

Pretrial Preparation
September 22, 2025

To do: 1) print off poster; 2) get photographs of car; 3) ask ppl to show up to trial; 4) try and witness real trial; 5) take trial class; 6) compile transcripts, articles, etc. for arguments.

Defense Agenda: The purpose of this document is to prepare the Defense for every aspect of the Pretrial. This document details every aspect of the pretrial and prepares the Defense for every argument, counter argument, and contingency. This document contains four parts: **I. Pretrial outline;** **II. Defense Strategy;** **III. Script;** **IV. List of Key Terms, Concepts, Phrases, and Procedures.**

I. PRETRIAL OUTLINE

This outline names Defense's main pretrial agendas segment by segment, and concisely summarizes each segment of the pretrial. For each pretrial segment, this outline names the Defense's goals and strategies. Every segment of the trial should be named. This outline serves as the framework for the second section of this document, "Defense Strategy." It should be memorized by the Defense. The Defense should be able to discuss every segment of the pretrial, regardless of the order or context of their appearance.

II. DEFENSE STRATEGY

This section describes the Defense's Strategy agenda by agenda. This section should give a thorough and detailed description of every aspect of the Defense's strategy, every argument, objection, counter argument, issue, etc. It should be memorized by the defense.

- A. Motions:**
 - i. exclude prior conviction;
 - ii. exclude Intoxilyzer results;
 - iii. exclude statements—no Miranda;
 - iv. provide 5th supplemental
- B. Witness List**
- C. Exhibit List**
- D. Jury Instruction**
- E. Voir Dire**
- F. Terms, Concepts, and Phrases**
- G. State's Most Likely Responses**

III. SCRIPT

The Outline is the framework for the Pretrial. The script is a hypothetical iteration of that Outline, segment by segment, issue by issue, argument by argument. Though it is impractical to include every possible iteration, each scripted segment covers the most likely proceedings of the pretrial. Each segment of the script should be memorized by the Defense.

IV. CHEAT SHEET: LIST OF KEY TERMS AND PROCEDURES

Alphabetized and annotated list of key concepts, phrases, and words.

PART I: OUTLINE [please insert outline here]

PART II: DEFENSE STRATEGY

NB: *After each adverse rulings say:* "Your Honor, I respectfully preserve this issue for appeal and request specific findings on the constitutional questions raised."

A. MOTIONS STRATEGY

I. EXCLUDE PRIOR CONVICTION

- **Legal Basis:** Utah Rules of Evidence 404(b) (prohibiting propensity evidence) and 403 (balancing test for unfair prejudice).
- **Factual Basis:** The prior conviction is for a different offense, resolved by a plea. It has no bearing on whether Mr. Golub was impaired on September 6, 2023. The State's own exhibit list and jury instructions reveal their intent to use this for the bifurcated enhancement phase, proving they know it is inadmissible during the guilt phase of the trial.
- **Purpose:** To ensure the jury decides this case on the facts alone. We prevent them from being poisoned against Mr. Golub before the trial even starts. This is a clean, procedural win that establishes a command of the rules from the outset.
- **Opening Statement:**

"Your Honor, the Defense moves to exclude Mr. Golub's 2019 reckless driving conviction. The State's attempt to introduce Mr. Golub's 2019 "reckless driving" plea is an illegal character attack. Its only purpose is to tell the jury, "He is a bad driver who has been in trouble before, so he must be guilty now." This is precisely what Rule 404(b) was written to prevent. The prejudice is overwhelming and its actual probative value on the facts of the current DUI charge is zero.

The prior act has no bearing on any element of the current DUI charge. It does not prove identity, knowledge, or absence of mistake. Its sole effect is to create unfair prejudice, suggesting to the jury that if he drove recklessly once, he must have driven drunk this time. This is precisely the kind of reasoning the rules of evidence are designed to prevent.

The prejudice of admitting this prior act would outweigh any conceivable probative value that it must be excluded under Rule 403. The proper procedure, if it becomes relevant at all, is in a bifurcated sentencing phase after, and only after, a guilty verdict. We ask the Court to grant the motion and forbid any mention of prior convictions during the guilt phase of the trial.

Therefore, under Rule 403, any minimal probative value is substantially outweighed by unfair prejudice."

- **Prosecution Objections and Defense Counters:**

- a. Prosecution objection: Enhancement element under 41-6a-502.5

Prosecution: "Your Honor, the prior conviction is essential to establish this as a second-offense DUI under Utah Code 41-6a-502. The jury must understand the enhanced penalties the defendant faces."

Defense Counter: "Respectfully, Your Honor, no enhancement is charged in the Information. This is prosecuted as a standard misdemeanor DUI. Under Rule 404(b), prior convictions can't be used to prove propensity. The State can establish enhancement at sentencing only after conviction."

- **Judge's Possible Rulings:**

- Probable: "I'll exclude the prior conviction during the guilt phase but allow the State to introduce it for sentencing purposes if there's a conviction."
- Less Probable:
- Least Probable:

- **Defense final comments on the issue:**

"Your Honor, I respectfully preserve this issue for appeal and request specific findings on the constitutional questions raised."

II. EXCLUDE INTOXYLIZER EVIDENCE

- **Legal Basis:** Failure to lay a proper foundation for scientific evidence under Utah Administrative Code R714-500 and the reliability standards established in cases like *Murray City v. Hall*.
- **Factual Basis:** The 0.104 BrAC result is not science; it is the product of a procedurally flawed and coercive test performed on an unverified machine. The State cannot prove the result is reliable, and therefore it is inadmissible as a matter of law.
 - *Improper Administration:* The officer forced a continuous 140-second blow, a 700% deviation from the 12-20 second NHTSA protocol. This is known to cause hyperventilation and artificially inflate BrAC results.
 - *Lack of Valid Certification:* The State has produced certifications from August 16 and September 19, 2023. Neither is valid for the test date of September 6. Without a valid certification for the day in question, the machine's accuracy is legally uncorroborated.
- **Purpose:** To remove the State's only piece of objective-seeming evidence. Without the 0.104 number, the State's case collapses into nothing more than the subjective, biased, and contradictory observations of a single officer, which the Defense will systematically dismantle at trial.
- **Opening Statement:**

Your Honor, the State's Intoxilyzer result is inadmissible as a matter of law because the State cannot lay the required foundation to prove its reliability. The test was administered in a manner that flagrantly violates Utah's own *scientific protocols*, on a machine with no valid certification for the date in question.

First, the administration of the test was procedurally problematic. Utah Administrative Code R714-500 exists to ensure reliability. *The rule states that a proper test consists of the collection of a "deep lung air" sample i.e. one full blow.* The machine is designed to accept a sample consisting of one "lung full of air," delivered in a steady, continuous blow of **12 to 20 seconds**. The video evidence shows Trooper Ernstsen coercing a breath sample for nearly 140 seconds—a 700% deviation from the standard protocol. This is not a minor variance; it is a different test altogether, one known to produce artificially high results due to hyperventilation. A result obtained in this manner is scientifically invalid. **Ernstsen** did not conduct the test according to protocol. He subjected Mr. Golub to a nearly **140-second ordeal**. This is not a "breath test" as defined by the rule; it is a stress test that induces hyperventilation, a condition known to artificially inflate the alcohol concentration in expired air (cite). Thus, this was not a scientific procedure but a coercive act designed to produce an inflated number to justify an arrest.

Second, the State has failed to produce a valid certification for the Intoxilyzer machine for September 6, 2023, the date of the test. Without a valid certification, the machine is legally presumed to be unreliable. A test from an uncertified machine has no place in a court of law. The State has provided certifications for the machine from **August 16** and **September 19**. Mr. Golub's test was on **September 6**. They have provided no evidence that the machine was properly certified on the day they used it to take away your client's liberty. You will argue that a certificate from three weeks prior is legally meaningless. For all we know, the machine could have been dropped, malfunctioned, or become uncalibrated in the intervening 21 days. The State has failed to prove this link in the chain.

Your Honor, R714-500 is the State's promise to this Court that when it presents a number from a machine, that number is the product of reliable science. For that promise to be kept, the State must prove three things:

1. a certified machine
2. a certified operator
3. a certified procedure.

In this case, they have failed on at least two of the three requirements.

They have failed to provide a valid certification for the machine on the date of the test. That breaks the first link in the chain of reliability.

And their officer, through his own actions documented on video, failed to follow the mandatory procedure for collecting a sample. He broke the third link by forcing a 140-second blow that bears no resemblance to the scientific protocol required by Utah law.

Because the State broke its own rules, it has broken its promise of reliability. The resulting number is not evidence; it is a product of speculation and coercion, and it must be excluded.

Therefore, since the procedure falls outside the prescribed test length and the machine's accuracy is unverified, the State cannot meet its foundational burden. The result is inadmissible, and the Defense asks the Court to exclude it.

- **Prosecution Objections and Defense Counters:**

Prosecution: "This is the central piece of evidence against Mr. Golub, and the Defense has already filed a motion to have it excluded and you, Your Honor, ruled there was not enough evidence to exclude the Intoxylizer result. This motion is unnecessary and a waste of the court's time."

Defense: "The problem with the Intoxylizer result is that there's a 22-day gap between certificates. This is not minor deviation, and even a possible statutory violation. There is no proof that the machine was functioning properly on the night of September 6, 2023."

- **Judge's possible rulings:**

- Probable: "I'll exclude the prior conviction during the guilt phase but allow the State to introduce it for sentencing purposes if there's a conviction."
- Less Probable:
- Least Probable:
- **Final comments:** "Your Honor, I would like to preserve BAC challenges for the trial. I respectfully preserve this issue for appeal and request specific findings on the constitutional questions raised."

III. MIRANDA

- **Legal Basis:** The (1) *Fifth Amendment* as interpreted by (2) *Miranda v. Arizona*. The key is the definition of "custodial interrogation. Under (3) *Berkemer v. McCarty*, roadside questioning becomes custodial when a reasonable person wouldn't feel free to leave
- **Factual Basis:** Custody" does not begin with handcuffs; it begins when a reasonable person would not feel free to terminate the encounter and leave. That moment, at the absolute latest, was when Trooper Ernstsen ordered Mr. Golub out of his car and positioned him for a battery of field sobriety tests. Then Mr. Golub was flanked by two officers. Every question from that point forward was an interrogation designed to elicit incriminating responses. The *Miranda* warnings were delivered only as a procedural afterthought at the jailhouse door.
- **Purpose:** To cleanse the evidentiary record of Mr. Golub's own words being used against him. This forces the jury to evaluate the case based only on the officer's actions and the (unreliable) physical test, further exposing the weakness of the State's investigation.
- **Opening Statement:**

"Your Honor, all statements made by Mr. Golub from the moment he was ordered out of his car until he was read his rights at the jail must be suppressed. He was subjected to a prolonged custodial interrogation without the benefit of the *Miranda* warnings required by the Fifth Amendment.

Mr. Golub was in custody from the moment Trooper Ernstsen ordered him from the vehicle. Under *Berkemer v. McCarty*, roadside questioning becomes custodial when a reasonable person wouldn't feel free to leave. Here, Mr. Golub was surrounded by two officers, his documents were retained, and he was being investigated for DUI. All statements without Miranda warnings must be suppressed. Under the *Berkemer standard*, we have to ask: 'Would a reasonable person feel free to leave after being stopped and interrogated? The answer in the case of Mr. Golub is a clear 'No.'"

Trooper Ernstsen subjected Mr. Golub to a custodial interrogation for approximately 70 minutes before providing *Miranda* warnings. Every statement made by Mr. Golub during this period—from his admission to having two beers to his location of origin—was illegally obtained and must be suppressed.

"Your Honor, the rule from *Miranda* is not a suggestion, it is a bright-line command from the Supreme Court. The warning must be given '**prior to any questioning.**' In this case, the record is clear that Trooper Ernstsen engaged in over an hour of investigative questioning *before* he gave any warning. Every question about alcohol, every field sobriety test, and every statement made by Mr. Golub was in direct violation of this command. The evidence, therefore, must be suppressed."

Custodial:

The Supreme Court defined custody not by handcuffs, but as any situation where a person is '**deprived of his freedom of action in any significant way.**' When Mr. Golub was ordered from his car and commanded to perform a series of tests under the authority of two armed officers, his freedom was undeniably and significantly deprived. That is when custody began, and that is when the warnings were required.

Indeed, *Miranda* says: "...by custodial interrogation, we mean questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way."

The legal test for 'custody' is not when handcuffs are applied, but when a reasonable person would not feel free to leave. That line was crossed the moment this became a DUI investigation. When Mr. Golub was ordered out of his vehicle, positioned between two officers, and commanded to perform a battery of physical tests under the threat of arrest, he was, for all intents and purposes, in custody.

From that point forward, every question the officer asked—"Have you been drinking?", 'How much?', 'Where are you coming from?'—was an interrogation designed to elicit incriminating evidence. These were not casual roadside questions; they were the building blocks of a criminal case.

Because this custodial interrogation occurred before the *Miranda* warnings were given some 70 minutes later, every statement elicited is the fruit of a constitutional violation. As a matter of law, they must be suppressed."

Prosecution Objections and Defense Counters:

Prosecution: "This exceeded traffic stop scope. Custodial atmosphere requires *Miranda* protection."

Defense: "The Constitution protects citizens in exactly these circumstances. Mr. Golub detained and interrogated by Trooper Ernstsen for an hour and half. And *Miranda* was only read when Mr. Golub was booked into the County Jail. *Miranda* has to be applied to the statements if Mr. Golub's constitutional rights are to be preserved."

Judge's possible rulings:

- Probable: "I'll exclude the prior conviction during the guilt phase but allow the State to introduce it for sentencing purposes if there's a conviction."
- Less Probable:
- Least Probable:

Final comments: "Your Honor, I respectfully preserve this issue for appeal and request specific findings on the constitutional questions raised."

IV. REQUEST FOR EVIDENCE IN 5TH SUPPLEMENTAL

- **Legal Basis:** According to Rule 16 of the Utah Rules of Criminal Procedure, the Prosecution must disclose all evidence relating to the trial to the Defense.
- **Factual Basis:**
- **Purpose:**
- **Opening Statement**
- **Prosecution Objections and Defense Counters:**
- **Judge's possible rulings:**
- **Final comments:**

B. WITNESS LIST

- **Legal Basis:**
- **Factual Basis:** There were two arresting officers but TE only reported one both on his Incident Report and twice during testimony, quote “” and “”
- **Purpose:** Potentially examine Defendant and Trooper 2. Control the flow of testimony, expose investigative failures, and hold the option to either present a defense or rest our case on the State's failure to meet its burden
 - Preserve the defendant's constitutional right to testify on his own behalf, should he choose to do so.
 - T2 (Unnamed/Unidentified): The Defense lists the second officer who was present at the scene but conspicuously absent from all police reports. This serves two purposes: *first*, it highlights the State's haphazard and incomplete investigation; *second*, it preserves the Defense's right to call him as a witness. If his testimony contradicts Trooper Ernstsens in any way, he becomes our most powerful witness.
 - TE said there was no second officer.
 - Put T2 on stand and ask him to describe everything he did: arrest, search, write car report, etc. (~50 min of work that TE claimed didn't happen)
 - Ask TE why he didn't include T2 on the Incident Report
 - Talk about “disgusting” comment
 - Question T2 (see Cross-Exam File)
 - “Was the car disgusting?”
 - Why did you ask TE why he pulled over Mr. Golub?
 - If you had to guess, what's the likelihood that Mr. Golub could drive home? Get back into his car and drive all the way home, get out of the car, walk into the house, and fall asleep.
- **Opening Statement:**

“Yes, Your Honor. The Defense's witness and exhibit lists are concise and targeted directly at the central issues of this case: the credibility of the arresting officer and the reliability of his investigation.

On our **witness list**, we have of course included Trooper Ernstsens. More importantly, we have listed the second, unnamed officer who participated in the arrest but was omitted from all police reports. This omission is a significant investigative failure, and that officer's testimony is essential to either corroborate or contradict the State's narrative. We have also listed the defendant to preserve his constitutional right to testify.”

- **Prosecution Objections and Defense Counters:**
- **Judge's possible rulings:**
- **Final comments:**

C. EXHIBIT LIST

- **Legal Basis:** The Defense will only use evidence that has been presented or filed by the state.
- **Factual Basis:** All the documents on the Defense's Exhibit List have either been accepted and filed by the court or are on the exhibit list of the state. The defense merely wants to ensure it can reference all documents presented during Discovery and Pretrial to the Jury.
- **Purpose:** The exhibits are the facts that will be used to impeach the State's witness and dismantle the State's narrative. To use unimpeachable documentary evidence to prove our case theory: that a biased officer, operating outside established procedure, used a faulty machine to create a DUI charge where none existed. This **exhibit list** is designed to use the State's own evidence to prove our case. The Defense will use the officer's dashcam and bodycam videos to show the illegal U-turn that initiated this encounter and the procedural failures during the FST and breath tests. The Defense will introduce the officer's own arrest statistics, obtained via GRAMA, as concrete evidence of a pattern of practice that suggests confirmation bias. Finally, the Defense will use the State's Intoxilyzer certifications to prove they cannot lay the foundation for their scientific evidence. Each witness and exhibit is directly relevant to demonstrating that the State's case is built on a foundation of procedural error and investigative bias.
 1. **All Video Evidence Dashcam:** The Defense will use all available video evidence (~8 hrs) with transcripts to make it easier for the jury to process the information.
 2. **Trooper Ernstsen's Testimony:** The Defense will use all Trooper Ernstsen's Testimony (~3 hrs) with transcripts to make it easier for the jury to process the information.
 3. **Trooper Ernstsen's Arrest Statistics (GRAMA Response):** The Defense will use this document as the irrefutable proof of confirmation bias. It establishes that this officer is a statistical anomaly, arresting drivers for DUI at a rate more than 20 times the state average. It is the cornerstone of our argument that this was not an objective investigation, but a biased hunt.
 4. **Intoxilyzer 8000 Certification Reports:** These exhibits prove our point that the State cannot produce a valid certification for the date of the test, destroying the foundation for the admissibility of the breath test result.
- **Opening Statement:**

Your Honor,

D.JURY INSTRUCTIONS

Purpose: The purpose of the Jury Instructions is to ensure that the Jury:

1. understands the bare-minimum threshold for law enforcement to justify a brief investigative stop or detention based on actions suggesting criminal activity;
2. understands the definition of “reasonable doubt” (i.e. threshold for conviction);
3. is given the opportunity to evaluate and judge the reliability of the testing procedures and equipment;
4. is given the opportunity to evaluate and judge the reliability of all existing testimonies
5. is given the opportunity to evaluate and judge the significance of the officers’ job performance;
6. is given the opportunity to evaluate and judge the significance of officers’ record.

STEP 1. OPENING STATEMENT

“Your Honor.

The jury instructions are the legal lens through which the people will see and judge the facts of the trial. **The State's proposed instructions provide a biased lens designed to coerce a conviction and could even be grounds for a mistrial as they violate the Defendant's rights by violating the defendant's *presumption of innocence*; by invading the province of the jury; and by using coercive and biased language throughout the instruction.** As the name suggests the Jury Instructions are meant to instruct the jury of their powers and rights and not to litigate against to taint the defendant in any way. Thus, the language should be perfectly neutral as any biased language could not only prime the people toward a specific outcome, but obfuscates the reason the instructions are required in the first place: to inform the people of their rights and duties as citizens of the United States.

The Prosecution instructs the jury on the sentence enhancement *before* the trial, let alone a verdict. The phrase “Having unanimously found... the Defendant... guilty” all but ensures a guilty verdict. This entirely prejudices the jury and violates Mr. Golub's right to a fair trial. This instruction must be stricken.

For example, the State's Bifurcation Instruction on page 47 presumes my guilt and is grounds for a mistrial. Their instruction on the Intoxilyzer on page 29 constitutes an improper judicial finding on a matter of fact that is exclusively for the jury to decide.

My proposed instructions, by contrast, are drawn directly from controlling Utah statutes and case law. They correctly state the law and provide the jury with the specific legal framework necessary to properly weigh the complex evidence in this case, particularly concerning the administration of field sobriety and chemical tests, which is the central issue here. A fair trial requires instructions that fit the facts. That's what the instructions submitted by the Defense aim to do.”

STEP 2: ARGUE AGAINST THE STATE'S INSTRUCTIONS (pp. 47; 29; 5; 32)

Dispute A: The Bifurcation Instruction (p. 47)

"Your Honor, I first object to the State's "Bifurcation Instruction" on page 47, which reads: '**Having unanimously found... the Defendant... guilty of the conduct charged in Count 1, the trial will now move to a second phase.**'

This instruction is not merely improper but is grounds for a mistrial if read to a jury.

Your Honor, the State's instruction violates the defendant's *presumption of innocence*, which is rooted in the **Fifth, Sixth, and Fourteenth Amendments** through their due process and fair trial guarantees. It is a fundamental legal principle that requires the prosecution to prove every element of a crime *beyond a reasonable doubt*. It has been solidified as a fundamental requirement of a fair trial by the US Supreme Court and the Universal Declaration of Human rights.

Thus, every member selected to be on the jury should be able to look at Mr. Golub and faithfully claim that he *is* innocent. This is the most basic and fundamental of laws guaranteeing a fair trial."

And yet the State's language presumes Mr. Golub's guilt on the underlying DUI before the jury has even begun to deliberate. It completely flouts *presumption of innocence*. But the law is crystal clear: a trial must be bifurcated. The jury cannot hear any evidence or argument regarding a prior conviction for enhancement purposes until *after* they have returned a guilty verdict on the current charge. This instruction puts the cart before the horse and then throws it into a poison well for good measure. It must be stricken in its entirety."

Dispute B: Affirmative Findings on the Intoxilyzer (p. 29)

"Second, Your Honor, I object to the instruction titled 'The Court's Affirmative Findings Concerning the Intoxilyzer Machine' on page 29.

This instruction tells the jury that '**the Court has made the following affirmative findings concerning the Intoxilyzer machine [and that it] was functioning properly.**'

This is a judicial comment on the evidence. It invades the province of the jury. The reliability of that machine is a critical and contested factual issue. By giving this instruction, the Court would essentially become the State's expert witness, telling the jury that the 'science' is settled. Whether that machine was calibrated, whether it was operated correctly, and whether its result is trustworthy are questions for the jury, *and the jury alone*. This instruction usurps their fundamental role and must be stricken."

Dispute C: Coercive and Mandatory Language (p. 5, 32, FIND ALL INSTANCES)

"Finally, Your Honor, I object to the repeated use of coercive language throughout the State's instructions. For instance, on pages 5 and 32, the instructions state that if the jury is convinced, '**you must find him guilty.**'

On page X, the instructions state:

On page Y, the instructions state:

This misstates the jury's duty. The jury's duty is not to find guilt, but to determine whether the State has met its extraordinary burden. The correct phrasing, reflected in the Defense's proposed instructions, is that the jury *may* find the defendant guilty. The word '*must*' is a strong imperative and obviously primes the jury for a conviction. It strips the jurors of their agency as fact-finders and turns their deliberation into a mechanical, Pavlovian exercise. The Defense asks that all such mandatory language be replaced with the legal, non-coercive phrasing."

Step 3: Arguments for Defense Jury Instructions

Explain *why* the Defense instructions are necessary based on the *facts of the case*.

Argument A: Officer Testimony and Confirmation Bias (Instruction No. 6, p. 2)

"Your Honor, in the Jury Instructions proposed by the Defense, Instruction No. 6 is vital. It correctly informs the jury that they should evaluate an officer's testimony like any other witness, and specifically introduces the concept of '**confirmation bias**'."

This isn't a theoretical risk. Discovery shows that Trooper Ernstsen's DUI arrest rate is over **24 times the state average**. The jury should be given the legal tool to consider whether the trooper's subsequent observations were objective facts, or were colored by pre-existing beliefs that led the trooper to presume that Mr. Golub was guilty. This instruction provides that tool."

[Consider additional arguments in favor of Defense Instructions, and preempt the State's objections, including the Prosecution and the Judge.]

Argument B:

Argument C:

Argument D:

E. Voir Dire
[What does the Defense need for Voir Dire?]

F. TERMS, CONCEPTS, AND PHRASES FOR A SUCCESSFUL PRETRIAL

Pretrial terms and concepts you must know for a successful pretrial

List of State objections (judge and prosecution) and how to answer them

When judge criticizes:

"Your Honor, you're right about argumentative language. May I propose neutral scientific reliability standards instead?"

Your position:

"Jury needs objective criteria for evaluating technical evidence—not argument, but guidance."

Phrases you must know for a successful pretrial

Judge's phrases

Prosecution's phrases

Defense's phrases

PART III: SCRIPT

The following script is based on the most likely outcomes of the final pre-trial. it is intended to prepare the defense for the pre-trial. Memorize everything the defense will say. Be adaptable and ready for all contingencies. whatever happens at the pre-trial, the defense should be ready with a cogent response that optimizes the outcome of the pre-trial by framing Voir Dire and prepping the evidence and proceedings of the trial.

Opening Statement: Your Honor, the Defense requests two basic provisions: 1) the right to reference the evidence during the trial and if necessary to show visual aids and 2) to have adequate time to make relevant arguments.

The following will argue for these two necessities in detail. May I proceed?

PART IV. CHEET SHEET: LIST OF KEY TERMS, CONCEPTS, PHRASES, AND PROCEDURES

Be ready to negotiate with the state. Below are the most likely outcomes of the Defense's motions, lists, and requests and how it should respond. The Defense's plan must include multiple contingencies.

What Does the Prosecution Want & Defense Counterarguments?

What Will the Prosecution Say in Response to the Defense's Requests & How the Defense Should Respond?

What Will the Judge Say After Each Item on the Agenda & How the Defense Should Respond?

EXISTING OUTLINE

Step 1: The Pretrial Outline

Objective: To control the narrative of the pretrial hearing, secure tactical victories on key evidentiary issues, and frame the trial in a way that makes an acquittal the most logical outcome.

1. Motions in Limine

Objective: To surgically remove the State's most prejudicial and unreliable evidence before a jury ever hears it.

- **Our Overarching Theme:** "Your Honor, these motions ensure the jury's verdict is based on reliable facts."

A. Motion to Exclude Prior Conviction (The Opening Victory)

- **Core Argument:** The 2019 "reckless driving" plea is inadmissible propensity evidence under Rule 404(b), and its prejudicial effect outweighs any probative value under Rule 403.
- **Key Points:**
 1. This is a classic character attack, inviting the jury to convict based on past actions, not current evidence.
 2. The State's argument that it is for a sentence enhancement is an admission that it is irrelevant to the question of guilt.
 3. The only proper procedure is a bifurcated trial, where the prior conviction is only mentioned *after* a guilty verdict. To do otherwise is a structural error.
- **Anticipated Prosecution Response:** "Your Honor, it's for the enhancement."
- **Our Counter:** "Respectfully, Your Honor, that's precisely why it must be excluded from the guilt phase. The law requires bifurcation. We can stipulate to that procedure right now."

B. Motion to Exclude Intoxilyzer Result (The Attack on "Science")

- **Core Argument:** The State cannot lay the necessary scientific foundation to admit the 0.104 result. The test was administered in gross violation of Utah's own rules, on a machine with no valid certification for the date in question.
- **Key Points:**
 1. **Certification Gap:** The State has no certificate for September 6, 2023, creating a 21-day evidentiary gap. The machine is unreliable.

- 2. **Procedural Violation:** The 140-second coerced blow is a 700% deviation from the mandatory protocol under Admin Code R714-500. It was not a scientific test; it was a coercive procedure known to inflate results.
 - **Anticipated Prosecution Response:** "Your Honor, these issues go to the weight of the evidence, not its admissibility."
 - **Our Counter:** "Your Honor, these are not minor flaws. These are foundational failures. Without a valid certification and a valid procedure, the State cannot meet its threshold burden. There is nothing for the jury to 'weigh'."
- **C. Motion to Suppress Statements (The Constitutional Line)**
 - **Core Argument:** All statements made by Mr. Golub after he was ordered out of his car were the product of an unwarned custodial interrogation in violation of his Fifth Amendment rights.
 - **Key Points:**
 1. "Custody" for *Miranda* purposes began the moment Trooper Ernstsen transformed a traffic stop into a DUI investigation by ordering Mr. Golub to perform field sobriety tests.
 2. A reasonable person in that situation—flanked by officers, performing command-performance tests—would not feel free to leave.
 3. Every question about alcohol from that point forward was an interrogation. The warnings came 70 minutes too late.
 - **Anticipated Prosecution Response:** "It wasn't custodial until the arrest, Your Honor. It was just a roadside stop."
 - **Our Counter:** "The test under *Berkemer* isn't handcuffs; it's the restraint on freedom. The moment the FSTs began, Mr. Golub's freedom was restrained to a degree associated with a formal arrest. The warnings were required then."

2. Motion to Compel Discovery (The Accountability Check)

- **Objective:** To hold the State accountable for its failure to provide evidence and either force production or get the evidence excluded.
- **Core Argument:** The State's Fifth Supplemental Response lists over 40 items of evidence, including "Other Evidence" and "Evidence.com Data," that have never been provided to the Defense, in violation of Rule 16. With trial days away, this failure is profoundly prejudicial.
- **Key Points:**

1. The State has a constitutional and statutory duty to disclose.
 2. Simply listing a file name is not disclosure. The provided links have expired.
 3. We cannot prepare a defense against evidence we have never seen.
- **Anticipated Prosecution Response:** "I apologize, Your Honor, it was a clerical error with the last prosecutor. We will get it to the defense right away."
 - **Our Counter:** "Your Honor, this is too late. This case is two years old and the prosecution has never contacted the Defense or even responded to one of the Defense's emails. We ask that the Court issue an order excluding any of the withheld evidence not on the Defense's Exhibit List, and any testimony related to it, from trial."

3. Witness & Exhibit Lists

- **Objective:** To defend the relevance of our lists and subtly frame our case theory.
- **Core Argument:** Each witness and exhibit on our lists is directly relevant to the central issues of officer credibility and investigative reliability.
- **Talking Points:**
 - **Witness List:** "We list 'Officer 2' because the State's failure to name the second arresting officer in any report is a significant investigative omission. His testimony is vital for corroboration or impeachment. We list the Defendant to preserve his constitutional right to testify."
 - **Exhibit List:** "Our exhibits are designed to use the State's own evidence and public records to prove our case. The GRAMA data (Ex. 4 & 5) is not character evidence; it is statistical evidence of a pattern of practice relevant to proving the officer's confirmation bias. The hearing transcripts (Ex. 2) are essential for impeachment. The Intoxilyzer Manual (Ex. 7) is necessary to establish the standard of care from which the officer deviated."

4. Jury Instructions (The Capstone)

- **Objective:** To convince the judge to adopt our instructions as the working framework for the trial.
- **Core Argument:** The State's instructions are generic, biased, and legally flawed. The Defense's instructions are tailored to the specific, contested facts of this case and provide the jury with the correct legal framework to render a just verdict.

A. Critique of State's Instructions:

- **Thesis:** "The State's instructions are designed to coerce a conviction by violating three core principles: the presumption of innocence, the jury's role as fact-finder, and the non-coercive nature of the law."

- **Point 1 (Bifurcation):** "The instruction on page 47 presumes guilt and is grounds for a mistrial."
- **Point 2 (Intoxilyzer):** "The instruction on page 29 is an improper judicial comment on the evidence, telling the jury the Court has already decided the machine works."
- **Point 3 (Coercive Language):** "The repeated use of 'you must find him guilty' misstates the jury's duty and turns deliberation into a Pavlovian exercise."

B. Argument for Defense's Instructions:

- **Thesis:** "Our instructions are necessary because they directly address the complex factual questions the jury must decide, providing clear legal guidance where the State's boilerplate is silent."
- **Point 1 (Instruction #6 - Confirmation Bias):** "This is necessary because the officer's 24-fold higher arrest rate makes his bias a central issue of fact."
- **Point 2 (Instructions #7 & #8 - FST/Breath Test):** "These are necessary because the video shows clear deviations from scientific protocol. The jury needs to know the rules to understand that they were broken."
- **Point 3 (Instruction #10 - Initial Stop):** "This is necessary because the legality of the entire stop is in question. The jury must be empowered to disregard all evidence if they find the stop was unlawful."