

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. Audio recordings (~2 hrs) of May 29, 2024 Hearing (sender: Melissa Lepore, melissaal@utcourts.gov) and 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

II. Officer Videos (~8 hrs) of Trooper 2 & Corporal Ernstsen—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.

III. Transcripts presented in this document:

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

Transcript I. Hearing I

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

[00:01:08] **Judge Elizabeth Hruby-Mills:** Does defense waive reading?

[00:02:88] **Defense Attorney Daniel Frazier:** We do, Your Honor.

[00:04:28] **Judge Elizabeth Hruby-Mills:** Alright, Ms. Dunkelman, are you ready with your first witness?

[00:06:148] **Deputy District Attorney Cara Dunkelman:** Yes, I just have to go grab him over there.

[00:08:298] **Judge Elizabeth Hruby-Mills:** Okay, thank you.

[00:09:658] **Judge Elizabeth Hruby-Mills:** [Addressing witness approaching stand] Alright, can you join us up here at the witness stand? We'll get you sworn in.

[00:58:135] **Court Clerk:** Do you solemnly swear or affirm the evidence that you give in the matter now before the court shall be the truth, the whole truth, and nothing but the truth?

Golub Case # 23590070

Transcripts 1

[01:03:265] **Corporal Brock Ernstsen:** Yes.

[01:04:005] **Judge Elizabeth Hruby-Mills:** You may be seated. There's fresh water in the pitcher.

[01:06:285] **Corporal Brock Ernstsen:** Thank you.

[01:13:175] **Judge Elizabeth Hruby-Mills:** Are you able to get seated in the...?

[01:14:925] **Corporal Brock Ernstsen:** Yeah.

[01:15:225] **Judge Elizabeth Hruby-Mills:** Okay.

[01:16:495] **Deputy District Attorney Cara Dunkelman:** Would you mind stating your full name and spelling both your first and last name for the record?

[01:21:345] **Corporal Brock Ernstsen:** Yeah, it's Brock Ernstsen. B-R-O-C-K E-R-N-S-T-S-E-N.

[01:28:345] **Deputy District Attorney Cara Dunkelman:** Um, and where do you currently work?

[01:31:145] **Corporal Brock Ernstsen:** Utah Highway Patrol.

[01:32:985] **Deputy District Attorney Cara Dunkelman:** And what are... or I guess, were you working with Utah Highway Patrol on September 6th of 2023?

[01:39:145] **Corporal Brock Ernstsen:** Yes.

[01:40:585] **Deputy District Attorney Cara Dunkelman:** And what, um, is your position with them?

[01:45:015] **Corporal Brock Ernstsen:** Uh, Corporal.

[01:46:115] **Deputy District Attorney Cara Dunkelman:** Okay. Um, and was that the same position you had on September 6th of 2023?

[01:51:865] **Corporal Brock Ernstsen:** Yes.

[01:52:705] **Deputy District Attorney Cara Dunkelman:** Um, do you conduct traffic stops as part of that position as well?

[01:56:625] **Corporal Brock Ernstsen:** I do.

[01:57:465] **Deputy District Attorney Cara Dunkelman:** Okay. Are you trained in DUI investigations?

[02:00:645] **Corporal Brock Ernstsen:** Yes.

[02:01:805] **Deputy District Attorney Cara Dunkelman:** Um, are you SFST certified?

[02:04:805] **Corporal Brock Ernstsen:** Yes.

[02:05:845] **Deputy District Attorney Cara Dunkelman:** Okay. So were you working on September 6th of 2023?

[02:10:205] **Corporal Brock Ernstsen:** Yes.

[02:11:145] **Deputy District Attorney Cara Dunkelman:** Were you involved in a traffic stop that would bring you here to court today?

[02:16:465] **Corporal Brock Ernstsen:** Yes, I was.

[02:17:545] **Deputy District Attorney Cara Dunkelman:** Okay. And tell me about, um, I guess, did a vehicle catch your attention on that day?

[02:24:305] **Corporal Brock Ernstsen:** It did, yes.

[02:25:405] **Deputy District Attorney Cara Dunkelman:** And where were you when the vehicle caught your attention?

[02:27:965] **Corporal Brock Ernstsen:** Um... I was... just uh south of Kensington Avenue. I initially saw the vehicle, it was about 1600 South on State Street.

[02:39:985] **Deputy District Attorney Cara Dunkelman:** Is that in Salt Lake County?

[02:42:025] **Corporal Brock Ernstsen:** Yes.

[02:43:065] **Deputy District Attorney Cara Dunkelman:** And what type of vehicle was it?

[02:45:885] **Corporal Brock Ernstsen:** Silver Hyundai Sonata.

[02:47:765] **Deputy District Attorney Cara Dunkelman:** What caught your attention about that vehicle?

[02:50:485] **Corporal Brock Ernstsen:** Um, when it pulled away from the curb, there was no blinking signal light, and then when it went across that first right lane and into the middle lane without signaling as well.

[03:01:825] **Deputy District Attorney Cara Dunkelman:** Is that a violation of the law?

[03:03:565] **Corporal Brock Ernstsen:** It is.

[03:04:685] **Deputy District Attorney Cara Dunkelman:** And what did you do after making this observation?

[03:07:245] **Corporal Brock Ernstsen:** Uh, I got behind the vehicle, followed it for a little while, and then initiated a traffic stop.

[03:12:545] **Deputy District Attorney Cara Dunkelman:** And when you initiated the traffic stop, did the vehicle pull over?

[03:16:245] **Corporal Brock Ernstsen:** Yeah.

[03:17:165] **Deputy District Attorney Cara Dunkelman:** Okay. And did you approach the vehicle?

[03:20:885] **Corporal Brock Ernstsen:** I did.

[03:21:885] **Deputy District Attorney Cara Dunkelman:** What side of the vehicle did you approach on?

[03:25:885] **Corporal Brock Ernstsen:** Uh, the driver's side.

[03:27.365] **Deputy District Attorney Cara Dunkelman:** Okay. And tell me about that first interaction with the driver.

[03:31.165] **Corporal Brock Ernstsen:** Um, when I was speaking with him, um, I could smell an odor of an alcoholic beverage coming from the vehicle. I observed that his eyes were glossy and bloodshot and his speech seemed slurred at times.

[03:43.425] **Deputy District Attorney Cara Dunkelman:** Okay. Did you identify him?

[03:46.105] **Corporal Brock Ernstsen:** I did.

[03:46.665] **Deputy District Attorney Cara Dunkelman:** How did you identify him?

[03:48.745] **Corporal Brock Ernstsen:** His driver's license.

[03:50.205] **Deputy District Attorney Cara Dunkelman:** Is that when you found out his name?

[03:51.905] **Corporal Brock Ernstsen:** Yes.

[03:53.145] **Deputy District Attorney Cara Dunkelman:** And what was his name?

[03:54.405] **Corporal Brock Ernstsen:** Peter Golub.

[03:55.525] **Deputy District Attorney Cara Dunkelman:** Do you see him in the courtroom today?

[03:56.945] **Corporal Brock Ernstsen:** I do.

[03:57.925] **Deputy District Attorney Cara Dunkelman:** Would you mind pointing him out and identifying an article of clothing they're wearing?

[04:01.315] **Corporal Brock Ernstsen:** Yeah, he's right here in the suit [points at defendant] with the reddish tie and the blue, uh, the blue shirt underneath.

[04:07.925] **Judge Elizabeth Hruby-Mills:** Your Honor, let the record reflect the identification.

[04:09.665] **Clerk:** It will so reflect.

[04:10.055] **Judge Elizabeth Hruby-Mills:** Okay.

[04:12.025] **Deputy District Attorney Cara Dunkelman:** Um, did you ask him for any other documents other than his driver's license?

[04:15.665] **Corporal Brock Ernstsen:** I asked him for his proof of insurance for the vehicle.

[04:18.365] **Deputy District Attorney Cara Dunkelman:** Okay. And, um, anything of significance about his response to that question?

[04:23.945] **Corporal Brock Ernstsen:** Uh, he handed me the registration and some other papers, um, instead of the insurance.

[04:30.665] **Deputy District Attorney Cara Dunkelman:** Okay. Um, did you ask him any

questions during this... I guess at this point, did you have any concerns about him as a driver?

[04:37.685] **Corporal Brock Ernstsen:** Uh, yeah, I was suspicious that he had been consuming alcoholic beverages.

[04:42.865] **Deputy District Attorney Cara Dunkelman:** Okay. And based on that suspicion, did you ask him any follow-up questions?

[04:46.065] **Corporal Brock Ernstsen:** I asked him if he had anything to drink that night.

[04:48.305] **Deputy District Attorney Cara Dunkelman:** How did he respond?

[04:49.505] **Corporal Brock Ernstsen:** He said he had a couple of Coronas at the bar about an hour earlier.

[04:54.785] **Deputy District Attorney Cara Dunkelman:** Okay. What did you do from there?

[04:57.445] **Corporal Brock Ernstsen:** Um... I went back and performed a records check of his driver's license and vehicle registration. Um... And then when I went back up to the vehicle, I asked him to step out to perform field sobriety tests.

[05:09.565] **Deputy District Attorney Cara Dunkelman:** Okay. Did you ask him to do a PBT?

[05:12.065] **Corporal Brock Ernstsen:** I did, at the end.

[05:13.765] **Deputy District Attorney Cara Dunkelman:** Okay, so this was after the, the roadside test?

[05:16.685] **Corporal Brock Ernstsen:** After the field sobriety tests, yeah.

[05:18.925] **Deputy District Attorney Cara Dunkelman:** Okay. I don't want to get ahead of myself. So, um, anything... did you notice anything as he exited the vehicle?

[05:25.205] **Corporal Brock Ernstsen:** Uh, he braced himself with both hands on the door as he was exiting the vehicle.

[00:31.185] **Deputy District Attorney Cara Dunkelman:** Okay. Um, and did he agree to do the roadside maneuvers?

[05:36.185] **Corporal Brock Ernstsen:** The... yes.

[05:37.765] **Deputy District Attorney Cara Dunkelman:** Okay. So I want to walk through those. Did you... What was the first maneuver that you began with?

[05:43.905] **Corporal Brock Ernstsen:** Uh, the first field sobriety test was the Horizontal Gaze Nystagmus test.

[05:48.965] **Deputy District Attorney Cara Dunkelman:** Okay. And did you give him instructions on how to do this test?

[05:51.725] **Corporal Brock Ernstsen:** Yes.

[05:52.945] **Deputy District Attorney Cara Dunkelman:** Okay. And did you observe any clues on this test?

[05:55.785] **Corporal Brock Ernstsen:** Six out of the six possible clues.

[05:58.705] **Deputy District Attorney Cara Dunkelman:** Okay. Um, sorry, I'm just going to interrupt. Do you need to clarify any of that? [Addressing defense counsel]

[06:01.365] **Judge Elizabeth Hruby-Mills:** [To defense counsel] Are you okay?

[06:01.785] **Defense Attorney Daniel Frazier:** Yes.

[06:02.165] **Judge Elizabeth Hruby-Mills:** Okay. Go ahead.

[06:03.425] **Deputy District Attorney Cara Dunkelman:** And what were those clues?

[06:05.045] **Corporal Brock Ernstsen:** Uh, lack of smooth pursuit in both eyes, distinct and sustained nystagmus at maximum deviation in both eyes, and the onset of nystagmus prior to 45 degrees in both eyes.

[06:10.945] **Deputy District Attorney Cara Dunkelman:** Okay. Um, did you notice anything about his balance while he was doing this test?

[06:15.365] **Corporal Brock Ernstsen:** Yeah, while he was standing still, uh, during the HGN test, I

observed that he had a slight circular sway.

[06:21.185] **Deputy District Attorney Cara Dunkelman:** Okay. Um, so let's talk about the next test that you did. What was that one?

[06:25.825] **Corporal Brock Ernstsen:** The, um, Walk-and-Turn test.

[06:28.405] **Deputy District Attorney Cara Dunkelman:** Okay. Did you explain and demonstrate this test for him as well?

[06:31.705] **Corporal Brock Ernstsen:** I did, and I demonstrated it.

[06:33.445] **Deputy District Attorney Cara Dunkelman:** Okay. And did you observe any clues on this test?

[06:37.065] **Corporal Brock Ernstsen:** Yes, I observed four out of the eight possible clues.

[06:40.505] **Deputy District Attorney Cara Dunkelman:** Okay. Um, okay. And do you remember what those clues were?

[06:47.125] **Corporal Brock Ernstsen:** Yes. Um, on the first set of nine steps, he stopped walking and asked a question. And he made an improper turn by taking one large spinning step to turn around, and then took his front foot off the line and stepped backwards with it. Um, the second set of nine steps, he stopped walking and asked a question again. And he stepped off line once, and the actual number of steps taken was 11.

[07:13.185] **Deputy District Attorney Cara Dunkelman:** Okay. What's the next test you did after that?

[07:15.945] **Corporal Brock Ernstsen:** Um, the One Leg Stand test.

[07:17.705] **Deputy District Attorney Cara Dunkelman:** Okay. And did you explain and demonstrate that test as well?

[07:19.965] **Corporal Brock Ernstsen:** Yes.

[07:20.805] **Deputy District Attorney Cara Dunkelman:** And did you observe any clues on that test?

[07:23.365] **Corporal Brock Ernstsen:** Um, nothing that I counted in my report. I probably could have counted a couple of clues, but I gave him the benefit of the doubt and didn't count them. So I just counted zero clues on that one.

[07:31.605] **Deputy District Attorney Cara Dunkelman:** Okay. Um, and, I guess, are you able to explain the difference between clues and indicators when you're conducting a DUI investigation?

[07:40.245] **Corporal Brock Ernstsen:** Yes.

[07:40.905] **Deputy District Attorney Cara Dunkelman:** Okay. And can you tell me about that?

[07:43.065] **Corporal Brock Ernstsen:** So, the clues, um, on the Standardized Field Sobriety Tests are, um, specific things that we're looking for. Uh, so for example, on the Horizontal Gaze Nystagmus test, there are six clues. Um, there are eight clues on the Walk-and-Turn test, and four clues possible on the One-Leg Stand test. Anything else that, uh, is mentioned is considered an indicator, like odor of an alcoholic beverage, glossy bloodshot eyes, uh, confusion, dexterity, things like those are indicators.

[08:13.445] **Deputy District Attorney Cara Dunkelman:** Okay. So while they don't, um, NHTSA is the one that creates the standard, um, clues for the field sobriety test? Is that right?

[08:21.985] **Corporal Brock Ernstsen:** Correct.

[08:22.545] **Deputy District Attorney Cara Dunkelman:** Okay. So if, um, they're not one of... so, for example, the odor of alcohol, the bloodshot glossy eyes, those could be indications of impairment, they're just not notated clues as it relates to the field sobriety test?

[08:34.605] **Corporal Brock Ernstsen:** Correct.

[08:35.045] **Deputy District Attorney Cara Dunkelman:** Okay. And it sounds like you saw some of those possible indications of impairment in addition to what you testified to on the field sobriety

tests?

[08:43.105] **Corporal Brock Ernstsen:** Yes.

[08:43.865] **Deputy District Attorney Cara Dunkelman:** Okay. Um, did you ask, um, the defendant to do a preliminary breath test?

[08:49.125] **Corporal Brock Ernstsen:** I did.

[08:49.925] **Deputy District Attorney Cara Dunkelman:** Okay. Um, and how did he respond to that question?

[08:53.465] **Corporal Brock Ernstsen:** He did not want to do it.

[08:55.265] **Deputy District Attorney Cara Dunkelman:** Okay. And did he make any statements about how he thought he may perform on the test?

[09:02.545] **Corporal Brock Ernstsen:** Um, I asked him after he refused to blow into the PBT, how much he had had to drink that night? And he said he didn't know, but he knew he would blow over. He also said that he should not go out with his friends at night, so.

[09:17.205] **Deputy District Attorney Cara Dunkelman:** Okay. Um, so tell me what you did after the defendant refused to do the PBT?

[09:25.585] **Corporal Brock Ernstsen:** I arrested him for DUI.

[09:28.125] **Deputy District Attorney Cara Dunkelman:** Okay. Um... Okay. And was he transported anywhere?

[09:32.885] **Corporal Brock Ernstsen:** Uh, yes.

[09:33.945] **Deputy District Attorney Cara Dunkelman:** Okay. And where was that?

[09:35.465] **Corporal Brock Ernstsen:** Um... I believe it was Special Operations.

[09:41.025] **Deputy District Attorney Cara Dunkelman:** Okay. I guess let me ask you another question. Um, was he asked to submit to a chemical breath test?

[09:46.085] **Corporal Brock Ernstsen:** Yes.

[09:46.905] **Deputy District Attorney Cara Dunkelman:** Okay. And was that done?

[09:49.185] **Corporal Brock Ernstsen:** Yes.

[09:49.845] **Deputy District Attorney Cara Dunkelman:** Okay. And what was the result of that?

[09:51.885] **Corporal Brock Ernstsen:** 0.104.

[09:54.025] **Deputy District Attorney Cara Dunkelman:** Okay. And what is the legal limit in Utah?

[09:56.745] **Corporal Brock Ernstsen:** 0.05.

[09:58.145] **Deputy District Attorney Cara Dunkelman:** Okay. Um, and, uh, what... did you end up citing him for anything to do with the driving behavior you had observed as well?

[10:05.665] **Corporal Brock Ernstsen:** Yes. Uh, for failure to signal.

[10:07.785] **Deputy District Attorney Cara Dunkelman:** Okay. Nothing further, Your Honor.

[10:10.765] **Judge Elizabeth Hruby-Mills:** Mr. Frazier.

[10:11.945] **Defense Attorney Daniel Frazier:** How many times did you say you observed him fail to signal?

[10:19.885] **Corporal Brock Ernstsen:** How many times?

[10:21.465] **Defense Attorney Daniel Frazier:** Yes.

[10:22.725] **Corporal Brock Ernstsen:** Um, I mean, he didn't signal when he pulled away from the curb, and he didn't signal on the lane change.

[10:27.745] **Defense Attorney Daniel Frazier:** Twice?

[10:28.625] **Corporal Brock Ernstsen:** I guess you could call it twice.

[10:30.285] **Defense Attorney Daniel Frazier:** Okay. Then you indicated you followed him for a while?

[10:36.305] **Corporal Brock Ernstsen:** Yes.

[10:36.765] **Defense Attorney Daniel Frazier:** How long is, uh, a while?

[10:40.825] **Corporal Brock Ernstsen:** Just a few blocks, several blocks.

[10:43.705] **Defense Attorney Daniel Frazier:** Okay. And what was the purpose of that?

[10:47.345] **Corporal Brock Ernstsen:** Uh, to see if there are any other violations.

[10:49.905] **Defense Attorney Daniel Frazier:** Uh, what was observed during the time you followed him?

[10:53.125] **Corporal Brock Ernstsen:** I didn't see any other, uh, violations.

[10:56.885] **Defense Attorney Daniel Frazier:** So you just stopped him for the original one?

[10:58.985] **Corporal Brock Ernstsen:** Pardon me?

[10:59.165] **Defense Attorney Daniel Frazier:** So you just stopped him for the original one?

[11:00.645] **Corporal Brock Ernstsen:** So I just stopped him for the original one, the original violation.

[11:04.185] **Defense Attorney Daniel Frazier:** Okay. Was there anything in that initial stop driving pattern that was an indicator to you of some sort of impairment?

[11:12.565] **Corporal Brock Ernstsen:** Uh, after I initiated the traffic stop, you mean?

[11:14.905] **Defense Attorney Daniel Frazier:** No. In the course of observing him, uh, as he, uh, drove and operated the motor vehicle?

[11:22.385] **Corporal Brock Ernstsen:** Uh, like I said, just the initial way he pulled away from the curb.

[11:26.625] **Defense Attorney Daniel Frazier:** And that was evidence to you of impairment?

[11:28.305] **Corporal Brock Ernstsen:** Uh, it's possible.

[11:29.885] **Defense Attorney Daniel Frazier:** Possible. But did you consider that an indicator or clue of impairment?

[11:36.865] **Corporal Brock Ernstsen:** Uh, not necessarily. Not a clue, for sure not a clue.

[11:40.265] **Defense Attorney Daniel Frazier:** There's nothing on the driving pattern that was a clue for impairment?

[11:46.445] **Corporal Brock Ernstsen:** No.

[11:47.285] **Defense Attorney Daniel Frazier:** Okay. And you said there was a difference between indicator and clue. Was there anything there, just for the sake of being, you know, as clear as I can, that was, that constituted, in your mind, an indicator of impairment?

[12:02.125] **Corporal Brock Ernstsen:** Uh, it's possible. I mean, sometimes people that are impaired don't signal, and they pull out abruptly into traffic.

[12:09.885] **Defense Attorney Daniel Frazier:** Okay. So I, I guess I already asked and answered this question, I apologize. I'm pretty sure I know the answer. But that wasn't... not anything that rose to the level of your, uh, basis for believing he was impaired?

[12:23.765] **Corporal Brock Ernstsen:** I mean, it's part of the whole picture. It's not the sole reason that I believed he was impaired. And that's not why I arrested him for DUI, but that was part of the picture.

[12:35.185] **Defense Attorney Daniel Frazier:** And then after you, uh, indicated, you stopped the vehicle, uh, for the traffic violations after a few blocks of following it, not observing any other violations?

[12:51.945] **Corporal Brock Ernstsen:** Yeah, I, I initiated the traffic stop, yeah.

[12:54.425] **Defense Attorney Daniel Frazier:** And about what time of day or night was this?

[12:57.345] **Corporal Brock Ernstsen:** Uh, it was definitely dark. It was probably after midnight.

[13:06.045] **Defense Attorney Daniel Frazier:** What was the traffic like on that?

[13:08.885] **Corporal Brock Ernstsen:** Uh... moderate.

[13:13.225] **Defense Attorney Daniel Frazier:** And after you approached the vehicle, you indicated

you did so on the passenger side?

[13:25.765] **Corporal Brock Ernstsen:** No, driver's side.

[13:26.545] **Defense Attorney Daniel Frazier:** Driver's side? Uh... Was his window rolled down at the time you approached him?

[13:31.625] **Corporal Brock Ernstsen:** Uh... at some point, he rolled his window down because I was talking to him.

[13:36.585] **Defense Attorney Daniel Frazier:** Yeah. Okay. And um, what was the next thing that you observed?

[13:45.025] **Corporal Brock Ernstsen:** When I initially approached the vehicle? I could see that he had glossy, bloodshot eyes and I, uh, I could smell an odor of an alcoholic beverage coming from the vehicle.

[14:17.805] **Defense Attorney Daniel Frazier:** In terms of your observations of any, uh, alcoholic containers or any evidence of alcohol usage aside from the two... or the two things you indicated? Did you observe any containers or anything like that?

[14:34.005] **Corporal Brock Ernstsen:** No containers.

[14:35.885] **Defense Attorney Daniel Frazier:** And after you, uh, observed the bloodshot eyes and the odor of alcohol coming from the vehicle, what was the next thing that you did?

[14:48.445] **Corporal Brock Ernstsen:** Uh, I asked him if he had anything to drink.

[14:50.845] **Defense Attorney Daniel Frazier:** And his response was, uh, a minimal amount in your mind at least, a couple of beers?

[15:03.125] **Corporal Brock Ernstsen:** Uh, he told me he had a couple of Coronas.

[15:06.325] **Defense Attorney Daniel Frazier:** Pardon me?

[15:07.325] **Corporal Brock Ernstsen:** He told me he had a couple of Coronas at the, the bar an hour earlier.

[15:12.065] **Defense Attorney Daniel Frazier:** And was there anything that indicated to you that there was, uh, more than that amount of alcohol consumed?

[15:19.925] **Corporal Brock Ernstsen:** I don't know.

[15:23.065] **Defense Attorney Daniel Frazier:** Okay. And you certified, you, you said that you are certified in, uh, doing breath test results and detecting of impairment?

[15:38.085] **Corporal Brock Ernstsen:** Yes.

[15:38.585] **Defense Attorney Daniel Frazier:** And at that point, you're still saying that you didn't know whether there was evidence of impairment?

[15:48.005] **Corporal Brock Ernstsen:** No. There were several indicators of impairment at this point.

[15:53.845] **Defense Attorney Daniel Frazier:** Okay, but in your mind, were you able to conclude whether or not there... there was an impairment at that point?

[16:01.965] **Corporal Brock Ernstsen:** I mean, I was building suspicion.

[16:06.225] **Defense Attorney Daniel Frazier:** Okay. And after you detected the odor of alcohol coming from the vehicle, what was the next thing that you did?

[16:16.785] **Corporal Brock Ernstsen:** Uh, after he told me he had a couple of drinks at the bar, I went back to my vehicle. Well, I asked him for his insurance and he handed me a bunch of different papers that were not his insurance. And then I went back to my patrol vehicle and performed a records check.

[16:43.345] **Defense Attorney Daniel Frazier:** And then you returned to his vehicle?

[16:45.005] **Corporal Brock Ernstsen:** I did.

[16:46.225] **Defense Attorney Daniel Frazier:** And, my recollection was at that point that you indicated him to get out of the vehicle?

[16:51.505] **Corporal Brock Ernstsen:** Yes.

[16:52.765] **Defense Attorney Daniel Frazier:** And at that point, you had generated enough evidence, at least in your mind, that, uh, to suspect him of being impaired?

[17:02.945] **Corporal Brock Ernstsen:** Uh... As I said before, my suspicion was growing.

[17:07.145] **Defense Attorney Daniel Frazier:** Okay. And your purpose in having him come out of the vehicle?

[17:13.725] **Corporal Brock Ernstsen:** Uh, well, I could smell an odor of an alcoholic beverage coming from the vehicle. I'd like to have the... and he was the only person in the vehicle. So I'd like to have him step out and see if I can smell it coming from his breath. And, and at that point, I wanted him to perform field sobriety tests.

[17:27.085] **Defense Attorney Daniel Frazier:** And you were able to determine that the odor of alcohol came directly from him in the form of his breath?

[17:38.545] **Corporal Brock Ernstsen:** Uh, when he was outside of his vehicle, I could smell it coming from his breath as he was speaking to me out there in the open air.

[17:44.505] **Defense Attorney Daniel Frazier:** Okay. You indicated also there was a bracing that he performed or did?

[17:50.025] **Corporal Brock Ernstsen:** When he was getting out of the vehicle. Yeah.

[17:51.645] **Defense Attorney Daniel Frazier:** And what do you mean by bracing, exactly?

[17:53.565] **Corporal Brock Ernstsen:** He used his hands on the driver door as he was exiting.

[17:56.485] **Defense Attorney Daniel Frazier:** To get out of the vehicle?

[17:57.445] **Corporal Brock Ernstsen:** Yeah.

[17:58.585] **Defense Attorney Daniel Frazier:** And you consider that to be evidence of impairment?

[18:01.825] **Corporal Brock Ernstsen:** It's... again, it's a piece of the puzzle.

[18:06.025] **Defense Attorney Daniel Frazier:** Okay. And the field sobriety tests, in your, at least, uh, performance of those particular tests, you indicated that he had performed unsatisfactorily or...?

[18:23.305] **Corporal Brock Ernstsen:** I mean... so... on the, uh... well... yeah... oh... I saw multiple clues of impairment during the field sobriety tests.

[18:33.785] **Defense Attorney Daniel Frazier:** Right. My question related to your conclusions as to his, uh, level of performance.

[18:40.825] **Corporal Brock Ernstsen:** Yeah, I concluded that he was not okay to be driving.

[18:42.885] **Defense Attorney Daniel Frazier:** Okay. And was it at that point that you placed him under arrest?

[18:49.865] **Corporal Brock Ernstsen:** Yes.

[18:50.705] **Defense Attorney Daniel Frazier:** And after you placed him under arrest, did you place him in your patrol vehicle?

[18:55.385] **Corporal Brock Ernstsen:** I did.

[18:56.185] **Defense Attorney Daniel Frazier:** And did you transport him?

[18:57.685] **Corporal Brock Ernstsen:** I did.

[18:58.345] **Defense Attorney Daniel Frazier:** And where did you transport him?

[18:59.705] **Corporal Brock Ernstsen:** Uh, I took him to the Special Ops Center and eventually to jail.

[19:07.085] **Defense Attorney Daniel Frazier:** And after he was at Special Ops, is that where the intoxilyzer test was performed?

[19:13.045] **Corporal Brock Ernstsen:** Uh, I believe so.

[19:15.485] **Defense Attorney Daniel Frazier:** Did you perform it?

[19:16.245] **Corporal Brock Ernstsen:** I did.

[19:18.185] **Defense Attorney Daniel Frazier:** And you're certified to operate?

[19:21.145] **Corporal Brock Ernstsen:** Yes.

[19:21.665] **Defense Attorney Daniel Frazier:** The intoxilyzer?

[19:22.865] **Corporal Brock Ernstsen:** Mm-hmm.

[19:24.025] **Defense Attorney Daniel Frazier:** And you indicated that at least from your report, and correct me if I'm wrong... you... you... began tracking Baker on the same time as it's listed on the intoxilyzer receipt?

[19:42.565] **Corporal Brock Ernstsen:** Yes.

[19:43.405] **Defense Attorney Daniel Frazier:** And where was he situated in relation to you while you were, um, monitoring him?

[19:52.125] **Corporal Brock Ernstsen:** Just right there in front of me in my immediate presence.

[19:55.765] **Defense Attorney Daniel Frazier:** And was there anything else that distracted you or took your attention away from him during the, uh, the period of time that you were observing him?

[20:04.465] **Corporal Brock Ernstsen:** I don't believe so.

[20:05.685] **Defense Attorney Daniel Frazier:** And what were you doing during that time?

[20:08.165] **Corporal Brock Ernstsen:** Just talking to him, explaining what was going to happen.

[20:12.605] **Defense Attorney Daniel Frazier:** And then you got a result?

[20:14.725] **Corporal Brock Ernstsen:** I did.

[20:15.505] **Defense Attorney Daniel Frazier:** After operating the machine?

[20:17.345] **Corporal Brock Ernstsen:** Yes.

[20:17.905] **Defense Attorney Daniel Frazier:** Were there any problems that you noted while you were performing the test?

[20:22.285] **Corporal Brock Ernstsen:** Not that I recall.

[20:23.525] **Defense Attorney Daniel Frazier:** No problems in operating the machine?

[20:25.425] **Corporal Brock Ernstsen:** Not that I recall.

[20:26.465] **Defense Attorney Daniel Frazier:** Or with the machine's operation?

[20:28.085] **Corporal Brock Ernstsen:** No. Not that I recall.

[20:31.585] **Defense Attorney Daniel Frazier:** And what did you do next based on that?

[20:35.665] **Corporal Brock Ernstsen:** Um... just filled out the forms for the jail, and then we went to the jail, and I booked him in.

[20:43.285] **Defense Attorney Daniel Frazier:** And so after you took him to the jail, you just turned him over to jail staff?

[20:46.865] **Corporal Brock Ernstsen:** Correct.

[20:47.845] **Defense Attorney Daniel Frazier:** Was there any point where you read him his rights?

[20:51.125] **Corporal Brock Ernstsen:** Uh, I believe so. I believe that was in the parking lot of Special Ops if I remember correctly.

[20:56.645] **Defense Attorney Daniel Frazier:** Was that subsequent or after the intoxilyzer subsequent to?

[21:00.385] **Corporal Brock Ernstsen:** After.

[21:00.745] **Defense Attorney Daniel Frazier:** Okay. And what was his response?

[21:03.905] **Corporal Brock Ernstsen:** I don't recall. I'd have to look at my report.

[21:15.125] **Defense Attorney Daniel Frazier:** Just a moment, Your Honor. [Counsel confers with defendant, Peter Golub.]

[22:49.975] **Sound comes from Webex monitor used for teleconferences.**

[22:55.455] **Judge Elizabeth Hruby-Mills:** Please make sure you're muted if you're on Webex.

[25:49.00] **Judge Elizabeth Hruby-Mills:** Any objections, Mr. Frazier?

[25:50.68] **Defense Attorney Daniel Frazier:** No, Your Honor.

[25:51.68] **Judge Elizabeth Hruby-Mills:** Alright, so state's 1 will be admitted.

[25:54.10] **Deputy District Attorney Cara Dunkelman:** Your Honor, may I approach?

[25:54.84] **Judge Elizabeth Hruby-Mills:** Yes. Okay. Thank you. Alright. Is the state resting then?

[26:04.46] **Deputy District Attorney Cara Dunkelman:** Yes, Your Honor.

[26:05.32] **Judge Elizabeth Hruby-Mills:** Okay. Mr. Frazier, do you have any witnesses?

[26:07.86] **Defense Attorney Daniel Frazier:** We do not, Your Honor. Um, the client has been advised he has the right to testify. I recommended he not do that. He's chosen to follow that advice.

[26:17.28] **Judge Elizabeth Hruby-Mills:** Um, alright. And so with that, uh, any summary argument from the State?

[26:22.26] **Deputy District Attorney Cara Dunkelman:** Very briefly, Your Honor. Uh, Your Honor, in this case, the state... the court has heard evidence that the defendant was driving a vehicle. He was stopped because he failed to signal both when leaving the curb in which, um, the vehicle had been located previously, and then when moving across lanes of travel. He also didn't, um, indicate a lane change with his, uh, vehicle. And then upon contact by law enforcement, he made an admission... well, I guess, um, I'm a little ahead of myself. The officer began speaking with the defendant, who was the driver of the vehicle. He observed that he had an odor of alcohol coming from, um, the vehicle. And, um, then later when the defendant stepped out of the vehicle was isolated to him as well. Um, he had slurred speech, and he had glossy, bloodshot eyes. He made an admission that he had, um, a few Coronas about an hour earlier. Um, as he exited the vehicle, he had to, uh, help... um, I guess, assist himself out of the vehicle by grabbing onto the vehicle with both hands. Um... the roadside maneuvers were completed, during which, um, the officer found, um, that in conclusion of the roadsides that there was indication of impairment. Um, a PBT was offered, and the defendant indicated that he, um, did not want to do it, um, because he would, um, blow over the limit, and that he shouldn't have been out, um, with his friends that night. Um, or, um, shouldn't have met up with his friends after work on that day. Um, and then ultimately a breath test was done, which came back as a 0.104. Uh, so Your Honor, the... the state would ask that the court find that the defendant bound over on both charges.

[28:18.04] **Judge Elizabeth Hruby-Mills:** Alright, Mr. Frazier.

[28:20.62] **Defense Attorney Daniel Frazier:** Your Honor, I just want to be silent for a minute.

[28:23.44] **Judge Elizabeth Hruby-Mills:** Alright. So based on the evidence as provided, uh, by the state, uh, and its live witness, as well as through its, um, exhibit, um, I do find that the state has met its burden in establishing probable cause, uh, with regard to the, uh, two charges, uh, in the information. And so, sir, you are bound over, um, as charged in the information. Um, Mr. Frazier, do you want to address that arraignment today?

[28:45.84] **Defense Attorney Daniel Frazier:** Uh, yes, Your Honor, we'd be happy to. We plead not guilty.

[28:48.48] **Judge Elizabeth Hruby-Mills:** Okay, so we will note that, and then when do you want to come back for a pretrial conference?

[28:53.24] **Defense Attorney Daniel Frazier:** Uh... probably for me, Your Honor, the mid to... first part of August, end of July, first part of August.

[29:18.48] **Judge Elizabeth Hruby-Mills:** Do you want to come back on... we could do July 15th, or we can go August 5th?

[29:28.00] **Defense Attorney Daniel Frazier:** Got a jury trial July 15th, Your Honor.

[29:30.54] **Judge Elizabeth Hruby-Mills:** Oh, you're being selected for jury?

[29:33.10] **Defense Attorney Daniel Frazier:** Oh, no, that's one of my case. Oh yeah, haha. I wouldn't last long on a jury, Your Honor.

[29:42.78] **Judge Elizabeth Hruby-Mills:** Um, so do you want to do... what? When do you...

August 12th, August 5th, or August 12th?

[29:46.96] **Defense Attorney Daniel Frazier:** August 5th.

[29:48.48] **Judge Elizabeth Hruby-Mills:** Okay. Do you want to come at 9:00 or 1:00?

[29:52.00] **Defense Attorney Daniel Frazier:** Nine.

[29:52.86] **Judge Elizabeth Hruby-Mills:** Nine o'clock on August 5th, we'll have you back for a pretrial conference. Um, does the state want to... state wants to retain its exhibit? Um, make sure you stay in touch with counsel. All right. Thank you.

[30:06.70] **Defense Attorney Daniel Frazier:** Thank you, Your Honor.

II. Testimony II

[00:00:01.16] **Judge Hruby-Mills:** All remaining matters on the morning calendar? We shall have, I guess, Rockstone and Mr. Golub.

[00:00:06.71] **Prosecutor Dunkelman:** We're ready on the Golub case, Your Honor.

[00:00:07.72] **Judge Hruby-Mills:** If that... So what are we ready on?

[00:00:13.59] **Prosecutor Dunkelman:** We're ready on the Golub case, Your Honor. He's...

[00:00:16.71] **Judge Hruby-Mills:** And Mr. Golub, which one are you ready on here?

[00:00:20.12] **Prosecutor Dunkelman:** Oh. I can also... we can wait.

[00:00:23.12] **Judge Hruby-Mills:** Okay, call off the docket.

[00:00:25.12] **Prosecutor Dunkelman:** Um, is it going to be audio/video?

[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:** And I tried to... you're waiting for an interpreter? No. Oh. All right. So with that then, Ms. Dunkelman...

[00:00:38.88] **Prosecutor Dunkelman:** Sure.

[00:00:40.36] **Judge Hruby-Mills:** And so we are here on a motion... [To Mr. Golub] you can just come up and sit at the table.

[00:00:49.20] **Judge Hruby-Mills:** So this is a last year case ending in 0706. Here are your codes. Right there. Okay. And so, um, we have sort of a revised, uh, motion to suppress, motion to suppress statements, and then a motion to dismiss, I guess it is. Yeah?

[00:01:13.51] **Defense Counsel Golub:** Yeah. So, there's like the main one, which is the motion to suppress and dismiss. And then there's one that's a little bit more specific that just refers to, like, Miranda and statements. But, if we could, um, discuss the motion to suppress and dismiss first maybe? That covers...

[00:01:30.27] **Judge Hruby-Mills:** Well, they're sort of tied together, aren't they?

[00:01:31.95] **Defense Counsel Golub:** Yeah, they are.

[00:01:32.23] **Judge Hruby-Mills:** Okay. Yeah.

[00:01:33.63] **Prosecutor Dunkelman:** And I guess, um, I understood them to be in conjunction with each other as well. But there is quite a bit, especially in the one motion to suppress and dismiss. And so, she is asking for, I guess, a proffer as to, just in reading through that, I identified, you know, 15 plus issues?

[00:01:53.83] **Judge Hruby-Mills:** Okay, but, but... the motion you're making reference to is the motion to suppress and dismiss, but that one to me is... has very little, isn't it? Number 50, Motion to Suppress Statements, is the one that's lengthy?

[00:02:04.11] **Defense Counsel Golub:** Uh, let me pull up the motions. The lengthy one is the motion to suppress and dismiss. It's the longer one. It's, uh... it's the one that I have. It's 19 or 20 pages. And then the statement is 12 pages.

[00:02:20.83] **Judge Hruby-Mills:** Okay. I'm sorry. I actually thought 51 was identical to the other one, but I can see it is not. Okay. Yeah. Okay. Okay. Yeah. Okay. So, I did not realize that, um, that is different than the other one that I considered to be helpful. Um, but, but nevertheless, um, are... And so, the State has its witnesses?

[00:02:55.35] **Prosecutor Dunkelman:** Yes. Um, I'm only calling one witness, which I think was the intention. But there is quite a bit, especially in the, um, Motion to Suppress and Dismiss, um, document number 49 and document 50?

[00:03:12.79] **Defense Counsel Golub:** Pardon me. Can I get my computer?

[00:03:19.18] **Judge Hruby-Mills:** Yes. Yes. It would be document... 48 or 49? They're both... One Golub Case # 23590070

is just kind of the... there's a form attached.

[00:03:35.11] **Prosecutor Dunkelman:** Yeah. One's the form, I think each of the form...

[00:03:37.11] **Judge Hruby-Mills:** It's sort of the memo was filed separately from the motion. So there's 48, and then there is also 50. Those are the two filings. I think 49 and 51 are just the... the motion part.

[00:03:53.19] **Defense Counsel Golub:** Yeah, I think it's just the paperwork.

[00:03:56.23] **Judge Hruby-Mills:** All right. Um, but in particular, um, 48 addresses so many different, um, things that are in... I just want to have a clear idea. All right. Can you summarize, um, Mr. Golub for us what the, um, the main points are so that the State's witness will be able to address it?

[00:04:21.82] **Defense Counsel Golub:** Yes. Um, so I think that there's a lack of probable cause, um, in terms of, uh, what the video shows. I think the video shows a traffic violation by the officer when he, in the very beginning, he pulls a U-turn, um, at an intersection with a red light. Um... So those are the two main ones. Lack of probable cause for the initial stop.

[00:04:50.34] **Judge Hruby-Mills:** Okay. And then what else?

[00:04:54.37] **Defense Counsel Golub:** Um, the... the way that the tests were, um, administered and interpreted.

[00:05:01.17] **Judge Hruby-Mills:** Do you mean, um, the SFSTs?

[00:05:02.49] **Defense Counsel Golub:** Yeah, yeah.

[00:05:03.25] **Judge Hruby-Mills:** Okay.

[00:05:04.61] **Defense Counsel Golub:** And then, um... Let's see. And then, um, the final the chemical breath test, I also think is highly problematic.

[00:05:17.13] **Judge Hruby-Mills:** Just the administration of that or...?

[00:05:19.37] **Defense Counsel Golub:** The administration and the results. And I'm going to try to argue that it was poorly administered and that there should have been a second test done, and I'm going to argue that the results are much too high.

[00:05:34.21] **Judge Hruby-Mills:** Okay, does that, uh, narrow it down enough for you, Ms. Dunkelman, so you can question?

[00:05:40.05] **Prosecutor Dunkelman:** Yeah. I was just looking for some direction. So that's fine. Um, Your Honor, the State does have one video exhibit that the State intends to play. Um, it's the officer's body worn camera. And it's... we'll play, um, a couple portions of that same exhibit. And so I just wanted to give everybody a heads up for the video, for making sure that the video...

[00:06:04.97] **Judge Hruby-Mills:** Okay. 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 know if we should do it... I can do a test, if it's...

[00:06:12.51] **Judge Hruby-Mills:** Yeah, I think it should be all fixed. Needs... don't... I mean...

[00:06:17.41] **Defense Counsel Golub:** I mean, I didn't even know we were going to go over the video evidence because the dash cam footage is the thing that shows that he ran a red light. And then he looked around, waited there. Didn't see the violation.

[00:06:33.33] **Judge Hruby-Mills:** Well, right now we're just... We're calling... we're just about ready to get started with the evidentiary hearing.

[00:06:38.13] **Defense Counsel Golub:** I was just... it seems I like looking ahead of...

[00:06:41.21] **Judge Hruby-Mills:** Okay, we'll go ahead and call him.

[00:06:46.13] **Prosecutor Dunkelman:** [Leaves to get witness]

[00:07:09.39] **Judge Hruby-Mills:** Oh my gosh. It's going to work, but finding the time stamp...

[00:07:16.55] **Prosecutor Dunkelman:** I think you're going to have fun. It's a rotating pattern. But it looks like it should work. Can I just test the audio just to make...? Oh my god, I don't know if I

can even see... If you can see it on that. Oh, yeah. It's on. Okay.

[00:07:37.61] **Judicial Assistant Joseph Liuzzi:** I have some experience with this if you would like me to take over.

[00:07:44.09] **Prosecutor Dunkelman:** If you have to do the audio, I might...

[00:07:48.05] **Judicial Assistant Joseph Liuzzi:** Is your audio on? Just press the button. Okay.

[00:07:58.85] **Prosecutor Dunkelman:** Your Honor, I think it's important. Thanks for your time.

[00:08:02.09] **Judicial Assistant Joseph Liuzzi:** [Adjusting audio/video setup] Okay, I just left that on there. Yeah. Okay.

[00:08:10.91] **Judge Hruby-Mills:** I did it for two days straight and then...

[00:08:15.44] **Prosecutor Dunkelman:** You can do it. Just press... you can do it.

[00:08:17.52] **Judge Hruby-Mills:** Okay, so it should be all fixed. Okay, State's ready with that. So, um, with that then, I guess the State's ready with its witness.

[00:08:24.87] **Prosecutor Dunkelman:** Yes. Can I go grab him?

[00:08:25.91] **Judge Hruby-Mills:** Sure.

[00:08:29.08] **Prosecutor Dunkelman:** Oh, he made it. Okay. Perfect. Um...

[00:08:33.12] **Judge Hruby-Mills:** All right.

[00:08:34.68] **Prosecutor Dunkelman:** Your Honor, um, can we call Corporal Ernstsen?

[00:08:43.92] **Judge Hruby-Mills:** Okay. Trooper Ernstsen, if you would make your way up here, uh, to get, uh, sworn in as the witness stand.

[00:08:49.19] **Prosecutor Dunkelman:** And Your Honor, are you okay with me sitting here since I have a video that I plan on playing?

[00:08:54.95] **Judge Hruby-Mills:** Okay.

[00:09:01.05] **Clerk:** Can you raise your right hand, please? Do you solemnly swear or affirm the testimony you shall give before the court shall be the truth, the whole truth, and nothing but the truth?

[00:09:09.31] **Trooper Ernstsen:** Yes.

[00:09:10.15] **Clerk:** Thank you. Please be seated in this witness stand and state your name for the record.

[00:09:12.75] **Trooper Ernstsen:** Brock Ernstsen.

[00:09:16.83] **Prosecutor Dunkelman:** Okay. Um... Could you please state your name and spell your first and last name for the record?

[00:09:23.27] **Trooper Ernstsen:** Yeah, it's Brock Ernstsen, B R O C K E R N S T S E N.

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

[00:09:31.39] **Trooper Ernstsen:** Utah Highway Patrol.

[00:09:33.27] **Prosecutor Dunkelman:** What is your current position with Utah Highway Patrol?

[00:09:36.63] **Trooper Ernstsen:** Uh, I'm a Corporal on, do what we call the DUI squad.

[00:09:40.51] **Prosecutor Dunkelman:** Okay. And I guess, how do you be... how do you get to becoming a Corporal?

[00:09:46.11] **Trooper Ernstsen:** Um, it's an interview process. Um, basically, most we're utilized for training purposes.

[00:09:52.58] **Prosecutor Dunkelman:** And does it require quite a bit of experience to get into that position?

[00:09:56.62] **Trooper Ernstsen:** Uh, yes.

[00:09:57.38] **Prosecutor Dunkelman:** Okay. Um, and how long have you been working with Utah Highway Patrol in any sort of capacity?

[00:10:03.54] **Trooper Ernstsen:** Over 10 years.

[00:10:05.22] **Prosecutor Dunkelman:** Okay. Um, and would you mind just telling me a little bit

about your training and experience, um, when you first started, um, with Utah Highway Patrol?
[00:10:15.74] **Trooper Ernstsen:** Yeah, so I attended, uh, the academy. Um... Are you asking specifically about like DUI training or...?

[00:10:24.10] **Prosecutor Dunkelman:** Oh, I'll ask about that, but just, okay... to become a police officer?

[00:10:27.78] **Trooper Ernstsen:** Okay. So yeah, I, I completed the academy. Um, I, I began the academy in November of 2014. And then after the academy, we have what we call an in-house academy with, uh, Highway Patrol. And then after that, I went to field training with a field training officer. Um, and then once I was released from field training, um, I was just on my own.

[00:10:52.02] **Prosecutor Dunkelman:** Okay. Um, and, um, between that time period and now, do you undergo continuous training as well?

[00:10:59.38] **Trooper Ernstsen:** Uh, yes.

[00:11:00.50] **Prosecutor Dunkelman:** Okay. And then tell me about, um, specifically any, um, training you've done related to DUIs?

[00:11:08.10] **Trooper Ernstsen:** So there's training in the academy, um, both, like, book work, um, and, um, experience. They have, like, what they call a wet lab, where they have people that drink alcohol beverages and they come in, and we perform the field sobriety tests on those people, um, and then make guesses of where they are as far as their breath alcohol content. And then they tell us what the results are. Um, and then, um, after I was on my own, I went through the A-ride training. I also went through what's called the seated battery of tests training. And then, I also became a, an, the drug recognition expert, DRE. Um... Um, and, uh, essentially, I go through refresher training, um, every year.

[00:12:00.77] **Prosecutor Dunkelman:** So with respect to, um, DUI recognition, and I guess general drug recognition, is being a DRE, is that the highest level of certification you can have, um, with respect to those things?

[00:12:12.93] **Trooper Ernstsen:** Yes.

[00:12:13.37] **Prosecutor Dunkelman:** Okay. Um, were you also trained to administer an Intoxilyzer machine?

[00:12:18.29] **Trooper Ernstsen:** Yes.

[00:12:18.97] **Prosecutor Dunkelman:** Okay. And, okay. So I want to talk to you about September 6th of 2023. Were you, um, SFST certified on that day?

[00:12:30.21] **Trooper Ernstsen:** Yes.

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

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

[00:12:33.01] **Prosecutor Dunkelman:** Okay. Um, were you a DRE at that time?

[00:12:35.45] **Trooper Ernstsen:** Yes.

[00:12:35.89] **Prosecutor Dunkelman:** Okay. And, um, were you... was your training with respect to an Intoxilyzer up to date on that time?

[00:12:41.93] **Trooper Ernstsen:** Yes.

[00:12:42.45] **Prosecutor Dunkelman:** Okay. Were you working, um, with Utah Highway Patrol in September of 2023?

[00:12:49.41] **Trooper Ernstsen:** I was, yes.

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

[00:12:52.09] **Trooper Ernstsen:** I was the same as now on the DUI squad.

[00:12:55.33] **Prosecutor Dunkelman:** Okay. Um, and did a vehicle catch your attention on that day?

[00:12:59.89] **Trooper Ernstsen:** Yes.

[00:13:01.01] **Prosecutor Dunkelman:** Okay. Can you tell me about where you were when you, um, first saw this vehicle?

[00:13:07.29] **Trooper Ernstsen:** Yeah. So when I was originally traveling northbound on State Street, um, just passing 1700 South, I observed, um, a person in front of the bar on the, uh, sidewalk get into the driver seat of a vehicle. So I drove to what's, uh, still northbound on, uh, State Street to Kensington Avenue, where I stopped at a red light. Um, and then I turned, made a U-turn at that intersection and came back and observed the vehicle that I saw the person get into the driver's seat, pull away from the curb and go across the right lane and into the middle lane and never, uh, saw a blinking signal light.

[00:13:51.44] **Prosecutor Dunkelman:** Okay, can I... I'm gonna back up and just ask you a couple questions. Do you remember what time of day it was when this happened?

[00:13:57.72] **Trooper Ernstsen:** Uh, it was definitely dark. It was somewhere around probably 11:00 or midnight, somewhere in there.

[00:14:04.44] **Prosecutor Dunkelman:** Okay. Um, and just so I'm following, you saw, um, an individual come out of a bar and get into their vehicle?

[00:14:12.68] **Trooper Ernstsen:** I remember seeing them on the... in front of the bar. I don't remember seeing them come out of the bar, but I saw them in front of the bar, uh, like on the sidewalk, and then get into the driver's door.

[00:14:24.12] **Prosecutor Dunkelman:** Okay. Um, and so why, um, given the circumstances you just described, why was this of a concern to you?

[00:14:32.40] **Trooper Ernstsen:** Um, so my primary responsibility on the DUI squad is to remove impaired drivers from the roadway. Um, when I see somebody in front of a bar get into the driver's seat of a car, there's, I mean, we all know that it's common knowledge that in bars and, and saloons, I think this was Aces High Saloon, uh, that many times people are drinking alcoholic beverages in those establishments. And then when I see somebody in front of an establishment like that, get into the driver's seat, it is of interest to me.

[00:15:04.40] **Prosecutor Dunkelman:** Okay. So did you have a concern that that individual may be, um, drinking and then subsequently driving?

[00:15:11.12] **Trooper Ernstsen:** Yes.

[00:15:11.60] **Prosecutor Dunkelman:** Okay. Um, and this, just so I'm understanding, this was seen by you prior to you making the U-turn?

[00:15:18.64] **Trooper Ernstsen:** Yes.

[00:15:19.04] **Prosecutor Dunkelman:** Okay. And that was the cause for you making that U-turn?

[00:15:22.16] **Trooper Ernstsen:** Correct.

[00:15:22.68] **Prosecutor Dunkelman:** Okay. Okay. Um, and it's okay if you don't, but to your knowledge, is there a code or statute or anything that would allow you to make the U-turn at by red light based on what you observed?

[00:15:36.88] **Trooper Ernstsen:** Yes. 41-6a-212.

[00:15:39.91] **Prosecutor Dunkelman:** Okay. Um, and what, I guess, tell me more about why that would... why you understood that to allow you to do what you did?

[00:15:47.59] **Trooper Ernstsen:** Essentially, it says in there that, um, if there's a reason that I am in pursuit of somebody that I suspect may have or will commit a crime, um, I can disregard, essentially, or I can violate traffic laws, like, it even specifically says a stoplight.

[00:16:11.63] **Prosecutor Dunkelman:** Okay. And so just so I'm following, um, at what point in that, or I guess, at what point in your driving did you notice the vehicle pull away from the curb without signaling?

[00:16:23.79] **Trooper Ernstsen:** After I'd made the U-turn, I was headed back southbound on

State Street.

[00:16:28.15] **Prosecutor Dunkelman:** Okay. Um, and so you noticed that it doesn't use a signal as it leaves the curb. And then what about when it crosses the subsequent lanes of travel?

[00:16:37.26] **Trooper Ernstsen:** Did not use a signal light either on that.

[00:16:40.58] **Prosecutor Dunkelman:** Okay. Um, and so is that in itself a violation of the law?

[00:16:45.46] **Trooper Ernstsen:** Yes, failure to signal.

[00:16:47.10] **Prosecutor Dunkelman:** Okay. Um, do you remember what kind of vehicle it was?

[00:16:50.22] **Trooper Ernstsen:** It was a silver Hyundai Sonata.

[00:16:52.74] **Prosecutor Dunkelman:** Okay. And tell me what happened, um, once you were behind the vehicle and saw, um, this, this traffic violations that you had just testified to?

[00:17:03.50] **Trooper Ernstsen:** So after I made the U-turn, I saw the violations. Um, I got behind the vehicle. Uh, at some point, uh, after I followed it for a while, um, the vehicle turned, or changed lanes to the left. Um... I didn't note it in my report, but I did notice that the, the vehicle got pretty close to the left side of the lane close to the raised median there. Um, and then after I observed the vehicle in the left turn lane to get onto I-80, um, I initiated a traffic stop at that point so that we wouldn't enter the freeway.

[00:17:39.54] **Prosecutor Dunkelman:** Okay. Um, and just to back up really quickly, um, did you have a clear view of the vehicle as it left the curb and then moved between the lanes?

[00:17:49.46] **Trooper Ernstsen:** I did, yes.

[00:17:50.38] **Prosecutor Dunkelman:** Okay. Um, and when you initiated your traffic stop, did you turn on your overhead lights?

[00:17:55.62] **Trooper Ernstsen:** I did.

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

[00:18:00.62] **Trooper Ernstsen:** Uh, yeah, we had to change several lanes, and then, uh, we went underneath I-80, the overpass there, and then pulled over to the right shoulder. Well, actually, I think we were blocking a lane. The right lane.

[00:18:13.70] **Prosecutor Dunkelman:** Okay. Um, and did you approach the vehicle after both vehicles stopped?

[00:18:17.82] **Trooper Ernstsen:** I did.

[00:18:18.62] **Prosecutor Dunkelman:** Okay. Um, and did you made it, I guess, make any observations on your initial approach to the, uh, what was it? The driver's side of the vehicle?

[00:18:28.30] **Trooper Ernstsen:** It was driver's side, yes.

[00:18:29.22] **Prosecutor Dunkelman:** Okay. Did you notice anything as you first approached the driver's side of the vehicle?

[00:18:34.33] **Trooper Ernstsen:** Yeah, multiple things. So I could smell an odor of an alcoholic beverage coming from the vehicle. Uh, I observed that, uh, the person sitting in the driver's seat, uh, had glassy, bloodshot eyes, and that when he spoke with me, some of his words were slurred.

[00:18:51.85] **Prosecutor Dunkelman:** Okay. Um, were there any other occupants in the vehicle?

[00:18:53.97] **Trooper Ernstsen:** He's the only occupant.

[00:18:55.13] **Prosecutor Dunkelman:** Okay. Um, and do you see the driver, driver in the courtroom today?

[00:18:58.89] **Trooper Ernstsen:** I do.

[00:18:59.65] **Prosecutor Dunkelman:** Would you mind pointing them out and identifying an article of clothing they're wearing?

[00:19:03.17] **Trooper Ernstsen:** Yeah, he's wearing the, uh, brown suit coat with a black tie.

[00:19:07.01] **Judge Hruby-Mills:** Your honor, let the record reflect the identification.

[00:19:09.17] **Prosecutor Dunkelman:** Okay. Would you mind telling me about the conversation as

you first approached the vehicle?

[00:19:17.01] **Trooper Ernstsen:** Uh, yeah. So I asked him, uh, for his driver license and the insurance, the proof of insurance for the vehicle. Uh, he handed me the, the registration instead of the insurance. Um, and then eventually, I think he handed me an expired insurance card. So I asked him to see if he could find that. Um... I asked him if he had anything to drink. He told me he had a couple, I believe he said Coronas at the bar about an hour before that. Um... Uh, when I went back to my vehicle to perform a records check, uh, I informed him if he could just keep looking for the insurance information.

[00:19:56.25] **Prosecutor Dunkelman:** Okay. Um, and was it during this time period that you were noticing the speech patterns that you talked about and the observations with respect to his eyes being glossy and bloodshot?

[00:20:08.53] **Trooper Ernstsen:** Yeah, that initial approach, I noticed all those things.

[00:20:11.01] **Prosecutor Dunkelman:** Okay. So based on your training and experience, um, what could those be possible indicators of?

[00:20:17.01] **Trooper Ernstsen:** Um, that he's consumed alcohol.

[00:20:20.21] **Prosecutor Dunkelman:** Okay. Okay. Um, and, um, as you returned... or I guess as you were returning to your vehicle, did you, um, hear anything else that was stated by the defendant?

[00:20:33.28] **Trooper Ernstsen:** Yeah, um, I heard him drop an F-bomb or yeah.

[00:20:40.10] **Prosecutor Dunkelman:** Okay. We'll refer to it as that, I guess. Okay. And once in your vehicle, um, after you had run his information, did you make any determinations as to how you wanted to proceed from there?

[00:20:55.92] **Trooper Ernstsen:** Yeah, um, so when I ran that records check, I, um, you know, as I was narrating to my camera in my patrol vehicle, I stated that I was going to have him do tests to make sure he's okay to be driving.

[00:21:09.88] **Prosecutor Dunkelman:** Okay. So you actually narrated that out loud onto your body camera, the observations you had made?

[00:21:15.64] **Trooper Ernstsen:** Yes.

[00:21:16.20] **Prosecutor Dunkelman:** Okay. So at some point after you made that determination, did you return back to the defendant's vehicle?

[00:21:25.24] **Trooper Ernstsen:** I did, yes.

[00:21:25.92] **Prosecutor Dunkelman:** Okay. Um, and when you returned back the vehicle, um, did you explain what you wanted to do from there?

[00:21:32.32] **Trooper Ernstsen:** Yeah, I had him, I told him I wanted him to step out of the vehicle.

[00:21:35.64] **Prosecutor Dunkelman:** Okay. Um, and as he exited the vehicle, did, uh, you notice anything about, uh, how he exited that vehicle?

[00:21:43.44] **Trooper Ernstsen:** Yeah, as he was exiting, he braced himself on his driver door with both hands. Um, and then we walked over to the sidewalk.

[00:21:50.64] **Prosecutor Dunkelman:** And why is... was that of any significance to you?

[00:21:54.56] **Trooper Ernstsen:** Um, it could, you know, essentially, his balance could be off from possibly, uh, alcohol consumption.

[00:22:02.88] **Prosecutor Dunkelman:** Okay. Um, in your training and experience, can, um, a balance be impacted by consuming alcohol?

[00:22:10.48] **Trooper Ernstsen:** Yes.

[00:22:11.24] **Prosecutor Dunkelman:** Okay. Okay. Um, and did you, um, ask him to do the roadside maneuvers?

[00:22:19.04] **Trooper Ernstsen:** Uh... Yeah, so I told him I wanted him to do some tests to make

sure he was okay to drive.

[00:22:24.92] **Prosecutor Dunkelman:** Okay. Um, and prior to doing those tests, um, are there any sort of questions that you ask him, um, with respect to his ability to complete those tests?

[00:22:35.11] **Trooper Ernstsen:** Yeah, I, 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 Ernstsen:** It was, yes.

[00:22:41.07] **Prosecutor Dunkelman:** Okay. Um, based on his responses to the medical screening, any questions or concerns about his ability to do the tests?

[00:22:47.79] **Trooper Ernstsen:** No. He told me he did not have any injuries nor illnesses.

[00:22:51.39] **Prosecutor Dunkelman:** Okay. So, um, is there a standardized way in which you, um, do these, uh, the battery of tests for this?

[00:23:01.23] **Trooper Ernstsen:** Yeah, it's actually in the name of the test. It's called the Standardized Field Sobriety Test.

[00:23:05.19] **Prosecutor Dunkelman:** Okay. Um, and what is the first test, uh, that you are, um, to start with?

[00:23:10.31] **Trooper Ernstsen:** Horizontal Gaze Nystagmus.

[00:23:11.99] **Prosecutor Dunkelman:** Okay. And did you explain the instructions for this particular test?

[00:23:18.03] **Trooper Ernstsen:** I did.

[00:23:18.47] **Prosecutor Dunkelman:** Okay. Um... And is there a way... or I guess, what is there some sort of manual or instruction, um, booklet that you are trained on in order to administer these tests?

[00:23:32.07] **Trooper Ernstsen:** Yeah, it's the, it's referred to as the Nitsa manual. It's the National Highway Traffic Safety Administration.

[00:23:38.51] **Prosecutor Dunkelman:** Okay. Um, and did you explain the instructions for... I'm just going to refer to it as HGN, um, as you had been trained to do?

[00:23:48.11] **Trooper Ernstsen:** Yes.

[00:23:48.63] **Prosecutor Dunkelman:** Okay. Um... And so how many possible clues are there on the HGN test?

[00:23:56.27] **Trooper Ernstsen:** Six.

[00:23:57.03] **Prosecutor Dunkelman:** Okay. And how many, um, clues did you see?

[00:23:59.47] **Trooper Ernstsen:** Six.

[00:24:00.23] **Prosecutor Dunkelman:** Would you mind just telling the court what those clues were?

[00:24:03.03] **Trooper Ernstsen:** Yep. Um, so lack of smooth pursuit, the distinct and sustained nystagmus at maximum deviation, and the onset of nystagmus prior to 45 degree angle.

[00:24:12.15] **Prosecutor Dunkelman:** And both eyes?

[00:24:12.87] **Trooper Ernstsen:** In both eyes.

[00:24:13.47] **Prosecutor Dunkelman:** Okay, I was just going to clarify. So three for each eye?

[00:24:16.51] **Trooper Ernstsen:** Yes.

[00:24:16.95] **Prosecutor Dunkelman:** Okay. Um, and when you're administering this test, um, would you mind just, I guess, walking us through how the test is actually administered?

[00:24:25.87] **Trooper Ernstsen:** Yeah, so, um, I asked him about injuries and illnesses. Um, I asked him if he was wearing contacts or glasses. Um, I asked him, uh, to look at my finger. I held my finger just in front of his face, and I looked to see if resting nystagmus was present, and it was not. Um, then I performed... I also looked at the size of his pupils to make sure that his pupils were the same size. Um, to, again, rule out, it's medical pre-screening. And then, um, I did two passes per eye,

um, just to see if his eyes were tracking the stimulus, which was my index finger.

[00:25:02.62] **Prosecutor Dunkelman:** And one second, just... would the record reflect that, um, the witness just brought his finger, uh, back and forth in front of his face once in each direction.

[00:25:13.26] **Judge Hruby-Mills:** Record will so reflect.

[00:25:14.06] **Prosecutor Dunkelman:** Okay. Um, okay. So you can continue from there.

[00:25:18.38] **Trooper Ernstsen:** Um... So it's very standardized how, how, like, the distance and everything. So I held my stimulus, my index finger, approximately 12 to 15 inches away from his face and slightly above eye level. Um, once I did make sure his eyes were tracking correctly, I, I took the stimulus away to basically, um, signify... indicate that I was through with the medical pre-screening. And at that point, I start watching for clues on the horizontal gaze nystagmus, the clues that I mentioned earlier.

[00:25:49.85] **Prosecutor Dunkelman:** Okay. Um, and in doing so, are you using the determined distances away from, um, the individual and distances, um, I guess back and forth on, on each side of his face?

[00:26:03.05] **Trooper Ernstsen:** Yes. And it also matters, uh, how quickly you move the stimulus depending on which clue you're looking for.

[00:26:09.57] **Prosecutor Dunkelman:** Okay. So I guess, um, in summary, um, was this maneuver done as you have been trained to do and as, um, determined in the Nitsa manual?

[00:26:19.89] **Trooper Ernstsen:** Yes.

[00:26:20.61] **Prosecutor Dunkelman:** Okay. Um, and so you said that you saw six clues on HGN, is that right?

[00:26:26.65] **Trooper Ernstsen:** Correct.

[00:26:27.17] **Prosecutor Dunkelman:** Okay. Um, how many clues do you need to see to determine impairment on HGN test?

[00:26:32.37] **Trooper Ernstsen:** Um, essentially, the Nitsa manual talks about the... on the HGN test, four out of the six clues indicates an 88% probability that they're 0.08 or greater.

[00:26:43.45] **Prosecutor Dunkelman:** Okay. And you saw how many out of six?

[00:26:46.13] **Trooper Ernstsen:** Six out of six.

[00:26:47.21] **Prosecutor Dunkelman:** Okay. Um, did you notice anything about the defendant's balance during the HGN test?

[00:26:52.13] **Trooper Ernstsen:** Yeah. Um, so while he was standing there just on normally on both feet, he had a slight circular sway.

[00:26:59.77] **Prosecutor Dunkelman:** Okay. And why was this of any significance to you?

[00:27:03.57] **Trooper Ernstsen:** Again, um, his balance.

[00:27:05.73] **Prosecutor Dunkelman:** Okay. So there was a concern with, um, his ability to maintain his balance?

[00:27:09.85] **Trooper Ernstsen:** Yeah. And plus I could smell the odor of an alcoholic beverage coming from his mouth as he was speaking to me there in the open air environment as well.

[00:27:17.13] **Prosecutor Dunkelman:** Okay. Um, so what is the next test, uh, that you conducted?

[00:27:21.29] **Trooper Ernstsen:** The next is the Walk and Turn test.

[00:27:23.64] **Prosecutor Dunkelman:** Okay. Um, and, um, can you... or I guess, what is the instruction... what are the instructions for the Walk and Turn test?

[00:27:32.82] **Trooper Ernstsen:** Uh... So essentially, I have, um, I get in what's called the starting position or the instructional stance where I put 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. Uh, I tell him, imagine if there's an actual line painted on the road or something we can use. I have him step on that line. If not, in this case, there was no line. So I told him to imagine just an imaginary line that started under his left foot

and went straight out in front of him. Then I instructed him to put, as I was doing, put his right foot in front of his left foot with his heel touching his toe and his hands down at his side. And then I told him once he got in that, 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 he's in that starting position, um, what do you do in terms of demonstration from that point?

[00:28:20.28] **Trooper Ernstsen:** So I explained the test as I demonstrated it. Um, I, in the... there's another manual for the Nitsa manual, it's the instructor manual where it teaches the instructors how to actually perform and teach the cadets and whoever's their training, how to administer the Field Sobriety Tests. And so in that manual, it says that you demonstrate three steps, demonstrate the turn, and then demonstrate three steps back. Um, so that's what I did.

[00:28:53.94] **Prosecutor Dunkelman:** Okay. Um, and how many possible clues are there on this test?

[00:28:58.42] **Trooper Ernstsen:** Eight.

[00:29:00.30] **Prosecutor Dunkelman:** Okay. Um, and how many, um, clues, if any, did you observe, um, once the defendant completed the test?

[00:29:08.70] **Trooper Ernstsen:** Four out of the eight.

[00:29:09.98] **Prosecutor Dunkelman:** Um, and what clues were those?

[00:29:12.06] **Trooper Ernstsen:** Uh, he stopped walking and asked a question, and then he made an improper turn by taking one large spinning step to turn around, and then took his front foot off the line and stepped backwards with that foot. And then he, uh, again stopped walking and asked a question on the second set of nine steps. He also stepped off line once, and instead of nine steps, he took 11 steps.

[00:29:33.43] **Prosecutor Dunkelman:** Okay. Okay. Um, and did that conclude the Walk and Turn test?

[00:29:42.15] **Trooper Ernstsen:** Yes.

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

[00:29:44.99] **Trooper Ernstsen:** The One Leg Stand test.

[00:29:46.39] **Prosecutor Dunkelman:** Okay. Um, and what is the One Leg Stand test?

[00:29:50.39] **Trooper Ernstsen:** Um, so I instructed him just to stand with his feet together and his hands to the side while I explained and demonstrated again this test. Um, and then I instructed him that he can choose which foot he wants to use. When I tell him to begin whatever foot he decided, he's supposed to raise his foot up six inches point his toe down towards the ground, um, keep both legs straight, and look at his foot and count out loud: 1001, 1002, 1003, and just keep counting until I tell him to stop.

[00:30:18.95] **Prosecutor Dunkelman:** And those are the instructions that you gave him on this day?

[00:30:21.39] **Trooper Ernstsen:** Yes.

[00:30:21.99] **Prosecutor Dunkelman:** Okay. Um, and how many possible clues are there on this test?

[00:30:25.19] **Trooper Ernstsen:** Four.

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

[00:30:28.63] **Trooper Ernstsen:** Um, I saw one clue that I probably could have counted, but I felt like it was kind of borderline, so I did not count that clue, and I, I counted... and essentially documented zero clues out of the four clues possible.

[00:30:39.87] **Prosecutor Dunkelman:** Okay. And what's the clue that you're alluding to but didn't notate on the report?

[00:30:44.95] **Trooper Ernstsen:** Raising his arms above six inches to help maintain his balance.

[00:30:48.23] **Prosecutor Dunkelman:** Okay. So is that typically, um, one of the four possible clues?

[00:30:51.71] **Trooper Ernstsen:** It is.

[00:30:52.19] **Prosecutor Dunkelman:** Okay. Um... And so did you ignore the results of this test, um, in your analysis of making an impairment determination?

[00:31:02.87] **Trooper Ernstsen:** No, I actually documented it in my report that it was zero clues observed.

[00:31:06.79] **Prosecutor Dunkelman:** Okay. So based on your observations so far and the defendant's performance on SFSTs, did you have any further concern about the defendant's ability to drive?

[00:31:20.50] **Trooper Ernstsen:** Yes. I determined at that point that I was going to arrest him for DUI.

[00:31:24.90] **Prosecutor Dunkelman:** Okay. Um, and did you ask him to do a PBT?

[00:31:29.62] **Trooper Ernstsen:** I did.

[00:31:30.22] **Prosecutor Dunkelman:** Okay. And when you asked him if he wanted to do it, how did he respond?

[00:31:35.66] **Trooper Ernstsen:** Uh, he had his hands up by his face covering his mouth and his nose, and basically told me that he did not want to blow into it because he had been drinking, and he, he knew he would blow over.

[00:31:46.02] **Prosecutor Dunkelman:** Okay. So what happened at this point?

[00:31:50.86] **Trooper Ernstsen:** Uh, I placed him under arrest.

[00:31:52.18] **Prosecutor Dunkelman:** Okay. Um, and after he was placed under arrest, um, where did... What happened from there?

[00:32:00.34] **Trooper Ernstsen:** So I did a search of his person, his pockets, his waistband, his pants, shirt. Um, and then, uh, I made sure that the handcuffs were okay, that they weren't too tight. I locked them so they didn't tighten up. I put him in my patrol vehicle. And then, uh, eventually I did, uh, a vehicle inventory because I had to impound the car.

[00:32:23.61] **Prosecutor Dunkelman:** Okay. Um, and was there another trooper around at this point?

[00:32:26.77] **Trooper Ernstsen:** Yeah, he arrived there right before I, um, placed the defendant under arrest for DUI.

[00:32:31.45] **Prosecutor Dunkelman:** Okay. Did... were... were you and did you remain to be the primary officer in the case?

[00:32:36.61] **Trooper Ernstsen:** Yes.

[00:32:37.37] **Prosecutor Dunkelman:** Okay. Um, is it fair to say he was there for support?

[00:32:41.29] **Trooper Ernstsen:** Yeah, he was just there as a backup officer, yeah.

[00:32:43.85] **Prosecutor Dunkelman:** Okay. Okay. Um, so was anything taken out of the defendant's vehicle, um, prior to you guys leaving that location?

[00:32:53.21] **Trooper Ernstsen:** Yeah, I believe he wanted his phone and, I think, a wallet, if I remember correctly.

[00:32:58.69] **Prosecutor Dunkelman:** Okay. Was the defendant transported somewhere else?

[00:33:04.25] **Trooper Ernstsen:** Yeah. After the, uh, car was towed away, I transported him to what we call Special Operations.

[00:33:10.49] **Prosecutor Dunkelman:** Okay. And what, what is that? Or why were you bringing him to that particular location?

[00:33:15.61] **Trooper Ernstsen:** So Special Ops is, it's like, it's, uh, a room that we have the code to enter. It's like, it's actually a, uh, an evidence room for Unified Police Department. Um, they have an

Intoxilyzer machine in there. We also draw blood in there many times. Um, so that's where I went, and entered that evidence room.

[00:33:34.13] **Prosecutor Dunkelman:** Okay. Um, and, um, while you were driving him to this location, did you ask him any questions likely to elicit incriminating response?

[00:33:44.49] **Trooper Ernstsen:** No.

[00:33:45.05] **Prosecutor Dunkelman:** Okay. Um, did he ask you any questions or make any statements to you during that time?

[00:33:51.01] **Trooper Ernstsen:** Yeah, he asked me many questions.

[00:33:53.13] **Prosecutor Dunkelman:** Okay. Do you remember what type, the general nature of the statements he was making to you?

[00:34:00.89] **Trooper Ernstsen:** Um... While we were in the vehicle?

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

[00:34:04.29] **Trooper Ernstsen:** Uh, I think he was just curious like what was going to happen. Um, he wanted me to let him go. Uh, things like that.

[00:34:11.13] **Prosecutor Dunkelman:** Okay. Do you remember... Is it fair to say you kind of explained to him what explained to him what the next steps were going to be at that point?

[00:34:21.32] **Trooper Ernstsen:** Yeah, I, I read the the DUI admonitions at some point.

[00:34:25.44] **Prosecutor Dunkelman:** Okay. And what are the DUI admonitions?

[00:34:30.44] **Trooper Ernstsen:** It basically... Excuse me. It basically explains why he's under arrest for DUI. Again, I had already told him he was under arrest for DUI, but it... I have to read these DUI admonitions word for word. Um, and so I read that, and then I requested, uh, a breath test at that point and told him the, uh, possible ramifications of the breath test results.

[00:34:54.12] **Prosecutor Dunkelman:** Okay. And did he agree to do a breath test?

[00:34:57.00] **Trooper Ernstsen:** Uh, yes.

[00:34:58.08] **Prosecutor Dunkelman:** Okay. So once you got to, um, the second location, um, what did you do in order to prepare to do a breath test?

[00:35:09.68] **Trooper Ernstsen:** Yeah, so there's, uh, what's called a Baker period, where it's a 15 minute period of time. Um, I had him open his mouth, and I shine my flashlight in his eye and his mouth to check and make sure there was nothing inside of his mouth, no fluids or any objects or anything inside his mouth. And then, uh, I looked at the, the time that was on the Intoxilyzer machine, and I wrote that down, um, and began the Baker period off of that time. I waited 15 minutes, and at the end of that 15 minutes, I again looked in his mouth with my flashlight to make sure there was nothing in his mouth. Um, both times that I inspected his mouth, I didn't see anything in his mouth. Um, after I inspected it the second time after the Baker period was over, I had him... well, we tried to do the breath test multiple times.

[00:35:59.48] **Prosecutor Dunkelman:** Okay. And let me back up just a second. Um, and so what about... what's the process for getting the Intoxilyzer going?

[00:36:08.55] **Trooper Ernstsen:** Uh, it's pretty simple. We just push this little green button that says start.

[00:36:12.43] **Prosecutor Dunkelman:** Okay. Um, and when it turns on, um, if there were an error message or something that wasn't functioning with the machine, would it tell you that?

[00:36:22.03] **Trooper Ernstsen:** Yeah, if it's not functioning, it does, um, what's called an air blank... it does multiple air blank tests to make sure there's no alcohol in the actual system of the machine. It does diagnostic testing, and if any of those tests fail, it will not let you proceed.

[00:36:38.71] **Prosecutor Dunkelman:** Okay. Did you receive any messages of that nature indicating that the machine wasn't working?

[00:36:44.31] **Trooper Ernstsen:** Not that I recall, no.

[00:36:45.67] **Prosecutor Dunkelman:** Okay. So I guess let me clarify, to your knowledge, did it appear that the machine was functioning as normal?

[00:36:51.51] **Trooper Ernstsen:** Yes.

[00:36:52.07] **Prosecutor Dunkelman:** Okay. Okay. Um, and during this Baker period, um, were you, um... was there conversation going between you and the defendant?

[00:37:02.23] **Trooper Ernstsen:** Uh, yeah. Yeah.

[00:37:03.07] **Prosecutor Dunkelman:** Okay. Um, were you asking him questions or what was kind of this conversation like?

[00:37:09.31] **Trooper Ernstsen:** Uh, I think I asked him where he worked and stuff. Um, yeah, just kind of conversation.

[00:37:15.51] **Prosecutor Dunkelman:** Okay. Um, and was he also engaging you in conversation as well?

[00:37:20.31] **Trooper Ernstsen:** Yes.

[00:37:20.91] **Prosecutor Dunkelman:** Okay. Okay. Um, and so, would you mind just walking me through... we'll first talk about the general process for getting a breath sample and then how it went in this case. So just the general process for a breath sample?

[00:37:41.80] **Trooper Ernstsen:** Um, yeah. So basically, uh, there's a mouthpiece in a little plastic, uh, container. I take the plastic off of the mouthpiece. I put the mouthpiece on the end of the tube that's connected to the Intoxilyzer machine. And then I instruct them that, basically, I show them where my fingers are. I need you to put your mouth on that part of the mouthpiece, and then just blow for several seconds until I tell you to stop. If... basically, I instruct them that if he's blowing enough air, that you'll, you'll hear, uh, a high pitched noise coming from the, the machine. If you're not blowing enough, you won't hear anything. I'll be right here telling you, blow a little bit more, get it a little harder, keep going, keep going. Once the, uh, once there's enough air volume introduced into the machine, it will register the results, and it will print the results off on a little receipt, and then I tear it off, and I show them what the results are. And eventually, I give them a copy of the result.

[00:38:37.34] **Prosecutor Dunkelman:** Okay. And so as air is being blown into the machine, are you getting a reading of, like, the quantity of air or is it more of a insufficient versus sufficient thing?

[00:38:49.38] **Trooper Ernstsen:** Yeah, essentially, um... I can't see how much air is being blown into the machine. I... it basically just shows these little green bars. Um, and then once there's enough air that's been introduced, it will start the process. You can hear the machine working and starting to analyze the, the sample. And then eventually it shows you what the result is. Prints the results off.

[00:39:15.50] **Prosecutor Dunkelman:** Okay. And then with respect to, um, say someone was doing a test, and it took a couple tries to get the sufficient sample, um, is there any reason why you would need to restart the test after each attempted breath, or I guess, each attempt to get a full breath sample?

[00:39:34.42] **Trooper Ernstsen:** No. The only thing that happens is if it's a certain amount of time, um, goes by, it will time out the machine, and you'll have to just basically enter all the information. Um, so initially I enter, like, it asked for my name and badge number, and the person's name and date of birth and driver license. So if it times out, um, you would have to enter all that information again and have them start to blow into it again. But it, it'll allow you within that time frame to do as many attempts as you need to, to get the correct amount of air into the machine.

[00:40:10.81] **Prosecutor Dunkelman:** Okay. And to your knowledge, do more breath attempts 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 like to talk to you about how, um, it went in this case. Um, would you mind just walking me through, um, what happened after the defendant

was given the instructions on, on how to blow into the machine and everything you described already?

[00:40:32.85] **Trooper Ernstsen:** Yeah. So I told him all the things that I mentioned that I tell people, uh, instructions on how to perform the breath test. And multiple times, like, I can't remember exactly how many, it was many times, he didn't blow enough air into the machine to have it register the results. And so I had to have him try it over and over and over again. And, uh, before it timed out, we were able to collect a valid sample.

[00:40:58.25] **Prosecutor Dunkelman:** Okay. And just one more, I guess, procedural question. Is there any sort of, to your knowledge, any sort of minimum or maximum time period that you're allotted to get these breath samples in?

[00:41:13.00] **Trooper Ernstsen:** Yeah, like I said, the machine will time out if you don't do it within a certain amount of time. And I, I can't remember exactly how long 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?

[00:41:25.20] **Trooper Ernstsen:** No, it didn't.

[00:41:26.04] **Prosecutor Dunkelman:** Okay. Um, and, um, ultimately, were you able to get a, I don't know if this is the right word, but like a viable breath sample?

[00:41:35.04] **Trooper Ernstsen:** Yes. So there is a minimum amount of breath that you have to blow into it. And I, I think it's around 1.1 or 1.2 liters of air before it will accept the, the sample.

[00:41:47.84] **Prosecutor Dunkelman:** Okay. And to your knowledge, is there... if someone blew... is there an amount... Is there too much air you can blow in?

[00:41:57.40] **Trooper Ernstsen:** I've never seen any that, no.

[00:41:59.84] **Prosecutor Dunkelman:** Okay. Okay. And do you... So did you receive a printout, um, from this test?

[00:42:09.16] **Trooper Ernstsen:** I did, yes.

[00:42:09.88] **Prosecutor Dunkelman:** Okay. Um, and what was the result of that?

[00:42:11.64] **Trooper Ernstsen:** 0.104.

[00:42:13.28] **Prosecutor Dunkelman:** Okay. Um, and while, um, awaiting for those results, um, do you recall if the defendant made any statements about the result?

[00:42:24.56] **Trooper Ernstsen:** Uh, yeah, before we got the results, he told me that he felt like it was going to be bad.

[00:42:30.80] **Prosecutor Dunkelman:** Okay. Um, and after you received the results, 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 out loud.

[00:42:40.80] **Prosecutor Dunkelman:** Okay. Um, and what happened after he... after the test was completed?

[00:42:47.48] **Trooper Ernstsen:** Um, I believe we just went back out to my patrol vehicle and I, um, and while we were inside my patrol vehicle, I read his, read him his Miranda rights to him.

[00:42:56.80] **Prosecutor Dunkelman:** Okay. And why did you advise... why did you decide to advise him of his Miranda rights at this point?

[00:43:02.35] **Trooper Ernstsen:** Um, so my department likes us to perform an interview. It's just part of our DUI form on our computers. Uh, it's just multiple questions that we ask them pertaining to the, the crime of the DUI. And so I wanted to, before I ask them any incriminating questions about that crime specifically, I wanted him to understand his rights.

[00:43:23.43] **Prosecutor Dunkelman:** Okay. Um, and did he choose to continue speaking with you?

[00:43:28.83] **Trooper Ernstsen:** He told me he did not want to.

[00:43:30.31] **Prosecutor Dunkelman:** Okay. Um, and so did you proceed with questioning after that?

[00:43:38.51] **Trooper Ernstsen:** I did not, no. He just wanted to call somebody, so.

[00:43:42.11] **Prosecutor Dunkelman:** Okay. And did you... um, was he able to call somebody?

[00:43:46.87] **Trooper Ernstsen:** Uh, I asked him if he wanted me to get into his phone and dial a number for him to call somebody. And he said yes. And when I went to dial the number, his phone was dead, so he couldn't call anybody.

[00:43:58.59] **Prosecutor Dunkelman:** Okay. Um, and did that conclude your involvement in the case, or, I guess, how did it end?

[00:44:06.95] **Trooper Ernstsen:** Uh, eventually, once I got all the forms filled out and printed off for him, we went over to the jail where I had, uh, booked him into the jail.

[00:44:14.67] **Prosecutor Dunkelman:** Okay. Um, nothing further, Your Honor.

[00:44:17.75] **Judge Hruby-Mills:** Mr. Golub?

[00:44:18.75] **Defense Counsel Golub:** All right. Hello! Okay. Um, excuse me for... if I'm not good at this, but I'll try, um, to not waste everyone's time. Um, okay. So, um, I didn't know that, um, we were going to do another testimony because I figured you already did one. Um, can you just... can you do as many as you want?

[00:44:45.94] **Judge Hruby-Mills:** [Overlapping speech] And I'm sorry, I couldn't hear the defense...

[00:44:47.78] **Defense Counsel Golub:** Oh, sorry. Okay, never mind. I just, I just... I just was a little confused about procedure, but that's fine. It's not, it's not... that's not the point. Um, okay. So what I remember in the first, um, testimony was that... and again, if I'm wrong, just tell me that I'm wrong. Uh, did you say that it was a routine traffic stop when... in your initial testimony, or did you say it was because you saw me walk out of the bar?

[00:45:10.62] **Trooper Ernstsen:** Uh, I don't recall if I said it was routine. I don't remember.

[00:45:14.90] **Defense Counsel Golub:** Um, well why do you think you have to do another testimony today? Why are you doing this one?

[00:45:24.70] **Judge Hruby-Mills:** The witness doesn't decide why...

[00:45:25.02] **Defense Counsel Golub:** Why, why call you in for a second one?

[00:45:31.70] **Judge Hruby-Mills:** Yeah. That's not... he probably was subpoenaed because he had to get here today.

[00:45:38.42] **Defense Counsel Golub:** Okay. That's fine. I don't... Your Honor, motions to suppress. Absolutely. Absolutely. Okay. Okay. Um, so, you said that there was a code that you cited for running the red light? Correct?

[00:45:52.18] **Trooper Ernstsen:** Correct.

[00:45:53.10] **Defense Counsel Golub:** Um, does it say you have to have your flashing lights on?

[00:45:56.30] **Trooper Ernstsen:** No.

[00:45:57.10] **Defense Counsel Golub:** You're not turning one on? Okay. Um... the F-bomb. Is that absolutely on the video or anything like that?

[00:46:07.14] **Trooper Ernstsen:** I just mentioned it.

[00:46:08.86] **Defense Counsel Golub:** I was thinking that maybe it's kind of Russian sounding. So I was going to say, can I say the defendant or just me?

[00:46:19.06] **Judge Hruby-Mills:** You just pick something and say that you can...

[00:46:21.42] **Defense Counsel Golub:** Okay. Okay. I think I'll just do the sentence then. Um, so you say that the defendant braced himself against the door when he got out?

[00:46:34.18] **Trooper Ernstsen:** Uh, yeah. He just put both hands on the driver door when he

exited.

[00:46:39.10] **Defense Counsel Golub:** And that's absolutely on the video. Um, and that's, uh, indication of what?

[00:46:44.94] **Trooper Ernstsen:** Uh, it can, it can be an indication of balance issues.

[00:46:47.86] **Defense Counsel Golub:** But did you note that he got a perfect score on the test, which is the actual balance test?

[00:46:55.89] **Trooper Ernstsen:** Well, like I mentioned before, I could have counted raised arms above six inches to help maintain his balance, but I felt like it was fairly borderline, so I did not count that test, or that clue.

[00:47:06.85] **Defense Counsel Golub:** Okay, putting two hands on a door. Could it be because you're walking into traffic and you don't want that door to swing open and hit a cyclist or something?

[00:47:16.25] **Trooper Ernstsen:** It's possible.

[00:47:17.61] **Defense Counsel Golub:** Um, I... um, the defendant is a cyclist, and he is very scared of doors and being hit by them, and it's happened to him several times. Um... so, you said that you've been trained, um, to perform these field sobriety tests, um, particularly the horizontal gaze nystagmus test. Um...

[00:47:40.07] **Prosecutor Dunkelman:** Objection, Your Honor. Counsel is testifying.

[00:47:48.39] **Judge Hruby-Mills:** Any response to the objection?

[00:47:50.91] **Defense Counsel Golub:** Um, no. I just... I assume that's what you're supposed to say.

[00:47:57.23] **Judge Hruby-Mills:** Objection is sustained.

[00:47:58.51] **Defense Counsel Golub:** Okay. Okay. Um... Okay. So you said that he passed four... for the Walk the Line test. He got four out of the eight clues. I'm sorry. He got four out of the eight, right?

[00:49:00.56] **Trooper Ernstsen:** Four... I observed four out of the eight clues possible.

[00:49:03.04] **Defense Counsel Golub:** Okay. So what were the four clues that were not observed?

[00:49:06.96] **Trooper Ernstsen:** That were not observed? Um... Uh, so you... he did not, uh, step out of the instructional stance, did not start too soon. Um... did not miss heel to toe, and did not raise arms above six inches.

[00:49:25.32] **Defense Counsel Golub:** Okay. Okay. Um... So I read an article where it it said that, you know, some people may perform certain aspects of the test perfectly, but still blow, you know, below the... the legal limit. Is that true? Can that happen?

[00:49:47.44] **Trooper Ernstsen:** Anything's possible.

[00:49:48.52] **Defense Counsel Golub:** Okay. Um... So what makes fantastic is the balance test, that you didn't feel like putting down the one thing that he was... positive positive that he showed the clue that he showed that you didn't bother putting on the report.

[00:50:05.99] **Trooper Ernstsen:** Well, I didn't put it on there because I gave him the benefit of the doubt.

[00:50:09.07] **Defense Counsel Golub:** Yeah, no, but just... what was the one?

[00:50:11.19] **Trooper Ernstsen:** Raising his arms above six inches to help maintain his balance.

[00:50:13.95] **Defense Counsel Golub:** Okay. Um... Do you know that you are supposed to offer a PBT? And that you are supposed to give a person the right to the option to either agree or disagree to take it?

[00:50:32.95] **Trooper Ernstsen:** I don't understand your question.

[00:50:34.47] **Defense Counsel Golub:** So, when I... I may be wrong here, but I thought that under section 4168-520 of the Utah Code, um, there's an implied consent section, and an officer who

offers a PBT to a, um, to the defendant, um, must cite this law, because if you, um, if you say no, if you refuse to take the PBT, um, that could be a violation and could lead to your license being taken away for two years if you refuse to take the PBT. Um, the defendant still has his license.

[00:51:09.59] **Judge Hruby-Mills:** I'm wondering if you're reading the actual law, applies to the...

[00:51:12.15] **Defense Counsel Golub:** The actual... Oh, does it apply to the PBT too? Okay. And, um, from what I understand, I don't think the defendant realized that there was an official order, right? On the on the camera, she say something like, "I just want to go home." So I think it was a matter of like, what do we want to do? Versus, like, do you have to take this?

[00:51:39.63] **Prosecutor Dunkelman:** Objection, Your Honor. Counsel is testifying...

[unintelligible]

[00:51:44.79] **Judge Hruby-Mills:** Respond to the objection.

[00:51:46.31] **Defense Counsel Golub:** Um, can I just make that question simple?

[00:51:51.87] **Judge Hruby-Mills:** You need to respond to the objection.

[00:51:54.27] **Defense Counsel Golub:** Um... So, all I'm trying to say is that I thought the law was...

[00:51:55.67] **Judge Hruby-Mills:** Okay, but that's... and that's... that's kind of the issue right now. You're asking questions of this witness. If you want to call yourself as a witness, you can do that at some other time later. Okay? Okay. But so...

[00:52:05.63] **Defense Counsel Golub:** So based on character, based on what I said, do you think you properly, um, offered the witness to take the PBT?

[00:52:13.42] **Trooper Ernstsen:** Yes.

[00:52:14.06] **Defense Counsel Golub:** Okay. Thank you. Okay. Um... Do you remember what the second officer's name was?

[00:52:22.90] **Trooper Ernstsen:** Uh... Trooper Carpenter, I believe.

[00:52:26.18] **Defense Counsel Golub:** Did you include his name on the report or any of the other documentation?

[00:52:30.70] **Trooper Ernstsen:** I don't believe so, no.

[00:52:32.38] **Defense Counsel Golub:** Um, did he show up right before you, um, placed him under arrest?

[00:52:37.86] **Trooper Ernstsen:** Okay. So, do you remember him putting handcuffs on the, on the defendant? No, I believe when I went to place the defendant under arrest, he made some sudden movements and took his, um, headphones off. I believe that secondary officer took those, um, headphones. And as I placed him under arrest.

[00:53:02.06] **Defense Counsel Golub:** So, did the second officer put him in handcuffs? That would be... that would be a procedure difference.

[00:53:11.02] **Trooper Ernstsen:** I don't believe the second officer put him in handcuffs.

[00:53:13.34] **Defense Counsel Golub:** Okay. Um, after the the second officer, when we looked at the video, assisted in the arrest. Um, did he do anything else? Did the secondary officer do anything else?

[00:53:29.26] **Trooper Ernstsen:** Um... I don't recall.

[00:53:32.18] **Defense Counsel Golub:** Did you remember if he searched the vehicle?

[00:53:36.82] **Trooper Ernstsen:** I don't recall.

[00:53:38.18] **Defense Counsel Golub:** Um, because he does, he searched the vehicle, and he also, I think we have to look at the video, he assisted in the arrest. And that kind of thing. Um, like somebody held the hand, and somebody put the handcuffs on. But we'll... but we'll see. Um, was the, the second officer there when you offered, um, the defendant to take the PBT? Over there at that time?

[00:54:09.00] **Trooper Ernstsen:** I don't recall.

[00:54:13.52] **Defense Counsel Golub:** Okay. Okay. Um... Okay. So, um... Yeah, okay. Um... Okay. I'm done.

[00:59:18.39] **Judge Hruby-Mills:** Anything further from the State?

[00:59:20.07] **Prosecutor Dunkelman:** No.

[00:59:20.83] **Judge Hruby-Mills:** All right. Thank you for your testimony. You can step down.

[00:59:29.91] **Judge Hruby-Mills:** Ms. Dunkelman, does the State have any further witnesses?

[00:59:33.07] **Prosecutor Dunkelman:** No, Your Honor.

[00:59:33.87] **Judge Hruby-Mills:** All right. Mr. Golub, did you anticipate, uh, calling any witnesses?

[00:59:40.75] **Defense Counsel Golub:** Um... So I would have liked to call, um, one or two witnesses. But I didn't know that we were calling them this early. I can do it at a later time. Or should I just... What should I do now? Because I don't have anyone. I can't... I'm not going to call an expert witness about the machine. And also, um, the person that I went and met, um, at the establishment was working there that day. And I don't even know if she's going to have her support my argument that I, that I was there for, you know, to, to... to do something other than visit the establishment for the procurement of alcohol.

[01:01:26.69] **Judge Hruby-Mills:** Yeah. Yeah. Um, but do you, do you want to show the video? Does the State have any more evidence?

[01:01:35.89] **Defense Counsel Golub:** Oh, how should... how should I proceed with the video evidence that I have throughout my motions? I keep citing different videos and different times. And I could make a compilation of just those things if that's easier?

[01:01:52.81] **Judge Hruby-Mills:** So should we do that? I can have them sent to... We were set today for the evidentiary hearing. Do you have your... do you want to put your portions of the video? Do you want to...

[01:02:09.13] **Defense Counsel Golub:** Yeah. I, I... I think I was a little, um, confused about what was going to happen today. I, I figured that we were going to, um, review the motions, and then, and then we would decide which parts, um, could stand, and then I would provide, um, if necessary... I would provide evidence for certain parts of it. But I didn't think that I would have to do that today.

[01:02:35.25] **Judge Hruby-Mills:** Well, I try to, when I do these, I just like go over the motion and see which parts, um, you know, you guys support. Okay. And I, um, we were set on... on your motion. You... I think I asked you about narrowing down your topics, and you did file some additional narrow... more narrow down topics. And so today, we were set for the evidentiary hearing on the motion to suppress. And the state subpoenaed its witness. Okay. Um, with that... and you could have subpoenaed witnesses if you didn't. Um... But do you wish to rely on the body cam?

[01:03:16.64] **Defense Counsel Golub:** Yes. There's that video. There's not just the body cam. Well, the dash cam is pretty important because the dash cam is what supports my argument that there was no violation. There was no... failure to signal.

[01:03:31.63] **Judge Hruby-Mills:** Okay. So did you want to ask the prior witness about that?

[01:03:37.83] **Defense Counsel Golub:** Did I not?

[01:03:39.03] **Judge Hruby-Mills:** I'm not aware that the, I haven't seen any camera video come up on my screen.

[01:03:45.47] **Defense Counsel Golub:** Yeah. So, yeah. No, I mean, yeah, maybe I got sidetracked because the first thing was the running of the red light, which I know is typically legal. Um, but in terms of the distance of the officer from the defendant in his car, and what you see on the dash cam, you can't see.

[01:04:11.87] **Judge Hruby-Mills:** Yeah, I know you're arguing. This is... Yeah, that's fine. That's

what I thought. Yeah. So I don't... are you... did you have more questions for that prior witness?

[01:04:18.31] **Defense Counsel Golub:** I don't have any more questions.

[01:04:20.75] **Judge Hruby-Mills:** Okay. Are you submitting then or did you...

[01:04:26.03] **Defense Counsel Golub:** Can I submit these two motions?

[01:04:29.27] **Judge Hruby-Mills:** You submitted them.

[01:04:29.75] **Defense Counsel Golub:** And that's done? Okay.

[01:04:32.39] **Judge Hruby-Mills:** The motion... motion, you filed these two motions.

[01:04:35.87] **Defense Counsel Golub:** Yeah.

[01:04:36.23] **Judge Hruby-Mills:** Right? And that's what we're here on today. Okay. So the state had an obligation to bring in its witness to refute, um, what you've alleged to be lawful or unconstitutional stops.

[01:04:48.39] **Defense Counsel Golub:** Yes.

[01:04:49.07] **Judge Hruby-Mills:** Okay. So, do you have any other evidence that you wanted to present?

[01:04:55.23] **Defense Counsel Golub:** Um, I don't want to waste anyone's time. But do I need to submit the video evidence that the state provided me, or that I would have to leave?

[01:05:05.11] **Judge Hruby-Mills:** It's not something that I have.

[01:05:06.71] **Defense Counsel Golub:** Okay. Um, can I submit that later today?

[01:05:11.11] **Judge Hruby-Mills:** Submit the entire...

[01:05:12.83] **Defense Counsel Golub:** All of the video. No. There's like eight hours with this video. No, just the 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 citations in the motion. So I, I would probably want something more specific.

[01:05:29.90] **Defense Counsel Golub:** I can strip it down to 10 minutes, even less. Whatever time you think is appropriate, I can I can cut it to that.

[01:05:38.02] **Judge Hruby-Mills:** But your approach would be to put that on a flash drive? Just the portions of the video that would line up with what you has referenced in his motion. Just so we're all clear the um...

[01:05:55.29] **Prosecutor Dunkelman:** Okay. And so it's... There's he has no idea even what is being supported or asked. And really no ability to cross examine on these things. And so... I think the State objects.

[01:06:24.86] **Judge Hruby-Mills:** Okay. So, Mr. Golub, any response to the objection?

[01:06:30.38] **Defense Counsel Golub:** I was just trying to show that the... the point 104 is wildly high. It's way too high according to...

[01:06:40.00] **Prosecutor Dunkelman:** Objection, Your Honor. Counsel is testifying.

[01:06:46.26] **Judge Hruby-Mills:** Objection is sustained.

[01:06:48.02] **Defense Counsel Golub:** Okay. Yeah. And... I guess I don't really want to waste anyone's time anymore, so just rest there.

[01:06:56.50] **Judge Hruby-Mills:** Okay? And Miss Dunkelman?

[01:06:58.06] **Prosecutor Dunkelman:** Your Honor, I think there are three issues that the defendant seems to... Well, in his proffer, he stated that the focus of this is. Um, first, it is the... that there was... whether there was a lawful basis for the contact with the defendant by the corporal. Um, and law enforcement must have reasonable suspicion of criminal activity to make a traffic stop. And in this case, um, we have testimony from the courtroom that um that, um, that he observed the defendant walking to his car, um, from a bar, getting in his car. And that was the reason that... um, it was also late at night. Um, and that was the reason that he did a U-turn. And as he came out of the U-turn, he saw the defendant's vehicle pulled away from the curb without signaling and then

crossed, uh, multiple lanes of traffic with... also without signaling. Um, I asked him, uh, if these are violations of the law. He said that they were. Um... And I don't think it's particularly pertinent here, but, um, I do think that, uh, 41-6a-212, um, it did allow the officer to turn, do a U-turn on the red light, um, in pursuit of an actual, suspected violator of the law. Um, so I would argue that, um, there was a lawful basis for, um, the Corporal to contact the defendant. Um, and, um, move on to the next issue. The second issue, um, is FSTs... the, the administration of the FSTs. Um, and I, transparently, do not think that it was actually negated or refuted, um, by the defendant on cross-examination or any evidence that he presented. Um... The first... um, so I tried to address this in the direct of the officer. Um... There wasn't really any questions. I asked the officer about HGN, um, that he was certified to administer these tests, and that he went through the instruction phase, that he, um, kept, um, the stimulus away, traveling a certain speed, and it moved, um, the appropriate, um, back and forth distance, um, across the defendant's face. Um, and that he had done the medical screening questions to make sure there were no issues. He actually, as part of the medical screening, did a test to make sure there was no resting nystagmus. Um... and, and so we... I would argue that there was, um, that, uh the Corporal did everything as required by the manual, um, that allowed these tests to be standardized. And then also that there actually was nothing refuted, um, by the defendant, um, with respect to this. With the Walk and Turn, um... I would again say that there wasn't anything refuted by the defendant, um, in court today. Um, in his motion, he states that only three steps were taken on the Walk in turn. Um, or sorry, demonstrated by the Corporal instead of the full nine, um, that are asked to be performed of by the defendant. But I asked the Corporal about this, and he said in the instructor's manual, um, which he's trained on, it says that you demonstrate the steps, three steps, uh, the turn and the returning three steps back. Um, so I would argue that there's been no evidence that this was not, um, completed correctly. Um... With the One Leg Stand. Again, I, I don't think that there's anything, um, that has been refuted, that it was not done correctly. And in fact, the motion by the defendant is, um, interest... interestingly saying that because there were no clues on it, um, the officer's interpretation, selective interpretation of this result demonstrates a prejudicial bias. Um, I don't think there was any evidence for this at all in the testimony today. Um... The officer did testify that there was one indication that could have been a possible clue on this, but it was borderline. And he gave that benefit to the defendant in, um, doing his analysis and writing his report. Um... Finally... Um, and I also think that, um, any small deviations that the defendant is arguing, even though it doesn't come out in the testimony, um, would, um, go to weight, not admissibility, um, for this to the jury. And then finally, with the chemical test, um, I think the most attention was given here. Um... First there was, um... the officer testified that he is trained to administer this machine, that he checked, who went through all of the necessary checks with the machine prior to starting, that Baker was completed and after Baker was completed, um, then they started the test. Um, he stated that the test took multiple blows, um, because the defendant was unable to provide a sufficient sample. I asked that if any way having the defendant doing multiple blows would raise or lower, uh, the breath sample. He said no. Um, and also that the length of time was because the defendant was not providing a sufficient breath sample for this. The officer also said that he's not... there's not like a certain number... there's a minimum number that's needed. But when the breath is being blown in, he's only seeing a line indicating whether a sample has been met. And then at that time, the machine would make a noise. Um, and so I don't think that there's been any indication... The defendant's motion for test duration violations, um, cites largely an article. Um, and, um, I would argue that the duration was extended, um, because solely because the defendant's inability to provide a sufficiency. Um, and then also there's something with respect to the volume collection. Again, I asked the officer if this has any implication on the results of the test. Um, he said no. Um... There wasn't... When I asked the proffer about what the defendant was

arguing today, there was nothing about the PBT that was mentioned. Um, so the state didn't really focus a lot on that. I don't know that it's appropriate for argument. Um, but I am confused when the defendant said that he would have done a PBT if it was offered, because we heard testimony that, um, the officer stated that he did ask the defendant if he wanted a PBT, and the defendant said, um, he was going to... uh, that he was going to jail because he'd been drinking and that he was... he was well over the limit. And so the PBT was not done. I also don't think that has any implication on the testing at all, um, the chemical test. So I would argue that, um, none of these have been sufficiently addressed. Um, well, the state addressed them and they haven't been, um, refuted. And so the court should deny the motion in, in its entirety.

[00:27:20.07] **Judge Hruby-Mills:** All right. Thank you. Mr. Golub, anything further?

[00:27:24.03] **Defense Counsel Golub:** Um... Uh... Um... No, not right now.

[00:27:38.07] **Judge Hruby-Mills:** I'm going to inquire, because one of the things that really wasn't discussed today, but is part of, um, your written motion is, um... the... your request to suppress statements made, um, prior to Miranda? And we didn't... that...

[00:27:58.43] **Defense Counsel Golub:** Oh, that's right. Yeah.

[00:27:59.83] **Judge Hruby-Mills:** We didn't touch that today. Were you pursuing that still?

[00:28:02.35] **Defense Counsel Golub:** Uh, there was... I mean... there's a couple of things that I don't think we went over. But yeah, the statements, um... a big... a big part of that motion was also, um, claiming that there, um, there was no probable cause as well. So they were... um... and then the defendant was absolutely in custody, um, when he was arrested by two officers, um, standing on each side of him, um, and asking him questions, which are, you know, um... pretty early on in investigation, and that counts as, um, being, um, detained. And at that point, he should have been, um, read his Miranda rights. And if not, then definitely when he was in the car. If not in the car, then definitely when he was in the police Special Ops center.

[00:29:02.19] **Judge Hruby-Mills:** Um, is there some reason that you didn't, uh, address that today through the evidence?

[00:29:08.35] **Defense Counsel Golub:** Uh... There's just so much. And I'm just trying to be as succinct as possible. So, um, you know, I... I just... Yeah. I just didn't get to it.

[00:29:21.43] **Judge Hruby-Mills:** Okay.

[00:29:22.15] **Prosecutor Dunkelman:** And, Your Honor, that's why I asked for a proffer in the beginning, um, because there was quite a bit. Um, and so I don't think argument as to that is appropriate, um, because I asked for a proffer. And so, um, he didn't choose to proceed with them.

[00:29:45.07] **Judge Hruby-Mills:** Mr. Golub, anything further on that issue?

[00:29:48.47] **Defense Counsel Golub:** Um... There's also that, um, section about the GRAMA request, in terms of, um, trying to make a case for, um, inherent bias on the part of the officer since his, um, arrest to stop ratio is one in four, which is about 25 times, or 24 times higher than the state average. Um, and this isn't... this is just for DUI arrests, um, through a GRAMA request the defense obtained [unclear]... and I went and got the latest, um, data for this year. And so it seems like there is a case to be made that because the officer is so, um, involved in making so many DUI arrests, um, on a pretty much daily basis, that he cannot be a fair judge or witness to, um, a case that I believe has a lot of anomalies. And, um, I know that the defendant believes that, um, he was not driving under the influence. Um, but because there was bias, um, he was seen walking out of a bar, and the officer made a, um, a conviction based on bias versus the facts.

[01:01:15.75] **Prosecutor Dunkelman:** And Your Honor, I don't think any of that is appropriate argument...

[01:01:17.83] **Judge Hruby-Mills:** Mr. Golub. What I'm trying to get at is you didn't... you didn't elicit evidence or testimony regarding that today. Is that correct?

[01:01:25.47] **Defense Counsel Golub:** Correct.

[01:01:25.99] **Judge Hruby-Mills:** Okay. Ms. Dunkelman, anything further on that issue carefully?

[01:01:32.19] **Prosecutor Dunkelman:** Um... No, Your Honor. I mean, I guess just to clarify, the State's position is that the defendant is not permitted to make those arguments at this point or in the future because he is... This was the opportunity, and I asked for that proffer for this exact reason.

[01:01:52.19] **Judge Hruby-Mills:** And I don't know necessarily that an argument made in, in your written filings, if you don't address it, it's not there anymore. Um, however, this was the opportunity for that evidence, these other arguments. And so I'm just trying to get at whether or not you just chose not to go forward on it. I know you're trying to be succinct, but some of these things are arguments that don't have evidentiary support, okay?

[01:02:22.75] **Defense Counsel Golub:** But, I think the GRAMA has... the data.

[01:02:27.11] **Judge Hruby-Mills:** When you say GRAMA, you mean the government's records?

[01:02:30.55] **Defense Counsel Golub:** Yeah, yeah. So that's... and I also submitted that, um, and cited in the paperwork for all of that stuff. Um, when you say in the future, can I not make these arguments, um, during the trial?

[01:02:46.15] **Judge Hruby-Mills:** Well, again, the state is not here to give legal advice.

[01:02:49.71] **Defense Counsel Golub:** Yeah. But, I mean... can I make these arguments during the trial?

[01:02:53.23] **Judge Hruby-Mills:** I'm not going to give you legal advice. All right? Okay. Yes. Yes. Okay. So, um, with regard to what, um, I have before me, though, um, on the, the motions, um, Motion to Suppress and Motion to Dismiss. And again, there, there are a lot of, um, nuanced, um, arguments in there, but based on what, uh, was presented today, um, at the evidentiary hearing on this, um, I, um... again, trying to do it in the way that you had, um, outlined your, your, um, proffer today, um, that, uh, I do find that there was probable cause, uh, reasonable articulable suspicion for the initial stop, uh, based on the, uh, officer's, um, um, observations. Uh, with that, um, I... again, I'm not getting in too much into the Miranda issue, but you were eventually Mirandized. I, I am not aware of what, uh, specific statements that you were concerned about. Uh, there's none of that was elicited during, um, the, uh, hearing today. Uh, based on the, basically unrefuted testimony of the Corporal, uh, with regard to the administration of the, the, uh, Field Sobriety Tests, they seem to be appropriately administered. Um... Nothing suggests that, uh, there was anything inappropriate about that. And so, uh, they seem to be, um, valid, uh, based on, uh, his testimony and, um, observations, um, of that. Similarly, uh, the administration of the Intoxilyzer, um, seems to be unrefuted that, uh, that was done, um, consistent with all appropriate standards. And so I don't see there's any reason to, uh, suppress, um, the outcome, um, of that as well. And so with that, I, um, am denying the Motion to Suppress and, uh, the Motion to Dismiss as well. Um, and I... And I guess you have any questions, Mr. Golub, about what might remain, um, before we get trial dates? Or are we in a situation to get trial dates?

[00:34:59.05] **Defense Counsel Golub:** Uh, I don't have any questions at this time.

[00:35:01.13] **Judge Hruby-Mills:** Okay. Should we get trial dates, Counsel?

[00:35:03.33] **Prosecutor Dunkelman:** Um, there's been an offer extended in this case, so I'm fine, um, going forward with trial dates if it's... it's more of a defendant's preference.

[00:35:13.17] **Judge Hruby-Mills:** Do you want to give it some thought? Would you be sent back for a pretrial conference, or we can get trial dates?

[00:35:18.73] **Defense Counsel Golub:** I'm not sure what...

[00:35:20.89] **Prosecutor Dunkelman:** The change of plea to count one.

[00:35:23.05] **Defense Counsel Golub:** Oh. Is that... is that in one of my case paperwork? Or where do I find that stuff?

[00:35:29.17] **Prosecutor Dunkelman:** Um, I can put it on the record? No? Because I don't... I don't remember ever having...

[00:35:33.97] **Judge Hruby-Mills:** Give me that.

[00:35:36.13] **Prosecutor Dunkelman:** I guess I'll just put the offer on the record. Um, change of plea to count one, which is the DUI, uh, second and ten, um, as charged with a PSR required.

[00:35:48.73] **Judge Hruby-Mills:** Okay. Mr. Golub, do you want to accept that offer now, or do you want to give it some more thought?

[00:35:55.89] **Defense Counsel Golub:** I would like to plead not guilty to the DUI.

[00:36:01.13] **Judge Hruby-Mills:** Okay. Which is what you have pleaded? Yeah. Okay. So with that, then, um, do you want a pretrial conference date, or do you want to get trial dates?

[00:36:11.41] **Defense Counsel Golub:** Um... Do... do you guys have a preference?

[00:36:14.77] **Prosecutor Dunkelman:** I think if he's not intending to take the State's offer, um, the State doesn't intend on changing the offer. So I think we should just set a trial date.

[00:36:22.57] **Judge Hruby-Mills:** Okay. Okay. Is it a two-day trial?

[00:36:25.93] **Prosecutor Dunkelman:** At most? At most. Yeah.

[00:36:28.61] **Judge Hruby-Mills:** Because we, we pick our jury in the morning, and then we begin trial. So we usually set everything for at least two days. Okay. Does that seem like enough time?

[00:36:37.29] **Defense Counsel Golub:** Um, do I have the opportunity to, um, help with the jury? Or talk to...

[00:36:43.05] **Judge Hruby-Mills:** Oh my god... yes, that's...

[00:36:45.13] **Defense Counsel Golub:** Oh my god... [unclear]

[00:36:45.93] **Judge Hruby-Mills:** You have all those obligations?

[00:36:53.81] **Defense Counsel Golub:** Okay. So... Sorry.

[00:36:56.73] **Judge Hruby-Mills:** Go ahead.

[00:36:57.29] **Defense Counsel Golub:** Do I have to file a motion for witnesses or like how do I...

[00:37:02.33] **Judge Hruby-Mills:** Um, you'll, you'll need to look at the rules to how to do that. Um, and you can look at the, the court website if you have any questions about that process.

[00:37:13.41] **Defense Counsel Golub:** Okay.

[00:37:14.13] **Judge Hruby-Mills:** Okay. So, um, with that, we'll look for some dates... Our calendar is just next... long months coming up here. So, um, I can set you over the last trial, which is a three-week trial in March. Um... along with a number of other matters. I set at the top of that, or we can look further out.

[00:38:14.09] **Defense Counsel Golub:** Um, maybe a little bit further would be nice.

[00:38:24.37] **Judge Hruby-Mills:** So whose case will this be [to the three prosecutors at the table].

[00:38:26.29] **Prosecutor Dunkelman:** It'll be the new person.

[00:38:27.41] **Judge Hruby-Mills:** The new person? Okay. So there'll be a new prosecutor at some point. So what about April 22nd and 23rd?

[00:38:36.57] **Defense Counsel Golub:** Okay.

[00:38:36.93] **Judge Hruby-Mills:** That works. Okay. All right. So you would, um... there are four already set. One of those is in custody.

[00:38:48.17] **Prosecutor Dunkelman:** Your Honor...

[00:38:48.65] **Judge Hruby-Mills:** Sorry.

[00:38:50.45] **Prosecutor Dunkelman:** I was just... I have the, the list... the regular going list in front of us. I have that there are two felonies in custody and three felonies out of custody.

[00:39:07.05] **Judge Hruby-Mills:** Okay. I only see one in custody, but nevertheless. Um...

[00:39:13.45] **Prosecutor Dunkelman:** I have Thorton and Samuel Martindale listed both set for those dates as felonies in custody.

[00:39:19.09] **Judge Hruby-Mills:** Okay. Um, so there... you're likely not going to be the number one setting for the State. Um, but does that work though for everyone, the 22nd and 23rd? Okay. Final pretrial conference will be two weeks ahead. Only because I'm not going to have a calendar that prior week. So that will be April 7th at 1:00. Um, you need to stipulate the jury instructions no later than April 4th at 5:00. Any contested voir dire noted, any case specific voir dire at that same time. Does anyone anticipate further motion practice, um, or are we able to certify that there will be no further pretrial motions?

[01:00:01.53] **Prosecutor Dunkelman:** Your honor, there will be a 609 mode of notice from the state. Um, because this is the second in ten.

[01:00:12.21] **Judge Hruby-Mills:** Okay. Because that doesn't necessarily mean there will be a motion associated with that. You're just giving notice of that. Is that correct?

[01:00:22.37] **Prosecutor Dunkelman:** Um... Um, I guess so, if generally I get those in the same time filing as the motion cut off. I don't... I think a motion cut off would be helpful.

[01:00:33.17] **Judge Hruby-Mills:** Okay. Okay. So moving backwards. Let's, uh, put a motion cut off for February 28th at 5:00. Any motions filed need to be filed with either a request for hearing or request for evidentiary hearing. Something that gets triggered in our system, um, so that we can see it and, uh, hopefully resolve that before that final pretrial conference. Well, that's February 28th. Yeah. February 28th. Thank you. Okay. Anything further that needs to go today?

[01:01:08.05] **Defense Counsel Golub:** Um, no. Thank you.

[01:01:09.77] **Judge Hruby-Mills:** Okay. Thank you. No. Okay. All right. Thank you.

[01:01:13.17] **Defense Counsel Golub:** Thank you.

[01:01:14.25] **Judge Hruby-Mills:** Court's in recess.

[01:01:14.81] **Clerk:** All rise.

Summary of Key Exchanges (File 2, approx. 10:00 - 14:00):

- [00:12:18] **Defense Question:** "Was that the right amount of time for the test?" (Referring to the 140-second video clip)
- [00:12:23] **Trooper Response:** Admits the final *successful* attempt was within the correct time but states the overall duration was long because the defendant made multiple attempts without providing a sufficient sample.
- [00:12:40 & 00:13:09] **Defense Question:** Asks about defendant cooperation and whether the way the test was taken could invalidate it.
- [00:13:09 & 00:13:36] **Trooper Response:** States the defendant was *not* cooperating but that the machine ultimately *did* provide a valid sample.

Analysis: The audio does cover the duration issue and the trooper's explanation (defendant's attempts vs. single successful blow). The defense does question cooperation and implies this could affect validity. However, the transcript doesn't clearly show the defense explicitly structuring the argument as "either the trooper misadministered or the defendant didn't cooperate, therefore the test is invalid and needs a retest." The trooper insists a valid sample was eventually obtained, sidestepping the implication that the process might invalidate the result due to the extended time and multiple attempts without reset (a point the defense motion makes, but isn't clearly articulated and rebutted in this specific audible exchange). The trooper does not seem to concede that the test was administered incorrectly or that the result might be invalid due to the process.

Testimony II, Part II

[00:00:01.16] **Judge Hruby-Mills:** All remaining matters on the morning calendar? We shall have, I guess, Rockstone and Mr. Golub.

[00:00:06.71] **Prosecutor Dunkelman:** We're ready on the Golub case, Your Honor.

[00:00:07.72] **Judge Hruby-Mills:** If that... So what are we ready on?

[00:00:13.59] **Prosecutor Dunkelman:** We're ready on the Golub case, Your Honor. He's...

[00:00:16.71] **Judge Hruby-Mills:** And Mr. Golub, which one are you ready on here?

[00:00:20.12] **Prosecutor Dunkelman:** Oh. I can also... we can wait.

[00:00:23.12] **Judge Hruby-Mills:** Okay, call off the docket.

[00:00:25.12] **Prosecutor Dunkelman:** Um, is it going to be audio/video?

[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:** And I tried to... you're waiting for an interpreter? No. Oh. All right. So with that then, Ms. Dunkelman...

[00:00:38.88] **Prosecutor Dunkelman:** Sure.

[00:00:40.36] **Judge Hruby-Mills:** And so we are here on a motion... [To Mr. Golub] you can just come up and sit at the table.

[00:00:49.20] **Judge Hruby-Mills:** So this is a last year case ending in 0706. Here are your codes. Right there. Okay. And so, um, we have sort of a revised, uh, motion to suppress, motion to suppress statements, and then a motion to dismiss, I guess it is. Yeah?

[00:01:13.51] **Defense Counsel Golub:** Yeah. So, there's like the main one, which is the motion to suppress and dismiss. And then there's one that's a little bit more specific that just refers to, like, Miranda and statements. But, if we could, um, discuss the motion to suppress and dismiss first maybe? That covers...

[00:01:30.27] **Judge Hruby-Mills:** Well, they're sort of tied together, aren't they?

[00:01:31.95] **Defense Counsel Golub:** Yeah, they are.

[00:01:32.23] **Judge Hruby-Mills:** Okay. Yeah.

[00:01:33.63] **Prosecutor Dunkelman:** And I guess, um, I understood them to be in conjunction with each other as well. But there is quite a bit, especially in the one motion to suppress and dismiss. And so, she is asking for, I guess, a proffer as to, just in reading through that, I identified, you know, 15 plus issues?

[00:01:53.83] **Judge Hruby-Mills:** Okay, but, but... the motion you're making reference to is the motion to suppress and dismiss, but that one to me is... has very little, isn't it? Number 50, Motion to Suppress Statements, is the one that's lengthy?

[00:02:04.11] **Defense Counsel Golub:** Uh, let me pull up the motions. The lengthy one is the motion to suppress and dismiss. It's the longer one. It's, uh... it's the one that I have. It's 19 or 20 pages. And then the statement is 12 pages.

[00:02:20.83] **Judge Hruby-Mills:** Okay. I'm sorry. I actually thought 51 was identical to the other one, but I can see it is not. Okay. Yeah. Okay. Okay. Yeah. Okay. So, I did not realize that, um, that is different than the other one that I considered to be helpful. Um, but, but nevertheless, um, are... And so, the State has its witnesses?

[00:02:55.35] **Prosecutor Dunkelman:** Yes. Um, I'm only calling one witness, which I think was the intention. But there is quite a bit, especially in the, um, Motion to Suppress and Dismiss, um, document number 49 and document 50?

[00:03:12.79] **Defense Counsel Golub:** Pardon me. Can I get my computer?

[00:03:19.18] **Judge Hruby-Mills:** Yes. Yes. It would be document... 48 or 49? They're both... One is just kind of the... there's a form attached.

[00:03:35.11] **Prosecutor Dunkelman:** Yeah. One's the form, I think each of the form...

[00:03:37.11] **Judge Hruby-Mills:** It's sort of the memo was filed separately from the motion. So there's 48, and then there is also 50. Those are the two filings. I think 49 and 51 are just the... the motion part.

[00:03:53.19] **Defense Counsel Golub:** Yeah, I think it's just the paperwork.

[00:03:56.23] **Judge Hruby-Mills:** All right. Um, but in particular, um, 48 addresses so many different, um, things that are in... I just want to have a clear idea. All right. Can you summarize, um, Mr. Golub for us what the, um, the main points are so that the State's witness will be able to address it?

[00:04:21.82] **Defense Counsel Golub:** Yes. Um, so I think that there's a lack of probable cause, um, in terms of, uh, what the video shows. I think the video shows a traffic violation by the officer when he, in the very beginning, he pulls a U-turn, um, at an intersection with a red light. Um... So those are the two main ones. Lack of probable cause for the initial stop.

[00:04:50.34] **Judge Hruby-Mills:** Okay. And then what else?

[00:04:54.37] **Defense Counsel Golub:** Um, the... the way that the tests were, um, administered and interpreted.

[00:05:01.17] **Judge Hruby-Mills:** Do you mean, um, the SFSTs?

[00:05:02.49] **Defense Counsel Golub:** Yeah, yeah.

[00:05:03.25] **Judge Hruby-Mills:** Okay.

[00:05:04.61] **Defense Counsel Golub:** And then, um... Let's see. And then, um, the final the chemical breath test, I also think is highly problematic.

[00:05:17.13] **Judge Hruby-Mills:** Just the administration of that or...?

[00:05:19.37] **Defense Counsel Golub:** The administration and the results. And I'm going to try to argue that it was poorly administered and that there should have been a second test done, and I'm going to argue that the results are much too high.

[00:05:34.21] **Judge Hruby-Mills:** Okay, does that, uh, narrow it down enough for you, Ms. Dunkelman, so you can question?

[00:05:40.05] **Prosecutor Dunkelman:** Yeah. I was just looking for some direction. So that's fine. Um, Your Honor, the State does have one video exhibit that the State intends to play. Um, it's the officer's body worn camera. And it's... we'll play, um, a couple portions of that same exhibit. And so I just wanted to give everybody a heads up for the video, for making sure that the video...

[00:06:04.97] **Judge Hruby-Mills:** Okay. 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 know if we should do it... I can do a test, if it's...

[00:06:12.51] **Judge Hruby-Mills:** Yeah, I think it should be all fixed. Needs... don't... I mean...

[00:06:17.41] **Defense Counsel Golub:** I mean, I didn't even know we were going to go over the video evidence because the dash cam footage is the thing that shows that he ran a red light. And then he looked around, waited there. Didn't see the violation.

[00:06:33.33] **Judge Hruby-Mills:** Well, right now we're just... We're calling... we're just about ready to get started with the evidentiary hearing.

[00:06:38.13] **Defense Counsel Golub:** I was just... it seems I like looking ahead of...

[00:06:41.21] **Judge Hruby-Mills:** Okay, we'll go ahead and call him.

[00:06:46.13] **Prosecutor Dunkelman:** [Leaves to get witness]

[00:07:09.39] **Judge Hruby-Mills:** Oh my gosh. It's going to work, but finding the time stamp...

[00:07:16.55] **Prosecutor Dunkelman:** I think you're going to have fun. It's a rotating pattern. But it looks like it should work. Can I just test the audio just to make...? Oh my god, I don't know if I can even see... If you can see it on that. Oh, yeah. It's on. Okay.

[00:07:37.61] **Judicial Assistant Joseph Liuzzi:** I have some experience with this if you would like

me to take over.

[00:07:44.09] **Prosecutor Dunkelman:** If you have to do the audio, I might...

[00:07:48.05] **Judicial Assistant Joseph Liuzzi:** Is your audio on? Just press the button. Okay.

[00:07:58.85] **Prosecutor Dunkelman:** Your Honor, I think it's important. Thanks for your time.

[00:08:02.09] **Judicial Assistant Joseph Liuzzi:** [Adjusting audio/video setup] Okay, I just left that on there. Yeah. Okay.

[00:08:10.91] **Judge Hruby-Mills:** I did it for two days straight and then...

[00:08:15.44] **Prosecutor Dunkelman:** You can do it. Just press... you can do it.

[00:08:17.52] **Judge Hruby-Mills:** Okay, so it should be all fixed. Okay, State's ready with that. So, um, with that then, I guess the State's ready with its witness.

[00:08:24.87] **Prosecutor Dunkelman:** Yes. Can I go grab him?

[00:08:25.91] **Judge Hruby-Mills:** Sure.

[00:08:29.08] **Prosecutor Dunkelman:** Oh, he made it. Okay. Perfect. Um...

[00:08:33.12] **Judge Hruby-Mills:** All right.

[00:08:34.68] **Prosecutor Dunkelman:** Your Honor, um, can we call Corporal Ernstsen?

[00:08:43.92] **Judge Hruby-Mills:** Okay. Trooper Ernstsen, if you would make your way up here, uh, to get, uh, sworn in as the witness stand.

[00:08:49.19] **Prosecutor Dunkelman:** And Your Honor, are you okay with me sitting here since I have a video that I plan on playing?

[00:08:54.95] **Judge Hruby-Mills:** Okay.

[00:09:01.05] **Clerk:** Can you raise your right hand, please? Do you solemnly swear or affirm the testimony you shall give before the court shall be the truth, the whole truth, and nothing but the truth?

[00:09:09.31] **Trooper Ernstsen:** Yes.

[00:09:10.15] **Clerk:** Thank you. Please be seated in this witness stand and state your name for the record.

[00:09:12.75] **Trooper Ernstsen:** Brock Ernstsen.

[00:09:16.83] **Prosecutor Dunkelman:** Okay. Um... Could you please state your name and spell your first and last name for the record?

[00:09:23.27] **Trooper Ernstsen:** Yeah, it's Brock Ernstsen, B R O C K E R N S T S E N.

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

[00:09:31.39] **Trooper Ernstsen:** Utah Highway Patrol.

[00:09:33.27] **Prosecutor Dunkelman:** What is your current position with Utah Highway Patrol?

[00:09:36.63] **Trooper Ernstsen:** Uh, I'm a Corporal on, do what we call the DUI squad.

[00:09:40.51] **Prosecutor Dunkelman:** Okay. And I guess, how do you be... how do you get to becoming a Corporal?

[00:09:46.11] **Trooper Ernstsen:** Um, it's an interview process. Um, basically, most we're utilized for training purposes.

[00:09:52.58] **Prosecutor Dunkelman:** And does it require quite a bit of experience to get into that position?

[00:09:56.62] **Trooper Ernstsen:** Uh, yes.

[00:09:57.38] **Prosecutor Dunkelman:** Okay. Um, and how long have you been working with Utah Highway Patrol in any sort of capacity?

[00:10:03.54] **Trooper Ernstsen:** Over 10 years.

[00:10:05.22] **Prosecutor Dunkelman:** Okay. Um, and would you mind just telling me a little bit about your training and experience, um, when you first started, um, with Utah Highway Patrol?

[00:10:15.74] **Trooper Ernstsen:** Yeah, so I attended, uh, the academy. Um... Are you asking

specifically about like DUI training or...?

[00:10:24.10] **Prosecutor Dunkelman:** Oh, I'll ask about that, but just, okay... to become a police officer?

[00:10:27.78] **Trooper Ernstsen:** Okay. So yeah, I, I completed the academy. Um, I, I began the academy in November of 2014. And then after the academy, we have what we call an in-house academy with, uh, Highway Patrol. And then after that, I went to field training with a field training officer. Um, and then once I was released from field training, um, I was just on my own.

[00:10:52.02] **Prosecutor Dunkelman:** Okay. Um, and, um, between that time period and now, do you undergo continuous training as well?

[00:10:59.38] **Trooper Ernstsen:** Uh, yes.

[00:11:00.50] **Prosecutor Dunkelman:** Okay. And then tell me about, um, specifically any, um, training you've done related to DUIs?

[00:11:08.10] **Trooper Ernstsen:** So there's training in the academy, um, both, like, book work, um, and, um, experience. They have, like, what they call a wet lab, where they have people that drink alcohol beverages and they come in, and we perform the field sobriety tests on those people, um, and then make guesses of where they are as far as their breath alcohol content. And then they tell us what the results are. Um, and then, um, after I was on my own, I went through the A-ride training. I also went through what's called the seated battery of tests training. And then, I also became a, an, the drug recognition expert, DRE. Um... Um, and, uh, essentially, I go through refresher training, um, every year.

[00:12:00.77] **Prosecutor Dunkelman:** So with respect to, um, DUI recognition, and I guess general drug recognition, is being a DRE, is that the highest level of certification you can have, um, with respect to those things?

[00:12:12.93] **Trooper Ernstsen:** Yes.

[00:12:13.37] **Prosecutor Dunkelman:** Okay. Um, were you also trained to administer an Intoxilyzer machine?

[00:12:18.29] **Trooper Ernstsen:** Yes.

[00:12:18.97] **Prosecutor Dunkelman:** Okay. And, okay. So I want to talk to you about September 6th of 2023. Were you, um, SFST certified on that day?

[00:12:30.21] **Trooper Ernstsen:** Yes.

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

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

[00:12:33.01] **Prosecutor Dunkelman:** Okay. Um, were you a DRE at that time?

[00:12:35.45] **Trooper Ernstsen:** Yes.

[00:12:35.89] **Prosecutor Dunkelman:** Okay. And, um, were you... was your training with respect to an Intoxilyzer up to date on that time?

[00:12:41.93] **Trooper Ernstsen:** Yes.

[00:12:42.45] **Prosecutor Dunkelman:** Okay. Were you working, um, with Utah Highway Patrol in September of 2023?

[00:12:49.41] **Trooper Ernstsen:** I was, yes.

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

[00:12:52.09] **Trooper Ernstsen:** I was the same as now on the DUI squad.

[00:12:55.33] **Prosecutor Dunkelman:** Okay. Um, and did a vehicle catch your attention on that day?

[00:12:59.89] **Trooper Ernstsen:** Yes.

[00:13:01.01] **Prosecutor Dunkelman:** Okay. Can you tell me about where you were when you, um, first saw this vehicle?

[00:13:07.29] **Trooper Ernstsen:** Yeah. So when I was originally traveling northbound on State Street, um, just passing 1700 South, I observed, um, a person in front of the bar on the, uh, sidewalk get into the driver seat of a vehicle. So I drove to what's, uh, still northbound on, uh, State Street to Kensington Avenue, where I stopped at a red light. Um, and then I turned, made a U-turn at that intersection and came back and observed the vehicle that I saw the person get into the driver's seat, pull away from the curb and go across the right lane and into the middle lane and never, uh, saw a blinking signal light.

[00:13:51.44] **Prosecutor Dunkelman:** Okay, can I... I'm gonna back up and just ask you a couple questions. Do you remember what time of day it was when this happened?

[00:13:57.72] **Trooper Ernstsen:** Uh, it was definitely dark. It was somewhere around probably 11:00 or midnight, somewhere in there.

[00:14:04.44] **Prosecutor Dunkelman:** Okay. Um, and just so I'm following, you saw, um, an individual come out of a bar and get into their vehicle?

[00:14:12.68] **Trooper Ernstsen:** I remember seeing them on the... in front of the bar. I don't remember seeing them come out of the bar, but I saw them in front of the bar, uh, like on the sidewalk, and then get into the driver's door.

[00:14:24.12] **Prosecutor Dunkelman:** Okay. Um, and so why, um, given the circumstances you just described, why was this of a concern to you?

[00:14:32.40] **Trooper Ernstsen:** Um, so my primary responsibility on the DUI squad is to remove impaired drivers from the roadway. Um, when I see somebody in front of a bar get into the driver's seat of a car, there's, I mean, we all know that it's common knowledge that in bars and, and saloons, I think this was Aces High Saloon, uh, that many times people are drinking alcoholic beverages in those establishments. And then when I see somebody in front of an establishment like that, get into the driver's seat, it is of interest to me.

[00:15:04.40] **Prosecutor Dunkelman:** Okay. So did you have a concern that that individual may be, um, drinking and then subsequently driving?

[00:15:11.12] **Trooper Ernstsen:** Yes.

[00:15:11.60] **Prosecutor Dunkelman:** Okay. Um, and this, just so I'm understanding, this was seen by you prior to you making the U-turn?

[00:15:18.64] **Trooper Ernstsen:** Yes.

[00:15:19.04] **Prosecutor Dunkelman:** Okay. And that was the cause for you making that U-turn?

[00:15:22.16] **Trooper Ernstsen:** Correct.

[00:15:22.68] **Prosecutor Dunkelman:** Okay. Okay. Um, and it's okay if you don't, but to your knowledge, is there a code or statute or anything that would allow you to make the U-turn at by red light based on what you observed?

[00:15:36.88] **Trooper Ernstsen:** Yes. 41-6a-212.

[00:15:39.91] **Prosecutor Dunkelman:** Okay. Um, and what, I guess, tell me more about why that would... why you understood that to allow you to do what you did?

[00:15:47.59] **Trooper Ernstsen:** Essentially, it says in there that, um, if there's a reason that I am in pursuit of somebody that I suspect may have or will commit a crime, um, I can disregard, essentially, or I can violate traffic laws, like, it even specifically says a stoplight.

[00:16:11.63] **Prosecutor Dunkelman:** Okay. And so just so I'm following, um, at what point in that, or I guess, at what point in your driving did you notice the vehicle pull away from the curb without signaling?

[00:16:23.79] **Trooper Ernstsen:** After I'd made the U-turn, I was headed back southbound on State Street.

[00:16:28.15] **Prosecutor Dunkelman:** Okay. Um, and so you noticed that it doesn't use a signal as

it leaves the curb. And then what about when it crosses the subsequent lanes of travel?

[00:16:37.26] **Trooper Ernstsen:** Did not use a signal light either on that.

[00:16:40.58] **Prosecutor Dunkelman:** Okay. Um, and so is that in itself a violation of the law?

[00:16:45.46] **Trooper Ernstsen:** Yes, failure to signal.

[00:16:47.10] **Prosecutor Dunkelman:** Okay. Um, do you remember what kind of vehicle it was?

[00:16:50.22] **Trooper Ernstsen:** It was a silver Hyundai Sonata.

[00:16:52.74] **Prosecutor Dunkelman:** Okay. And tell me what happened, um, once you were behind the vehicle and saw, um, this, this traffic violations that you had just testified to?

[00:17:03.50] **Trooper Ernstsen:** So after I made the U-turn, I saw the violations. Um, I got behind the vehicle. Uh, at some point, uh, after I followed it for a while, um, the vehicle turned, or changed lanes to the left. Um... I didn't note it in my report, but I did notice that the, the vehicle got pretty close to the left side of the lane close to the raised median there. Um, and then after I observed the vehicle in the left turn lane to get onto I-80, um, I initiated a traffic stop at that point so that we wouldn't enter the freeway.

[00:17:39.54] **Prosecutor Dunkelman:** Okay. Um, and just to back up really quickly, um, did you have a clear view of the vehicle as it left the curb and then moved between the lanes?

[00:17:49.46] **Trooper Ernstsen:** I did, yes.

[00:17:50.38] **Prosecutor Dunkelman:** Okay. Um, and when you initiated your traffic stop, did you turn on your overhead lights?

[00:17:55.62] **Trooper Ernstsen:** I did.

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

[00:18:00.62] **Trooper Ernstsen:** Uh, yeah, we had to change several lanes, and then, uh, we went underneath I-80, the overpass there, and then pulled over to the right shoulder. Well, actually, I think we were blocking a lane. The right lane.

[00:18:13.70] **Prosecutor Dunkelman:** Okay. Um, and did you approach the vehicle after both vehicles stopped?

[00:18:17.82] **Trooper Ernstsen:** I did.

[00:18:18.62] **Prosecutor Dunkelman:** Okay. Um, and did you made it, I guess, make any observations on your initial approach to the, uh, what was it? The driver's side of the vehicle?

[00:18:28.30] **Trooper Ernstsen:** It was driver's side, yes.

[00:18:29.22] **Prosecutor Dunkelman:** Okay. Did you notice anything as you first approached the driver's side of the vehicle?

[00:18:34.33] **Trooper Ernstsen:** Yeah, multiple things. So I could smell an odor of an alcoholic beverage coming from the vehicle. Uh, I observed that, uh, the person sitting in the driver's seat, uh, had glassy, bloodshot eyes, and that when he spoke with me, some of his words were slurred.

[00:18:51.85] **Prosecutor Dunkelman:** Okay. Um, were there any other occupants in the vehicle?

[00:18:53.97] **Trooper Ernstsen:** He's the only occupant.

[00:18:55.13] **Prosecutor Dunkelman:** Okay. Um, and do you see the driver, driver in the courtroom today?

[00:18:58.89] **Trooper Ernstsen:** I do.

[00:18:59.65] **Prosecutor Dunkelman:** Would you mind pointing them out and identifying an article of clothing they're wearing?

[00:19:03.17] **Trooper Ernstsen:** Yeah, he's wearing the, uh, brown suit coat with a black tie.

[00:19:07.01] **Judge Hruby-Mills:** Your honor, let the record reflect the identification.

[00:19:09.17] **Prosecutor Dunkelman:** Okay. Would you mind telling me about the conversation as you first approached the vehicle?

[00:19:17.01] **Trooper Ernstsen:** Uh, yeah. So I asked him, uh, for his driver license and the

insurance, the proof of insurance for the vehicle. Uh, he handed me the, the registration instead of the insurance. Um, and then eventually, I think he handed me an expired insurance card. So I asked him to see if he could find that. Um... I asked him if he had anything to drink. He told me he had a couple, I believe he said Coronas at the bar about an hour before that. Um... Uh, when I went back to my vehicle to perform a records check, uh, I informed him if he could just keep looking for the insurance information.

[00:19:56.25] **Prosecutor Dunkelman:** Okay. Um, and was it during this time period that you were noticing the speech patterns that you talked about and the observations with respect to his eyes being glossy and bloodshot?

[00:20:08.53] **Trooper Ernstsen:** Yeah, that initial approach, I noticed all those things.

[00:20:11.01] **Prosecutor Dunkelman:** Okay. So based on your training and experience, um, what could those be possible indicators of?

[00:20:17.01] **Trooper Ernstsen:** Um, that he's consumed alcohol.

[00:20:20.21] **Prosecutor Dunkelman:** Okay. Okay. Um, and, um, as you returned... or I guess as you were returning to your vehicle, did you, um, hear anything else that was stated by the defendant?

[00:20:33.28] **Trooper Ernstsen:** Yeah, um, I heard him drop an F-bomb or yeah.

[00:20:40.10] **Prosecutor Dunkelman:** Okay. We'll refer to it as that, I guess. Okay. And once in your vehicle, um, after you had run his information, did you make any determinations as to how you wanted to proceed from there?

[00:20:55.92] **Trooper Ernstsen:** Yeah, um, so when I ran that records check, I, um, you know, as I was narrating to my camera in my patrol vehicle, I stated that I was going to have him do tests to make sure he's okay to be driving.

[00:21:09.88] **Prosecutor Dunkelman:** Okay. So you actually narrated that out loud onto your body camera, the observations you had made?

[00:21:15.64] **Trooper Ernstsen:** Yes.

[00:21:16.20] **Prosecutor Dunkelman:** Okay. So at some point after you made that determination, did you return back to the defendant's vehicle?

[00:21:25.24] **Trooper Ernstsen:** I did, yes.

[00:21:25.92] **Prosecutor Dunkelman:** Okay. Um, and when you returned back the vehicle, um, did you explain what you wanted to do from there?

[00:21:32.32] **Trooper Ernstsen:** Yeah, I had him, I told him I wanted him to step out of the vehicle.

[00:21:35.64] **Prosecutor Dunkelman:** Okay. Um, and as he exited the vehicle, did, uh, you notice anything about, uh, how he exited that vehicle?

[00:21:43.44] **Trooper Ernstsen:** Yeah, as he was exiting, he braced himself on his driver door with both hands. Um, and then we walked over to the sidewalk.

[00:21:50.64] **Prosecutor Dunkelman:** And why is... was that of any significance to you?

[00:21:54.56] **Trooper Ernstsen:** Um, it could, you know, essentially, his balance could be off from possibly, uh, alcohol consumption.

[00:22:02.88] **Prosecutor Dunkelman:** Okay. Um, in your training and experience, can, um, a balance be impacted by consuming alcohol?

[00:22:10.48] **Trooper Ernstsen:** Yes.

[00:22:11.24] **Prosecutor Dunkelman:** Okay. Okay. Um, and did you, um, ask him to do the roadside maneuvers?

[00:22:19.04] **Trooper Ernstsen:** Uh... Yeah, so I told him I wanted him to do some tests to make sure he was okay to drive.

[00:22:24.92] **Prosecutor Dunkelman:** Okay. Um, and prior to doing those tests, um, are there any

sort of questions that you ask him, um, with respect to his ability to complete those tests?

[00:22:35.11] **Trooper Ernstsen:** Yeah, I, 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 Ernstsen:** It was, yes.

[00:22:41.07] **Prosecutor Dunkelman:** Okay. Um, based on his responses to the medical screening, any questions or concerns about his ability to do the tests?

[00:22:47.79] **Trooper Ernstsen:** No. He told me he did not have any injuries nor illnesses.

[00:22:51.39] **Prosecutor Dunkelman:** Okay. So, um, is there a standardized way in which you, um, do these, uh, the battery of tests for this?

[00:23:01.23] **Trooper Ernstsen:** Yeah, it's actually in the name of the test. It's called the Standardized Field Sobriety Test.

[00:23:05.19] **Prosecutor Dunkelman:** Okay. Um, and what is the first test, uh, that you are, um, to start with?

[00:23:10.31] **Trooper Ernstsen:** Horizontal Gaze Nystagmus.

[00:23:11.99] **Prosecutor Dunkelman:** Okay. And did you explain the instructions for this particular test?

[00:23:18.03] **Trooper Ernstsen:** I did.

[00:23:18.47] **Prosecutor Dunkelman:** Okay. Um... And is there a way... or I guess, what is there some sort of manual or instruction, um, booklet that you are trained on in order to administer these tests?

[00:23:32.07] **Trooper Ernstsen:** Yeah, it's the, it's referred to as the Nitsa manual. It's the National Highway Traffic Safety Administration.

[00:23:38.51] **Prosecutor Dunkelman:** Okay. Um, and did you explain the instructions for... I'm just going to refer to it as HGN, um, as you had been trained to do?

[00:23:48.11] **Trooper Ernstsen:** Yes.

[00:23:48.63] **Prosecutor Dunkelman:** Okay. Um... And so how many possible clues are there on the HGN test?

[00:23:56.27] **Trooper Ernstsen:** Six.

[00:23:57.03] **Prosecutor Dunkelman:** Okay. And how many, um, clues did you see?

[00:23:59.47] **Trooper Ernstsen:** Six.

[00:24:00.23] **Prosecutor Dunkelman:** Would you mind just telling the court what those clues were?

[00:24:03.03] **Trooper Ernstsen:** Yep. Um, so lack of smooth pursuit, the distinct and sustained nystagmus at maximum deviation, and the onset of nystagmus prior to 45 degree angle.

[00:24:12.15] **Prosecutor Dunkelman:** And both eyes?

[00:24:12.87] **Trooper Ernstsen:** In both eyes.

[00:24:13.47] **Prosecutor Dunkelman:** Okay, I was just going to clarify. So three for each eye?

[00:24:16.51] **Trooper Ernstsen:** Yes.

[00:24:16.95] **Prosecutor Dunkelman:** Okay. Um, and when you're administering this test, um, would you mind just, I guess, walking us through how the test is actually administered?

[00:24:25.87] **Trooper Ernstsen:** Yeah, so, um, I asked him about injuries and illnesses. Um, I asked him if he was wearing contacts or glasses. Um, I asked him, uh, to look at my finger. I held my finger just in front of his face, and I looked to see if resting nystagmus was present, and it was not. Um, then I performed... I also looked at the size of his pupils to make sure that his pupils were the same size. Um, to, again, rule out, it's medical pre-screening. And then, um, I did two passes per eye, um, just to see if his eyes were tracking the stimulus, which was my index finger.

[00:25:02.62] **Prosecutor Dunkelman:** And one second, just... would the record reflect that, um,

the witness just brought his finger, uh, back and forth in front of his face once in each direction.

[00:25:13.26] **Judge Hruby-Mills:** Record will so reflect.

[00:25:14.06] **Prosecutor Dunkelman:** Okay. Um, okay. So you can continue from there.

[00:25:18.38] **Trooper Ernstsen:** Um... So it's very standardized how, how, like, the distance and everything. So I held my stimulus, my index finger, approximately 12 to 15 inches away from his face and slightly above eye level. Um, once I did make sure his eyes were tracking correctly, I, I took the stimulus away to basically, um, signify... indicate that I was through with the medical pre-screening. And at that point, I start watching for clues on the horizontal gaze nystagmus, the clues that I mentioned earlier.

[00:25:49.85] **Prosecutor Dunkelman:** Okay. Um, and in doing so, are you using the determined distances away from, um, the individual and distances, um, I guess back and forth on, on each side of his face?

[00:26:03.05] **Trooper Ernstsen:** Yes. And it also matters, uh, how quickly you move the stimulus depending on which clue you're looking for.

[00:26:09.57] **Prosecutor Dunkelman:** Okay. So I guess, um, in summary, um, was this maneuver done as you have been trained to do and as, um, determined in the Nitsa manual?

[00:26:19.89] **Trooper Ernstsen:** Yes.

[00:26:20.61] **Prosecutor Dunkelman:** Okay. Um, and so you said that you saw six clues on HGN, is that right?

[00:26:26.65] **Trooper Ernstsen:** Correct.

[00:26:27.17] **Prosecutor Dunkelman:** Okay. Um, how many clues do you need to see to determine impairment on HGN test?

[00:26:32.37] **Trooper Ernstsen:** Um, essentially, the Nitsa manual talks about the... on the HGN test, four out of the six clues indicates an 88% probability that they're 0.08 or greater.

[00:26:43.45] **Prosecutor Dunkelman:** Okay. And you saw how many out of six?

[00:26:46.13] **Trooper Ernstsen:** Six out of six.

[00:26:47.21] **Prosecutor Dunkelman:** Okay. Um, did you notice anything about the defendant's balance during the HGN test?

[00:26:52.13] **Trooper Ernstsen:** Yeah. Um, so while he was standing there just on normally on both feet, he had a slight circular sway.

[00:26:59.77] **Prosecutor Dunkelman:** Okay. And why was this of any significance to you?

[00:27:03.57] **Trooper Ernstsen:** Again, um, his balance.

[00:27:05.73] **Prosecutor Dunkelman:** Okay. So there was a concern with, um, his ability to maintain his balance?

[00:27:09.85] **Trooper Ernstsen:** Yeah. And plus I could smell the odor of an alcoholic beverage coming from his mouth as he was speaking to me there in the open air environment as well.

[00:27:17.13] **Prosecutor Dunkelman:** Okay. Um, so what is the next test, uh, that you conducted?

[00:27:21.29] **Trooper Ernstsen:** The next is the Walk and Turn test.

[00:27:23.64] **Prosecutor Dunkelman:** Okay. Um, and, um, can you... or I guess, what is the instruction... what are the instructions for the Walk and Turn test?

[00:27:32.82] **Trooper Ernstsen:** Uh... So essentially, I have, um, I get in what's called the starting position or the instructional stance where I put 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. Uh, I tell him, imagine if there's an actual line painted on the road or something we can use. I have him step on that line. If not, in this case, there was no line. So I told him to imagine just an imaginary line that started under his left foot and went straight out in front of him. Then I instructed him to put, as I was doing, put his right foot in front of his left foot with his heel touching his toe and his hands down at his side. And then I told

him once he got in that, 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 he's in that starting position, um, what do you do in terms of demonstration from that point?

[00:28:20.28] **Trooper Ernstsen:** So I explained the test as I demonstrated it. Um, I, in the... there's another manual for the Nitsa manual, it's the instructor manual where it teaches the instructors how to actually perform and teach the cadets and whoever's their training, how to administer the Field Sobriety Tests. And so in that manual, it says that you demonstrate three steps, demonstrate the turn, and then demonstrate three steps back. Um, so that's what I did.

[00:28:53.94] **Prosecutor Dunkelman:** Okay. Um, and how many possible clues are there on this test?

[00:28:58.42] **Trooper Ernstsen:** Eight.

[00:29:00.30] **Prosecutor Dunkelman:** Okay. Um, and how many, um, clues, if any, did you observe, um, once the defendant completed the test?

[00:29:08.70] **Trooper Ernstsen:** Four out of the eight.

[00:29:09.98] **Prosecutor Dunkelman:** Um, and what clues were those?

[00:29:12.06] **Trooper Ernstsen:** Uh, he stopped walking and asked a question, and then he made an improper turn by taking one large spinning step to turn around, and then took his front foot off the line and stepped backwards with that foot. And then he, uh, again stopped walking and asked a question on the second set of nine steps. He also stepped off line once, and instead of nine steps, he took 11 steps.

[00:29:33.43] **Prosecutor Dunkelman:** Okay. Okay. Um, and did that conclude the Walk and Turn test?

[00:29:42.15] **Trooper Ernstsen:** Yes.

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

[00:29:44.99] **Trooper Ernstsen:** The One Leg Stand test.

[00:29:46.39] **Prosecutor Dunkelman:** Okay. Um, and what is the One Leg Stand test?

[00:29:50.39] **Trooper Ernstsen:** Um, so I instructed him just to stand with his feet together and his hands to the side while I explained and demonstrated again this test. Um, and then I instructed him that he can choose which foot he wants to use. When I tell him to begin whatever foot he decided, he's supposed to raise his foot up six inches point his toe down towards the ground, um, keep both legs straight, and look at his foot and count out loud: 1001, 1002, 1003, and just keep counting until I tell him to stop.

[00:30:18.95] **Prosecutor Dunkelman:** And those are the instructions that you gave him on this day?

[00:30:21.39] **Trooper Ernstsen:** Yes.

[00:30:21.99] **Prosecutor Dunkelman:** Okay. Um, and how many possible clues are there on this test?

[00:30:25.19] **Trooper Ernstsen:** Four.

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

[00:30:28.63] **Trooper Ernstsen:** Um, I saw one clue that I probably could have counted, but I felt like it was kind of borderline, so I did not count that clue, and I, I counted... and essentially documented zero clues out of the four clues possible.

[00:30:39.87] **Prosecutor Dunkelman:** Okay. And what's the clue that you're alluding to but didn't note on the report?

[00:30:44.95] **Trooper Ernstsen:** Raising his arms above six inches to help maintain his balance.

[00:30:48.23] **Prosecutor Dunkelman:** Okay. So is that typically, um, one of the four possible clues?

[00:30:51.71] **Trooper Ernstsen:** It is.

[00:30:52.19] **Prosecutor Dunkelman:** Okay. Um... And so did you ignore the results of this test, um, in your analysis of making an impairment determination?

[00:31:02.87] **Trooper Ernstsen:** No, I actually documented it in my report that it was zero clues observed.

[00:31:06.79] **Prosecutor Dunkelman:** Okay. So based on your observations so far and the defendant's performance on SFSTs, did you have any further concern about the defendant's ability to drive?

[00:31:20.50] **Trooper Ernstsen:** Yes. I determined at that point that I was going to arrest him for DUI.

[00:31:24.90] **Prosecutor Dunkelman:** Okay. Um, and did you ask him to do a PBT?

[00:31:29.62] **Trooper Ernstsen:** I did.

[00:31:30.22] **Prosecutor Dunkelman:** Okay. And when you asked him if he wanted to do it, how did he respond?

[00:31:35.66] **Trooper Ernstsen:** Uh, he had his hands up by his face covering his mouth and his nose, and basically told me that he did not want to blow into it because he had been drinking, and he, he knew he would blow over.

[00:31:46.02] **Prosecutor Dunkelman:** Okay. So what happened at this point?

[00:31:50.86] **Trooper Ernstsen:** Uh, I placed him under arrest.

[00:31:52.18] **Prosecutor Dunkelman:** Okay. Um, and after he was placed under arrest, um, where did... What happened from there?

[00:32:00.34] **Trooper Ernstsen:** So I did a search of his person, his pockets, his waistband, his pants, shirt. Um, and then, uh, I made sure that the handcuffs were okay, that they weren't too tight. I locked them so they didn't tighten up. I put him in my patrol vehicle. And then, uh, eventually I did, uh, a vehicle inventory because I had to impound the car.

[00:32:23.61] **Prosecutor Dunkelman:** Okay. Um, and was there another trooper around at this point?

[00:32:26.77] **Trooper Ernstsen:** Yeah, he arrived there right before I, um, placed the defendant under arrest for DUI.

[00:32:31.45] **Prosecutor Dunkelman:** Okay. Did... were... were you and did you remain to be the primary officer in the case?

[00:32:36.61] **Trooper Ernstsen:** Yes.

[00:32:37.37] **Prosecutor Dunkelman:** Okay. Um, is it fair to say he was there for support?

[00:32:41.29] **Trooper Ernstsen:** Yeah, he was just there as a backup officer, yeah.

[00:32:43.85] **Prosecutor Dunkelman:** Okay. Okay. Um, so was anything taken out of the defendant's vehicle, um, prior to you guys leaving that location?

[00:32:53.21] **Trooper Ernstsen:** Yeah, I believe he wanted his phone and, I think, a wallet, if I remember correctly.

[00:32:58.69] **Prosecutor Dunkelman:** Okay. Was the defendant transported somewhere else?

[00:33:04.25] **Trooper Ernstsen:** Yeah. After the, uh, car was towed away, I transported him to what we call Special Operations.

[00:33:10.49] **Prosecutor Dunkelman:** Okay. And what, what is that? Or why were you bringing him to that particular location?

[00:33:15.61] **Trooper Ernstsen:** So Special Ops is, it's like, it's, uh, a room that we have the code to enter. It's like, it's actually a, uh, an evidence room for Unified Police Department. Um, they have an Intoxilyzer machine in there. We also draw blood in there many times. Um, so that's where I went, and entered that evidence room.

[00:33:34.13] **Prosecutor Dunkelman:** Okay. Um, and, um, while you were driving him to this location, did you ask him any questions likely to elicit incriminating response?

[00:33:44.49] **Trooper Ernstsen:** No.

[00:33:45.05] **Prosecutor Dunkelman:** Okay. Um, did he ask you any questions or make any statements to you during that time?

[00:33:51.01] **Trooper Ernstsen:** Yeah, he asked me many questions.

[00:33:53.13] **Prosecutor Dunkelman:** Okay. Do you remember what type, the general nature of the statements he was making to you?

[00:34:00.89] **Trooper Ernstsen:** Um... While we were in the vehicle?

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

[00:34:04.29] **Trooper Ernstsen:** Uh, I think he was just curious like what was going to happen. Um, he wanted me to let him go. Uh, things like that.

[00:34:11.13] **Prosecutor Dunkelman:** Okay. Do you remember... Is it fair to say you kind of explained to him what explained to him what the next steps were going to be at that point?

[00:34:21.32] **Trooper Ernstsen:** Yeah, I, I read the the DUI admonitions at some point.

[00:34:25.44] **Prosecutor Dunkelman:** Okay. And what are the DUI admonitions?

[00:34:30.44] **Trooper Ernstsen:** It basically... Excuse me. It basically explains why he's under arrest for DUI. Again, I had already told him he was under arrest for DUI, but it... I have to read these DUI admonitions word for word. Um, and so I read that, and then I requested, uh, a breath test at that point and told him the, uh, possible ramifications of the breath test results.

[00:34:54.12] **Prosecutor Dunkelman:** Okay. And did he agree to do a breath test?

[00:34:57.00] **Trooper Ernstsen:** Uh, yes.

[00:34:58.08] **Prosecutor Dunkelman:** Okay. So once you got to, um, the second location, um, what did you do in order to prepare to do a breath test?

[00:35:09.68] **Trooper Ernstsen:** Yeah, so there's, uh, what's called a Baker period, where it's a 15 minute period of time. Um, I had him open his mouth, and I shine my flashlight in his eye and his mouth to check and make sure there was nothing inside of his mouth, no fluids or any objects or anything inside his mouth. And then, uh, I looked at the, the time that was on the Intoxilyzer machine, and I wrote that down, um, and began the Baker period off of that time. I waited 15 minutes, and at the end of that 15 minutes, I again looked in his mouth with my flashlight to make sure there was nothing in his mouth. Um, both times that I inspected his mouth, I didn't see anything in his mouth. Um, after I inspected it the second time after the Baker period was over, I had him... well, we tried to do the breath test multiple times.

[00:35:59.48] **Prosecutor Dunkelman:** Okay. And let me back up just a second. Um, and so what about... what's the process for getting the Intoxilyzer going?

[00:36:08.55] **Trooper Ernstsen:** Uh, it's pretty simple. We just push this little green button that says start.

[00:36:12.43] **Prosecutor Dunkelman:** Okay. Um, and when it turns on, um, if there were an error message or something that wasn't functioning with the machine, would it tell you that?

[00:36:22.03] **Trooper Ernstsen:** Yeah, if it's not functioning, it does, um, what's called an air blank... it does multiple air blank tests to make sure there's no alcohol in the actual system of the machine. It does diagnostic testing, and if any of those tests fail, it will not let you proceed.

[00:36:38.71] **Prosecutor Dunkelman:** Okay. Did you receive any messages of that nature indicating that the machine wasn't working?

[00:36:44.31] **Trooper Ernstsen:** Not that I recall, no.

[00:36:45.67] **Prosecutor Dunkelman:** Okay. So I guess let me clarify, to your knowledge, did it appear that the machine was functioning as normal?

[00:36:51.51] **Trooper Ernstsen:** Yes.

[00:36:52.07] **Prosecutor Dunkelman:** Okay. Okay. Um, and during this Baker period, um, were you, um... was there conversation going between you and the defendant?

[00:37:02.23] **Trooper Ernstsen:** Uh, yeah. Yeah.

[00:37:03.07] **Prosecutor Dunkelman:** Okay. Um, were you asking him questions or what was kind of this conversation like?

[00:37:09.31] **Trooper Ernstsen:** Uh, I think I asked him where he worked and stuff. Um, yeah, just kind of conversation.

[00:37:15.51] **Prosecutor Dunkelman:** Okay. Um, and was he also engaging you in conversation as well?

[00:37:20.31] **Trooper Ernstsen:** Yes.

[00:37:20.91] **Prosecutor Dunkelman:** Okay. Okay. Um, and so, would you mind just walking me through... we'll first talk about the general process for getting a breath sample and then how it went in this case. So just the general process for a breath sample?

[00:37:41.80] **Trooper Ernstsen:** Um, yeah. So basically, uh, there's a mouthpiece in a little plastic, uh, container. I take the plastic off of the mouthpiece. I put the mouthpiece on the end of the tube that's connected to the Intoxilyzer machine. And then I instruct them that, basically, I show them where my fingers are. I need you to put your mouth on that part of the mouthpiece, and then just blow for several seconds until I tell you to stop. If... basically, I instruct them that if he's blowing enough air, that you'll, you'll hear, uh, a high pitched noise coming from the, the machine. If you're not blowing enough, you won't hear anything. I'll be right here telling you, blow a little bit more, get it a little harder, keep going, keep going. Once the, uh, once there's enough air volume introduced into the machine, it will register the results, and it will print the results off on a little receipt, and then I tear it off, and I show them what the results are. And eventually, I give them a copy of the result.

[00:38:37.34] **Prosecutor Dunkelman:** Okay. And so as air is being blown into the machine, are you getting a reading of, like, the quantity of air or is it more of a insufficient versus sufficient thing?

[00:38:49.38] **Trooper Ernstsen:** Yeah, essentially, um... I can't see how much air is being blown into the machine. I... it basically just shows these little green bars. Um, and then once there's enough air that's been introduced, it will start the process. You can hear the machine working and starting to analyze the, the sample. And then eventually it shows you what the result is. Prints the results off.

[00:39:15.50] **Prosecutor Dunkelman:** Okay. And then with respect to, um, say someone was doing a test, and it took a couple tries to get the sufficient sample, um, is there any reason why you would need to restart the test after each attempted breath, or I guess, each attempt to get a full breath sample?

[00:39:34.42] **Trooper Ernstsen:** No. The only thing that happens is if it's a certain amount of time, um, goes by, it will time out the machine, and you'll have to just basically enter all the information. Um, so initially I enter, like, it asked for my name and badge number, and the person's name and date of birth and driver license. So if it times out, um, you would have to enter all that information again and have them start to blow into it again. But it, it'll allow you within that time frame to do as many attempts as you need to, to get the correct amount of air into the machine.

[00:40:10.81] **Prosecutor Dunkelman:** Okay. And to your knowledge, do more breath attempts 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 like to talk to you about how, um, it went in this case. Um, would you mind just walking me through, um, what happened after the defendant was given the instructions on, on how to blow into the machine and everything you described already?

[00:40:32.85] **Trooper Ernstsen:** Yeah. So I told him all the things that I mentioned that I tell people, uh, instructions on how to perform the breath test. And multiple times, like, I can't remember exactly how many, it was many times, he didn't blow enough air into the machine to have it register the results. And so I had to have him try it over and over and over again. And, uh, before it timed out, we were able to collect a valid sample.

[00:40:58.25] **Prosecutor Dunkelman:** Okay. And just one more, I guess, procedural question. Is there any sort of, to your knowledge, any sort of minimum or maximum time period that you're allotted to get these breath samples in?

[00:41:13.00] **Trooper Ernstsen:** Yeah, like I said, the machine will time out if you don't do it within a certain amount of time. And I, I can't remember exactly how long 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?

[00:41:25.20] **Trooper Ernstsen:** No, it didn't.

[00:41:26.04] **Prosecutor Dunkelman:** Okay. Um, and, um, ultimately, were you able to get a, I don't know if this is the right word, but like a viable breath sample?

[00:41:35.04] **Trooper Ernstsen:** Yes. So there is a minimum amount of breath that you have to blow into it. And I, I think it's around 1.1 or 1.2 liters of air before it will accept the, the sample.

[00:41:47.84] **Prosecutor Dunkelman:** Okay. And to your knowledge, is there... if someone blew... is there an amount... Is there too much air you can blow in?

[00:41:57.40] **Trooper Ernstsen:** I've never seen any that, no.

[00:41:59.84] **Prosecutor Dunkelman:** Okay. Okay. And do you... So did you receive a printout, um, from this test?

[00:42:09.16] **Trooper Ernstsen:** I did, yes.

[00:42:09.88] **Prosecutor Dunkelman:** Okay. Um, and what was the result of that?

[00:42:11.64] **Trooper Ernstsen:** 0.104.

[00:42:13.28] **Prosecutor Dunkelman:** Okay. Um, and while, um, awaiting for those results, um, do you recall if the defendant made any statements about the result?

[00:42:24.56] **Trooper Ernstsen:** Uh, yeah, before we got the results, he told me that he felt like it was going to be bad.

[00:42:30.80] **Prosecutor Dunkelman:** Okay. Um, and after you received the results, 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 out loud.

[00:42:40.80] **Prosecutor Dunkelman:** Okay. Um, and what happened after he... after the test was completed?

[00:42:47.48] **Trooper Ernstsen:** Um, I believe we just went back out to my patrol vehicle and I, um, and while we were inside my patrol vehicle, I read his, read him his Miranda rights to him.

[00:42:56.80] **Prosecutor Dunkelman:** Okay. And why did you advise... why did you decide to advise him of his Miranda rights at this point?

[00:43:02.35] **Trooper Ernstsen:** Um, so my department likes us to perform an interview. It's just part of our DUI form on our computers. Uh, it's just multiple questions that we ask them pertaining to the, the crime of the DUI. And so I wanted to, before I ask them any incriminating questions about that crime specifically, I wanted him to understand his rights.

[00:43:23.43] **Prosecutor Dunkelman:** Okay. Um, and did he choose to continue speaking with you?

[00:43:28.83] **Trooper Ernstsen:** He told me he did not want to.

[00:43:30.31] **Prosecutor Dunkelman:** Okay. Um, and so did you proceed with questioning after

that?

[00:43:38.51] **Trooper Ernstsen:** I did not, no. He just wanted to call somebody, so.

[00:43:42.11] **Prosecutor Dunkelman:** Okay. And did you... um, was he able to call somebody?

[00:43:46.87] **Trooper Ernstsen:** Uh, I asked him if he wanted me to get into his phone and dial a number for him to call somebody. And he said yes. And when I went to dial the number, his phone was dead, so he couldn't call anybody.

[00:43:58.59] **Prosecutor Dunkelman:** Okay. Um, and did that conclude your involvement in the case, or, I guess, how did it end?

[00:44:06.95] **Trooper Ernstsen:** Uh, eventually, once I got all the forms filled out and printed off for him, we went over to the jail where I had, uh, booked him into the jail.

[00:44:14.67] **Prosecutor Dunkelman:** Okay. Um, nothing further, Your Honor.

[00:44:17.75] **Judge Hruby-Mills:** Mr. Golub?

[00:44:18.75] **Defense Counsel Golub:** All right. Hello! Okay. Um, excuse me for... if I'm not good at this, but I'll try, um, to not waste everyone's time. Um, okay. So, um, I didn't know that, um, we were going to do another testimony because I figured you already did one. Um, can you just... can you do as many as you want?

[00:44:45.94] **Judge Hruby-Mills:** [Overlapping speech] And I'm sorry, I couldn't hear the defense...

[00:44:47.78] **Defense Counsel Golub:** Oh, sorry. Okay, never mind. I just, I just... I just was a little confused about procedure, but that's fine. It's not, it's not... that's not the point. Um, okay. So what I remember in the first, um, testimony was that... and again, if I'm wrong, just tell me that I'm wrong. Uh, did you say that it was a routine traffic stop when... in your initial testimony, or did you say it was because you saw me walk out of the bar?

[00:45:10.62] **Trooper Ernstsen:** Uh, I don't recall if I said it was routine. I don't remember.

[00:45:14.90] **Defense Counsel Golub:** Um, well why do you think you have to do another testimony today? Why are you doing this one?

[00:45:24.70] **Judge Hruby-Mills:** The witness doesn't decide why...

[00:45:25.02] **Defense Counsel Golub:** Why, why call you in for a second one?

[00:45:31.70] **Judge Hruby-Mills:** Yeah. That's not... he probably was subpoenaed because he had to get here today.

[00:45:38.42] **Defense Counsel Golub:** Okay. That's fine. I don't... Your Honor, motions to suppress. Absolutely. Absolutely. Okay. Okay. Um, so, you said that there was a code that you cited for running the red light? Correct?

[00:45:52.18] **Trooper Ernstsen:** Correct.

[00:45:53.10] **Defense Counsel Golub:** Um, does it say you have to have your flashing lights on?

[00:45:56.30] **Trooper Ernstsen:** No.

[00:45:57.10] **Defense Counsel Golub:** You're not turning one on? Okay. Um... the F-bomb. Is that absolutely on the video or anything like that?

[00:46:07.14] **Trooper Ernstsen:** I just mentioned it.

[00:46:08.86] **Defense Counsel Golub:** I was thinking that maybe it's kind of Russian sounding. So I was going to say, can I say the defendant or just me?

[00:46:19.06] **Judge Hruby-Mills:** You just pick something and say that you can...

[00:46:21.42] **Defense Counsel Golub:** Okay. Okay. I think I'll just do the sentence then. Um, so you say that the defendant braced himself against the door when he got out?

[00:46:34.18] **Trooper Ernstsen:** Uh, yeah. He just put both hands on the driver door when he exited.

[00:46:39.10] **Defense Counsel Golub:** And that's absolutely on the video. Um, and that's, uh,

indication of what?

[00:46:44.94] **Trooper Ernstsen:** Uh, it can, it can be an indication of balance issues.

[00:46:47.86] **Defense Counsel Golub:** But did you note that he got a perfect score on the test, which is the actual balance test?

[00:46:55.89] **Trooper Ernstsen:** Well, like I mentioned before, I could have counted raised arms above six inches to help maintain his balance, but I felt like it was fairly borderline, so I did not count that test, or that clue.

[00:47:06.85] **Defense Counsel Golub:** Okay, putting two hands on a door. Could it be because you're walking into traffic and you don't want that door to swing open and hit a cyclist or something?

[00:47:16.25] **Trooper Ernstsen:** It's possible.

[00:47:17.61] **Defense Counsel Golub:** Um, I... um, the defendant is a cyclist, and he is very scared of doors and being hit by them, and it's happened to him several times. Um... so, you said that you've been trained, um, to perform these field sobriety tests, um, particularly the horizontal gaze nystagmus test. Um...

[00:47:40.07] **Prosecutor Dunkelman:** Objection, Your Honor. Counsel is testifying.

[00:47:48.39] **Judge Hruby-Mills:** Any response to the objection?

[00:47:50.91] **Defense Counsel Golub:** Um, no. I just... I assume that's what you're supposed to say.

[00:47:57.23] **Judge Hruby-Mills:** Objection is sustained.

[00:47:58.51] **Defense Counsel Golub:** Okay. Okay. Um... Okay. So you said that he passed four... for the Walk the Line test. He got four out of the eight clues. I'm sorry. He got four out of the eight, right?

[00:49:00.56] **Trooper Ernstsen:** Four... I observed four out of the eight clues possible.

[00:49:03.04] **Defense Counsel Golub:** Okay. So what were the four clues that were not observed?

[00:49:06.96] **Trooper Ernstsen:** That were not observed? Um... Uh, so you... he did not, uh, step out of the instructional stance, did not start too soon. Um... did not miss heel to toe, and did not raise arms above six inches.

[00:49:25.32] **Defense Counsel Golub:** Okay. Okay. Um... So I read an article where it it said that, you know, some people may perform certain aspects of the test perfectly, but still blow, you know, below the... the legal limit. Is that true? Can that happen?

[00:49:47.44] **Trooper Ernstsen:** Anything's possible.

[00:49:48.52] **Defense Counsel Golub:** Okay. Um... So what makes fantastic is the balance test, that you didn't feel like putting down the one thing that he was... positive positive that he showed the clue that he showed that you didn't bother putting on the report.

[00:50:05.99] **Trooper Ernstsen:** Well, I didn't put it on there because I gave him the benefit of the doubt.

[00:50:09.07] **Defense Counsel Golub:** Yeah, no, but just... what was the one?

[00:50:11.19] **Trooper Ernstsen:** Raising his arms above six inches to help maintain his balance.

[00:50:13.95] **Defense Counsel Golub:** Okay. Um... Do you know that you are supposed to offer a PBT? And that you are supposed to give a person the right to the option to either agree or disagree to take it?

[00:50:32.95] **Trooper Ernstsen:** I don't understand your question.

[00:50:34.47] **Defense Counsel Golub:** So, when I... I may be wrong here, but I thought that under section 4168-520 of the Utah Code, um, there's an implied consent section, and an officer who offers a PBT to a, um, to the defendant, um, must cite this law, because if you, um, if you say no, if you refuse to take the PBT, um, that could be a violation and could lead to your license being taken

away for two years if you refuse to take the PBT. Um, the defendant still has his license.

[00:51:09.59] **Judge Hruby-Mills:** I'm wondering if you're reading the actual law, applies to the...

[00:51:12.15] **Defense Counsel Golub:** The actual... Oh, does it apply to the PBT too? Okay. And, um, from what I understand, I don't think the defendant realized that there was an official order, right? On the on the camera, she say something like, "I just want to go home." So I think it was a matter of like, what do we want to do? Versus, like, do you have to take this?

[00:51:39.63] **Prosecutor Dunkelman:** Objection, Your Honor. Counsel is testifying...

[unintelligible]

[00:51:44.79] **Judge Hruby-Mills:** Respond to the objection.

[00:51:46.31] **Defense Counsel Golub:** Um, can I just make that question simple?

[00:51:51.87] **Judge Hruby-Mills:** You need to respond to the objection.

[00:51:54.27] **Defense Counsel Golub:** Um... So, all I'm trying to say is that I thought the law was...

[00:51:55.67] **Judge Hruby-Mills:** Okay, but that's... and that's... that's kind of the issue right now. You're asking questions of this witness. If you want to call yourself as a witness, you can do that at some other time later. Okay? Okay. But so...

[00:52:05.63] **Defense Counsel Golub:** So based on character, based on what I said, do you think you properly, um, offered the witness to take the PBT?

[00:52:13.42] **Trooper Ernstsen:** Yes.

[00:52:14.06] **Defense Counsel Golub:** Okay. Thank you. Okay. Um... Do you remember what the second officer's name was?

[00:52:22.90] **Trooper Ernstsen:** Uh... Trooper Carpenter, I believe.

[00:52:26.18] **Defense Counsel Golub:** Did you include his name on the report or any of the other documentation?

[00:52:30.70] **Trooper Ernstsen:** I don't believe so, no.

[00:52:32.38] **Defense Counsel Golub:** Um, did he show up right before you, um, placed him under arrest?

[00:52:37.86] **Trooper Ernstsen:** Okay. So, do you remember him putting handcuffs on the, on the defendant? No, I believe when I went to place the defendant under arrest, he made some sudden movements and took his, um, headphones off. I believe that secondary officer took those, um, headphones. And as I placed him under arrest.

[00:53:02.06] **Defense Counsel Golub:** So, did the second officer put him in handcuffs? That would be... that would be a procedure difference.

[00:53:11.02] **Trooper Ernstsen:** I don't believe the second officer put him in handcuffs.

[00:53:13.34] **Defense Counsel Golub:** Okay. Um, after the the second officer, when we looked at the video, assisted in the arrest. Um, did he do anything else? Did the secondary officer do anything else?

[00:53:29.26] **Trooper Ernstsen:** Um... I don't recall.

[00:53:32.18] **Defense Counsel Golub:** Did you remember if he searched the vehicle?

[00:53:36.82] **Trooper Ernstsen:** I don't recall.

[00:53:38.18] **Defense Counsel Golub:** Um, because he does, he searched the vehicle, and he also, I think we have to look at the video, he assisted in the arrest. And that kind of thing. Um, like somebody held the hand, and somebody put the handcuffs on. But we'll... but we'll see. Um, was the, the second officer there when you offered, um, the defendant to take the PBT? Over there at that time?

[00:54:09.00] **Trooper Ernstsen:** I don't recall.

[00:54:13.52] **Defense Counsel Golub:** Okay. Okay. Um... Okay. So, um... Yeah, okay. Um... Okay. I'm done.

[00:59:18.39] **Judge Hruby-Mills:** Anything further from the State?

[00:59:20.07] **Prosecutor Dunkelman:** No.

[00:59:20.83] **Judge Hruby-Mills:** All right. Thank you for your testimony. You can step down.

[00:59:29.91] **Judge Hruby-Mills:** Ms. Dunkelman, does the State have any further witnesses?

[00:59:33.07] **Prosecutor Dunkelman:** No, Your Honor.

[00:59:33.87] **Judge Hruby-Mills:** All right. Mr. Golub, did you anticipate, uh, calling any witnesses?

[00:59:40.75] **Defense Counsel Golub:** Um... So I would have liked to call, um, one or two witnesses. But I didn't know that we were calling them this early. I can do it at a later time. Or should I just... What should I do now? Because I don't have anyone. I can't... I'm not going to call an expert witness about the machine. And also, um, the person that I went and met, um, at the establishment was working there that day. And I don't even know if she's going to have her support my argument that I, that I was there for, you know, to, to... to do something other than visit the establishment for the procurement of alcohol.

[01:01:26.69] **Judge Hruby-Mills:** Yeah. Yeah. Um, but do you, do you want to show the video? Does the State have any more evidence?

[01:01:35.89] **Defense Counsel Golub:** Oh, how should... how should I proceed with the video evidence that I have throughout my motions? I keep citing different videos and different times. And I could make a compilation of just those things if that's easier?

[01:01:52.81] **Judge Hruby-Mills:** So should we do that? I can have them sent to... We were set today for the evidentiary hearing. Do you have your... do you want to put your portions of the video? Do you want to...

[01:02:09.13] **Defense Counsel Golub:** Yeah. I, I... I think I was a little, um, confused about what was going to happen today. I, I figured that we were going to, um, review the motions, and then, and then we would decide which parts, um, could stand, and then I would provide, um, if necessary... I would provide evidence for certain parts of it. But I didn't think that I would have to do that today.

[01:02:35.25] **Judge Hruby-Mills:** Well, I try to, when I do these, I just like go over the motion and see which parts, um, you know, you guys support. Okay. And I, um, we were set on... on your motion. You... I think I asked you about narrowing down your topics, and you did file some additional narrow... more narrow down topics. And so today, we were set for the evidentiary hearing on the motion to suppress. And the state subpoenaed its witness. Okay. Um, with that... and you could have subpoenaed witnesses if you didn't. Um... But do you wish to rely on the body cam?

[01:03:16.64] **Defense Counsel Golub:** Yes. There's that video. There's not just the body cam.

Well, the dash cam is pretty important because the dash cam is what supports my argument that there was no violation. There was no... failure to signal.

[01:03:31.63] **Judge Hruby-Mills:** Okay. So did you want to ask the prior witness about that?

[01:03:37.83] **Defense Counsel Golub:** Did I not?

[01:03:39.03] **Judge Hruby-Mills:** I'm not aware that the, I haven't seen any camera video come up on my screen.

[01:03:45.47] **Defense Counsel Golub:** Yeah. So, yeah. No, I mean, yeah, maybe I got sidetracked because the first thing was the running of the red light, which I know is typically legal. Um, but in terms of the distance of the officer from the defendant in his car, and what you see on the dash cam, you can't see.

[01:04:11.87] **Judge Hruby-Mills:** Yeah, I know you're arguing. This is... Yeah, that's fine. That's what I thought. Yeah. So I don't... are you... did you have more questions for that prior witness?

[01:04:18.31] **Defense Counsel Golub:** I don't have any more questions.

[01:04:20.75] **Judge Hruby-Mills:** Okay. Are you submitting then or did you...

[01:04:26.03] **Defense Counsel Golub:** Can I submit these two motions?

[01:04:29.27] **Judge Hruby-Mills:** You submitted them.

[01:04:29.75] **Defense Counsel Golub:** And that's done? Okay.

[01:04:32.39] **Judge Hruby-Mills:** The motion... motion, you filed these two motions.

[01:04:35.87] **Defense Counsel Golub:** Yeah.

[01:04:36.23] **Judge Hruby-Mills:** Right? And that's what we're here on today. Okay. So the state had an obligation to bring in its witness to refute, um, what you've alleged to be lawful or unconstitutional stops.

[01:04:48.39] **Defense Counsel Golub:** Yes.

[01:04:49.07] **Judge Hruby-Mills:** Okay. So, do you have any other evidence that you wanted to present?

[01:04:55.23] **Defense Counsel Golub:** Um, I don't want to waste anyone's time. But do I need to submit the video evidence that the state provided me, or that I would have to leave?

[01:05:05.11] **Judge Hruby-Mills:** It's not something that I have.

[01:05:06.71] **Defense Counsel Golub:** Okay. Um, can I submit that later today?

[01:05:11.11] **Judge Hruby-Mills:** Submit the entire...

[01:05:12.83] **Defense Counsel Golub:** All of the video. No. There's like eight hours with this video. No, just the 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 citations in the motion. So I, I would probably want something more specific.

[01:05:29.90] **Defense Counsel Golub:** I can strip it down to 10 minutes, even less. Whatever time you think is appropriate, I can I can cut it to that.

[01:05:38.02] **Judge Hruby-Mills:** But your approach would be to put that on a flash drive? Just the portions of the video that would line up with what you has referenced in his motion. Just so we're all clear the um...

[01:05:55.29] **Prosecutor Dunkelman:** Okay. And so it's... There's he has no idea even what is being supported or asked. And really no ability to cross examine on these things. And so... I think the State objects.

[01:06:24.86] **Judge Hruby-Mills:** Okay. So, Mr. Golub, any response to the objection?

[01:06:30.38] **Defense Counsel Golub:** I was just trying to show that the... the point 104 is wildly high. It's way too high according to...

[01:06:40.00] **Prosecutor Dunkelman:** Objection, Your Honor. Counsel is testifying.

[01:06:46.26] **Judge Hruby-Mills:** Objection is sustained.

[01:06:48.02] **Defense Counsel Golub:** Okay. Yeah. And... I guess I don't really want to waste anyone's time anymore, so just rest there.

[01:06:56.50] **Judge Hruby-Mills:** Okay? And Miss Dunkelman?

[01:06:58.06] **Prosecutor Dunkelman:** Your Honor, I think there are three issues that the defendant seems to... Well, in his proffer, he stated that the focus of this is. Um, first, it is the... that there was... whether there was a lawful basis for the contact with the defendant by the corporal. Um, and law enforcement must have reasonable suspicion of criminal activity to make a traffic stop. And in this case, um, we have testimony from the courtroom that um that, um, that he observed the defendant walking to his car, um, from a bar, getting in his car. And that was the reason that... um, it was also late at night. Um, and that was the reason that he did a U-turn. And as he came out of the U-turn, he saw the defendant's vehicle pull away from the curb without signaling and then cross, uh, multiple lanes of traffic with also without signaling. Um, I asked him, uh, if these are violations of the law. He said that they were. Um... And I don't think it's particularly pertinent here, but, um, I do

think that, uh, 41-6a-212, um, it did allow the officer to turn, do a U-turn on the red light, um, in pursuit of an actual, suspected violator of the law. Um, so I would argue that, um, there was a lawful basis for, um, the Corporal to contact the defendant. Um, and, um, move on to the next issue. The second issue, um, is SFS... the, the administration of the SFSTs. Um, and I, transparently, do not think that it was actually negated or refuted, um, by the defendant on cross-examination or any evidence that he presented. Um... The first... um, so I tried to address this in the direct of the officer. Um... There wasn't really any questions. I asked the officer about HGN, um, that he was certified to administer these tests, and that he went through the instruction phase, that he, um, kept, um, the stimulus away, traveling a certain speed, and it moved, um, the appropriate, um, back and forth distance, um, across the defendant's face. Um, and that he had done the medical screening questions to make sure there were no issues. He actually, as part of the medical screening, did a test to make sure there was no resting nystagmus. Um... and, and so we... I would argue that there was, um, that, A, the Corporal did everything as required by the manual, um, that allowed these tests to be standardized. And then also that there actually was nothing refuted, um, by the defendant, um, with respect to this. With the Walk and Turn, um... I would again say that there wasn't anything refuted by the defendant, um, in court today. Um, in his motion, he states that only three steps were taken on the Walk in turn. Um, or sorry, demonstrated by the Corporal instead of the full nine, um, that are asked to be performed of by the defendant. But I asked the Corporal about this, and he said in the instructor's manual, um, which he's trained on, it says that you demonstrate the steps, three steps, uh, the turn and the returning three steps back. Um, so I would argue that there's been no evidence that this was not, um, completed correctly. Um... With the One Leg Stand. Again, I, I don't think that there's anything, um, that has been refuted, that it was not done correctly. And in fact, the motion by the defendant is, um, interest... interestingly saying that because there were no clues on it, um, the officer's interpretation, selective interpretation of this result demonstrates a prejudicial bias. Um, I don't think there was any evidence for this at all in the testimony today. Um... The officer did testify that there was one indication that could have been a possible clue on this, but it was borderline. And he gave that benefit to the defendant in, um, doing his analysis and writing his report. Um... Finally... Um, and I also think that, um, any small deviations that the defendant is arguing, even though it doesn't come out in the testimony, um, would, um, go to weight, not admissibility, um, for this to the jury. And then finally, with the chemical test, um, I think the most attention was given here. Um... First there was, um... the officer testified that he is trained to administer this machine that he checked, who went through all of the necessary checks with the machine prior to starting, that Baker was completed and after Baker was completed, um, then they started the test. Um, he stated that the test took multiple blows, um, because the defendant was unable to provide a sufficient sample. I asked that if any way having the defendant doing multiple rows would raise or lower, uh, the breath sample. He said no. Um, and also that the length of time was because the defendant was not providing a sufficient breath sample for this. The officer also said that he's not... there's not like a certain number... there's a minimum number that's needed. But when the breath is being blown in, he's only seeing a line indicating whether a sample has been met. And then at that time, the machine would make a noise. Um, and so I don't think that there's been any indication... The defendant's motion for test duration violations, um, cites largely an article. Um, and, um, I would argue that the duration was extended, um, because solely because the defendant's inability to provide a sufficiency. Um, and then also there's something with respect to the volume collection. Again, I asked the officer if this has any implication on the results of the test. Um, he said no. Um... There wasn't... When I asked the proffer about what the defendant was arguing today, there was nothing about the PBT that was mentioned. Um, so the state didn't really focus a lot on that. I don't know that it's appropriate for argument. Um, but I am confused when the defendant

said that he would have done a PBT if it was offered, because we heard testimony that, um, the officer stated that he did ask the defendant if he wanted a PBT, and the defendant said, um, he was going to... uh, that he was going to jail because he'd been drinking and he was... and was well over... a little over the limit. And so the PBT was not done. I also don't think that has any implication on the testing at all, um, the chemical test. So I would argue that, um, none of these have been sufficiently addressed. Um, well, the state addressed them and they haven't been, um, refuted. And so the court should deny the motion in, in its entirety.

[00:27:20.07] **Judge Hruby-Mills:** All right. Thank you. Mr. Golub, anything further?

[00:27:24.03] **Defense Counsel Golub:** Um... Uh... Um... No, not right now.

[00:27:38.07] **Judge Hruby-Mills:** I'm going to inquire, because one of the things that really wasn't discussed today, but is part of, um, your written motion is, um... the... your request to suppress statements made, um, prior to Miranda? And we didn't... that...

[00:27:58.43] **Defense Counsel Golub:** Oh, that's right. Yeah.

[00:27:59.83] **Judge Hruby-Mills:** We didn't touch that today. Were you pursuing that still?

[00:28:02.35] **Defense Counsel Golub:** Uh, there was... I mean... there's a there's a couple of things that I don't think we went over. But yeah, the, the statements, um... a big... a big part of, of, of that motion was also, um, claiming that there, um, there was no probable cause as well. So they were... um... and then the defendant was absolutely in custody, um, when he was arrested by two officers, um, standing on each side of him, um, and asking him questions, which are, you know, um... pretty early on in investigation, and that counts as, um, being, um, detained. And at that point, he should have been, um, read his Miranda rights. And if not, then definitely when he was in the car. If not in the car, then definitely when he was in the police, um, Special Ops center.

[00:29:02.19] **Judge Hruby-Mills:** Um, is there some reason that you didn't, uh, address that today through the evidence?

[00:29:08.35] **Defense Counsel Golub:** Uh... There's just so much. And I'm just trying to be as succinct as possible. So, um, you know, I... I just... Yeah. I just didn't get to it.

[00:29:21.43] **Judge Hruby-Mills:** Okay.

[00:29:22.15] **Prosecutor Dunkelman:** And, Your Honor, that's why I asked for a proffer in the beginning, um, because there was quite a bit. Um, and so I don't think argument as to that is appropriate, um, because I asked for a proffer. And so, um, he didn't choose to proceed with them.

[00:29:45.07] **Judge Hruby-Mills:** Mr. Golub, anything further on that issue?

[00:29:48.47] **Defense Counsel Golub:** Um... There's also that, um, section about the GRAMA request, in terms of, um, trying to make a case for, um, inherent bias on the part of the officer since his, um, arrest to stop ratio is one in four, which is about 25 times, or 24 times higher than the state average. Um, and this isn't... this is just for DUI arrests, um, through a GRAMA request the defense obtained [unclear]... and I went and got the latest, um, data for this year. And so it seems like there is a case to be made that because the officer is so, um, involved in making so many DUI arrests, um, on a pretty much daily basis, that he cannot be a fair judge or witness to, um, a case that I believe has a lot of anomalies. And, um, I know that the defendant believes that, um, he was not driving under the influence. Um, but because there was bias, um, he was seen walking out of a bar, and the officer made a, um, a conviction based on bias versus the facts.

[01:01:15.75] **Prosecutor Dunkelman:** And Your Honor, I don't think any of that is appropriate argument...

[01:01:17.83] **Judge Hruby-Mills:** Mr. Golub. What I'm trying to get at is you didn't... you didn't elicit evidence or testimony regarding that today. Is that correct?

[01:01:25.47] **Defense Counsel Golub:** Correct.

[01:01:25.99] **Judge Hruby-Mills:** Okay. Ms. Dunkelman, anything further on that issue carefully?

[01:01:32.19] **Prosecutor Dunkelman:** Um... No, Your Honor. I mean, I guess just to clarify, the State's position is that the defendant is not permitted to make those arguments at this point or in the future because he is... This was the opportunity, and I asked for that proffer for this exact reason.

[01:01:52.19] **Judge Hruby-Mills:** And I don't know necessarily that an argument made in, in your written filings, if you don't address it, it's not there anymore. Um, however, this was the opportunity for that evidence, these other arguments. And so I'm just trying to get at whether or not you just chose not to go forward on it. I know you're trying to be succinct, but some of these things are arguments that don't have evidentiary support, okay?

[01:02:22.75] **Defense Counsel Golub:** But, I think the GRAMA has... the data.

[01:02:27.11] **Judge Hruby-Mills:** When you say GRAMA, you mean the government's records?

[01:02:30.55] **Defense Counsel Golub:** Yeah, yeah. So that's... and I also submitted that, um, and cited in the paperwork for all of that stuff. Um, when you say in the future, can I not make these arguments, um, during the trial?

[01:02:46.15] **Judge Hruby-Mills:** Well, again, the state is not here to give legal advice.

[01:02:49.71] **Defense Counsel Golub:** Yeah. But, I mean... can I make these arguments during the trial?

[01:02:53.23] **Judge Hruby-Mills:** I'm not going to give you legal advice. All right? Okay. Yes. Yes. Okay. So, um, with regard to what, um, I have before me, though, um, on the, the motions, um, Motion to Suppress and Motion to Dismiss. And again, there, there are a lot of, um, nuanced, um, arguments in there, but based on what, uh, was presented today, um, at the evidentiary hearing on this, um, I, um... again, trying to do it in the way that you had, um, outlined your, your, um, proffer today, um, that, uh, I do find that there was probable cause, uh, reasonable articulable suspicion for the initial stop, uh, based on the, uh, officer's, um, um, observations. Uh, with that, um, I... again, I'm not getting in too much into the Miranda issue, but you were eventually Mirandized. I, I am not aware of what, uh, specific statements that you were concerned about. Uh, there's none of that was elicited during, um, the, uh, hearing today. Uh, based on the, basically unrefuted testimony of the Corporal, uh, with regard to the administration of the, the, uh, Field Sobriety Tests, they seem to be appropriately administered. Um... Nothing suggests that, uh, there was anything inappropriate about that. And so, uh, they seem to be, um, valid, uh, based on, uh, his testimony and, um, observations, um, of that. Similarly, uh, the administration of the Intoxilyzer, um, seems to be unrefuted that, uh, that was done, um, consistent with all appropriate standards. And so I don't see there's any reason to, uh, suppress, um, the outcome, um, of that as well. And so with that, I, um, am denying the Motion to Suppress and, uh, the Motion to Dismiss as well. Um, and I... And I guess you have any questions, Mr. Golub, about what might remain, um, before we get trial dates? Or are we in a situation to get trial dates?

[00:34:59.05] **Defense Counsel Golub:** Uh, I don't have any questions at this time.

[00:35:01.13] **Judge Hruby-Mills:** Okay. Should we get trial dates, Counsel?

[00:35:03.33] **Prosecutor Dunkelman:** Um, there's been an offer extended in this case, so I'm fine, um, going forward with trial dates if it's... it's more of a defendant's preference.

[00:35:13.17] **Judge Hruby-Mills:** Do you want to give it some thought? Would you be sent back for a pretrial conference, or we can get trial dates?

[00:35:18.73] **Defense Counsel Golub:** I'm not sure what...

[00:35:20.89] **Prosecutor Dunkelman:** The change of plea to count one.

[00:35:23.05] **Defense Counsel Golub:** Oh. Is that... is that in one of my case paperwork? Or where do I find that stuff?

[00:35:29.17] **Prosecutor Dunkelman:** Um, I can put it on the record? No? Because I don't... I don't remember ever having...

[00:35:33.97] **Judge Hruby-Mills:** Give me that.

[00:35:36.13] **Prosecutor Dunkelman:** I guess I'll just put the offer on the record. Um, change of plea to count one, which is the DUI, uh, second and ten, um, as charged with a PSR required.

[00:35:48.73] **Judge Hruby-Mills:** Okay. Mr. Golub, do you want to accept that offer now, or do you want to give it some more thought?

[00:35:55.89] **Defense Counsel Golub:** I would like to plead not guilty to the DUI.

[00:36:01.13] **Judge Hruby-Mills:** Okay. Which is what you have pleaded? Yeah. Okay. So with that, then, um, do you want a pretrial conference date, or do you want to get trial dates?

[00:36:11.41] **Defense Counsel Golub:** Um... Do... do you guys have a preference?

[00:36:14.77] **Prosecutor Dunkelman:** I think if he's not intending to take the State's offer, um, the State doesn't intend on changing the offer. So I think we should just set a trial date.

[00:36:22.57] **Judge Hruby-Mills:** Okay. Okay. Is it a two-day trial?

[00:36:25.93] **Prosecutor Dunkelman:** At most? At most. Yeah.

[00:36:28.61] **Judge Hruby-Mills:** Because we, we pick our jury in the morning, and then we begin trial. So we usually set everything for at least two days. Okay. Does that seem like enough time?

[00:36:37.29] **Defense Counsel Golub:** Um, do I have the opportunity to, um, help with the jury? Or talk to...

[00:36:43.05] **Judge Hruby-Mills:** Oh my god... yes, that's...

[00:36:45.13] **Defense Counsel Golub:** Oh my god... [unclear]

[00:36:45.93] **Judge Hruby-Mills:** You have all those obligations?

[00:36:53.81] **Defense Counsel Golub:** Okay. So... Sorry.

[00:36:56.73] **Judge Hruby-Mills:** Go ahead.

[00:36:57.29] **Defense Counsel Golub:** Do I have to file a motion for witnesses or like how do I...

[00:37:02.33] **Judge Hruby-Mills:** Um, you'll, you'll need to look at the rules to how to do that.

Um, and you can look at the, the court website if you have any questions about that process.

[00:37:13.41] **Defense Counsel Golub:** Okay.

[00:37:14.13] **Judge Hruby-Mills:** Okay. So, um, with that, we'll look for some dates... Our calendar is just next... long months coming up here. So, um, I can set you over the last trial, which is a three-week trial in March. Um... along with a number of other matters. I set at the top of that, or we can look further out.

[00:38:14.09] **Defense Counsel Golub:** Um, maybe a little bit further would be nice.

[00:38:24.37] **Judge Hruby-Mills:** So whose case will this be [to the three prosecutors at the table].

[00:38:26.29] **Prosecutor Dunkelman:** It'll be the new person.

[00:38:27.41] **Judge Hruby-Mills:** The new person? Okay. So there'll be a new prosecutor at some point. So what about April 22nd and 23rd?

[00:38:36.57] **Defense Counsel Golub:** Okay.

[00:38:36.93] **Judge Hruby-Mills:** That works. Okay. All right. So you would, um... there are four already set. One of those is in custody.

[00:38:48.17] **Prosecutor Dunkelman:** Your Honor...

[00:38:48.65] **Judge Hruby-Mills:** Sorry.

[00:38:50.45] **Prosecutor Dunkelman:** I was just... I have the, the list... the regular going list in front of us. I have that there are two felonies in custody and three felonies out of custody.

[00:39:07.05] **Judge Hruby-Mills:** Okay. I only see one in custody, but nevertheless. Um...

[00:39:13.45] **Prosecutor Dunkelman:** I have Thorton and Samuel Martindale listed both set for those dates as felonies in custody.

[00:39:19.09] **Judge Hruby-Mills:** Okay. Um, so there... you're likely not going to be the number one setting for the State. Um, but does that work though for everyone, the 22nd and 23rd? Okay.

Final pretrial conference will be two weeks ahead. Only because I'm not going to have a calendar that prior week. So that will be April 7th at 1:00. Um, you need to stipulate the jury instructions no later than April 4th at 5:00. Any contested voir dire noted, any case specific voir dire at that same time. Does anyone anticipate further motion practice, um, or are we able to certify that there will be no further pretrial motions?

[01:00:01.53] **Prosecutor Dunkelman:** Your honor, there will be a 609 mode of notice from the state. Um, because this is the second in ten.

[01:00:12.21] **Judge Hruby-Mills:** Okay. Because that doesn't necessarily mean there will be a motion associated with that. You're just giving notice of that. Is that correct?

[01:00:22.37] **Prosecutor Dunkelman:** Um... Um, I guess so, if generally I get those in the same time filing as the motion cut off. I don't... I think a motion cut off would be helpful.

[01:00:33.17] **Judge Hruby-Mills:** Okay. Okay. So moving backwards. Let's, uh, put a motion cut off for February 28th at 5:00. Any motions filed need to be filed with either a request for hearing or request for evidentiary hearing. Something that gets triggered in our system, um, so that we can see it and, uh, hopefully resolve that before that final pretrial conference. Well, that's February 28th. Yeah. February 28th. Thank you. Okay. Anything further that needs to go today?

[01:01:08.05] **Defense Counsel Golub:** Um, no. Thank you.

[01:01:09.77] **Judge Hruby-Mills:** Okay. Thank you. No. Okay. All right. Thank you.

[01:01:13.17] **Defense Counsel Golub:** Thank you.

[01:01:14.25] **Judge Hruby-Mills:** Court's in recess.

[01:01:14.81] **Clerk:** All rise.

Transcript III. Bodycam Video, Trooper Ernstsen (86:09 min)

[00:00:00] **Cpl. Ernstsen:** [Driving squad car. Camera pointed somewhat down, showing dashboard/panel, limited view of road.]

[00:00:26] **Cpl. Ernstsen:** [Activates bodycam recorder.] First car just pulled away from the curb, went across the first lane, and into the middle lane. Never signaled, [mumbles] very aggressively. [To self/unclear context] What do you want me to say?

[00:01:33] **Dispatch/Coms:** [Radio communication, unintelligible].

[00:01:39] **Dispatch/Coms:** [Radio communication] 1098. I got a 741 Sierra Alpha.

[00:02:26] **Cpl. Ernstsen:** [Speaks to himself] He did not signal pulling out of the curb. He's gonna get it bad. He's... [unintelligible] Actually...

[00:03:17] **Cpl. Ernstsen:** [Turns on overhead emergency lights].

[00:03:32] **Cpl. Ernstsen:** [Exits squad truck].

[00:03:45] **Cpl. Ernstsen:** [Approaches driver's side of Peter Golub's vehicle. Peter Golub has window rolled down and license ready. Cpl. Ernstsen takes license.] I'm Highway Patrol. The reason I stopped you is when you pulled off the curb there, you didn't signal and went across two lanes. That's why I stopped you. Do you have your driver's license? [Realizes he's holding license.] Uh... is this your car?

[00:04:07] **Peter Golub:** No.

[00:04:08] **Cpl. Ernstsen:** Do you have proof of insurance?

[00:04:13] **Peter Golub:** [Reaches into glovebox and hands a document to Cpl. Ernstsen.]

[00:04:14] **Cpl. Ernstsen:** That's the registration.

[00:04:15] **Peter Golub:** Oh.

[00:04:16] **Cpl. Ernstsen:** I need the insurance.

[00:04:17] **Peter Golub:** It's somewhere here, but this isn't my car.

[00:04:18] **Cpl. Ernstsen:** What's that?

[00:04:20] **Peter Golub:** Here's the insurance.

[00:04:25] **Cpl. Ernstsen:** Uh... this is some sort of... this is for the actual car, like a safety rating sheet...

[00:04:26] **Peter Golub:** [Looking through various papers] We definitely have it.

[00:04:30] **Cpl. Ernstsen:** What are you up to tonight?

[00:04:31] **Peter Golub:** I'm just going home. I've been teaching all day.

[00:04:36] **Cpl. Ernstsen:** Teaching all day, huh?

[00:04:37] **Peter Golub:** Yeah.

[00:04:39] **Cpl. Ernstsen:** Where do you teach?

[00:04:40] **Peter Golub:** University of Utah. [Continues to look for insurance].

[00:04:41] **Cpl. Ernstsen:** What was that?

[00:04:43] **Peter Golub:** The University of Utah.

[00:04:44] **Cpl. Ernstsen:** What? What do you teach?

[00:04:48] **Peter Golub:** English.

[00:04:49] **Cpl. Ernstsen:** English?

[00:04:51] **Peter Golub:** [Tries to hand him another paper] I would really like to go home. I'm sorry if I pulled out without signaling. I thought I had signaled. I'd really like to go home, please.

[00:05:01] **Cpl. Ernstsen:** Okay, well... I'm just trying to figure out if you have insurance.

[00:05:03] **Peter Golub:** I think we have it somewhere here. I have insurance, definitely. [Cpl. Ernstsen shines light inside car and looks in back seat.] I guarantee you my mother has insurance.

[00:05:10] **Cpl. Ernstsen:** Okay, you have it on your phone or anything?

[00:05:13] **Peter Golub:** Not on my phone. [Looks back through glovebox papers.]
[00:05:23] **Cpl. Ernstsen:** Anything to drink tonight?
[00:05:29] **Peter Golub:** Um... I had... I had two Coronas at the bar.
[00:05:30] **Cpl. Ernstsen:** Two Coronas at the bar? How long ago do you think?
[00:05:32] **Peter Golub:** I drank a glass of water before I came out.
[00:05:34] **Cpl. Ernstsen:** Yeah.
[00:05:35] **Peter Golub:** I don't know, an hour ago?
[00:05:37] **Cpl. Ernstsen:** Well, if you want to keep looking for your insurance. I don't care if it's on your phone or a paper or whatever you want or whatever you have.
[00:05:43] **Peter Golub:** What does it look like?
[00:05:47] **Cpl. Ernstsen:** It can look like a lot of different things depending on the insurance company. But...
[00:05:50] **Peter Golub:** This? [Hands over another piece of paper.]
[00:06:35] **Cpl. Ernstsen:** Yeah... Oh, that's from last year, though. So you just need to find a current one. I'll let you look for that. I'm just gonna put that there. [Drops papers back into car.] So you keep looking.
[00:06:40] **Peter Golub:** Okay. I'm so sorry.
[00:06:59] **Cpl. Ernstsen:** You just look for the insurance. [Walks back to squad car with license and enters vehicle.] Salt Lake 311 10 60.
[00:07:16] **Dispatcher:** 311.
[00:07:18] **Cpl. Ernstsen:** About 2600 South State Street on Echo 1 Sierra Alpha.
[00:07:22] **Cpl. Ernstsen:** [Looks up plates on computer.]
[00:07:40] **Computer Automated Voice:** Vehicle inquiry. 471SA returns a 2016 Hyundai Sonata/limited passenger vehicle, owned by Golub, Tatyana. Out on Violator: Priority 2.
[00:07:55] **Cpl. Ernstsen:** Well, hello.
[00:07:57] **Computer Automated Voice:** Out on 600 S. State Street. License is valid.
[00:08:02] **Cpl. Ernstsen:** [Enters license into computer. Speaks to self] He dropped an F-bomb as I was walking away from the car. [Mumbles/unintelligible] He... he said he just wanted to go home.
[00:08:18] **Computer Automated Voice:** License is valid. Warning: Driving arrest conviction.
[00:08:22] **Cpl. Ernstsen:** [To self] I didn't say anything about [mumbles] insurance... anyway... um... he... he seems like he does not... haha... I don't know. He wants to get out of here that's for sure. He has an arrest and a conviction, so he might have a previous DUI or something.
[00:08:51] **Dispatch/Coms:** [Officer radio chatter] Salt Lake 557 10 42.
[00:08:56] **Dispatch/Coms:** [Dispatch radio chatter] 557 23.
[00:09:10] **Cpl. Ernstsen:** [To self] Anyway. Slurred speech. Glossy bloodshot eyes. Said he had a couple... I think he said Coronas at the bar that he was at about an hour ago. So I'm gonna have him do a test and make sure he's okay to drive. [Eats mint. Throws away wrapper. Types on keyboard.]
[00:09:41] **Computer Automated Voice:** License is valid. Warning: one driving arrest. Warning: one driving conviction.
[00:09:49] **Cpl. Ernstsen:** [To self] Just wanna make sure there's not another thing, a warrant or anything that's all. Looks like there is not. But I'm gonna have him do a test, and make sure he's okay to be driving. Odor of an alcoholic beverage coming from the car as well. Um... uh... so anyway... I am gonna make sure he's good to be driving. I think we'll go up on the... 'cause I think we're like up on the actually... uh... lane of traffic. We're kinda of like right where it merges, so... we'll go up on the sidewalk... test up there. Looks like he found his insurance.
[00:10:28] **Cpl. Ernstsen:** [Exits squad car and walks back to Peter Golub's vehicle.] Find it?

[00:10:31] **Peter Golub:** No but she can dictate it to you.

[00:10:33] **Cpl. Ernstsen:** What?

[00:10:34] **Peter Golub:** My mom can dictate it to you.

[00:10:36] **Cpl. Ernstsen:** Dictate what?

[00:10:37] **Peter Golub:** The insurance number.

[00:10:39] **Cpl. Ernstsen:** What's that?

[00:10:40] **Peter Golub:** She says that she can just read it out to you.

[00:10:43] **Cpl. Ernstsen:** Oh, that's okay. I'm gonna have you step out. I need you to step out of the car.

[00:10:50] **Peter Golub:** [Speaks to mother on phone, likely Russian] He says I have to get out of the car. [Peter Golub exits vehicle].

[00:10:55] **Cpl. Ernstsen:** Let's get up here on the side[walk]. Can you take your headphones off? [Peter Golub sets headphones on grass]. You can put them in the car if you want. You don't need to put them right there on the ground.

[00:11:06] **Peter Golub:** That's okay.

[00:11:07] **Cpl. Ernstsen:** Alright. So I just want you to do some tests real quick and make sure you're alright to drive. Okay? Um, first thing I'm gonna do is check your eyes. Have you had any medications today?

[00:11:18] **Peter Golub:** No.

[00:11:19] **Cpl. Ernstsen:** You don't have any weapons on you do you?

[00:11:21] **Peter Golub:** I don't have any weapons. I am very exhausted.

[00:11:24] **Cpl. Ernstsen:** Okay. I got you. If you won't mind keeping your hands out of your pockets. [Peter Golub removes hands from pockets.] Do you have gum in your mouth?

[00:11:30] **Peter Golub:** Yes. [Takes out gum and tosses it next to headphones.]

[00:11:33] **Cpl. Ernstsen:** Okay.

(Field Sobriety Testing Begins)

[00:11:37] **Cpl. Ernstsen:** So I'm just gonna have you stand right where the light is [shines light a foot in front of Peter Golub] and face me. [Peter Golub steps forward and faces Cpl. Ernstsen]. And so just put your feet together so that they're touching. [Peter Golub puts feet together.] So that your heels and toes are together. [Peter Golub moves feet tightly together.] Hands down to your sides. Just keep them out of your pockets. [Peter Golub's hands are already at his side.] Have you had any injuries or anything happen to your eyes? Any injuries to the back of your legs, your feet or anything? [Peter Golub shakes his head 'no'.] Okay. Um, if you don't mind can you like just tuck your hair behind your ears? [Peter Golub puts hair back.] Um, alright. You feel comfortable in those shoes?

[00:12:10] **Peter Golub:** Yes.

[00:12:11] **Cpl. Ernstsen:** Okay. Alright. So I want you... Do you wear contacts or glasses?

[00:12:15] **Peter Golub:** No.

[00:12:16] **Cpl. Ernstsen:** Okay. So I just want you to look at my finger tip and follow it with your eyes. What color are your eyes? Blue?

[00:12:21] **Peter Golub:** Yes.

[00:12:22] **Cpl. Ernstsen:** So I want you to follow my fingertip with your eyes.

[00:12:25] **Peter Golub:** Okay.

[00:12:25] **Cpl. Ernstsen:** [00:12:34–00:12:45] Don't move your head, okay? [Moves his index finger horizontally in front of Peter Golub's face.] Okay. You can blink if you need to. It can make your eyes dry.

[00:12:47] **Peter Golub:** [Laughs nervously] Yes, okay.

[00:12:48] **Cpl. Ernstsen:** [00:12:48–00:13:27] Same thing. Just follow my finger with your eyes. But don't move your head, okay. [Proceeds to move finger horizontally again, then vertically.]

[00:13:28] **Cpl. Ernstsen:** [00:13:28–00:14:19] [Continues HGN test, moving finger slowly then more rapidly side to side, holding at maximum deviation.]

[00:14:20] **Cpl. Ernstsen:** [Mumbles, unclear] Just look straight up, okay? [Continues moving finger vertically.] Okay.

[00:14:35] **Cpl. Ernstsen:** [Shines light two yards to Peter Golub's left.] Do you wanna just stand right where my light is? [Peter Golub moves to light.] And just face this direction? [Cpl. Ernstsen points north. Peter Golub stands with feet together facing north.] Um, so I want you to imagine a line that starts under your left foot, okay? So this imaginary line is gonna go straight out in front of you. [Peter Golub points to spot in front of his feet.] Yep, all I want you to do right now [sic] put your right foot in front of your left foot, your heel touching your toe. [Peter Golub assumes heel-toe stance with hands at sides.] I want you to put your hands down to your sides. And just stay in that position, okay? Don't move from there. Don't start walking or anything until I tell you to begin, okay? You understand? [Peter Golub nods head.] What's that?

[00:14:55] **Peter Golub:** Yes, Sir. [Voice sounds hoarse, coughs.]

[00:15:18] **Cpl. Ernstsen:** Yes. When I tell you to begin, you're gonna take nine heel-to-toe steps down that imaginary line, turn around, take nine heel-to-toe steps back down the line. Okay? So right now, I'm in the same position that you are. [Cpl. Ernstsen assumes heel-to-toe position.] When I tell you to begin, I want you to do it like this. [Cpl. Ernstsen demonstrates walking three steps on an imaginary line perpendicular to Peter Golub's line.] One, two, three, all the way to nine steps. [After three steps, Cpl. Ernstsen stops.] When you get to nine, leave your front foot planted on the line. With your back foot, take a series of small steps, like this to turn around. [Cpl. Ernstsen demonstrates turn with several small steps and takes three steps back.] And then one, two, three [Cpl. Ernstsen appears to step off the imaginary line] all the way to nine steps back. [Peter Golub remains still in instructional stance.] Things that I want you to remember. Keep your hands down to your sides. Make sure you look down at your feet as you take the steps. Count every step out loud like I did. Make sure you touch your heel to your toe on every step. And once you've begun don't stop till you've finished with everything.

[00:15:40] **Peter Golub:** [Still in instructional stance] Left foot first?

[00:15:41] **Cpl. Ernstsen:** Your starting position is a zero. Your first step is one. Yep. Do you have any other questions?

[00:15:44] **Peter Golub:** Every step I take I say, "One, two, three, four"?

[00:15:46] **Cpl. Ernstsen:** Yep. Count every step out loud. Yep. Do you have any other questions?

[00:15:51] **Peter Golub:** I think—

[00:15:52] **Cpl. Ernstsen:** Feel like you understand everything?

[00:15:55] **Peter Golub:** I think so, Sir.

[00:16:00] **Cpl. Ernstsen:** Okay. Whenever you're ready, you can begin.

[00:16:10] **Peter Golub:** [Begins Walk-and-Turn test, counting steps aloud] One, two, three, four, five, six, seven, eight, nine... [stops]. Is this when I turn around?

[00:16:15] **Cpl. Ernstsen:** Yeah, just do the best you remember.

[00:16:18] **Peter Golub:** [Turns around using two steps.] So this is how I start again? One...

[00:16:21] **Cpl. Ernstsen:** Yeah, just like... Do the best you can.

[00:16:23] **Peter Golub:** [Begins walking back, counting steps aloud] One, two, three, four, five, six, seven, eight [Appears to step on own toe and stumbles slightly.] Shh! [Repeats step] eight, nine, ten... Oh, just nine, ten [stops]. Wait, how many? Just nine, right? Nine. I already did it. Sorry.

[00:16:41] **Cpl. Ernstsen:** On this next one, just stand with your feet and toes together like this with your hands down to your sides. [Peter Golub assumes position.] Just stay in that position as I explain this next one to you. Okay, so in this test... I don't care which direction you face. And I don't care which foot you use. You decide those things, okay? When I tell you to begin, whichever foot you decided, you're gonna raise it off the ground six inches. [Cpl. Ernstsen demonstrates, lifting left foot slightly, arms come out briefly for balance.] Point your foot down at the ground. Both legs need to stay straight. Arms stay down to your side. [Cpl. Ernstsen's arms come out again as he tries to balance.] You look down at your foot and count out loud: "One-thousand one, one-thousand two, one-thousand three, [puts foot down] and just keep counting until I tell you to stop. Okay. So...

[00:17:11] **Peter Golub:** Either... either foot.

[00:17:12] **Cpl. Ernstsen:** Yep, either foot. You decide. Six inches up with your foot and count until I tell you to stop. It's a timed test, okay? I'm gonna time it and tell you when to stop. Do you have any other questions?

[00:17:21] **Peter Golub:** [Shakes hands.] Um—

[00:17:22] **Cpl. Ernstsen:** What was that?

[00:17:23] **Peter Golub:** It's just stand on one foot and put the foot out?

[00:17:26] **Cpl. Ernstsen:** Yep. Okay? You understand it?

[00:17:28] **Peter Golub:** Yes, Sir.

[00:17:29] **Cpl. Ernstsen:** No questions?

[00:17:30] **Peter Golub:** No.

[00:17:31] **Cpl. Ernstsen:** Okay whenever you're ready.

[00:17:33] **Peter Golub:** So just hold one foot out?

[00:17:35] **Cpl. Ernstsen:** Yep, just like I showed you.

[00:17:36] **Peter Golub:** [Begins One-Leg Stand test, standing on left foot, raises right foot.]

[00:17:38] **Cpl. Ernstsen:** [Interrupting] Count out loud.

[00:17:40] **Peter Golub:** [Still standing on left foot, appears stable, adjusts right foot position slightly higher.] I'm sorry. One, two, three, four, five—

[00:17:47] **Cpl. Ernstsen:** Put your foot down. [Peter Golub begins lowering foot.] Point your toe.

[00:17:50] **Peter Golub:** Oh, like that?

[00:17:51] **Cpl. Ernstsen:** There you go.

[00:17:52] **Peter Golub:** [Resumes stance, counts aloud] One, two, three, four, five, six, seven, eight, nine, ten, ele—

[00:18:04] **Cpl. Ernstsen:** Okay. You can stop right there. I just gotta grab something out of my car real quick. You wanna just stand right here in front of my car. Where the light is. I just gotta grab something. [Cpl. Ernstsen turns and walks toward his car. Peter Golub picks up his headphones.] Yeah, you can grab those headphones if you want. [Both walk to Cpl. Ernstsen's squad truck.] I just gotta grab something real quick. [Peter Golub stands in front of the truck's headlights as directed.]

(Dialogue becomes harder to hear due to distance and running engine)

[00:19:10] **Cpl. Ernstsen:** [Returns from car with Preliminary Breath Test (PBT) device] Do you have anything in your mouth?

[00:19:14] **Peter Golub:** No.

[00:19:15] **Cpl. Ernstsen:** So this thing is called a preliminary breath test. Okay. You just put your lips around that straw and blow.

[00:19:21] **Peter Golub:** [Holds interlocked hands in front of him] Can you please just let me go?

[00:19:24] **Cpl. Ernstsen:** Well, I'll let you know.

[00:19:26] **Peter Golub:** I'm gonna go to jail.

[00:19:28] **Cpl. Ernstsen:** Do you not wanna do this?

[00:19:29] **Peter Golub:** Come on. I mean just... I just wanna go home... come on...

[00:19:34] **Cpl. Ernstsen:** Any reason why?

[00:19:36] **Peter Golub:** [Quick hands-up gesture] No! I mean. I just... I mean just... you know.

[00:19:40] **Cpl. Ernstsen:** You've had some drinks?

[00:19:42] **Peter Golub:** Yeah.

[00:19:43] **Cpl. Ernstsen:** [Inaudible]

[00:19:44] **Peter Golub:** I don't know. I mean. I just know I'll blow over. And I... I have classes tomorrow, like I don't... like I don't know what I can promise you with all of my heart... But I'm sorry I pulled out... You know what I really should do is not meet my friends after work when I should just go home and sleep.

[00:20:02] **Cpl. Ernstsen:** You know what I should do?

[00:20:03] **Peter Golub:** Which I will do, I promise you, for the rest of my life. Like I just need... like... my mom, that's her car. I pay for her car. I pay for the mortgage, medical bills. I pay for everything.

[00:20:12] **Cpl. Ernstsen:** You think you should be driving?

[00:20:15] **Peter Golub:** Um, I... I... I. I... I thought I was okay. I'm just very eager to get home. I'm very tired. And I'm sorry I pulled out. But I will absolutely, you know. [Officer 2 approaches Peter Golub from behind.] Yes, I probably should have just gone to sleep. I've been teaching since 7:30 [sic – later clarified as 7:15] till 8 p.m. I teach in the Granite School District and then I teach at the University of Utah.

[00:20:40] **Officer 2:** [Unclear] Do we have a problem here?

[00:20:43] **Cpl. Ernstsen:** Okay.

[00:20:45] **Peter Golub:** Um...

[00:20:46] **Cpl. Ernstsen:** It's Peter, right?

[00:20:47] **Peter Golub:** Yes.

[00:20:48] **Cpl. Ernstsen:** Right. I don't think you should've been driving. I am going to arrest you for a DUI. Put your hands behind your back. [Peter Golub complies. Officer 2 and Cpl. Ernstsen each take an arm/hand. Officer 2 takes headphones from Peter Golub and speaks into radio.] Is that too tight?

[00:21:18] **Peter Golub:** Yeah, they're fine.

[00:21:20] **Cpl. Ernstsen:** Let me just... you turn and face me. I just gotta search your pockets. Do you have anything... [inaudible - likely asking about sharp objects/weapons]? [Cpl. Ernstsen frisks Peter Golub.] Widen your stance for me. [Peter Golub widens stance. Cpl. Ernstsen continues frisking legs.] Alright. Will you just walk... Are those too tight? [Checks handcuffs]. Thanks for being cooperative. We're gonna go sit in my car.

[00:21:55] **Officer 2:** [Opens rear door of squad car] Watch your step. [Peter Golub enters vehicle.]

[00:21:59] **Cpl. Ernstsen:** Do you need anything out of your car? Your wallet, phone...

[00:22:02] **Peter Golub:** No, thank you. Is there anyway the car could not be impounded?

[00:22:09] **Cpl. Ernstsen:** I have to impound it.

[00:22:11] **Peter Golub:** Look. This is just, you know... It's a horrible thing. And I can call someone.

[00:22:16] **Cpl. Ernstsen:** [Officer 2 walks over] I understand, but it's a state statute when you're arrested for a DUI.

[00:22:21] **Peter Golub:** Alright.

[00:22:22] **Cpl. Ernstsen:** You're sure you don't want your phone or wallet? You want everything to be left in the car?

[00:22:26] **Peter Golub:** I just uh...

[00:22:27] **Cpl. Ernstsen:** It's probably good to get your wallet and phone in case you wanna call somebody.

[00:22:30] **Peter Golub:** I just um... You can get my phone?

[00:22:34] **Cpl. Ernstsen:** Yeah, I can go grab it.

[00:22:36] **Peter Golub:** Can I just grab it?

[00:22:37] **Cpl. Ernstsen:** No. I'll go grab it. [Door is closed. Cpl. Ernstsen and Officer 2 walk back to Peter Golub's vehicle. Cpl. Ernstsen reads plates into radio.]

[00:24:05] **Officer 2:** Did you get his driver's license?

[00:24:07] **Cpl. Ernstsen:** Yeah. [Cpl. Ernstsen and Officer 2 walk back to Cpl. Ernstsen's squad truck.] I'm just gonna pull up a little bit. [Cpl. Ernstsen opens truck door and speaks to Officer 2] Oh, I guess, I'm just gonna [inaudible]...

[00:24:37] **Officer 2:** It's all good. [Begins walking back to Peter Golub's vehicle.]

[00:24:41] **Cpl. Ernstsen:** Okay. [Cpl. Ernstsen gets in truck, drives forward slightly, parks, and gets back out. Cpl. Ernstsen walks to Peter Golub's vehicle to retrieve items and begin inventory.]

[00:25:10] **Cpl. Ernstsen:** [At Peter Golub's vehicle with Officer 2, beginning inventory] Actually, I guess, it might be easier to just... to transfer [unclear—traffic noise].

[00:25:19] **Officer 2:** Yeah, transfer it down to [unclear - maybe 'section'].

[00:25:22] **Cpl. Ernstsen:** Yeah, just go through and make sure there aren't any like drugs or anything. And then yeah, if you wanna just write it down...

[00:25:29] **Officer 2:** Okay.

[00:25:30] **Cpl. Ernstsen:** I can do it as well.

[00:25:32] **Officer 2:** I don't wanna get up all in your business.

[00:26:00] **Cpl. Ernstsen:** It's all good. I mean, it'd be cool if you did. Thank you.

[00:26:29] **Officer 2:** What caught your attention?

[00:26:32] **Cpl. Ernstsen:** [Holds up a bag of hard candy.] What in the world is this? He pulled away from the curb and didn't signal when he crossed a couple of lanes of traffic. [Continues to study candy wrappers.] I do not know what that is. I don't know what that says either. Looks like a cotton ball. [Troopers continue to search vehicle, moving items around.]

[00:27:20] **Officer 2:** Do you wanna look... [inaudible]

[00:27:23] **Cpl. Ernstsen:** What?

[00:27:24] **Officer 2:** Are we gonna look through all this? [Unclear]

[00:27:27] **Cpl. Ernstsen:** Yeah. Some of this stuff is pretty weird, huh? Alright. [Cpl. Ernstsen walks back to driver-side; they continue searching.] He didn't have the fob on him.

[00:27:43] **Officer 2:** What was that?

[00:27:44] **Cpl. Ernstsen:** He didn't have the fob.

[00:27:46] **Officer 2:** There's a cell phone here.

[00:27:48] **Cpl. Ernstsen:** Yeah.

[00:27:49] **Officer 2:** Here's the phone. Is this a Hyundai?

[00:27:52] **Cpl. Ernstsen:** Yeah.

[00:27:53] **Officer 2:** Keep looking?

[00:27:54] **Cpl. Ernstsen:** Yeah. [He takes keys and closes doors.] I opened the trunk so, it [key fob] was just in the center console. [Troopers point lights into trunk and begin searching.] Look at this bag [picks up hiking bag with water bottle. Water spills.] Look it's wet. Disgusting! Ah. The bottle leaked. So weird. Lots of bags in here [referring to small bags inside hiking bag]. They must have a dog. Look at all these plastic bags.

[00:28:42] **Officer 2:** I'm gonna put some hand sanitizer on.

[00:28:44] **Cpl. Ernstsen:** Yeah. [Walks back to squad car, gets hand sanitizer, walks around truck, closes door, walks around, opens driver door, gets in driver's seat.]

[00:29:16] **Peter Golub:** Is there any way I could not go to jail?

[00:29:20] **Cpl. Ernstsen:** What's that?

[00:29:21] **Peter Golub:** Is there any way I could not go to jail? I need to go to work in the morning.

[00:29:25] **Cpl. Ernstsen:** Well.

[00:29:26] **Peter Golub:** I could lose my job.

[00:29:28] **Cpl. Ernstsen:** My agency requires for me to take everyone to jail who I arrest for a DUI. Sorry man.

[00:29:33] **Peter Golub:** [Inaudible].

[00:29:36] **Cpl. Ernstsen:** From what agency, though?

[00:29:38] **Peter Golub:** [Inaudible].

[00:29:41] **Cpl. Ernstsen:** Huh?

[00:32:33] **Officer 2:** [Walks to Cpl. Ernstsen's driver's side window.]

[00:32:36] **Cpl. Ernstsen:** [Rolls down window] Sorry.

[00:32:38] **Officer 2:** Oh you're... I thought you were... Well, that's the inventory. It's done.

[00:32:42] **Cpl. Ernstsen:** Okay. Cool.

[00:32:45] **Peter Golub:** Could you...

[00:32:47] **Cpl. Ernstsen:** What's that? Sorry man. I can't hear you real good.

[00:32:52] **Peter Golub:** I'm exhausted, and I need to work in the morning.

[00:32:56] **Cpl. Ernstsen:** Hey, I get it, man. I'm not trying to make you lose your job or anything, but I have... my agency says that I have to take you to jail, that I have to arrest you for a DUI.

[00:33:10] **Peter Golub:** So you really don't think I passed the field...

[00:33:13] **Cpl. Ernstsen:** What's that?

[00:33:14] **Peter Golub:** You really don't think I passed the field sobriety test?

[00:33:17] **Cpl. Ernstsen:** So the field sobriety is not a pass/fail type of test. I saw enough clues that I don't feel like you're safe to be driving. Like what I saw in your eyes. Um, multiple clues on the Walk and Turn test. Those types of things. If the court needs to get a hold of you, what's the best phone number for them to call?

[00:33:33] **Peter Golub:** 801-618-7609.

[00:33:37] **Cpl. Ernstsen:** 7691?

[00:33:38] **Peter Golub:** 7609.

[00:33:40] **Cpl. Ernstsen:** 7609?

[00:33:41] **Peter Golub:** Yes, sir.

[00:33:42] **Cpl. Ernstsen:** Are you still at 3821 South 2000 East?

[00:33:49] **Peter Golub:** Yes. [Cpl. Ernstsen enters information into computer.]

(Chemical Breath Test Admonition and Administration at Special Ops)

[00:38:25] **Cpl. Ernstsen:** So I just need to read some things, okay? Um... okay? How do you pronounce your last name? Is it Golub?

[00:39:03] **Peter Golub:** Mm-hm.

[00:39:05] **Cpl. Ernstsen:** [Reads breath test admonition from a form] Mr. Golub, you are under arrest for driving under the influence of alcohol and/or drugs or with a measurable amount of a controlled substance or metabolite in your body. I hereby request you submit to a chemical test to determine the alcohol and/or drug content of your body. I hereby request that you submit to a chemical breath test to determine the drug and/or alcohol content of your body. I request that you take a breath test. Test results indicating an unlawful amount of alcohol, drug, or controlled substance or its metabolite in your breath, blood, urine, oral fluids in violation of Utah Law or the

presence of alcohol and/or drugs sufficient to render you incapable of safely driving a motor vehicle may result in denial, revocation, or disqualification of your driving privilege, or refusal to issue you a license. What is your official response? Do you submit to a test?

[00:39:52] **Peter Golub:** Um, I mean, you can. You do whatever the [expletive] you want.

[00:39:54] **Cpl. Ernstsen:** What was that?

[00:39:55] **Peter Golub:** Yes. Thank you! Yes, I submit.

[00:39:58] **Cpl. Ernstsen:** Okay. [Enters response into computer. Exits vehicle and walks toward squad car of Officer 2.] Did he give you a card?

[00:40:07] **Officer 2:** Yeah, just uh... [Hands print-off to Cpl. Ernstsen]. Here you go.

[00:40:11] **Cpl. Ernstsen:** Good man, thank you.

[00:40:13] **Officer 2:** Not a problem.

[00:40:15] **Cpl. Ernstsen:** 'Preciate that. [Walks back to squad car and enters vehicle.]

[00:40:25] **Peter Golub:** [Cpl. Ernstsen is rustling paperwork near mic] Can you... [unclear].

[00:40:40] **Cpl. Ernstsen:** Sorry, what was that?

[00:40:42] **Peter Golub:** I take... [unclear; papers still rustling].

[00:40:48] **Cpl. Ernstsen:** So we're doing uh... I'm requesting a breath test now. That doesn't show any medications, right? It's just...

[00:40:55] **Peter Golub:** What I was wondering...

[00:40:56] **Cpl. Ernstsen:** What's that?

[00:40:57] **Peter Golub:** Do you take a blood test?

[00:41:00] **Cpl. Ernstsen:** [Speaks into coms.] Salt Lake 381. 311 actually. En route to uh... to Special Ops. [To Peter Golub] Let's just get to the office and talk about it there. But, um, all I'm requesting is a breath test. What was that?

[00:41:15] **Peter Golub:** Nothing, nothing. I was just... [inaudible]

[00:41:18] **Cpl. Ernstsen:** Sorry I can't hear you too good. [Drives in silence].

[00:47:23] **Cpl. Ernstsen:** [Speaks into coms] Salt Lake 311. Entering Special Ops.

[00:48:07] **Cpl. Ernstsen:** [Cpl. Ernstsen and Peter Golub exit vehicle and head towards Special Operations Building.]

[00:48:15] **Cpl. Ernstsen:** [Scooting chair toward Peter Golub] You can sit there. [Peter Golub sits down.] Um, I just need to check your mouth real quick. [Shines flashlight into Peter Golub's mouth.] Okay. So for the next 15 minutes if you wanna burp or vomit or anything, [don't?] because the alcohol that's in your stomach could be in your mouth [affecting?] breath test results. We don't want it to be elevated. We just wanna get an accurate result. So just don't burp in the next 15 minutes. Um, [pats machine] this is the machine... okay. So, in a minute... I'm going to enter your information into my computer... case number, stuff like that. Um... uh... at some point, I will probably have you take this mouthpiece out of this tube. You just have to put your mouth at the end of this. You just have to blow for several seconds. Um, if you're blowing enough air into it, you'll hear a tone. If you're not blowing enough air, you won't hear anything. Okay? I'll be right here and tell you to blow a little longer, keep going, keep going. When you blow enough air, it will register the result and print off a little receipt right there. I'll tear it off, and I'll show you what the result is, give you a copy of it. When we're done with the breath test, we'll go back out to my car. I have your phone. If you want to call anybody, you can. If you don't, that's fine.

[00:49:46] **Peter Golub:** Obviously.

[00:49:47] **Cpl. Ernstsen:** What was that?

[00:49:49] **Peter Golub:** I have a [expletive] job.

[00:49:51] **Cpl. Ernstsen:** Okay. Text or call. Whatever you want to do, you can do that. I'm gonna fill out a form, go back to my car... for the jail, that will hopefully help you get through the process a little faster.

[00:50:04] **Peter Golub:** I need to be at work at 7 a.m.

[00:50:06] **Cpl. Ernstsen:** I got you.

[00:50:07] **Peter Golub:** I need to sleep.

[00:50:09] **Cpl. Ernstsen:** So here's some advice when you're over there...

[00:50:11] **Peter Golub:** Shut the [expletive] up, and follow directions.

[00:50:13] **Cpl. Ernstsen:** Well, just follow directions. Don't give the staff at the jail any reason to think that, "We need to give this guy some time to sober up before going through due process." Because they'll put you in what they call the drunk tank, where you'll sit for however long they decide, just however long. So just, just... just be cooperative, respectful. They'll be the same with you. If they don't think you need to get sober, they'll put you in what they call the pit where you'll be with other people. And you'll get through the process faster. They take your picture, your fingerprints. At some point, you'll talk to a judge. The judge will determine the conditions of your release, right? So, there's more to the process—I'm sure. I'm not... I don't work at the jail. So I don't know all their process. But... um... I'm just giving you what advice... what I know. Like, I've seen people that go over there and not take my advice and be there longer. So you can take that for what it's worth. Okay, um... Like I said, I'm gonna see if I can go back to my car, and fill out this form. A lot of times, officers don't fill out this form, get to the jail, and a lot of time, the people I've taken to jail... will be in front of them. So like I said, me filling it out right here, before you go to jail will... help you get through that process. But... I'll... do the best that I can. In the end, I always feel responsible. Um, really doing a good thing here. Um, [coughs] do you have any questions?

[00:52:10] **Peter Golub:** No.

[00:52:11] **Cpl. Ernstsen:** Um, I do have some information for your car. How you can get it out of the impound, the instructions. With these instructions, you'll be able to get it out tomorrow. It's all there. That's it. Um, there's two steps: you gotta go to the DMV, get it released, and go to the tow-yard. I have the card where the tow-yard is, how to get it out. It's uh... [coughs] How long have you worked at, uh, the uh, U?

[00:52:37] **Peter Golub:** Since 2008, actually.

[00:52:40] **Cpl. Ernstsen:** What was that?

[00:52:41] **Peter Golub:** [Loudly] Since 2008, actually. I just came back for this first semester.

[00:52:46] **Cpl. Ernstsen:** This is your first time back?

[00:52:48] **Peter Golub:** I started teaching there in 2008. Then I taught at Columbia in 2010.

[00:52:54] **Cpl. Ernstsen:** I have an associate's from the community college. And then I've gone to the U.

[00:52:58] **Peter Golub:** Wow. Right here in Utah.

[00:53:00] **Cpl. Ernstsen:** Yeah.

[00:53:01] **Peter Golub:** Yeah, I was at Berkeley, Columbia, and now I'm back here. I, um, don't want to be back here. But I gotta pay off my mom's mortgage. So you're really helping out.

[00:53:12] **Cpl. Ernstsen:** Yeah.

[00:53:13] **Peter Golub:** Thank you so much.

[00:53:14] **Cpl. Ernstsen:** I do what I can. But I'm not here trying to ruin your life or anything.

[00:53:19] **Peter Golub:** Well, you're out to ruin everyone's life.

[00:53:21] **Cpl. Ernstsen:** What's that?

[00:53:22] **Peter Golub:** I'm not taking it personally. It's your job. We all chose a job. I chose to be an English teacher, and you chose to give people DUIs. Also, you know, English teachers are jerks too. So, you know, we're all the same.

[00:53:35] **Cpl. Ernstsen:** I got ya, man. I'm not trying to ruin your license.

[00:53:38] **Peter Golub:** Oh, you've already succeeded.

[00:53:40] **Cpl. Ernstsen:** I doubt that man. I'm trying to...

[00:53:43] **Peter Golub:** I will commit suicide. This is [expletive] horseshit!

[00:53:46] **Cpl. Ernstsen:** Please try not to say that.

[00:53:48] **Peter Golub:** Jesus, God, yeah, I'm sorry. It's a euphemism. You know what a euphemism is? You know what euphemism is. You went to college. I will be very upset if I ever get one of these again. Obviously, I have to pay the mortgage first. How will I pay the mortgage if I'm dead. So, that's not gonna happen. I have 15 more years on the Goddamn mortgage. So 15 more years in this wonderful city. And then I can go back to California. Yeah, 15 years. What's your name?

[00:54:33] **Cpl. Ernstsen:** Corporal Brock Ernstsen. My name will be on the report too.

[00:54:38] **Peter Golub:** Well, what's your badge number?

[00:54:40] **Cpl. Ernstsen:** Brock Ernstsen.

[00:54:45] **Peter Golub:** Well, where'd you go to high school?

[00:54:47] **Cpl. Ernstsen:** Skyline.

[00:54:49] **Peter Golub:** Oh, cool. I was at Olympus.

[00:54:52] **Cpl. Ernstsen:** Really? I was '95.

[00:54:55] **Peter Golub:** Oh jeez. I graduated in 2000. That's pretty close.

[00:55:00] **Cpl. Ernstsen:** Yeah.

[00:55:01] **Peter Golub:** We may even have hung out.

[00:55:03] **Cpl. Ernstsen:** My little brother graduated in 2000. I'm trying to think... My friends played baseball a lot over at Olympus High School.

[00:55:11] **Peter Golub:** Did you ever do football?

[00:55:14] **Cpl. Ernstsen:** I played like a year of football... Sky... back when Skyline was a powerhouse.

[00:55:19] **Peter Golub:** Yeah.

[00:55:20] **Cpl. Ernstsen:** But then I just played rugby.

[00:55:23] **Peter Golub:** Yeah.

[00:55:24] **Cpl. Ernstsen:** And then I wrestled. Yeah.

[00:55:26] **Peter Golub:** What position did you play in football?

[00:55:28] **Cpl. Ernstsen:** Well... uh... that was a while ago, before high school. We would just practice on their field. I played secondary outfield. Yeah, but that's not... yeah...

[00:55:40] **Peter Golub:** Did you ever leave the city?

[00:55:42] **Cpl. Ernstsen:** Do I ever leave the city?

[00:55:43] **Peter Golub:** Did you ever, like, not go to high school? Have you ever been... I'm only here to pay off the mortgage. I hate Salt Lake City.

[00:55:51] **Cpl. Ernstsen:** Yeah, well... I lived in Honduras for two years.

[00:55:55] **Peter Golub:** That's cool. Was that for your mission?

[00:55:57] **Cpl. Ernstsen:** Yeah.

[00:55:58] **Peter Golub:** Nice. You convert many Hondurans?

[01:00:01] **Cpl. Ernstsen:** What's that?

[01:00:02] **Peter Golub:** Did you convert many people?

- [01:00:04] **Cpl. Ernstsen:** Some, yes. Yep, yeah... I used to... I lived for one summer up in... in uh... Jackson Hole as a river guide up there.
- [01:00:14] **Peter Golub:** Cool, yeah. I sometimes translate up there. In the uh... in the... um... in the Open World Program for the Feds.
- [01:00:22] **Cpl. Ernstsen:** Oh yeah.
- [01:00:23] **Peter Golub:** You know. Dick Cheyney had two DUIs. And he seemed to have done fine.
- [01:00:29] **Cpl. Ernstsen:** What?
- [01:00:31] **Peter Golub:** Um... yeah... You should look me up.
- [01:00:35] **Cpl. Ernstsen:** Huh?
- [01:00:36] **Peter Golub:** You should look me up.
- [01:00:37] **Cpl. Ernstsen:** What?
- [01:00:38] **Peter Golub:** Look up my first and last name.
- [01:00:40] **Cpl. Ernstsen:** Look you up on... like Google.
- [01:00:43] **Peter Golub:** Yeah, you know how to use the internet.
- [01:00:45] **Cpl. Ernstsen:** Why's that.
- [01:00:46] **Peter Golub:** It'll be funny.
- [01:00:48] **Cpl. Ernstsen:** What do mean?
- [01:00:49] **Peter Golub:** I mean everyone—
- [01:00:51] **Cpl. Ernstsen:** Huh?
- [01:00:52] **Peter Golub:** I mean everyone... you know, it'll just... it'll be so funny. You can look at pictures.
- [01:00:57] **Cpl. Ernstsen:** Like pictures from the U or what?
- [01:00:59] **Peter Golub:** No, from California.
- [01:01:01] **Cpl. Ernstsen:** From California? Like on Facebook or Instagram or something.
- [01:01:04] **Peter Golub:** Nah, I don't use Facebook or Instagram. I mean I have some pictures on Facebook, like by my mom.
- [01:01:09] **Cpl. Ernstsen:** It's just on, like, on Google. Just search your name and some funny pictures show up.
- [01:01:13] **Peter Golub:** Look at the Beverly Hills ones.
- [01:01:15] **Cpl. Ernstsen:** Beverly Hills?
- [01:01:17] **Peter Golub:** Just... it doesn't matter. I have a pretty unique name. Um... you know—
- [01:01:22] **Cpl. Ernstsen:** I got ya. So it's gonna show some stuff that, like, I probably don't want to see.
- [01:01:27] **Peter Golub:** No, I'm relatively famous. You'll see picture of me and, like, James Franco.
- [01:01:31] **Cpl. Ernstsen:** Okay.
- [01:01:32] **Peter Golub:** What [expletive] sucks is that now I'm here. I don't have any money. Do you know what this is doing? One, I might lose my job.
- [01:01:41] **Cpl. Ernstsen:** I hope not, man. I... I—
- [01:01:43] **Peter Golub:** I might. But I have two jobs.
- [01:01:45] **Cpl. Ernstsen:** Here's the thing. I'm not, like, gonna call up the University of Utah like, "Hey..."
- [01:01:49] **Peter Golub:** No. Obviously, I'm not gonna lose my University of Utah job. I'm gonna lose my Granite School District job.
- [01:01:54] **Cpl. Ernstsen:** Possibly. Yeah.
- [01:01:56] **Peter Golub:** Absolutely.

[01:01:57] **Cpl. Ernstsen:** I don't know, man. A lot of people think they're gonna lose their job, and then, like, I—

[01:02:01] **Peter Golub:** I'll lose my Granite School District job 100%.

[01:02:05] **Cpl. Ernstsen:** Do they do regular criminal history checks?

[01:02:07] **Peter Golub:** Yeah, and I just started both of them. Before I had wonderful jobs. But because of the war in Ukraine, all of my departments got cut.

[01:02:15] **Cpl. Ernstsen:** Where?

[01:02:16] **Peter Golub:** Um—

[01:02:17] **Cpl. Ernstsen:** You worked in Ukraine?

[01:02:18] **Peter Golub:** Yeah, I work in Russian stuff.

[01:02:20] **Cpl. Ernstsen:** Oh.

[01:02:21] **Peter Golub:** So, um... yeah... anyway. I absolute... You just... you just cost me one of my main jobs.

[01:02:28] **Cpl. Ernstsen:** Well, I hope not.

[01:02:29] **Peter Golub:** Oh, 100% I'm getting fired.

[01:02:32] **Cpl. Ernstsen:** I don't know anything about that.

[01:02:34] **Peter Golub:** I know you're not trying... it's just what you chose to do.

[01:02:37] **Cpl. Ernstsen:** What was that?

[01:02:38] **Peter Golub:** Do you pray still?

[01:02:40] **Cpl. Ernstsen:** Yep.

[01:02:41] **Peter Golub:** Ask Him. What He thinks about what you did today. Go ahead. See what He says.

[01:03:01] **Peter Golub:** [Machine beeps].

[01:03:01] **Cpl. Ernstsen:** [Enters information into machine.]

[01:03:01] **Peter Golub:** Thanks for waiting.

[01:03:10] **Cpl. Ernstsen:** Huh?

[01:03:11] **Peter Golub:** Thanks for waiting.

[01:03:14] **Cpl. Ernstsen:** What do you mean?

[01:03:14] **Peter Golub:** [Unclear]

[01:03:28] **Cpl. Ernstsen:** Did you play sports at Olympus or anything?

[01:03:31] **Peter Golub:** Skating. I mostly run.

[01:03:36] **Cpl. Ernstsen:** What?

[01:03:38] **Peter Golub:** I mostly run. You seem very fit. What do you do?

[01:03:42] **Cpl. Ernstsen:** Gym.

[01:03:45] **Peter Golub:** Nice.

[01:03:51] **Cpl. Ernstsen:** You run any marathons now?

[01:03:53] **Peter Golub:** Not very often. I'll do half-marathons sometimes. Oh, the Moab one is probably the best. It's nice.

[01:04:00] **Cpl. Ernstsen:** Yeah. Like the full marathon?

[01:04:03] **Peter Golub:** Well, you can do the full one or half.

[01:04:05] **Cpl. Ernstsen:** You like the 13.1 better?

[01:04:07] **Peter Golub:** Yeah, the last couple of times. Yeah, I like the baby one.

[01:04:10] **Cpl. Ernstsen:** You ever see those guys who do, like, the ultra, like 100-mile? Those guys are nuts. I know couple guys who do that.

[01:04:20] **Peter Golub:** Yeah, if you dedicate yourself to a thing. I mean, I'm not a marathon runner.

[01:04:26] **Cpl. Ernstsen:** Yeah. Definitely takes a lot of commitment that's for sure.

[01:04:30] **Peter Golub:** Yeah, that's true. You run for wrestling?

(Chemical Breath Test Administration Starts)

[01:04:45] **Cpl. Ernstsen:** For rugby. [Machine beeps. Cpl. Ernstsen attaches mouthpiece to machine.] Alright. I just have to look in your mouth [shines light in mouth]. All ready for ya.

[01:05:44] **Cpl. Ernstsen:** [Places mouthpiece into Peter Golub's mouth. Peter Golub blows into mouthpiece.] Blow harder.

[01:05:50] **Cpl. Ernstsen:** It's not registering at all. [Peter Golub continues to blow.]

[01:05:52] **Cpl. Ernstsen:** It's not...

[01:05:57] **Cpl. Ernstsen:** [The machine beeps in pulses, resets, and then makes a long steady beep. Peter Golub leans over, blowing forcefully.] Yeah, yeah. Keep going, keep going, keep going.

[01:06:03] **Cpl. Ernstsen:** Yeah, stop. Okay, blow. [Peter Golub continues to blow. Machine continues long steady beep.]

[01:06:06] **Cpl. Ernstsen:** So when you hear that noise, you're blowing enough air, and you gotta do that until it tells you to stop.

[01:06:10] **Cpl. Ernstsen:** [Machine continues long steady beep. Peter Golub shows signs of being light-headed, moves mouth slightly away from mouthpiece.]

[01:06:11] **Peter Golub:** I'm outta...

[01:06:13] **Cpl. Ernstsen:** [Places mouthpiece back firmly] Let's try it one more time. You gotta blow a little bit longer than that. [Peter Golub blows]. Just a little bit more. Oh, it stopped.

[01:06:19] **Cpl. Ernstsen:** [Peter Golub takes a breath] You're gonna blow longer than that.

[01:06:21] **Cpl. Ernstsen:** [Peter Golub blows again forcefully] Keep going, keep going, keep going, keep going.

[01:06:27] **Cpl. Ernstsen:** Stop! [Doesn't remove mouthpiece. Peter Golub keeps blowing, face flushed, cheeks puffed.]

[01:06:32] **Cpl. Ernstsen:** You gotta keep going. Make that noise the whole time.

[01:06:36] **Cpl. Ernstsen:** Keep going, keep going, keep going [Peter Golub takes breath.] Oh, you stopped! You gotta blow like a couple seconds longer.

[01:06:44] **Peter Golub:** [Appears unsteady/teeters slightly on chair.]

[01:06:45] **Cpl. Ernstsen:** [Puts mouthpiece back in Peter Golub's mouth, Peter Golub blows.] I'll tell you when to stop. Keep going, keep going, keep going, keep going.

[01:06:56] **Cpl. Ernstsen:** [Peter Golub appears distressed, shaking slightly, but continues blowing forcefully.] Keep going, keep going, keep going, keep going.

[01:07:03] **Cpl. Ernstsen:** [Removes mouthpiece] Alright, you're good.

[01:07:05] **Peter Golub:** [Doubles over slightly, appearing out of breath.]

[01:07:10] **Cpl. Ernstsen:** So the machine is gonna print that out for you.

[01:07:13] **Peter Golub:** It's not gonna be very good.

[01:07:17] **Cpl. Ernstsen:** Well, like I said, it's not gonna show any of the medications. Because if we drew blood and it showed alcohol with the drugs—

[01:07:31] **Peter Golub:** I don't have any drugs.

[01:07:32] **Cpl. Ernstsen:** Or medications. It can be what they, what they uh, classify as an extreme DUI, which has more penalties.

[01:07:41] **Peter Golub:** Yeah. I really think you pulled me over because I was pulling out of a bar, not because I was doing anything illegal. That's my opinion, and your opinion is that—

[01:07:55] **Cpl. Ernstsen:** [Machine prints result] Subject test: 0.104.

[01:07:59] **Peter Golub:** Yeah, that's bad... or good?

[01:08:15] **Cpl. Ernstsen:** Alright, so. Let's go back out to my car. If you wanna call someone, you can.

[01:08:23] **Peter Golub:** [Stands up. Both walk out door.] Well, I need them to get the car. Can you tell them about the car?

[01:08:28] **Cpl. Ernstsen:** Well, do you think... it's a little... it's probably late.

[01:08:33] **Peter Golub:** We need that [expletive] car. We both use it for work.

[01:08:35] **Cpl. Ernstsen:** It is 12:30. You think they'll answer?

[01:08:42] **Peter Golub:** Absolutely. They are super pissed. You have no idea.

[01:08:43] **Cpl. Ernstsen:** Do they know that...

[01:08:45] **Peter Golub:** Well, yeah. I just talked to them.

[01:08:47] **Cpl. Ernstsen:** You were on the phone with your mom?

[01:08:48] **Peter Golub:** Yeah, yeah.

[01:08:49] **Cpl. Ernstsen:** Alright, well. I'm not gonna put the seatbelt on.

[01:08:52] **Peter Golub:** I'm not going anywhere.

[01:08:53] **Cpl. Ernstsen:** Well, we're just driving to the jail. [Walks around squad car and gets in driver's side.]

(Miranda Rights and Post-Arrest Interaction)

[01:09:11] **Cpl. Ernstsen:** Alright, so real quick, um... They like me to ask you some questions before I read you your, um... there's just, like, an interview. Before I read you any of those questions, I'm gonna read you your Miranda Rights. You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to talk to a lawyer and have him or her present with you while you are being questioned. If you cannot afford to hire a lawyer, one will be appointed to represent you before any questioning if you wish. If you decide to answer questions now without having counsel present, you may stop answering the questions at any time. Also you may request counsel at any time during questioning. Do you understand each of these rights as I have explained them to you?

[01:10:03] **Peter Golub:** Yes, sir.

[01:10:04] **Cpl. Ernstsen:** Having these rights in mind, do you wish to talk to me now? Wanna answer some questions?

[01:10:08] **Peter Golub:** Sure.

[01:10:09] **Cpl. Ernstsen:** You know what, I won't ask you any of these questions. Do you want me to call someone on your phone? I can just put it on speaker. Want me to get into your phone?

[01:10:19] **Peter Golub:** Yes, sir.

[01:10:21] **Cpl. Ernstsen:** How do you get... Is it off? Did it die?

[01:10:28] **Peter Golub:** Actually, it might have died.

[01:10:31] **Cpl. Ernstsen:** Yeah, because I was just getting home. I literally just stepped out to—

[01:10:37] **Peter Golub:** It's not turning on at all.

[01:10:39] **Cpl. Ernstsen:** Do you have a USB?

[01:10:42] **Peter Golub:** Uh, I have one for an iPhone.

[01:10:44] **Cpl. Ernstsen:** I'm gonna hurry and fill out this form real quick for the jail. [Enters information into computer.]

[01:15:07] **Cpl. Ernstsen:** So the state wants me to ask you these questions. You don't have to answer them if you don't want to. They want to know what your gross annual household income is.

[01:15:20] **Peter Golub:** Um, I don't know. It's some... it's not very high. I have three jobs but I don't make any money.

[01:15:23] **Cpl. Ernstsen:** Whatever.

[01:15:24] **Peter Golub:** Put it at 30.

[01:15:25] **Cpl. Ernstsen:** Thirty thousand?

[01:15:26] **Peter Golub:** Yeah.

[01:15:27] **Cpl. Ernstsen:** Just you and the family size?
[01:15:29] **Peter Golub:** What?
[01:15:30] **Cpl. Ernstsen:** They want to know if you have any pending criminal charges, warrants, probation, parole, anything like that?
[01:15:36] **Peter Golub:** No.
[01:15:37] **Cpl. Ernstsen:** What was that?
[01:15:38] **Peter Golub:** No.
[01:15:39] **Cpl. Ernstsen:** They want to know who your current employer is. Again up to you.
[01:15:45] **Peter Golub:** University of Utah, Granite School District, Netflix, Plint, and uh—
[01:15:54] **Cpl. Ernstsen:** What? Granite School District and what?
[01:15:56] **Peter Golub:** Granite School District, University of Utah, Netflix, Plint. We can stop.
[01:16:07] **Cpl. Ernstsen:** Okay. They want to know how long you've lived at your current address.
[01:17:13] **Peter Golub:** Um, eight years.
[01:17:15] **Cpl. Ernstsen:** [Typing]
[01:17:35] **Peter Golub:** Is there a way to charge my phone?
[01:17:39] **Cpl. Ernstsen:** I don't have anything, man.
[01:17:41] **Peter Golub:** What about the jail?
[01:17:43] **Cpl. Ernstsen:** I imagine they would at the jail. I don't know for sure, but I would imagine they have that problem all the time. [Retrieves print out]. They'll be able to answer that way better than me. I don't know. [Continues typing].
[01:24:00] **Cpl. Ernstsen:** [Speaks into coms] Salt Lake, 311, out at the jail. [Begins driving].
[01:24:20] **Vehicle:** [Car seatbelt warning begins to beep.]
[01:25:04] **Cpl. Ernstsen:** [To jail guard via coms] One male, no assistance.
[01:25:05] **Guard (Coms):** Copy that.
[01:25:07] **Cpl. Ernstsen:** [Enters through jail sally port gate.]
[01:25:35] **Cpl. Ernstsen:** [Parks, removes computer from stand, exits squad car, places printout inside computer folder, leaves firearm secured in vehicle.]
[01:26:13] **Peter Golub:** [Exits vehicle when prompted.]
[01:26:17] **Cpl. Ernstsen:** This way. [Both walk towards jail entrance.]
[01:26:38] **Peter Golub:** Um, so regarding the car... [END OF VIDEO]

ANALYSIS

Analysis and Comments Related to Motion to Dismiss (Based on Bodycam Transcript):
This bodycam footage provides crucial context and potential evidence supporting several arguments in the Motion to Dismiss:

1. **Initial Stop & Probable Cause (Motion Argument I):**
 - **Officer's Stated Reason:** Cpl. Ernstsen clearly states the stop was for failure to signal when pulling from the curb and crossing two lanes ([00:03:45]). This aligns with his testimony but is contested by the motion using dashcam evidence (not visible here).
 - **Shift to DUI Investigation:** The questioning quickly shifts from insurance/registration to alcohol consumption ("Anything to drink tonight?" at [00:05:23]) after minimal interaction regarding the traffic stop. This supports the motion's argument that the stop may have been pretextual or based on profiling the location (Aces High bar nearby) rather than the observed driving.

- **Officer's Subjective Observations:** While in his car, Cpl. Ernstsen notes "Slurred speech. Glossy bloodshot eyes." and the odor ([00:09:10]). These are the subjective observations he relies on to justify the FSTs. The motion likely challenges the reliability or interpretation of these signs, especially given potential fatigue.
 - **Prior Record Influence:** Cpl. Ernstsen notes the prior arrest/conviction warning on the computer ([00:08:18]), which could arguably influence his subsequent actions and perception, lending credence to the bias argument in the motion.
2. **Field Sobriety Tests (Motion Argument II):**
- **HGN Administration:** The transcript details the process. The motion argues deviations from NHTSA timing protocols (2-second passes, 4-second holds). While the transcript describes the *actions*, it doesn't provide timings to verify/refute the motion's claim based on this video alone. The defendant's fatigue is mentioned ([00:11:21]), which the motion links to potential HGN inaccuracies.
 - **WAT Administration:** The transcript confirms Cpl. Ernstsen demonstrated *three* steps ([00:15:18]), directly supporting the motion's claim of improper administration deviating from the 9-step NHTSA standard. It also captures the defendant asking clarifying questions ("Is this when I turn around?" at [00:16:10]), suggesting potential confusion caused by the incomplete demonstration.
 - **OLS Administration:** The transcript shows the instructions and the defendant performing the test. While the defendant appears stable, the trooper interrupts him initially ([00:17:38]) and corrects his toe position ([00:17:47]). The motion argues the defendant passed this test perfectly and the trooper ignored exculpatory evidence; this transcript segment doesn't fully confirm or deny the "perfect" performance but shows the interaction. (The trooper's prior testimony acknowledged a *borderline* clue he *didn't* count, which isn't explicitly stated here).
3. **Chemical Testing (Motion Argument III):**
- **PBT Refusal/Ambiguity:** The exchange around [00:19:10] is key. Mr. Golub doesn't give a clear yes/no to the PBT initially, instead expressing distress ("I'm gonna go to jail," "I just know I'll blow over"). Cpl. Ernstsen asks, "Do you not wanna do this?" but doesn't seem to press it as a formal refusal under implied consent, instead moving directly to arrest. This supports the motion's argument that a PBT wasn't formally administered or refused according to protocol.
 - **Intoxilyzer 8000 Administration:** The long segment from [01:04:45] to [01:07:03] vividly depicts the extended duration (calculated as ~75 seconds of blowing within a 140-second total interaction for the test itself). It shows the trooper repeatedly instructing Mr. Golub to "keep going" even as Mr. Golub expresses being "outta" breath and shows visible signs of distress (teetering, flushed face, shaking). This *strongly* supports the motion's argument (III.A.1) that the test duration far exceeded standards and was improperly administered, potentially inflating the result. The transcript doesn't explicitly state if the machine was reset between attempts, supporting Motion III.A.3 (lack of documentation/protocol adherence).
 - **Defendant's Statements during Test:** Mr. Golub's statement "It's not gonna be very good" ([01:07:13]) could be interpreted in multiple ways (sarcasm, resignation, genuine belief he'd fail), potentially supporting arguments about coercion or misunderstanding.
 - **Result (.104):** The final BAC reading is stated.
4. **Miranda Rights (Motion Argument IV):**

- **Delayed Warning:** Miranda rights are clearly read *after* the arrest, FSTs, chemical test, and transport to Special Ops, specifically at [01:09:11]. This directly supports the motion's claim that custodial interrogation occurred *before* warnings were given.
 - **Post-Miranda Actions:** Cpl. Ernstsen immediately asks if Mr. Golub wishes to talk ([01:10:04]). Although Mr. Golub initially says "Sure," the trooper then decides *not* to ask "any of these questions" (referring to a standard interview form) and instead pivots to offering to help make a phone call ([01:10:09]). This sequence is slightly ambiguous regarding a clear invocation of silence but shows the trooper backing off formal questioning post-Miranda. The subsequent attempt to access the phone supports the motion's surveillance claim. The pre-booking questions about income/employment ([01:15:07]) occur *after* Miranda but might be argued as administrative rather than interrogative, though the defense could contest this.
5. **Officer Conduct/Bias (Motion Arguments I.C, I.D, II.B):**
- **Self-Talk/Assumptions:** The trooper's comments while running checks ([00:08:02] onwards) reveal early assumptions based on location, demeanor, and prior record checks ("He wants to get out of here," "might have a previous DUI").
 - **Tone/Interaction:** The overall interaction, particularly during the stressful chemical test, could be analyzed for professionalism versus coercion. The trooper's advice about jail conduct ([00:50:09]) could be seen as helpful or manipulative depending on interpretation. The discussion about high school ([00:54:45]) might be viewed as rapport-building or irrelevant.
 - **Dismissal of Defendant's Concerns:** The trooper consistently downplays Mr. Golub's concerns about his job ([01:01:41], [01:02:28]).

This bodycam footage transcript provides substantial material to support the factual basis for many arguments presented in the Motion to Dismiss, particularly regarding the sequence of events, the administration of the FSTs and chemical test, and the timing of the Miranda warning.

TRANSCRIPT IV—Video VII (Corporal Ernstsens dashcam; 85:30 min)

NB: Cruising State. Going up and down State St. driving slowly past bars. Q: How fast was he going past bars? Doesn't look over 10–15 m/h.

[00:00:00] Starts off on Kensington and State Street in front of Piper Down going north. Waits at light. Flips around, heads south on State St.

[00:00:21] Slows down to 1 mile an hour as he approaches Aces High—1588 s. Corporal Brock Ernstsens is approximately 100-125 feet behind Peter Golub as Peter Golub pulls out. Very difficult to make out, but Peter Golub looks neither to break law nor drive recklessly.

NB: As Corporal Brock Ernstsens is creeping up to bar, Peter Golub pulls off of shoulder. It looks like he is signaling, but it is very hard to tell because the video is blurry and shaky. Likewise, there is a parked car blocking direct sight of Golub's car. All that you see is that he pulls off of shoulder in front of Aces High. Peter Golub waits for car in right lane to pass, then pulls out and merges into middle lane. Does not seem to either break law or drive recklessly.

[00:00:24] Corporal Brock Ernstsens speeds up and merges into middle lane behind Peter Golub. Follows Peter Golub for 10 blocks.

[00:02:25] Peter Golub merges into left freeway I-80 lane.

[00:02:58] Corporal Brock Ernstsens turns on flashing lights. As Peter Golub is in free-way turn lane, he signals with his right blinker, lets right hand cars pass, and pulls onto shoulder in front of Granite School District building—2500 s.

NB: Corporal Brock Ernstsens followed Peter Golub for approximately 10 blocks, during which time Peter Golub does not break any laws or shows signs of driving recklessly.

FIELD SOBRIETY Corporal Brock Ernstsens [00:11:33–00:18:45]

[00:11:33] Peter Golub stands listening to instructions.

[00:14:44] Corporal Brock Ernstsens administers field sobriety test. Peter Golub stands with feet together. He does not sway or show signs of impairment.

[00:16:00] Peter Golub stands awaiting instructions. Shows no signs of impairment.

[00:18:00] Peter Golub stands on one leg for 47 seconds. Does not sway. Does not fall.

NB: In his testimony, Corporal Brock Ernstsens said he saw Peter Golub sway. There seems to be no swaying during the field sobriety test. In fact, Peter Golub seems extraordinarily rigid.

[00:19:00] Corporal Brock Ernstsens asks Peter Golub to stand in front of squad truck, which has its brights and search light on. As the truck is quite high and Peter Golub is short 5'6 and the brights and search light are directly in Peter Golub's face, it is hard for him to see.

Golub Case # 23590070

Transcripts 79

[00:20:00] Peter Golub asks to be sent home because he has work in the morning.

[00:20:56] Officer 2 appears and stands behind Peter Golub.

[00:21:17] Corporal Brock Ernstsen takes Peter Golub's left hand, while O2 takes Peter Golub's right. They put him under arrest together. O2 takes Peter Golub's headphones.

VEHICLE SEARCH [00:24:55–00:32:27]

[00:24:55] Corporal Brock Ernstsen and O2 search Peter Golub's car.

[00:31:15–00:32:27] Corporal Brock Ernstsen returns to squad car, while O2 continues to search vehicle.

[00:36:20] Tow truck arrives.

[00:37:06] O2 meets tow-truck driver. They talk and exchange paperwork.

[00:37:41] O2 enters Peter Golub's car, turns it on, and puts it in neutral.

[00:40:56] Tow-truck driver takes picture of Peter Golub's car and drives off.

III. Partial Transcripts for Seven Additional Videos (due to the poor audio, transcription is incredibly time-consuming. NB try and find an LLM that can transcribe MP4 files)

NB: *i) blue highlights are questions; yellow highlights are evidence; ii)*

VIDEO I—INSIDE OFFICER 2'S SQUAD CAR—B&W; LENGTH 21:37

NB: Most of the video doesn't show anything.

[00:22] [*lights come on*]

[00:39] [*automated voice*] Adding new shoot injury.

[16:26] [*second officer arrives*]

[16:44] [*automated voice*] One driving conviction.

Officer 2: [21:29] [*O2 speaks to Corporal Brock Ernstsen*] Here you go.

VIDEO II—OFFICER 2'S DASHCAM; B&W; LENGTH 20:40; NO AUDIO

NB: Officer 2's bodycam is Video VII

[00:19] O2 does a U-turn.

[1:05] exits vehicle and approaches Trooper Ernstsen and defendant.

[2:54] opens door for Trooper E. and helps defendant into squad car.

[4:12] Corporal Brock Ernstsen closes door.

[4:25] Corporal Brock Ernstsen and Officer 2 walk out of sight of camera.

[4:47] Corporal Brock Ernstsen and Officer 2 return to Corporal Brock Ernstsen's squad car and continue talking.

[4:57] Corporal Brock Ernstsen enters squad car and Officer 2 begins walking back to his squad car.

[5:02] Corporal Brock Ernstsen drives off. Officer 2 drives.

[5:07] Corporal Brock Ernstsen stops. Officer 2 stops. Both exit vehicles.

[5:30] both get out, walk out of camera's sight.

[6:04] Corporal Brock Ernstsen returns to squad car and takes out flashlight.

[6:10–11:34] out of side of camera.

[11:35–12:04] Corporal Brock Ernstsen returns to squad car, takes out lotion, and puts on hand lotion. Closes door begins walking back.

[12:07] Corporal Brock Ernstsen returns to and enters squad car. (NB Officer 2 is still off-camera and not in his squad car.)

[13:03] Officer 2 appears and walks back to his squad car.

[13:05] Both officers off-camera.

[16:27] Tow-truck arrives.

[17:18] Officer 2 gets out of his squad car and approach vehicle.

[17:23] Officer 2 off-camera.

[18:22] Officer 2 walks back to his squad car.

[21:04] Corporal Brock Ernstsen exits his squad car and approaches the squad car of Officer 2.

[21:07] Corporal Brock Ernstsen and Officer 2 are off-camera.

[21:36] Corporal Brock Ernstsen appears back on camera holding a piece of paper.

[21:42] Corporal Brock Ernstsen and Officer 2 walk around. Corporal Brock Ernstsen enters his squad car. Officer 2 walks up and down sidewalk.

[22:01] Officer 2 walks back to and enters his squad car.

[22:40] END OF VIDEO

VIDEO III. OFFICER 2'S DASH CAM; B&W; LENGTH w; NO AUDIO

O2 is parked behind Corporal Brock Ernstsen, so not much is seen. Shows the back of Corporal Brock Ernstsen's car. O2 gets out and talks to Corporal Brock Ernstsen. They walk off camera in front of Corporal Brock Ernstsen's truck.

VIDEO V—BLANK; NO AUDIO; LENGTH: 1:25:10

NB: *Do not know what this is. Ask/email.*

VIDEO VI—CPL. ERNSTSEN'S REAR-SEAT CAMERA; BW; LENGTH: 1:25:1