

## Corporal Ernstsens Cross-Examination

**Theme** — “The law requires proof beyond a reasonable doubt, not beyond an officer’s personal bias.”

1. Argument: After making a stop, CE doesn’t investigate DUIs—he’s already decided he is going to give one. He is highly biased.
  - Cite stop to arrest statistics
  - Ask him to repeat the line about “the smell of an alcoholic beverage from the vehicle.”
    - o Argue that instead of describing the reality of events, he uses a preconceived template to impose a DUI story onto the events.

## Officer Background & Bias

- “You didn’t see erratic or dangerous driving, correct?”
- “You didn’t follow NHTSA SFST instructions verbatim?”
- “Lighting, surface, and footwear all affect results — those factors were present, right?”
- “Calibration certificate didn’t match the exact test date?”
- “You questioned Mr. Golub before reading Miranda rights?”

**Purpose:** Suggest confirmation bias and lack of neutrality.

**Q:** Trooper Ernstsens, you’ve made many DUI arrests in your career, correct?

**Q:** And your performance evaluations sometimes note arrest numbers, right?

**Q:** You’ve been recognized for your DUI enforcement statistics before?

**Q:** You understand that more arrests can be viewed favorably by supervisors?

**Q:** In this case, from the moment you suspected DUI, you were looking for evidence to confirm that suspicion?

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## B. Initial Stop

**Purpose:** Highlight lack of erratic driving or objective impairment cues.

**Q:** You didn’t stop Mr. Golub for swerving or causing a traffic accident, correct?

**Q:** There was no report of dangerous driving from another motorist?

**Q:** The reason for the stop was [state specific reason, e.g., speeding slightly, minor infraction]?

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## C. Field Sobriety Tests (SFSTs)

**Purpose:** Show procedural deviation from NHTSA standards.

**Q:** You are trained in standardized field sobriety tests according to NHTSA, correct?

**Q:** Those standards require certain instructions to be given verbatim?

**Q:** You agree you did not give the exact NHTSA instructions in at least one of the tests?

**Q:** NHTSA guidelines also caution about uneven surfaces, lighting, and footwear — those factors were present here, weren’t they?

**Q:** You didn’t document checking for medical or physical conditions that could affect balance, did you?

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#### **D. Intoxilyzer Testing**

**Purpose:** Attack reliability if admitted.

**Q:** The Intoxilyzer requires a valid calibration certificate for the date of the test, correct?

**Q:** The certificates in evidence are from August 16 and September 19, 2023 — not the test date itself?

**Q:** You did not perform the calibration yourself?

**Q:** You did not verify the operator's certification before relying on the result?

**Q:** You are aware that certain substances, like cold medicines, can cause mouth alcohol interference?

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#### **E. Miranda & Statements**

**Purpose:** Suppress statements in jury's mind if admitted.

**Q:** You placed Mr. Golub in custody before reading Miranda rights, correct?

**Q:** You asked him questions before reading those rights?

**Q:** You were aware that anything obtained in violation of Miranda may be inadmissible?

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#### **Closing Cross Q:**

**Q:** Trooper, if procedures are not followed exactly, that can affect the reliability of the evidence, can't it?