



Visual Persuasion

Demonstrative Evidence That Informs and Transforms

Demonstrative Evidence Illuminates Alternative Theories

Consult with a Demonstrative Evidence Specialist on your complex cases. A talented DE Specialist is skilled in sorting through the details to discover the underlying idea that explains them all. The Specialist is also comfortable working “in the alternative” because those solutions entail “lateral thinking.”

For example, consider the development of a timeline of events leading up to a fatal accident involving a drunk driver.

A man is invited by a friend to be his guest for dinner at a restaurant where the friend works. He arrives at the restaurant about 10:00 PM and is joined by his friend. He consumes a steak dinner, bread, and wine. The waiter prepares a receipt (one steak dinner, one bottle of wine, and one glass of wine) but finishes his shift before the men leave the restaurant. The new waiter prepares an identical receipt which the friend signs. The two men leave the restaurant together about 12:00 AM and part company in the parking lot. The man is involved in a fatal automobile accident at about 2:00 AM. At 4:00 AM, his Blood Alcohol Content (BAC) is 0.16%. Due to concerns of possible liability for serving the wine, the restaurant proposes a financial settlement with the widow of the driver killed in the accident.

Observations & Questions: During the initial draft of the timeline, the Specialist raised questions that were not answered by the facts.

1. The drive time from the restaurant to the location of the accident is about 25 minutes. What happened during the 1-1/2 hour gap in the timeline? (Fig. 1)
2. A bottle contains five 6-oz. servings of wine, so one bottle + one glass = six servings. There are two receipts, which is a possible total of 12 servings. How many servings of wine did the man drink? (The friend and the waiters could not be located to testify.)
 - Theory A 3 servings: The man drank three servings; his friend drank three servings. (The second receipt was a duplicate due to the shift change.)
 - Theory B 6 servings: The man drank all six servings on the receipt while his friend had none (the second receipt was a duplicate); or the man and his friend each drank the three servings indicated on each receipt.
 - Theory C 12 servings: The man drank all six servings on each receipt while his friend had none.
3. Using a standard BAC calculator, BAC is estimated for each of the theories (Fig. 2). At this point, Theory C is eliminated because the BAC anticipated at 4 AM would have well exceeded the actual. However, under Theories A & B, how did the man’s BAC climb to twice the legal limit?

New Theory: Was additional alcohol consumed between the time he left the restaurant and the accident? Extrapolations from the BAC calculator suggest that as many as 7 additional drinks (Theory A) or as few as 3 (Theory B) would be required in order to have a BAC of 0.16% at 4 AM. (Fig. 3)

A review of the file revealed: 1) the man stated in deposition that he invited his friend to a party; and 2) a coworker stated in an affidavit that the man had intended to go to a bar that night—one that was a local favorite for birthday celebrations.

In this instance, consulting with the DE Specialist enabled the legal team to test theories and propose an alternative. Later, a toxicologist would provide expert testimony that verified the theory of additional alcohol consumption.

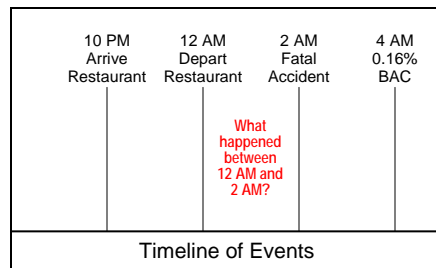


Fig. 1 Major Events

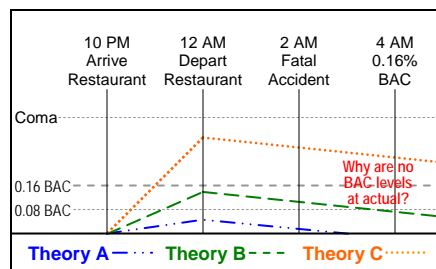


Fig. 2 Estimated BAC

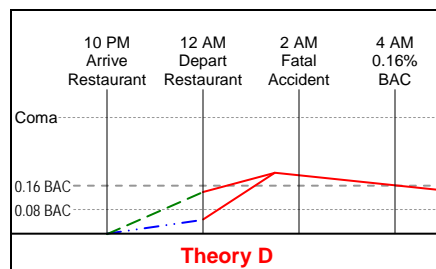
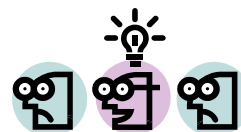


Fig. 3 Alternate Theory



Visual Persuasion

© Dale C. Howe, DE Specialist, Consultant
dhowe@cllegal.com

Campbell & LeBoeuf, PC
4201 Spring Valley Road, Suite 1250
Dallas, Texas 75244
972-277-8585 • 972-277-8586 (fax)
www.CampbellLeboeuf.com

