

**THIRD JUDICIAL DISTRICT - SALT LAKE COUNTY DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH**

STATE OF UTAH
Plaintiff,

**EMERGENCY MOTION
TO SUBMIT REAL JURY INSTRUCTIONS**

v.

PETER GOLUB,
Defendant.

Case No: 235900706

Judge: ELIZABETH A. HRUBY-MILLS

Date: August 18, 2025

(1) PRESUMPTION OF INNOCENCE AND BURDEN OF PROOF

The defendant, Peter Golub, is presumed innocent of the crime charged. This presumption follows the defendant throughout the trial. The prosecution always has the burden of proving each and every element of the crime charged beyond a reasonable doubt. The burden never shifts to the defendant to call any witnesses, produce any evidence, or disprove any element of the crime charged.

Authority: Utah Code Ann. § 76-1-501.

(2) REASONABLE DOUBT STANDARD

A defendant is presumed innocent until proven guilty. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. There are very few things in this world that we know with absolute certainty, and in criminal cases the law does not require proof that overcomes every possible doubt. If, based on your consideration of the evidence, you are firmly convinced that the defendant is guilty of the crime charged, you must find him guilty. However, if you think there is a real possibility that he is not guilty, you must give him the benefit of the doubt and find him not guilty.

Authority: State v. Reyes, 2005 UT 33, ¶ 30, 116 P.3d 305; Utah Model Jury Instructions CR103, "Proof Beyond a Reasonable Doubt"

(3) ELEMENTS OF DRIVING UNDER THE INFLUENCE

Before you can find the defendant guilty of Driving Under the Influence of Alcohol, the prosecution must prove each of the following elements beyond a reasonable doubt: i) That on or about September 6, 2023; ii) In Salt Lake County, State of Utah; iii) The defendant, Peter Golub; iv) Operated a motor vehicle; That Mr. Golub either:

- (a) Had sufficient alcohol in his body that a subsequent chemical test revealed a blood or breath alcohol concentration of .05 grams or greater at the time of the test;**
- OR**
- (b) Was under the influence of alcohol to a degree that rendered him incapable of safely operating a vehicle.**

If the prosecution has failed to prove any one or more of these elements beyond a reasonable doubt, you must find the defendant not guilty. If the prosecution has proven all of these elements beyond a reasonable doubt, you may find the defendant guilty.

NB: Even if a chemical test shows a *breath alcohol* concentration of .05 grams or greater within two hours of the alleged operation, there is no automatic presumption that the defendant's *blood alcohol* level is or was at or above that level. Breathe tests are less accurate resulting from contamination and technical issues with the Intoxylizer machine. The validity and accuracy of any one breathe test should in the very least be corroborated with a second breathe test, and typically a blood draw is done to ensure the physical evidence (i.e. the sample on which the case rests) is still present. Not only are blood tests far more accurate, breathe tests are literally “gone with the wind” and cannot be reassessed or revaluated.

Authority: Utah Code Ann. § 41-6a-502; Utah Model Jury Instructions CR1003-CR1005; State v. Preece (establishing that breath test results can be challenged and there is no presumption of guilt based solely on timing of test).

(4) CONSUMPTION VERSUS IMPAIRMENT DISTINCTION

The mere consumption of alcohol is not itself a crime. It is not illegal to drive after consuming alcohol so long as the driver is not impaired to a degree that renders him incapable of safely operating a vehicle, or the driver's blood alcohol concentration is below the legal limit of .05 grams or greater.

Therefore, the fact that a person may have consumed alcohol prior to driving, standing alone, is not sufficient to establish guilt of Driving Under the Influence. The prosecution must prove beyond a reasonable doubt either that:

1. The defendant was actually impaired by alcohol to a degree that rendered him incapable of safely operating a vehicle; OR
2. The defendant had a blood or breath alcohol concentration of .05 grams or greater at the time of the test.

Authority: Utah Code Ann. § 41-6a-502 (statutory)

(5) REASONABLE SUSPICION STANDARD FOR DUI STOPS

Before a law enforcement officer may stop a vehicle for suspected driving under the influence, the officer must have reasonable articulable suspicion that the driver is impaired or has committed a traffic violation.

Reasonable suspicion means that the officer must be able to point to specific, objective facts that would lead a reasonable person to believe that criminal activity may be occurring. The officer's suspicion must be based on more than mere speculation, hunch, or intuition.

When evaluating whether reasonable suspicion existed for a DUI stop, you should consider:

- **Driving patterns observed:** Whether the defendant's driving exhibited specific behaviors that suggest impairment, such as weaving, swerving, erratic speed, or failure to maintain lane position;

- **Traffic violations:** Whether the defendant committed observed traffic violations that provided lawful justification for the stop;
- **Objective observations:** Whether the officer observed specific, articulable facts that would suggest impairment to a reasonable person;
- **Duration and nature of observation:** How long the officer observed the defendant's driving and under what conditions.

Important limitations:

- An officer may not stop a vehicle based solely on the time of day, the location of the driving, or the type of establishment the driver may have visited;
- The officer's subjective belief or "hunch" that someone is impaired, without objective supporting facts, is insufficient to justify a stop;
- The fact that a person was driving near or leaving an establishment that serves alcohol, by itself, does not create reasonable suspicion of impairment;
- A seizure cannot be made based on an uncorroborated anonymous tip.

Additionally, you should consider:

- Whether the defendant was improperly seized when officers held his driver's license for an extended period;
- Whether the defendant was improperly seized when officers separated him from his vehicle;
- Whether officers exceeded the scope of what was necessary for officer safety during a routine traffic stop.

If you find that the initial stop was not supported by reasonable suspicion, or that the scope of the stop was improperly expanded, you should consider that fact in determining what weight, if any, to give to evidence obtained as a result of that stop.

Authority: State v. Rodriguez, 854 P.2d 1292 (Utah 1993); U.S. Constitution Amendment IV; Utah Constitution Article I, Section 14; U.S. v. Lambert (seizure during extended license retention); U.S. v. Buchanan (seizure when separated from vehicle); Knowles v. Iowa (search limitations in routine traffic stops).

(6) SCIENTIFIC EVIDENCE RELIABILITY STANDARDS

When evaluating scientific evidence, including chemical tests and field sobriety tests, you should consider:

- Whether proper procedures were followed in conducting the test;
- Whether the person conducting the test was properly trained and certified;
- Whether proper scientific protocols were observed;
- Whether the testing equipment was functioning properly and properly maintained;
- Whether there are known error rates or limitations to the testing methodology;
- Whether the results of the test are consistent with other evidence in the case;
- Whether environmental or physical conditions may have affected the accuracy of the results.

If you determine that proper scientific procedures were not followed, or that the reliability of the test is compromised for any reason, you should consider that fact in determining how much weight, if any, to give to that evidence.

Authority: Utah's NHTSA compliance requirements or Utah Administrative Code provisions; State v. Rimmasch, 775 P.2d 388, 396-99 (Utah 1989); State v. Crosby, 927 P.2d 638, 642 (Utah 1996).

(7) FIELD SOBRIETY TEST EVALUATION

You have heard evidence about field sobriety tests, including the Horizontal Gaze Nystagmus (HGN) test, the Walk-and-Turn test, and the One-Leg Stand test. These tests are designed to be administered according to standardized procedures established by the National Highway Traffic Safety Administration (NHTSA).

When evaluating the results of these tests, you should consider:

- Whether the tests were administered in accordance with standardized procedures;

- Whether the officer provided clear and complete instructions;
- Whether the testing conditions (such as weather, terrain, lighting, footwear, or passing traffic) may have affected the defendant's performance;
- Whether any physical conditions, injuries, medical conditions, fatigue, or medications may have affected the defendant's performance; and
- Whether the officer's interpretation of the results was objective and consistent with established standards.

If you determine that a field sobriety test was not administered properly or that other factors may have affected the defendant's performance, you should consider those facts in determining how much weight, if any, to give to that evidence.

Authority: State v. Layman, 953 P.2d 782, 786 (Utah 1998); National Highway Traffic Safety Administration Standards; Salt Lake City v. Garcia, 912 P.2d 997 (Utah Ct. App. 1996); State v. Homan, 89 Ohio St. 3d 421, 732 N.E.2d 952 (2000).

(8) BREATH TESTING PROCEDURAL REQUIREMENTS

You have heard evidence about a breath test administered using an Intoxilyzer device. When evaluating the results of this test, you should consider: i) Whether the device was properly calibrated, maintained, and certified according to Utah Administrative Code requirements; ii) Whether the test was administered by a properly certified operator; iii) Whether proper procedures were followed in administering the test, including:

- Observation of the defendant for the required time period prior to testing to ensure no foreign substances were introduced into the mouth;
- Proper collection of an adequate breath sample;
- Following manufacturer's guidelines for test administration;
- Whether any factors may have affected the accuracy of the results, such as:
- The physiological condition of the defendant;

- Any medications or medical conditions;
- Environmental factors at the time of testing.

If you determine that proper procedures were not followed in administering the breath test, or that other factors may have affected the accuracy of the results, you should consider those facts in determining how much weight, if any, to give to that evidence.

Critical requirements for breath test validity:

- Before any breath test result can be introduced as evidence, the prosecution must provide evidence that the Intoxilyzer machine was working properly, including affidavits or witness testimony regarding proper calibration and maintenance;
- Officers must observe the defendant for a full 15 minutes prior to administering the breath test (the "Baker Test" requirement);
- If the defendant had gum, burped, vomited, or introduced any foreign substance into their mouth before or during the observation period, the validity of the test is compromised and the officer must restart the 15-minute observation period.

If you determine that proper procedures were not followed in administering the breath test, that the required 15-minute observation period was not properly conducted, or that other factors may have affected the accuracy of the results, you should consider those facts in determining how much weight, if any, to give to that evidence.

Authority: Murray City v. Hall, 663 P.2d 1314, 1319 (Utah 1983) (requiring evidence of proper machine function); Utah Administrative Code Rule R714-500; Salt Lake City v. Womack (15-minute observation period requirement).

(9) OFFICER TESTIMONY EVALUATION

The testimony of a law enforcement officer should be evaluated in the same manner as the testimony of any other witness. The fact that a witness is employed as a law enforcement officer does not mean that his or her testimony is necessarily deserving of more or less consideration than

that of any other witness. It is your decision, after reviewing all the evidence, whether to accept or reject the testimony of the officer and to determine what weight, if any, this testimony should be given in light of all other evidence in the case.

In evaluating any witness's testimony, you should consider:

- The witness's opportunity to observe the events about which he testified;
- The witness's training and experience;
- The consistency of the witness's testimony with other evidence in the case;
- Any potential bias or interest the witness might have;
- The witness's demeanor on the witness stand.

Authority: State v. Perea, 2013 UT 68, ¶ 32, 322 P.3d 624; Utah Model Jury Instructions CR206.

(10) ALTERNATIVE EXPLANATIONS FOR PHYSICAL INDICATORS

You may hear evidence about physical signs or indicators observed by the officer, such as bloodshot eyes, odor of alcohol, slurred speech, or balance issues. Even if these indicators were consistent with alcohol impairment, they may also be caused or explained by other factors, such as:

- Fatigue or sleep deprivation;
- Stress or nervousness;
- Medical conditions;
- Weather conditions;
- Physical exertion;
- Over-the-counter or prescription medications;
- Language or speech differences.

The presence of these physical indicators, standing alone, is not sufficient to establish impairment beyond a reasonable doubt. You should consider all possible explanations for these indicators in light of all the evidence presented.

Worwood establishes that physical indicators alone are insufficient. The Utah Supreme Court noted that "Worwood's bloodshot eyes and slurred speech and the smell of alcohol did not provide sufficient trustworthy information for Wright to conclude that Worwood had exceeded the legal alcohol limit."

Authority: State v. Worwood, 2007 UT 47, 164 P.3d 397.

(11) EVALUATING CONTRADICTIONARY EVIDENCE

If you hear evidence that appears to be contradictory or inconsistent, it is your responsibility as jurors to determine the facts from the evidence presented. In resolving any inconsistencies or contradictions in the evidence, you should consider:

- Whether physical evidence, such as video recordings, contradict verbal testimony;
- Whether a witness's testimony is consistent with his prior statements;
- Whether a witness's testimony is consistent with other established facts;
- The witness's opportunity to observe the events about which he testified;
- The witness's ability to recall those events accurately; and
- The witness's demeanor on the stand.

When evidence conflicts, you are not required to accept the testimony of a greater number of witnesses against that of a lesser number of witnesses. The test is not which side brings the greater number of witnesses or presents the greater quantity of evidence, but which witnesses and which evidence appeal to your minds as being most accurate and otherwise trustworthy.

Authority: MUJI 2d CR210 "Direct/Circumstantial Evidence"; State v. Gallegos, 2009 UT 42, ¶ 33, 220 P.3d 136.

(12) DEFENDANT'S RIGHT NOT TO TESTIFY

The defendant has a constitutional right not to testify. The fact that the defendant did not testify must not be considered by you as any indication of guilt, and you should not be influenced in any way by his decision not to testify.

Authority: Utah Constitution Article I, Section 12: "The accused shall not be compelled to give evidence against himself or herself." U.S. v. Mitchell (privilege against self-incrimination retained through sentencing).