

## **August 18 Jury**

### **Mr. Golub Account**

The facts (including inadmissible details that are only mentioned to give a full description of Mr. Golub's account of events): Mr. Golub was illegally stopped without probable cause. The video does not show Mr. Golub violating any traffic laws after being observed and followed by Corporal Ernstsen (CE). CE claims he can "see better than the camera" (see transcript). At the time, Mr. Golub had taught a 7 hr high school English class and a 2 hr long college Business English class. He was very tired, but had gone to Aces High to meet with a woman he'd done renovation work for in the summer. She wanted to give him some extra money for his work (as she didn't want to tip him in front of her husband). He showed up and while talking with the woman (Kay) about possibly doing more, he drank two Corona beers, and left. Kay was asked and declined to serve as a witness in the trial. She'd also warned Mr. Golub at the time that the reason all the street parking in front of the bar was free was because State Troopers regularly cruise State St. and target her clientele and everyone parks in the back. Mr. Golub chose to keep his spot saying that he didn't plan on drinking enough to reach a .08 BAC (mistakenly thinking this was the limit when in reality it is .05 in UT). After being stopped Mr. Golub was very nervous. He was not driving his car. He had to teach class at 7:15 a.m. and desperately wanted to go home which he conveyed to the officer. Mr. Golub complied with all instructions. He was given the SFST (with incomplete instructions), but "passed" the coordination part of the test; however, CE reported that Mr. Golub showed 6/6 signs on the horizontal gaze nystagmus which is a notoriously subjective and scientifically unverifiable metric. CE asked Mr. Golub if he wanted to take more tests (including a breath test). At this point, Mr. Golub was flanked by a second officer and felt scared for his safety as there had been recent incidents of police violence in the area, including the killing of Mr. Golub's old college friend, James Baker, who was shot point blank multiple times in a quiet and wealthy residential area where he lived. James was next to his home and was shoveling frozen snow off a bus bench. After refusing to cooperate with the investigation. Mr. Baker was killed in broad daylight. Tired and afraid, the two officers handcuffed Mr. Golub, put him in the back of CE's squad truck, and proceeded to search his mother's car. The point of contention here is whether Mr. Golub refused to take the PBT. Mr. Golub claims he never refused as he was never ordered to comply but whether he "wanted" to take the test. Mr. Golub had already been arrested under very similar circumstances when a trooper followed him from a parking lot down the street from Mr. Golub's house. He had gone down to pick up his girlfriend's car and drive it to his house. He was a block from his house and had driven two blocks. Then as in this case the Troopers claimed Mr. Golub failed to signal while changing lanes. When Mr. Golub pointed out that the two lanes merged and thus did not require a signal, the officers laughed and continued their investigation. Mr. Golub readily complied when told to take the PBT. But he was not given one in this case. The only physical evidence the State has is a single breath test gathered using the Intoxylizer 8000 (a notoriously unreliable machine that has been discontinued on mass in many states, see NYT article). There was no second test to corroborate the results. There was no blood draw, as there had been in the previous arrest. Mr. Golub claims that although he was exhausted and terrified, which did make him speak erratically at times, he could not have blown a .10. Mr. Golub should have requested a second test, but by that point he was not thinking or speaking clearly. Again the memory of his friend was foremost on his mind. This is an irrational thought that caused irrational behavior—he should have asked for a second test or a blood draw, since scientific and medical research shows that to blow a .10, Mr. Golub would have had to in the very least have had six drinks at the bar, which he vehemently claims he did not have.

Thus, the defense argument is that: 1) Mr. Golub did not break any traffic laws; 2) that the tests were misinterpreted and poorly administered; 3) the initial test was erroneous and a second test or a blood draw should have been performed; 4) CE stop to arret record shows an incredibly high DUI arrest record, nearly 24 times higher than the national average. The claim is that CE was motivated by bias, religious beliefs (he is a practicing member of the LDS church which demonizes any drinking of any alcohol), and extensive self-conditioning after developing the habit of arresting most of the people he stops. Although not in the record, after speaking with other attorney's the defense learned that CE has been asked to testify in many trials, some of which were either dismissed or resulted in a not guilty verdict resulting from CE's hasty and biased assumptions which led to the miscarriage of justice by CE. Despite his record, CE continues to be a pointman on the UT Highway Patrol's DUI task force which aggressively pursues the patrons of low-income bars and primarily arrests poor and low-income drivers who can neither afford a lawyer nor have the law explained to them in any satisfactory manner. The reason Mr. Golub is fighting the charges at this time is because he capitulated to the State's counsel in the previous case. When Mr. Golub argued that the google map (showing a merge where he was pulled over) and the video evidence would exonerate him, the state's defense attorney openly stated, "They'll just lie and make something up. Unless you can pay a 10k lawyer's fee, you're much better off pleading guilty." Mr. Golub pled guilty to "reckless driving" resulting from a traffic violation he did not make, having then as in this case not broken any traffic laws or shown any signs of inappropriate or dangerous driving.

The video shows the second officer arresting Mr. Golub, searching his car, and filing the paper work with the tow-truck driver. Yet he is entirely unnamed in the police report submitted by CE. During the search of the vehicle, CE calls Mr. Golub's car "disgusting" (a well-documented emotion of bias and prejudice).

Possible cross-examination questions:

- Where you the one who interacted with the towtruck driver?
- Where you the one who searched the vehicle?
- Do you recall the state of Mr. Golub's car? Did it look like the car of someone who was drinking? Was it filthy? Where there food items, fast food, etc.? Was there any dog hair or other animal remains that often make a car rather messy? Would you call the car filthy? Would you call the car "disgusting"? Quote CE "disgusting" comment.

**1. Make a list of Cross-Examination Questions**

**2. Make a list of Triggers and objections**

- **Trigger:** State plays dashcam/bodycam with your pre-Miranda statements, or asks officer to repeat them. **Objection Phrase:**

"Your Honor, I renew my objection to these statements on the grounds previously argued in my Motion to Suppress Statements — Fifth Amendment, Miranda, and custody without warnings."

(If overruled, say:)

"Objection noted for the record."

## I. PRE-AUGUST 18 CHECKLIST

- Review all case documents (see doc list)
- Verify what evidence can be used at trial
- Verify exhibit list
- **File documents:** i) motion to suppress BAC; ii) motion to suppress prior conviction; iii) motion to suppress statements;
- Lock in all objections and defenses in writing
- Witness list: does Golub need to be on list to testify?
- Prepare Trial briefs on key legal issues (e.g., probable cause thresholds, exclusionary rule, Miranda timing, Utah SFST standards).

## II. QUESTIONS

1. Can counsel use notes during hearings and trials?
2. Can everything submitted so far be used during the trial (e.g. information in motions)?
3. Can Mr. Golub testify if not on witness list?
4. If previous DUI is excluded, can it still be brought up by the Defense at trial?
5. Can Defense quote from motions?
6. Can Defense give summaries of motions to jury?
7. Can everything said prior to Miranda be excluded?

## III. DOCUMENTS DISCUSS AT PRETRIAL

- *Jury Instructions*
- *Witness List* — Should the second officer be added to the witness list? Could his testimony be used to contradict what Corporal Ernstsen said in his previous testimonies? Should Mr. Golub be included on witness list? How does a witness list look like?
- *Exhibit List and Logistics* — **Verify Demonstrative exhibits** — video, testimonies, visual aids showing dashcam timelines, distance and obstructions to officer's view, and Intoxilyzer operational guidelines. Officer's stop/arrest stats, and expert reports.
- *MIL #1* – Exclusion of Prior Conviction Evidence — Move to exclude Certified Conviction from 2019 as inadmissible propensity evidence under Utah R. Evid. 404(b) and unfairly prejudicial under Rule 403.
- *MIL #2* – Exclusion of Intoxilyzer Result — Move to exclude Intoxilyzer 8000/9000 results if foundation can't be laid for proper operation, calibration (August 16 vs. September 19 certifications), and operator training per Utah Admin. Code R714-500
- *MIL #3* – Exclusion of Statements made prior to Miranda
- **Renew prior suppression arguments** from B.motion\_1, B.motion\_2, B.motion\_3 to preserve them for appeal. **What does “preserve them for appeal” mean?**

## IV. DOCUMENTS TO FILE

1. **Exhibit List?**
2. **Witness List** —make sure witnesses are formally disclosed. Should the second officer be added to the witness list? Could his testimony be used to contradict what Corporal Ernstsen said in his previous testimonies? Should Mr. Golub be included on witness list? How does a witness list look like?
3. **MIL #1** – Exclusion of Prior Conviction Evidence  
Move to exclude Certified Conviction from 2019 as inadmissible propensity evidence under Utah R. Evid. 404(b) and unfairly prejudicial under Rule 403.
4. **MIL #2** – Exclusion of Intoxilyzer Result  
Move to exclude Intoxilyzer 8000/9000 results if foundation can't be laid for proper operation, calibration (August 16 vs. September 19 certifications), and operator training per Utah Admin. Code R714-500.
5. **MIL #3** – Exclusion of Statements made prior to Miranda
6. **Jury Instructions (Voir Dire)**

What should I discuss regarding the filed Jury instructions? Should I change anything in the already filed Jury instructions?

Mr. Golub's Account of the events of September 6, 2023.

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