

**2021
DISTRICT COURT
CASE MATERIALS**

**CASE 1
STATE OF MINNESOTA V. DAVIDSON**

A Murder Case

With a pre-trial hearing involving the First Amendment and Social Media

BACKGROUND

CHARGES & JURY INSTRUCTIONS

STIPULATIONS

WITNESS STATEMENTS

Prosecution Witness - Adrian Carroll

Prosecution Witness - Devon Morrison

Prosecution Witness - Hayden Rodriguez

Prosecution Witness - Morgan Bonderman

Defense Witnesses - Casey Davidson

Defense Witness - Tory Lee

Defense Witness - Fabian Moreno

Defense Witness - Avery Williams

PRETRIAL MOTION

PHYSICAL EVIDENCE

EXHIBITS

CREDITS

BACKGROUND

1 New Prague is a small town of about 20,000 people. Over the last five years, about 30 families from the
2 country of Tanterra have arrived as refugees in New Prague. The Tanterran population in New Prague is
3 growing, and they have largely been accepted into the community.

4 Casey Davidson is a resident of New Prague who is a part of the Equality For All (EFA) group, which is a
5 political activist group that favors liberal policies, including liberal immigration policies. Davidson has
6 regularly attended rallies and demonstrations since first joining the EFA two years ago. A core of about
7 35 New Prague residents are active in EFA, but many residents from nearby towns join them when there
8 is a public protest or assembly. EFA has its own page on BLAB (an online social network) with 300
9 “likes.”

10 While most people in New Prague welcome the Tanterran refugees, there are some who oppose their
11 presence. One is Alex Thompson, a young person who is a member of Our America (OA). OA is
12 conservative group that seeks to limit immigration to the United States. OA has an online group page on
13 BLAB with 70 “likes.” OA has attracted about 20 followers from New Prague who meet infrequently
14 with others from nearby areas.

15 Davidson and Thompson have publicly argued with each other at city council meetings over the presence
16 of Tanterran refugees. Both have written letters to the editor of the local New Prague Tribune newspaper.
17 At a few political rallies over the last two years, Davidson and Thompson confronted each other and
18 argued over their differing beliefs. Both EFA and OA are nonviolent groups.

19 At previous political rallies in New Prague extreme groups who advocate violence or violent tactics have
20 shown up seeking to cause a disruption. Ultra Nats are a right-wing nationalist group that has more
21 extreme political and tactical views than OA. Rads are an anarchist group with more extreme views on
22 tactics than the EFA. New Prague police are aware of both extreme groups.

23 Among the posts deleted from OA's BLAB page are posts authored by Ultra Nats advocating immediate
24 violent action against Tanterrans to intimidate them into leaving the United States.

25 In summer 2020, the OA invited Mitch O’Cannity to speak in New Prague. O’Cannity is a national radio
26 political commentator who is an outspoken critic of progressive immigration policy. Members of OA
27 secured all the necessary permits from the City of New Prague for O’Cannity’s appearance at a rally in
28 front of New Prague Town Hall, which leads into New Prague Park, scheduled for September 14, 2020, at
29 10:00 a.m.

30 As a show of national pride, Tanterrans love to prominently display their flag. In solidarity, New Prague
31 residents who support Tanterrans have taken to wearing black hoodies with the Tanterran flag on the back
32 around town. Davidson and the other 8 EFA members learned about the September 14 demonstration on
33 BLAB and planned to attend the speech wearing black hoodies with the Tanterran flag to protest
34 O’Cannity.

35 On September 10, Davidson and Thompson encountered each other at the New Prague Farmers Market.
36 Thompson tripped Davidson and when Davidson got back up, they pushed, shoved, and 15 argued with
37 each other until Thompson’s friend Morgan Bonderman and others separated them.

38 By 9:30 a.m. on September 14, 2020, a few hundred people assembled in New Prague Park and on the
39 steps of New Prague Town Hall for O’Cannity’s speech. Many of the EFA members at the rally wore

40 black hoodies with the Tanterran flag. Davidson attended and brought a bullhorn and a walking stick to
41 the event.

42 The crowd also included Alex Thompson, members of OA and EFA, and many curious onlookers both
43 from New Prague and nearby areas. Some began pushing and elbowing each other. Several people
44 attending the speech brought sticks, poles, bricks, and tree branches as rudimentary weapons. Due to
45 the fact that they were heavily outnumbered by the protesters, New Prague police did not try to
46 confiscate the rudimentary weapons. Instead they formed a line of officers between the OA and Ultra
47 Nats on one side (supporting the speaker), and the EFA and the Rads on the other side (opposing the
48 speaker) to keep them separated.

49 O’Cannity was scheduled to speak at 10:00 a.m., but he was running late. An announcer from the New
50 Prague mayor’s office told the crowd around 9:40 a.m. that the speech was going to start at approximately
51 10:20 a.m. After hearing about the delay, the two assembled political groups became restless, and many
52 individuals from the Rads and the Ultra Nats began to cross the police line and scuffle with each other.

53 At approximately 9:50 a.m., Thompson crossed the police line and started throwing eggs at people
54 wearing the Tanterran hoodies. Thompson hit four people with eggs. Davidson saw this, and Thompson
55 and Davidson argued. During the argument, Thompson attempted to gain possession of Davidson’s
56 walking stick. At that moment, someone snuck behind Thompson and punched Thompson in the face,
57 causing a bloody nose. The person fled and was never identified.

58 Thompson immediately retreated to the OA side of the police line before heading toward the nearby
59 public restroom in New Prague Park. Pushing, shoving, and some fighting continued between the Rads
60 and Ultra Nats as the New Prague Police tried to maintain control. About twenty minutes after Thompson
61 left the scene, the announcer from the mayor’s office told the crowd that O’Cannity’s speech was
62 cancelled out of concern for the safety of O’Cannity and those in attendance. The police immediately told
63 the crowd to disperse and that anyone remaining after 10 minutes would be considered part of an
64 unlawful assembly and subject to arrest.

65 At 10:20 a.m., most of the crowd began to leave or had left the area. Davidson used the bullhorn to
66 address those remaining, declaring “There aren’t enough police to stop us! Let’s get these

67 Tanterran haters now! We stopped this stupid speech! No O’Cannity!” More fights broke out between the
68 Ultra Nats and Rads. Members of EFA and OA were drawn into the fray and forced to defend themselves.
69 A police officer near Davidson warned Davidson to stop using the bullhorn.

70 A few minutes later, as the crowd continued to disperse, a gruesome discovery was made. At
71 approximately 10:25 a.m., Morgan Bonderman found Thompson’s body underneath a cluster of trees at
72 the back of New Prague Park. Thompson’s face and the side of Thompson’s head were covered in blood.
73 Thompson had wounds on the hands and wrists, and the screen on the fitness tracker Thompson was
74 wearing was broken. Davidson’s walking stick was found 10 feet from Thompson’s body, and a tree
75 branch was found 15 feet away. Both had blood on them.

76 Detective Adrian Carroll interviewed several attendees and examined the walking stick. Detective Carroll,
77 who was present at the rally and in uniform, learned that the walking stick matched the description of a
78 walking stick belonging to Davidson. Over the next several days, Carroll learned that Davidson told
79 Thompson:

80 “Get back on your side of the line, or you’ll get what’s coming to you!” [Carroll also further learned
81 from GPS data in Davidson’s car that, late at night four times over the past two weeks, it was at the

82 *warehouse on the outskirts of town where Thompson lived.]* Based on Detective Carroll's investigation,
83 Carroll arrested Davidson for the murder of Alex Thompson. Davidson was charged with first-degree
84 murder.

CHARGES & JURY INSTRUCTIONS

CHARGES

The prosecution charges Davidson with one count:

First Degree Murder (Minnesota Statutes, Sections 187-189).

Minnesota Criminal Code Section 187. Murder defined. Murder is the unlawful killing of a human being with malice aforethought.

Minnesota Criminal Code Section 188. Malice defined Such malice may be express or implied. It is express when there is manifested a deliberate intention unlawfully to take away the life of a fellow creature. It is implied, when no considerable provocation appears, or when the circumstances attending the killing show an abandoned and malignant heart.

Minnesota Criminal Code Section 189. Degrees of murder All murder which is perpetrated by means of a destructive device or explosive, a weapon of mass destruction, knowing use of ammunition designed primarily to penetrate metal or armor, poison, lying in wait, torture, or by any other kind of willful, deliberate, and premeditated killing is murder of the first degree. All other kinds of murders are of the second degree. To prove the killing was “deliberate and premeditated,” it shall not be necessary to prove the defendant maturely and meaningfully reflected upon the gravity of his or her act.

JURY INSTRUCTIONS (Relating to the Charges)

Direct and Circumstantial Evidence

Facts may be proved by direct or circumstantial evidence or by a combination of both. Direct evidence can prove a fact by itself. For example, if a witness testifies he saw it raining outside before he came into the courthouse, that testimony is direct evidence that it was raining. Circumstantial evidence also may be called indirect evidence. Circumstantial evidence does not directly prove the fact to be decided, but is evidence of another fact or group of facts from which you may logically and reasonably conclude the truth of the fact in question. For example, if a witness testifies that he saw someone come inside wearing a raincoat covered with drops of water, that testimony is circumstantial evidence because it may support a conclusion that it was raining outside.

Both direct and circumstantial evidence are acceptable types of evidence to prove or disprove the elements of a charge, including intent and mental state and acts necessary to a conviction, and neither is necessarily more reliable than the other. Neither is entitled to any greater weight than the other. You must decide whether a fact in issue has been proved based on all the evidence.

Circumstantial Evidence: Sufficiency of Evidence

Before you may rely on circumstantial evidence to conclude that a fact necessary to find the defendant guilty has been proved, you must be convinced that the People have proved each fact essential to that conclusion beyond a reasonable doubt.

Also, before you may rely on circumstantial evidence to find the defendant guilty, you must be convinced that the only reasonable conclusion supported by the circumstantial evidence is that the defendant is guilty. If you can draw two or more reasonable conclusions from the circumstantial evidence, and one of those reasonable conclusions points to innocence and another to guilt, you must accept the one that points

to innocence. However, when considering circumstantial evidence, you must accept only reasonable conclusions and reject any that are unreasonable.

Murder With Malice Aforethought

The defendant is charged with murder. To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant committed an act that caused the death of another person; and
2. When the defendant acted, the defendant had a state of mind called malice aforethought; and
3. The defendant killed without lawful excuse or justification.

There are two kinds of malice aforethought, express malice and implied malice. Proof of either is sufficient to establish the state of mind required for murder.

The defendant acted with express malice if the defendant unlawfully intended to kill.

The defendant acted with implied malice if:

1. The defendant intentionally committed an act;
2. The natural consequences of the act were dangerous to human life;
3. At the time the defendant acted, the defendant knew the defendant's act was dangerous to human life; and
4. The defendant deliberately acted with conscious disregard for human life.

Malice aforethought does not require hatred or ill will toward the victim. It is a mental state that must be formed before the act that causes death is committed. It does not require deliberation or the passage of any particular period of time.

First Degree Murder

The defendant has been charged with first degree murder under the theory that the murder was willful, deliberate, and premeditated.

The defendant is guilty of first degree murder if the State have proved that the defendant acted willfully, deliberately, and with premeditation. The defendant acted willfully if the defendant intended to kill. The defendant acted deliberately if the defendant carefully weighed the considerations for and against the defendant's choice and, knowing the consequences, decided to kill. The defendant acted with premeditation if the defendant decided to kill before committing the act that caused death.

The length of time the person spends considering whether to kill does not alone determine whether the killing is deliberate and premeditated. The amount of time required for deliberation and premeditation may vary from person to person and according to the circumstances. A decision to kill made rashly, impulsively, or without careful consideration is not deliberate and premeditated.

On the other hand, a cold, calculated decision to kill can be reached quickly. The test is the extent of the reflection, not the length of time.

STIPULATIONS

Stipulations shall be considered part of the record. Prosecution and defense stipulate to the following:

1. Other than the Fourth Amendment pretrial issue, there are no issues with the seizure of evidence or the arrest of the defendant.
2. There are no Miranda issues related to Davidson arrest.
3. Thompson and Davidson are about the same age, height, weight, and build.

WITNESS STATEMENTS

**Prosecution Witness
Adrian Carroll
Arresting and Investigating Detective**

1 My name is Adrian Carroll. I earned my bachelor's degree in criminology from Peak City University in
2 2004. After graduating, I moved to Washington, D.C., where I worked for the FBI as a technical analyst
3 and agent from 2004-2016. I left that job four years ago and returned to my hometown of New Prague
4 where I have been on the New Prague Police force as a detective since 2016. I've completed all the
5 necessary requirements to become a detective and I receive bi-annual education and training from the
6 New Prague Police Department to stay up to date on law enforcement Techniques and protocols.
7 Normally, I am not on the street beat, but with Mitch O'Cannity coming to New Prague to give a
8 speech, it was all hands on deck.

9 Our America (OA) was there in support of O'Cannity; and Equality for All (EFA) was there to protest
10 O'Cannity's speech. I was familiar with OA as a nationalistic type of group. I also knew of EFA as a
11 group that favored the rights of immigrants. In my limited interactions with these groups at rallies over
12 the last couple of years, I knew them to be nonviolent groups but passionately at odds with each other. I
13 was familiar with Casey Davidson and Alex Thompson as particularly active and vocal members of
14 EFA and OA, respectively, and had seen them shout at each other at a couple of small rallies I was
15 assigned to monitor.

16 Before the rally on September 14, other officers and I were briefed that the rally could turn violent. We
17 were told that there was a fear that extremists would try to take over the rally with violence. The Ultra
18 Nats are a right-wing group that has more extreme political and tactical views than OA. Some Ultra Nats
19 have been arrested in the past for violence against people at rallies. Rads are an anarchistic group with
20 more extreme views on tactics than the EFA. Rads oppose all forms of government, including laws
21 either the OA or EFA would support. Rads do not have the same history of arrests for violence against
22 people at rallies, but they do have a history of property destruction at past rallies. Thompson was
23 identified as an Ultra Nat. We now believe that Davidson was part of Rads. We were briefed that the
24 September 14 rally could turn violent, so our goal was to keep the two opposing groups apart. Other
25 New Prague police officers had also encountered both Davidson and Thompson at previous rallies.

26 On the morning of September 14, Mitch O'Cannity was scheduled to speak at 10:00 a.m. in front of
27 New Prague Town Hall. Police had been there since 8:00 a.m. to get ready, and attendees started to
28 show up around 9:00 a.m. By 9:30 a.m. there was already a large crowd with a couple hundred people
29 supporting both sides. We formed a police line in the middle of the crowd to try to keep the two
30 opposing sides separated. This worked at first, but there were so many people on both sides that our
31 police line became ragged. A number of people from each side crossed the police line. There were a
32 number of fights.

33 At 9:40 a.m., there was an announcement that the speech would be delayed until 10:20 a.m. During the
34 delay, members of the crowd who belonged to the Rads and the Ultra Nats became more rowdy. At
35 10:10 a.m., there was an announcement that O'Cannity's speech was cancelled out of concern for public
36 safety. A police officer announced to the crowd that the gathering was now an unlawful assembly and
37 ordered everyone to disperse within 10 minutes or we would make arrests.

38 At 10:20 a.m., Davidson climbed the steps of town hall and stood right in front of the podium there.
39 Davidson used a bullhorn and yelled, "There aren't enough police to stop us! Let's get these Tanterran
40 haters now! We stopped this stupid speech! No O'Cannity!" A riot then broke out between the two
41 sides.

42 I was positioned at the front of the police line, closest to the podium. After Davidson's statement, I
43 instructed Davidson to stop using the bullhorn and leave the area immediately, or be arrested. Davidson
44 complied and left the area. We made a few arrests, and New Prague Park quickly emptied.

45 About five minutes after Davidson left the area, I heard over my police radio that a body had been
46 discovered in New Prague Park. I went to the scene to investigate.

47 I arrived at the scene and saw the victim Alex Thompson. Thompson's face and the side of Thompson's
48 head were covered in blood. There was blood on Thompson's clothes. There were two items near the
49 scene that looked like potential weapons. One was a stick about four feet in length that looked like a
50 walking stick. The letters C and D were carved on one end of it. The other was a blue oak tree branch
51 about three and a half feet in length. The tree branch was about the thickness of the barrel of a baseball
52 bat at its thickest point. It looked like it had all of the needles stripped off. The branch had a sharp
53 jagged edge on one side that looked rotten, indicating that the branch had probably fallen off a tree or
54 had been pulled off. The tree branch had some blood drops on it. The tree branch and walking stick were
55 collected for blood and DNA analysis.

56 I saw quite a few people at the rally with rudimentary weapons like the tree branch. I thought it was
57 possible someone dropped the tree branch there going to or leaving the speech. The walking stick with
58 "CD" carved into the handle had significantly more blood on it on one end. I believed it was likely the
59 murder weapon. I first interviewed Morgan Bonderman, who had discovered the body and self-
60 identified as a friend of Thompson. Bonderman told me of an earlier confrontation that morning when
61 Davidson shoved a walking stick toward Thompson, and an unidentified person punched Thompson in
62 the nose. Around 10:15 a.m., Bonderman had gone looking for Thompson, since Thompson had not
63 returned from tending to the bloody nose, and that is when Bonderman found Thompson's body. I later
64 searched the bathroom in New Prague Park but did not find any evidence of blood there.

65 I asked Bonderman about the tree branch and walking stick. Bonderman told us that Bonderman did not
66 recognize the tree branch. However, Bonderman said that Bonderman had seen Davidson holding a
67 walking stick at a public demonstration before, and this one looked like the walking stick Davidson had
68 earlier that same morning. Bonderman also believed Bonderman had seen Davidson's car at least twice
69 parked outside of the empty warehouse where Thompson lived, late at night, in the two weeks prior to
70 the murder. The warehouse is located on the outskirts of town.

71 At this point, Davidson became a person of interest in the investigation because of Bonderman's
72 statement, the walking stick, and because I knew of the contentious history between Thompson and
73 Davidson. I conducted additional interviews, but I found no one who could identify the tree branch's
74 owner, or who could identify the person who punched Thompson. As part of the investigation we also
75 collected all of the makeshift weapons abandoned in New Prague Park after the rally. Over the next
76 several days, I interviewed others who attended the rally. I spoke to Hayden Rodriguez who confirmed
77 Bonderman's statements that Thompson and Davidson had argued just before Thompson was punched.

78 In a follow up interview, Bonderman also told me about a previous altercation between Davidson and
79 Thompson on September 10, 2020. Additionally, as part of the investigation I searched Thompson's
80 social media and found two threatening messages that Davidson had posted on Thompson's BLAB
81 page. The first threatening message was three months ago when OA had announced O'Cannity's speech.

82 It said “O’Cannity followers like Thompson don’t deserve to live.” The second threatening message was
83 posted on Thompson’s page on September 10 and read, “Someone should kill idiots like you.” I also
84 found a post that Thompson made the night before the speech. It read: “Going to O’Cannity’s speech
85 tomorrow. Rads better not show up if they know what’s good for them.”

86 I also found evidence on social media that the Rad members planned to wear shirts that were grey on the
87 day of the rally, so that they could be identified by other Rad members. As part of the investigation, I
88 walked from the steps of New Prague Town Hall to where Thompson’s body was found to determine
89 how long it takes. I completed the walk in six minutes. I also walked from the murder scene to the New
90 Prague Tech shop. That walk took me five minutes. Finally, I walked from the New Prague Tech Shop
91 to the steps of town hall. That walk took seven minutes. I walked at an average pace, but of course I did
92 not have to contend with crowds like those on the day of O’Cannity’s speech.

93 *[Also, based on Bonderman’s testimony about seeing Davidson’s car at Thompson’s warehouse I got a*
94 *court order pursuant to the Stored Communication Act to obtain GPS location data from Davidson’s car*
95 *GPS company. The information obtained from the car GPS company showed that the defendant’s car*
96 *had been near the location of Thompson’s warehouse, late at night, four times over the last two weeks.*
97 *The warehouse on the outskirts of town where Thompson lives is the only building in the area. There*
98 *was also car GPS location data that placed Davidson at the location where the Rads were known to*
99 *meet eight different times over the past month. The way car GPS or really any GPS works is by*
100 *communicating location and other information, such as real time traffic information to satellites in*
101 *space. With this information the location of the car GPS can be tracked within 50-100 feet of its precise*
102 *location. GPS and satellite companies keep and retain this location data in the normal operation of their*
103 *business to help them improve features of their products such as real time traffic, and to track customer*
104 *usage patterns.]*

105 Also as part of the investigation we searched Davidson's house. During the search we discovered a grey
106 shirt with Thompson’s blood on it. We also found Davidson's jeans and shoes, which both had
107 Thompson's blood on them, but we did not find a black hoodie with the Tanterran flag on it. We did not
108 find blood on any other items of Davidson’s clothes. The next day I returned to Davidson’s home and
109 arrested Davidson for the murder of Alex Thompson.

110

**Prosecution Witness:
Devon Morrison
Medical Examiner**

1 My name is Devon Morrison. I earned my bachelor's degree in biology from East Minnesota University
2 in 2000. I attended medical school at Northern Minnesota State where I earned a medical degree in
3 2002. After that, I moved to New Prague where I have worked as a medical examiner for the last 15
4 years. I have conducted over 100 autopsies during my career. I attend the National Forensic Pathology
5 Conference every year to keep up with the latest advances in forensics. For the sake of transparency
6 both Alex Thompson and I were members of the New Prague Country Club, but we did not know each
7 other and this coincidence had no effect on my investigation.

8 I performed the autopsy on Alex Thompson. The cause of death was two depressed skull fractures and
9 subdural hematoma. The death occurred instantly after the second blow. There was bruising and blood
10 on the front of the victim's face, which was consistent with getting punched in the face, but the fatal
11 wounds were on the left side of Thompson's head above the ear and around the temple area. I can say
12 definitively that the injury to the front of the victim's face was not the cause of death for the victim.
13 Thompson had wounds and scratches on the arms. Some of these wounds were fresh and others
14 appeared to be about three to four days old. I recovered skin cell DNA evidence from underneath
15 Thompson's fingernails. The DNA skin cell evidence was a match to Davidson, indicating that
16 Thompson had scratched or been in a struggle with Davidson. The victim was wearing a fitness tracker
17 at the time of death. During the morning of the incident, the victim's tracker recorded heart rate levels
18 ranging from 60-110. At 10:03 a.m. the victim's fitness tracker registered a heart rate of 164. A normal
19 heart rate of someone walking would be about 100-110. One minute later at 10:04 a.m., the fitness
20 tracker registered no heart rate. In my professional opinion, this indicates that Thompson experienced
21 physical stress between 10:03 a.m. and 10:04 a.m., and that the victim's time of death may have been
22 10:04 a.m., or shortly afterwards, if the fitness tracker was broken before the victim died. This data was
23 obtained from the fitness tracker company through a court order. The defensive wounds to the victim's
24 hands and arms are consistent with Thompson defending against a frontal attack. Assuming Thompson
25 was defending against a frontal attack, and given the placement of Thompson's head wounds, the
26 attacker would have been right-handed.

27 It is difficult to match weapons to blunt-force head injuries based only on the shape of the wounds, but
28 the large quantity of blood on the walking stick is consistent with the large amount of blood that would
29 have issued from head wounds such as the two that appear on the victim. There were about 25 different
30 blood spatter marks of various sizes on the walking stick. Additionally, there was blood smearing,
31 indicating that someone wiped blood off the walking stick. It is highly unlikely that the victim's bloody
32 nose would leave a similar amount of blood on the walking stick. I examined the clothes that were
33 recovered from the search of Davidson's house that Davidson was wearing on the day of the rally.
34 Davidson's jeans, grey t-shirt, and left shoe contained Thompson's blood. Davidson's grey shirt had five
35 medium sized blood spatter droplets on the left side at the bottom. This is consistent with blood dripping
36 from Thompson's wound onto Davidson. On the bottom of the right side of Davidson's grey shirt was a
37 thin long blood transfer smear about five inches in length. In my professional opinion this kind of blood
38 transfer smear is consistent with wiping a long, bloody item, such as a stick, on the grey shirt.
39 Davidson's jeans had a small amount of fine blood spatter on the left pant leg. This is consistent with
40 Davidson being in the vicinity of where Thompson was struck in the head. Finally, Davidson's left shoe
41 had two medium-to-large blood spatter droplets. This is consistent with blood dripping from
42 Thompson's head wound. In my professional opinion, the amount and type of blood evidence on
43 Davidson's clothes was too great to have come from Thompson's bloody nose, so the blood transfer
44 occurred when Thompson was killed.

45 In examining the walking stick, I found skin cells embedded in the blood that contained the victim's
46 DNA. This caused me to have even higher confidence that the walking stick was the murder weapon.
47 There is little chance that Thompson's skin cells got embedded in blood on the walking stick when the
48 victim tried to grab it from Davidson. I recovered 14 individual fingerprints from Davidson's walking
49 stick that belonged to the defendant. There was an additional set of fingerprints (from a right hand) on
50 the walking stick that did not belong to the defendant. I was unable to determine to whom the additional
51 set of fingerprints belonged. I analyzed the tree branch found at the scene. It was from a blue oak tree
52 and was the same dimensions as a baseball bat. It had a jagged edge on one end that looked rotten, as if
53 it had fallen from a tree. There were castoff blood spatter drops on the tree branch that were consistent
54 with the stick being near the scene of the murder. I recovered no skin cells from the branch. The blood
55 on the tree branch matched the victim's blood. It is my professional opinion that the relatively small
56 amount of blood and lack of skin cells on the tree branch are not consistent with the depth and size of
57 the head wound on the victim, and are only consistent with blood spatter. The tree branch did have
58 partial prints in several places, but because the wood had bark on it and was not smooth like the walking
59 stick, I was not able to get any complete fingerprints or identify to whom the partial prints belonged. I
60 also examined all other weapons recovered from the scene by police. None of them contained any blood,
61 or any skin cell DNA from Thompson or Davidson.

**Prosecution Witness
Hayden Rodriguez
New Prague Resident**

1 My name is Hayden Rodriguez. I am 45 years old and have lived in New Prague my whole life. I am a
2 reporter for the *New Prague Herald*. I cover politics and community events. There is not a lot going on
3 in New Prague, since is a small town. I went to O’Cannity’s speech because of the controversy that his
4 speech was causing in New Prague and because I was looking into the relationship between some of the
5 more radical groups attending the speech. I had been investigating the Rads for a story and stumbled
6 upon threats Casey Davidson made towards Alex Thompson, so I was including that as part of my story.
7 It’s well known around town they don’t like each other. I arrived at about 9:15 a.m. I ended up near the
8 front of the crowd on the side of the police line that was protesting O’Cannity. It seemed that
9 O’Cannity’s appearance created more controversy than any previous rallies or speakers caused. A lot of
10 the people on my side of the police line were wearing black hoodies with the Tanterran flag on the back.
11 I don't know Davidson personally, but I knew of Davidson. Davidson is well known around town for
12 having passionate positions and frequently participating in rallies. During the September 14 rally, I saw
13 Davidson screaming at people who were just standing around and even shoving people who ignored
14 Davidson or who yelled back at Davidson.

15 At 9:50 a.m., a scuffle broke out right next to me, and Davidson was involved. I saw Thompson, who
16 was also well known throughout town, cross the police line and start throwing eggs at people wearing
17 the Tanterran hoodies. I saw Davidson go up to Thompson with a walking stick in one hand and a
18 bullhorn in the other. I heard Davidson yell into the bullhorn, “Stop that!” Thompson responded, “Here
19 we go again!” From my research, I know that the two of them knew each other from previous rallies and
20 had seen the two threats Davidson had posted on Thompson’s BLAB page. I was just a few feet away
21 from Davidson when I saw Thompson grab Davidson’s walking stick and appear to try to take it from
22 Davidson. The two of them were pulling and tugging on the stick. It seemed like this made Davidson
23 mad because I heard Davidson yell, “Get back on your side of the [police] line, or you’ll get what’s
24 coming to you!” Thompson did not retreat and instead stayed on the EFA side of the police line.

25 Immediately after that, someone came up from behind Thompson and “sucker-punched” Thompson in
26 the face and then ran away. The punch must have been bad because I saw blood almost immediately
27 gushing from both Thompson's nostrils.

28 When I returned home I discovered that I had a couple of large drops of blood on the shoes I wore to the
29 rally. After getting punched, I saw Thompson hold Thompson’s nose and run to the OA side of the
30 police line. I saw Thompson talk to someone for a few seconds and rush towards the back of the crowd
31 in the direction of the restroom in New Prague Park. A couple of minutes later I heard Davidson say,
32 “Here’s my chance.” Then Davidson headed towards the back of the crowd in the exact same direction
33 that the victim had walked. I saw the walking stick in one of Davidson’s hands, but I do not remember if
34 Davidson had a bullhorn in the other hand. Based on the threats Davidson had made towards Thompson
35 on BLAB, the fact that they had just gotten into an altercation, and Davidson’s statement of “Here’s my
36 chance,” I had some good material for my story. After I learned that Alex Thompson had been killed I
37 shared this information with police.

**Prosecution Witness
Morgan Bonderman
Friend of Thompson`**

1 My name is Morgan Bonderman. I have been a resident of New Prague for the last eight years, and have
2 been friends with Alex Thompson for the last five years. I met Davidson twice, one time about a year
3 before the incident at the O’Cannity rally, and the other time at the farmers market on September 10,
4 2020. I knew Davidson was at the O’Cannity event, but I did not directly encounter Davidson there.
5 Thompson had invited me to the speech, but I was not a member of OA. Thompson had encouraged me
6 to join OA, but I did not because I don’t like to be a follower. I helped Thompson get prepared for
7 O’Cannity’s speech as a favor because some OA members were out of town and were unable to help
8 with the planning. I attended a rally about a year ago with Thompson, and that was where I first became
9 aware of Casey Davidson. During that rally, I saw Thompson and Davidson get into a heated argument.
10 I couldn't hear what they were arguing about. Thompson got right in Davidson's face and started yelling.
11 Then, Davidson started waving a walking stick around in the air. Thompson just turned and walked
12 away. It was pretty well known throughout town that Thompson and Davidson hated each other.

13 On September 10, 2020, four days before the rally, Thompson and I ran into Davidson when we visited
14 the New Prague farmers market. Davidson saw Thompson and yelled, “You better cancel that stupid
15 speech!” In response Thompson tripped Davidson and said, “Shut up jerk.” Davidson then got up and
16 grabbed Thompson and the two of them struggled and pushed and shoved back and forth for a few
17 seconds before some other people and I broke it up. By the time they were separated, it appeared that
18 both Davidson and Thompson had a few small cuts and scratches. Thompson and I talked about
19 O’Cannity’s upcoming speech. I could tell that Thompson was excited about getting a well-known
20 celebrity to speak in our little town. We also talked about how Davidson would most likely attend
21 O’Cannity’s speech to protest. Thompson said something like “I am sure that idiot will be there again
22 this time!” I helped Thompson with a lot of the work in preparing for O’Cannity’s speech. This included
23 many late nights. We did the work at the warehouse where Thompson lived on the outskirts of town. On
24 two separate occasions over the past two weeks, I thought I saw Davidson sitting in a silver sedan on the
25 street outside of Thompson’s warehouse.

26 Davidson’s car has a Tanterran flag painted on the hood, so it was easily recognizable. At O’Cannity’s
27 rally I pretty much minded my own business. Thompson was much more active and willing to engage
28 the opposing side. Around 9:50 a.m., Thompson crossed the police line and I saw Thompson arguing
29 with Davidson. I saw what looked like Davidson shoving the walking stick in Thompson’s direction,
30 and Thompson grabbed it to stop Davidson from doing that. Then, a few moments later, I looked back
31 over at them, and someone came out of nowhere and punched Thompson in the face. I only got a quick
32 look, I do not know who punched Thompson but I know it was not Davidson. Thompson then told me
33 that Thompson was going to go to the bathroom to deal with it, and would return soon. After Thompson
34 left, I looked at the ground and noticed several large blood drops on the grass where Thompson was
35 standing. Thompson seemed to be bleeding quite a bit. At about 10:15 a.m., I was surprised that it had
36 been about half an hour and Thompson had not returned, so I went looking for Thompson. As I headed
37 in the direction of the bathroom, and towards the back of where the crowd had been, I saw someone
38 lying on the ground under a cluster of trees. As I approached I realized that it was my friend Alex
39 Thompson. I ran to check and see if Thompson was okay, but Thompson was unresponsive. I
40 immediately found a police officer. I was in total shock. I can’t believe my friend is dead.

Defense Witnesses

Defense Witness Casey Davidson Defendant

1 My name is Casey Davidson. I am from New Prague and have lived here my whole life. I am right-
2 handed. I am a member of Equality of All (EFA) group in New Prague. The EFA is a peaceful pro-
3 immigrant group that seeks to confront backwards-thinking nativist and nationalist people and groups. I
4 consider myself a nonviolent person and do not believe in the use of violence. The EFA was
5 encouraging people to attend Mitch O’Cannity’s speech at New Prague Town Hall on September 14,
6 2020. O’Cannity was going to speak about immigration and how the United States should not allow
7 immigrants into the country anymore. I strongly disagreed with O’Cannity’s stance, so I decided to
8 attend his speech.

9 Our group arrived that morning right around 9:30 a.m. There were already a lot of people there. I was
10 wearing jeans, an untucked grey t-shirt, a pullover black hoodie with the Tanterran flag on the back to
11 show my support for the Tanterrans in New Prague. I was not part of the Rads because they always ruin
12 peaceful protests with their violent ways. I’m for strong speech, not destroying things. When they take
13 their frustrations out by damaging property, it gives peaceful groups like ours a bad name. Let me be
14 very clear, I am not a Rad and I don't believe in violent tactics. It was just a coincidence that I wore a
15 grey shirt that day. I did not know that Rads coordinated to wear shirts that were grey that day, so that
16 they would be recognizable to each other. Many other people associated with the EFA were wearing the
17 hoodies with the Tanterran flag, like me. I also had my bullhorn.

18 I had my walking stick with me that I carved from the branch of a fallen redwood tree. I carved my
19 initials into it years ago. I am a hiker, and I always take it with me whenever I’ll be standing or walking
20 for long periods because my legs get sore. With my bullhorn, I thought I could drown out O’Cannity’s
21 backwards views and force the City of New Prague to cancel the speech. My bullhorn batteries died
22 during the event, so I had to go to the New Prague Tech Shop for new batteries for my bullhorn. I knew
23 the victim Alex Thompson. We had attended several political rallies over the past couple of years. It’s
24 not a secret that I did not like Thompson and Thompson’s views.

25 I argued with Thompson at a couple of rallies, but they were just arguments. Additionally, I happened
26 upon Thompson at the New Prague Tech Shop several months ago. As I was walking into the store I
27 saw Thompson swing Thompson’s own fist at the store owner, my friend Avery Williams. Thankfully
28 Thompson missed and Avery was fine. The two of them seemed to be arguing over a printer that was on
29 layaway. I did my best to mediate the situation and prevent any further violence, since I am anti-violence.

30 Thompson must have been in a good mood that day because Thompson said something like “I won’t be
31 spending my hard earned money in this dump anymore” and left the store without further incident. I also
32 happened to run into Thompson on September 10 at the farmer's market and encouraged Thompson to
33 cancel O’Cannity’s speech because O’Cannity’s views are backwards. Thompson then tripped me,
34 called me a jerk, and then grabbed me when I got back on my feet. I tried to break away, and we
35 struggled and pushed each other for few seconds, but that was all. Neither of us was hurt as a result of
36 the pushing, other than some small scratches and bruises. I probably had more scratches, since I had
37 fallen to the ground. I did not post the first threat on Thompson's BLAB. I left my BLAB page open on a
38 computer while working with other EFA members.

39 One of the other members wrote that message while I was away from my computer. I don’t know who
40 wrote it, and I did not delete it because I didn’t want O’Cannity coming to New Prague. I did write the

41 second message, but that was in response to Thompson tripping me, calling me a jerk, and starting a
42 fight with me at the farmers market. I wrote it in anger and meant to delete it when I cooled off but
43 forgot. Around 9:40 a.m. the announcer from the mayor's office announced that O'Cannity's speech was
44 delayed until 10:20 a.m.

45 About ten minutes later, I was minding my own business and saw Alex Thompson cross the police line
46 and throw eggs at people wearing the Tanterran hoodies. At first I just yelled, "Stop that!" I heard
47 Thompson respond, "Here we go again." Then Thompson grabbed my walking stick, tried to take it
48 from me, and I pulled it back. I yelled, "Get back on your side of the line, or you'll get what's coming to
49 you!" I just meant that I wanted Thompson to stop attacking people and throwing eggs.

50 At this point someone came up behind Thompson, grabbed Thompson by the shoulder, and punched
51 Thompson in the face. I was next to Thompson when it happened. I was standing to the right of
52 Thompson, still struggling with Thompson for my walking stick, when Thompson was punched.
53 Thompson bled heavily from the nose and held onto my walking stick to keep from falling over. Right
54 then, a lot of people started yelling and pushing and shoving. I was getting shoved back and forth. I lost
55 my walking stick in the chaos and never saw it again. I had my bullhorn with me the whole time I was
56 there. Also, I do not support whomever punched Thompson. It was probably a Rad who did it. I tried to
57 find people in the crowd to help me shut down O'Cannity's speech.

58 A few minutes later, I saw a teacher from New Prague High School whom I recognized from previous
59 rallies. I did not know this person well, or even by name, but the teacher encouraged me to use my
60 bullhorn to get some sort of a chant going to drown out O'Cannity. About 10 minutes or so after this
61 conversation I took off my hoodie because I was hot. I tied it around my waist. But as I was making my
62 way through the crowd it fell off at some point.

63 I searched for it, but was unable to find it. I continued to make my way through the crowd and was about
64 to make my own announcement, but my bullhorn batteries died. I rushed over to the New Prague Tech
65 Store to get new batteries for my bullhorn. Then I went back across the street to the rally and made my
66 way to the front of the crowd. At 10:20 a.m., I was feeling energized by the cancellation, but the OA
67 people were still hanging around, trying to look tough.

68 I decided to take action to get OA to leave. I started to climb the stairs of town hall in front of the
69 podium and said into my bullhorn, "There aren't enough police to stop us! Let's get these Tanterran
70 haters now! We stopped this stupid speech! No O'Cannity!" I just wanted to start a chant of "No
71 O'Cannity!" But before I could start the chant, a police officer grabbed me and told me to stop using the
72 bullhorn immediately and leave the area or I would be arrested.

73 I stopped using the bullhorn and left. About two days later, the same officer approached me on the
74 sidewalk in front of my home. The officer self-identified as Detective Adrian Carroll and said I should
75 get an attorney for some questions the officer had to ask me. I said I didn't need an attorney. Detective
76 Carroll then told me that they had found Alex Thompson dead and that my walking stick was found
77 close to Thompson's body. It had blood on it.

78 The detective asked if I knew anything about that. I tried to explain to the detective that the blood was
79 probably from when I was standing next to Thompson when Thompson was punched and that I lost my
80 walking stick right then. The detective didn't seem to care about my answer. A few hours later, the
81 detective came back with a search warrant for my house. I saw the police remove some clothes from my
82 house. First thing the next morning, the detective again came back, and this time had a warrant for my
83 arrest. I was arrested at my own front door.

84 *[I don't remember ever being near a warehouse on the outskirts of town. Nor have I ever attended a Rad*
85 *meeting. The GPS from my car may show that my car was located at those places, but I was not there. I*
86 *regularly loan my car out to Avery Williams. We have sort of an informal car-sharing arrangement*
87 *where we each have a key to the car and can just take it whenever. We do not have a formal schedule,*
88 *which has yet to be a problem. I did not drive the car on the dates and times in question.]*

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Defense Witness
Tory Lee
Forensic Expert Witness

1 My name is Tory Lee. I am an independent forensic pathologist. I received a medical degree from the
2 Peaksville State University in 1998. I was a medical examiner in Minneapolis for 14 years from 1998-
3 2012. Since leaving there eight years ago, I started a forensics consulting firm. My firm often works
4 with law enforcement on investigations and offers expert analysis of forensic evidence at trials. I have
5 testified as an expert in over 50 trials. In reaching my conclusions in this case, I reviewed all police and
6 medical reports including photographs of wounds and physical evidence with the exception of the
7 victim's body.

8 I agree with the prosecution expert that Thompson died from two depressed skull fractures and subdural
9 hematoma. The death occurred within seconds of the blows. I understand the analysis by the New
10 Prague Medical Examiner that the walking stick was definitively the weapon that struck Thompson, but
11 I disagree with that conclusion. The injuries are consistent with a number of different weapons, and it is
12 very difficult to match a particular weapon to blunt-force injuries. In my professional opinion,
13 Thompson's skin cells and blood were transferred to Davidson's walking stick when Thompson grabbed
14 the stick and after Thompson was punched in the earlier confrontation. There were round blood spatter
15 spots of differing sizes on the walking stick.

16 This is consistent with bleeding from a heavy nosebleed. The different size spatter marks indicate that
17 the blood fell a different distance before landing on the stick. This is consistent with the way the stick
18 looks with smaller blood-spatter spots near the top of the walking stick and larger blood spatter drops
19 lower on the walking stick. The bloody nose caused significant blood flow that was enough to leave the
20 walking stick covered in blood and it is consistent with the amount of blood found on Davidson's shirt,
21 jeans, and shoes.

22 Davidson's shirt had five medium-sized blood spatter droplets on the bottom left-hand front area. This is
23 consistent with blood dripping from Thompson's nose after Thompson was punched. The shirt also had
24 a narrow five-inch blood transfer smear on the bottom right. This is consistent with wiping the walking
25 stick on the shirt. The fine spatter on Davidson's left pant leg is consistent with Davidson standing to the
26 right of Thompson when Thompson was punched, and in my professional opinion does not show that
27 Davidson was near Thompson when Thompson received the fatal wounds. Finally, the two medium to
28 large blood spatter droplets on Davidson's left shoe are consistent with blood dripping from
29 Thompson's nose onto Davidson's shoe.

30 Davidson had no new cuts or scratches on Davidson's hands and arms. Davidson did have a few small
31 scratches on Davidson's hands and forearms that appeared to be several days old. There

32 were only a few skin cells found under Thompson's fingernails. In my professional opinion, these few
33 skin cells could have survived from the September 10 fight at the farmers market. Even with four days
34 and Thompson washing Thompson's hands, scientific studies show that recovering skin cells from
35 underneath fingernails is possible. Since Davidson did not have any fresh wounds, and since so few of
36 Davidson's skin cells were found under Thompson's fingernails, there was no conclusive evidence that
37 the cells were from a struggle with each other at the rally, except perhaps when Thompson touched
38 Davidson's walking stick. In my professional opinion, the tree branch found near the victim was
39 consistent with Thompson's blunt-force trauma head injuries. The size and width of the tree branch were
40 consistent with the two penetrating blunt force trauma head injuries sustained by Thompson.

41 While I did not find Thompson's skin cells on the tree branch, it did contain Thompson's blood, and in
42 my professional opinion the tree branch had enough blood on it that it could have been the murder
43 weapon. I also examined the partial fingerprints on the tree branch but could not get a match with the
44 identity of a person based on the fingerprints. I cannot say for certain, nor can anyone else, what caused
45 the blunt-force trauma head injuries to the victim. Even if the walking stick was the weapon, there were
46 multiple sets of fingerprints on it.

47 There were 14 individual fingerprints on the walking stick that belonged to the defendant. There was an
48 additional set of fingerprints (from a right hand) on the walking stick that did not belong to the
49 defendant. This additional set of prints was in a location near the end of the walking stick, consistent
50 with someone holding the walking stick in such a way that they could swing the stick like a baseball bat.
51 If the walking stick was the weapon, the murder could have been committed by the defendant, the
52 person with the unknown fingerprints, or a person wearing gloves.

53 Also, I disagree with the conclusion of the New Prague Medical Examiner that Thompson's injuries are
54 consistent with being inflicted by a right-handed person during a face-to-face confrontation. In my
55 professional opinion, Thompson's injuries to the left side of the head were just as consistent with being
56 attacked from behind by a left-handed person. This would also be consistent with the defensive wounds
57 on the victim's hands and wrists. The high heart rate the victim had at 10:03 a.m. could have been
58 caused by Thompson running. The fitness tracker not registering a heart rate at 10:04 a.m. does not
59 show that Thompson died at 10:04 a.m.

60 It could be that the first strike from an attacker from the front or back broke the fitness tracker and the
61 victim was alive for some time after that. A struggle between the victim and someone else is just one of
62 many possible explanations for the accelerated heart rate at that time.

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**Defense Witness
Fabian Moreno
Acquaintance of Defendant**

1 My name is Fabian Moreno. I moved to New Prague nine years ago, after getting my B.A. and then
2 M.A. in history from Sunnyland State College in 2011. I teach history at New Prague High School. I
3 follow politics and current events closely and often attend political speeches and rallies in New Prague. I
4 am a member of EFA, because I believe in the causes they support. I was arrested for 14 trespass while
5 protesting the Iraq War during my time at Sunnyland State College.

6 I decided to attend O’Cannity’s speech to protest his backwards immigration positions. I was about two-
7 thirds of the way back in the crowd. I wanted to stay pretty far back, because I thought it was likely that
8 there would be fighting and figured those were more likely to happen up near the front of the audience
9 where some of the more aggressive people were likely to be.

10 I arrived at about 9:20 a.m. on September 14. Within a few minutes I saw Davidson arrive and said
11 hello. I have met Davidson about a half dozen times at previous rallies and saw Davidson several times
12 during this rally. Davidson had a walking stick, which Davidson had once proudly told me that
13 Davidson had carved out of an old tree branch, and Davidson showed me how Davidson had carved the
14 initials CD into the handle of the walking stick. Davidson always had the walking stick when I saw
15 Davidson at these types of events. Davidson also had a bullhorn.

16 I saw Davidson again about at about 9:50 a.m. At this point Davidson thanked me for coming to the
17 rally and for supporting the Tanterrans, and told me that Davidson was going to try to get a chant started
18 to drown out O’Cannity. Davidson had the bullhorn, but I do not remember if Davidson had the walking
19 stick at this time. Davidson was wearing jeans, and a black hoodie with the Tanterran flag on the back
20 and the hood up. This was the same thing that many of the people on the EFA side of the rally were
21 wearing.

22 After talking for a few seconds, Davidson left to go talk to others in the crowd and I began talking to
23 some of the people around me. Three or four times over the next 15 minutes, I saw someone in the
24 crowd who I believed was Davidson, holding but not speaking into the bullhorn. That person was
25 holding the bullhorn up and resting it on their shoulder. The person’s side or back

26 was facing me, so I did not see the person’s face. I only saw the side or back of the person’s head
27 covered by the black hoodie. I assumed that it was Davidson, because Davidson was the only one I saw
28 with a bullhorn that day other than police, and the person I saw was the same size as Davidson.

29 At 10:20 a.m. I saw Davidson climb the steps of the New Prague Town Hall. Davidson was no longer
30 wearing the black hoodie with the Tanterran flag on it. Davidson yelled into the bullhorn. This was the
31 only time that morning that Davidson was not wearing the black hoodie. As that was happening, a riot
32 was breaking out.

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Defense Witness
Avery Williams

My name is Avery Williams. I earned my degree in computer science from Western Minnesota Technical College in 2003. After I graduated, I worked as a consultant for various tech companies for a few years. Since then, and for the last ten years, I have owned a small electronics store in New Prague. My store, New Prague Tech Shop, is located across from New Prague Park and near New Prague Town Hall. I specialize in cell phones and GPS technology but have a wide variety of other products. I know Casey Davidson. I am friends with Davidson and sold Davidson a bullhorn. Davidson always seemed like a good person. Davidson was a bit of a techie, so Davidson was often in my store. Davidson and I would often make small talk about our shared interest in electronics. I don't own a car because New Prague is a small town, so I ride my bicycle everywhere. I have my own key to Davidson's car and can take it whenever I need it. I don't have to let Davidson know, since I don't think Davidson uses the car much. I probably drive the car two to three times a month. I pay Davidson about \$20 to \$50 a month to cover gas and maintenance. I don't remember having the car on any of the nights in question.

I also know the victim Alex Thompson. Thompson has bought a few products from my store over the years. Thompson bought a smartphone on layaway, but did not keep up with the payments. Because of this, I had an expensive smartphone on reserve for Thompson that I could not sell to anyone else. Also, about nine months ago, Thompson was in my store about a printer Thompson had purchased on layaway. Thompson was behind on the payments and was yelling at me since I would not give the printer to Thompson until it was paid in full. Thompson ended up taking a swing at my face. Right at that time Davidson entered my store. I was really upset and started yelling at Thompson and thought Thompson and I might fight. Instead, Davidson intervened and peacefully deescalated the situation. Davidson did not like violence. Thompson walked out of my store saying something about not shopping there anymore. That's fine by me. I need customers who can pay their bills. I'm thankful Davidson showed up just in time. If it weren't for Davidson, I'm sure things would have turned physical.

Davidson was in my store around 10:10 a.m. on the morning of O'Cannity's speech, and after buying batteries, I of course gave Davidson a receipt. My cash register prints a receipt for every transaction at the time of the transaction, and I give customers a copy of the receipt. I regularly check at least once a month that the cash register prints the correct information on receipts, including date and time. I had just checked the register a few days before my last encounter with Davidson, and it was working properly. While I was ringing Davidson up, I made small talk with Davidson about the rally. I knew Davidson was interested in political causes and asked why Davidson had brought the bullhorn to the rally. Davidson told me that Davidson wanted to create some kind of disruption. I asked Davidson about the blood on the bottom of the shirt Davidson was wearing. It looked like a light grey shirt. Davidson told me that someone standing next to Davidson had been punched, started bleeding a lot, and had bled on the shirt. There was no blood that I could see on the bullhorn. Davidson appeared to be in a hurry and told me Davidson was anxious to get the bullhorn working. Nothing about Davidson's behavior seemed unusual to me. Davidson was in my store for at most five minutes.

PRETRIAL MOTION

This section contains materials and procedures for the preparation of the trial and a pretrial motion on an important legal issue. The judge's ruling on the pretrial motion will have a direct bearing on the charges and the possible outcome of the trial.

The First Amendment protects individuals from federal government intrusions on their right to speak, exercise religion, assemble, publish news, and petition the government. These rights are extended to the states by the due process clause of the 14th Amendment. Freedom of speech is an area that has come under fire throughout United States history. The tension between the right to speak freely and the need to protect people from dangers that may result from certain speech has been hotly debated throughout the Nation's history, resulting in a great number court decisions over the years.

The pretrial motion in this case is a motion to set aside Count 2 – Criminal Threat as a matter of law. Here, the defense will argue that Reagan Davidson's NowPic comment is constitutionally protected free speech. If the judge rules in favor of the defense, finding the comment not to be a "clear, immediate, unconditional, and specific" communication to Sawyer Smith of a serious intention and the immediate prospect of being carried out as required by law, the criminal threat charge will be dismissed. The prosecution, however, will argue that the Judge consider all of the circumstances surrounding the threat in determining if the legal standard was met. Regardless of the Judge's ruling, the comment may still be used as evidence relating to the Count 1 – False Report of an Emergency, subject to relevance and other evidentiary objections.

PRETRIAL ARGUMENTS

The pretrial issue in this case focuses on whether it is free speech under the First Amendment for a person to comment on social media, "You deserve to die. I'm going to get you for this, you just wait. I hate you. When you're dead no one will even miss you, you monstrous slime of a person. You think you can stick me with a \$34,000 lawsuit and just get away with it? Watch your back Sawyer, I'm coming for you."

The prosecution will argue that such speech constitutes a true threat that is not protected speech under the First Amendment. The First Amendment does not protect "true threats," although it does protect "loose, figurative, or hyperbolic language." A statement becomes a "true threat" when the speaker intends to communicate a "serious expression of an intent to commit an unlawful act of violence." A "true threat" is one that is sufficient to cause a reasonable person to be in sustained fear. Because a reasonable person could foresee how statements such as "you deserve to die," "I'm going to get you for this," "when you're dead no one will even miss you," "watch your back," and "I'm coming for you," would be taken as a serious expression to inflict bodily harm on someone, and Sawyer admitted to being in fear of what Reagan would do to Sawyer, the comment should constitute a true threat. Furthermore, Reagan and Sawyer's rocky relationship after Sawyer dropped Reagan as a friend, as can be seen through Reagan's decision to "catfish" and otherwise taunt Sawyer through the Hayden account, shows a history of animosity between the parties. Courts have looked at a history of animosity as relevant in determining whether a statement constitutes a true threat.

The defense will argue that the comment was not a "true threat," and it is therefore protected free speech under the First Amendment. The comment lacked the "unequivocal, unconditional, immediate, and specific" language normally required to constitute a threat under section 422, and if such language is lacking, the court examines the surrounding circumstances to determine if the statement is elevated to a threat. Courts have found that statements such as "I'm going to get you" are insufficient alone to constitute a true threat. Here, the Defense will argue that Reagan made no specific threat, and there was

no other outside conduct to suggest that the comment was a serious expression of an intent to inflict bodily harm on Sawyer. Furthermore, section 422 requires that the statement “causes that person reasonably to be in sustained fear for his or her own safety” in order to constitute a criminal threat. Sawyer’s response, “LOL, as IF. You’re done now, bye,” clearly demonstrates that Reagan’s comment did not cause Sawyer to be in sustained fear for Sawyer’s safety. Sawyer’s actions following the comment further support the mentality of Sawyer’s response: Sawyer was at home, streaming a movie, like it was any other night of the week. If Sawyer were in sustained fear, Sawyer would have called the police.

SOURCES FOR PRETRIAL HEARING

The sources for the pretrial motion arguments are a “closed library,” which means that participants may only use the materials provided in this case packet. These materials include: any relevant testimony to be found in the fact situation and witness statements of Reagan Davidson, Sawyer Smith, and Officer Lopez, excerpts from the U.S. Constitution, the Minnesota Statutes, and edited court opinions.

The U.S. Constitution, U.S. Supreme Court holdings, and Minnesota Supreme Court and Minnesota Appellate Court holdings are all binding and must be followed by Minnesota trial courts. All other cases are not binding but are persuasive authority. In developing arguments for this Mock Trial, both sides should compare or distinguish the facts in the cited cases from one another and from the facts in *People v. Davidson*.

LEGAL AUTHORITIES

U.S. Constitution

Amendment IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the States wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Minnesota Constitution

Article I, Section 13

The right of the people to be secure in their persons, houses, papers, and effects against unreasonable seizures and searches may not be violated; and a warrant may not issue except on probable cause, supported by oath or affirmation, particularly describing the place to be searched and the persons and things to be seized.

STATUTORY

Minnesota Statutes Sections 187–189

§187 Murder Defined

(a) Murder is the unlawful killing of a human being, or a fetus, with malice aforethought.

§188 Malice Defined

Such malice may be express or implied. It is express when there is manifested a deliberate intention unlawfully to take away the life of a fellow creature. It is implied, when no considerable provocation appears, or when the circumstances attending the killing show an abandoned and malignant heart.

§189 Degrees of Murder

All murder which is perpetrated by means of . . . lying in wait, torture, or by any other kind of willful, deliberate, and premeditated killing . . . is murder of the first degree. All other kinds of murders are of the second degree.

Stored Communications Act

18 U.S.C.A. § 2703

Required disclosure of customer communications or records

(c) Records concerning electronic communication service or remote computing service. (1) A governmental entity may require a provider of electronic communication service or remote computing service to disclose a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications) only when the 19 governmental entity . . . obtains a court order for such disclosure 20 under subsection (d) of this section

(d) Requirements for court order. A court order for disclosure under subsection (b) or (c) may be issued by any court that is a court of competent jurisdiction and shall issue only if the governmental entity offers specific and articulable facts showing that there are reasonable grounds to believe that the contents of a wire or electronic communication, or the records or other information sought, are relevant and material to an ongoing criminal investigation. In the case of a State governmental authority, such a court order shall not issue if prohibited by the law of such State. A court issuing an order pursuant to this section, on a motion made promptly by the service provider, may quash or modify such order, if the information or records requested are unusually voluminous in nature or compliance with such order otherwise would cause an undue burden on such provider. *The Stored Communications Act was enacted as Title II 37 of the Electronic Communications Privacy Act of 1986 (ECPA).

CASES

Smith v. Maryland (1979) 442 U.S. 735

Facts: Police, without getting a warrant, installed a pen register system at the phone company's central offices with the permission of the phone company. The pen register system tracked the phone numbers dialed by the defendant, who was suspected in a robbery. The defendant moved to have numbers captured by the pen register excluded from evidence.

Issue: Was the tracking of phone numbers the defendant dialed on a home phone without a warrant a search under the Fourth Amendment? *Holding:* No. It was not a search because the defendant could not reasonably expect the numbers he dialed to remain private. Because “Smith ‘voluntarily conveyed numerical information to the telephone company and exposed that information to its equipment in the ordinary course of business,’ the “numerical information was not protected under the Fourth Amendment.”

Holding: “A person has no legitimate expectation of privacy in information he voluntarily turns over to third parties,” under the third party doctrine.

United States v. Jones (2012) 565 U.S. 400

Facts: The FBI obtained a warrant to place a GPS tracking device on the defendant’s SUV. The FBI suspected the defendant of being a drug trafficker. The tracking device was placed on the defendant’s SUV in a public parking lot and outside of the scope of the warrant. The tracking device remained on the defendant’s SUV for 28 days, generating over 2,000 pages of data on the defendant’s movements. The defendant moved to have tracking data captured by the GPS device excluded from evidence.

Issue: Does placing a GPS tracking device on a person’s vehicle constitute a search under the Fourth Amendment?

Holding: Yes. The Fourth Amendment protects people, not places, and a vehicle is encompassed by “effect” in Fourth Amendment. The government physically intruded into an area protected by the Fourth Amendment, so it was a search under the Fourth Amendment. The government physically intruded into an area protected by the Fourth Amendment, so it was a search regardless of whether a reasonable expectation of privacy existed.

United States v. Miller (1976) 425 U.S. 435

Facts: The ATF, without a warrant, obtained copies of checks and other banking records from the two banks where the defendant had accounts. The defendant was suspected of illegally producing alcohol and avoiding the whiskey tax. The banks maintained the records in accordance with the Bank Secrecy Act of 1970. The defendant moved to have the banking records excluded from evidence.

Issue: Was the ATF’s obtaining of individual banking records 37 from a bank a search under the Fourth Amendment?

Holding: No. The defendant had no reasonable expectation of privacy and no interest in the documents. Defendant had neither ownership nor possession of the documents, but had voluntarily given the information to the bank in the normal course of business. “This Court has held repeatedly that the Fourth Amendment does not prohibit the obtaining of information revealed to a third party and conveyed by him to Government authorities, even if the information is revealed on the assumption 47 that it will be used only for a limited purpose and the confidence placed in the third party will not be betrayed.” The defendant assumed the risk that the documents could be turned over to the government, when he gave his information to the bank.

Katz v. United States (1967) 389 U.S. 347

Facts: Police, without getting a warrant, wiretapped a public phone booth to listen to defendant’s calls. Defendant placed bets from the phone in violation of federal law. The defendant moved to have the recorded conversations excluded from evidence.

Issue: Was the police recording of defendant's calls a search?

Holding: Yes. The court defined a search as any governmental intrusion into something in which a person has a reasonable expectation of privacy. Justice Harlan's concurrence stated that the reasonable expectation of privacy occurred when "first . . . a person [has] exhibited an actual (subjective) expectation of privacy and, second, that the expectation be one that society is prepared to recognize as 'reasonable.'" Here, the defendant had a reasonable expectation of privacy in the booth. The officer's recording of his conversation constituted a search under the Fourth Amendment. The police did not have any legal justification for the search. Therefore, the search was unconstitutional.

United States v. Knotts (1983) 460 U.S. 276

Facts: Police believed that the defendant was purchasing chloroform to manufacture drugs. Police got the seller of the chloroform to agree to let law enforcement place a tracking beeper in one of the containers of chloroform. Police used the beeper to track the car carrying the chloroform from its place of purchase to the defendant's secluded cabin. The defendant moved to have the tracking data excluded from evidence, since the police had not obtained a warrant. *Issue:* Was the placing of a tracking beeper in a container of chloroform before it was sold to the defendant a search under the Fourth Amendment? *Holding:* No. It was not a search under the Fourth Amendment, because visual surveillance by police would have given police the same information. "The governmental surveillance conducted by means of the beeper in this case amounted principally to the following of an automobile on public streets and highways," and since people have no reasonable expectation of privacy on public roads, this was not a search under the Fourth Amendment.

Riley v. California (2014) 573 US

Facts: Riley was pulled over for an expired registration. During the stop it was found that Riley also had a suspended driver's license. Riley's car was impounded, and a search of Riley's car turned up a gun. Riley was arrested on gun charges. Police searched Riley's phone incident to the arrest. Based on photos and videos from the phone Riley was charged in connection with a shooting that took place a few weeks earlier.

Issue: Can police without a warrant search digital information on a cell phone seized from someone who has been arrested?

Holding: No. The unanimous Supreme Court ruled police generally may not, without a warrant, search digital information on a cell phone seized from a person who has been arrested. The interest in protecting officers safety or in preventing the destruction of evidence do not dispense with the warrant requirement. Digital data itself cannot be used as a weapon. Not every search is acceptable solely because a person is in custody. When "privacy related concerns are weighty enough" a "search may require a warrant." Before cell phones, "a search of a person was limited by physical realities and tended as a general matter to constitute only a narrow intrusion on privacy." Today over 90% of people own cell phones, and these devices create a "digital record of nearly every aspect of their lives." The search of a cell phone "would typically expose to the government far more than the most extensive search of a house," so generally a warrant is required.

In re Application for Telephone Information Needed for a Criminal Investigation (D.C.ND Cal. 2015) 119 F.Supp.3d 1011

Facts: The government sought access to sixty days of petitioner's historical cell-site location information, including the physical locations of the cellular tower and identification of the particular

sector of the tower that the phone was connected to. The judge in the case denied the court order for the cell-site location information.

Issue: Is the use of cell-site location information a search under the Fourth Amendment?

Holding: Yes. The use of cell-site location information is a search under the Fourth Amendment. These requests fall outside of the third party doctrine, because consumers do not voluntarily share information with cell phone tower/companies. The information is shared anytime a cell phone is on, whether or not a consumer is actively using the phone. Consumers have a reasonable expectation of privacy in historical cell site location data.

United States v. Graham (4th Cir. 2016) 824 F.3d 421

Facts: Graham and a co-defendant were arrested for a series of armed robberies of gas stations, convenience stores, fast food restaurants, and other retail establishments. As part of the investigation, the government obtained a court order pursuant to the Stored Communication Act for the defendants' historical cell-site location information. The court order allowed the government to collect historical cell-site location data from the defendants for a 221-day period, including location data for 30,000 calls and texts.

Issue: Is the government's acquisition of cell-site location information over a 221-day period a search under the Fourth Amendment, and thus requires a warrant?

Holding: No. A person has no reasonable expectation of privacy in cell-site location information. Under the third party doctrine, the defendant voluntarily exposed location information to the cell phone company by using the phone, and assumed the risk that the cell phone company would give up the information to the government. Under the third party doctrine there is no limit to the amount of data that can be collected.

United States v. Davis (11th Cir. 2015) 785 F.3d 498

Facts: Davis was arrested for seven robberies over a two-month period. Davis robbed a pizzeria, a gas station, a drug store, an auto parts store, a beauty salon, a fast food restaurant, and a jewelry store. The government got a court order to obtain location data pursuant to Stored Communication Act for cell-site location information for a 67-day period. The government used the cell-site location information to link Davis to the robberies.

Issue: Is the government's acquisition of cell-site location information over a 67-day period a search under the Fourth Amendment, thus requiring a warrant?

Holding: No. The defendant did not have ownership or possession of the cell-site location information in question. The data was created and stored by the cell phone company, and subject to the cell phone company's control. The defendant had no subjective or objective expectation of privacy in the phone company's business records. The third party doctrine controls the outcome of this case. A reasonable expectation of privacy does not change because of the amount of information collected.

In re Application of the United States for Historical Cell Site Data (5th Cir. 2013) 724 F.3d 600

Facts: The government filed applications for court orders pursuant to the Stored Communication Act (SCA) seeking the 39 subscriber information and cell-site location information as part of

three investigations for a 60-day period. The magistrate judge granted a court order for subscriber information only citing the SCA standard of “specific and articulable facts showing that there are reasonable grounds to believe that the contents of a wire or electronic communication, or the records or other information sought, are relevant and material to an ongoing criminal investigation,” was met. However, the magistrate judge denied the court order for the cell-site location information, stating that a warrant was needed because it was a Fourth Amendment search.

Issue: Are court orders pursuant to the SCA that compel cell phone companies to provide historical cell site location data unconstitutional?

Holding: No. The word “shall,” which is used in the SCA, “is ordinarily language of a command.” The “shall directs the court to issue the order if all necessary conditions in the statute are met,” as they were in this case. As long as these conditions are met, the court does not have discretion to deny issuing a court order. It is the phone company, not the government, who creates, maintains, and possesses the cell-site location information, and the companies do so as part of their regular business practices. Customers voluntarily transmit the information to cell phone companies, because the use of the cell 13 phone is voluntary, and customers know that data is being transmitted to the cell phone company. Once the information is conveyed to the third party (cell phone companies) it can be used for any purpose.

In re Application of U.S. for an Order Directing a Provider of Electronic Communication Service to Disclose Records to the Government (3rd Cir. 2010) 620 F.3d 304

Fun Facts: The government applied for a court order pursuant to Stored Communications Act (SCA) to make cell phone providers turn over cell-site location information. The application for the court order sought this information as part of an ongoing investigation into large-scale narcotics trafficking and various other crimes. The magistrate judge denied the application for a court order pursuant to the SCA, and instead insisted a warrant is needed.

Issue: Is a judge required to approve the application for a court order for cell-site location information under the SCA?

Holding: No. The government has a lower burden than probable cause needed for a warrant to access cell-site location information. The government must show, “specific and articulable facts showing that there are reasonable grounds to believe that the contents of a wire or electronic communication, or the records or other information sought, are relevant and material to an ongoing criminal investigation.” However, the court has “discretion to require a warrant prior to ordering a provider to produce customer cell-site location information.” The language of the SCA says a court order “may be issued.” This is language of permission (the order is optional) rather than a mandate (the order is required). Additionally, a cell phone customer has not voluntarily shared their information with a cell phone company in any meaningful way.

JURY INSTRUCTIONS

See the Jury Instructions at the beginning of this package

PHYSICAL EVIDENCE

Only the following physical evidence may be introduced at trial.

1. Exhibit A - Diagram of the New Prague Park
2. Exhibit B - Diagram of where Thompson's body was found.
3. Exhibit C - Photograph of Davidson's Shirt
4. Exhibit D - Photograph of Davidson's Pants
5. Exhibit E - Photograph of Davidson's Shoes
6. Exhibit F - Photograph of Davidson's Walking Stick
7. Exhibit G - Photograph of the Tree Branch
8. Exhibit H - Davidson's Receipt From New Prague Tech Shop
9. Exhibit I - Autopsy Report
10. Exhibit J - GPS Map of Davidson's Car Locations.

Exhibits may be printed in color or in black and white as provided in this case packet.

EXHIBIT A
Map of New Prague Park

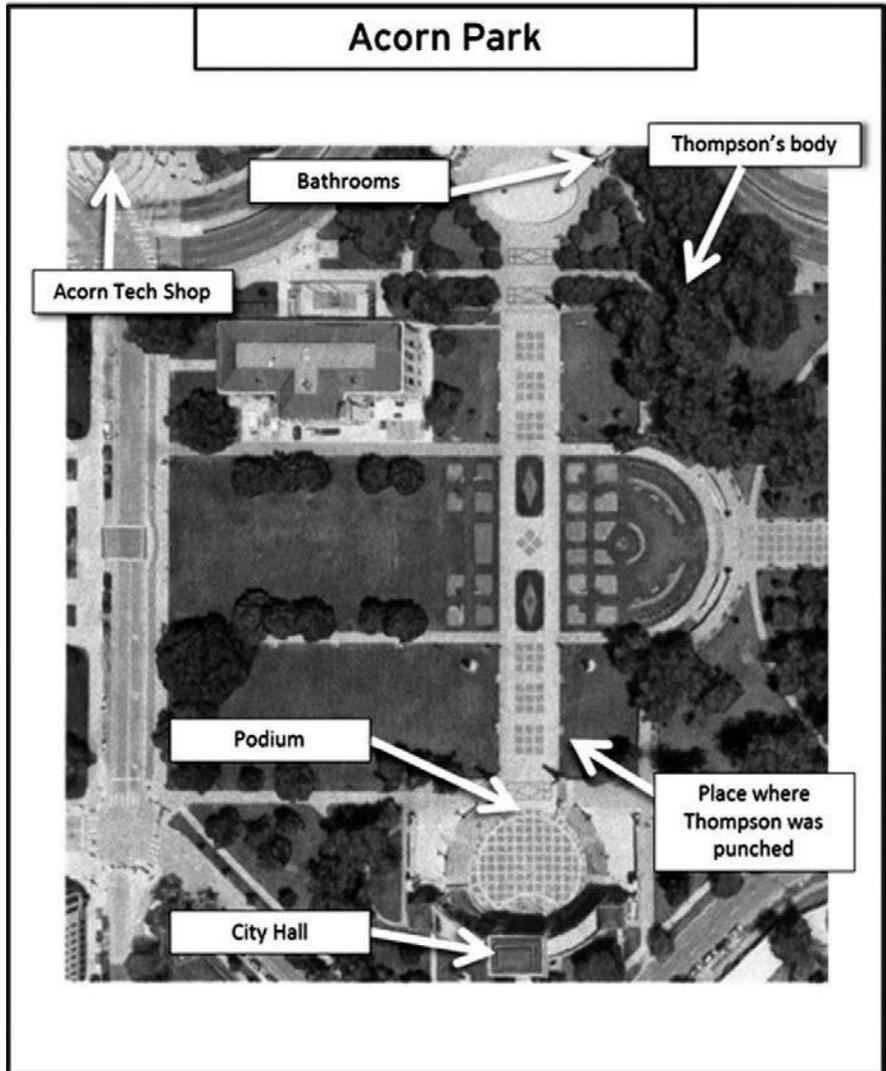


EXHIBIT B
Diagram of Where Thompsons Body Was Found



EXHIBIT C
Photograph of Davidson's Shirt



EXHIBIT D

Photograph of Davidson's Pants





EXHIBIT E
Photograph of Davidson's Shoes

EXHIBIT F

Photograph of Davidson's Walking Stick



EXHIBIT G

Photograph of the Tree Branch



EXHIBIT H

Davidson's Receipt from New Prague Tech Shop

Acorn Tech Shop
1214 Acorn Rd.
(707) 555-5025

8 Pack D Batteries Model: MN13R8DW	\$15.99
Subtotal	\$15.99
TAX 8.25%	\$ 1.32
Total	\$17.31
Cash Payment	\$20.00
Change Due	\$ 2.69

9/14/17 10:12 am

EXHIBIT I
Autopsy Report

Pathologist Name: Devon Morrison
Case # 139

Autopsy Report

Who is the Deceased?

Name: Alex Thompson
Age: 26
Sex: _____
Address: 1847 East Country Rd
City, State, Zip: Acorn, CA 99999
Phone #: (707) 555-5555

Age	Race	Sex	Length	Weight	Eyes	Hair	Beard
26	N/A	N/A	N/A	N/A	Brown	Brown	N

Blood Type	Contents in Blood	Rigor Mortis	Liver Mortis
O+	No drugs or alcohol	No	Yes

Marks and Wounds

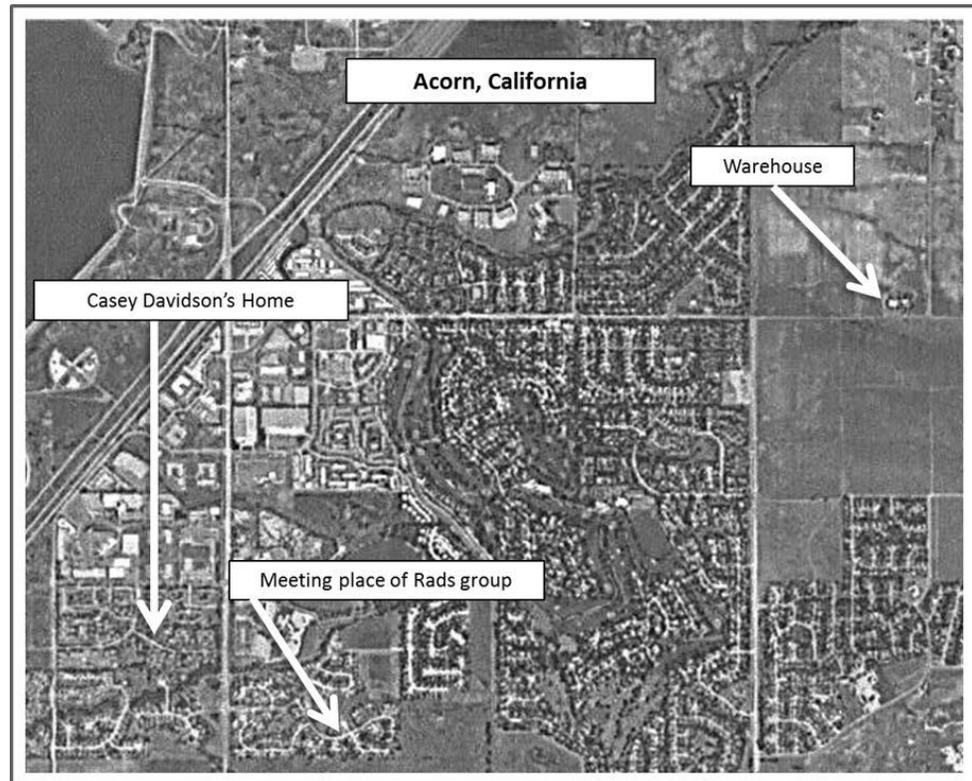
injuries that caused death

- Victim died of subdural hematoma resulting from two depressed skull fractures.
- The two wounds were located on the left side of the victims head above the ear and near the temple
- Bruising from punch was NOT COD
- minor scratches and bruising on arms + hands.

Probable Cause of Death
Blunt Force Trauma causing Subdural Hematoma

Date of Autopsy	Location of Autopsy
<u>9/14/17</u>	<u>Acorn City Morgue</u>

EXHIBIT J
GPS Map of Davidson's Car Locations.



Defendant's Car Located at Warehouse (1-4)

1. 9/02/17 —10:33 p.m. —11:14 p.m.
2. 9/07/17 —11:19 p.m. —12:05 a.m.
3. 9/09/17 —11:37 p.m. —11:51 p.m.
4. 9/12/17 —10:47 p.m. —11:11 p.m.

Defendant's Car at Known Rad's Meeting Place

5. 8/16/17 —2:05 p.m. —4:11 p.m.
6. 8/22/17 —11:23 a.m. —12:11 p.m.
7. 8/26/17 —5:15 p.m. —5:23 p.m.
8. 9/02/17 —1:13 p.m. —3:33 p.m.
9. 9/06/17 —5:21 p.m. —7:35 p.m.
10. 9/10/17 —9:15 a.m. —10:08 a.m.
11. 9/11/17 —3:30 p.m. —3:49 p.m.
12. 9/13/17 —6:12 p.m. —8:36 p.m.

CREDITS

Case Materials adapted from:

People v. Davidson

Constitutional Rights Foundation, California