

Court and Video Transcripts

Hearing I, May, 29 2024; Hearing II, December 31, 2024

Video I-VIII (Bodycam and Dashcam of the Arresting Officers)

Case # 23590070

I. Transcripts presented in this document:

Transcript I: Hearing I
Transcript II: Hearing II
Transcript III: Ernstsens Bodycam
Transcript IV: Ernstsens Dashcam
Transcript V: Trooper 2 Bodycam
Transcript VI: Trooper 2 Dashcam

Audio recordings of court hearings: 1) May 29, 2024 Hearing (sender: Melissa Lepore, melissaal@utcourts.gov); 2) December 31, 2024 Hearing (sender: Elizabeth Foster, elizabethaf@utcourts.gov)

- 1_SLCCRTW47_20240529-0947_01dab1ad335c5a80
- 2_Part_1_SLCCRTW47_20241231-1205_235900706 pt1
- 2_SLCCRTW47_20241231-1430_235900706pt2

Officer Videos (~8 hrs) of Trooper 2 & Corporal Ernstsens—Dashcam, Bodycam, and Car cam Videos (sender: Salt Lake County District Attorney (<https://saltlakeda.evidence.com>), June 5, 2024)

- 23.020064 / 162300485 / 235900706 - GOLUB, PETER
Contact Peterson, Terry (Badge ID: tlpeterson@saltlakecounty.gov, Agency: Salt Lake County (UT) District Attorney) for access.

I. Hearing, May 29, 2024

Transcript: State of Utah vs. Peter Golub; Hearing May 29, 2024
(Case No. 235900706); transcribed by Peter Golub

[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 Ernsten?

[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 Ernsten] 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] **Trooper Ernsten:** 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] **Trooper Ernsten:** It's Brock. Brock E r [00:09:25.00] n s t s e n.

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

[00:09:31.39] **Trooper Ernsten:** 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] **Trooper Ernsten:** 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] **Trooper Ernsten:** 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] **Trooper Ernsten:** 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] **Trooper Ernstsens:** 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] **Trooper Ernstsens:** 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] **Trooper Ernstsens:** 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] **Trooper Ernstsens:** 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] **Trooper Ernstsens:** 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] **Trooper Ernstsens:** 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] **Trooper Ernstsens:** 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] **Trooper Ernstsens:** Yes.

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

[00:12:32.45] **Trooper Ernstsens:** Yes.

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

[00:12:35.45] **Trooper Ernstsens:** 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] **Trooper Ernstsens:** 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] **Trooper Ernstsens:** I was, yes. [00:12:50.00]

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

[00:12:52.09] **Trooper Ernstsens:** 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] **Trooper Ernstsens:** 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] **Trooper Ernstsens:** 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] **Trooper Ernstsens:** 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] **Trooper Ernstsens:** 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] **Trooper Ernstsens:** 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] **Trooper Ernstsens:** 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] **Trooper Ernstsens:** 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] **Trooper Ernstsens:** 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] **Trooper Ernstsens:** 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] **Trooper Ernstsens:** 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] **Trooper Ernstsens:** 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] **Trooper Ernstsens:** 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] **Trooper Ernstsens:** 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] **Trooper Ernstsens:** 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] **Trooper Ernstsens:** 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] **Trooper Ernstsens:** 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] **Trooper Ernstsens:** I did.

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

[00:18:00.62] **Trooper Ernstsen:** 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] **Trooper Ernstsen:** 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] **Trooper Ernstsen:** 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] **Trooper Ernstsen:** 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] **Trooper Ernstsen:** 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] **Trooper Ernstsen:** 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] **Trooper Ernstsen:** 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] **Trooper Ernstsens:** 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] **Trooper Ernstsens:** 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] **Trooper Ernstsens:** 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] **Trooper Ernstsens:** 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] **Trooper Ernstsens:** 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] **Trooper Ernstsens:** 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] **Trooper Ernstsens:** 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] **Trooper Ernstsens:** 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] **Trooper Ernstsens:** 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] **Trooper Ernstsens:** 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] **Trooper Ernstsens:** 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] **Trooper Ernstsens:** 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] **Trooper Ernstsens:** 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] **Trooper Ernstsens:** 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] **Trooper Ernstsens:** 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] **Trooper Ernstsens:** 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] **Trooper Ernstsens:** 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] **Trooper Ernstsens:** 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] **Trooper Ernstsens:** Six.

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

[00:23:59.47] **Trooper Ernstsens:** 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] **Trooper Ernstsens:** 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] **Trooper Ernstsens:** 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] **Trooper Ernstsens:** 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] **Trooper Ernstsens:** 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] **Trooper Ernstsens:** 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] **Trooper Ernstsens:** 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] **Trooper Ernstsens:** 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] **Trooper Ernstsens:** 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] **Trooper Ernstsens:** 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] **Trooper Ernstsens:** 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] **Trooper Ernstsens:** 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] **Trooper Ernstsens:** 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] **Trooper Ernstsens:** 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] **Trooper Ernstsens:** 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] **Trooper Ernstsens:** 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] **Trooper Ernstsens:** Yes.

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

[00:29:44.99] **Trooper Ernstsens:** 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] **Trooper Ernstsens:** 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] **Trooper Ernstsens:** Four.

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

[00:30:28.63] **Trooper Ernstsens:** 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] **Trooper Ernstsens:** 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] **Trooper Ernstsens:** 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] **Trooper Ernstsens:** 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] **Trooper Ernstsens:** 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] **Trooper Ernstsens:** 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] **Trooper Ernstsen:** 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] **Trooper Ernstsen:** 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] **Trooper Ernstsen:** 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] **Trooper Ernstsen:** 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] **Trooper Ernstsen:** 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] **Trooper Ernstsen:** 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] **Trooper Ernstsen:** 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] **Trooper Ernstsen:** 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] **Trooper Ernstsens:** 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] **Trooper Ernstsens:** 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] **Trooper Ernstsens:** While [00:34:00.00] we were in the vehicle?

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

[00:34:04.29] **Trooper Ernstsens:** 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] **Trooper Ernstsens:** 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] **Trooper Ernstsens:** 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] **Trooper Ernstsens:** 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] **Trooper Ernstsens:** 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] **Trooper Ernstsens:** 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] **Trooper Ernstsens:** 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] **Trooper Ernstsens:** 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] **Trooper Ernstsens:** 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] **Trooper Ernstsens:** 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] **Trooper Ernstsens:** 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] **Trooper Ernstsens:** 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] **Trooper Ernstsen:** 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] **Trooper Ernstsen:** 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] **Trooper Ernstsen:** 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] **Trooper Ernstsen:** 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] **Trooper Ernstsens:** 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] **Trooper Ernstsens:** 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] **Trooper Ernstsens:** 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] **Trooper Ernstsens:** 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] **Trooper Ernstsens:** 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] **Trooper Ernstsens:** 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] **Trooper Ernstsens:** .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] **Trooper Ernstsens:** 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] **Trooper Ernstsen:** 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] **Trooper Ernstsen:** 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] **Trooper Ernstsen:** 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] **Trooper Ernstsen:** 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] **Trooper Ernstsen:** 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] **Trooper Ernstsen:** 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] **Trooper Ernstsen:** 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] **Trooper Ernstsens:** 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] **Trooper Ernstsens:** 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] **Trooper Ernstsens:** 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] **Trooper Ernstsens:** 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] **Trooper Ernstsens:** 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] **Trooper Ernstsen:** 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] **Trooper Ernstsen:** 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] **Trooper Ernstsen:** 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] **Trooper Ernstsen:** 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] **Trooper Ernstsen:** 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] **Trooper Ernstsen:** 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] **Trooper Ernstsen:** 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 Ernstsen:** 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] **Trooper Ernstsen:** 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] **Trooper Ernstsen:** 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] **Trooper Ernstsen:** 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] **Trooper Ernstsen:** 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] **Trooper Ernstsen:** 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] **Trooper Ernstsen:** 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] **Trooper Ernstsen:** 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] **Trooper Ernstsen:** 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] **Trooper Ernstsen:** 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] **Trooper Ernstsen:** Yeah. [00:56:05.00]

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

[00:56:13.36] **Trooper Ernstsen:** 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] **Trooper Ernstsen:** 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] **Trooper Ernstsen:** 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] **Trooper Ernstsen:** 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] **Trooper Ernstsen:** 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] **Trooper Ernstsen:** It [00:59:15.00] should take only a few seconds, but the defendant would 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] **Trooper Ernstsen:** 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] **Trooper Ernstsen:** 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?

