

2017

**TRIAL COURT
Case 2
STATE OF MINNESOTA VS. KENDALL**

CASE MATERIALS

Issues involving racing and vehicular manslaughter charges.

FACTUAL BACKGROUND

New Prague is located in Scott County, Minnesota, a semi-rural area. With a population of 7,428, the city has seen an alarming increase of illegal drag racing in recent years. The races attract small crowds of local teenagers and young adults. Many cheer on their favorite drivers from the side of the road, while a few others participate as starters (giving start signals) or as drivers themselves. In the last year alone, there have been two fatalities and a number of other injuries requiring medical attention due to incidents of illegal drag racing. There has also been significant damage to both private and public property.

Some local residents have organized informal drag racing clubs that challenge each other to race on New Prague's streets. Each club identifies itself with decals that depict the club's logo.

The City Council decided to address this deadly problem. With a unanimous vote in January 2016, the council passed Chapter 20, called the "New Prague Control of Illegal Racing Clubs Ordinance" ("Racing Ordinance"). The Racing Ordinance went into effect in April 2016. Notices of the pending law were placed in the county Department of Motor Vehicles office and the high school and community college auto-shop classes.

Under this ordinance, it is a misdemeanor for drivers to knowingly congregate with members of an illegal racing club on New Prague's streets. Police officers have identified about five local clubs and their logos. The ordinance allows officers to identify a driver as a club participant by the particular logo that is visible on the vehicle.

Vanessa Foley, age 19, enrolled at New Prague Community College in September 2015. At that time she befriended Mo Lancaster, age 18 and the two of them signed up for an auto-shop class at the college. Vanessa owned a two-door Stallion X2 compact sports car, an import from Europe. Mo was known to be a drag racer, and Vanessa became interested, too. Vanessa's brother-in-law owns and manages a computer store in New Prague, and Vanessa requested that he design and print window decals of a cartoon pig driving a hot rod with the words "Road Hogz" on it. He did this and provided Vanessa with some stickers. Vanessa, Mo, and a couple of others placed the decals on their cars and started to tell people that they were a dragster club called the Road Hogz. Vanessa and Mo had appeared at the City Council meeting in January to speak out in opposition to the passing of the Racing Ordinance and to recommend that the local government build a legal racetrack

in New Prague. In October 2015, Vanessa and Mo were arrested in New Prague and convicted for violation of Minnesota Criminal Code Section 23109, which prohibits illegal contests or exhibitions of speed. Officer Quinn Avila of the New Prague Police Department cited Vanessa twice since 2015 for speeding down Main Street in New Prague.

Starting in September 2015, an informal social group at the college, got together to start the weekend, often driving across town in a "caravan" to a place called The Heavy Burger. The caravan typically began where the college was located on the eastern end of Main Street, a two-lane road that ran east-west through the center of New Prague. The caravan then traversed the street to the far west end of town, where the street crossed Gardner Avenue, a four-lane road. The 80-foot wide intersection was controlled by a traffic signal suspended above the center of the intersection by high cables attached to electrical poles at the four corners. An auto-repair shop and gas station located on the southwest corner belonged to Brett Williams, an auto mechanic. The Heavy Burger is located a mile west of this intersection in an undeveloped area of New Prague. There are sparsely placed light poles along this mile stretch of Main Street, and there were no other stop signs or traffic signals. It was at this intersection that drag racing often began.

Darian Kendall, age 20, is a second-year student at the college and an acquaintance of Vanessa's

from high school. Darian had enrolled in the same auto-shop class at the college with Vanessa and Mo. Darian owned a four-door Dimension 100 sedan with a manual transmission and an eight-cylinder engine. Upon seeing Darian's Dimension 100 for the first time at the college in September, Vanessa made fun of it. Vanessa later told others in the group that when things cooled down after her

October arrest and December speeding violations, she would enjoy demonstrating how fast her Stallion X2 could go.

On February 20, Vanessa picked Darian and Mo up at the college to drive them in the caravan to The Heavy Burger. Vanessa's Stallion X2 was in the front of the caravan. Darian sat in the backseat, while Mo was the front passenger. The car stopped at the intersection of Gardner and Main, but when the light turned green, Vanessa revved the engine. At that moment, Vanessa laughed and accelerated the Stallion X2 forward to 85 mph and drove at that speed for a quarter mile.

Darian also attended a drag race as a spectator. At this race on Friday, April 23, Officer Avila came upon the scene and arrested Vanessa Foley for illegally racing. Avila also counseled Darian, and others on the dangers and legal consequences of street racing and then released them.

On the night of Friday, May 21, at 7:40 p.m., Darian and Robin Avery assembled in a parking lot at the college for the usual caravan across town. Vanessa arrived with Mo as a passenger. Darian, who was alone in the Dimension 100, led the three cars in the caravan. Robin, age 20, was second in line, driving a Saurus, a large SUV. Vanessa's Stallion X2 was the third and last car in the line. They arrived at the intersection of Gardner and Main, just after sunset approximately 7:55 p.m.

When the cars stopped for the red light at Gardner, Vanessa suddenly pulled her car out of the line, drove on the wrong side of the road, and stopped next to Darian's sedan. Vanessa began revving the Stallion X2's engine. When the light turned green, both cars began to accelerate. Vanessa immediately lost control of her vehicle. The Stallion X2 crossed the intersection and onto the southwest corner where it struck the light pole. The car wrapped around the pole in such a way that its hood was split in two. Mo managed to escape from the car. Vanessa, however, was pinned inside. Flames arose from the engine.

Darian's Dimension 100 came to a stop on the north side of Gardner Avenue, approximately 55 feet west of the Main and Gardner intersection.

Brett Williams was at work that evening in the repair shop. As soon as the Stallion X2 collided with the pole, Brett enlisted the help of Parker Gallo to pull Vanessa from the car. Brett ran back into the shop to retrieve a fire extinguisher and ran back to the car with it. Brett managed to douse the flames, but could not extract Vanessa from the car.

About five minutes later, police officer Quinn Avila, paramedics, and firefighters arrived at the accident scene. Officer Avila calmed the small crowd that had formed and kept them safely away from the vehicle. The firefighters extracted Vanessa from the Stallion X2, and paramedics took Vanessa to the emergency room at St. Ignatus Hospital, where she was pronounced dead from traumatic head injuries. No one else had any severe injuries.

Officer Avila took statements from witnesses at the scene. Officer Avila arrested Darian for participating in an illegal contest of speed and arrested Mo for aiding and abetting an illegal contest of speed. Darian was subsequently charged with two criminal counts: (1) vehicular manslaughter Minn. Stat. Sec. 192; and (2) misdemeanor violation of Minn. Stat. Sec. 23109. Police impounded Darian's Dimension 100, which was subsequently missing from the impound lot before experts could examine it.

CHARGES

The prosecution charges Darian Kendall with three charges:

1. Vehicular Manslaughter
Minnesota Criminal Code, Section 192(c)
2. Illegal Exhibition of Speed, misdemeanor violation
Minnesota Criminal Code, Section 23109

DESCRIPTION OF THE CHARGES

Vehicular Manslaughter Minnesota Criminal Code, Section 192(c) –

Vehicular Manslaughter – Unlawful killing of a human being:

- (1) [Gross Vehicular Manslaughter]...while driving a vehicle in the commission of an unlawful act, not amounting to a felony, and with gross negligence; or driving a vehicle in the commission of a lawful act which might produce death, in an unlawful manner, and with gross negligence.
- (2) [Vehicular Manslaughter – Ordinary Negligence]...while driving a vehicle in the commission of an unlawful act, not amounting to a felony, with negligence; or driving a vehicle in the commission of a lawful act which might produce death, in a negligence manner.

Jury Instructions Regarding Vehicular Manslaughter

The defendant is charged with alternative counts of Vehicular Manslaughter.

To prove the defendant guilty of Gross Vehicular Manslaughter, the State must prove that:

- (1) The defendant drove or operated a vehicle.
- (2) While driving or operating the vehicle, the defendant either (a) committed a misdemeanor or other infraction or (b) engaged in otherwise lawful act that might cause death.
- (3) The defendant's conduct caused the death of another person.

An act causes death if the death is the direct, natural, and probable consequence of the act and the death would not have happened without the act. A natural and probable consequence is one that a reasonable person would know is likely to happen if nothing unusual intervenes. In deciding whether a consequence is natural and probable, consider all of the circumstances established by the evidence.

There may be more than one cause of death. An act causes death only if it is a substantial factor in causing the death. A substantial factor is more than a trivial or remote factor. However, it does not need to be the only factor that causes the death.

- (4) The defendant acted with gross negligence.

Gross negligence involves more than ordinary carelessness, inattention, or mistake in judgment. A person acts with gross negligence when that person acts with scant regard or

blatant disregard for the risk of seriously bodily injury or death.

The mere fact that a defendant drives a motor vehicle and violates a traffic law is insufficient in and of itself to constitute gross negligence. You must determine from the overall circumstances of the manner in which defendant drove whether his or her conduct constituted gross negligence.

The State has the burden of proving beyond a reasonable doubt that the defendant committed all of the elements of Gross Vehicular Manslaughter. If you find that the State did not meet its burden to prove all of the elements of the crime, then you must find the defendant not guilty of Gross Vehicular Manslaughter.

The defendant is charged alternatively with the lesser crime of Vehicular Manslaughter – Ordinary Negligence.

If you find that all elements of Gross Vehicular Manslaughter have been met – except for Defendant’s acting with gross negligence – then you must consider whether or not the defendant is guilty of Vehicular Manslaughter – Ordinary Negligence.

The only difference between Gross Vehicular Manslaughter and Vehicular Manslaughter – Ordinary Negligence is the degree of negligence required.

I have all ready defined gross negligence for you. Ordinary negligence is the failure to use reasonable care to prevent reasonably foreseeable harm to oneself or to someone else. A person is negligent if he or she does something that a reasonable person would do in the same situation or fails to do something that a reasonable person would do in the same situation.

If you find that the defendant (1) drove or operated a vehicle, (2) committed a misdemeanor, other infraction or engaged in otherwise lawful act that might cause death, (3) the defendant’s conduct caused the death of another person *and* (4) the defendant acted negligently, then the defendant is guilty of Vehicular Manslaughter – Ordinary Negligence.

If you find that any of these elements has not been proven beyond a reasonable doubt, then you must find the defendant not guilty on this charge.

Motor Vehicle Speed Contest
Minnesota Criminal Code, Section 23109

- (a) No person shall engage in any motor vehicle speed contest on a highway. As used in this section, a motor vehicle speed contest includes a motor vehicle race against another vehicle, a clock, or other timing device. For purposes of this section, an event in which the time to cover a prescribed route of more than 20 miles is measured, but where the vehicle does not exceed the speed limits, is not a speed contest.
- (b) No person shall aid or abet in any motor vehicle speed contest on any highway....
- (c) No person shall engage in any motor vehicle exhibition of speed on a highway, and no person shall aid or abet in any motor vehicle exhibition of speed on any highway...

Jury Instructions – Exhibition of Speed

Defendant is charged with engaging in an exhibition of speed. To prove that the defendant is guilty of this crime, the State must prove that:

- (1) Defendant drove a motor vehicle on a highway.

A highway is any area publicly maintained and open to the public for vehicular travel, including city streets.

- (2) When doing so, defendant willfully engaged in an exhibition of speed.

Someone commits an act willfully when he or she does it willingly or on purpose. It is not required that he or she intend to break the law, hurt someone else, or gain any advantage.

A person engages in an exhibit of speed when he or she accelerates or drives at a rate of speed that is dangerous and unsafe, in order to show off or to make an impression on someone else.

The State must prove that the defendant intended to show off or impress someone but is not required to prove that the defendant intended to show off or to impress a particular person.

If you find all of the elements of this crime have been proven beyond a reasonable doubt, you must find the defendant guilty on Count 2. If you do not find that all of the elements have been met, then you must find the defendant not guilty on Count 2.

STIPULATIONS

Prosecution and defense will stipulate to the all of the following:

1. For purposes of the trial, there is not an equal protection argument.
2. There was sufficient probable cause to arrest Darian Kendall and Mo Lancaster.
3. Vanessa Foley's car was thoroughly examined by experts (not included in the case) and it was determined that there were no mechanical defects and the accident was caused by driver error.
4. All witness statements were taken in a timely manner.
5. All physical evidence and witnesses not provided for in the case packet are unavailable and availability may not be questioned.
6. All witness statements were taken in a timely matter.
7. Lindsay White and Haley Salazar are qualified witness experts and can testify to each other's statements.

WITNESS STATEMENT
Prosecution Witness
Officer Quinn Avila

1 My name is Quinn Avila. I am a police officer in the New Prague Police Department where I have worked
2 for the last six years. I am 29 years old.

3 In the last year, there has been an increase in the amount of illegal speed contests, or drag racing, in New
4 Prague. I know that teenagers sometimes do it for excitement. I find it unacceptable, however, that so
5 many people are taking such risks with their lives. The deaths that have resulted have been horrific for the
6 community, and I have personally investigated two of them before the death of Vanessa Foley. I also
7 directed the task force that investigated the problem, identifying some of the known car clubs around
8 town. This is how I discovered Vanessa's club, the Road Hogz, and its logo. Other clubs, like the Comets,
9 would race against either Vanessa or Mo Lancaster just because they saw the logo on the back of
10 Vanessa's car. The logos may be otherwise innocuous, but when placed on a vehicle they take on a
11 symbolic significance, letting other drivers know that the driver intends to drag race.

12 I knew Vanessa Foley before she died. I had ticketed her for speeding on Main Street twice since 2015. I
13 had spoken to many students at the Community College, and they told me that Vanessa was very
14 competitive. She would challenge people to any kind of race, including mountain bicycling,
15 skateboarding, and driving. I arrested her at the drag race on April 23, 2016, for participating in an illegal
16 speed contest. I also know she had been arrested for other illegal speeding incidents.

17 I did not know of Darian Kendall until April 23, when I saw Darian who was a spectator at an illegal race.
18 As with many of the spectators that night, I decided not to press charges, but simply to issue warnings. I
19 counseled Darian about the dangers of street racing and then released Darian. I hoped that would do the
20 trick to scare Darian away from participating. However, during my warning, Darian seemed to have an
21 attitude and appeared not to be paying attention to anything I was saying. Typical of these drag racing
22 kids, they think they know everything.

23 On May 21, at about 8:00 p.m., I was on patrol in New Prague when a call came in from dispatch about a
24 car accident at Main and Gardner. In the patrol car, I rushed to the scene. The fire department had been
25 called, too. At the scene, I first noticed Vanessa's car on Brett Williams' property. The hood was smoking
26 from the flames that Brett had just doused. A small crowd of about 10 people had formed on the perimeter
27 of Williams' gas station. I immediately cordoned off the gas station while the firefighters and paramedics
28 took care of Vanessa. I questioned the three eyewitnesses to the accident: Robin Avery, Parker Gallo, and
29 Brett Williams. From them, I learned that Vanessa's car had sped out of control into the station and
30 collided with parked vehicle. I also learned from Parker's statement that Parker had a good line of sight
31 and saw the entire accident. Parker stated that Vanessa and Darian were racing and that Darian had been
32 speeding from the moment the light turned green.

33 As I finished taking Parker's statement, I noticed two people on the northern side of Main Street. One was
34 sitting on the ground, and the other was standing. I immediately identified the sitting person as Mo
35 Lancaster, whom I knew to be a frequent drag racer and member of the Road Hogz, one of the racing
36 clubs my department had identified. I walked toward them, and as I got closer I saw that I also knew the
37 other person standing there. It was Darian Kendall.

38 I asked Mo Lancaster if Mo knew anything about the accident. Mo replied, "There was a race between
39 Darian and Vanessa, but it went all wrong." Mo was visibly upset. Darian immediately began to protest
40 what Mo had said. I asked Darian where Darian's vehicle was, and Darian pointed to the Dimension 100.
41 It was starting to get dark, but I could see that the Dimension 100 had a Road Hogz decal, which furthered

42 my suspicion that Darian had been involved in a race. When I tried to question Darian, almost
43 immediately I recognized that Darian had the same negative attitude as on the night of April 23, when I
44 caught Darian at the drag race. On the night of Vanessa's accident, I could tell from Darian's body
45 language that Darian really didn't seem concerned with Vanessa. I think Darian was more concerned with
46 what happened to Vanessa's car than with Vanessa herself.

47 I determined that there had been an illegal race. I then arrested Darian on the spot for violating Minnesota
48 Criminal Code Section 23109(a) and Mo for violating Section 23109(b). I read them their Miranda rights,
49 frisked them but found nothing, and brought them back to the patrol car. By that time, another patrol car
50 had arrived. I completed my investigation by taking all the pertinent measurements of the scene and then
51 took Mo and Darian to the Police Station.

WITNESS STATEMENT
Prosecution Witness
Mo Lancaster

1 My name is Mo Lancaster. I live at 789 Woods Avenue in New Prague. I moved to New Prague from
2 Oregon five years ago and have attended New Prague Community College since September 2015. I
3 enrolled in the auto-shop class so that I could eventually work as a mechanic to pay my way toward
4 getting a bachelor's degree. I have always loved cars and watching races on television. I am currently on
5 probation from the incident on May 21, as part of my plea agreement for my charge of aiding and abetting
6 an illegal contest of speed under the Criminal Code Sec. 23109.

7 I met Vanessa Foley in auto-shop class. We became friends and shared a lot about our interest in cars and
8 racing. We knew that there had been a couple of deaths and others had been injured in New Prague
9 recently, but we also knew that at least one of those deaths had been caused by teenagers who drove in
10 from other towns. We attended professional races once in a while and had a serious interest, but the
11 younger teenagers messed it up for the rest of us.

12 We formed a car club in September with some others from New Prague and called ourselves the Road
13 Hogz. It was meant to be funny, and Vanessa even had her brother-in-law design a funny decal for the
14 club. We wanted to distinguish ourselves and race from time to time.

15 In the month of October, in fact, I was arrested along with Vanessa and a couple of others for drag racing
16 on a remote road in New Prague. It seemed unfair, because we deliberately did it outside of the city center
17 and away from anyplace where we would annoy or injure anyone. The experience convinced us that we
18 had to protest this new ordinance that was being planned, because we were mostly responsible drivers and
19 wanted a legal venue for our races.

20 I knew Darian Kendall from the auto-shop class. Darian was more Vanessa's friend than mine, but I liked
21 to show Darian what I was doing in the class. I already knew a lot about engines and improving the
22 performance of a car. Darian was interested in cars, but I think was afraid to race at first, until Vanessa
23 and I talked to Darian and said a lot about how much fun racing was. Darian read about our appeal at the
24 City Council meeting in the newspaper and asked us how to get into racing. Vanessa thought Darian was a
25 "wannabe" who only got into racing when the newspapers reported about us. I thought Darian was more
26 serious about racing and explained to Darian that I was available to race anytime.

27 On February 20, 2016, Vanessa told me that she was going to see if Darian was the kind of person worthy
28 to be a Road Hog. She drove very fast toward the Heavy Burger with Darian and me as passengers. Darian
29 was yelling at her to slow down. At The Heavy Burger, Vanessa was laughing at Darian and telling people
30 that Darian was "freaked out to be going so fast." Darian seemed mad about it. Three days later, on
31 Monday, we saw Darian's Dimension 100 car at the college parking lot. There was a Road Hogz decal in
32 the back window. Vanessa confronted Darian right there and told Darian to take the decal off the car.
33 Darian got into Vanessa's face and said, "How can you say that when my car's faster than your pathetic
34 Stallion X2?" Things were tense. Vanessa started laughing again, though, and said that Darian was a
35 "poseur," a fake. Darian just walked away.

36 Later that same day in the auto-shop class, I watched as Vanessa talked about her car's engine to
37 someone. Darian walked up to Vanessa and said out loud, "Your car is pathetic!" Vanessa did not laugh
38 this time, but said to Darian that she was willing to race Darian anytime. She referred to Darian's car as a
39 "bougie bucket," which made people laugh. Darian said, "You're all talk." I do not know what got into
40 Darian to get so mad, but I assume it was the incident of February 20. Vanessa repeated that Darian was a

41 “fake Road Hog.”

42 I saw little of Darian until April 23 at the drag race. It was on the north side of New Prague, again in a
43 remote area. It was the area, in fact, where we wanted the racetrack built. Just after Vanessa raced against
44 someone, the police showed up with their sirens blaring. They started arresting a bunch of people, and it
45 was then that I noticed Darian there. Darian looked at me and said, “Hey, Mo.” I asked Darian why Darian
46 was there. Darian replied, “Just to see Vanessa lose.”

47 It was the next day, I think, when I told Vanessa what Darian had said. Vanessa concluded that Darian
48 was challenging her to race, which Vanesa was sure she would win. Vanessa explained, though, that even
49 though her license was being suspended, she would be willing to accept any challenge by Darian to race.
50 We both wanted Darian to shut up and stop acting so tough.

51 The opportunity came on May 21, 2016. I was in Vanessa’s car as a passenger when we saw Darian and
52 Robin Avery standing around in the campus parking lot. We drove up to them and Vanessa asked where
53 they were going. One of them said The Heavy Burger. Vanessa stopped the car and asked Darian, “How’s
54 the bougie bucket?” Darian scowled back at her and said, “I’ll be out in front tonight.” Darian got into the
55 Dimension 100 immediately and was the first to leave the parking lot. Darian left in a hurry, and it was
56 hard for us to keep up. I saw that as an indication that Darian wanted to race. I immediately called Parker
57 Gallo on my cell phone and said, “Vanessa’s ready to go! Get down to Main and Gardner!”⁰

58 When we pulled up to the Main and Gardner intersection, I could not see Darian because of Robin
59 Avery’s big SUV in the way. Suddenly, Vanessa pulled the car around and drove up alongside Darian.
60 Vanessa started to rev the engine. I rolled down my passenger side window so Vanessa could yell at
61 Darian, whose window was also rolled down. She yelled, “On your mark, bougie bucket! You’ll be in our
62 dust!”

63 Darian pointed at her and yelled “No way!” I heard Darian’s motor revving, too.

64 When the light turned green, I was staring at Darian. Darian’s car pulled forward, and the front tires
65 smoked a bit. I heard the tires screech. Darian was peeling out, and so was Vanessa. The rest happened
66 very quickly, though, and I wish I could turn back the clock. The moment Vanessa’s car pulled forward, I
67 felt it swerve to the left. I started screaming when I saw us heading at full speed toward Brett Williams’
68 station. All I remember was a loud crash. I must have blacked out because the next thing I remember, I
69 was running across Main Street to get away from the car. I fell to the ground.

70 I then saw that Vanessa had hit the light pole on the corner of the gas station. Robin got out of the SUV
71 and ran toward the station. I do not remember much about the next few moments, but I do remember
72 Darian walking up to me. I did not really want to speak. I was in shock. I think I was crying. Darian was
73 just staring at the wrecked car when the firefighters and police arrived. I started yelling, “What are we
74 going to do?” I had a feeling that Vanessa was dead. I later found out that I was right.

75 When Officer Avila approached us by the side of the road, the officer asked me first, “Can you tell me
76 anything about what happened here?” I replied that Darian and Vanessa were racing. Darian immediately
77 yelled out that that was a lie. When I explained to the officer that I was Vanessa’s passenger and knew
78 about the race, I was arrested for aiding and abetting.

79 I am very sorry now that I did not stop Vanessa from racing Darian that night, and that I did not do more
80 to calm Darian down. I could just see that Darian would not back down, but neither would Vanessa. They
81 both were determined to race each other.

WITNESS STATEMENT
Prosecution Witness
Parker Gallo

1 My name is Parker Gallo. I live in New Prague at 110 Stock Street. I am in my second year at New Prague
2 Community College, along with Darian Kendall. I was also enrolled in the auto-shop class with Darian,
3 Vanessa Foley, and Mo Lancaster.

4 I never was a drag racer, but I attended almost every race in the last two years, up until January 2016. I
5 videotaped races so that many of us could have parties and watch the movies of the races. It was fun while
6 it lasted, and I saw Vanessa and Mo at a lot of these races and parties. I knew Mo better than Vanessa, but
7 I liked to talk to Vanessa sometimes about racing. I had a dream of being a mechanic at the Indianapolis
8 500 professional race someday.

9 Starting in January 2016, though, I changed my mind about the illegal drag races. I read in the paper about
10 the City Council's ordinance, and in an article there were statistics about deaths caused by drag racing in
11 New Prague and in all of Minnesota. I realized that I could get in trouble, too, just for attending these
12 races. I had made it into a U.C. school as a transfer student, to begin the following year. I decided not to
13 jeopardize my future and told myself that I would stay away from the races.

14 The problem was that I was still in the auto-shop class. I had to be there with people who talked
15 constantly about drag racing. On the Monday afternoon of February 23, I heard Darian Kendall and
16 Vanessa Foley yelling at each other in shop class. It was weird. They were both angry about something. I
17 heard Darian yell at Vanessa, "Your car is pathetic!"

18 Vanessa insulted Darian by calling Darian's car a "bougie bucket." I thought Darian would back down,
19 because I had not seen Darian at any of the races I had attended, except for February 20. I did not think
20 until then that Darian was a drag racer.

21 Surprisingly, though, Darian said, "You're all talk." Darian then walked away, and after a moment sat
22 next to me. We were quiet for a minute, and then Darian said to me, "I'm sick of hearing about Vanessa's
23 stupid car." Darian started to ask me about drag racing. I suppose Mo or someone must have told Darian
24 that I was enthusiastic about racing and had attended a lot of the local races. Darian said, "I think my
25 Dimension 100 can beat Vanessa's piece of junk."

26 Over the next few weeks, people in the auto-shop class talked about the "upcoming race" between Darian
27 and Vanessa. This happened many times. Whenever Darian was in the room, I would notice Darian smile
28 when people talked about Darian racing against Vanessa. People asked me to come videotape it, but I said
29 I did not do that anymore.

30 Then, in the evening of May 21, 2016, I was at work at The Heavy Burger. A couple of students were
31 there from the college. I recognized them from my classes. I overheard them talking about a big race that
32 evening between Vanessa and Darian at Main and Gardner. Many races had occurred at that intersection
33 before, but most drag racers had been using more remote roads since 2015.

34 My shift ended at 7:30 p.m., and I stayed around for a little while talking to people. At about 7:40, I was
35 walking to the parking lot and I got a call on my cell phone from Mo Lancaster. Mo said, "Vanessa's
36 ready to go! Get down to Main and Gardner!" I then got on my motorcycle. I rode down an old fire road
37 to the intersection of Main and Gardner. This fire road started behind The Heavy Burger and went parallel
38 to Main Street for a mile until it opened onto Gardner Avenue, about 40 feet or so north of the intersection

39 with Main Street. I then went south and parked my bike on the northwest corner of the intersection, across
40 from Brett Williams' gas station. It was about 7:50 p.m. and I sat and waited.

41 About five minutes later, I saw Darian's Dimension 100 pull up to the red light at the intersection.
42 Suddenly, Vanessa's car pulled up next to Darian, in the wrong lane. I heard the engines revving. I
43 realized that the race was actually going to happen.

44 When the light turned green, I saw Darian's car peel out into the intersection. Darian's car appeared to be
45 accelerating very quickly. I had seen a lot of races over the years, and I can tell when a car is going to
46 speed.

47 My attention, though, was quickly drawn toward Vanessa's car. It was veering toward Brett's gas station.
48 For the split second that I noticed Mo's face, Mo looked terrified. I then saw the car collide with the light
49 pole at the station's corner. Darian's car was just to my left, almost right in front of me when Vanessa's
50 car hit. I then heard screeching from Darian slamming on Darian's brakes.

51 I looked across the street and saw Brett with a fire extinguisher. I ran over there to see if Vanessa was all
52 right. Of course, she was not. She looked badly injured. I tried to get her out of the car while Brett put out
53 the fire that had broken out. The door was jammed shut, though. Neither Brett nor I could do anything. In
54 the next few minutes, a couple of cars came up Gardner Avenue and stopped by the station. A small group
55 of onlookers soon were standing around looking at the aftermath of the accident. The firefighters and
56 police arrived quickly, and I just stood off to the side and answered Officer Avila's questions when I was
57 asked.

WITNESS STATEMENT
Prosecution Witness
Lindsay White

1 My name is Lindsay White. I live at 345 Firestone Road in St. Ignatus , Minnesota. I am 39 years old. I
2 have a B.S. in mechanical engineering and am a licensed professional engineer in Minnesota. I now work
3 for the Scott County Sheriff’s Department as a supervisor in the Automobile Accident Reconstruction
4 Team (AART). I was a motor officer for seven years. I personally investigated hundreds of traffic
5 accidents and took numerous courses in accident reconstruction and automobile dynamics during that
6 period. I then became a commercial vehicle inspector for three additional years before becoming certified
7 as an accident reconstruction expert and a specialist for AART.

8 This case presents a situation in which I am not actually analyzing an automobile collision, but rather
9 evidence related to the issue of whether the defendant was “peeling out,” or accelerating very rapidly, on
10 the night in question. I have had to analyze the evidence from the moment of the defendant’s acceleration
11 from Main and Gardner to the subsequent deceleration further west, past the western end of the
12 intersection. I also examined the intersection where this accident occurred in June 2016 at the same time
13 of day as the accident. This intersection had also been frequently used by drag racers.

14 The evidence leads me to conclude that the defendant’s automobile was accelerating very quickly in a
15 short distance.

16 Accident reconstruction requires me to look at three general areas to make my conclusions: the facts, the
17 engineering analysis, and the witness statements. I look at the facts from the officer’s investigation to see
18 if certain facts here are called into question. In this case, the defendant’s vehicle was positioned in the
19 westbound lane on Main Street, accelerated when the light turned green, and proceeded west on Main
20 before braking.

21 The first issue is whether there were any tire marks to indicate that Darian peeled out. There were a
22 number of sets of tire marks in the westbound lane of the intersection. None of the marks, however, can be
23 traced with any certainty to any specific vehicle.

24 There were also no marks at the point of deceleration. Darian’s car, however, is equipped with an antilock
25 brake system (ABS). Skid marks from ABS brakes are called wheels-unlocked braking marks and will not
26 resemble typical locked-wheel skid marks. For one thing, ABS braking marks are fainter than locked-
27 wheel skid marks. They may have dark edges that can be detected, but I did not detect them in the western
28 crosswalk of Main Street at Gardner when I examined the scene in June of 2016. This is not uncommon,
29 however, because in more than 60-80 percent of cases, the conditions of the road do not allow ABS
30 braking marks to be visible at all. I have personally tested many cars with ABS brakes, including the
31 Dimension 100 model, and have yet to find visible marks even when I hit the brakes quickly (or “slam” on
32 the brakes) while the car travels at 40 mph. Because the absence of braking marks, it is difficult to say for
33 sure, exactly how fast Darian was going at the time the brakes were applied.

34 The most important issue would be whether Darian reacted quickly or slowly in applying the brakes. The
35 more a person expects to brake, the faster is their reaction time. This is the time it takes from perception of
36 a need to brake (like seeing an obstacle in the road) to moving the foot to the brake pedal and stepping on
37 the pedal. Simply stated, it is the amount of time it takes a driver to process what is happening and then to
38 step on the brakes. This reaction time can be as little as 0.75 seconds, especially in a young driver like
39 Darian Kendall.

40 When Darian perceived that Vanessa's car swerved toward Brett's station, Darian had already been
41 traveling forward. According to Parker Gallo's statement, Darian was to Parker's left, almost in front of
42 Parker at the moment Vanessa's car hit the pole. That impact began Darian's reaction time. In 0.75
43 seconds, Darian traveled about 20 more feet, then hit the brakes, and abruptly came to a full stop about
44 135 feet from the point of acceleration.

45 Parker also testified that Parker heard a loud screech after Vanessa's car hit the pole. First, this screech
46 would coincide with Darian's braking. Second, such a screech indicates that the vehicle was traveling
47 relatively fast.

48 Darian was not looking over at Vanessa when Darian accelerated, which would have given Darian ample
49 time to gradually apply the brakes. Instead, Darian has stated that Darian looked down at the accelerator
50 pedal. Even if that glance at the pedal took only one second, that is enough time for the Dimension 100 to
51 proceed 60 feet, just past the midway point of the intersection. When Darian then looked up and saw the
52 impact, the reaction time would begin. In 0.75 seconds, as is expected for a young adult driver like Darian,
53 the application of the brakes at the opposite end of the intersection is accurate.

54 Parker Gallo's statement that Darian's vehicle crossed the intersection quickly would be consistent with a
55 vehicle that is accelerating at maximum velocity. We measure that velocity from zero to sixty miles per
56 hour. This model of Dimension 100 automobile has an eight-cylinder or "V8" engine and can travel from
57 zero to sixty mph in from seven to eight seconds. Since Darian was nearly in front of Gallo after only a
58 couple of seconds (when the Stallion X2 hit the pole), this shows that Darian was accelerating extremely
59 fast in relation to the distance traveled.

60 In addition, though it was dusk, the intersection was well lit as there was still some natural light at the
61 time; and the gas station was illuminated with fluorescent lights, so Parker's observations are reliable.
62 Importantly, Parker Gallo was only 80 feet from the two cars before they moved forward. Parker had a
63 good vantage point from which to hear Darian's engine rev, to hear Darian peel out upon acceleration, and
64 finally to hear Darian's car screech upon braking.

65 By contrast, Brett Williams stated that Darian moved off the line slowly. Brett is much older than Parker
66 Gallo. It is a noted among reconstructionists that the older the observer, the more they tend to
67 underestimate speeds of vehicles. Also, Williams would have been observing the Dimension 100 in
68 relation to Vanessa's vehicle, which was speeding toward Brett. From that angle, Brett would have
69 mentally compared the Dimension 100's speed to the closer Stallion X2 driven by Vanessa. Brett would
70 naturally have underestimated Darian's speed in the mental comparison.

71 In my expert opinion, Darian Kendall was traveling at a high velocity in relation to the distance the car
72 traveled at the time Vanessa Foley's vehicle collided with the light pole.

WITNESS STATEMENT
Defense Witness
Darian Kendall

1 My name is Darian Kendall. I am 20 years old. I live at 4545 Whitmore Street in New Prague, Minnesota.
2 I am in my second year at New Prague Community College, where I am enrolled in an auto- shop
3 program. I hope to study mechanical engineering at a four-year university.

4 My parents own a market in New Prague, where I have worked since my first summer after ninth grade in
5 high school. For the last two years, I have also worked part-time there throughout the year. Around the
6 first of September in 2015, I had saved enough money to buy a car. It was a used Dimension 100, and I got
7 a good price on it. Up until that time, I had always walked or used the New Prague bus system.

8 Having enrolled in the auto class, I really wanted to learn more about how to fix up my car. I have always
9 liked building and repairing things, especially radios and televisions. I have been handy at my parents'
10 store doing odd jobs. I also needed a car. I figured that once I learned more in auto-shop, I would be able
11 to do my own car repairs as well. I have a knack for it.

12 In the class, I met Vanessa Foley. I had known of her in high school, but we had different sets of friends.
13 She talked about racing from the first moment I spoke to her in September of that year. I had known that
14 around town some kids had been drag racing illegally for a few years. I was always talking to my friends
15 about the serious problem of racing. I knew someone who died in a race back in 2014, and it sickened me.
16 It seemed so pointless to die just for trying to beat someone in a race. People told me that Vanessa often
17 raced, but I never knew when or where.

18 I also met Mo Lancaster in the class. Mo and Vanessa were buddies. Mo had an uncle who had been a
19 pretty well-known race car driver in the 80's. Mo bragged a lot about racing people around town and said
20 disparaging things about members of one of the local car clubs who went by the name The Comets. Mo
21 told me that Mo's car could outrun any of The Comets. I started to become curious about these races I had
22 heard so much about but had never seen. Mo was a very confident person and made racing sound
23 interesting. I thought Vanessa and Mo were cool people, having gotten to know them. They were always
24 eager to show me how to do things in class.

25 I noticed they each had window decals on their cars that said "Road Hogz" and had a picture of a cartoon
26 pig in a hot rod. Vanessa explained that her brother-in-law custom designed the decal on his computer. He
27 ran a computer store in town.

28 I realize now that it was a bad idea for me to want to see a race. On February 20, I went with Mo and
29 Vanessa to The Heavy Burger, a place just outside of New Prague that had good food and was a cool
30 place for us to go at the end of the week. Vanessa was driving. Just past the Gardner intersection on Main,
31 Vanessa sped up the car. As the Stallion X2's engine roared, Vanessa said to Darian, "You hear that?
32 That's a racing engine!" We went incredibly fast, and I was afraid Vanessa would lose control of the
33 wheel and we would all end up dead. I yelled at Vanessa to slow down, but she did not. I thought she was
34 crazy. She and Mo told everyone that I was freaked out by the speed of the car, which was true.
35 Nonetheless, I was embarrassed by how everyone thought I was "freaked out."

36 The following Monday, February 23, Vanessa confronted me just before auto-shop class began. Vanessa
37 said, "You should do something with that bougie bucket of yours. It can't race!" I tried to ignore Vanessa
38 because she was starting to go out of her way to ridicule my car for no apparent reason.

39 Partly to show I was still cool, and partly to annoy Vanessa and Mo, I went to Vanessa's brother-in-law at
40 the computer store and asked for him to print up one of those "Road Hogz" window decals for me. He did,
41 and I paid him \$5.00 for it and put it on my car.

42 One day in autoshop, I heard Vanessa bragging about how her car club, the Road Hogz, had the fastest
43 cars in Scott County. I decided to have a little fun and interrupted her to say that her car was actually not
44 that fast. I said anyone could push their car to 85 mph, but that did not make the car that amazing. Her
45 reaction surprised me because she was genuinely angry. She told me the only thing pathetic was that I had
46 her club's sticker on my car when I did not have the guts to race. She demanded that I remove the sticker.
47 I decided not to remove the sticker, since I had paid for it. I still wanted to be friends with Vanessa and
48 Mo, but it seemed they no longer cared to be friends with me.

49 Then on the Friday night of April 23, I was driving to a friend's house on northside of New Prague. On
50 my way there I came upon a large number of people gathered on a side-street with their cars. I was curious
51 what this was about so I pulled over. I quickly discovered that what I was watching was a race between a
52 couple of the car clubs. I thought this could be interesting, though now I realize I made a mistake. A few
53 minutes after the first race, police officers showed up and arrested a couple of people, including Vanessa
54 Foley. I saw Mo there but did not say anything to Mo. Officer Avila warned me very seriously not to
55 participate in or watch any more races or else I could serve jail time and pay a fine. The experience
56 frightened me into staying away from drag races.

57 For the next few weeks, I stayed away from Vanessa and Mo. I saw them in class, but I did not want to
58 socialize with them. I wanted to avoid trouble while I was preparing to graduate from the college. Vanessa
59 warned me repeatedly to remove the sticker from my car window. I had lost some respect for Mo and
60 Vanessa and felt like defying them, so I left the sticker on my car.

61 On May 14, 2016, as I was in my Dimension 100 stopped at an intersection in town, the accelerator pedal
62 stuck. The car skidded a bit when I moved forward from a complete stop. That very afternoon, I called
63 Brett Williams and explained the problem. Brett is our family's mechanic and I knew Brett might be able
64 to help me. Brett told me to bring the car in on Monday so Brett could look at it. I wish I had taken the car
65 to Brett, but I was really busy with school.

66 On May 21, 2016, about 7:40 p.m., I met up with my friend Robin Avery at the college parking lot. We
67 were going to get something to eat. To my surprise, Vanessa and Mo showed up there, too. Robin and I
68 had planned to caravan to The Heavy Burger, like we often did back then. Vanessa pointed at me and said,
69 "How's the bougie bucket?" I was annoyed by this, but knew that Vanessa was probably still angry that I
70 did not remove that window decal.

71 I looked over to Robin and said, "I will be out in front tonight." I said that because I knew Vanessa was
72 trying to taunt me into racing, so I wanted to make sure I was as far away from Vanessa as possible. I was
73 afraid that Vanessa would try to speed on the way to The Heavy Burger again. I was the first to leave the
74 parking lot and was comforted to see that Robin was right behind me as a kind of buffer between Vanessa
75 and me.

76 When we arrived at Main and Gardner, the light was red. I stopped, of course. Seconds later, I saw
77 Vanessa's car next to mine on the road, facing west in the eastbound lane. Mo was in the passenger seat
78 and rolled down the window. Vanessa yelled something at me, but she was also revving her engine, which
79 made it impossible for me to understand what she was saying. My window was already unrolled, and I
80 yelled back, "What did you say?" Mo started laughing, and Vanessa gripped the steering wheel. She
81 appeared angry. I was confused. It appeared that Vanessa was determined to race against me, but I had no
82 intention of doing that.

83 When the light turned green, things got crazy. My car lurched forward and I knew immediately that it was
84 because the accelerator was stuck again. I pulled forward, but my accelerator inexplicably got stuck again.
85 I was looking down at the gas pedal for a second, when in my peripheral vision I saw that something was
86 not right. I quickly looked to my left to see what Vanessa was doing, and that is when I saw that her car
87 had skidded out of control and was already entering Brett Williams' gas station area. I was stunned at
88 what I saw. Vanessa's car hit the light pole at the station. I kept staring as my car moved forward. I then
89 braked and pulled my car to the side of the road.

90 The front end of Vanessa's car was wrapped around the pole and was in flames. I saw Brett Williams
91 trying to get near the car to pull Vanessa out. I got out of my car and watched what was happening. I was
92 scared and could not really move. Mo managed to escape from the car and ran to my side of the road and
93 fell to the ground. Mo appeared in shock. I looked over to Mo and asked, "Are you all right?" Mo did not
94 say anything. Mo was shivering while sitting on the ground, so I offered my jacket to Mo. Mo sat-up and
95 started screaming, "What should we do? What should we do?" That is when I heard the sirens coming.

96 The local firefighters arrived, and so did Officer Avila. I could not speak or move, standing there
97 watching while the firefighters put out the fire at the car. I do not know how long we stood there. It could
98 have been five minutes or an hour because everything seemed to blur.

99 The next thing I knew, Officer Avila was standing in front of us, asking us about what had happened. At
100 that moment, Mo screamed that Vanessa and I had been racing just before she crashed. I said that was not
101 true. I told the officer that Mo was hysterical and jumping to conclusions. Officer Avila then asked me
102 where my car was. I pointed to my Dimension 100.

103 The officer asked me about how fast I had been going before I stopped. I said I was not sure, because
104 while driving my attention was turned toward the gas station and I did not look at the speedometer. I was
105 in shock when I stopped the car. I told the officer I did not remember exactly all that had happened.

106 Officer Avila then told me this had been a race, and that the officer had to place me under arrest for an
107 illegal contest of speed. I did not know what to do, but I said I would cooperate. Officer Avila arrested
108 both Mo and me and walked us back to the patrol car.

WITNESS STATEMENT
Defense Witness
Robin Avery

1 My name is Robin Avery. I am 20 years old. I live at 464 Daytona Street in New Prague, Minnesota. I am
2 in my second year at New Prague Community College. I was a social acquaintance of Mo Lancaster and
3 Vanessa Foley and a friend of Darian Kendall. I never really liked Mo or Vanessa. They seemed to be a
4 bad influence on Darian. I only hung around them because of Darian.

5 Frequently, Darian, myself, and others would caravan in our cars over to The Heavy Burger. It was
6 convenient for us to do this, since many of us would go our separate ways after eating there, to this party
7 or that. I would drive myself there and often go on to my parents' house in St. Ignatus .

8 I was not involved in the auto-shop class, but I had attended the race on April 23, 2016 when some people
9 were arrested. The police gave us a stern warning and then ordered us to disperse. I knew that that was
10 scary for Darian. Darian had no criminal record, and was worried about the rest of Darian's family finding
11 out about it. Darian told me that Darian would not get involved in racing.

12 That same night, I asked Darian about that decal on the window of Darian's car. I thought it was silly for
13 Darian to keep it. Darian explained that it irritated Vanessa, and that gave Darian a sense of satisfaction.
14 They had some kind of mutual dislike for each other, and Darian knew that Vanessa's source of pride was
15 in racing and "souping up" automobiles. Darian liked the idea that the decal meant nothing to Darian, but
16 meant everything to Vanessa. "It's so easy to make her mad," Darian said, "Just diss her car and she starts
17 fuming." I still thought Darian was being ridiculous, but I never expected that Vanessa would take Darian
18 seriously. "I just think I'll try to stay away from her," Darian finally said to me, "She's out of control."

19 On the evening of May 21, 2016, I arranged with Darian to meet after studying for finals at the college.
20 We would meet at about 7:40 p.m. in the same parking lot we always met at before caravanning over to
21 The Heavy Burger. We met as scheduled, and just before we headed out to Main Street, another car pulled
22 up. Its engine was roaring, and I was surprised to see Vanessa and Mo in Vanessa's Stallion X2. We had
23 not seen them around for weeks.

24 Darian and I looked at each other. Then I saw Darian shrug. Vanessa called out to Darian, saying, "How's
25 the bougie bucket?" Darian looked back over at me and rolled Darian's eyes.

26 Darian also said to me, "I'll be out in front tonight." I said, "Okay." I thought the statement was a little
27 odd because I usually drove in front, but I really didn't think too much about it.

28 Darian then walked quickly back to the Dimension 100, got in, and drove toward Main Street. I pulled up
29 behind Darian, and Vanessa drove behind me. Vanessa tailgated me most of the way. It was not clear to
30 me that Vanessa and Mo were invited to come along with us, especially since Vanessa was driving so
31 erratically.

32 When we pulled up to the intersection of Main and Gardner at about 7:55 p.m., I saw Vanessa pull the
33 Stallion X2 next to Darian's car. Mo unrolled the passenger window of the Stallion X2. I saw Vanessa
34 lean over and yell something at Darian. Darian yelled something back. I saw Darian shrug again.

35 When the light turned green, Darian seemed to lurch forward a little bit, but then proceeded forward. I was
36 about to step on my gas pedal, but kept my foot on the brake when I saw the Stallion X2 go off at a high

37 speed toward the gas station. I heard screeching sounds and saw the Stallion X2 hit the light pole. I
38 glanced in front of me to see where Darian was and saw Darian's car about halfway across the
39 intersection, moving forward and away from me.

40 I jumped out of the SUV and ran toward the gas station. I saw Brett Williams there. I pulled out my cell
41 phone and dialed 911. After a few minutes, the firefighters and police arrived. I stayed and answered
42 questions from Officer Avila. I saw what Vanessa looked like when they finally pulled her out of the
43 Stallion X2. It was horrible.

WITNESS STATEMENT
Defense Witness
Brett Williams

1 My name is Brett Williams. I am 60 years old. I live with my family at 29 Gardner Avenue, about half a
2 mile south of the auto-service station that I have owned for the past fifteen years. I have built the business
3 up over the years, and that has required working many late nights. It is the last service station, let alone
4 the last building, you will see as you travel west along Main Street toward The Heavy Burger.

5 I have known Darian Kendall for fifteen years, as long as I have owned the service station. Darian's
6 parents bring their cars to me for repairs from time to time. I remember about May 14, 2016, I received a
7 phone call in the late afternoon. It was Darian Kendall. Darian explained that the gas pedal of Darian's
8 Dimension 100 had gotten stuck at an intersection and made the car jerk forward when Darian accelerated.
9 Darian explained that it made the car skid a bit. I was about ready to head out of town for the weekend. I
10 explained this to Darian and said that Darian should just bring the car by the service station the following
11 Monday morning. I did not hear from Darian, and frankly I had forgotten about the problem until I saw
12 Darian a week later at the scene of the accident at my shop.

13 On that night of May 21, I had turned on the station lights and was outside the shop, fixing a door hinge
14 on the western wall of the main building. A few minutes before 8:00 p.m., I walked around to the front of
15 the building to get some other tools. At that moment, I heard revving noises coming from the direction of
16 the intersection. I looked over and saw someone in the car nearest to me, facing the wrong direction. I
17 later learned this person was Vanessa Foley. I kept looking toward the intersection, because her car was in
18 the wrong lane.

19 I recognized Darian Kendall in the Dimension 100 next to Vanessa's car. Darian had a confused facial
20 expression. The light turned green and the cars moved forward. Darian's car moved slowly. My attention,
21 though, was drawn to the car Vanessa was driving because it took off so fast. The front of that car was
22 ahead of Darian's, but almost immediately it was headed for my station. I quickly jumped back.

23 The car Vanessa was driving crashed right into the light pole that was at my station. I froze for a second,
24 though it felt like an hour. When I saw the flames burst from under the crushed hood of the car, I ran into
25 the station to grab my fire extinguisher. Then, Parker Gallo ran up to me.

26 With the fire extinguisher, I ran to the burning car. I put out the flames pretty quickly, but I could see that
27 Foley was pinned between the steering column and the seat of the car. The door was crushed, too, in such
28 a way that I could not pull it open. Gallo tried, too. I ran back inside and called 911. Apparently, someone
29 had already called 911 about this accident. I felt helpless. All I could do was wait. The few minutes before
30 the police and firefighters arrived again felt like hours. During those minutes, I saw Darian Kendall and
31 someone else off to the side of the road. It may seem trivial in hindsight, but at that moment I thought
32 about Darian's phone call to me a week before. I guess I was in shock to be thinking about something that
33 seemed so trivial at the time.

WITNESS STATEMENT
Defense Witness
Haley Salazar

1 My name is Haley Salazar. I am 50 years old. I live at 999 Michelin Way in St. Ignatus , Minnesota.
2 worked for 10 years in Detroit, Michigan, as a mechanical engineer and then as a consultant for many
3 major automobile manufacturers. In 1990, I was certified as an accident reconstructionist in Michigan. I
4 moved to Minnesota where I was again certified. I am also a licensed professional engineer in Minnesota.
5 I worked in an accident reconstruction firm in Southern Minnesota until 1995, at which time I founded my
6 own firm, Salazar Associates, where I presently work.

7 To reconstruct the accident, I use the facts, engineering analysis, and witness statements. Often,
8 reconstructionists are unable to examine the scene directly after an accident, but the record, properly
9 gathered, will suffice. Here, such a proper record exists. I also examined the scene in June 2016 at the
10 same time of day as the accident in question.

11 In this case, many facts are not called into question. The intersection was 80 feet wide including a 10-foot
12 wide crosswalk on each side running north to south. The defendant's Dimension 100 with an eight-
13 cylinder engine and the decedent's Stallion X2 were side-by-side facing west on Main Street at the
14 intersection with Gardner. Vanessa Foley's vehicle accelerated rapidly in a southerly direction toward
15 Brett Williams' station due to driver error. Darian Kendall applied the brakes of the Dimension 100 at
16 some point past the midway point of the intersection and came to a full stop approximately 100 feet west
17 of the eastern end of the intersection. The road was dry at the time.

18 Though there were numerous tire marks in the intersection, none of them was identifiable or traceable to
19 any particular vehicle. This was, after all, a popular spot for exhibitions of speed prior to May 21, 2016.

20 Another issue is the wheels-unlocked braking marks. No such marks were visible at the scene. The lack of
21 brake marks, however, indicates that Darian was not traveling fast enough to create them. Had Darian
22 traveled fast and then quickly slammed on the brakes, there would have been faint striations (lines) as
23 braking marks.

24 Regardless of tire marks, the Dimension 100 did not travel very fast in relation to the distance traveled. In
25 Darian's moment of alarm from seeing what happened to Vanessa, Darian's attention was distracted.
26 Darian stated this. In such a situation, Darian looked over at Vanessa and not at the road. In the shock,
27 Darian may not have pressed fully on the accelerator, or could have applied the brakes more than once,
28 giving the impression Darian had been accelerating rapidly and "slammed" the brakes (i.e., stepped down
29 hard on the pedal). It would not be hard for the tires to screech even if Darian was traveling at a slow
30 speed.

31 The crucial issue is really whether Darian could have reacted as quickly in stopping as Darian did if,
32 indeed, Darian was racing. From Robin Avery's statement, Darian was about halfway through the
33 intersection when the Stallion X2 collided with the pole. Darian's reaction to the collision would have
34 begun at that point. Darian may have already traveled approximately 60 feet and could have taken more
35 than a second to react to the impact of the Stallion X2. By the end of that third second of travel, Darian
36 would have moved Darian's foot over to the brake pedal and then applied the brakes. After that, the
37 vehicle would have rolled to a stop approximately 55 feet west of the intersection by the side of Main
38 Street, as we see in these facts.

39 It is clear, too, that it could even have taken Darian as much as a second and a half to react to what
40 happened to Vanessa's car. Darian stated that "things got crazy" immediately when the light turned green.

41 Darian looked down for maybe a second or less. Furthermore, Darian said that Darian then looked over at
42 Vanessa's car as it entered the gas station area, before the impact. In that case, not only was Darian's
43 reaction slower, but Darian could not have been accelerating very fast before applying the brakes at the
44 opposite end of the intersection. People generally have shorter reaction times when they expect to brake.
45 Darian, however, did not expect Vanessa to swerve out of control, so Darian's reaction time would be
46 slower. Robin Avery's statement corroborates this, since Robin stated that Darian was only about halfway
47 across the intersection at the moment of impact.

48 Finally, in looking at the witness statements, an important factor must be taken into consideration. Parker
49 Gallo said that Darian's car traveled at a high speed through the intersection. Brett Williams, however,
50 stated that Darian's car appeared to move slowly off the line. A number of factors play into judging
51 speeds of vehicles, such as the structure of the surroundings and background, the direction of motion
52 relative to the observer, and the lighting of the area. Here, Parker may have judged Darian's vehicle to be
53 moving faster than it was really traveling due to the excitement of seeing it head westward directly toward
54 Parker. Parker also heard revving noises, but that was definitely coming from Vanessa's Stallion X2, as
55 corroborated by Mo Lancaster, who said that Vanessa started to rev the Stallion XT's engine.

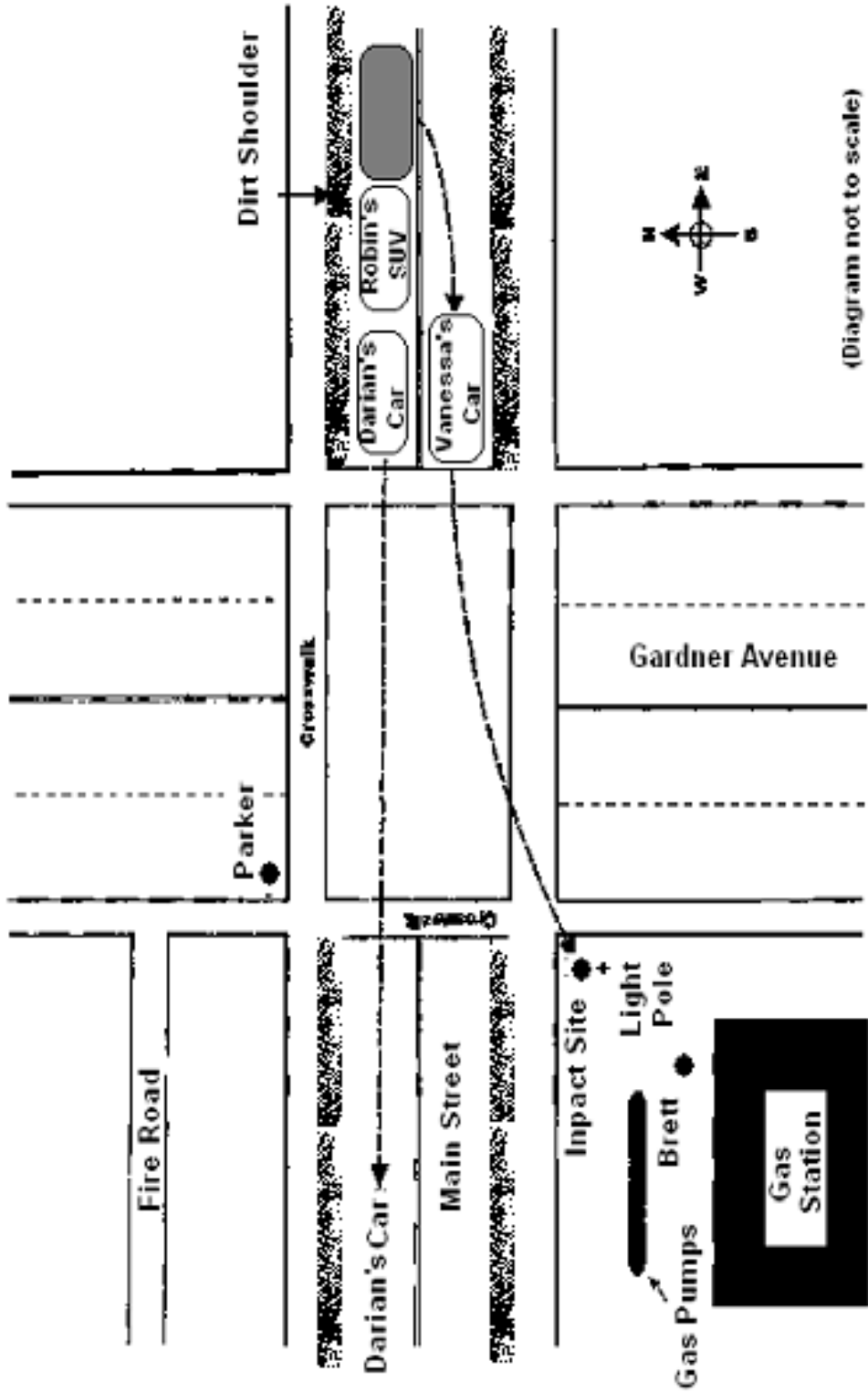
56 It is my expert opinion, then, that Darian Kendall was not accelerating rapidly through the intersection,
57 but rather began reacting to Vanessa's car swerving out of control, and about a second and a half later
58 braked and rolled to a stop just past the Main and Gardner intersection.

PHYSICAL EVIDENCE

Only the following physical evidence may be introduced at trial:

Exhibit A - Diagram of the Scene

EXHIBIT A
DIAGRAM OF THE SCENE



PROCEDURES FOR THE MOCK PRETRIAL MOTION HEARING

The following procedures and recommendations provide a format for the presentation of a mock pretrial motion.

1. Prior to the opening of the pretrial motion arguments, the judge will have read the pretrial materials provided in the case packet.
2. Be as organized as possible in your presentation. Provide clear arguments so the judge can follow and understand your line of reasoning.
3. Arguments should be well substantiated with references to any of the pretrial sources provided with the case materials and any common sense or social-interest judgments. Do not be afraid to use strong and persuasive language.
4. Use the facts of your case in your argument. Compare them to facts of cases in the pretrial materials that support your position, or distinguish the facts from cases that contradict the conclusion you desire.
5. Review the legal arguments to assist you in formulating your own arguments.
6. Your conclusion should be a short restatement of your strongest arguments.

PRETRIAL MOTION AND CONSTITUTIONAL ISSUE

This section contains materials and procedures for the preparation of a pretrial motion on an important legal issue in your case. The judge's ruling on the pretrial motion will have a direct bearing on the charges in this trial and the possible outcome of the trial. The pretrial motion is designed to help participants learn about the legal process and legal reasoning.

The pretrial issue in this case revolves around the First Amendment's guarantee of freedom of speech and freedom of association. It challenges the constitutionality of the New Prague City Ordinance, Chapter 20, also known as the New Prague Control of Illegal Racing Clubs Ordinance. The prosecution has charged Darian Kendall with violating this ordinance because Darian had both the illegal racing club logo on Darian's vehicle and because Darian congregated with Vanessa and Mo, whom Darian knew to be members of the Road Hogz.

Although the First Amendment is a powerful protection guaranteed under the United States Constitution, not all speech is protected. One can be held responsible for making libelous remarks about another individual; one cannot falsely yell "fire" in a crowded theater; and one is not protected for uttering fighting words that are likely to produce an immediate violent reaction.

The sources cited below will help you determine if New Prague's City Ordinance, Chapter 20, is unconstitutional. For trials in which there is no pretrial hearing, the ordinance is deemed constitutional and the count three under the charges remains. This pretrial motion is the only allowable motion for the purposes of the competition.

Arguments

The prosecution will argue that the ordinance is constitutional because it regulates conduct known to be a clear and present danger to the public order and safety of New Prague. Additionally, even as

symbolic speech, the placing of illegal club logos on vehicles is the equivalent of fighting words that incite an immediate retaliation by other drivers.

The defense will argue that the ordinance is unconstitutionally vague because it is not clear what conduct is illegal from the ordinance. It is also overbroad because it encompasses within its scope otherwise privileged symbolic speech, namely placing decals or logos on one's vehicle. Also, the defense will argue that there is no clear and present danger from the placing of logos on vehicles, but rather from drag racing itself and from driving at speeds in excess of speed limits or reckless driving, all of which are already illegal without the New Prague Control of Illegal Racing Clubs Ordinance.

Sources

The sources for the pretrial motion arguments consist of excerpts from the U.S. Constitution, Minnesota Criminal Code, Minnesota Jury Instructions, edited court opinions, New Prague City Ordinance (Chapter 20) and the Factual Background.

The U.S. Constitution protects individual's freedom of speech. But its language is subject to interpretation. Both federal and state courts have the power to interpret the Constitution. The U.S. Supreme Court's holdings are binding and must be followed by Minnesota courts. The Supreme Court decides which cases it wishes to hear. A party may request that the Supreme Court hear its case through a petition for certiorari. When the court decides not to hear a case that is on appeal from a lower court, it is said to have denied certiorari. The denial of certiorari should not be taken as a comment on the lower court's decision.

Cases from all circuits, including the Eighth Circuit, and cases from federal district courts and from other state supreme courts, as well as legal commentary, can be used for persuasive purposes, but are not binding on a Minnesota judge. Decisions from higher Minnesota courts (such as the Minnesota Supreme Court) are binding on Minnesota Judges.

In developing arguments for this case, both sides should compare or distinguish the facts in the cited cases from one another and from the facts in your case