a career and Lee's life.

I believe Lee lied about how much Dustin had to drink and about what Dustin said in the week following the prom. Lee gave a statement saying Dustin drank two six-packs and a lot of champagne. I know there were at least four people drinking the case of beer that Lee brought. I was there and I saw who was drinking. Dustin drank no more than one six-pack. When I asked Lee if Dustin had said anything about the kid that got killed, Lee never mentioned anything about Dustin saying keep your mouth shut. Lee told me Dustin said, "Try not to think about it or you will end up hurting innocent people."

Lee's statement also made it seem like there were a lot of swimmers in the area when Dustin swerved his boat toward the beach. The moon was bright and I could clearly see that there were only one or two swimmers near the bridge when Dustin drove by.

I was also shocked when I saw Lee's statement about Dustin's boat hitting something like a sandbar. When I spoke to Lee, I specifically asked if Lee and Dustin thought they ran over the guy that drowned. Lee didn't say anything about the boat hitting a sandbar or anything else.

All those allegations Lee is making simply aren't true. Lee is angry about Dustin's treatment of Lee's sister. Also, Lee is scared to death of going to jail and would say anything to avoid it. For all the police know, the kid that got killed could have been run over by Alex, although I am sure I would have heard something or seen something if that happened. Dustin won't get his diploma until September and he can't go to college. All he has left is Janet. He never should have been arrested and certainly should not go to jail for something he did not do.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

August 21, 2012

/s/ Rene(e) Robbins
Rene(e) Robbins

AFFIDAVIT OF DR. CHRIS CARSON

(Testifying for the Defense)

I am Dr. Chris Carson. I am 48 years old. I have a Ph.D. in Toxicology from Mid-Western University. I am the president of my own forensic consulting firm, Reliable Experts, Inc. I have consulted in more than 300 cases involving alcohol-related issues. I have published 20 articles involving the effects of alcohol on human behavior and perception, 18 of which have been published in legal journals. However, I have been qualified as an expert in over 40 district courts in the State of Independence, where I have testified in numerous cases involving charges of DUI. I have also consulted in more than 150 personal injury cases involving accidents where alcohol is alleged to have played a part. The majority of my testimony in those cases has been on behalf of plaintiffs or injured parties. I have also testified in 23 criminal trials; 20 for the defense and three for the prosecution. I have been paid \$2,500.00 for completing my investigation and preparing my report. I will be paid \$1,500.00 daily for my time while testifying at trial.

I was requested by Dustin Beaver's attorney to provide an opinion in this case. I reviewed the following material:

- The witness statement of Lee Lincoln
- The witness statement of Eric(a) Evans
- The witness statement of Alex Alvaro
- The witness statement of Rene(e) Robbins
- The witness statement of Dr. Shelly Storm
- The blood sample and BAC of the defendant, Dustin Beaver and
- The autopsy results reported by Detective Evans.

I have assumed that Dustin Beaver began drinking at 12:01 a.m. on May 21, 2012 and that he stopped drinking around 1:30 a.m. I have also assumed that he approached the Railroad Bridge, then swerved toward the beach at 2:20 a.m. His blood sample, which was reportedly taken at 3:45 a.m. disclosed a blood alcohol concentration of 0.057%.

One's blood level reaches its maximum concentration, or peak from 30 to 90 minutes after one stops drinking. That is because after one stops drinking, alcohol continues to be absorbed through the stomach and intestines. Alcohol is eliminated from the body at the average rate of 0.015% per hour. I see that Dr. Storm uses a range of 0.015% to 0.017%. Such a range is really no longer accepted by the scientific or medical community and can result in a distorted extrapolation that is higher than one's actual BAC. Studies which show that habitual abusers of alcohol may eliminate it at a slightly higher than average rate involve chronic alcoholics, not casual weekend drinkers. There is no sound reason to use a rate of elimination other than the well-established average of 0.015%.

Based upon the foregoing considerations and assumptions, it is my opinion, within reasonable scientific probability and with even greater certainty, that Mr. Beaver's blood alcohol peaked at approximately 2:20 a.m. on May 21, 2012—approximately the time he sped toward and swerved away from Railroad Bridge. It is also my opinion that his peak BAC was between 0.072% and

0.079%; it never reached 0.08% on the morning of May 21. I have plotted Mr. Beaver's BAC curve on Exhibit 2.

Lee Lincoln's assertion in the witness statement that Dustin Beaver consumed two six-packs of 12 oz. beer plus quantities of champagne is preposterous. Dustin's BAC at 3:45 would have been considerably higher—perhaps twice what it was. Dustin's BAC of 0.057% at 3:45 a.m. is consistent with his consumption of five, possibly six 12-oz bottles of beer or their equivalent.

Alcohol affects different people in different ways. Some people become totally uncontrollable after one or two drinks. Others can drink significantly greater quantities and show little sign of intoxication. Because there is little or no evidence of Mr. Beaver's drinking history, and no way to accurately gauge the effects of different quantities of alcohol upon him, it is, from a scientific or toxicological perspective, simply impossible to say whether or to what extent his ability to operate a boat was impaired by alcohol on May 21, 2012. Certainly his ability to navigate a boat through tricky river channels, an island, and sand bars down a winding river on his return trip suggests he was not impaired. Also, he demonstrated no readily observable signs of intoxication.

I acknowledge that Exhibit 3 is authoritative and represents generally accepted correlations between alcohol and behavior. I also agree that an individual's ability to operate a motor vehicle or vessel is impaired if his or her BAC is at or above 0.08%. People with BACs at those levels suffer from impaired judgment, loss of self-control and diminished visual acuity. I also acknowledge that a person whose BAC is above 0.06% has a likelihood of becoming involved in a vehicular accident that is twice that of a person who has no alcohol in his system. I have indicated the increased likelihood of an accident on Exhibit 2. I do not know if that same principle would apply to boating accidents. I am not aware of any authoritative studies on boating as opposed to motor vehicle accidents.

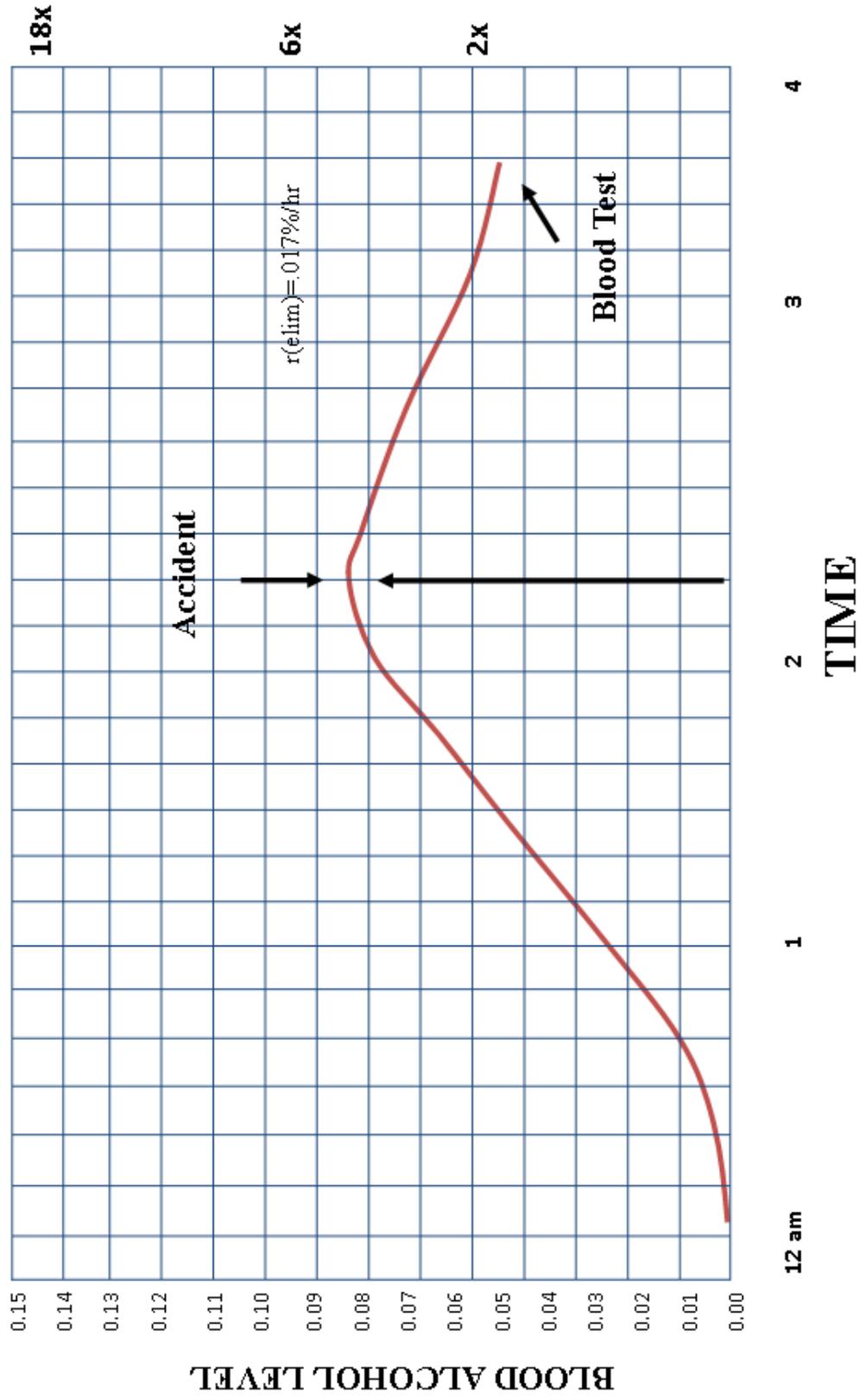
I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

September 6, 2012

/s/Chris Carson
Chris Carson, Ph.D.

Section 3: SBAND Exhibits

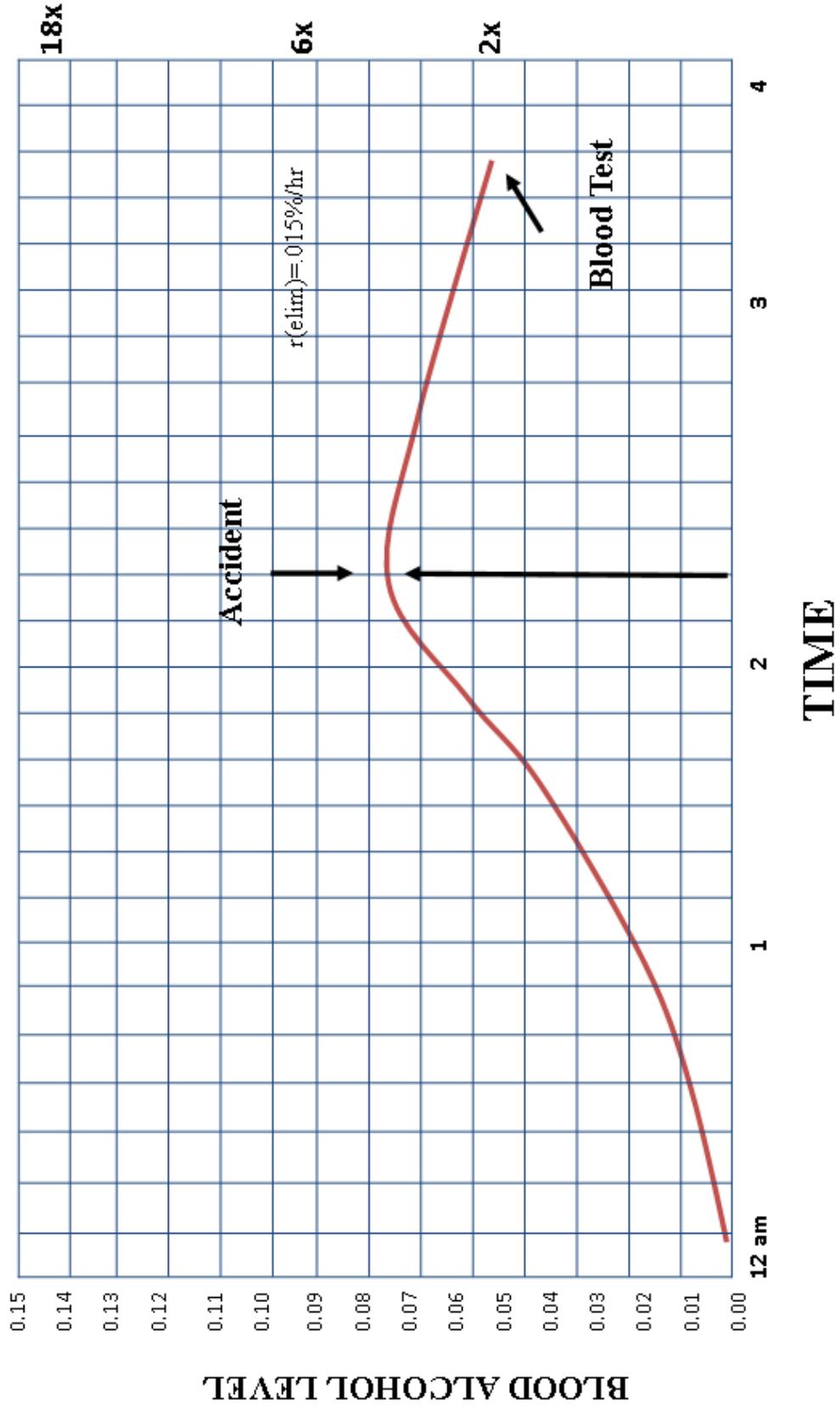
BLOOD ALCOHOL CURVE FOR DUSTIN BEAVER



Accident: 2:20 a.m., Blood Alcohol Level= .057% at 3:45 a.m.; $r(\text{elim}) = 0.17\%/hr$.

Exhibit 1

BLOOD ALCOHOL CURVE FOR DUSTIN BEAVER



Accident: 2:20 a.m., Blood Alcohol Level= .057% at 3:45 a.m.; $r(\text{elim})=0.015\%/hr$.

Exhibit 2

RELATIONSHIP BETWEEN ALCOHOL INTOXICATION AND BEHAVIOR©

BAC (grams percent)	BIOBEHAVIORAL EFFECTS
.02-.04%	No impairment detectable except when measured by highly specialized tests. Subjective, warm mellow feeling, slight relaxation.
.06%	Increased risk for an accident (2x greater) due to divided attention failure and impaired judgment.
.08%	Too intoxicated to drive (legal limit); impaired muscular coordination on certain standardized tests, some impairment of vision.
.15%	Reliable signs of visible intoxication without the use of special tests (e.g., slurred speech, difficulty walking, standing, picking up objects), inappropriate uninhibited behavior, impaired sensory processing, increased reaction time.
.20-.25%	Severely impaired sensory motor processing.
.30%	Stuporous - Unconscious.
.35%	Low range of surgical anesthesia.
.40%	Lethal level for half the population.

The effects described are cumulative. Symptoms that appear at lower blood alcohol levels may also be present at higher alcohol concentrations. Derived from Brick, J., *The Relationship between Alcohol Intoxication and Behavior* ©1994, and Brick J. and Erickson, C., *Drugs, The Brain and Behavior*, Haworth Medical Press, 1998.

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Exhibit 3

DRUGS, THE BRAIN, AND BEHAVIOR: THE PHARMACOLOGY OF ABUSE AND DEPENDENCE©

By John Brick, Ph.D. and Carl Erickson, Ph.D.

The following excerpts from Chapter 6 are reprinted with permission from Dr. John Brick:

- Alcohol is perhaps the world's oldest known drug.
- It is toxic to almost everything, including the liver, heart, brain, gut, pancreas, and fetus -- yet people drink gallons of it. We know more about this drug than other psychoactive drugs, yet we still do not know all of the mechanisms through which it works to produce intoxication and addiction.
- When alcohol is swallowed it enters the stomach. The transit from the stomach into the small intestine is regulated by a ring-shaped muscular valve called the pyloric sphincter. Under laboratory conditions in which the pylorus has been clamped closed or ligated, about half the alcohol in the stomach will eventually be absorbed through the stomach wall and into the blood. However, under more natural drinking conditions, about 10 percent of the orally ingested alcohol is absorbed through the stomach; the rest is absorbed in the upper intestine.
- The concentration of alcohol in the blood is a function of many factors including (1) the amount consumed, (2) the rate at which alcohol enters the circulatory system from the gastrointestinal tract, (3) the diffusion and distribution of alcohol into blood and fluid compartments, (4) the rate at which alcohol is oxidized and eliminated, and (5) the time course of drinking.
- When the rate of absorption exceeds the rate of elimination, blood alcohol concentration (BAC) rises. Therefore, the rate of alcohol absorption directly affects the maximum BAC.
- Under most drinking scenarios, alcohol absorption exceeds elimination for about thirty to ninety minutes after the last drink.
- Widmark was the first to accurately describe the rate of alcohol elimination in humans...Widmark reported [the rate of alcohol elimination in humans] to be about 15mg/dl/hr (.015 percent/hr.).
- More recent studies using better analytical techniques have confirmed Widmark's original computation and have suggested that, except in some clinical populations, the rate of elimination is very centrally weighted at approximately .015 percent/hr.
- Approximately 90 percent of all alcohol is eliminated from the body through breakdown by the liver enzyme alcohol dehydrogenase. Small amounts of unchanged alcohol are eliminated from the body through sweat, urine, and expired air. These can be measured in alcohol sweat patch tests, urinalysis, and through breath testing.

- The BAC is the concentration of alcohol by weight in a volume of blood, almost always 100 milliliters (in the United States). The BAC is usually expressed in grams or milligrams (mg) of pure ethanol per 100 milliliters (ml) of whole blood or serum.
- In most drinkers, as the BAC increases toward 100 mg/dl (.10 percent), it becomes increasingly difficult to perform various complex psychomotor tests, including tasks such as driving. However, it is difficult, in the absence of specific testing, to reliably observe and identify symptoms of alcohol intoxication until BACs reach 150 mg/dl (.15 percent). At that level or more, the majority of people will show signs or symptoms of impairment due to alcohol intoxication, even in the absence of specific testing.
- One of the most pronounced effects of alcohol is on divided attention tasks... For example, operating a motor vehicle requires the driver to attend to and remember many tasks. Alcohol intoxication may interfere with the ability to remember to wear a seat belt, turn on driving lights and/or directional signals, attend simultaneously to other vehicles, pedestrians, traffic control devices, road markings, hazards, or signs, and to control lane position, speed, make estimates of time and distance, etc. At high BACs the performance of these skills is further hampered by analgesia and impaired feed back from tactile (touch) receptors in the skin. (This type of feedback is called proprioception.)
- People rarely look visibly intoxicated at BACs that produce impairment in complex divided attention task, such as driving. Most drinkers will not appear visibly intoxicated (impaired) at BACs of 0.08 percent (the current legal limit in all states), unless they are given specific tests. The reality is that virtually all drinkers are at increased risk for an accident at BACs that do not produce visible intoxication....
- Chronic heavy drinking can produce liver damage (e.g., fatty liver, cirrhosis), cardiovascular diseases (e.g., heart disease, hypotension), brain damage (cerebellum degeneration, enlarged ventricles), peripheral nerve damage (e.g., neuropathies, paresthesias), neurological damage (cognitive and memory impairment), and motor disorders (gait).

Exhibit 4

LEGAL AUTHORITY

INDEPENDENCE STATUTES

2C: 2-2 General requirements of culpability.

- a. Minimum requirements of culpability. A person is not guilty of an offense unless s/he acted purposely, knowingly, recklessly or negligently, as the law may require, with respect to each material element of the offense.
- b. Kinds of culpability defined.
 - (3) Recklessly. A person acts recklessly with respect to a material element of an offense when s/he consciously disregards a substantial and unjustifiable risk that the material element exists or will result from the person's 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 the actor, its disregard involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation.

2C: 2-3 Causal relationship between conduct and result.

- a. Conduct is the cause of a result when:
 - (1) It is an antecedent but for which the result in question would not have occurred.
- b. When the offense requires that the defendant recklessly cause a particular result, the actual result must be within the risk of which the actor is aware or, if not, the actual result must involve the same kind of injury or harm as the probable result and must not be too remote, accidental in its occurrence, or dependent on another's volitional act to have a just bearing on the actor's liability or on the gravity of his offense.

2C: 11-2 Criminal Homicide.

- a. A person is guilty of criminal homicide if s/he purposely, knowingly, recklessly, or under circumstances set forth in section 2C 11: -5, causes the death of another human being.
- b. Criminal homicide is murder, manslaughter or death by auto.

2C: 11-4 Manslaughter.

- a. Criminal homicide constitutes aggravated manslaughter when the actor recklessly causes death under circumstances manifesting extreme indifference to human life.
- b. Aggravated manslaughter is a crime of the first degree.

2C: 11-5 Death by vehicular homicide.

- a. Criminal homicide constitutes vehicular homicide when it is caused by driving a vehicle or vessel recklessly.

- b. A person who drives a vehicle or vessel with a blood alcohol concentration of 0.08% or more by weight of alcohol in the defendant's blood, is presumed to be operating the vehicle or vessel recklessly.

2C: 43-6 Sentence of imprisonment for crime.

- a. Except as otherwise provided, a person who has been convicted of a crime may be sentenced to imprisonment, as follows:
 - (1) in the case of a crime of the first degree, for a specific term of years which shall be fixed by the court and shall be between 10 years and 20 years;
 - (2) in the case of a crime of the second degree, for a specific term of years which shall be fixed by the court and shall be between 5 years and 10 years;
 - (3) in the case of a crime of the third degree, for a specific term of years which shall be fixed by the court and shall be between 3 years and 5 years.

POINT DOUGLAS BEACH ORDINANCE 15-88

Section 1. Use of beaches after 10:00 p.m. and swimming after dark prohibited.

- a. It shall be unlawful for any person to walk on or use for any purpose after 10:00 p.m. the beaches at Prescott Bridge and Railroad Bridge or to swim after dark in the waters adjacent to, or within 300 feet of, the beaches at Prescott Bridge and Railroad Bridge.
- b. Any person who has been convicted of a violation of this ordinance shall be required to pay a fine of \$1,000.00 and shall be subject to a term of imprisonment of up to 90 days or both.

JURY CHARGE
STATE V. DUSTIN BEAVER

Ladies and Gentleman,

The defendant, Dustin Beaver, is presumed to be innocent until and unless the State proves guilt beyond a reasonable doubt. The burden of proving guilt is upon the State. No burden of proof is imposed upon the defendant, Dustin Beaver. Unless the State has proven beyond a reasonable doubt each and every element of the crimes charged, this defendant, Dustin Beaver, is entitled to a verdict of not guilty. Reasonable doubt is an honest and reasonable uncertainty as to the guilt of this defendant existing in your minds after you have given full, fair and impartial consideration to all of the evidence.

Count One of the indictment alleges that on May 21, 2012 the defendant, Dustin Beaver, committed aggravated manslaughter. In order to establish the crime of aggravated manslaughter, the State must prove to you beyond a reasonable doubt that on May 21, 2012, Dustin Beaver recklessly caused the death of Freddy Ferris under circumstances manifesting extreme indifference to human life. In order for you to find the defendant guilty of aggravated manslaughter, the State is required to prove each of the following elements beyond a reasonable doubt:

1. That the defendant caused Freddy Ferris's death;
2. That the defendant did so recklessly; and
3. That the defendant did so under circumstances manifesting extreme indifference to human life.

One element that the State must prove beyond a reasonable doubt is that the defendant acted recklessly. A person who causes another's death does so recklessly when s/he is aware of and consciously disregards a substantial and unjustifiable risk that death will result from his conduct. The risk must be of such nature and degree that, considering the nature and purpose of the defendant's conduct and the circumstances known to the defendant, his/her disregard of that risk is a gross deviation from the standard of conduct that any reasonable person would follow in the same situation.

In other words, you must find that the defendant was aware of and consciously disregarded the risk of causing death. If you find that defendant was aware of and consciously disregarded the risk of causing death, you must determine whether the risk that he disregarded was substantial and unjustifiable. In doing so, you must consider the nature and purpose of defendant's conduct, and the circumstances known to the defendant, and you must determine whether, in light of those factors, the defendant's disregard of that risk was a gross deviation from the conduct a reasonable person would have observed in the defendant's situation.

Another element that the State must prove beyond a reasonable doubt is that the defendant acted under circumstances manifesting extreme indifference to human life. The phrase “under circumstances manifesting extreme indifference to human life” does not focus on the defendant’s state of mind, but rather on the circumstances under which you find he acted. If, in light of all the evidence, you find that the defendant’s conduct resulted in a probability as opposed to a mere possibility of death, then you may find that he acted under circumstances manifesting extreme indifference to human life. On the other hand, if you find that his conduct resulted in only a possibility of death, then you must acquit him of aggravated manslaughter and consider the crime of death by vehicular homicide, which I will explain to you shortly.

The final element that the State must prove beyond a reasonable doubt is that the defendant caused Freddy Ferris’s death. Causation has a special meaning under the law. To establish causation, the State must prove two elements, each beyond a reasonable doubt:

First, that but for the defendant’s conduct, Freddy Ferris would not have died.

Second, Freddy Ferris’s death must have been within the risk of which the defendant was aware. If not, it must involve the same kind of injury or harm as a probable result of the defendant’s conduct, and must also not be too remote, too accidental in its occurrence, or too dependent on another’s volitional act to have a just bearing on the defendant’s liability or on the gravity of his offense. In other words, the State must prove beyond a reasonable doubt that Freddy Ferris’s death was not so unexpected or unusual that it might be unjust to find the defendant guilty of aggravated manslaughter.

Count Two of the indictment alleges that on May 21, 2012, the defendant committed the crime of death by vehicular homicide. A person is guilty of death by vehicular homicide when that person causes the death of another by operating the vehicle or vessel, in this case a boat, recklessly. The elements of death by auto or vessel in this case are:

1. That the defendant, Dustin Beaver, was the operator of a boat;
2. That Dustin Beaver caused the death of Freddy Ferris; and
3. The defendant caused Freddy Ferris’s death by driving the boat recklessly.

I have previously explained to you that causation has a special meaning under the law. To establish causation, the State must prove two elements, each beyond a reasonable doubt:

First, that but for the defendant’s conduct, Freddy Ferris would not have died.

Second, Freddy Ferris’s death must have been within the risk of which the defendant was aware. If not, it must involve the same kind of injury or harm as a probable result of the defendant’s conduct, and must also not be too remote, too accidental in its occurrence, or too dependent on another’s volitional act to have a just bearing on the defendant’s liability or on the gravity of his offense. In other words, the State must prove beyond a reasonable doubt that Freddy Ferris’s death was not so unexpected or unusual that it might be unjust to find the defendant guilty of death by vehicular homicide.

In this case there has been testimony that Dustin Beaver was drinking alcohol, and that his blood alcohol concentration was 0.08% or higher. If you find that the State has proven Dustin Beaver

was the operator of the boat that struck Freddy Ferris, and that Dustin Beaver's blood alcohol concentration, or BAC, was .08% or more at the time, then you are permitted to infer from the proven facts that Dustin Beaver was operating the boat recklessly. However, while you are permitted to accept the inference that Dustin Beaver was operating the boat recklessly, you may also reject it. If you find that there was credible evidence that contradicts or refutes the inference, then you should not conclude from defendant Beaver's BAC alone that he operated the boat recklessly at the time of Freddy Ferris's death. Of course, if you do not find from the evidence that defendant Beaver's BAC was 0.08% or above at the time of Freddy Ferris's death, then there is no inference.

The State need not prove beyond a reasonable doubt that the defendant's BAC was 0.08% or more at the time he was operating the boat in order to establish that he operated the boat recklessly. Such proof would give rise to an inference that the defendant's operation of the boat was reckless. However, the State may prove reckless operation of the boat from other evidence. If you do not conclude that defendant Beaver's BAC was 0.08%, you should then consider the testimony of all of the witnesses, including the experts, in deciding whether the State has proven beyond a reasonable doubt that the defendant, Dustin Beaver, recklessly operated the boat.

If, after weighing all of the evidence, you conclude that the State has proven beyond a reasonable doubt that Dustin Beaver was operating the boat that struck Freddy Ferris, that the defendant was operating the boat recklessly, and that Dustin Beaver's reckless operation of the boat caused the death of Freddy Ferris's, then you should find Dustin Beaver guilty of death by vehicular homicide. If you find there is reasonable doubt as to any of these three elements, then you should find that Dustin Beaver is not guilty.

The accused, Dustin Beaver, is entitled to separate consideration on each count of the indictment. In addition, if the State has not proven any one element of any offense beyond a reasonable doubt, the defendant is entitled to a "not guilty" verdict. However, if you conclude that the State has proven each element of an offense beyond a reasonable doubt, you must return a verdict of guilty with regard to that particular count.

Since this is a criminal case, your verdict must be unanimous -- all jurors deliberating must agree one way or the other before a verdict can be returned. You should decide this case on the evidence presented without any bias, prejudice, or sympathy, and without any reference to suspicion or conjecture. Although you are required to give careful consideration to the views of your fellow jurors, you are not required to give up your honestly held belief as to the guilt or innocence of the defendant on any particular count, as long as you are satisfied that your conclusion is correct after you have considered the views of your fellow jurors.

You may begin your deliberations. At such time as you return with your verdict, I will ask the juror sitting in seat #1 to rise and inform the court publicly of the verdict.