

Exhibit Aid
Court Transcripts
State vs. Peter Golub
Case # 235900706
Hearings: I. May, 29 2024; II. December 31, 2024

Transcripts presented in this document:

- I. Transcript of Hearing, May, 29 2024
- II. Transcript of Hearing, December 31, 2024

Sources:

- I. May 29, 2024 Hearing (sender: Melissa Lepore, melissaal@utcourts.gov);
- II. December 31, 2024 Hearing (sender: Elizabeth Foster, elizabethaf@utcourts.gov)

Files:

- I. 1_SLCCRTW47_20240529-0947_01dab1ad335c5a80
- II. 2_Part_1_SLCCRTW47_20241231-1205_235900706 pt1; 2_SLCCRTW47_20241231-1430_235900706pt2

Transcript I
***State vs. Golub* (Case No. 235900706)**
Officer Testimony
May 29, 2024

[00:01:08] **Judge Elizabeth Hruby-Mills:** Does defense waive reading?

[00:02:88] **Defense Attorney Daniel Frazier:** We do, Your Honor.

[00:04:28] **Judge Elizabeth Hruby-Mills:** Alright, Ms. Dunkelman, are you ready with your first witness?

[00:06:148] **Deputy District Attorney Cara Dunkelman:** Yes, I just have to go grab him over there.

[00:08:298] **Judge Elizabeth Hruby-Mills:** Okay, thank you.

[00:09:658] **Judge Elizabeth Hruby-Mills:** [Addressing witness approaching stand] Alright, can you join us up here at the witness stand? We'll get you sworn in.

[00:58:135] **Court Clerk:** Do you solemnly swear or affirm the evidence that you give in the matter now before the court shall be the truth, the whole truth, and nothing but the truth?

[01:03:265] **Corporal Brock Ernstsens:** Yes.

[01:04:005] **Judge Elizabeth Hruby-Mills:** You may be seated. There's fresh water in the pitcher.

[01:06:285] **Corporal Brock Ernstsens:** Thank you.

[01:13:175] **Judge Elizabeth Hruby-Mills:** Are you able to get seated in the...?

[01:14:925] **Corporal Brock Ernstsens:** Yeah.

[01:15:225] **Judge Elizabeth Hruby-Mills:** Okay.

[01:16:495] **Deputy District Attorney Cara Dunkelman:** Would you mind stating your full name and spelling both your first and last name for the record?

[01:21:345] **Corporal Brock Ernstsens:** Yeah, it's Brock Ernstsens. B-R-O-C-K E-R-N-S-T-S-E-N.

[01:28:345] **Deputy District Attorney Cara Dunkelman:** Um, and where do you currently work?

[01:31:145] **Corporal Brock Ernstsens:** Utah Highway Patrol.

[01:32:985] **Deputy District Attorney Cara Dunkelman:** And what are... or I guess, were you working with Utah Highway Patrol on September 6th of 2023?

[01:39:145] **Corporal Brock Ernstsens:** Yes.

[01:40:585] **Deputy District Attorney Cara Dunkelman:** And what, um, is your position with them?

[01:45:015] **Corporal Brock Ernstsens:** Uh, Corporal.

[01:46:115] **Deputy District Attorney Cara Dunkelman:** Okay. Um, and was that the same position you had on September 6th of 2023?

[01:51:865] **Corporal Brock Ernstsens:** Yes.

[01:52:705] **Deputy District Attorney Cara Dunkelman:** Um, do you conduct traffic stops as part of that position as well?

[01:56:625] **Corporal Brock Ernstsens:** I do.

[01:57:465] **Deputy District Attorney Cara Dunkelman:** Okay. Are you trained in DUI investigations?

[02:00:645] **Corporal Brock Ernstsens:** Yes.

[02:01:805] **Deputy District Attorney Cara Dunkelman:** Um, are you SFST certified?

[02:04:805] **Corporal Brock Ernstsens:** Yes.

[02:05:845] **Deputy District Attorney Cara Dunkelman:** Okay. So were you working on September 6th of 2023?

[02:10:205] **Corporal Brock Ernstsens:** Yes.

[02:11:145] **Deputy District Attorney Cara Dunkelman:** Were you involved in a traffic stop that would bring you here to court today?

[02:16:465] **Corporal Brock Ernstsens:** Yes, I was.

[02:17:545] **Deputy District Attorney Cara Dunkelman:** Okay. And tell me about, um, I guess, did a vehicle catch your attention on that day?

[02:24:305] **Corporal Brock Ernstsens:** It did, yes.

[02:25:405] **Deputy District Attorney Cara Dunkelman:** And where were you when the vehicle caught your attention?

[02:27:965] **Corporal Brock Ernstsens:** Um... I was... just uh south of Kensington Avenue. I initially saw the vehicle, it was about 1600 South on State Street.

[02:39:985] **Deputy District Attorney Cara Dunkelman:** Is that in Salt Lake County?

[02:42:025] **Corporal Brock Ernstsens:** Yes.

[02:43:065] **Deputy District Attorney Cara Dunkelman:** And what type of vehicle was it?

[02:45:885] **Corporal Brock Ernstsens:** Silver Hyundai Sonata.

[02:47:765] **Deputy District Attorney Cara Dunkelman:** What caught your attention about that vehicle?

[02:50:485] **Corporal Brock Ernstsens:** Um, when it pulled away from the curb, there was no blinking signal light, and then when it went across that first right lane and into the middle lane without signaling as well.

[03:01:825] **Deputy District Attorney Cara Dunkelman:** Is that a violation of the law?

[03:03:565] **Corporal Brock Ernstsens:** It is.

[03:04:685] **Deputy District Attorney Cara Dunkelman:** And what did you do after making this observation?

[03:07:245] **Corporal Brock Ernstsens:** Uh, I got behind the vehicle, followed it for a little while, and then initiated a traffic stop.

[03:12:545] **Deputy District Attorney Cara Dunkelman:** And when you initiated the traffic stop, did the vehicle pull over?

[03:16:245] **Corporal Brock Ernstsens:** Yeah.

[03:17:165] **Deputy District Attorney Cara Dunkelman:** Okay. And did you approach the vehicle?

[03:20:885] **Corporal Brock Ernstsens:** I did.

[03:21:885] **Deputy District Attorney Cara Dunkelman:** What side of the vehicle did you approach on?

[03:25:885] **Corporal Brock Ernstsens:** Uh, the driver's side.

[03:27.365] **Deputy District Attorney Cara Dunkelman:** Okay. And tell me about that first interaction with the driver.

[03:31.165] **Corporal Brock Ernstsens:** Um, when I was speaking with him, um, I could smell an odor of an alcoholic beverage coming from the vehicle. I observed that his eyes were glossy and bloodshot and his speech seemed slurred at times.

[03:43.425] **Deputy District Attorney Cara Dunkelman:** Okay. Did you identify him?

[03:46.105] **Corporal Brock Ernstsens:** I did.

[03:46.665] **Deputy District Attorney Cara Dunkelman:** How did you identify him?

[03:48.745] **Corporal Brock Ernstsens:** His driver's license.

[03:50.205] **Deputy District Attorney Cara Dunkelman:** Is that when you found out his name?

[03:51.905] **Corporal Brock Ernstsens:** Yes.

[03:53.145] **Deputy District Attorney Cara Dunkelman:** And what was his name?

[03:54.405] **Corporal Brock Ernstsens:** Peter Golub.

[03:55.525] **Deputy District Attorney Cara Dunkelman:** Do you see him in the courtroom today?

[03:56.945] **Corporal Brock Ernstsens:** I do.

[03:57.925] **Deputy District Attorney Cara Dunkelman:** Would you mind pointing him out and identifying an article of clothing they're wearing?

[04:01.315] **Corporal Brock Ernstsens:** Yeah, he's right here in the suit [points at defendant] with the reddish tie and the blue, uh, the blue shirt underneath.

[04:07.925] **Judge Elizabeth Hruby-Mills:** Your Honor, let the record reflect the identification.

[04:09.665] **Clerk:** It will so reflect.

[04:10.055] **Judge Elizabeth Hruby-Mills:** Okay.

[04:12.025] **Deputy District Attorney Cara Dunkelman:** Um, did you ask him for any other documents other than his driver's license?

[04:15.665] **Corporal Brock Ernstsens:** I asked him for his proof of insurance for the vehicle.

[04:18.365] **Deputy District Attorney Cara Dunkelman:** Okay. And, um, anything of significance about his response to that question?

[04:23.945] **Corporal Brock Ernstsens:** Uh, he handed me the registration and some other papers, um, instead of the insurance.

[04:30.665] **Deputy District Attorney Cara Dunkelman:** Okay. Um, did you ask him any questions during this... I guess at this point, did you have any concerns about him as a driver?

[04:37.685] **Corporal Brock Ernstsens:** Uh, yeah, I was suspicious that he had been consuming alcoholic beverages.

[04:42.865] **Deputy District Attorney Cara Dunkelman:** Okay. And based on that suspicion, did you ask him any follow-up questions?

[04:46.065] **Corporal Brock Ernstsens:** I asked him if he had anything to drink that night.

[04:48.305] **Deputy District Attorney Cara Dunkelman:** How did he respond?

[04:49.505] **Corporal Brock Ernstsens:** He said he had a couple of Coronas at the bar about an hour earlier.

[04:54.785] **Deputy District Attorney Cara Dunkelman:** Okay. What did you do from there?

[04:57.445] **Corporal Brock Ernstsens:** Um... I went back and performed a records check of his driver's license and vehicle registration. Um... And then when I went back up to the vehicle, I asked

him to step out to perform field sobriety tests.

[05:09.565] **Deputy District Attorney Cara Dunkelman:** Okay. Did you ask him to do a PBT?

[05:12.065] **Corporal Brock Ernstsens:** I did, at the end.

[05:13.765] **Deputy District Attorney Cara Dunkelman:** Okay, so this was after the, the roadside test?

[05:16.685] **Corporal Brock Ernstsens:** After the field sobriety tests, yeah.

[05:18.925] **Deputy District Attorney Cara Dunkelman:** Okay. I don't want to get ahead of myself. So, um, anything... did you notice anything as he exited the vehicle?

[05:25.205] **Corporal Brock Ernstsens:** Uh, he braced himself with both hands on the door as he was exiting the vehicle.

[00:31.185] **Deputy District Attorney Cara Dunkelman:** Okay. Um, and did he agree to do the roadside maneuvers?

[05:36.185] **Corporal Brock Ernstsens:** The... yes.

[05:37.765] **Deputy District Attorney Cara Dunkelman:** Okay. So I want to walk through those. Did you... What was the first maneuver that you began with?

[05:43.905] **Corporal Brock Ernstsens:** Uh, the first field sobriety test was the Horizontal Gaze Nystagmus test.

[05:48.965] **Deputy District Attorney Cara Dunkelman:** Okay. And did you give him instructions on how to do this test?

[05:51.725] **Corporal Brock Ernstsens:** Yes.

[05:52.945] **Deputy District Attorney Cara Dunkelman:** Okay. And did you observe any clues on this test?

[05:55.785] **Corporal Brock Ernstsens:** Six out of the six possible clues.

[05:58.705] **Deputy District Attorney Cara Dunkelman:** Okay. Um, sorry, I'm just going to interrupt. Do you need to clarify any of that? [Addressing defense counsel]

[06:01.365] **Judge Elizabeth Hruby-Mills:** [To defense counsel] Are you okay?

[06:01.785] **Defense Attorney Daniel Frazier:** Yes.

[06:02.165] **Judge Elizabeth Hruby-Mills:** Okay. Go ahead.

[06:03.425] **Deputy District Attorney Cara Dunkelman:** And what were those clues?

[06:05.045] **Corporal Brock Ernstsens:** Uh, lack of smooth pursuit in both eyes, distinct and sustained nystagmus at maximum deviation in both eyes, and the onset of nystagmus prior to 45 degrees in both eyes.

[06:10.945] **Deputy District Attorney Cara Dunkelman:** Okay. Um, did you notice anything about his balance while he was doing this test?

[06:15.365] **Corporal Brock Ernstsens:** Yeah, while he was standing still, uh, during the HGN test, I observed that he had a slight circular sway.

[06:21.185] **Deputy District Attorney Cara Dunkelman:** Okay. Um, so let's talk about the next test that you did. What was that one?

[06:25.825] **Corporal Brock Ernstsens:** The, um, Walk-and-Turn test.

[06:28.405] **Deputy District Attorney Cara Dunkelman:** Okay. Did you explain and demonstrate this test for him as well?

[06:31.705] **Corporal Brock Ernstsens:** I did, and I demonstrated it.

[06:33.445] **Deputy District Attorney Cara Dunkelman:** Okay. And did you observe any clues on this test?

[06:37.065] **Corporal Brock Ernstsens:** Yes, I observed four out of the eight possible clues.

[06:40.505] **Deputy District Attorney Cara Dunkelman:** Okay. Um, okay. And do you remember what those clues were?

[06:47.125] **Corporal Brock Ernstsens:** Yes. Um, on the first set of nine steps, he stopped walking

and asked a question. And he made an improper turn by taking one large spinning step to turn around, and then took his front foot off the line and stepped backwards with it. Um, the second set of nine steps, he stopped walking and asked a question again. And he stepped off line once, and the actual number of steps taken was 11.

[07:13.185] **Deputy District Attorney Cara Dunkelman:** Okay. What's the next test you did after that?

[07:15.945] **Corporal Brock Ernstsens:** Um, the One Leg Stand test.

[07:17.705] **Deputy District Attorney Cara Dunkelman:** Okay. And did you explain and demonstrate that test as well?

[07:19.965] **Corporal Brock Ernstsens:** Yes.

[07:20.805] **Deputy District Attorney Cara Dunkelman:** And did you observe any clues on that test?

[07:23.365] **Corporal Brock Ernstsens:** Um, nothing that I counted in my report. I probably could have counted a couple of clues, but I gave him the benefit of the doubt and didn't count them. So I just counted zero clues on that one.

[07:31.605] **Deputy District Attorney Cara Dunkelman:** Okay. Um, and, I guess, are you able to explain the difference between clues and indicators when you're conducting a DUI investigation?

[07:40.245] **Corporal Brock Ernstsens:** Yes.

[07:40.905] **Deputy District Attorney Cara Dunkelman:** Okay. And can you tell me about that?

[07:43.065] **Corporal Brock Ernstsens:** So, the clues, um, on the Standardized Field Sobriety Tests are, um, specific things that we're looking for. Uh, so for example, on the Horizontal Gaze Nystagmus test, there are six clues. Um, there are eight clues on the Walk-and-Turn test, and four clues possible on the One-Leg Stand test. Anything else that, uh, is mentioned is considered an indicator, like odor of an alcoholic beverage, glossy bloodshot eyes, uh, confusion, dexterity, things like those are indicators.

[08:13.445] **Deputy District Attorney Cara Dunkelman:** Okay. So while they don't, um, NHTSA is the one that creates the standard, um, clues for the field sobriety test? Is that right?

[08:21.985] **Corporal Brock Ernstsens:** Correct.

[08:22.545] **Deputy District Attorney Cara Dunkelman:** Okay. So if, um, they're not one of... so, for example, the odor of alcohol, the bloodshot glossy eyes, those could be indications of impairment, they're just not notated clues as it relates to the field sobriety test?

[08:34.605] **Corporal Brock Ernstsens:** Correct.

[08:35.045] **Deputy District Attorney Cara Dunkelman:** Okay. And it sounds like you saw some of those possible indications of impairment in addition to what you testified to on the field sobriety tests?

[08:43.105] **Corporal Brock Ernstsens:** Yes.

[08:43.865] **Deputy District Attorney Cara Dunkelman:** Okay. Um, did you ask, um, the defendant to do a preliminary breath test?

[08:49.125] **Corporal Brock Ernstsens:** I did.

[08:49.925] **Deputy District Attorney Cara Dunkelman:** Okay. Um, and how did he respond to that question?

[08:53.465] **Corporal Brock Ernstsens:** He did not want to do it.

[08:55.265] **Deputy District Attorney Cara Dunkelman:** Okay. And did he make any statements about how he thought he may perform on the test?

[09:02.545] **Corporal Brock Ernstsens:** Um, I asked him after he refused to blow into the PBT, how much he had had to drink that night? And he said he didn't know, but he knew he would blow over. He also said that he should not go out with his friends at night, so.

[09:17.205] **Deputy District Attorney Cara Dunkelman:** Okay. Um, so tell me what you did after

the defendant refused to do the PBT?

[09:25.585] **Corporal Brock Ernstsens:** I arrested him for DUI.

[09:28.125] **Deputy District Attorney Cara Dunkelman:** Okay. Um... Okay. And was he transported anywhere?

[09:32.885] **Corporal Brock Ernstsens:** Uh, yes.

[09:33.945] **Deputy District Attorney Cara Dunkelman:** Okay. And where was that?

[09:35.465] **Corporal Brock Ernstsens:** Um... I believe it was Special Operations.

[09:41.025] **Deputy District Attorney Cara Dunkelman:** Okay. I guess let me ask you another question. Um, was he asked to submit to a chemical breath test?

[09:46.085] **Corporal Brock Ernstsens:** Yes.

[09:46.905] **Deputy District Attorney Cara Dunkelman:** Okay. And was that done?

[09:49.185] **Corporal Brock Ernstsens:** Yes.

[09:49.845] **Deputy District Attorney Cara Dunkelman:** Okay. And what was the result of that?

[09:51.885] **Corporal Brock Ernstsens:** 0.104.

[09:54.025] **Deputy District Attorney Cara Dunkelman:** Okay. And what is the legal limit in Utah?

[09:56.745] **Corporal Brock Ernstsens:** 0.05.

[09:58.145] **Deputy District Attorney Cara Dunkelman:** Okay. Um, and, uh, what... did you end up citing him for anything to do with the driving behavior you had observed as well?

[10:05.665] **Corporal Brock Ernstsens:** Yes. Uh, for failure to signal.

[10:07.785] **Deputy District Attorney Cara Dunkelman:** Okay. Nothing further, Your Honor.

[10:10.765] **Judge Elizabeth Hruby-Mills:** Mr. Frazier.

[10:11.945] **Defense Attorney Daniel Frazier:** How many times did you say you observed him fail to signal?

[10:19.885] **Corporal Brock Ernstsens:** How many times?

[10:21.465] **Defense Attorney Daniel Frazier:** Yes.

[10:22.725] **Corporal Brock Ernstsens:** Um, I mean, he didn't signal when he pulled away from the curb, and he didn't signal on the lane change.

[10:27.745] **Defense Attorney Daniel Frazier:** Twice?

[10:28.625] **Corporal Brock Ernstsens:** I guess you could call it twice.

[10:30.285] **Defense Attorney Daniel Frazier:** Okay. Then you indicated you followed him for a while?

[10:36.305] **Corporal Brock Ernstsens:** Yes.

[10:36.765] **Defense Attorney Daniel Frazier:** How long is, uh, a while?

[10:40.825] **Corporal Brock Ernstsens:** Just a few blocks, several blocks.

[10:43.705] **Defense Attorney Daniel Frazier:** Okay. And what was the purpose of that?

[10:47.345] **Corporal Brock Ernstsens:** Uh, to see if there are any other violations.

[10:49.905] **Defense Attorney Daniel Frazier:** Uh, what was observed during the time you followed him?

[10:53.125] **Corporal Brock Ernstsens:** I didn't see any other, uh, violations.

[10:56.885] **Defense Attorney Daniel Frazier:** So you just stopped him for the original one?

[10:58.985] **Corporal Brock Ernstsens:** Pardon me?

[10:59.165] **Defense Attorney Daniel Frazier:** So you just stopped him for the original one?

[11:00.645] **Corporal Brock Ernstsens:** So I just stopped him for the original one, the original violation.

[11:04.185] **Defense Attorney Daniel Frazier:** Okay. Was there anything in that initial stop driving pattern that was an indicator to you of some sort of impairment?

[11:12.565] **Corporal Brock Ernstsens:** Uh, after I initiated the traffic stop, you mean?

[11:14.905] **Defense Attorney Daniel Frazier:** No. In the course of observing him, uh, as he, uh, drove and operated the motor vehicle?

[11:22.385] **Corporal Brock Ernstsens:** Uh, like I said, just the initial way he pulled away from the curb.

[11:26.625] **Defense Attorney Daniel Frazier:** And that was evidence to you of impairment?

[11:28.305] **Corporal Brock Ernstsens:** Uh, it's possible.

[11:29.885] **Defense Attorney Daniel Frazier:** Possible. But did you consider that an indicator or clue of impairment?

[11:36.865] **Corporal Brock Ernstsens:** Uh, not necessarily. Not a clue, for sure not a clue.

[11:40.265] **Defense Attorney Daniel Frazier:** There's nothing on the driving pattern that was a clue for impairment?

[11:46.445] **Corporal Brock Ernstsens:** No.

[11:47.285] **Defense Attorney Daniel Frazier:** Okay. And you said there was a difference between indicator and clue. Was there anything there, just for the sake of being, you know, as clear as I can, that was, that constituted, in your mind, an indicator of impairment?

[12:02.125] **Corporal Brock Ernstsens:** Uh, it's possible. I mean, sometimes people that are impaired don't signal, and they pull out abruptly into traffic.

[12:09.885] **Defense Attorney Daniel Frazier:** Okay. So I, I guess I already asked and answered this question, I apologize. I'm pretty sure I know the answer. But that wasn't... not anything that rose to the level of your, uh, basis for believing he was impaired?

[12:23.765] **Corporal Brock Ernstsens:** I mean, it's part of the whole picture. It's not the sole reason that I believed he was impaired. And that's not why I arrested him for DUI, but that was part of the picture.

[12:35.185] **Defense Attorney Daniel Frazier:** And then after you, uh, indicated, you stopped the vehicle, uh, for the traffic violations after a few blocks of following it, not observing any other violations?

[12:51.945] **Corporal Brock Ernstsens:** Yeah, I, I initiated the traffic stop, yeah.

[12:54.425] **Defense Attorney Daniel Frazier:** And about what time of day or night was this?

[12:57.345] **Corporal Brock Ernstsens:** Uh, it was definitely dark. It was probably after midnight.

[13:06.045] **Defense Attorney Daniel Frazier:** What was the traffic like on that?

[13:08.885] **Corporal Brock Ernstsens:** Uh... moderate.

[13:13.225] **Defense Attorney Daniel Frazier:** And after you approached the vehicle, you indicated you did so on the passenger side?

[13:25.765] **Corporal Brock Ernstsens:** No, driver's side.

[13:26.545] **Defense Attorney Daniel Frazier:** Driver's side? Uh... Was his window rolled down at the time you approached him?

[13:31.625] **Corporal Brock Ernstsens:** Uh... at some point, he rolled his window down because I was talking to him.

[13:36.585] **Defense Attorney Daniel Frazier:** Yeah. Okay. And um, what was the next thing that you observed?

[13:45.025] **Corporal Brock Ernstsens:** When I initially approached the vehicle? I could see that he had glossy, bloodshot eyes and I, uh, I could smell an odor of an alcoholic beverage coming from the vehicle.

[14:17.805] **Defense Attorney Daniel Frazier:** In terms of your observations of any, uh, alcoholic containers or any evidence of alcohol usage aside from the two... or the two things you indicated? Did you observe any containers or anything like that?

[14:34.005] **Corporal Brock Ernstsens:** No containers.

[14:35.885] **Defense Attorney Daniel Frazier:** And after you, uh, observed the bloodshot eyes and

the odor of alcohol coming from the vehicle, what was the next thing that you did?

[14:48.445] **Corporal Brock Ernstsens:** Uh, I asked him if he had anything to drink.

[14:50.845] **Defense Attorney Daniel Frazier:** And his response was, uh, a minimal amount in your mind at least, a couple of beers?

[15:03.125] **Corporal Brock Ernstsens:** Uh, he told me he had a couple of Coronas.

[15:06.325] **Defense Attorney Daniel Frazier:** Pardon me?

[15:07.325] **Corporal Brock Ernstsens:** He told me he had a couple of Coronas at the, the bar an hour earlier.

[15:12.065] **Defense Attorney Daniel Frazier:** And was there anything that indicated to you that there was, uh, more than that amount of alcohol consumed?

[15:19.925] **Corporal Brock Ernstsens:** I don't know.

[15:23.065] **Defense Attorney Daniel Frazier:** Okay. And you certified, you, you said that you are certified in, uh, doing breath test results and detecting of impairment?

[15:38.085] **Corporal Brock Ernstsens:** Yes.

[15:38.585] **Defense Attorney Daniel Frazier:** And at that point, you're still saying that you didn't know whether there was evidence of impairment?

[15:48.005] **Corporal Brock Ernstsens:** No. There were several indicators of impairment at this point.

[15:53.845] **Defense Attorney Daniel Frazier:** Okay, but in your mind, were you able to conclude whether or not there... there was an impairment at that point?

[16:01.965] **Corporal Brock Ernstsens:** I mean, I was building suspicion.

[16:06.225] **Defense Attorney Daniel Frazier:** Okay. And after you detected the odor of alcohol coming from the vehicle, what was the next thing that you did?

[16:16.785] **Corporal Brock Ernstsens:** Uh, after he told me he had a couple of drinks at the bar, I went back to my vehicle. Well, I asked him for his insurance and he handed me a bunch of different papers that were not his insurance. And then I went back to my patrol vehicle and performed a records check.

[16:43.345] **Defense Attorney Daniel Frazier:** And then you returned to his vehicle?

[16:45.005] **Corporal Brock Ernstsens:** I did.

[16:46.225] **Defense Attorney Daniel Frazier:** And, my recollection was at that point that you indicated him to get out of the vehicle?

[16:51.505] **Corporal Brock Ernstsens:** Yes.

[16:52.765] **Defense Attorney Daniel Frazier:** And at that point, you had generated enough evidence, at least in your mind, that, uh, to suspect him of being impaired?

[17:02.945] **Corporal Brock Ernstsens:** Uh... As I said before, my suspicion was growing.

[17:07.145] **Defense Attorney Daniel Frazier:** Okay. And your purpose in having him come out of the vehicle?

[17:13.725] **Corporal Brock Ernstsens:** Uh, well, I could smell an odor of an alcoholic beverage coming from the vehicle. I'd like to have the... and he was the only person in the vehicle. So I'd like to have him step out and see if I can smell it coming from his breath. And, and at that point, I wanted him to perform field sobriety tests.

[17:27.085] **Defense Attorney Daniel Frazier:** And you were able to determine that the odor of alcohol came directly from him in the form of his breath?

[17:38.545] **Corporal Brock Ernstsens:** Uh, when he was outside of his vehicle, I could smell it coming from his breath as he was speaking to me out there in the open air.

[17:44.505] **Defense Attorney Daniel Frazier:** Okay. You indicated also there was a bracing that he performed or did?

[17:50.025] **Corporal Brock Ernstsens:** When he was getting out of the vehicle. Yeah.

[17:51.645] **Defense Attorney Daniel Frazier:** And what do you mean by bracing, exactly?

[17:53.565] **Corporal Brock Ernstsens:** He used his hands on the driver door as he was exiting.

[17:56.485] **Defense Attorney Daniel Frazier:** To get out of the vehicle?

[17:57.445] **Corporal Brock Ernstsens:** Yeah.

[17:58.585] **Defense Attorney Daniel Frazier:** And you consider that to be evidence of impairment?

[18:01.825] **Corporal Brock Ernstsens:** It's... again, it's a piece of the puzzle.

[18:06.025] **Defense Attorney Daniel Frazier:** Okay. And the field sobriety tests, in your, at least, uh, performance of those particular tests, you indicated that he had performed unsatisfactorily or...?

[18:23.305] **Corporal Brock Ernstsens:** I mean... so... on the, uh... well... yeah... oh... I saw multiple clues of impairment during the field sobriety tests.

[18:33.785] **Defense Attorney Daniel Frazier:** Right. My question related to your conclusions as to his, uh, level of performance.

[18:40.825] **Corporal Brock Ernstsens:** Yeah, I concluded that he was not okay to be driving.

[18:42.885] **Defense Attorney Daniel Frazier:** Okay. And was it at that point that you placed him under arrest?

[18:49.865] **Corporal Brock Ernstsens:** Yes.

[18:50.705] **Defense Attorney Daniel Frazier:** And after you placed him under arrest, did you place him in your patrol vehicle?

[18:55.385] **Corporal Brock Ernstsens:** I did.

[18:56.185] **Defense Attorney Daniel Frazier:** And did you transport him?

[18:57.685] **Corporal Brock Ernstsens:** I did.

[18:58.345] **Defense Attorney Daniel Frazier:** And where did you transport him?

[18:59.705] **Corporal Brock Ernstsens:** Uh, I took him to the Special Ops Center and eventually to jail.

[19:07.085] **Defense Attorney Daniel Frazier:** And after he was at Special Ops, is that where the intoxilyzer test was performed?

[19:13.045] **Corporal Brock Ernstsens:** Uh, I believe so.

[19:15.485] **Defense Attorney Daniel Frazier:** Did you perform it?

[19:16.245] **Corporal Brock Ernstsens:** I did.

[19:18.185] **Defense Attorney Daniel Frazier:** And you're certified to operate?

[19:21.145] **Corporal Brock Ernstsens:** Yes.

[19:21.665] **Defense Attorney Daniel Frazier:** The intoxilyzer?

[19:22.865] **Corporal Brock Ernstsens:** Mm-hmm.

[19:24.025] **Defense Attorney Daniel Frazier:** And you indicated that at least from your report, and correct me if I'm wrong... you... you... began tracking Baker on the same time as it's listed on the intoxilyzer receipt?

[19:42.565] **Corporal Brock Ernstsens:** Yes.

[19:43.405] **Defense Attorney Daniel Frazier:** And where was he situated in relation to you while you were, um, monitoring him?

[19:52.125] **Corporal Brock Ernstsens:** Just right there in front of me in my immediate presence.

[19:55.765] **Defense Attorney Daniel Frazier:** And was there anything else that distracted you or took your attention away from him during the, uh, the period of time that you were observing him?

[20:04.465] **Corporal Brock Ernstsens:** I don't believe so.

[20:05.685] **Defense Attorney Daniel Frazier:** And what were you doing during that time?

[20:08.165] **Corporal Brock Ernstsens:** Just talking to him, explaining what was going to happen.

[20:12.605] **Defense Attorney Daniel Frazier:** And then you got a result?

[20:14.725] **Corporal Brock Ernstsens:** I did.

[20:15.505] **Defense Attorney Daniel Frazier:** After operating the machine?

[20:17.345] **Corporal Brock Ernstsens:** Yes.

[20:17.905] **Defense Attorney Daniel Frazier:** Were there any problems that you noted while you were performing the test?

[20:22.285] **Corporal Brock Ernstsens:** Not that I recall.

[20:23.525] **Defense Attorney Daniel Frazier:** No problems in operating the machine?

[20:25.425] **Corporal Brock Ernstsens:** Not that I recall.

[20:26.465] **Defense Attorney Daniel Frazier:** Or with the machine's operation?

[20:28.085] **Corporal Brock Ernstsens:** No. Not that I recall.

[20:31.585] **Defense Attorney Daniel Frazier:** And what did you do next based on that?

[20:35.665] **Corporal Brock Ernstsens:** Um... just filled out the forms for the jail, and then we went to the jail, and I booked him in.

[20:43.285] **Defense Attorney Daniel Frazier:** And so after you took him to the jail, you just turned him over to jail staff?

[20:46.865] **Corporal Brock Ernstsens:** Correct.

[20:47.845] **Defense Attorney Daniel Frazier:** Was there any point where you read him his rights?

[20:51.125] **Corporal Brock Ernstsens:** Uh, I believe so. I believe that was in the parking lot of Special Ops if I remember correctly.

[20:56.645] **Defense Attorney Daniel Frazier:** Was that subsequent or after the intoxilyzer subsequent to?

[21:00.385] **Corporal Brock Ernstsens:** After.

[21:00.745] **Defense Attorney Daniel Frazier:** Okay. And what was his response?

[21:03.905] **Corporal Brock Ernstsens:** I don't recall. I'd have to look at my report.

[21:15.125] **Defense Attorney Daniel Frazier:** Just a moment, Your Honor. [Counsel confers with defendant, Peter Golub.]

[22:49.975] **Sound comes from Webex monitor used for teleconferences.**

[22:55.455] **Judge Elizabeth Hruby-Mills:** Please make sure you're muted if you're on Webex.

[25:49.00] **Judge Elizabeth Hruby-Mills:** Any objections, Mr. Frazier?

[25:50.68] **Defense Attorney Daniel Frazier:** No, Your Honor.

[25:51.68] **Judge Elizabeth Hruby-Mills:** Alright, so state's 1 will be admitted.

[25:54.10] **Deputy District Attorney Cara Dunkelman:** Your Honor, may I approach?

[25:54.84] **Judge Elizabeth Hruby-Mills:** Yes. Okay. Thank you. Alright. Is the state resting then?

[26:04.46] **Deputy District Attorney Cara Dunkelman:** Yes, Your Honor.

[26:05.32] **Judge Elizabeth Hruby-Mills:** Okay. Mr. Frazier, do you have any witnesses?

[26:07.86] **Defense Attorney Daniel Frazier:** We do not, Your Honor. Um, the client has been advised he has the right to testify. I recommended he not do that. He's chosen to follow that advice.

[26:17.28] **Judge Elizabeth Hruby-Mills:** Um, alright. And so with that, uh, any summary argument from the State?

[26:22.26] **Deputy District Attorney Cara Dunkelman:** Very briefly, Your Honor. Uh, Your Honor, in this case, the state... the court has heard evidence that the defendant was driving a vehicle. He was stopped because he failed to signal both when leaving the curb in which, um, the vehicle had been located previously, and then when moving across lanes of travel. He also didn't, um, indicate a lane change with his, uh, vehicle. And then upon contact by law enforcement, he made an admission... well, I guess, um, I'm a little ahead of myself. The officer began speaking with the defendant, who was the driver of the vehicle. He observed that he had an odor of alcohol coming from, um, the vehicle. And, um, then later when the defendant stepped out of the vehicle was isolated to him as well. Um, he had slurred speech, and he had glossy, bloodshot eyes. He made an admission that he had, um, a few Coronas about an hour earlier. Um, as he exited the vehicle, he had

to, uh, help... um, I guess, assist himself out of the vehicle by grabbing onto the vehicle with both hands. Um... the roadside maneuvers were completed, during which, um, the officer found, um, that in conclusion of the roadsides that there was indication of impairment. Um, a PBT was offered, and the defendant indicated that he, um, did not want to do it, um, because he would, um, blow over the limit, and that he shouldn't have been out, um, with his friends that night. Um, or, um, shouldn't have met up with his friends after work on that day. Um, and then ultimately a breath test was done, which came back as a 0.104. Uh, so Your Honor, the... the state would ask that the court find that the defendant bound over on both charges.

[28:18.04] **Judge Elizabeth Hruby-Mills:** Alright, Mr. Frazier.

[28:20.62] **Defense Attorney Daniel Frazier:** Your Honor, I just want to be silent for a minute.

[28:23.44] **Judge Elizabeth Hruby-Mills:** Alright. So based on the evidence as provided, uh, by the state, uh, and its live witness, as well as through its, um, exhibit, um, I do find that the state has met its burden in establishing probable cause, uh, with regard to the, uh, two charges, uh, in the information. And so, sir, you are bound over, um, as charged in the information. Um, Mr. Frazier, do you want to address that arraignment today?

[28:45.84] **Defense Attorney Daniel Frazier:** Uh, yes, Your Honor, we'd be happy to. We plead not guilty.

[28:48.48] **Judge Elizabeth Hruby-Mills:** Okay, so we will note that, and then when do you want to come back for a pretrial conference?

[28:53.24] **Defense Attorney Daniel Frazier:** Uh... probably for me, Your Honor, the mid to... first part of August, end of July, first part of August.

[29:18.48] **Judge Elizabeth Hruby-Mills:** Do you want to come back on... we could do July 15th, or we can go August 5th?

[29:28.00] **Defense Attorney Daniel Frazier:** Got a jury trial July 15th, Your Honor.

[29:30.54] **Judge Elizabeth Hruby-Mills:** Oh, you're being selected for jury?

[29:33.10] **Defense Attorney Daniel Frazier:** Oh, no, that's one of my case. Oh yeah, haha. I wouldn't last long on a jury, Your Honor.

[29:42.78] **Judge Elizabeth Hruby-Mills:** Um, so do you want to do... what? When do you... August 12th, August 5th, or August 12th?

[29:46.96] **Defense Attorney Daniel Frazier:** August 5th.

[29:48.48] **Judge Elizabeth Hruby-Mills:** Okay. Do you want to come at 9:00 or 1:00?

[29:52.00] **Defense Attorney Daniel Frazier:** Nine.

[29:52.86] **Judge Elizabeth Hruby-Mills:** Nine o'clock on August 5th, we'll have you back for a pretrial conference. Um, does the state want to... state wants to retain its exhibit? Um, make sure you stay in touch with counsel. All right. Thank you.

[30:06.70] **Defense Attorney Daniel Frazier:** Thank you, Your Honor.

Transcript II
Motions Hearing and Officer Testimony
December 31, 2024
State vs. Golub

Transcript

[00:00:01.16] **Judge Hruby-Mills:** Are we still on the calendar? We shall have, I guess, Rockstone [00:00:05.00] and Mr. Golub. [00:00:10.00] Are we ready? Are we ready over [00:00:15.00] there. I can also... We [00:00:20.00] can wait.

[00:00:23.00] **Prosecutor Dunkelman:** Um, is it [00:00:25.00] going to be [inaudible]?

[00:00:27.12] **Judge Hruby-Mills:** Yes.

[00:00:27.52] **Prosecutor Dunkelman:** Okay. I just want to make sure I'm ready.

[00:00:30.96] **Judge Hruby-Mills:** I tried to... you're [00:00:30.00] waiting for an interpreter? No. All [00:00:35.00] right, so with that, then, I'm sure.... And [00:00:40.00] so we are here on a motion... [to Mr. Golub] You can just come [00:00:45.00] up to the table... So [00:00:50.00] this is a last-year case ending in 0706. Right. Okay. [00:00:55.00] And so we [00:01:00.00] have sort of a revised motion [00:01:05.00] to suppress, motion to suppress the statement, and then [00:01:10.00] a motion to dismiss, I guess, if there's..

[00:01:13.51] **Defense:** Yeah. [00:01:15.00] So there's, like, the main one, which is the motion to suppress and dismiss. And then there's one that's a little [00:01:20.00] bit more specific that just refers to Miranda and statements made. But if we could [00:01:25.00] discuss the motion to suppress and dismiss first, maybe [00:01:30.00] because they're sort of tied together.

[00:01:32.03] **Judge Hruby-Mills:** Yeah, they are. Okay. Yeah. And I guess I [00:01:35.00] understood them to be in conjunction with each other as well. But there's quite a bit, especially [00:01:40.00] in the one motion to dismiss. And so she is asking for, [00:01:45.00] I guess, a proffer as to just in reading through [00:01:50.00] that I identified, you know, 15 plus issues, but both of [00:01:55.00] you were making reference to the motion to suppress and dismiss. But that one to me has very little, [00:02:00.00] isn't it? Number 50.

[00:02:01.35] **Prosecutor Dunkelman:** Motion to suppress statements is the one that's lengthy. Let me pull up the motions. [00:02:05.00] The lengthy one is the motion to suppress and dismiss. It's the longer one. [00:02:10.00] It's the one that I have. It's 19 or [00:02:15.00] 20 pages. And then the statement is 12 [00:02:20.00] pages. Okay. I'm sorry. I actually thought it [00:02:25.00] was identical to the other one, but I can see it [00:02:30.00] is not. Okay. Yes. [00:02:35.00] Okay. [00:02:40.00] So I did not realize that. That [00:02:45.00] is different than the other one that I considered to be helpful. But... [00:02:50.00] nevertheless they are... And so we have its witnesses?

[00:02:55.35] **Prosecutor Dunkelman:** Yes. [00:02:55.00] I'm only calling one witness, which I think was the intention, [00:03:00.00] but there is quite a bit, especially in the [00:03:05.00] motion to suppress and dismiss. Document [00:03:10.00] number 49 document. I think that's right.

[00:03:14.26] **Defense:** Pregnant. [00:03:15.00] Can I get my computer?

[00:03:19.18] **Judge Hruby-Mills:** Yes. Yes, [00:03:20.00] it would be document. For [00:03:25.00] the the 48 or 49, they're both [00:03:30.00] one is just kind of the there's a form to. Yeah. One I [00:03:35.00] think each of the form is sort of the memo was filed separately from the motion. [00:03:40.00] So there's 48 and then there is also 70. [00:03:45.00] Those are the two filings I think 49 and 51 are [00:03:50.00] just the the motion. Yeah I think it's just [00:03:55.00] the paperwork, but in particular 48 [00:04:00.00] addresses, so many different things that are... [00:04:05.00] I just want to have a clear idea. All right. Can you summarize [00:04:10.00] for us what the the [00:04:15.00] main points are so that this witness will [00:04:20.00] be able to address it? Yes.

[00:04:23.14] **Defense:** So I [00:04:25.00] think that there's a lack of probable cause. In terms of what the [00:04:30.00] video shows. I think the video shows a traffic violation [00:04:35.00] by the officer. In the very beginning, he pulls a U-turn [00:04:40.00] at an intersection with a red light. So [00:04:45.00] those are the two main ones, the lack of probable cause for the initial stop.

[00:04:23.14] **Judge Hruby-Mills:** Okay. [00:04:50.00] And then what else?

[00:04:54.37] **Defense:** The [00:04:55.00] way that the tests were administered and interpreted.

[00:05:00.09] **Judge Hruby-Mills:** Do [00:05:00.00] you mean the SFS?

[00:05:02.49] **Defense:** Yes.

[00:05:03.25] **Judge Hruby-Mills:** Okay.

[00:05:04.61] **Defense:** And [00:05:05.00] then Let's see. And then the [00:05:10.00] chemical breath test I also think is highly [00:05:15.00] problematic, its administration and the subsequent results. [00:05:20.00] I'm going to try to argue that it was [00:05:25.00] poorly administered and that there should have been a second test done. [00:05:30.00] I'm going to argue that the results are much too high. Okay, does [00:05:35.00] that narrow it down enough for you?

[00:05:40.05] **Judge Hruby-Mills:** You [00:05:40.00] can do it. Yeah. I was just looking for some direction. So that's fine. You're... [00:05:45.00]

[00:05:45.45] **Prosecutor Dunkelman:** The state does have one video exhibit that the state intends to play. [00:05:50.00] It's the officer's body worn camera. And it will play [00:05:55.00] a couple portions of that exhibit. And so I just wanted to give [00:06:00.00] everybody a heads up for the video for making sure that the video....

[00:06:04.97] **Judge Hruby-Mills:** Okay. [00:06:05.00] And so you'll plug in at your station there, and we'll do what we need.

[00:06:09.53] **Prosecutor Dunkelman:** I just didn't [00:06:10.00] know if we should do it. I can do a test, or I can just do it when it [00:06:15.00] should be all fixed.

[00:06:17.41] **Defense:** I didn't know we were going to go over the video evidence. The dash [00:06:20.00] cam footage is the video that shows the officer running a [00:06:25.00] red light and then flipping around, waiting [00:06:30.00] at a location where he could not have seen the violation.

[00:06:33.33] **Judge Hruby-Mills:** Right. Now we're just... We're [00:06:35.00] just about ready to get started. Okay, I was just I think I like [00:06:40.00] that. I think we'll go ahead and you don't [00:07:05.00] need any help with that. Oh my gosh. [00:07:10.00] It's going to work. But finding the time [00:07:15.00] stamp on your log or something? I can't. I think you're going [00:07:20.00] to have one. It's a rotating pattern, but [00:07:25.00] it looks like it should work. Can I just test the audio just to make... I don't know [00:07:30.00] if I can even see. If you can see it on that. Oh, [00:07:35.00] yeah.

[00:07:36.48] **Judicial Assistant Joseph Liuzzi :** Okay. So [00:07:40.00] I have some experience with this. If you would like me to take over, [00:07:45.00] I have to do the audio. Right. Here is your audio. [00:07:50.00] Just press the button. Okay. [00:07:55.00]

[00:07:56.08] **Prosecutor Dunkelman:** Your honor, I think it's important. Thanks for [00:08:00.00] your time. I just thought that. Yeah. [00:08:05.00] You're not hearing me. Yeah, [00:08:10.00] maybe I can. I did it for two days straight in the book.

[00:08:15.44] **Judge Hruby-Mills:** You [00:08:15.00] can do it. It's hard, but you can do it.

[00:08:17.52] **Prosecutor Dunkelman:** Okay, so we should be all ready [00:08:20.00] with that. So with that, then I guess the state's ready with it. Can [00:08:25.00] I go grab him?

[00:08:26.00] **Judge Hruby-Mills:** Sure.

[00:08:29.08] **Prosecutor Dunkelman:** Oh, great. [00:08:30.00] Okay. Perfect. Okay. [00:08:35.00] Can we call? Chris. [00:08:40.00] Right. Corporal Ernstsén?

[00:08:43.92] **Judge Hruby-Mills:** Okay, sure. If you would make [00:08:45.00] your way up here to get sworn in as the witness.

[00:08:49.19] **Prosecutor Dunkelman:** Your honor... [to Corporal Ernstsén] are you okay [00:08:50.00] sitting here? Since I have a video. Can [00:09:00.00] you raise your right hand, please? Do you affirm the [00:09:05.00] evidence? You shall before the court shall tell the truth, the whole truth, and nothing but the truth.

[00:09:09.31] : Yes. [00:09:10.00]

[00:09:13.19] **Prosecutor Dunkelman:** Well. Thank you. Okay. [00:09:15.00] Could you please state your [00:09:20.00] name and spell your first and last name for the record?

[00:09:23.27] : It's Brock. Brock E r [00:09:25.00] n s t s é n.

[00:09:29.43] **Prosecutor Dunkelman:** Where do you currently [00:09:30.00] work?

[00:09:31.39] : Utah Highway patrol.

[00:09:33.27] **Prosecutor Dunkelman:** What is your current position with Utah [00:09:35.00] Highway Patrol?

[00:09:36.63] : I'm a corporal on what we call a DUI squad. [00:09:40.00]

[00:09:40.51] **Prosecutor Dunkelman:** Okay. And I guess, how do you... how do you get to becoming a corporal?

[00:09:46.11] : It's [00:09:45.00] an interview process, basically. Mostly we're utilized [00:09:50.00] for training purposes.

[00:09:52.58] **Prosecutor Dunkelman:** And does it require quite a bit of experience to get [00:09:55.00] into that position?

[00:09:56.62] : Yes.

[00:09:57.38] **Prosecutor Dunkelman:** Okay. And how long have you been working [00:10:00.00] with Utah Highway Patrol in any sort of capacity?

[00:10:03.54] : Over ten years. Okay. [00:10:05.00]

[00:10:06.66] **Prosecutor Dunkelman:** And would you mind just telling me a little bit about your training and experience? [00:10:10.00] When you started with Utah Highway Patrol? [00:10:15.00]

[00:10:15.74] : Yeah, so, I attended the academy. Are [00:10:20.00] you asking specifically about, like, DUI training or...

[00:10:24.10] **Prosecutor Dunkelman:** I'll ask about that, but [00:10:25.00] just to become a police officer.

[00:10:27.78] : So, yeah, I completed the academy. [00:10:30.00] I began the academy in November of 2014. [00:10:35.00] And then after the academy, we have what we call an in-house academy [00:10:40.00] with highway patrol. And then after that, I went to field training [00:10:45.00] with their field training officer. And then once I was released from field training, I [00:10:50.00] was just on my own.

[00:10:52.02] **Prosecutor Dunkelman:** Okay. And between that [00:10:55.00] time period and now, do you undergo continuous training as well?

[00:10:59.38] : Yes.

[00:11:00.50] **Prosecutor Dunkelman:** And [00:11:00.00] then tell me about specifically any training you've done related [00:11:05.00] to DUI.

[00:11:08.10] : So there's training in the academy [00:11:10.00] on both, like, book work and [00:11:15.00] experience. They have, like, what they call a wet lab where they have people that drink alcoholic [00:11:20.00] beverages and they come in and they perform the field sobriety tests on those people. And [00:11:25.00] then make guesses of where they are as far as their breath, alcohol content. [00:11:30.00] And then they tell us what the results are. And then after [00:11:35.00] I was on my own, I went through the training and I also went [00:11:40.00] through what's called the battery of tests training. And then I also [00:11:45.00] became a drug recognition expert, DRA. And [00:11:50.00] essentially [00:11:55.00] I go through refresher training every year.

[00:12:00.77] **Prosecutor Dunkelman:** So [00:12:00.00] with respect to DUI recognition and I guess general [00:12:05.00] drug recognition is being a DRA at the highest level of certification you [00:12:10.00] can have with respect to those things.

[00:12:12.93] : Yes.

[00:12:13.37] **Prosecutor Dunkelman:** Okay. Were you also [00:12:15.00] trained to administer an intoxilyzer machine?

[00:12:18.29] : Yes.

[00:12:18.97] **Prosecutor Dunkelman:** Okay. [00:12:20.00] And. Okay, so I want to talk to you about September 6th of 2023, [00:12:25.00] where you SFST certified on that day? [00:12:30.00]

[00:12:30.21] : Yes.

[00:12:30.33] **Prosecutor Dunkelman:** Okay. Were you a certified on that day?

[00:12:32.45] : Yes.

[00:12:33.01] **Prosecutor Dunkelman:** Okay. Were you a DRE at that time? [00:12:35.00]

[00:12:35.45] : Yes.

[00:12:35.89] **Prosecutor Dunkelman:** Okay. And were you... was your training with respect to an intoxilyzer [00:12:40.00] up to date on that time?

[00:12:41.93] : Yes.

[00:12:42.45] **Prosecutor Dunkelman:** Okay. Were you [00:12:45.00] working with Utah Highway Patrol in September of 2023?

[00:12:49.41] : I was, yes. [00:12:50.00]

[00:12:50.37] **Prosecutor Dunkelman:** What was your position at that time?

[00:12:52.09] : I was the same as now on the DUI squad. [00:12:55.00]

[00:12:55.33] **Prosecutor Dunkelman:** Okay. And did a vehicle catch your attention on that day?

[00:12:59.89] : Yes. [00:13:00.00]

[00:13:01.69] **Prosecutor Dunkelman:** Can you tell me about where you were when you [00:13:05.00] first saw this vehicle?

[00:13:07.29] : Yeah. So when I was originally [00:13:10.00] traveling northbound on State Street just passing 1700 [00:13:15.00] South, I observed a person in [00:13:20.00] front of the bar on the sidewalk get into the driver's seat of a vehicle. So I drove [00:13:25.00] to what's still northbound State Street to Kensington [00:13:30.00] Avenue, where I stopped at a red light. And then I made [00:13:35.00] a U-turn at that intersection and came back and observed [00:13:40.00] the vehicle that I saw the person get into the driver's seat, pull away from the curb and [00:13:45.00] go across the right lane and into the middle lane [00:13:48.28] and never saw a blinking [00:13:50.00] signal light. [00:13:51.40]

[00:13:51.44] **Prosecutor Dunkelman:** Okay, can I... I'm going to back up and just ask you a couple questions. Do you remember what [00:13:55.00] time of day it was when this happened?

[00:13:57.72] : It was definitely dark. It was [00:14:00.00] somewhere around probably 11 or midnight. Somewhere in there.

[00:14:04.44] **Prosecutor Dunkelman:** Okay. [00:14:05.00] And just so I'm following, you saw an individual [00:14:10.00] come out of a bar and get into their vehicle?

[00:14:12.68] : I remember seeing him in [00:14:15.00] front of the bar. I don't remember seeing them come out of the bar, but I saw them in front of the bar like, [00:14:20.00] on the sidewalk. And then get into the driver's door.

[00:14:24.12] **Prosecutor Dunkelman:** Okay. And [00:14:25.00] so why given the circumstances you've just described, why was this [00:14:30.00] of a concern to you?

[00:14:32.40] : So my primary responsibility on the DUI squad is [00:14:35.00] to remove impaired drivers from the roadway. When I see somebody in [00:14:40.00] front of a bar, get into the driver's seat of a car. There's, I mean, we all know that it's [00:14:45.00] common knowledge that in bars and saloons. I think this was Aces [00:14:50.00] High saloon that many times people were drinking alcoholic beverages in those [00:14:55.00] establishments. And then when I see somebody in front of an establishment like that [00:15:00.00] and get into the driver's seat, it is of interest to me.

[00:15:04.40] **Prosecutor Dunkelman:** Okay. So [00:15:05.00] did you ever concern that that individual may be drinking and then subsequently [00:15:10.00] driving?

[00:15:11.12] : Yes.

[00:15:11.60] **Prosecutor Dunkelman:** Okay. And this just so I'm understanding, [00:15:15.00] this was seen by you prior to you making the U-turn.

[00:15:18.64] : Yes.

[00:15:19.04] **Prosecutor Dunkelman:** Okay. And that was the [00:15:20.00] cause for you making that U-turn?

[00:15:22.16] : Correct.

[00:15:22.68] **Prosecutor Dunkelman:** Okay. Okay. [00:15:25.00] And It's okay if you don't. But to your knowledge, is [00:15:30.00] there a code or statute or anything that would allow you to make the U-turn at by red light [00:15:35.00] based on what you observed?

[00:15:36.88] : Yes. 41-6a-212.

[00:15:39.91] **Prosecutor Dunkelman:** Okay. [00:15:40.00] And what? I guess. Tell me more about why that would. Why [00:15:45.00] you understood that would allow you to do what you did?

[00:15:47.59] : Essentially, it says in there that [00:15:50.00] if there's a reason that I am in [00:15:55.00] the pursuit of somebody that I suspect may have [00:16:00.00] or will commit a crime I can disregard, [00:16:05.00] essentially, that I can violate traffic laws, like, if even specifically, [00:16:10.00] say, the stoplight.

[00:16:11.63] **Prosecutor Dunkelman:** Okay. And so just so I'm following at [00:16:15.00] what point in that or I guess, at what point in your driving did you notice [00:16:20.00] the vehicle pull away from the curb without signaling?

[00:16:23.79] : After I made the U-turn, [00:16:25.00] I was headed back southbound on State Street.

[00:16:28.15] **Prosecutor Dunkelman:** Okay. And so you [00:16:30.00] noticed that it doesn't use a signal as it leaves the curb. And then what about when it crosses [00:16:35.00] the subsequent lanes of travel.

[00:16:37.26] : Did not use a signal light either on that. [00:16:40.00]

[00:16:40.58] **Prosecutor Dunkelman:** Okay. And so is that in itself a violation of the law?
[00:16:45.00]

[00:16:45.46] : Yes. So it's a signal.

[00:16:47.10] **Prosecutor Dunkelman:** Okay. Do you remember what kind of vehicle it was?
[00:16:50.00]

[00:16:50.22] : It was a silver Hyundai Sonata.

[00:16:54.66] **Prosecutor Dunkelman:** And tell [00:16:55.00] me what happened. Once you were behind the vehicle and saw this [00:17:00.00] traffic violations that you had just testified to.

[00:17:03.50] : So after I made the U-turn, I saw the [00:17:05.00] violations. I got behind the vehicle. At some point [00:17:10.00] after I followed it for a while. The [00:17:15.00] vehicle turned or changed lanes to the left. I [00:17:20.00] didn't note it in my report, but I did notice that the vehicle got pretty close to the left side of [00:17:25.00] the lane, close to the raised median there. And then [00:17:30.00] after I observed the vehicle in the left turn lane to get on to I-80 I [00:17:35.00] initiated a traffic stop at that point so that we wouldn't enter the freeway.

[00:17:39.54] **Prosecutor Dunkelman:** Okay. [00:17:40.00] And just to back up really quickly did you have a clear view [00:17:45.00] of the vehicle as it left the curb and then moved between the lanes?

[00:17:49.46] : I did, yes. [00:17:50.00]

[00:17:50.38] **Prosecutor Dunkelman:** Okay. And when you initiated your traffic stop, did you turn on your overhead [00:17:55.00] lights?

[00:17:55.62] : I did.

[00:17:56.62] **Prosecutor Dunkelman:** Okay. And did the driver of the vehicle pull over?

[00:18:00.62] : Yeah, [00:18:00.00] we had to change several lanes, and then we went underneath I-80, [00:18:05.00] the overpass there, and then pulled over to the right shoulder. Well, actually, I think we were [00:18:10.00] blocking a lane. The right lane.

[00:18:13.70] **Prosecutor Dunkelman:** And did you approach [00:18:15.00] the vehicle after both vehicles stopped? I did, okay. And [00:18:20.00] did you made it, I guess. Make any observations on your initial approach to [00:18:25.00] the What was it? The driver's side of the vehicle.

[00:18:28.30] : It was the driver's side? Yes.

[00:18:29.58] **Prosecutor Dunkelman:** Okay. Did [00:18:30.00] you notice anything as you first approached the driver's side of the vehicle?

[00:18:34.33] : Yeah. Multiple [00:18:35.00] things. [00:18:35.81] So I could smell an odor of an alcoholic beverage coming from the vehicle. I [00:18:40.00] observed that the person sitting in the driver's seat had glassy, [00:18:45.00] bloodshot eyes, and that when he spoke with me, some of his words were slurred. [00:18:49.53]

[00:18:51.85] **Prosecutor Dunkelman:** Were [00:18:50.00] there any other occupants in the vehicle?

[00:18:53.97] : He was the only occupant. [00:18:55.00]

[00:18:55.13] **Prosecutor Dunkelman:** Okay. And do you see the driver in the courtroom today?

[00:18:58.89] : I do.

[00:18:59.65] **Prosecutor Dunkelman:** Would you [00:19:00.00] mind pointing them out and identifying articles of clothing they're wearing?

[00:19:03.17] : Yeah, he's wearing the brown suit [00:19:05.00] coat with a black tie with the shirt.

[00:19:07.77] **Prosecutor Dunkelman:** Let the record reflect the identification. Would [00:19:10.00] you mind telling me about the conversation as you first [00:19:15.00] approached the vehicle?

[00:19:17.01] : Yeah. So I asked him for his driver license [00:19:20.00] and the insurance. The proof of insurance for the vehicle. He handed me the the [00:19:25.00] registration instead of the insurance. And then eventually, I think he handed me an [00:19:30.00] expired insurance card. So I asked him to see if he could find that. [00:19:35.00] I asked him if he had anything to drink. He told me he had a couple. [00:19:40.00] I believe he said Coronas at the bar. About an hour before that when [00:19:45.00] I went back to my vehicle to perform a records [00:19:50.00] check I informed him if he could just keep looking for the insurance [00:19:55.00] information.

[00:19:56.25] **Prosecutor Dunkelman:** Okay. And was [00:20:00.00] it during this time period that you were noticing the speech patterns that you talked about and the observations [00:20:05.00] with respect to his eyes being glossy and bloodshot?

[00:20:08.53] : Yeah. That initial approach. I noticed [00:20:10.00] all those things.

[00:20:11.01] **Prosecutor Dunkelman:** Okay. So based on your training and experience what could those be? [00:20:15.00]

[00:20:15.13] : Possible indicators of that he's consumed alcohol.

[00:20:20.21] **Prosecutor Dunkelman:** Okay. [00:20:20.00] Okay. And once [00:20:25.00] he returned, or I guess, as you were returning to your vehicle, did you hear anything [00:20:30.00] else that was stated by the defendant.

[00:20:33.28] : Yeah, I heard him drop [00:20:35.00] an F-bomb.

[00:20:37.92] **Prosecutor Dunkelman:** Yeah. Okay. I would refer to it as [00:20:40.00] a yes. Okay. [00:20:45.00] And once in your vehicle after you had [00:20:50.00] run his information, did you make any determinations as to how you wanted to proceed from [00:20:55.00] there?

[00:20:55.92] : Yeah. When I ran that records check, I [00:21:00.00] you know, as I was narrating to my camera in my patrol vehicle, I [00:21:05.00] said that I was going to have him do test to make sure he's okay to be driving.

[00:21:09.88] **Prosecutor Dunkelman:** Okay. [00:21:10.00] So you actually narrated that out loud onto your body camera? The observations [00:21:15.00] you had made?

[00:21:15.64] : Yes.

[00:21:16.20] **Prosecutor Dunkelman:** Okay. So at [00:21:20.00] some point after you made that determination, did you return back to the defendant's vehicle? [00:21:25.00]

[00:21:25.24] : I did.

[00:21:26.56] **Prosecutor Dunkelman:** Okay. And when you returned off the vehicle did you explain [00:21:30.00] what you wanted to do from there?

[00:21:32.32] : Yeah, I told him I wanted him to step out of the vehicle. [00:21:35.00]

[00:21:35.64] **Prosecutor Dunkelman:** Okay. And as he exited the vehicle, did you notice [00:21:40.00] anything about how he exited that vehicle?

[00:21:43.44] : Yeah. As he was exiting, he [00:21:45.00] braced himself on his driver door with both hands. And then we walked over to the sidewalk. [00:21:50.00]

[00:21:50.64] **Prosecutor Dunkelman:** And why is... was that of any significance to you?

[00:21:54.56] : It [00:21:55.00] could, you know, essentially, his balance could be off from possibly [00:22:00.00] alcohol consumption.

[00:22:02.88] **Prosecutor Dunkelman:** Okay. In your training experience, can [00:22:05.00] a balance be impacted by consuming alcohol? [00:22:10.00]

[00:22:10.48] : Yes.

[00:22:13.12] **Prosecutor Dunkelman:** Okay. And did you ask [00:22:15.00] him to do the roadside maneuvers?

[00:22:20.92] : Yeah. [00:22:20.00] So I told him I wanted him to do some tests to make sure he was okay.

[00:22:24.92] **Prosecutor Dunkelman:** Okay. [00:22:25.00] And prior to doing those are there any sort [00:22:30.00] of questions that you ask him with respect to his ability to complete those tests? [00:22:35.00]

[00:22:35.11] : Yeah, I do what's called a medical pre-screening.

[00:22:38.51] **Prosecutor Dunkelman:** Okay. And was that done here?

[00:22:39.91] : It [00:22:40.00] was. Yes.

[00:22:41.79] **Prosecutor Dunkelman:** Based on his responses to the medical screening, any questions or [00:22:45.00] concerns about his ability to do the test?

[00:22:47.79] : No. He told me he did not have any injuries [00:22:50.00] or illnesses.

[00:22:51.39] **Prosecutor Dunkelman:** Okay. So is there a standardized [00:22:55.00] way in which you do these the battery of tests [00:23:00.00] for this?

[00:23:01.23] : Yeah, it's actually in the name of the test. It's called the standardized field sobriety test. [00:23:05.00]

[00:23:05.19] **Prosecutor Dunkelman:** Okay. And what is the first test that you are to start with? [00:23:10.00]

[00:23:10.31] : Horizontal gaze nystagmus.

[00:23:11.99] **Prosecutor Dunkelman:** Okay. And did you explain [00:23:15.00] the instructions for this particular test? I did, okay. And [00:23:20.00] is there a way or I guess, what is there some sort of manual [00:23:25.00] or instruction booklet that you are trained on in order to administer [00:23:30.00] these tests?

[00:23:32.07] : Yeah. It's the it's referred to as the manual. [00:23:35.00] It's the National Highway Traffic Safety Administration.

[00:23:38.51] **Prosecutor Dunkelman:** Okay. And [00:23:40.00] did you explain the instructions for... I'm just going to refer to it as NHTSA... as you [00:23:45.00] had been trained to do?

[00:23:48.11] : Yes.

[00:23:48.63] **Prosecutor Dunkelman:** Okay. And [00:23:50.00] so how many possible clues are there on the hidden [00:23:55.00] test?

[00:23:56.27] : Six.

[00:23:57.51] **Prosecutor Dunkelman:** And how many clues did you see?

[00:23:59.47] : Six.

[00:24:00.23] **Prosecutor Dunkelman:** Would [00:24:00.00] you mind just telling the court what those clues were?

[00:24:03.03] : Yep. So, lack of smooth pursuit, [00:24:05.00] the distinct and sustained and maximum deviation and the onset of nystagmus [00:24:10.00] prior to 45 degree angle and 45.

[00:24:13.47] **Prosecutor Dunkelman:** Okay, I was just going to clarify. So [00:24:15.00] three for each eye?

[00:24:16.51] : Yes.

[00:24:16.95] **Prosecutor Dunkelman:** Okay. And when you're administering this test would [00:24:20.00] you mind just, I guess, walking us through how the test is actually administered? [00:24:25.00]

[00:24:16.95] : So I asked about injuries and illnesses. I [00:24:30.00] asked him if he was wearing contacts or glasses. Asked [00:24:35.00] him to look at my finger. I held my finger just in front of his face, and I looked [00:24:40.00] to see if the thing was present, and it was not. Then I [00:24:45.00] performed. I also looked at the size of his pupils to make sure his pupils were the same size. [00:24:50.00] To again rule out medical prescreening. And then [00:24:55.00] I did two passes per eye. Just to see if his eyes were tracking [00:25:00.00] the stimulus, which was my index finger.

[00:25:02.62] **Prosecutor Dunkelman:** And one second. Just. Would the record reflect that? [00:25:05.00] The witness just brought his finger back and forth [00:25:10.00] in front of his face once in each direction. Okay. [00:25:15.00] Okay. So you can continue from there.

[00:25:19.06] : So it's [00:25:20.00] very standardized. How, like the distance and everything. So I held my [00:25:25.00] stimulus, my index finger, approximately 12 to 15in away from the station, slightly above [00:25:30.00] eye level. Once I did make sure his eyes were tracking, I took the [00:25:35.00] stimulus away to basically. Indicate [00:25:40.00] that I was through with the medical pre-screening, and at that point I start [00:25:45.00] watching for clues on the horizontal gaze nystagmus clues that I mentioned earlier.

[00:25:49.85] **Prosecutor Dunkelman:** Okay. [00:25:50.00] And in doing so, are you using the determined distances [00:25:55.00] away from the individual and distances? I guess back and [00:26:00.00] forth on each side of his face?

[00:26:03.05] : Yes. And it also mattered [00:26:05.00] how quickly you move the stimulus, depending on which clue you're looking for.

[00:26:09.57] **Prosecutor Dunkelman:** Okay. [00:26:10.00] So I guess in summary was this maneuver [00:26:15.00] done, as you have been trained to do and as determined in the manual?

[00:26:19.89] : Yes. [00:26:20.00]

[00:26:21.61] **Prosecutor Dunkelman:** Okay. And so you said that you saw six clues [00:26:25.00] on HCN. Is that right?

[00:26:26.65] : Correct.

[00:26:27.69] **Prosecutor Dunkelman:** How many clues do you need to see to determine [00:26:30.00] impairment on HCN?

[00:26:32.37] : Essentially the manual talks about [00:26:35.00] the... On the test, four out of the six clues indicates [00:26:40.00] an 88% probability that there are 0.8 or greater.

[00:26:43.45] **Prosecutor Dunkelman:** Okay. And you saw how many [00:26:45.00] out of six?

[00:26:46.13] : Six out of six.

[00:26:48.25] **Prosecutor Dunkelman:** Did you notice anything about the defendant's [00:26:50.00] balance during the HCN test?

[00:26:52.13] : Yeah. So while I was standing there just on normally [00:26:55.00] on both, he had a slight circular sway.

[00:26:59.77] **Prosecutor Dunkelman:** And why [00:27:00.00] was this of any significance again?

[00:27:03.57] : His balance.

[00:27:05.73] **Prosecutor Dunkelman:** Okay. [00:27:05.00] So there was a concern with his ability to maintain his balance.

[00:27:09.85] : Yeah. [00:27:10.00]Plus, [00:27:11.09] I could smell the odor of an alcoholic beverage coming from his mouth as he was speaking to me [00:27:15.00] there in the open air environment [00:27:16.37] as well.

[00:27:17.13] **Prosecutor Dunkelman:** Okay. So what is the next test [00:27:20.00] that you conducted?

[00:27:21.29] : The WAT or the walk and turn test.

[00:27:23.64] **Prosecutor Dunkelman:** Okay. And [00:27:25.00] can you or I guess, what is the instruction? What are the instructions [00:27:30.00] for the walk and turn test?

[00:27:33.48] : So essentially I have [00:27:35.00] I get in what's called the starting position or the instructional stance, where I put [00:27:40.00] my right foot in front of my left foot with my heel touching my toe, and I tell him to get in that same position. I [00:27:45.00] tell him, imagine if there's an actual line painted [00:27:50.00] on the road or something we can use. I haven't stepped on that line. It's not. In this case. There was no [00:27:55.00] line. So I told him to imagine just an imaginary line that started under his left foot and went straight out [00:28:00.00] in front of him. Then I instructed him to put, as I was doing, put his right foot in front of his [00:28:05.00] left foot with his heel touching his toe on his hands, down to his side. And then I told him once he got in, that [00:28:10.00] not to move from there and not to start walking until I told him to begin.

[00:28:14.12] **Prosecutor Dunkelman:** Okay. So once [00:28:15.00] he's in that starting position what do you do in terms of demonstration from that point? [00:28:20.00]

[00:28:20.28] : So I explained the test as I demonstrated in [00:28:25.00] the... well there's another manual for the manual. It's the instructor manual where [00:28:30.00] it teaches the instructors how to actually perform and/or [00:28:35.00] teach the the cadets and whoever it is they're training how to administer [00:28:40.00] the test. And so in that manual it says [00:28:45.00] that you demonstrate three steps, demonstrate the turn and then demonstrate [00:28:50.00] three steps back. So that's what I did. And [00:28:55.00] how many possible clues are there on this test? [00:29:00.00] Okay. And how many clues, if any, did you [00:29:05.00] observe? Once the defendant completed this test, four out of the eight. [00:29:10.00] And what clues were those? I stopped walking and asked a question, and then he made [00:29:15.00] an improper turn by taking one large spinning step to turn around, and then took his front foot off the line and [00:29:20.00] stepped backwards with that foot.

And then he again stopped [00:29:25.00] walking and asked a question on the second set of nine steps. He also stepped off line once, and [00:29:30.00] instead of nine steps, he took 11 steps.

[00:29:33.43] **Prosecutor Dunkelman:** Okay. Okay. [00:29:35.00] And did that [00:29:40.00] conclude the walk and turn test?

[00:29:42.15] : Yes.

[00:29:43.11] **Prosecutor Dunkelman:** What was the next test that you did?

[00:29:44.99] : The [00:29:45.00] one leg test.

[00:29:46.39] **Prosecutor Dunkelman:** Okay. And what is this next test? [00:29:50.00]

[00:29:50.39] So I instructed him just to stand with his feet together and his hands to his side. Explained and demonstrated again this [00:29:55.00] test. And then I instructed him that he can choose [00:30:00.00] which foot he wants to use when I tell him to begin he can stand whatever foot he decides. He can stand on any foot of his choice and then [00:30:05.00] raise his foot up six inches, point his toe down towards the ground and [00:30:10.00] keep both legs straight, but also look at his foot and count out loud in thousands: 1001, 1002, 1003 [00:30:15.00] and keep counting and not ask when to stop.

[00:30:18.95] **Prosecutor Dunkelman:** And those are the instructions [00:30:20.00] that you gave him on this day?

[00:30:21.39] : Yes.

[00:30:22.87] **Prosecutor Dunkelman:** And how many possible clues are there on this test?
[00:30:25.00]

[00:30:25.19] : Four.

[00:30:25.71] **Prosecutor Dunkelman:** Okay. And did you see any clues on this test?

[00:30:28.63] : I saw one clue, [00:30:30.00] but I felt like it was kind of borderline, so I did not count that clue, and [00:30:35.00] I counted.... well, I essentially documented zero clues out of the four clues possible.

[00:30:39.87] **Prosecutor Dunkelman:** Okay. [00:30:40.00] And what's the clue that you're alluding to but didn't notate on the report?

[00:30:44.95] : Raising [00:30:45.00] his arms above six inches.

[00:30:48.23] **Prosecutor Dunkelman:** Okay. So is that typically one [00:30:50.00] of the four possible clues?

[00:30:51.71] : It is.

[00:30:52.19] **Prosecutor Dunkelman:** Okay. And [00:30:55.00] so did you ignore the results of this test in your analysis [00:31:00.00] of making an impairment determination?

[00:31:02.87] : No, I actually documented that zero [00:31:05.00] clues observed.

[00:31:06.79] **Prosecutor Dunkelman:** Okay. So based [00:31:10.00] on your observations so far and the defendant's performance on SFSTs, [00:31:15.00] did you have any further concern about the defendant's ability to drive? [00:31:20.00]

[00:31:20.50] : Yes. I determined at that point that I was going to arrest him for DUI.

[00:31:26.30] **Prosecutor Dunkelman:** And [00:31:25.00] did you ask him to do a PBT?

[00:31:29.62] : I did. [00:31:30.00]

[00:31:31.18] **Prosecutor Dunkelman:** Okay. And when you asked him if you wanted to do it, how did he respond? [00:31:35.00]

[00:31:35.66] : He had his hands up by his face, covering his mouth and his nose, and basically [00:31:40.00] told me that he did not want to blow into it because he had been drinking, and he knew he would blow [00:31:45.00] over.

[00:31:46.02] **Prosecutor Dunkelman:** Okay. So what happened at this point? [00:31:50.00]

[00:31:50.86] : I placed him under arrest.

[00:31:52.86] **Prosecutor Dunkelman:** Okay. After he was placed under [00:31:55.00] arrest where did... What happened from there? [00:32:00.00]

[00:32:00.34] : So I did a search of his person. His pockets, his waistband, his pants, [00:32:05.00] his shirt. And then made sure that the handcuffs [00:32:10.00] were okay, that they weren't too tight. I locked them so they didn't tighten up. I put him in my patrol vehicle. [00:32:15.00] And then eventually I did a vehicle inventory [00:32:20.00] because I had to impound the car.

[00:32:23.61] **Prosecutor Dunkelman:** And was there another [00:32:25.00] trooper around at this point?

[00:32:26.77] : Yeah, he arrived there right before I'm placed under [00:32:30.00] arrest for DUI.

[00:32:31.45] **Prosecutor Dunkelman:** Okay. Did were... Were you and did you remain to be [00:32:35.00] the primary officer in the case?

[00:32:36.61] : Yes.

[00:32:38.33] **Prosecutor Dunkelman:** Is it fair to say he was there for support? [00:32:40.00]

[00:32:41.29] : Yeah, he was just there as a backup officer.

[00:32:43.85] **Prosecutor Dunkelman:** Yeah. Okay. [00:32:45.00] Okay. So was anything taken out of the defendant's vehicle prior [00:32:50.00] to you guys leaving that location?

[00:32:53.21] : Yeah, I believe he wanted his phone. [00:32:55.00] And I think a wallet.

[00:32:58.69] **Prosecutor Dunkelman:** Okay. Was [00:33:00.00] the defendant transported somewhere else?

[00:33:04.25] : Yeah. After [00:33:05.00] the car was towed away, I transported him to what we call special operations. [00:33:10.00]

[00:33:11.05] **Prosecutor Dunkelman:** Okay. And what? What is that or why were you bringing him to that particular location? [00:33:15.00]

[00:33:15.61] : So special ops, it's like... It's a room that we have the code to enter. [00:33:20.00] It's really... it's actually a... an evidence room for unified police. [00:33:25.00] They have an Intoxilyzer machine in there. We also draw blood in there many times. So [00:33:30.00] that's where I went. We entered that evidence room.

[00:33:34.13] **Prosecutor Dunkelman:** Okay. [00:33:35.00] And while you were driving him to this location, [00:33:40.00] did you ask him any questions likely to elicit an incriminating response? No. Okay. [00:33:45.00] Did he ask you any questions or make any statements to you [00:33:50.00] during that time?

[00:33:51.01] : Yeah. Yeah. I mean, many questions.

[00:33:53.13] **Prosecutor Dunkelman:** Okay. Do [00:33:55.00] you remember what type the general nature of the statements he was making to you?

[00:34:01.81] : While [00:34:00.00] we were in the vehicle?

[00:34:03.05] **Prosecutor Dunkelman:** Yeah.

[00:34:04.29] : I think he was just [00:34:05.00] curious, like what was going to happen. He wanted me to let him go. Things [00:34:10.00] like that.

[00:34:13.48] **Prosecutor Dunkelman:** And do you remember is [00:34:15.00] it fair to say you kind of explained to him what explained to him what the next steps were [00:34:20.00] going to be at that point?

[00:34:21.32] : Yeah, I read the DUI admissions at some point. [00:34:25.00]

[00:34:25.44] **Prosecutor Dunkelman:** Okay. And what are the DUI admonitions? [00:34:30.00]

[00:34:30.44] : It basically. Excuse me. It basically explains why he's under arrest [00:34:35.00] for DUI again. I'd already told him he was under arrest for DUI, but I [00:34:40.00] have to read these

DUI admonitions word for word. And so I read that, and then [00:34:45.00] I requested a breath test at that point and told him the possible [00:34:50.00] ramifications of the breath test results.

[00:34:54.12] **Prosecutor Dunkelman:** Okay. And did he agree [00:34:55.00] to do a breath test?

[00:34:57.00] : Yes.

[00:34:58.08] **Prosecutor Dunkelman:** Okay. So once you got to [00:35:00.00] the second location what [00:35:05.00] did you do in order to prepare to do a breath test?

[00:35:09.68] : Yeah. So [00:35:10.00] there's what's called a baker period, where it's a 15 minute period of time. I [00:35:15.00] had him open his mouth, and I shined my flashlight in his eye and his mouth to [00:35:20.00] check and make sure there was nothing inside of his mouth. No fluids or any objects or anything [00:35:25.00] inside his mouth. And then I looked at the the time that was on the Intoxilyzer [00:35:30.00] machine, and I wrote that down and began the Baker period off of [00:35:35.00] that time. I waited 15 minutes, and at the end of that 15 minutes [00:35:40.00] I again looked at his mouth with my flashlight to make sure there was nothing in his mouth. Both [00:35:45.00] times that I inspected that and didn't see anything in his [00:35:50.00] mouth after I inspected it the second time after the Baker period was over, I had [00:35:55.00] him... well, we tried to do the breath test multiple times.

[00:35:59.48] **Prosecutor Dunkelman:** Okay. And let [00:36:00.00] me back up just a second. And so what about what's the process for getting [00:36:05.00] the Intoxilyzer going?

[00:36:08.55] : It's pretty simple. We just [00:36:10.00] push this little green button that says start.

[00:36:12.43] **Prosecutor Dunkelman:** Okay. And when it turns on [00:36:15.00] if there were an error message or something that wasn't functioning with [00:36:20.00] the machine, would it tell you that?

[00:36:22.03] : Yeah. If it's not functioning. It does [00:36:25.00] what's called an error blank to make sure that there's no alcohol [00:36:30.00] in the actual system of the machine. It does diagnostic testing. And [00:36:35.00] if any of those tests fail, it will not let you proceed.

[00:36:38.71] **Prosecutor Dunkelman:** Okay. Did you receive [00:36:40.00] any messages of that nature indicating that the machine wasn't working?

[00:36:44.31] : Not that I recall, [00:36:45.00] no.

[00:36:45.67] **Prosecutor Dunkelman:** Okay. So I guess let me clarify. To your knowledge, did it appear that the machine [00:36:50.00] was functioning as normal?

[00:36:51.51] : Yes.

[00:36:52.07] **Prosecutor Dunkelman:** Okay, okay. And [00:36:55.00] during this period were you... Was there a conversation going [00:37:00.00] between you and the defendant?

[00:37:02.23] : Yeah.

[00:37:02.23] **Prosecutor Dunkelman:** Okay. Were you asking [00:37:05.00] him questions or what was kind of this conversation like?

[00:37:09.31] : I think I asked [00:37:10.00] him where he worked and stuff and just kind of conversation. [00:37:15.00]

[00:37:15.51] **Prosecutor Dunkelman:** Okay. And was he also engaging you in conversation as well? [00:37:20.00]

[00:37:20.31] : Yes.

[00:37:20.91] **Prosecutor Dunkelman:** Okay. Okay. [00:37:25.00] And so, would you mind just walking me through? We'll [00:37:30.00] first talk about the general process for getting a breath sample and then how [00:37:35.00] it went in this case.

[00:37:37.15] : So just the general process for a breath [00:37:40.00] sample. Yeah. So basically there's a mouthpiece [00:37:45.00] in a little plastic container. I take the plastic [00:37:50.00] off of the mouthpiece. I put the mouthpiece on the end of the tube that's connected to the [00:37:55.00] Intoxilyzer machine, and then I instruct them that basically, I show them where my [00:38:00.00] fingers are. I need you to put your mouth on that part of the mouthpiece, and then just blow for several seconds [00:38:05.00] until I tell you to stop. If I basically instruct him that if he's [00:38:10.00] blowing enough air that you'll... you hear this high pitched noise coming from the machine. [00:38:15.00] If you're not blowing enough, you won't hear anything. I'll be right here

telling you a little bit more. [00:38:20.00] Get a little harder. Keep going, keep going. Once the... once [00:38:25.00] there's enough air volume introduced into the machine, it will register the results, and it will print [00:38:30.00] the results off on a little receipt and then it tears off. And I show them what the results are, and [00:38:35.00] eventually I give them a copy of the result.

[00:38:37.34] **Prosecutor Dunkelman:** Okay. And so as air [00:38:40.00] is being blown into the machine, are you getting a reading of like [00:38:45.00] the quantity of air or is it more of an insufficient versus sufficient thing?

[00:38:49.38] : Yeah, essentially. [00:38:50.00] I can't see how much air is being blown into the [00:38:55.00] machine. It basically... It just shows these little green bars. And [00:39:00.00] then once there's enough air that's been introduced, it will start [00:39:05.00] the process. You can hear the machine working and starting to analyze the [00:39:10.00] sample, and then eventually it shows you what the result is. It prints the results off okay. [00:39:15.00]

[00:39:15.50] **Prosecutor Dunkelman:** And then with respect to say someone was doing a test [00:39:20.00] and it took a couple tries to get the sufficient sample is [00:39:25.00] there any reason why you would need to restart the test after each attempted breath [00:39:30.00] or I guess, each attempt to get a full breath sample?

[00:39:34.42] : No. The only [00:39:35.00] thing that happens is if it's a certain amount of time goes by, [00:39:40.00] it will time out the machine and you'll have to just basically enter all the information. So [00:39:45.00] initially I enter like it asked for my name and badge number and [00:39:50.00] the person's name and date of birth and driver's license. So if it times out [00:39:55.00] you would have to enter all that information in and get it and have them [00:40:00.00] start to blow into it again. But it... it'll allow you within that time [00:40:05.00] frame to do as many attempts as you need to to get the correct amount of air into the [00:40:10.00] machine.

[00:40:10.81] **Prosecutor Dunkelman:** Okay. And to your knowledge do more breath attempts [00:40:15.00] raise the level of the results at all?

[00:40:18.01] : No.

[00:40:18.57] **Prosecutor Dunkelman:** Okay. So I'd [00:40:20.00] like to talk to you about how it went in this case. Would you mind just [00:40:25.00] walking me through what happened after the

defendant was given the instructions on on how to [00:40:30.00] blow into the machine and everything you described already? Yeah.

[00:40:32.85] : So I told him all the things that I [00:40:35.00] mentioned that I tell people instructions on how to perform the breath test. [00:40:40.00] And multiple times, I can't remember exactly how many it was. Many times. [00:40:45.00] He didn't blow enough air into the machine to have it register the results. [00:40:50.00] And so I had to have him try it over and over and over again. And before it timed [00:40:55.00] out, we were able to collect a sample.

[00:40:58.25] **Prosecutor Dunkelman:** Okay. And just [00:41:00.00] one more, I guess procedural question. Is there any sort of, to your knowledge, [00:41:05.00] any sort of minimum or maximum time period that you're allotted [00:41:10.00] to get these breath samples in?

[00:41:13.00] : Yeah. Like I said, the [00:41:15.00] machine will time out if you don't do it within a certain amount of time. And I can't remember exactly how long [00:41:20.00] it is. It's probably like a minute or two.

[00:41:22.64] **Prosecutor Dunkelman:** Okay. And did you did the machine time out in this case? [00:41:25.00]

[00:41:25.20] : No it didn't.

[00:41:26.04] **Prosecutor Dunkelman:** Okay. And ultimately, were [00:41:30.00] you able to get I don't know if this is the right word, but, like, a viable breath sample?

[00:41:35.04] : Yes. [00:41:35.00] So there is a minimum amount of breath that you have to blow into it. And I [00:41:40.00] think it's around 1.1 or 1.2 liters of air before it will [00:41:45.00] accept the sample.

[00:41:47.84] **Prosecutor Dunkelman:** Okay. And to your knowledge, is there... If [00:41:50.00] someone blew... is there like an amount? Is there [00:41:55.00] too much air you can blow in?

[00:41:57.40] : I've never seen that. No.

[00:41:59.84] **Prosecutor Dunkelman:** Okay. [00:42:00.00] Okay. And do you. So [00:42:05.00] did you receive a printout from this test?

[00:42:09.16] : I did, yes.

[00:42:09.88] **Prosecutor Dunkelman:** Okay. [00:42:10.00] And what was the result of that?

[00:42:11.64] : .104.

[00:42:13.28] **Prosecutor Dunkelman:** Okay. And [00:42:15.00] while awaiting for those results do you recall if the defendant [00:42:20.00] made any statements about the result?

[00:42:24.56] : Yeah. [00:42:25.00] Before we... we got the results, he told me that he felt like it was going to be bad.

[00:42:30.80] **Prosecutor Dunkelman:** Okay. [00:42:30.00] And after you received the results, [00:42:35.00] did you inform the defendant of the result?

[00:42:37.40] : I did, I showed him on the paper and told him what it was. Read it [00:42:40.00] out loud.

[00:42:40.80] **Prosecutor Dunkelman:** Okay. And what happened after he...after the test was completed? [00:42:45.00]

[00:42:47.48] : I believe we just went back out to my patrol vehicle, and [00:42:50.00] I... and while we were inside my patrol vehicle, I read his Miranda [00:42:55.00] rights to him.

[00:42:56.80] **Prosecutor Dunkelman:** Okay. And why did you? Why did you decide to advise [00:43:00.00] Miranda at this point?

[00:43:02.35] : So my department likes us to perform [00:43:05.00] an interview. It's just part of our DUI form on our computers. It's [00:43:10.00] just multiple questions that we ask them pertaining to the crime of the DUI. [00:43:15.00] And so I wanted to, before I ask them any incriminating questions about that crime, specifically, [00:43:20.00] I wanted him to understand his rights.

[00:43:23.43] **Prosecutor Dunkelman:** Okay. And [00:43:25.00] did he choose to continue speaking with you?

[00:43:28.83] : He told me he did not want to. [00:43:30.00]

[00:43:30.31] **Prosecutor Dunkelman:** Okay. And [00:43:35.00] so did you proceed with questioning after that?

[00:43:38.51] : I did not. No. He just [00:43:40.00] wanted to call somebody, so.

[00:43:42.11] **Prosecutor Dunkelman:** Okay. And did you... was he able [00:43:45.00] to call somebody?

[00:43:46.87] : I asked him if he wanted me to get into his phone and dial a [00:43:50.00] number for him to call somebody. And he said yes. And when I went to dial [00:43:55.00] the number, his phone was dead, so he couldn't call anybody.

[00:43:58.59] **Prosecutor Dunkelman:** Okay. And [00:44:00.00] did that conclude your involvement in the case, or, I guess, how did [00:44:05.00] it end?

[00:44:06.95] : Eventually, once I got all the forms filled out and printed off for [00:44:10.00] him, we went over to the jail where I had booked him into the jail.

[00:44:14.67] **Prosecutor Dunkelman:** Okay. [00:44:15.00] Nothing further, Your Honor.

[00:44:17.75] **Defense:** All right. Hello! Okay. [00:44:20.00] Excuse [00:44:25.00] me for... if I'm not good at this, but I'll try [00:44:30.00] to not waste everyone's time. Okay. So I didn't know that we [00:44:35.00] were going to do another testimony because I figured you already did one. Can [00:44:40.00] you just... can you do as many as you want? And [00:44:45.00] I'm sorry I couldn't hear you. Oh, okay. Never mind. I just, I just I just was a little confused [00:44:50.00] about procedure, but that's fine. It's not, it's not. that's not the point. Okay. So what I remember [00:44:55.00] in the first testimony was that, and [00:45:00.00] again, if I'm wrong, just tell me that I'm wrong. Did you say that it was a routine traffic stop in your initial [00:45:05.00] testimony, or did you say it was because you saw me walk out of the bar?

[00:45:10.62] : I [00:45:10.00] don't recall if I said it was routine. I don't remember.

[00:45:14.90] **Defense:** Well [00:45:15.00] why do you think [00:45:20.00] you have to do another testimony today? Why [00:45:25.00] are you doing this one? Why call you in for [00:45:30.00] a second one?

[00:45:33.46] **Judge Hruby-Mills:** Yeah. That's not him; [00:45:35.00] he probably was subpoenaed to get here today. Okay. That's that's that's [00:45:40.00] that's fine, I don't. Your motions to suppress.

[00:45:42.98] **Defense:** Absolutely. [00:45:45.00] Okay. So you said that there was a code [00:45:50.00] that you cited for running the red light.

[00:45:52.18] : Correct. Correct.

[00:45:53.94] **Defense:** Does it show that you have to have to turn [00:45:55.00] the lights on?

[00:45:56.30] : No, you're not turning. Well, [00:46:00.00] turns out the f bomb. Is that on the [00:46:05.00] video or anything like that? I just mentioned it. I was thinking if [00:46:10.00] I could find a Russian. So I'm gonna say [00:46:15.00] can I see the defendant or just me? You [00:46:20.00] just pick something and say that you can. Okay. Okay. I think I'll just do the sentence.

[00:46:24.82] **Defense:** Okay. [00:46:25.00] So then you say that the defendant braced [00:46:30.00] himself against the door when he got out?

[00:46:34.18] : Yeah.

[00:46:34.58] **Defense:** He just [00:46:35.00] he put both hands on the door, and that's absolutely [00:46:40.00] on the video. That's an indication of what can [00:46:45.00] be an indication of balance issues. But they should not get a perfect [00:46:50.00] score on the test, which is the actual balance test.

[00:46:55.89] : Well, [00:46:55.00] like I mentioned before, I could have counted raised arms above [00:47:00.00] six inches to help maintain his balance, but I felt like it was fairly borderline, so I did not count [00:47:05.00] that test or that clue.

[00:47:06.85] **Defense:** Okay, putting two hands on a door. Could [00:47:10.00] it be because you're walking into traffic and you don't want that door to swing open and hit a cyclist [00:47:15.00] or something? It's possible.

[00:47:17.61] : Pardon?

[00:47:18.45] **Defense:** The defendant is a cyclist and [00:47:20.00] he is very scared of doors and being hit by them. It's happened to him several times. So [00:47:25.00] you said that you've been trained to perform the field [00:47:30.00] sobriety tests. Particularly the horizontal gaze nystagmus test. [00:47:35.00] I'm trying to think about how fatigue could [00:47:40.00] cause a false positive horizontal [00:47:45.00] gaze nystagmus test. The menu goes over [00:47:50.00] many different types of Nice Okay. With me? I'm with you. Nice. [00:47:55.00] Resting. Nice. Whatever [00:48:00.00] the causes of that Well, all the different types of instruments can [00:48:05.00] do different things. So optokinetic nystagmus can be flashing lights. Cause [00:48:10.00] fatigue is one type of nystagmus. [00:48:15.00] I was exhausted and tired from [00:48:20.00] a year of teaching.

[00:48:22.16] **Prosecutor Dunkelman:** Objection, your honor.

[00:48:31.16] **Judge Hruby-Mills:** Any [00:48:30.00] response to the objection?

[00:48:33.52] **Defense:** No. I mean, I [00:48:35.00] assume that's what you're supposed to say.

[00:48:38.96] **Judge Hruby-Mills:** Yeah, the [00:48:40.00] objection is sustained.

[00:48:41.32] **Defense:** Okay. So. [00:48:45.00] You said that he passed four for [00:48:50.00] the Walk the line test; he got four out of the eight clues. But [00:48:55.00] he got four out of eight, right? [00:49:00.00]

[00:49:00.56] : Four. I observed four out of the eight clues possible.

[00:49:03.04] **Defense:** So what were the four clues that were not observed? [00:49:05.00]

[00:49:06.96] : That were not observed? So [00:49:10.00] you he did not step out of the instructional [00:49:15.00] stance, did not start too soon. Did [00:49:20.00] not miss heel to toe and did not raise arms with those six inches. [00:49:25.00]

[00:49:25.32] **Defense:** Okay. [00:49:30.00] I read an article where it was [00:49:35.00] said that, you know, some people may perform certain aspects of the task [00:49:40.00] but still blow, you know, blow the legal limit. [00:49:45.00] Is that true? Can that happen?

[00:49:47.44] : Anything is possible.

[00:49:48.52] **Defense:** Okay. So [00:49:50.00] what happened on balance test that you didn't [00:49:55.00] feel like putting down the one thing that he was positive. Positive that he showed [00:50:00.00] no clue that he showed that you didn't bother putting on the report. [Incomplete] [00:50:05.00]

[00:50:05.99] : Well, I didn't put it on there because I gave him the benefit of the doubt. Yeah. No, but just above [00:50:10.00] 60in to help maintain his balance.

[00:50:13.95] **Defense:** Okay. [00:50:15.00] Do you know that you are supposed to offer the PBT [00:50:20.00] and that you are you supposed [00:50:25.00] to give a person the right to the option to either [00:50:30.00] agree or disagree to take it? [Incomplete]

[00:50:32.95] : I don't understand your question.

[00:50:35.51] **Defense:** So [00:50:35.00] I may be wrong here, but I thought that under [00:50:40.00] section 4165 of the Utah Code [00:50:45.00] there's an implied consent section, and that when an officer who [00:50:50.00] offers a party to take the test, the the defendant must comply. [Incomplete/inaccurate]. [00:50:55.00] Because if you say no, that [00:51:00.00] would be a violation, and your license would be taken away for two years if you [00:51:05.00] refuse to take the PBT. But Mr. Golub still has his license. [00:51:10.00] The actual loss applies to the PBT too. [00:51:15.00] Okay. And from what I understand, I don't think the [00:51:20.00] defendant realized that there was an official order [00:51:25.00] like this. I do want to take the defendant on the on the camera [00:51:30.00] should say something like, I just want to go home. So I think it was a matter [00:51:35.00] of like, what do we want to do? Versus like, do you have to take off?

[00:51:39.63] **Prosecutor Dunkelman:** Objection, your [00:51:40.00] honor. Counsel is testifying to the question.

[00:51:48.54] **Judge Hruby-Mills:** Any [00:51:45.00] response to the objection? [00:51:50.00]

[00:51:51.54] **Defense:** So all I'm trying to say is that I thought the law was... [When defense speaks there seems to be something wrong with the recording].

[00:51:54.86] **Judge Hruby-Mills:** But [00:51:55.00] that's kind of the issue right now. You're asking questions of this witness, [00:52:00.00] which you want to call yourself as a witness. You can do that at some other time.

[00:52:04.58] **Defense:** Okay. So [00:52:05.00] based on the question, based on what I said, do you think you properly offered [00:52:10.00] the witness to take the PBT?

[00:52:13.42] : Yes.

[00:52:14.06] **Defense:** Okay. Thank you. [00:52:15.00] Do you remember [00:52:20.00] what the second officer's name was?

[00:52:24.34] : Trooper Carpenter, [00:52:25.00] I believe.

[00:52:26.90] **Defense:** Did you include his name on the report or any of the other documentation?
[00:52:30.00]

[00:52:30.70] : I don't believe so, no. Do you ever shut up right [00:52:35.00] before I placed you under arrest?

[00:52:38.18] **Defense:** So you don't remember him putting handcuffs [00:52:40.00] on the on the defendant? No.

[00:52:44.14] : I believe when I went [00:52:45.00] to place the defendant under arrest, he made some sudden movements [00:52:50.00] and took his headphones off. I believe that [00:52:55.00] secondary officer took those headphones. And [00:53:00.00] as I placed him under so that the second officer [00:53:05.00] put him in handcuffs, that would be that wouldn't be a big deal. So different. I [00:53:10.00] don't believe that the second officer put him under.

[00:53:13.34] **Defense:** Okay. After the [00:53:15.00] second officer we looked at the video, assisted in the arrest. [00:53:20.00] Did he do anything else? Did the secondary officer do anything else?
[00:53:25.00]

[00:53:13.34] : I don't know. I [00:53:30.00] don't recall. I don't think so. I don't know.

[00:53:33.02] **Defense:** Do you remember if he searched the vehicle? [00:53:35.00]

[00:53:36.82] : I don't recall.

[00:53:38.18] **Defense:** [This is complete gibberish in the recordings... really starting to suspect the audio for the defense has something wrong with it]. A little bit of the [00:53:40.00] truck driver and I to encounter [00:53:45.00] court. So he searched the vehicle and he also I think we [00:53:50.00] have to look at the video, arrested, that kind of thing. [00:53:55.00] Like somebody held the hand and somebody put the handcuffs on. Was [00:54:00.00] the the second officer there [00:54:05.00] when you offered the defendant to take the PBT? Over [00:54:10.00] there.

[00:54:12.01] : At that time, I don't recall. [00:54:15.00]

[00:54:12.01] **Defense:** Okay. [00:54:20.00] Sorry. Thank [00:54:25.00] you. I'm [00:54:30.00] sorry. [00:54:35.00] I tried to write down some more. Okay. Sorry about that. [00:54:40.00] So. So you're a Civilian expert in administrating the [00:54:45.00] chemical drug test.

[00:54:50.09] : You're [00:54:50.00] asking me if I'm an expert?

[00:54:52.33] **Defense:** Yeah. Can you testify as an expert witness [00:54:55.00] for the defense?

[00:54:57.77] : I don't believe so.

[00:54:59.05] **Defense:** Okay. So [00:55:00.00] for what? What is the training [00:55:05.00] that you have to administer the chemical drug tests. How long does it take you [00:55:10.00] to get the certificate?

[00:55:11.85] : You want me to go over it again?

[00:55:13.89] **Defense:** I would think so. [00:55:15.00]

[00:55:16.09] : In the academy, we do some book training. [00:55:20.00] Also, like I mentioned, the wet lab, where we have [00:55:25.00] people that drink come in and we do tests that we learned about and see what it [00:55:30.00] looks like on a real person. And then we review them

[00:55:35.00] again in the in-house academy, and then we're involved [00:55:40.00] in field training. I also went through the program, the program [00:55:45.00] and the battery of tests.

[00:55:48.24] **Defense:** So how many hours do you think that was in total, including [00:55:50.00] all the ongoing training. The [00:55:55.00] initial training that you have to have, I [00:56:00.00] think that you take at the end of it, isn't it?

[00:56:04.24] : Yeah. [00:56:05.00]

[00:56:05.60] **Defense:** How many hours?

[00:56:13.36] : I [00:56:10.00] don't know.

[00:56:14.16] **Defense:** It's okay. [00:56:15.00] What about the test that you took? Do you remember what the test [00:56:20.00] consisted of? I [00:56:25.00] think for the most part, you score 80% [00:56:30.00] and they're certified.

[00:56:32.52] : I believe so.

[00:56:33.28] **Defense:** Okay. Something like that. Yeah, I think [00:56:35.00] I think that's about right. Yeah. No, it's a long time ago [What the x is this recording doing?] Can [00:56:40.00] you tell me what the name of the machine is that you used [00:56:45.00] to do? The chemical breath test?

[00:56:47.35] : Yeah, the Intoxilyzer 8000.

[00:56:50.23] **Defense:** And [00:56:50.00] during your training, or maybe your additional training, has anyone ever [00:56:55.00] had you ever discuss or learn about false positives or what could cause an unreliable [00:57:00.00] result?

[00:57:05.03] **Prosecutor Dunkelman:** Well, in [00:57:05.00] my experience in training, I've never seen it allow any basically. We [00:57:10.00] can't even proceed to get [00:57:15.00] a valid sample if there's any problems with the machine or any interference [00:57:20.00] that are introduced to the machine.

[00:57:24.51] **Defense:** Are you aware [00:57:25.00] of the fact that over 30,000 of these machines [00:57:30.00] have been discontinued due to exactly that problem? That when the [00:57:35.00]

machine makes a mistake, it doesn't tell you? It just [incomplete]. Do you know that there's a whole procedure [00:57:40.00] protocol put in there that you need to follow, because it doesn't [00:57:45.00] necessarily tell you that something has gone wrong.

[00:57:50.75] : I'm [00:57:50.00] not sure.

[00:57:51.75] **Defense:** Did you know that that was a protocol that that [00:57:55.00] officers used all over the country?

[00:57:58.55] : What is the protocol?

[00:58:00.75] **Defense:** Well, [00:58:00.00] for duration, right? So if you have a duration, that's [00:58:05.00] I think is in the 100 and 40s, into [00:58:10.00] the machine. The protocol should be about 20s. [00:58:15.00] And the machine. The machine. It's not going to tell you that something's gone [00:58:20.00] awry, right? It's all about the time that it's taking. So [00:58:25.00] when it resets. But in terms of providing an accurate sample [00:58:30.00] I think that the time is about 2 to 12 seconds. So in [00:58:35.00] the end In case there is much over 100 [00:58:40.00] and 30s at 100%, where are we supposed to do [00:58:45.00] another test and restart the machine? [really need to get this right]

[00:58:21.51] **Prosecutor Dunkelman:** Objection, Your Honor.

[00:58:49.66] **Judge Hruby-Mills:** Calm down. [00:58:50.00] Question?

[00:58:51.30] **Prosecutor Dunkelman:** Defendant is testifying in the question.

[00:58:54.98] **Judge Hruby-Mills:** Wait. [00:58:55.00] What? How would you respond to the objection?

[00:58:59.22] **Defense:** Can I just make my [00:59:00.00] question simple?

[00:59:01.74] **Judge Hruby-Mills:** Yes. You need to take the objection.

[00:59:04.62] **Defense:** Okay. [00:59:05.00] Okay. Yeah. Sorry. Okay. Do you know that the protocol is to [00:59:10.00] have a test. Is it 12, 20s long?

[00:59:17.46] : It [00:59:15.00] should take only a few seconds, but the defendant would [00:59:20.00] not properly blow into the machine, so we had to make several attempts.

[00:59:27.02] **Defense:** Another [00:59:25.00] attempt?

[00:59:27.90] : No.

[00:59:28.86] **Defense:** Okay. And [00:59:30.00] the second issue is [...] [00:59:35.00] Is it possible that one could [00:59:40.00] create a false positive?

[00:59:42.90] : Not to my knowledge, no. So [00:59:45.00] the defendant would blow into the machine and not blow out there, for example. And [00:59:50.00] we did that over and over and over again. So I assume that's what you're speaking to the 100 [00:59:55.00] and 40s of the test. Well, the actual time that you blew [01:00:00.00] in when you provided, when the defendant provided a valid sample was not 100 and 40s. Not even [01:00:05.00] close.

[01:00:05.94] **Defense:** Okay. Well, you should definitely look at that. I think that's very, very helpful. [01:00:10.00] [...] What else? I'm [01:00:20.00] finished my honor.

[01:00:23.82] **Judge Hruby-Mills:** Okay. Anything further from the [01:00:25.00] state?

[01:00:26.06] **Defense:** No.

[01:00:28.06] **Judge Hruby-Mills:** All right. Thank you for your testimony. You can step down. [01:00:30.00] Did you have any [01:00:35.00] further witnesses or did you anticipate calling any witnesses?

[01:00:43.33] **Defense:** So [01:00:40.00] I would have liked to call [01:00:45.00] 1 or 2. I didn't know that we were calling them this early. I [01:00:50.00] can do it at a later time. Or should I just... what should I do now? [01:00:55.00] Because I don't have anyone, I can't. I'm not going to call an expert witness [01:01:00.00] about the machine. And also the person that I [01:01:05.00] went and met at the establishment was working there that day, [01:01:10.00] and I don't even know if it's going to have her support. [01:01:15.00] My argument that I was there for, you [01:01:20.00] know, to, to to do something other than visit the establishment for the procurement [01:01:25.00] of alcohol.

[01:01:26.69] **Judge Hruby-Mills:** Yeah. Yeah. But [01:01:30.00] do you, do you want to show the video does not have any more. [??] [01:01:35.00]

[01:01:35.89] **Defense:** Oh, how should... How should I pursue the evidence [01:01:40.00] that I have throughout my motions? I keep finding [01:01:45.00] different videos and different times, and I could make a compilation of just those [01:01:50.00] things.

[01:01:51.05] **Judge Hruby-Mills:** If that's easier to do and do that. I [01:01:55.00] can have them sent to whoever we were set today [01:02:00.00] for the evidentiary hearing. Do you have your do [01:02:05.00] you want to put your portions of the video? Do you want to?

[01:02:09.13] **Defense:** Yeah. I [01:02:10.00] think I was a little confused about what was going to happen today. I figured [01:02:15.00] that we were going to review the motions, and then we would [01:02:20.00] decide which parts could stand, and then I would provide, [01:02:25.00] if necessary... I would provide evidence for certain parts [01:02:30.00] of it, But I don't think that I would have to do that today. I [01:02:35.00] thought I would just, like, go through the motion and see which parts you [01:02:40.00] know, you guys support.

[01:02:45.00] **Judge Hruby-Mills:** I [01:02:45.00] go to, you know, and I do research on your motions. You. [01:02:50.00] I think I asked you about narrowing down your topics, and you [01:02:55.00] file some additional narrowed down, more narrow down topics. And so today, we were set [01:03:00.00] for the evidentiary hearing on the motion to suppress. And the state subpoenaed its witness. Okay. With [01:03:05.00] that, and you could have subpoenaed witnesses if you didn't. [01:03:10.00] But do you wish to rely on the body [01:03:15.00] cam?

[01:03:16.64] **Defense:** Yes. There's that video. There's [01:03:20.00] not just the body cam but the dash cam is pretty important because the [01:03:25.00] dash cam is it supports that there was no violations.

[01:03:31.63] **Judge Hruby-Mills:** Okay. [01:03:30.00] So did you want to ask the witness [01:03:35.00] about that or not? I'm [01:03:40.00] not aware of that. I haven't seen any camera or video come up on my screen. [01:03:45.00]

[01:03:45.47] **Defense:** Yeah. So, yeah. No, I mean, yeah, maybe I got sidetracked because [01:03:50.00] the first thing was that which I know is typically legal. [01:03:55.00] I went first on the prior testimony. I don't know what is legal, [01:04:00.00] but in terms of the defense of the officer

from [01:04:05.00] the defendant in his car and what you see on the dash cam, you can't [01:04:10.00] see.

[01:04:11.87] **Judge Hruby-Mills:** I know you're arguing. Yeah. Yeah, that's that's correct. Yeah. [01:04:15.00] So I don't are you did you have more questions for that?

[01:04:18.31] **Defense:** I don't have any more questions. [01:04:20.00]

[01:04:22.27] **Judge Hruby-Mills:** Okay. Are you submitting them [01:04:25.00] or did you. Can I submit these two motions? And resubmit [01:04:30.00] them. And that's done. Okay. The motion. Motion. You filed [01:04:35.00] these two motions?

[01:04:36.23] **Defense:** Yeah.

[01:04:36.79] **Judge Hruby-Mills:** And that's what we're here on today. Okay. So the state had [01:04:40.00] an obligation to bring it to witness, to refute what you've [01:04:45.00] alleged to be unconstitutional.

[01:04:48.39] **Defense:** Yes.

[01:04:50.23] **Judge Hruby-Mills:** So [01:04:50.00] do you have any other evidence that you wanted to present?

[01:04:55.23] **Defense:** I [01:04:55.00] don't want to waste any time. But do I need to submit the evidence that the [01:05:00.00] state provided me or that I would have to leave? It's not [01:05:05.00] something that I have. Can I submit that later today? [01:05:10.00] All of the [01:05:15.00] video... There's like eight hours of video. No, just [01:05:20.00] just just the parts that I'm citing in my in my motion.

[01:05:23.67] **Judge Hruby-Mills:** Well, there's quite a bit of [01:05:25.00] additions in the motion, so I would probably want something more specific.

[01:05:29.90] **Defense:** I [01:05:30.00] can strip it down to ten minutes or less whatever time you think [01:05:35.00] is appropriate. I can cut it to that.

[01:05:38.02] **Judge Hruby-Mills:** So your approach would be to put [01:05:40.00] on a flash drive, just the portions of it, and upload it to the stream [01:05:45.00] so that you can apply it. Can you can you attach video to the [01:05:50.00] file a motion? No, I don't have access.

[01:05:53.02] **Defense:** Okay. Yes, I will put it on [01:05:55.00] a flash drive and take it wherever I need to take it.

[01:05:58.70] **Judge Hruby-Mills:** Give me a compliment if [01:06:00.00] she puts that on a flash drive. The portions that he [01:06:05.00] wants the court to look at and gets it to you. Do you have any objection to that?

[01:06:10.50] **Prosecutor Dunkelman:** Your [01:06:10.00] honor, the state does have an objection. There's not a witness for which he's calling to bring [01:06:15.00] these videos in. And so I just don't think it's [01:06:20.00] properly admitted to the court to view.

[01:06:26.58] **Defense:** Well, [01:06:25.00] I mean, I can defend [01:06:30.00] myself because they share with the political statements that I made.

[01:06:33.62] **Judge Hruby-Mills:** One more time, though, do you think [01:06:35.00] you have additional questions for that fire?

[01:06:37.90] **Defense:** I don't know.

[01:06:39.62] **Judge Hruby-Mills:** You don't want [01:06:40.00] to ask him about the things that you see are in the video?

[01:06:45.34] **Defense:** Well, [01:06:45.00] I mean, I could I, I don't want to waste people's time. [01:06:50.00] Is that the proper procedure I should ask him about?

[01:06:53.70] **Judge Hruby-Mills:** No. I [01:06:55.00] think the state is saying there's [01:07:00.00] no underlying foundation for the the collage of [01:07:05.00] videos that that it sounds like you want to present. I know you've referenced things in your in your motion. [01:07:10.00] Yeah. But oftentimes it will be the witness will be up here.

[01:07:13.94] **Defense:** So I'm familiar with the [01:07:15.00] case or so I did ask about the 100 and 40s [01:07:20.00] right. And I did ask about the second officer [01:07:25.00] searching the car during the arrest.

[01:07:27.57] **Judge Hruby-Mills:** It's not in the report. But, [01:07:30.00] yeah, there's a there's a lot of there's a lot in there. [01:07:35.00] Those questions really don't have anything to do with your proposed [01:07:40.00] video.

[01:07:42.29] **Judge Hruby-Mills:** Well, I know that on the video, but [01:07:45.00] if the if the task takes 100 and 40s [01:07:50.00] and if that's considered expert witnesses to be too long, [01:07:55.00] but it needs to be. We need to do another test. The video showed that it took 100 [01:08:00.00] and 40s.

[01:08:02.65] **Defense:** And that's what you say. I'm not aware of that. The [01:08:05.00] video on that. I don't know if there's a video on that. I know that we have expert testimony regarding [01:08:10.00] that issue. So there's a there's a number of concerns [01:08:15.00] that you have that may or may not part appropriately, part of what you filed [01:08:20.00] for today. [Unclear]

[01:08:21.09] **Judge Hruby-Mills:** Okay. But but for the [01:08:25.00] issues you've raised in your motion to suppress the motion to dismiss related to the motion to suppress [01:08:30.00] is there anything else that you think I should know before [01:08:35.00] it's submitted?

[01:08:41.09] **Defense:** I [01:08:40.00] don't want to waste people's time. I'm not really sure. You know, [01:08:45.00] I would like to submit this. I would like to submit it. I assume all of it.
[01:08:50.00]

[01:08:50.29] **Judge Hruby-Mills:** You know I think what makes sense is that [01:08:55.00] you you want to use portions of various things. You're saying if you get it [01:09:00.00] down to ten minutes.

[01:09:01.01] **Defense:** Yeah.

[01:09:01.45] **Judge Hruby-Mills:** But so, for example, you want 30s of the dash [01:09:05.00] from the very beginning.

[01:09:08.73] **Defense:** Yeah. That would be the dash cam. [01:09:10.00]

[01:09:12.77] **Judge Hruby-Mills:** Will you have any objection for [01:09:15.00] Mr. Golub to put together the portions of the video that would [01:09:20.00] line up with what he has referenced in his motion. And just so we're all clear. [01:09:25.00] I think there's citations to videos [01:09:30.00] of several of the documents. Right?

[01:09:33.04] **Defense:** Yeah. So that's right. I just want to show the stuff [01:09:35.00] I cited as short as possible.

[01:09:39.24] **Prosecutor Dunkelman:** Objection, Your [01:09:40.00] Honor, the state is objecting on the foundation for these videos to come [01:09:45.00] in or his foundation for videos to come in. He [01:09:50.00] is not calling for those videos to come in on [01:09:55.00] those terms. That will create a little bit of a procedural problem, [01:10:00.00] because these motions are very lengthy and include numerous, numerous [01:10:05.00] different portions of the video. And so [01:10:10.00] and so he has no idea even [01:10:15.00] what is being reported or asked. And really no ability to [01:10:20.00] cross-examine on these things.

[01:10:21.52] **Judge Hruby-Mills:** And so I was just [01:10:25.00] going to ask, do you have any other [01:10:30.00] questions for the witness?

[01:10:32.96] **Prosecutor Dunkelman:** I don't know, sorry.

[01:10:34.76] **Judge Hruby-Mills:** Okay. [01:10:35.00] So with that does the state anticipate filing a [01:10:40.00] written response to the motion at this time?

[01:10:44.08] **Prosecutor Dunkelman:** The state is comfortable [01:10:45.00] proceeding with arguments today based on the issue itself.

[01:10:49.84] **Judge Hruby-Mills:** Okay. [01:10:50.00] All right. And so I am not going to allow the video to come in [01:10:55.00] after the motion. Okay. I tried to see about [01:11:00.00] you laying the foundation for that. You want to get into the witness, but you don't want to call [01:11:05.00] anyone else. So we're going to take a brief recess and try to call some of the other matters that are pending, and [01:11:10.00] then we will have summary arguments on the motion. Okay. [01:11:15.00] And so I guess Mr. Golub and Miss Dunkelman, do you have some matters that you're ready on?

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[00:00:00.40] **Judicial Assistant Joseph Liuzzi :** All remaining matters. The argument then on the motion to suppress. Is that correct, counsel?

[00:00:06.76] **Prosecutor Dunkelman:** I [00:00:05.00] believe so.

[00:00:08.32] **Judge Hruby-Mills:** All right. Mr. Golub, why don't you come up to the front [00:00:10.00].

[00:00:14.92] **Defendant Mr. Golub:** Can I ask a question? So I [00:00:15.00] found [00:00:20.00] the video because one is 20s and the other one is 100 and 40s, [00:00:25.00] which it makes sense to show it before...

[00:00:29.28] **Judge Hruby-Mills:** You want to reopen [00:00:30.00] the evidence. And be able to watch it?

[00:00:32.28] **Defendant Mr. Golub:** I was wondering if I could show about 26 [00:00:35.00] seconds of the dash cam and 140 of the body cam. [00:00:40.00]

[00:00:41.44] **Judge Hruby-Mills:** Did you want to recall the witness?

[00:00:43.72] Do I have to play [00:00:45.00] it, or do I need to show the..

[00:00:46.80] **Judge Hruby-Mills:** And if you remember which I think I think [00:00:50.00] part of Ms. Dunkelman's objection was foundation. Is that right, Ms. Dunkelman? [00:00:55.00]

[00:00:55.80] **Prosecutor Dunkelman:** That's one of the objections. Yeah.

[00:00:57.56] **Judge Hruby-Mills:** And so and so if [00:01:00.00] that is a witness, the one who was on the stand will be here. Is that [00:01:05.00] is that someone who could lay a foundation for your proposed exhibits? [00:01:10.00]

[00:01:11.28] **Defendant Mr. Golub:** Do you mean, like, would there be a reason to show it in regard to what he said? [00:01:15.00]

[00:01:16.60] **Judge Hruby-Mills:** Yeah, like it would tie in because we don't.

[00:01:19.12] **Defendant Mr. Golub:** Yeah, I think so. Yeah, [00:01:20.00] I think that would make sense. I mean it's short. It's not like long or anything.

[00:01:26.78] **Judge Hruby-Mills:** Ms. Dunkelman, any reopening [00:01:25.00] to reopening the [00:01:30.00] evidence just to address the, the [00:01:35.00] portions of the video that Mr. Golub is talking [00:01:40.00] about.

[00:01:42.12] **Prosecutor Dunkelman:** I'll reserve my objection based on how he presents.

[00:01:46.12] **Judge Hruby-Mills:** I think that even [00:01:45.00] though we do have a witness here, Ms. Dunkelman, do [00:01:50.00] you want him to lay foundation for that witness, or are [00:01:55.00] you okay just with the admission of the... I'm sure you don't know which portion. [00:02:00.00]

[00:02:00.44] **Prosecutor Dunkelman:** I don't know. So I think procedurally, I think it'd be cleaner if he laid foundation.

[00:02:05.80] **Judge Hruby-Mills:** All [00:02:05.00] right.

[00:02:06.28] **Defendant Mr. Golub:** I'm just going to grab my paper.

[00:02:07.88] **Judge Hruby-Mills:** Okay.

[00:02:08.24] **Judge Hruby-Mills:** And we did ask a [00:02:10.00] lot of questions.

[00:02:12.28] I appreciate that. Thank you. Okay, [00:02:15.00] so with that, if the detective could rejoin us on the witness stand, [00:02:20.00] please.

[00:02:21.96] **Defendant Mr. Golub:** Thank you.

[00:02:34.24] **Judge Hruby-Mills:** Okay. [00:02:30.00] So [00:02:35.00] rejoined us. You remain under oath, and I guess we [00:02:40.00] need to plug into our system. [00:02:45.00]

[00:02:45.76] **Defendant Mr. Golub:** Oh, yeah.

[00:02:48.84] **Judge Hruby-Mills:** Can I just use, like, [00:02:50.00] one of these?

[00:02:51.52] **Judge Hruby-Mills:** No. Joe will tell you. [00:02:55.00]

[00:02:56.52] **Judicial Assistant Joseph Liuzzi :** Okay. Do you have HDMI?

[00:02:57.20] **Defendant Mr. Golub:** Yeah, I have an HDMI port...[Mr. Golub connects his computer.] Should [00:03:10.00] I lay the foundation first and then...

[00:03:13.52] **Judge Hruby-Mills:** Yeah. Let's just make sure we're set [00:03:15.00] up here. Okay. All right. So [00:03:25.00] if you're ready, Mr. Golub.

[00:03:31.28] **Defendant Mr. Golub:** Is [00:03:30.00] it is it working?

[00:03:32.16] **Judge Hruby-Mills:** Do you want it on now?

[00:03:34.52] **Defendant Mr. Golub:** Oh, no, no, [00:03:35.00] I just wanted to make sure. Okay. Yeah. So I'll just I'll try to make this as quick as possible. [00:03:40.00] Thank you again for your patience. So. [00:03:45.00] Okay, so the first video concerns a dash cam. [00:03:50.00] Do you believe that you [00:03:55.00] saw the defendant said he [00:04:00.00] pulled away from the curb.

[00:04:01.52] **Corporal Ernstsens:** I know I did.

[00:04:01.92] **Defendant Mr. Golub:** Do you think that dashcam footage will support [00:04:05.00] that?

[00:04:06.72] **Corporal Ernstsens:** The dash camera is on that far side of my vehicle, and I'm [00:04:10.00] sitting in the driver's seat so it doesn't reflect what I'm seeing personally.

[00:04:14.36] **Judge Hruby-Mills:** All right, just for the [00:04:15.00] record, this. The witness utilized his right hand showing where the dashcam [00:04:20.00] was to the to the to basically three feet right of where you are sitting. Is [00:04:25.00] that correct?

[00:04:26.16] **Corporal Ernstsens:** Yeah. Probably three feet. Three or four feet.

[00:04:31.12] **Judge Hruby-Mills:** So [00:04:30.00] that's that's what the vehicle is on the video. [00:04:35.00] And it looks like it might be signaling with that. [00:04:40.00] I can watch it and then we can just decide if that's [00:04:45.00] what's going on. Is that okay? should [00:04:50.00] I play the first one?

[00:04:52.12] **Judge Hruby-Mills:** I don't know. Is that the first one?

[00:04:53.92] **Defendant Mr. Golub:** That's the first one on the dashboard. [00:04:55.00] The second round is the body cam on the approximately [00:05:00.00] 100 and 40s of the Intoxilyzer administration.

[00:05:05.12] **Judge Hruby-Mills:** The [00:05:05.00] first thing you want to talk about with the witness is the dashcam. All [00:05:10.00] right. All right. So let's go ahead and get it up and then we'll see it.

[00:05:14.84] **Defendant Mr. Golub:** Okay. [00:05:15.00]

[00:05:15.12] **Judge Hruby-Mills:** And you can identify it.

[00:05:17.96] **Defendant Mr. Golub:** [Shows first 26 seconds of dashcam video.] This [00:05:20.00] is just the very beginning. So this is the whole thing that's going to be about 26 [00:05:25.00] seconds. So this is the officer. So [00:05:30.00] this is the intersection. He turned around. There's a red light. [00:05:35.00] So he slows down. [00:05:40.00] And the seat of the car. So there's a car right up there with [00:05:45.00] the red light.

[00:05:47.72] **Prosecutor Dunkelman:** Your honor, counsel is testifying.

[00:05:51.88] **Defendant Mr. Golub:** I [00:05:50.00] was just going to show you where to look.

[00:05:54.48] **Judge Hruby-Mills:** Well, [00:05:55.00] you want to direct the witness to what you want to ask a question about?

[00:06:00.65] **Defendant Mr. Golub:** Sure. [00:06:00.00] Sorry. Then [00:06:05.00] after your turn at the intersection, you go to where [00:06:15.00] the suspect is parked?

[00:06:22.13] **Corporal Ernstsen:** Yeah. [00:06:20.00] So where that car is in front of me, that's [00:06:25.00] breaking. There's a white car to the right of it. And the suspect vehicle [00:06:30.00] is in front of that white car.

[00:06:31.85] **Defendant Mr. Golub:** Right. So that's what. That's what I was trying to say. So that's the that's [00:06:35.00] the car we're looking at. It's kinda far away. And then I'm gonna show, let's [00:06:40.00] wait for that car, the defendant is waiting for that car to go past. [00:06:45.00] And then he pulls out into the road and as we can tell that, see that [00:06:50.00] car right there on the right?

[00:06:52.29] **Prosecutor Dunkelman:** Objection. The council is narrating the [00:06:55.00] video to the witness.

[00:06:57.37] **Judge Hruby-Mills:** So, do you want to... [00:07:00.00] do you have questions for this witness regarding what's on it?

[00:07:04.25] **Defendant Mr. Golub:** So, [00:07:05.00] yes, I have one question. This car right here, this white car, it [00:07:10.00] was parked right in front of the silver car. The [00:07:15.00] silver car makes [00:07:17.69] a, waits a clear function of the road, but can [00:07:20.00] you see it one way or the other? [Unclear, but Mr. Golub if the officer can see that the white car is parked in front of the silver car the defendant was driving.] [00:07:24.25]

[00:07:24.53] **Corporal Ernstsen:** So that white [00:07:25.00] car was parked behind the silver car? Yeah.

[00:07:29.21] **Defendant Mr. Golub:** Yeah. This one. [00:07:30.00]

[00:07:31.41] **Corporal Ernstsen:** What's the question?

[00:07:33.05] **Defendant Mr. Golub:** [Unclear.] Do you still [00:07:35.00] see the signal even though it's obstructed. [00:07:40.00]

[00:07:41.41] **Corporal Ernstsen:** Well, there was no signal, so I did not see it. No.

[00:07:44.93] **Defendant Mr. Golub:** So [00:07:45.00] can you see that the taillight, that the signaling part of the car is on? [Mr. Golub is indicating that when the car is visible on the video, the signal does seem to be on.]

[00:07:54.41] **Corporal Ernstsen:** I'm [00:07:50.00] not sure what [00:07:55.00] you mean.

[00:07:56.93] **Defendant Mr. Golub:** So there's a car obstructing the [00:08:00.00] silver car.

[00:08:02.89] **Corporal Ernstsen:** There's the white car behind the silver car. [00:08:05.00]

[00:08:05.25] **Defendant Mr. Golub:** Yeah. So whether or not I [00:08:10.00] don't think you can tell either way, because those cars are in front of it.

[00:08:13.97] **Prosecutor Dunkelman:** Your Honor, I'm gonna object to this again. [00:08:15.00]

[00:08:18.89] **Judge Hruby-Mills:** You have the ability [00:08:20.00] to testify.

[00:08:22.41] **Defendant Mr. Golub:** Okay. Sorry. So I guess that's my question. So [00:08:25.00] do you still think that the car that we [00:08:30.00] saw did not signal, that you were able to see it not signal [unlear]? [00:08:35.00] So that's the first question. It was [00:08:40.00] not obstructed. The car, the vehicle was not obstructed? [00:08:45.00] the defendant's vehicle was not obstructed?

[00:08:48.37] **Corporal Ernstsen:** I could see the defendant's [00:08:50.00] vehicle that was parked on the side of the road.

[00:08:54.85] **Defendant Mr. Golub:** And do you think [00:08:55.00] that you were from a distance where you could [00:09:00.00] see it clearly? The footage doesn't show it one way or another. It's not very clear.

[00:09:04.93] **Corporal Ernstsen:** Yeah. [00:09:05.00] My vision is way better than what is represented in this video.

[00:09:08.53] **Defendant Mr. Golub:** Okay. That's [00:09:10.00] it for for that video. That's pretty much [00:09:15.00] all I have to say. And [00:09:20.00] then the second one is [00:09:25.00] the demonstration of the Intoxylizer, of [00:09:30.00] the chemical breath test. So what kind of

foundation [00:09:35.00] should I show? Do you remember during this test? [00:09:40.00] Yes. Is that enough to lay down a foundation [00:09:45.00] for it?

[00:09:46.33] **Prosecutor Dunkelman:** Your Honor, I don't think that the court or myself should provide counsel to [00:09:50.00] the defendant.

[00:09:51.49] **Defendant Mr. Golub:** Well, I just want to know if I can share the video or not.

[00:09:56.21] **Judge Hruby-Mills:** Ms. Dunkelman will object... [00:09:55.00]

[00:09:56.45] **Defendant Mr. Golub:** Okay.

[00:09:57.25] **Judge Hruby-Mills:** But for the record, it would be helpful for me to know... what [00:10:00.00] is your... Is it at the beginning of a certain video?

[00:10:04.73] **Defendant Mr. Golub:** [Unclear] After we saw the dashcam, we will see special [00:10:05.00] operations. [00:10:10.00]

[00:10:11.93] **Judge Hruby-Mills:** This will be that dashcam?

[00:10:13.25] **Defendant Mr. Golub:** No, this is the body cam, [00:10:20.00] and it shows the officer administering the chemical breath test.

[00:10:24.65] **Judge Hruby-Mills:** And is it [00:10:25.00] saying that... What's your time stamp?

[00:10:27.65] **Defendant Mr. Golub:** I think it's at 01:05:40... 43, 44. I'll [00:10:35.00] tell you exactly. Do you [00:10:40.00] want me to turn the volume down? [to Judicial Assistant]? [00:10:45.00] Okay, so there it begins [Video shows Corporal Ernstsens administering breath test Mr. Golub. Video audio is unintelligible. See video evidence, Video 4: Bodycam, 01:04:45-1:05:44-1:07:03] So [00:12:05.00] that's how long it took. That's all [00:12:10.00] I wanted to show. That's longer than it should last, according [00:12:15.00] to the manual.

[00:12:16.85] **Judge Hruby-Mills:** Is there a question for the witness?

[00:12:18.33] **Defendant Mr. Golub:** Yes. Was that the right amount of time for the test? [Unclear.] [00:12:20.00]

[00:12:23.65] **Corporal Ernstsens:** When we final... on the last [00:12:25.00] attempt? Yes, but there, you see multiple times [00:12:30.00] where the defendant did not blow enough air into the machine to get a valid [00:12:35.00] sample to be sent.

[00:12:38.45] **Defendant Mr. Golub:** There was not enough air for the sample?

[00:12:38.81] **Corporal Ernstsens:** No. Absolutely not.

[00:12:40.13] **Defendant Mr. Golub:** [00:12:40.33]He's blowing for a long time. Is there something wrong with the way you're administering the test? [Unintelligible, but question is rephrased below.]
[00:12:40.00]

[00:12:47.09] **Prosecutor Dunkelman:** Objection. [00:12:45.00] Speculation.

[00:12:50.97] **Defendant Mr. Golub:** Okay. [00:12:50.00]

[00:12:54.93] **Judge Hruby-Mills:** Okay, are [00:12:55.00] you withdrawing the question?

[00:12:57.29] **Defendant Mr. Golub:** Let me ask it in a different way. Did [00:13:00.00] it seem like the defendant [00:13:05.00] was cooperating with the breathalyzer?

[00:13:09.29] **Corporal Ernstsens:** No.

[00:13:10.21] **Defendant Mr. Golub:** Okay. [00:13:10.00] So that does invalidate [00:13:15.00] the test if it's not being taken improperly. Either [00:13:25.00] it was mis-administered or it could be taken, like the defendant could be taking [00:13:30.00] it the wrong way. And so you'd have to redo the test for it to be legitimate?

[00:13:36.89] **Corporal Ernstsens:** The [00:13:35.00] machine provided a valid sample.

[00:13:39.41] **Defendant Mr. Golub:** Okay. That's [00:13:40.00] all I have.

[00:13:44.89] **Judge Hruby-Mills:** Ms Dunkelman, any [00:13:45.00] questions for this witness based on that additional testimony?

[00:13:49.85] **Prosecutor Dunkelman:** No.

[00:13:49.97] **Judge Hruby-Mills:** Okay, Corporal, you [00:13:50.00] may step down. So [00:13:55.00] with that we're [00:14:00.00] ready for summary arguments?

[00:14:07.33] **Defendant Mr. Golub:** Yeah. [00:14:05.00] [Mr. Golub waits for Ms. Dunkelman to submit argument.] Is [00:14:20.00] that... is that my turn?

[00:14:23.85] **Judge Hruby-Mills:** It's your motion. And [00:14:25.00] although the State had the burden, it gives you the opportunity to go first and last. [00:14:30.00]

[00:14:30.45] **Defendant Mr. Golub:** Okay. Let me... try [00:14:35.00] and... I'll [00:14:50.00] just read the conclusion of the motion. Does that [00:14:55.00] work? Or...

[00:14:58.65] **Judge Hruby-Mills:** You can do whatever you want to do. [00:15:00.00] A lot of times people tie in what came out at the hearing.

[00:15:03.29] **Defendant Mr. Golub:** Yeah. I'll try [00:15:05.00] to. And I'll try not to repeat some of the things that it seems that aren't necessarily important [00:15:10.00] anymore. So during [00:15:15.00] the original testimony. It seemed like the [00:15:20.00] officer made that a typical routine stop on [00:15:25.00] the transcript from [00:15:30.00] the first testimony. The deputy district attorney [00:15:35.00] asked where were you on the vehicle caught your attention? And... [00:15:40.00]

[00:15:40.57] **Prosecutor Dunkelman:** Your Honor, I don't think it's appropriate to read intent from the.

[00:15:44.21] **Judge Hruby-Mills:** From preliminary? [00:15:45.00]

[00:15:45.46] **Defendant Mr. Golub:** That's where it's from. Yeah. Is that...

[00:15:47.54] **Judge Hruby-Mills:** Why hasn't this been filed?

[00:15:49.98] **Defendant Mr. Golub:** I [00:15:50.00] did include it in my first very long motion, which was [00:15:55.00] one of the reasons it was so long [i.e. much of the motion was the Appendix, which contained the testimony and the GRAMMA.]

[00:15:56.14] **Judge Hruby-Mills:** Did you hire someone to do that?

[00:15:57.82] **Defendant Mr. Golub:** I did it myself. I'm a professional [00:16:00.00] transcriber, but I don't [00:16:05.00] have to... I don't have to read it. I'm just saying that initially, it seemed like it was a routine [00:16:10.00] traffic stop. And today it seems more like it was a criminal investigation, which [00:16:15.00] is what allowed the officer to run the red light, because... I [00:16:20.00] read the law and it says officers can run a red light and responding to [00:16:25.00] an emergency call, responding to a fire, pursuing suspect or any other emergency [00:16:30.00] situation. So my question is, did the officer have probable cause to profile Mr. Golub? [00:16:35.00] What was the probable cause that justified the running of the red light, [00:16:40.00] or was there no probable cause and the red light was not part of a valid investigation, [00:16:45.00] but instead facilitated an investigation? I also want [00:16:50.00] to say that the evidence seems to show that either the [00:16:55.00] defendant did signal, or we're [00:17:00.00] getting some, a little bit of inherent [00:17:05.00] bias or something or just wanting to see the signal. I suspect [00:17:10.00] that if there had been a clear indication of a failure to signal that the [00:17:15.00] officer would have immediately pulled the defendant over instead following him for [00:17:20.00] ten blocks and seeing no violation according to his own testimony, watching him driving [00:17:25.00] for like ten blocks. [00:17:30.00] In addition, I think that multiple tests [00:17:35.00] were mis-administered. The defendant [00:17:40.00] did pass the the parts of the test past that deal balance. It [00:17:45.00] was said that the defendant used his arms to balance on the door, [00:17:50.00] and that he passed the actual test for balance. So, [00:17:55.00] according to the report, he passed perfectly. And then [00:18:00.00] the officer changed his report [00:18:05.00] on the situation so that the defendant actually has impaired [00:18:10.00] for balancing. And I think finally, the [00:18:15.00] chemical test should have been readministered, especially since the initial PBT was [00:18:20.00] not administered. And the defendant [00:18:25.00] was accused of partially and definitely should have taken the PBT and [00:18:30.00] probably would have done so because this would have helped him in his case. [00:18:35.00] I don't know if this is important, and you can [00:18:40.00] tell if for is. Right after this incident, [00:18:45.00] the defendant bought the most expensive hand [00:18:50.00] breathalyzer machine that you can buy on Amazon. It's also used by the police to do PBTs [00:18:55.00]. I have it in my bag.

[00:18:57.50] **Prosecutor Dunkelman:** And, your honor, I would object to this testimony [00:19:00.00] today. [Unclear.]

[00:19:01.66] **Defendant Mr. Golub:** Yes. Okay.

[00:19:02.70] **Prosecutor Dunkelman:** And it has innate clear bias and absolutely irrelevant to following. [Unintelligible.] [00:19:05.00]

[00:19:08.94] **Judge Hruby-Mills:** Any response to the objection? [00:19:10.00]

[00:19:11.22] **Defendant Mr. Golub:** I was just trying to say that the .104 [00:19:15.00] is wildly high. [00:19:20.00] It's way too high according.

[00:19:21.54] **Judge Hruby-Mills:** The objection is sustained.

[00:19:22.82] **Defendant Mr. Golub:** Okay. Yeah. And. [00:19:25.00] I guess I [00:19:30.00] don't really want to waste anyone's time anymore, so just rest there. [00:19:35.00]

[00:19:36.14] **Judge Hruby-Mills:** Okay? And Ms. Dunkelman.

[00:19:39.42] **Prosecutor Dunkelman:** Your Honor, I think there [00:19:40.00] are three issues that the defendant seems to... Well, in his proffer, he stated [00:19:45.00] that the focus of this is. [Unclear.] First, it is that whether [00:19:50.00] there was a lawful basis for the contact with the defendant [00:19:55.00] by the corporal. And law enforcement [00:20:00.00] must have reasonable suspicion of criminal activity to make a traffic stop. And in this [00:20:05.00] case, we have testimony from the courtroom that that he [00:20:10.00] observed the defendant walking to his car from a bar, [00:20:15.00] getting in his car. And that was the reason that... It [00:20:20.00] was also late at night. And that was the reason that he did a U-turn, and when he [00:20:25.00] came out of the U-turn, he saw the defendant's vehicle pull away from the curb without [00:20:30.00] signaling and then cross multiple lanes of traffic with also without signaling. [00:20:35.00] I asked him if these are violations of the law. He said that [00:20:40.00] they were. And I don't think it's particularly pertinent [00:20:45.00] here, but I do think that 41.6.A.414... [00:20:50.00] It did allow the officer to turn, [00:20:55.00] do a U-turn on the red light in pursuit of an actual suspected violator [00:21:00.00] of the law. So I would argue that there [00:21:05.00] was a lawful basis for the corporal to contact the [00:21:10.00] defendant. And move on to the next issue. [00:21:15.00] The second issue is SFS, the the [00:21:20.00] administration of the SFSTs. And I [00:21:25.00] transparently do not think that it was actually negated or refuted by the defendant [00:21:30.00] on cross-examination or any evidence that he presented. The [00:21:35.00] first... So I tried to address this in [00:21:40.00] the direct of the officer, and there wasn't really any [00:21:45.00] questions. I asked the officer about HGN and that he was certified to administer [00:21:50.00] these tests, and that he went through the

instruction phase, that [00:21:55.00] he kept the stimulus away, traveling a certain [00:22:00.00] speed, and it moved the appropriate back and forth distance [00:22:05.00] across the defendant's face, and that he had done the medical screening [00:22:10.00] questions to make sure there were no issues. He actually did part of the medical screening, did a test to make [00:22:15.00] sure there was no resting nystagmus. And and so we... I would argue that [00:22:20.00] there was... that the corporal did everything that was required by the manual [00:22:25.00] that allowed these tests to be standardized. And then also [00:22:30.00] that there actually was nothing refuted by the defendant with respect [00:22:35.00] to this. With the walk and turn. I [00:22:40.00] would again say that there wasn't anything refuted by the defendant in [00:22:45.00] court today. In his motion, he states that only three [00:22:50.00] steps were taken on the walk in turn. And [00:22:55.00] or sorry, demonstrated by the corporal instead of the full nine that [00:23:00.00] are asked to be performed of by the defendant. But I asked the corporal [00:23:05.00] about this, and he said in the instructor's manual which he's trained on, it says [00:23:10.00] that you demonstrate the steps, three steps, the turn and the returning [00:23:15.00] three steps back. So I would argue that there's been no evidence that [00:23:20.00] this was not completed correctly. With [00:23:25.00] the one leg stand. Again, I don't think that there's anything that [00:23:30.00] has been refuted, that it was not done correctly. And [00:23:35.00] in fact, the motion by the defendant is interestingly [00:23:40.00] saying that because there were no clues on it, the officer's [00:23:45.00] interpretation, selective interpretation of this result [00:23:50.00] demonstrates a prejudicial bias. I don't think there was any evidence for this [00:23:55.00] at all in the testimony today. The officer did testify [00:24:00.00] that there was one indication that could have been a possible clue on this, but it was [00:24:05.00] borderline. And he gave that benefit to the defendant in doing his analysis and [00:24:10.00] writing his report. Finally... And [00:24:15.00] I also think that any small deviations the the [00:24:20.00] defendant is arguing, even though it doesn't come out in the testimony, would go [00:24:25.00] to weight, not admissibility for this to the jury. And then finally, [00:24:30.00] with the chemical test, I think the most [00:24:35.00] attention was given here. First there was... the [00:24:40.00] officer testified that he is trained to administer this machine [00:24:45.00] that he checked, who went through all of the necessary checks with the machine prior to starting, [00:24:50.00] that Baker was completed and after Baker was completed [likely refers to the 15 min wait period], then they started [00:24:55.00] the test, and he stated that the test took multiple [00:25:00.00] blows because the defendant was unable to provide a sufficient sample. I [00:25:05.00] asked that if any way having the defendant doing multiple rows would raise or [00:25:10.00] lower the breath sample. He said no. And also that [00:25:15.00] the length of time was because the defendant was not [00:25:20.00] providing a sufficient breath sample for this. The [00:25:25.00] officer also said that he's not... there's not like a certain number... there's a minimum [00:25:30.00] number that's needed. But when the breath is being blown in, he's only seeing a [00:25:35.00] line indicating whether a sample has been met. And

then at that time, the machine would make [00:25:40.00] a noise. And so I don't think that there's been any indication... The defendant's [00:25:45.00] motion for test duration violations... largely [00:25:50.00] an article. And I [00:25:55.00] would argue that the duration was extended because [00:26:00.00] solely because the defendant's inability to provide a sufficiency. [00:26:05.00] And then also there's something with respect to the volume collection. Again, I [00:26:10.00] asked the officer if this has any implication on the results of the test. He said no. [00:26:15.00] There wasn't. When I asked the proffer about what [00:26:20.00] the defendant was arguing today, there was nothing about the PBT that was mentioned. So [00:26:25.00] the state didn't really focus a lot on that. I don't know that it's appropriate for argument. But [00:26:30.00] I am confused when the defendant said that he would have done a PBT if it [00:26:35.00] was offered, because we heard testimony that the officer stated that [00:26:40.00] he did ask the defendant if he wanted a PBT, and the defendant said he [00:26:45.00] was going to... that he was going to jail [00:26:50.00] because he'd been drinking and he was and was well over a little over the limit. And [00:26:55.00] so the PBT was not done. I also don't think that has any implication on the testing [00:27:00.00] at all. The chemical test. So I would argue [00:27:05.00] that none of these have been sufficiently addressed. Well, [00:27:10.00] the state addressed them and they haven't been refuted. [00:27:15.00] And so the court should deny the motion in its entirety.

[00:27:20.83] **Judge Hruby-Mills:** All [00:27:20.00] right. Thank you. Mr. Golub, anything further? [00:27:25.00]

[00:27:34.43] **Defendant Mr. Golub:** Yeah, [00:27:30.00] I [00:27:35.00] don't think. Not right now.

[00:27:38.19] **Judge Hruby-Mills:** I'm going to inquire, because one of the things that [00:27:40.00] really wasn't discussed today, but is part of your written motion [00:27:45.00] is the... your [00:27:50.00] request to suppress statements made prior to Miranda. [00:27:55.00] And we didn't... That.

[00:27:58.79] **Defendant Mr. Golub:** That's right. Yeah.

[00:28:00.27] **Judge Hruby-Mills:** Were [00:28:00.00] you pursuing that still?

[00:28:02.63] There's a there's a couple of things that I don't think [00:28:05.00] we went over, but yeah, the statements are a [00:28:10.00] big. A big part of... that motion [00:28:15.00] was also... claimed that there were there was no probable [00:28:20.00] cause as well, so they were inadmissible [unlcear]. And [00:28:25.00] then the defendant was absolutely in custody when [00:28:30.00] he was

arrested by two officers standing [00:28:35.00] on each side of him and asking them questions which [00:28:40.00] are, you know... Pretty early on in investigation, [00:28:45.00] and that counts as being detained. And [00:28:50.00] at that point, he should have been read his Miranda rights, and if not, then definitely [00:28:55.00] when he was in the car. If not in the car, then definitely when he was in the police Special [00:29:00.00] Ops Center.

[00:29:02.35] **Judge Hruby-Mills:** Is there some reason that you didn't address [00:29:05.00] that today through the evidence?

[00:29:08.11] **Defendant Mr. Golub:** There's just so much. And [00:29:10.00] I'm just trying to be as succinct as possible. So you [00:29:15.00] know, I... I just... Yeah. I just didn't get to it.
[00:29:20.00]

[00:29:21.39] Okay.

[00:29:21.87] **Prosecutor Dunkelman:** And, Your Honor, that's why I asked for a proffer [00:29:25.00] in the beginning. Because there was quite a bit. And so I don't [00:29:30.00] think argument as to that is appropriate because [00:29:35.00] I asked for a proffer. And so he didn't [00:29:40.00] choose to proceed with them.

[00:29:45.19] **Judge Hruby-Mills:** Anything [00:29:45.00] further?

[00:29:46.59] **Defendant Mr. Golub:** There's also that section [00:29:50.00] about the GRAMMA request in terms of trying [00:29:55.00] to make a case for inherent bias on the part of the officer since his [00:30:00.00] arrest-to-stop ratio is one in four, [00:30:05.00] which is about 25 times or 24 times higher [00:30:10.00] than the state average. And this isn't, this is just for DUI arrests...
[unintelligible] And [00:30:20.00] when I got to the latest data for this year. And [00:30:25.00] so it seems like there is a case to be made that because [00:30:30.00] the officer is so involved in making [00:30:35.00] so many DUI arrests on a pretty much daily [00:30:40.00] basis, that he cannot be a fair judge or [00:30:45.00] witness to a case that I believe has [00:30:50.00] a lot of anomalies. And I know that the defendant believes [00:30:55.00] that he was not driving under the influence. But because there was bias, he [00:31:00.00] was seen walking out of a bar, and the officer made a [00:31:05.00] conviction based on [00:31:10.00] bias versus the facts.

[00:31:15.87] **Prosecutor Dunkelman:** And Your Honor, I [00:31:15.00] don't think any of that is appropriate.

[00:31:18.43] **Judge Hruby-Mills:** Mr. Golub. What I'm trying [00:31:20.00] to get at is you didn't you didn't elicit evidence or testimony regarding that [00:31:25.00] today. Is that correct? Yes. Further [00:31:30.00] on that issue.

[00:31:35.95] **Prosecutor Dunkelman:** No, [00:31:35.00] Your Honor. I mean, I guess just to clarify, the State's position is that [00:31:40.00] the defendant is not permitted to make those arguments at this point or in the future because he [00:31:45.00] is... This was the opportunity, and I asked for that [00:31:50.00] proffer for this exact reason.

[00:31:52.27] **Judge Hruby-Mills:** And I don't know necessarily that [00:31:55.00] that's an argument made in, in your written filings that you don't address it. It's [00:32:00.00] not there anymore. However, this was [00:32:05.00] the opportunity for that evidence, these other arguments. And so [00:32:10.00] I'm just trying to get at whether or not you just chose not to go forward [00:32:15.00] on it. I know you're trying to be succinct, but some of these things are arguments that [00:32:20.00] don't have evidentiary support.

[00:32:22.19] **Defendant Mr. Golub:** Well, I think the GRAMA has... [00:32:25.00] the fact that I have...

[00:32:28.67] **Judge Hruby-Mills:** When you say GRAMA, did the [00:32:30.00] government's records...

[00:32:31.71] **Defendant Mr. Golub:** Yeah, right. So that's and I also [00:32:35.00] submitted that and I saw the paperwork for all of that. When [00:32:40.00] you say in the future, can I not make these arguments during the trial?

[00:32:46.27] **Judge Hruby-Mills:** Well, [00:32:45.00] again, the State is not here to give legal advice.

[00:32:49.99] **Defendant Mr. Golub:** Yeah, [00:32:50.00] but, I mean, can I make these arguments during the trial?

[00:32:53.19] **Judge Hruby-Mills:** I'm not gonna give you legal advice.

[00:32:53.47] All [00:32:55.00] right. Okay. Yes.

[00:32:57.79] **Judge Hruby-Mills:** So with regard to what I [00:33:00.00] have before me, though, on the motions... motion to suppress the [00:33:05.00] motion to dismiss. And again, there's a lot of nuanced arguments [00:33:10.00] in there, but based on what was presented today at the evidentiary hearing [00:33:15.00] on this I... again, trying to do it in the way that [00:33:20.00] you had outlined your proffer today... that [00:33:25.00] i do find that there was probable cause, reasonable-articulable [00:33:30.00] suspicion for the initial stop based on the [00:33:35.00] officer's observations. With that I... [00:33:40.00] Again, I'm not getting into too much into the Miranda issue, but [00:33:45.00] you were eventually mirandized. I am not aware of what specific statements that [00:33:50.00] you were concerned about. There's none of that was elicited during the [00:33:55.00] hearing today. Based on the basically unrefuted testimony [00:34:00.00] of the corporal with regard to the administration of the the [00:34:05.00] field sobriety test, they seem to be appropriately administered. Nothing [00:34:10.00] to suggest that there was anything inappropriate about that. And so they seem to be [00:34:15.00] valid based on his testimony and observations of that. [00:34:20.00] Similarly the administration of the Intoxilyzer seems to be unrefuted. [00:34:25.00] That was done consistent with [00:34:30.00] all appropriate standards. And so I don't see any reason to [00:34:35.00] suppress the outcome of that as well. And so with that, [00:34:40.00] I am denying the motion to suppress and the [00:34:45.00] motion to dismiss as well. And I... I guess you have [00:34:50.00] any questions about what might remain before we get trial [00:34:55.00] dates? Or are we in a situation to get trial dates.

[00:34:59.19] **Defendant Mr. Golub:** I don't have any questions [00:35:00.00] at this time.

[00:35:01.07] **Judge Hruby-Mills:** Okay, should we get trial dates, Counsel?

[00:35:03.51] **Prosecutor Dunkelman:** There's been an offer [00:35:05.00] in this case, so I'm fine... going forward with trial dates. [00:35:10.00] It's more of a defendant's preference.

[00:35:13.39] **Judge Hruby-Mills:** Do you want to give it, to be sent back for a [00:35:15.00] pretrial conference, or we can get trial dates?

[00:35:18.67] **Defendant Mr. Golub:** I'm not sure what... [00:35:20.00]

[00:35:21.03] **Prosecutor Dunkelman:** The change of plea to count one.

[00:35:23.67] **Defendant Mr. Golub:** Is that in [00:35:25.00] my case paperwork or where do I find that stuff?

[00:35:29.47] **Prosecutor Dunkelman:** I [00:35:30.00] can put it on the record.

[00:35:31.83] **Defendant Mr. Golub:** Because I don't remember getting any of [00:35:35.00] that.

[00:35:36.63] **Prosecutor Dunkelman:** I guess I'll just put the offer on the record and change of plea to count [00:35:40.00] one, which is the DUI, second and ten as charged with [00:35:45.00] a PSR sentencing.

[00:35:49.83] **Judge Hruby-Mills:** Mr. Golub, do [00:35:50.00] you want to accept that and or do you want to give it [00:35:55.00] some more thought?

[00:35:55.79] **Defendant Mr. Golub:** I would like to plead not guilty to the DUI. [00:36:00.00]

[00:36:01.51] **Judge Hruby-Mills:** Which is what you have.

[00:36:02.43] **Defendant Mr. Golub:** Yeah.

[00:36:03.95] **Judge Hruby-Mills:** So with that, [00:36:05.00] then do you want a pretrial conference date or do you want to get trial?

[00:36:12.67] **Defendant Mr. Golub:** Do you [00:36:10.00] have... do you guys have a preference?

[00:36:14.83] **Prosecutor Dunkelman:** I think [00:36:15.00] if he's not intending to take the offer the State doesn't intend on changing the [00:36:20.00] offer, so I think we should just set a trial date.

[00:36:23.68] **Judge Hruby-Mills:** Okay. Is it a two day trial? [00:36:25.00] At most?

[00:36:27.68] **Prosecutor Dunkelman:** At most, yeah.

[00:36:29.32] **Judge Hruby-Mills:** We pick our [00:36:30.00] jury in the morning, and then we begin trial. So we usually set everything for at least two weeks. Okay. [00:36:35.00] Is that enough time?

[00:36:37.56] **Defendant Mr. Golub:** Do I have the opportunity [00:36:40.00]to get... to participate in selecting the [00:36:45.00] jury at all? [Unclear]

[00:36:50.12] **Judge Hruby-Mills:** Yes. [00:36:50.00] That's your... you have all those obligations.

[00:36:54.20] **Defendant Mr. Golub:** Okay.

[00:36:55.68] **Judge Hruby-Mills:** So... [00:36:55.00]

[00:36:56.72] **Defendant Mr. Golub:** Sorry.

[00:36:56.88] **Judge Hruby-Mills:** Go ahead.

[00:36:57.72] **Defendant Mr. Golub:** Do I have to file a motion for witnesses or how [00:37:00.00] do I like...

[00:37:02.32] **Judge Hruby-Mills:** You'll need to look at the rules on how to [00:37:05.00]do that. And you can look at the court website to have [00:37:10.00] a look. Okay. [Prosecutor is laughing at a joke made by a colleague at her table i.e. not court proceedings] So with [00:37:15.00] that we'll look for some dates...

[00:37:19.80] **Prosecutor Dunkelman:** We just need the trial date, yeah. [00:37:20.00]

[00:37:20.12] **Judge Hruby-Mills:** [Judicial Assistant checks calendar. All pauses are the checking of the court calendar.] Calendar [00:37:35.00] is just... that's a long, [00:37:40.00] long time coming up here. So I [00:37:55.00] can set you over [00:38:00.00] the last trial, which is [00:38:05.00] a three week trial in March. Along with a number of other [00:38:10.00] matters. I said at the top of that, or we can look further out.

[00:38:14.28] **Defendant Mr. Golub:** Maybe a little bit further would [00:38:15.00] be nice.

[00:38:24.24] **Judge Hruby-Mills:** So whose case [00:38:20.00] will [00:38:25.00] this be [to the three prosecutors at the table].

[00:38:26.00] **Prosecutor Dunkelman:** The new attorney.

[00:38:28.24] **Judge Hruby-Mills:** The new person? Okay, so I'll be a new prosecutor at some point. So what about April 22nd and 23rd?

[00:38:36.44] **Defendant Mr. Golub:** Okay.

[00:38:41.16] **Judge Hruby-Mills:** All [00:38:40.00] right, so you would... There are four already set. One of those is in custody. So you're probably...

[00:38:54.40] **Prosecutor Dunkelman:** Your Honor...

[00:38:56.44] **Judge Hruby-Mills:** I was trying to...

[00:38:56.44] **Prosecutor Dunkelman:** I was... I just have the list, my going list in front of us. I have that there are two felonies in custody and three felonies out of custody.

[00:39:07.28] **Judge Hruby-Mills:** Okay. I only see one in custody, but nevertheless it's not here.

[00:39:13.32] **Prosecutor Dunkelman:** I have Thorton and Samuel Martindale is locked up for those felonies in custody.

[00:39:19.04] **Judge Hruby-Mills:** Okay. So you're likely not going to be the number one for the State. But that works for everyone. The 2nd and 23rd. Final pretrial conference will be [00:39:30.00] two weeks ahead. Only because I'm not going to have a calendar that prior week. So that'll be April [00:39:35.00] 7th at 1:00. I need to set of jury instructions no later than April 4th at 5:00.

[00:39:47.56] Any commence that wants to be noted, any cases specific here at that same time [Unclear]. [00:39:53.40] Does anyone anticipate further motion [00:39:55.00] practice or are we able to... are both parties able to certify that there will be no further pretrial [00:40:00.00] motions?

[00:40:01.08] **Prosecutor Dunkelman:** Your honor, there will be a 609 mode of notice from the state. Because [00:40:05.00] this is the second in ten.

[00:40:12.88] **Judge Hruby-Mills:** Okay. [00:40:10.00] Because that [00:40:15.00] doesn't necessarily mean there will be a motion associated with that. You're just [00:40:20.00] giving notice of that. Is that correct?

[00:40:22.36] **Prosecutor Dunkelman:** I guess so. It's [00:40:25.00] generally I get those in the same time filing as a motion cut off. I [00:40:30.00] don't... I think a motion would also be helpful.

[00:40:37.32] **Judge Hruby-Mills:** Okay. [00:40:35.00] So moving backwards. Let's put a [00:40:40.00] motion cut off for February 28th at 5:00. Any motions filed with [00:40:45.00] a request for hearing, request or evidentiary hearing? Something that gets triggered in our system [00:40:50.00] so that we can see it and hopefully before that final conference. [00:40:55.00] So that. February 28th. Thank you. Okay.