

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

STATE OF UTAH,
Plaintiff,

STIPULATED JURY INSTRUCTIONS

v.

PETER GOLUB,
Defendant.

Case No: 235900706
Judge: ELIZABETH A. HRUBY-MILLS
Date: April 4, 2025

STIPULATED JURY INSTRUCTIONS

(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; *State v. Robison*, 2006 UT 65, ¶ 15, 147 P.3d 448.

(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 CR301.

(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:

- That on or about September 6, 2023;
- In Salt Lake County, State of Utah;
- The defendant, Peter Golub;
- Operated a motor vehicle;
- That he violated the law which gave the trooper authority to detain his vehicle;
- That although Mr. Golub broke no traffic laws while being followed and observed by Trooper Ernstsen, his Field Sobriety Tests showed that not only impaired was he impaired but that these tested established enough probable cause for him to be arrested without the standard Preliminary Breath Test administered to driver's accused of impaired driving;
- That when Mr. Golub closed his car door with both hands was a sign of imbalance, but that when he passed the field balance test with 0 out of 4 clues, the result was inconsequential;
- That the second officer who physically arrested Mr. Golub, searched his vehicle, and wrote the vehicle search report should *not* have been mentioned on the arrest report;
- That Mr. Golub
 - a. Having sufficient alcohol in his body should have showed that the defendant had a breath alcohol concentration of .05 grams or greater at the time of the test; OR
 - b. Under the influence of alcohol to a degree that rendered him incapable of safely operating a vehicle.

- c. That although Intoxylizer 8000 manuals recommends a max breath test of 20 seconds, it was correct for Trooper Ernstsen to demand Mr. Golub to keep blowing for 144 seconds;
- d. That the Intoxylizer 8000 is reliable;
- e. That the only piece of physical evidence in this case (the 144-second-length breath test) is sufficient to convict Mr. Golub.

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

Authority: Utah Code Ann. § 41-6a-502; Utah Model Jury Instructions CR1205.

(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. Breath alcohol level is not the same as blood alcohol level.

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.

If you doubt either of these statements, you must find the defendant not guilty.

Authority: Utah Code Ann. § 41-6a-502; *State v. Hernandez*, 2011 UT 70, ¶ 23, 268 P.3d 822.

(5) SCIENTIFIC EVIDENCE RELIABILITY STANDARDS

When evaluating scientific evidence, 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;
- Whether there are known error rates or limitations to the testing methodology; and
- Whether the results of the test are consistent with other evidence in the case.

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: *State v. Rimmesch*, 775 P.2d 388, 396-99 (Utah 1989); *State v. Crosby*, 927 P.2d 638, 642 (Utah 1996).

(6) FIELD SOBRIETY TEST ADMINISTRATION REQUIREMENTS

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, or passing traffic) may have affected the defendant's performance;

- Whether any physical conditions, injuries, or fatigue 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); *State v. Homan*, 89 Ohio St.3d 421, 732 N.E.2d 952 (2000) (persuasive authority on standardized procedures); National Highway Traffic Safety Administration Standards.

(7) BREATH TESTING PROCEDURAL REQUIREMENTS

You have heard evidence about a breath test that was administered to the defendant using an Intoxilyzer 8000 device. When evaluating the results of this test, you should consider:

- Whether the device was properly calibrated, maintained, and certified;
- Whether the test was administered by a certified operator;
- Whether proper procedures were followed in administering the test, including:
 - a. Observation of the defendant for at least 15 minutes prior to testing to ensure no foreign substances were introduced into the mouth;
 - b. Proper collection of an adequate breath sample within the recommended duration;
 - c. Collection of the proper volume of breath; and
 - d. Any other procedural requirements.
- Whether any factors may have affected the accuracy of the results, such as:
 - a. The physiological condition of the defendant;
 - b. The length of time the defendant was required to blow into the device;
 - c. The volume of breath collected;

d. Any medications or medical conditions.

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.

Authority: Utah Admin. Code R714-500 (Intoxilyzer testing procedures); *State v. Baker*, 56 P.3d 1223, 1229 (Utah 2002); *Murray City v. Hall*, 663 P.2d 1314, 1319 (Utah 1983).

(8) 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 or greater/lesser weight 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 the officer's testimony, you should consider:

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

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

(9) ALTERNATIVE EXPLANATIONS FOR PHYSICAL INDICATORS

You may hear evidence about physical signs or indicators observed by the officer, such as bloodshot eyes, the odor of alcohol on the night air, 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; or
- 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.

Authority: *State v. Ramirez*, 817 P.2d 774, 784 (Utah 1991); *State v. Clopton*, 2009 UT 84, ¶ 15, 223 P.3d 1103.

(10) EVALUATING CONTRADICTORY EVIDENCE

If, during this trial, 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: *State v. Gallegos*, 2009 UT 42, ¶ 33, 220 P.3d 136; Utah Model Jury Instructions CR207 (modified).

(11) DEFENDANT'S RIGHT NOT TO TESTIFY (IF APPLICABLE)

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 Code Ann. § 77-1-6(2)(d); *State v. Maestas*, 2012 UT 46, ¶ 137, 299 P.3d 892; Utah I hereby certify that on April 4, 2025, a true and correct copy of the foregoing STIPULATED JURY INSTRUCTIONS was provided by email to:

Joseph Ciucci Liuzzi, josephcl@utcourts.gov
Judicial Assistant for Judge Hruby-Mills
3 Third District Court 450 South State Street
Salt Lake City, Ut 84114-1860

/s/ Peter Golub

Defendant, Pro Se
Date: April 4, 2025