

TRANSCRIPT NOTES

Court and Video Transcripts and Analysis
Hearing I, May, 29 2024; Hearing II, December 31, 2024
Video IV (Bodycam) and Video VII (Dashcam)
Case # 235900706

- I. **Hearing I** (*two versions*)
- II. **Hearing II**
- III. **Video IV** (*bodycam*)
- IV. **Video VII** (*dashcam*)
- V. **Remaining Videos I-VIII**

I. **Hearing I & Notes** (*version I*)

NB: The em dash indicates the speaker being cut off. Ellipses indicates a long pause. Interjections like “um,” “uh,” “okay,” “like,” etc. are included as the transcript attempts to capture the totality of what was said.

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

Defense Attorney Daniel Frazier [00:03]: We do your honor.

Judge Elizabeth Hruby-Mills [00:05]: Alright, Mrs. Dunkelman, are you ready with your first witness?

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

Judge Elizabeth Hruby-Mills [00:50]: Alright, can you join us up here on the witness stand, and you’re gonna be sworn in.

Court Clerk [*reads sworn testimony*] [00:58]: Do you affirm the evidence that you give in the matter before the court shall be the truth, the whole truth, and nothing but the truth?

Corporal Brock Ernstsens (Corporal Brock Ernstsens) [01:03]: Yes.

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

Corporal Brock Ernstsens [01:15]: Thank you.

Deputy District Attorney Cara Dunkelman [01:17]: Are you comfortable in that chair?

Corporal Brock Ernstsens [01:18]: Yeah.

Deputy District Attorney Cara Dunkelman [00:19]: Okay. Would you mind stating your full name, spelling both your first name and last name for the record?

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

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

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

Deputy District Attorney Cara Dunkelman [01:34]: And what are you...or I guess, were you working with the highway patrol on September 6, 2023?

Corporal Brock Ernstsen [00:39]: Yes.

Deputy District Attorney Cara Dunkelman [00:41]: And what, um, is your, um, is your position with them?

Corporal Brock Ernstsen [01:45]: Uh, corporal.

Deputy District Attorney Cara Dunkelman [01:46]: Okay, um, and was that the position you had on September 6, 2023?

Corporal Brock Ernstsen [01:52]: Yes.

Deputy District Attorney Cara Dunkelman [01:53]: Um, do you conduct traffic stops for that position?

Corporal Brock Ernstsen [01:57]: I do.

Deputy District Attorney Cara Dunkelman [01:59]: Are you trained in DUI investigation?

Corporal Brock Ernstsen [02:01]: Yes.

Deputy District Attorney Cara Dunkelman [02:02]: Um, are you SFST [*Standardized Field Sobriety Test*] certified?¹

¹ In Utah, police officers need to obtain specialized certifications to conduct DUI investigations, particularly in administering field sobriety tests and chemical tests. The key certifications are:

1. **Standardized Field Sobriety Test (SFST) Certification:** Officers must complete the National Highway Traffic Safety Administration (NHTSA)-approved SFST training. This training teaches them to properly conduct field sobriety tests, such as the **Horizontal Gaze Nystagmus (HGN) Test, Walk-and-Turn Test, and One-Leg Stand Test**, which are standardized methods to assess impairment.
2. **Intoxilyzer Certification:** Officers who administer breathalyzer tests (such as the Intoxilyzer 8000) need to be certified to use the equipment. This certification ensures that the officer can correctly operate the device and interpret the results, as these tests play a crucial role in determining a driver's blood alcohol content (BAC).
3. **Drug Recognition Expert (DRE) Certification:** Some officers may undergo additional training to become Drug Recognition Experts (DREs). This certification is important for officers dealing with cases where the driver is suspected of being under the influence of drugs, not just alcohol. The DRE training covers a 12-step evaluation process for identifying drug impairment.

These certifications are important because any failure to properly administer field sobriety tests or chemical tests could lead to the suppression of evidence in DUI cases. Officers typically receive this training through law enforcement academies or other approved training programs provided by NHTSA and local law enforcement agencies ([Utah State Courts](#)) ([Casetext - CoCounsel](#)).

Corporal Brock Ernstsen [02:05]: Yes.

Deputy District Attorney Cara Dunkelman [02:07]: Okay, so were you working on September 6, 2023.

Corporal Brock Ernstsen [02:10]: Yes.

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

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

Deputy District Attorney Cara Dunkelman [02:19]: Okay. And tell me about, um, I guess, did a vehicle catch your attention on that day?

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

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

Corporal Brock Ernstsen [02:27]: Um... I was... just south of Kensington Ave. I initially saw the vehicle at about 1600 south on State St.

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

Corporal Brock Ernstsen [02:42]: Yes.

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

Corporal Brock Ernstsen [02:46]: Silver Hyundai Sonata.

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

Corporal Brock Ernstsen [02:50]: 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 [*sic*].

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

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

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

Corporal Brock Ernstsen [03:08]: Uh, I got behind the vehicle and followed it for a little while and I initiated the traffic stop.

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

Corporal Brock Ernstsen [03:16]: Yeah.

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

Corporal Brock Ernstsen [03:21]: I did.

Deputy District Attorney Cara Dunkelman [03:22]: What side of the vehicle did you approach on?

Corporal Brock Ernstsen [03:26]: Um, the driver's side.

Deputy District Attorney Cara Dunkelman [03:27]: Okay. And tell me about that first interaction with the driver.

Corporal Brock Ernstsen [03:31]: Um, when I was speaking with him, um, I could smell an odor of an alcoholic beverage coming from the vehicle. I observed his eyes were glossy and bloodshot, and his speech seemed slurred speech at times.²

Deputy District Attorney Cara Dunkelman [03:43]: Okay. Did you identify him?

Corporal Brock Ernstsen [00:46]: I did.

Deputy District Attorney Cara Dunkelman [00:47]: How did you identify him?

Corporal Brock Ernstsen [03:49]: His driver's license.

Deputy District Attorney Cara Dunkelman [03:50]: Is that when you found out his name?

Corporal Brock Ernstsen [03:52]: Yes.

Deputy District Attorney Cara Dunkelman [03:53]: And what was his name?

Corporal Brock Ernstsen [03:54]: Peter Golub.

Deputy District Attorney Cara Dunkelman [03:55]: Do you see him in courtroom, Sir?

Corporal Brock Ernstsen [03:56]: I do.

² 1) When/Where did the officer detect. The officer claims he could "smell an odor of an alcoholic beverage coming from the vehicle" on three separate occasions in the deposition. At which point exactly, did he smell the vehicle? 2) Having never met the defendant, on what grounds did the officer decide Peter Golub had slurred speech. NB Peter Golub is not a native English speaker, and has been to speech therapy. 3) The defendant, Peter Golub, said he'd been teaching from 7 a.m. (Granite School District) to 8 p.m. (University of Utah). How did the officer decide that bloodshot, glossy eyes were a sign of impairment and not a sign of fatigue? The defendant made this known early on in the investigation. On what grounds were bloodshot, glossy eyes were an indicator of impairment instead of fatigue?

Deputy District Attorney Cara Dunkelman [03:58]: You mind pointing him out to identify him in the courtroom?

Corporal Brock Ernstsen [04:01]: Yeah, he's right here in the suit [*points at defendant*] with the reddish tie and the blue, uh... a blue shirt underneath it.

Deputy District Attorney Cara Dunkelman [04:08]: Your Honor, does the court reflect this identification?

Judge Elizabeth Hruby-Mills [04:10]: It will reflect.

Deputy District Attorney Cara Dunkelman [04:12]: Um, did you ask him for any other documents other than his driver's license?

Corporal Brock Ernstsen [04:15]: I asked for his proof of insurance for the vehicle.

Deputy District Attorney Cara Dunkelman [04:18]: Okay, and, um, anything else about his response to that question?

Corporal Brock Ernstsen [04:23]: Um, he handed me the registration and some other papers, um, instead of the insurance.

Deputy District Attorney Cara Dunkelman [04:30]: Um, did you ask him any questions during this... I guess at this point, did you have any concerns about him as a driver?

Corporal Brock Ernstsen [04:37]: Uh, yeah, I was suspicious that he had been consuming alcoholic beverages.

Deputy District Attorney Cara Dunkelman [04:42]: Okay, based on that suspicion, did you ask him any follow-up questions?

Corporal Brock Ernstsen [04:45]: I asked if he'd had anything to drink that night.

Deputy District Attorney Cara Dunkelman [04:48]: How did he respond?

Corporal Brock Ernstsen [04:49]: He said he had a couple of Coronas at the bar about an hour earlier.

Deputy District Attorney Cara Dunkelman [04:56]: Okay. What did you do from there?

Corporal Brock Ernstsen [05:00]: I went back and performed a records check of his driver's license and vehicle registration, and when I went back to the vehicle, I asked him to perform field sobriety tests.

Deputy District Attorney Cara Dunkelman [05:09]: Did you ask him to do a PBT?

Corporal Brock Ernstsen [05:12]: I did at the end.

Deputy District Attorney Cara Dunkelman [05:14]: Oh, so that this was after the roadside test?

Corporal Brock Ernstsen [05:19]: After the field sobriety tests, yeah.

Deputy District Attorney Cara Dunkelman [05:21]: Okay, I don't wanna get ahead of myself. So, um, anything... did you notice anything else when he exited the vehicle?

Corporal Brock Ernstsen [05:23]: He braced himself with both hands on the door as he was exiting the vehicle.³

Deputy District Attorney Cara Dunkelman [00:31]: Okay, um, and, did he agree to do the roadside test?

Corporal Brock Ernstsen [05:36]: The... yes.

Deputy District Attorney Cara Dunkelman [05:40]: So I wanna walk through this. Did you... what was the first maneuver that you began with?

Corporal Brock Ernstsen [05:43]: Uh, the first field sobriety test was the Horizontal Gaze Nystagmus test.

Deputy District Attorney Cara Dunkelman [05:49] Okay, and did you give him instructions how to do this test?

Corporal Brock Ernstsen [05:51] Yes.

Deputy District Attorney Cara Dunkelman [05:53] And was there any clues on this test?

Corporal Brock Ernstsen [05:55] Six out of the six possible.

Deputy District Attorney Cara Dunkelman [06:00] Um, sorry, and any sway or anything that was, like, concerning you about it?

Corporal Brock Ernstsen [06:13] Yeah, a lot of his standing still during the HGN test I observed he had a slight circular sway.

Deputy District Attorney Cara Dunkelman [06:20] Um, so, let's talk about the next test that you did. What was that one?

Corporal Brock Ernstsen [06:25] The, um, Walk-And-Turn test.

Deputy District Attorney Cara Dunkelman [06:28] Okay, did you explain the instructions for this test?

Corporal Brock Ernstsen [06:31] I did, and I demonstrated it.⁴

³ Video shows the contrary. Peter Golub stepped into traffic and was keeping the door from swinging open [VIDEO].

⁴ Walk-And-Turn was not fully demonstrated. [VIDEO]

Deputy District Attorney Cara Dunkelman [06:33] Okay. And did you observe any clues on this test?

Corporal Brock Ernstsen [06:37] Yes. I observed four out of the eight possible clues.⁵

Deputy District Attorney Cara Dunkelman [06:41] Okay, um, okay, and do you remember what those were?

Corporal Brock Ernstsen [06:47] Yes, um, on the first set of nine steps, he stopped and asked a question, and he made an improper turn by taking one large step. Uh, and then, took his front foot off the line and stepped backwards with it. Um, the second set of nine steps, he stopped and asked a question again, and he stepped off the line once and the actual number of steps taken was 11.⁶

Deputy District Attorney Cara Dunkelman [07:13] Okay, what's the next test you did after that?

Corporal Brock Ernstsen [07:15] Um, the One-Leg-Stand test.

Deputy District Attorney Cara Dunkelman [07:17] Okay, and did you explain and demonstrate that test as well?

Corporal Brock Ernstsen [07:19] Yes.

Deputy District Attorney Cara Dunkelman [07:20] And did you observe any clues on that test as well?

Corporal Brock Ernstsen [07:23] 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. I just counted zero clues on that one.⁷

Deputy District Attorney Cara Dunkelman [07:31] Okay, um, and, I guess, are you able to explain the difference between clues and indicators when you're conducting a DUI investigation?

Corporal Brock Ernstsen [07:40] Yes.

Deputy District Attorney Cara Dunkelman [07:41] Okay, and can you tell me about that?

Corporal Brock Ernstsen [07:40] So, the clues, um, on a standardized field sobriety test are, um, specific things that we're looking for, uh, so for example for the Horizontal Gaze Nystagmus test there are six clues. Um, there are eight clues on the Walk-And-Turn test and four clues 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.

⁵ Make sure to get a list of all the clues. Make sure you get him to name all clues, and then name all the clues PG showed, then cross reference these clues with the video.

⁶ See Video V.

⁷ What are the clues? Which did he observe? Why didn't he report them?

Deputy District Attorney Cara Dunkelman [08:13] Okay, so while they don't, um, NHTSA is the one who creates the standard, um, clues the field sobriety? Is that right?

Corporal Brock Ernstsen [08:22] Correct.

Deputy District Attorney Cara Dunkelman [08:23] Okay, so if, um, they're not one of the... so, for example, the odor of alcohol, bloodshot, glossy eyes, those could be indications of impairment. They're just not notated clues that relates to the field sobriety test?

Corporal Brock Ernstsen [08:34] Correct.

Deputy District Attorney Cara Dunkelman [08:35] Okay, it sounds like you saw some of those possible indications of impairment in addition to what you testified to in the field sobriety test.

Corporal Brock Ernstsen [08:43] Yes.

Deputy District Attorney Cara Dunkelman [08:45] Okay, um, did you ask, um, the defendant to do a Preliminary Breath Test?

Corporal Brock Ernstsen [08:49] I did.

Deputy District Attorney Cara Dunkelman [08:50] Okay, um and how did he respond to that question?

Corporal Brock Ernstsen [08:53] He did not wanna do it.⁸

Deputy District Attorney Cara Dunkelman [08:55] Okay, and did he make any comments about how he might perform on the test?

Corporal Brock Ernstsen [09:02] 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 thought he would blow over. He also said that he should not go out with his friends at night.

Deputy District Attorney Cara Dunkelman [09:17] Okay. Um, so tell me what you did after the defendant refused to do the PBT?

Corporal Brock Ernstsen [09:25] I arrested him for a DUI.

Deputy District Attorney Cara Dunkelman [09:28] Okay. Um, okay, and was he transported anywhere?

Corporal Brock Ernstsen [09:32] Uh, yes.

Deputy District Attorney Cara Dunkelman [09:34] Okay, and where was that?

⁸ PG never refused. PG did not want to be arrested. He said he wanted to go home. But he was never given direct instructions to take the test.

Corporal Brock Ernstsen [09:35] Um... I believe it was special operations.

Deputy District Attorney Cara Dunkelman [09:41] I guess let me ask you another question. Um, was he asked to submit to a chemical breath test?

Corporal Brock Ernstsen [09:43] Yes.

Deputy District Attorney Cara Dunkelman [09:46] Okay, and was that done?

Corporal Brock Ernstsen [09:49] Yes.

Deputy District Attorney Cara Dunkelman [09:50] Okay. And what was the result of that?

Corporal Brock Ernstsen [09:34] 0.104.

Deputy District Attorney Cara Dunkelman [09:35] And what is the legal limit in Utah?

Corporal Brock Ernstsen [09:40] .05.

Deputy District Attorney Cara Dunkelman [09:41] Okay, um, and, uh, what... did you end up citing him for anything to do with the driving the vehicle you had observed as well.

Corporal Brock Ernstsen [09:59] Yes. For failure to signal.

Deputy District Attorney Cara Dunkelman [10:02] Okay. Nothing further, Your Honor.

Judge Elizabeth Hruby-Mills: [10:011] Mr. Frazier.

Defense Attorney Danny Frazier [10:015] How many times did you say you observed him fail to signal?

Corporal Brock Ernstsen [10:20] How many times?

Defense Attorney Daniel Frazier [10:21] Yes.

Corporal Brock Ernstsen [10:23] Um, I mean he didn't signal when he pulled away from the curb. He didn't signal on the lane change.

Defense Attorney Daniel Frazier [10:30] Twice?

Corporal Brock Ernstsen [10:31] I guess you could call it twice?

Defense Attorney Daniel Frazier [10:33] Then you followed him for a while?

Corporal Brock Ernstsen [10:37] Yes.

Defense Attorney Daniel Frazier [10:38] How long is a while? A while?

Corporal Brock Ernstsen [10:37] Just a few blocks, several blocks, a couple blocks.⁹

Defense Attorney Daniel Frazier [10:44] And when was the purpose of that?

Corporal Brock Ernstsen [10:49] To see if there were any other violations?

Defense Attorney Daniel Frazier [10:51] Um, what was observed during the time you followed him?

Corporal Brock Ernstsen [10:53] I didn't see any other violations. So I just stopped him for the original one.

Defense Attorney Daniel Frazier [10:59] Why did you—

Corporal Brock Ernstsen [11:00] So I just stopped him for the original one, the original violation.

Defense Attorney Daniel Frazier [11:04] Oh, okay. Was there anything in that initial stop that, that was an indicator to you as some sort of impairment?

Corporal Brock Ernstsen [11:12] After I initiated the traffic stop, you mean?

Defense Attorney Daniel Frazier [11:16] In the course of observing him, um, as he, uh, drove and operated the motor vehicle?

Corporal Brock Ernstsen [11:22] Um, like I said, just the initial way he pulled away from the curb.

Defense Attorney Daniel Frazier [11:27] And that was evidence to you of impairment?

Corporal Brock Ernstsen [11:28] Yeah, it's possible.

Defense Attorney Daniel Frazier [11:30] Possible? Did you consider that as an indicator or clue of impairment?

Corporal Brock Ernstsen [11:37] Uh, not necessarily, not a clue, for sure not a clue.

Defense Attorney Daniel Frazier [11:41] There was nothing wrong with the driving pattern that was a clue of impairment?

Corporal Brock Ernstsen [11:47] No.

Defense Attorney Daniel Frazier [11:49] Okay. And you still know the difference between an indicator and a clue? Was there anything there? I'm trying to say this as clear as I can, that would indicate in your mind an indicator of impairment?

Corporal Brock Ernstsen [12:03] Uh, it's possible. I mean sometimes people who are impaired don't signal and you pull out abruptly into traffic.

⁹ Officer followed the defendant for over 10 blocks.

Defense Attorney Daniel Frazier [12:11] Okay, so, I guess I already asked you this question. I apologize. I'm pretty sure I know the answer. But that wasn't... not anything of the level or a basis of impairment?

Corporal Brock Ernstsen [12:24] I think that's part of the whole picture. It's not the sole reason that I believed he was impaired. That's not why I arrested him for a DUI. But that was part of the picture.

Defense Attorney Daniel Frazier [12:36] And then after you indicated... you stopped the vehicle... uh, there was no traffic violations after a few blocks of following him, not observing of any other violations?

Corporal Brock Ernstsen [12:52] Yeah, I initiated the traffic stop.

Defense Attorney Daniel Frazier [12:55] And about what time of day or night was this?

Corporal Brock Ernstsen [12:58] Um, it was definitely dark. It was probably after midnight.¹⁰

Defense Attorney Daniel Frazier [13:06] What was the traffic light on that?

Corporal Brock Ernstsen [13:10] Uh... moderate.

Defense Attorney Daniel Frazier [13:19] After you approached the vehicle, you indicated you did so on the passenger side?

Corporal Brock Ernstsen [13:26] No, driver's side.

Defense Attorney Daniel Frazier [13:27] Driver's side? Was his window rolled down at the time you approached him?

Corporal Brock Ernstsen [13:35] Uh, at some point he rolled his window down, cause I was talking to him.

Defense Attorney Daniel Frazier [13:36] Okay, and uh, what was the next thing that, uh, you observed.

Corporal Brock Ernstsen [13:45] You mean when I initially approached the vehicle? I could see he had glossy, bloodshot eyes and I, uh, I could smell the odor of an alcoholic beverage coming from the vehicle.

Defense Attorney Daniel Frazier [14:18] Were there any other observations of alcoholic containers or any evidence of alcohol usage other than the two things you indicated? Did you observe any containers? Or anything like that?

Corporal Brock Ernstsen [14:34] No containers.

¹⁰ It was 11 pm.

Defense Attorney Daniel Frazier [14:41] And after you, uh, observed bloodshot eyes and the odor of alcohol coming from the vehicle, what was the thing you did next?

Corporal Brock Ernstsen [14:54] I asked him if he'd had anything to drink?

Defense Attorney Daniel Frazier [14:58] And his response was a minimal amount? In your mind, a couple of beers.

Corporal Brock Ernstsen [15:04] Um, he told me he a couple of Coronas.

Defense Attorney Daniel Frazier [15:08] How many?

Corporal Brock Ernstsen [15:11] He told me he had a couple of Coronas at the bar an hour earlier.

Defense Attorney Daniel Frazier [15:12] And was there anything indicating to you that there was other than that amount of alcohol in his system?

Corporal Brock Ernstsen [15:21] I don't know.

Defense Attorney Daniel Frazier [15:23] Alright. And you say that you are certified in doing breathe test results for the detection of impairment?

Corporal Brock Ernstsen [15:38] Yes.

Defense Attorney Daniel Frazier [15:41] And at that point, you're still saying that you didn't know whether there was evidence of impairment?

Corporal Brock Ernstsen [15:49] No. There were several indicators of impairment at this point.

Defense Attorney Daniel Frazier [15:55] Okay. Well, in your mind, there were no clues about whether there was impairment?

Corporal Brock Ernstsen [16:02] I mean, I was feeling suspicion.

Defense Attorney Daniel Frazier [16:13] So after you thought you detected alcohol coming from the vehicle, what was the next thing that you did?

Corporal Brock Ernstsen [16:26] 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. I performed a records check.

Defense Attorney Daniel Frazier [16:44] Then you returned to his vehicle?

Corporal Brock Ernstsen [16:45] I did.

Defense Attorney Daniel Frazier [16:47] And on recollection, it was at that point you indicated to him to get out of the vehicle?

Corporal Brock Ernstsen [16:53] Yes.

Defense Attorney Daniel Frazier [16:54] at that point, you had generated enough evidence, at least in your mind, to suspect him of being impaired?

Corporal Brock Ernstsen [17:03] Uh... As I said before, my suspicion was growing.

Defense Attorney Daniel Frazier [17:09] And your purpose in having him come out of the vehicle?

Corporal Brock Ernstsen [17:14] Um, well, I could smell the odor of an alcoholic beverage coming from the vehicle. I'd like to ... and he was the only person in the vehicle, so I'd like him to step out, and I could smell it coming from his breath. And at that point, I wanted him to perform field sobriety tests.

Defense Attorney Daniel Frazier [17:30] And you were able to determine the odor of alcohol, on the record, was coming from him in the form of his breath.

Corporal Brock Ernstsen [17:39] Um, when he was asked to step out of the vehicle, I could smell the odor of alcohol coming from his breath as he was speaking to me out in the open air.

Defense Attorney Daniel Frazier [17:49] You indicate also that you observed a sway?

Corporal Brock Ernstsen [17:54] Yes.

Defense Attorney Daniel Frazier [17:55] When was that?

Corporal Brock Ernstsen [17:56] While he was standing still during the HGN test.

Defense Attorney Daniel Frazier [18:00] And was there any right to left, back and forth—

Corporal Brock Ernstsen [18:03] Circular.

Defense Attorney Daniel Frazier [18:04] A circular sway. You indicated also that there was a bracing? That he performed or did—

Corporal Brock Ernstsen [18:11] When he was getting out of the vehicle. Yeah.

Defense Attorney Daniel Frazier [18:14] And what do you mean by bracing?

Corporal Brock Ernstsen [18:16] He used his hands on the driver door when he was exiting.

Defense Attorney Daniel Frazier [18:19] To get out of the vehicle?

Corporal Brock Ernstsen [18:20] Yeah.

Defense Attorney Daniel Frazier [18:21] And you consider that an indicator of impairment?

Corporal Brock Ernstsen [18:24] Yeah. It's a piece of the puzzle.

Defense Attorney Daniel Frazier [18:24] And the field sobriety... in your at least, uh... the performance of those particular tests, you indicated that he had performed unsatisfactorily or—

Corporal Brock Ernstsen [18:53] I mean... so... on the eh... well... yeah... oh... I saw multiple clues of impairment during the field sobriety tests.

Defense Attorney Daniel Frazier [19:04] Right. My question was about your conclusion about his level of performance.

Corporal Brock Ernstsen [19:12] My conclusion was that he was not alright to drive.

Defense Attorney Daniel Frazier [19:13] And was it at that point that you placed him under arrest?

Corporal Brock Ernstsen [19:20] Yes.

Defense Attorney Daniel Frazier [19:22] And after you placed him under arrest, did you place him into your patrol vehicle?

Corporal Brock Ernstsen [19:27] I did, mm-hmm.

Defense Attorney Daniel Frazier [19:28] And did you escort him?

Corporal Brock Ernstsen [19:29] I did.

Defense Attorney Daniel Frazier [19:30] And where was he transported?

Corporal Brock Ernstsen [19:31] I took him to the Special Ops Center and then to jail.

Defense Attorney Daniel Frazier [19:34] And after he was in Special Ops, is that where the breathalyzer test was performed?

Corporal Brock Ernstsen [19:42] I believe so.

Defense Attorney Daniel Frazier [19:44] Did you test?

Corporal Brock Ernstsen [19:46] I did.

Defense Attorney Daniel Frazier [19:51] And you're certified to operate—

Corporal Brock Ernstsen [19:53] Yes.

Defense Attorney Daniel Frazier [19:54] The breathalyzer.

Corporal Brock Ernstsen [19:56] Mm-hmm.

Defense Attorney Daniel Frazier [19:59] And you indicated that, at least from your report, and correct me if I'm wrong... you, you... you began tracking the vapor as the same time that it's listed on the intoxilyzer?

Corporal Brock Ernstsen [20:13] Yes.

Defense Attorney Daniel Frazier [20:17] And where was he situated in relation to you when you were, um—

Corporal Brock Ernstsen [20:23] Just right in front of me, in my view, in my presence.

Defense Attorney Daniel Frazier [20:27] And was there anything else that distracted you or caught your attention during the time when you were observing him?

Corporal Brock Ernstsen [20:34] I don't believe so.

Defense Attorney Daniel Frazier [20:37] And what were you doing during that time?

Corporal Brock Ernstsen [20:39] Just talking to him. Explaining what was gonna happen.

Defense Attorney Daniel Frazier [20:49] And then you got the result?

Corporal Brock Ernstsen [20:51] I did.

Defense Attorney Daniel Frazier [20:52] After you were operating the machine?

Corporal Brock Ernstsen [20:55] Yes.

Defense Attorney Daniel Frazier [20:57] Were there any problems that you noted while you were performing the test?

Corporal Brock Ernstsen [21:01] Not that I recall.

Defense Attorney Daniel Frazier [21:02] No problem in operating the machine?

Corporal Brock Ernstsen [21:04] Not that I recall.

Defense Attorney Daniel Frazier [21:06] Or with the machine's operation?

Corporal Brock Ernstsen [21:08] Not that I recall.

Defense Attorney Daniel Frazier [21:18] And what did you do next based off that?

Corporal Brock Ernstsen [21:22] Um... just filled out the forms for the jail, and I took him to jail, and I booked him in.

Defense Attorney Daniel Frazier [21:35] And so after you took him to the jail, you just turned him over to jail staff?

Corporal Brock Ernstsen [21:41] Correct.

Defense Attorney Daniel Frazier [21:42] Was there any point where you read him his rights?

Corporal Brock Ernstsen [21:44] Uh, I believe so. I believe that was in the parking lot of Special Ops if I remember correctly.

Defense Attorney Daniel Frazier [21:52] Was that subsequent or after the breathalyzer or subsequent to?

Corporal Brock Ernstsen [21:56] After.

Defense Attorney Daniel Frazier [21:58] Okay. And what was his response?

Corporal Brock Ernstsen [22:03] I don't recall. I'd have to look at my report.

Defense Attorney Daniel Frazier [22:15] Just a moment, Your Honor. [*Counsel confers with defendant, Peter Golub.*]

[*Sound comes from WebX monitor used for tele-conferences.*]

Judge Elizabeth Hruby-Mills [22:55] Please make sure you're muted if you're using WebX. [25:49] Any objections, Mr. Frazier?

Defense Attorney Daniel Frazier [25:50] No, Your Honor.

Judge Elizabeth Hruby-Mills [25:52] Alright, so state will be admitted.

Deputy District Attorney Cara Dunkelman [25:54] Your Honor, would you like .

Judge Elizabeth Hruby-Mills [25:55] Yes. Thank you. Alright, is the state resting then?

Deputy District Attorney Cara Dunkelman [26:04] Yes.

Judge Elizabeth Hruby-Mills [26:07] Mr. Frazier, do you have any witnesses?

Defense Attorney Daniel Frazier [26:08] We do not, Your Honor.¹¹ The client has been advised that he has the right to testify. I recommended he not do that. And he followed that advice.

Judge Elizabeth Hruby-Mills [26:17] Alright, so with that, um, any summary argument from the state?

Deputy District Attorney Cara Dunkelman [26:22] Very briefly, Your Honor. Uh, Your Honor, in this case, the court has heard evidence that... uh, the, uh, that the defendant was driving a vehicle. He was stopped because he failed to signal both when leaving the curb in which the vehicle had been located previously and when moving across lanes of travel. He also didn't, um, indicate a lane

¹¹ Peter Golub wanted to testify, and he wanted to call Kay M. as a witness.

change with his vehicle. And then upon contact with law enforcement, he made an admission... well, I guess, um, I'm a little ahead of myself... the officer began thinking with the defendant, who was the driver of the vehicle. And he, uh, he said that he had an odor of alcohol coming from, um, the vehicle and, um, then later when the defendant stepped out of the vehicle, he isolated it as well. He had impaired speech and glossy, bloodshot eyes. He had made an admission that he had, um, a few Coronas about an hour earlier. As he exited the vehicle, he had to help, I guess, he had to grab the side of the vehicle with both hands. Um, the roadside field tests were completed, during which, um, the officer found that. In conclusion, um, in the roadside there was an indication of impairment, um, a PBT was offered. And the defendant indicated that he did not want to do it, because he would blow over the limit and that he should not have been out with his friends that night.¹² Or um, should have not met up with his friends after work on that day. And then, ultimately, the breath test was done, which came back as .104. Um, so, Your Honor, the state would ask that the court find the defendant liable on those charges.

Judge Elizabeth Hruby-Mills [28:18] Alright, Mr. Frazier.

Danny Frazier [28:21] Your Honor, I just wanna be silent for a minute.

Judge Elizabeth Hruby-Mills [28:18] Alright, so based on the information provided by the state and by the witness, I find that the state does has met it's burden of probable cause with regard to the two charges in the information. So, Sir, you are bound to appear in court as charged. Mr. Frazier, do you want to address the arraignment today?

Danny Frazier [28:46] Uh, yes, Your Honor, we'd be happy to. We plead not guilty.

Judge Elizabeth Hruby-Mills [28:51] Okay, so we will not that, and when you do want to have your pre-trial conference?

Danny Frazier [28:58] Uh... probably for me, Your Honor, the mid to first part of August, end of July, mid part of August.

Judge Elizabeth Hruby-Mills [29:18] Do you wanna come back on... We could do July 15th. Or we can go August 5th.

Danny Frazier [28:28] I gotta jury trial on July 15th, Your Honor.

Judge Elizabeth Hruby-Mills [29:34] You're being selected for a jury?

Danny Frazier [29:36] Oh, no it's my case. Oh yeah, ha-ha. I wouldn't last long on a jury, Your Honor.

Judge Elizabeth Hruby-Mills [29:44] Do you wanna do August 12th or August 5th?

Danny Frazier [29:28] August 5th.

Judge Elizabeth Hruby-Mills [29:49] Okay, do you wanna come at nine or one?

¹² Did not say I would blow over the limit. Did not go out with friends.

Danny Frazier [29:52] Nine.

Judge Elizabeth Hruby-Mills [28:51] Nine o'clock on August 5th, we'll have you back for a pre-trial conference. Does the state want to... want to approve this exhibit? Um, make sure you stay in touch with counsel. Alright. Thank you.

Danny Frazier [30:07] Thank you, Your Honor.

Hearing I (*version II*)

Refined Transcript: State of Utah vs. Peter Golub - Hearing May 29, 2024 (Case No. 235900706)

[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?

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

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

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

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

[01:14:925] **Corporal Brock Ernstsens:** 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 Ernstsens:** Yeah, it's Brock Ernstsens. 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 Ernstsens:** 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 Ernstsens:** Yes.

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

[01:45:015] **Corporal Brock Ernstsens:** 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 Ernstsens:** 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 Ernstsens:** 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, 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.

Analysis of Testimony (May 29, 2024 Hearing) in Relation to Motion to Dismiss:

This hearing serves as the State's opportunity to present its primary evidence through the arresting officer's testimony, countering the defense's written motions. Here's a breakdown of how the testimony relates to the key arguments in the Motion to Dismiss:

I. Initial Traffic Stop & Probable Cause:

- **Officer's Justification:** Cpl. Ernstsens states the stop was initiated due to observing Mr. Golub fail to signal when pulling away from the curb and again when changing lanes ([02:50]). He smelled alcohol upon approach and observed glossy/bloodshot eyes and slurred speech ([03:31]). He also noted Mr. Golub admitted to drinking "a couple of Coronas" about an hour prior ([04:49]).
- **Defense Challenge (Motion & Cross-Exam):** The motion argues the officer couldn't have clearly seen the initial alleged violation due to distance/obstruction and highlights the officer following for 10 blocks without observing further poor driving. Mr. Frazier's cross-examination reinforces this, getting the officer to admit he saw no other violations during the follow ([10:53]) and to characterize the initial failure-to-signal primarily as a "piece of the puzzle" rather than definitive proof of impairment on its own ([18:24]). The defense attempts to downplay the significance of the officer's stated observations.
- **Analysis:** The testimony establishes the *State's narrative* for probable cause (failure to signal + physical indicators + admission of drinking). The cross-examination chips away at the initial visual observation's certainty and highlights the lack of erratic driving *after* pulling away from the curb, supporting the motion's argument that the stop might have been based on weak or pretextual grounds rather than clear, articulable suspicion of impairment *at the moment the stop decision was made*. The motion's points about the officer's own prior traffic violation (running red light/U-turn) and statistical arrest rates were *not* addressed in this testimony.

II. Field Sobriety Tests (SFSTs):

- **Officer's Testimony:** Cpl. Ernstsen testifies he administered the three standardized tests (HGN, WAT, OLS). He claims Mr. Golub showed 6/6 clues on the HGN ([05:55]), 4/8 clues on the WAT ([06:37]), and 0/4 clues counted on the OLS (though he noted a borderline clue – raising arms for balance – which he gave the defendant the benefit of the doubt on) ([07:23]). He also noted a "slight circular sway" during HGN ([06:13]) and that Mr. Golub "braced himself" exiting the vehicle ([05:25]) as general "indicators."
- **Defense Challenge (Motion & Cross-Exam):** The motion argues improper administration (specifically citing the WAT demonstration in the written motion, though not probed deeply here) and selective interpretation (highlighting the perfect OLS score vs. the HGN score and other subjective indicators). The cross-examination doesn't heavily challenge the specific administration details in this segment but gets the officer to confirm the distinction between standardized "clues" and more subjective "indicators" ([07:40]).
- **Analysis:** The officer presents results suggesting significant impairment based on HGN and WAT clues, despite the perfect OLS score. This supports the State's case. However, the perfect OLS score aligns with the defense motion's argument that the evidence of impairment was inconsistent and perhaps interpreted with bias. The specific procedural errors alleged in the motion (like the 3-step vs. 9-step WAT demo) were not explored during this testimony.

III. Chemical Testing (Breathalyzer):

- **Officer's Testimony:** Cpl. Ernstsen confirms a chemical breath test was administered using an Intoxilyzer (presumably 8000, though not explicitly stated here) at the Special Operations center after a 15-minute observation ("Baker") period ([09:35], [09:49]). He testifies the result was 0.104 BAC, exceeding the Utah legal limit of 0.05 ([09:51], [09:56]). He also states the machine appeared to function normally ([03:33] in Part 2 transcript, though that specific line isn't in this audio clip) and ran diagnostics.
- **Defense Challenge (Motion):** The motion *heavily* challenges the reliability of the Intoxilyzer 8000 generally and specifically alleges improper administration in this case due to excessive test duration (140 seconds vs. 12-20 standard) and excessive volume collection (2.039L vs 1.1-1.5L standard). It argues these deviations invalidate the result.
- **Analysis:** This testimony *only* establishes the *result* of the test (0.104). It does *not* address the critical procedural arguments raised in the motion regarding the test's duration, the volume collected, the lack of a second sample, or the machine's inherent reliability issues. This is a significant gap between the testimony heard here and the challenges raised in the written motion.

IV. PBT & Statements:

- **Officer's Testimony:** Cpl. Ernstsen states he offered a Preliminary Breath Test (PBT), which Mr. Golub refused, stating he knew he would "blow over" because he'd been drinking ([08:45]-[09:17]).
- **Defense Challenge (Motion):** The motion argues this was not a formal refusal under Utah's implied consent statute, lacked proper admonitions, and that the statement itself is not conclusive proof of impairment level. The motion also addresses the timing of Miranda warnings much later in the process.
- **Analysis:** The testimony presents the defendant's statement as a clear refusal combined with an admission of likely intoxication. This contrasts sharply with the defense's legal interpretation in the motion regarding implied consent and the weight of the statement. The timing of Miranda is not explored here.

Conclusion based on this segment:

The testimony in this hearing establishes the State's basic narrative supporting probable cause and impairment, relying on the officer's observations (initial signal violation, physical indicators, SFST clues, chemical test result) and the defendant's alleged admissions/refusal. However, the cross-examination raises questions about the initial stop's justification and highlights inconsistencies in the SFST performance (perfect OLS vs. poor HGN/WAT). Crucially, this specific testimony *does not address* the significant procedural and reliability challenges to the chemical breath test administration detailed in the Motion to Dismiss, nor does it delve into the officer's alleged pattern of enforcement or the specific timing and context of the Miranda warnings relative to questioning. Therefore, while the testimony provides the State's foundational case, it leaves many of the core arguments for dismissal raised in the defense's motion unaddressed *within this particular hearing*.

II. Hearing II and Notes(152.37 min: 2 parts, 1 version)

Part I (i. transcript notes; ii. transcript)

i. Notes with timestamps

Notes

[00:13:51.44]

Where were you when you didn't see the blinking signal? Where you in the middle of the street or where you on the side of the road trying to conceal your presence to ensure you weren't seen? Have you ever not seen a blinking signal, but it later turned out there was a signal? For instance, during your training, where you ever made to observe signals of obstructed vehicles? So in general you've never missed a signal or accidentally thought there was no signal but later realized that there a signal? Do you think other officers have ever misidentified a traffic violation? Have any trials been overturned based on the lack of visual evidence or evidence for instance video evidence that showed the officer made a mistake and misidentified an offense? Etc. develop this line of questioning. the point is to get him to either admit to the possibility of him making a mistake, or to stubbornly insist he never makes mistakes which should then be exploited to show that the officer is presenting an unreasonable position, since clearly anyone can make such a mistake at any time, especially at night, from a far away distance, with multiple cars obstructing his view.

[00:15:04.40]

Ask questions about other establishments. Does he watch every establishment that serves alcohol? Based on what criteria does he watch some establishments and not others.

[00:15:36.88]

look up. cross reference with enitre Part 2 Applicability and Obedience of Traffic Laws" 41-6a-201 to 41-6a-217, as well as any other possibly relevant codes that relate to emergency vehicle protocols for responding to emergencies and conducting "emergency responses/investigations.

[00:16:28.15]

Were in any kind of hurry to get in position to observe Mr. Golub's vehicle? Were you rushed? Or did running the red light give you enough time to get in position?

[00:16:37.26]

Do people every automatically manually turn their signal off after using it to indicate a lane change, since that doesn't automatically turn off?

[00:17:39.54]

Why did you decide to pull him over then? Did you observe any violations when Mr. Golub was getting onto the freeway? Is stopping someone as they enter the freeway cause a higher or lower probability of a traffic accident than if you'd pulled them over on the road, especially if they were under the influence and weren't able to pull over without disrupting traffic? Did Mr. Golub pull over in a safe and composed matter? So thankfully, he wasn't exhibiting signs of reckless driving when he pulled over, otherwise he could have put other drivers in danger.

[00:18:13.70]

Does blocking a lane potentially put other drivers in danger? But this is just a part of your job, you didn't feel it was necessary to pull further ahead on the shoulder where there was maybe more space, more light, and so forth so that other drivers could better avoid your squad car and Mr. Golub's car?

[00:18:34.33]

Is that what you noticed? How many time do you think you've noticed: read from the Handbook, since he repeats it almost verbatim? How long did it take you to make these observations? What order did you make the observations? Was it [read quote]? Is always in this order? What order do you usually give when you're filling out a report or you giving your testifying, as in the case of (cite the last cases he's testified in, including the one where he lost). Is there another order other than the one you've onOr could it have been give different order ([perhaps more logical order]) Is it at all possible that since you've "noticed" read again so many times in the past that you could expect to observe [read again]. Make the point that not only is he repeating memorized text, but that this type of memorization is a clear sign of priming that causes confirmation bias. give def of confirmation bias and an example where memorizing an outcome makes a person more likely to observe an outcome.

[00:20:08.53]

Define "initial approach." How are these things observed? Do they always occur together? Do they ever occur individually? How do you determine glossy bloodshot eyes? Slurred speech? etc. What's the difference between slurred speech and a person's normal speaking style? At 11 pm, when you see someone with bloodshot eyes, what is the normal assumption? Could someone have glossy eyes and not be under the influence? What causes eyes to be glossy? Red? (read back of visine package). Cite if relevant to his previous answer i.e. if there is a discrepancy or if there is too much of an overlap. If possible, suggest that when elements of a complicated story never change it's an indication of lying or fabrication.

[00:20:33.28]

Did the defendant speak English? Did you hear any other language? NB Mr. Golub was speaking Russian while on the phone. Mr. Golub is a native Russian, not English speaker.

[00:21:15.64]

Cite actual clip. Ask: Do you usually say [give quote] to yourself when in the vehicle? What was going through your mind when you were saying that? What would you say was the likelihood that you were going to arrest Mr. Golub by that point (give timestamp)? What do you think What do most people assume at this stage of one of your investigations? What did Mr. Golub think his chances of being let go were?

[00:21:43.44]

Play clip. Clearly shows Mr. Golub holding door from opening into traffic.

[00:22:02.88]

Note that Mr. Golub passed the balance test 100%. Trooper E. saw no sign of balance impairment according to his recording of the balance test.

[00:22:39.91]

Read a medical diagnosis /prognosis of fatigue. Can fatigue be an "illness" i.e. medical condition?

Ask TE to give official medical screening procedure. Based on his screening did he notice any signs of fatigue? Is fatigue a medical indication? A medical diagnosis? What are its effects? The goal here is to have him say "No, there were no signs of fatigue" or "No, fatigue was not a factor" etc. Then to stress that Mr. Golub had been awake since 5:30 a.m. and taught until 8 p.m.

[00:22:41.79]

Ibid. Make it clear that either TE doesn't have enough medical knowledge to understand the influence of fatigue, or does not have the medical skill to identify fatigue.

[00:22:47.79]

Re-state that "fatigue" is not only a medical "illness" but can cause (name all the "signs" he'd observed up to this point) and is not only a typical interrogation technique but is the number one cause of psychosis, disorientation, and confusion in normal people, leading people to make false statements and can be lethal. NB throughout the defense's cross examination, try as much as possible to invalidate/question Mr. Golub's "confession" of having "gone out with friends" and not being able to pass a breath test.

[00:23:10.31]

Ask which is the most falsifiable field sobriety test? Define falsifiability for him. Stress that the HGS is the least falsifiable test vs the balance test which is the most falsifiable.

[00:23:32.07]

Quote the manual, including the verbatim quote about eyes, speech, breath, etc.

[00:23:56.27]

Q: You saw 6/6/ clues? Are the HGN clues less or more falsifiable than say the balance test?

[00:27:03.57]

This is good. He keeps emphasizing random balance "signs" but records nothing on the balance test. Reference report where he mentions these things but records nothing on the actual balance test. Either he's bad at recognizing balance problems or he's bad at recording signs of balance problems.

[00:27:09.85]

Quote manual. Show that this is verbatim from the manual. List all the times he recites the manual from memory. Especially when questioned about probable cause. So he's bad at recording/recognizing balance problems, and his other "signs" are repeated verbatim, i.e. are not the product of a natural observations, and are instead projections of predetermined signs.

[00:28:20.28]

Highlight that in the main manual and in the Utah Code of Law it stresses that the entire test be fully demonstrated (i.e. with the correct number of steps) especially when forcing a fatigued distraught stranger to walk an imaginary line in the dark.

[00:30:25.19]

Q: What are the four clues? Is it like with the eye test where there are three that are doubled for each eye for a total of six for people with two eyes. repeating clues. Presumably for someone with one eye there would only be three clues. In the balance test, are there two clues per foot or are these distinct

clues?

[00:30:28.63]

Ask him to repeat the four clues. Q: And which of clues did you see but forgot to record? (He'll say he didn't forget. Make the correction and say "the clues you thought were borderline") Then repeat them yourself. Q: Is there a hierarchy to these clues? Like is there

[00:31:35.66]

Very important to address this false confession. Strategy: 1) review and show entire exchange; 2) argue that this was a false confession under duress. 3) get into the weeds about whether this even counts as a confession or a clue of impairment. If a person says they are drunk that doesn't mean they are drunk just as if they say they aren't drunk also doesn't mean that they are not drunk. Strategy: Repeat the statement as " I know I will blow over." State that this statement is biconditional. Since a person can be wrong about what they think they know, which is why the law requires a test be administered to determine intoxication. Thus the statement, "I will not blow over" biconditional with the statement "I will blow over" both statements neither confirm nor deny the whether a person will or will not blow over. Thus, the statement without the corroboration of an actual test is "hearsay" with no bearing on the actual fact of what someone's Breath Alcohol Content or more importantly Blood Alcohol Level might be. Indeed, a breath alcohol test is a corollary not proof of blood alcohol content, which is why in most DUI cases advise that a blood sample be taken at the Special Operations Center (cite), because it is the blood alcohol content that determines a person's impairment. If I use mouthwash and take a Breath Alcohol Test, I will score high (cite example), but that obviously doesn't mean the person who provided the sample is under the influence or impaired by alcohol.

Also note that Utah has a penalty for refusing to take a breath test, but no refusal was documented in the report. The penalty is having your license suspended and jail time. Mr. Golub's license was never suspended or any other penalty given, suggesting that the trooper himself did not consider Mr. Golub's answer "I just want to go home" as a refusal to take the test at the time. However, despite not having given Mr. Golub even a preliminary breath test, TE had the second trooper arrest him anyway.

Is saying you don't want to do something the same as refusing to do it. For instance, if I say, "I don't want to go to work on Monday, mean I'm refusing to go to work?" "Did you inform Mr. Golub that it was an offense to refuse to take a breath test when ordered by an officer?" "So would it be accurate to say that Mr. Golub was never instructed to take the PBT?" "Is it possible that Mr. Golub would have taken the PBT if the question had been worded differently? For instance, if instead asking him if he wanted to take the PBT, you said, 'Will you take the PBT?' or if you'd just plainly said, 'To establish your Breath alcohol level, you need to take the PBT?' "Could not administrating the PBT potentially affect the validity of a DUI case? Would you agree that during the time between being pulled over and the administration of an alcohol test, the driver's BAC could fall below the limit set by the state?" Cit case where this occurred. "So you would agree that getting a test done is in the best interest of the case?" "So at the time of his arrest there was no evidence confirming that Mr. Golub was or was not over the limit?"

[00:31:50.86]

Q: Did you arrest him or did another officer arrest him? A second officer put Mr. Golub under arrest.

Q: What was it like? Did he struggle? Put up any physical resistance? Refuse to put his hands behind his back? Or keep his arms stiff? Or was otherwise uncooperative? So he was fully compliant both physically and verbally? So could you say he was resigned to the arrest? Do you think you should have administered a PBT at this point?

[00:32:00.34]

Q: What is the purpose of making sure the handcuffs were loose? Vehicle inventory was done by a second officer.

[00:32:53.21]

Mr. did not ask for his phone and he did not have a wallet. This is important: TE insisted Mr. Golub take his phone, then later in the arrest took Mr. Golub's phone and offered to call Mr. Golub's mother (who is the owner of the vehicle), to put the conversation on speaker phone, and to listen to the conversation while Mr. Golub was on the phone talking to his wife. FACT: This was an attempt at unwarranted surveillance. See Motion.

[00:33:15.51]

Open line of questioning along the lines of "What is an Intoxylizer?" It's a breath test machine. "What kind of Intoxylizers are there?" There are many models. "What kind of a model is it?" It's an 8000 model. "Are you aware that no fewer than 30,000 Intoxylizer machines have been decommissioned and destroyed across thirteen states?" "Do you know why so many police departments might choose to destroy, not update or fix, but destroy?" "Are you aware of how many court cases have been dismissed and overturned based on a judge's conclusion that not only was a breath test from an Intoxylizer unreliable, but the machine tends to elevate Breath Alcohol Content, failing to automatically invalidate a test or require a retest, even when the parameters of test administration have been grossly violated?" Cite case. "Given all this concern with the accuracy of breath tests, especially the test results provided by the Intoxylizer 8000, why didn't you feel the need to take a blood sample or even administer a second test after the advised administration-time maximum was exceeded?" "c time is in The manual for the Intoxylizer 8000?" It suggests that a test shouldn't take more than 12 seconds." "Do you remember how long it took you to administer Mr. Golub's test?" "It was 144 seconds."

[00:34:04.29]

In the car, it was discovered that Mr. Golub and TE knew each other in high school. TE and his brother were on the baseball team, while Mr. Golub and his brother were skateboarders, who on more than one occasion were bullied and on one occasion assaulted by Skyline athletes.

[00:34:30.44]

Q: "Is the DUI admission the same as the Miranda Rights?" "When did you read Mr. Golub his Miranda rights?" It was hours into the arrest, minutes before Mr. Golub was taken to jail.

[00:34:54.12]

Note th

[00:35:09.68]

Q: "What's the purpose of inspecting a prisoner's mouth?" He'll correct that "prisoner" isn't the right word. "Sorry, what is the right term?" "Right, so what is the purpose of inspecting his mouth?"

"Are there any other procedures that ensure that a test is administered correctly?" "After checking a defendant's mouth what might invalidate the test?" And what do you do if you discover one of these things?" "How often is a test invalidated because a defendant has something in their mouth?" "So not very often?" "And the purpose of adhering to all these recommendations is to ensure the test is accurate?" "So to the best of your knowledge you adhered to all testing recommendations?" "is there anything else that might invalidate a test or provide an inaccurate result?" "Is the duration of the test important?" "What does the Inoxylizer 8000 manual say is the recommended maximum duration of a test?" "Have you ever readministered a test because the test period was too prolonged?" "How often do you readminister a test?" "What about when the test is the only proof the state has confirming a defendant's violation of the law, because at this point Mr. Golub hadn't broken any laws, broken any traffic laws, resisted arrest, that type of thing." the point of this line of inquiry is to show that he followed minor, unimportant protocols while straying from one of the most important ones--the proper administration of the test and its duration.

IMPORTANT: Establish that taking the test multiple times automatically provides multiple results.
Q: "But you only recorded one result?" "Do you remember the other results? Or were there other results?" "So technically the test wasn't administered multiple times or it was administered multiple times but you didn't record the result?" "When you say you "tried the test multiple times, did you reset the Breathalyzer 8000 like the manual instructs." Quote manual. "So did you 'try to take the test multiple times' or did you just administer one test over a length of time many tests could have been administered?" "So you wouldn't say you stacked the tests?" "And you don't think exceeding the recommended test time by nearly 12 times could affect the outcome of the test, that it could raise the result?"

[00:36:08.55]

IMPORTANT: Quote this exchange. Q: "Do you remember the prosecutor asking you what the process for getting the Intoxylizer going is?" "She said, Prosecutor Dunkelman: what's the process for getting the Intoxylizer going' to which you responded 'Trooper Ernstsen: It's pretty simple. We just push this little green button that says start.'" "So apart from pushing the little green button, are you familiar with any of the mechanics of the machine? How it works. Which parts do what. What the mechanical and chemical process is and how it establishes a Breath Alcohol Content, and what the relation of Breath Alcohol Content is to Blood Alcohol Content, and how Blood Alcohol Content is used to support the conclusion that a person was driving under the influence? Because the test is obviously not the cause of intoxication but its correlation." "We correlate test results with the effect alcohol may have on a specific individual. Of course, this is still all statistics; each person's reaction to alcohol is different, there's nothing definitive that says a breath alcohol content of .08 causes a person's driving to be impaired, the way say the speed of light causes time to slow, or that the faster someone moves causes them to experience greater gravity."

[00:36:12.43]

Cite statement that describes how the machine malfunctions.

[00:36:22.03]

Q: "What are the diagnostic tests?" Tell him if he doesn't know. "What would happen if X test fails?" "Have you ever run diagnostics and had the machine fail? Not on this or any other machine, for instance doing your training? Or, I apologize, let me back up, how are you trained to use this machine? Do you administer it to real people? Do you maybe use some sort of prosthetic, like one of those CPR dummies?" Have him tell you as much as possible about the training. "Were the

various causes and effects of malfunctions discussed during your training?" "Is it possible for the machine to malfunction?" "What would you say is the probability that a test result is gathered from a malfunctioning machine?"

[00:36:44.31]

Quote this exchange: "When Prosecutor Dunkleman asked you whether you received any failure messages indicating the machine wasn't working, you answered "Not that I recall." Do you recall any times when the machine wasn't working?" "What are you instructed to do if the machine doesn't work? Do you have another machine? Do you use a backup machine? Or is it easier to take a blood sample? Or maybe you submit the machine printout with the blood test?" "What are the diagnostic tests?" Tell him if he doesn't know. "What would happen if X test fails?" "Have you ever run diagnostics and had the machine fail? Not on this or any other machine, for instance doing your training? Or, I apologize, let me back up, how are you trained to use this machine? Do you administer it to real people? Do you maybe use some sort of prosthetic, like one of those CPR dummies?" Have him tell you as much as possible about the training. "Were the various causes and effects of malfunctions discussed during your training?" "Is it possible for the machine to malfunction?" "What would you say is the probability that a test result is gathered from a malfunctioning machine?"

[00:36:52.07]

Quote: "When Prosecutor Dunkelman asked you if there was any conversation during the test, you said yes. Could talking during a test invalidate the result? Do you remember what you told Mr. Golub while he was taking the test? Do you remember what Mr. Golub said? Make sure to quote the exchange on the video or show the video where Mr. Golub voices his shortness of breath to which TE instructs Golub to keep blowing. "Did Mr. Golub seem to express any signs of distress?"
IMPORTANT: During the testing period there should be no conversation. Q: "While a subject is taking the test, should he be talking?" "Could it be said that talking during the test might invalidate the test?"

[00:37:37.15]

IMPORTANT He leaves out the bag, repeat his description and ask "Is there any other piece of equipment?" etc. If he doesn't say, "Another piece of equipment is the bag" (video) "What is the purpose of the bag?" "Is the bag reusable or do you get a new bag for every test?" rf. taking plastic off: Q "Why is it important to take the plastic off?" Line of inquiry meant to show the importance of eliminating contamination.

"When Prosecutor Dunkleman asked you to describe the test, 'I put the mouthpiece in their mouth and have them blow for several seconds.' Would you say that 144 seconds counts as several seconds?" "What the longest you've had someone blow into the machine to give a sample?" "During this time did that machine ever flash that it was malfunctioning?" Quote manual about the error message that appears if the test is being misadministered. Ask TE if he's ever seen this message during his training or his investigations. "What is the recommended response to a machine malfunction? What is the contingency plan if the machine malfunctions?" Also, keep asking about the blood test. Q: "Have you ever decided to take a blood sample bc the machine was malfunctioning?" IMPORTANT "What is the correlation between a Breath Test and a Blood Test?"

[00:38:49.38]

IMPORTANT Can? or can't? Quote in either case, including the "little green bars" statement which

makes him seem more a kid playing at cops and robbers as opposed to conducting a real investigation.

[00:39:15.50]

What is the difference between "each attempted breath" v "attempt at getting a full breath sample." Each attempt at getting a full breath sample does need to be restarted, which includes getting a new bag and mouth piece.

[00:39:34.42]

VERY IMPORTANT TO DEAL WITH THIS QUOTE.

"So if it times out you would have to enter all that information in and get it 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."

Q: "Do you need to select new sterilized equipment? Do you need a new bag?" What might be the reason you would need to get a new b

Apart from the timeframe, what the different things that could happen during a test for it to the machine to cancel the test? Would drinking a glass of vodka between test periods be picked up by the machine? Would displacing the bag cause the machine to stop the test? Does the machine stop the test when it malfunctions or does it give you a signal and you have to restart the test?

What does "it" mean? like new equipment. Use to show that TE is obv reluctant to retake a test bc it's too much of a hassle.

Quote. What constitutes an "attempt"?

[00:40:18.01]

QUOTE: Prosecutor Dunkelman: Okay. And to your knowledge do more breath attempts raise the level of the results at all?

Trooper Ernstsen: No.

CITATION showing that it can raise or lower the breath alcohol content measured.

SHOW that either TE doesn't know how the machine works or he is lying.

Make sure to quote because TE covers this whole issue in one monosyllabic word.

[00:40:32.85]

"How many times would you say?" "How much time did the machine have until it timed out?" If 180 sec total, 36 sec.

[00:41:13.00]

You said, "the machine will time out if you don't do it within a certain amount of time. And I can't

remember exactly how long it is. It's probably like a minute or two." But the test took 144 s. "Do you know what the time is? How many seconds need to pass before the machine shows an error?" This should be 180 s.

[00:41:26.04]

See if you can quote relatively to show Prosecutor's lack of knowledge of the subject matter. Maybe even ask/suggest she doesn't understand how the machine works, how blood chemistry works, how FSTs work, or what the correct arrest and test admin procedure is supposed to be.

[00:41:47.84]

She's trying to shift the focus from the duration of the test to the amount gathered.

[00:42:11.64]

Maybe, open line of inquiry to underline the fact that after 90 minutes BAC should be lower. Q: "Did you notice anything different when you checked his mouth, or was he the same?" "You didn't notice the odor of an alcoholic beverage?" "Was it stronger or weaker than odor you noticed when you first encountered him?" "So the presumption would be that his breath alcohol content was even higher when you arrested him than what you recorded." "Would you say it could've been .14 ? .15? .16? "How many DUI arrests have you made in your career? Through a GRAMMA request the defense has received TE's 23 and 24 stop to arrest statistics showing 138 and 107, respectively." "Would a person with a BAC of .16 or possibly more be able to pass the balance test 0/4?" "Would they be able to drive a vehicle without showing any signs of weaving or swerving or making any traffic violations?" SHOW that logically the BAC should be higher earlier and that such a high BAC would have made Mr. Golub drive differently and to take the FST differently.

[00:42:24.56]

"What would a good result be?" "Does what Mr. Golub said suggest he thought he would blow over? And that blowing over would mean he was guilty?" "Does that seem strange to you?" "Did he seem confident to you?" "There wasn't any irony, like where 'bad' means good?" "Could Mr. Golub have thought the BAC would clear him?" "Do you think he still thought he might go home?"

[00:43:23.43]

Check! On video he says, "You know what never mind." He stops reading the questions. Mr. Golub is answering all the questions.

[00:43:28.83]

Again, saying you don't "want to" is not the same as "choosing to stop talking."

"What is the purpose of asking all these questions?" "Is it important to ask all the questions?" "Could not asking x, y, z potentially have a negative effect?"

[00:43:38.51]

Mr. Golub did not want to call anyone. However, TE had tried to access Mr. Golub's phone to call Mr. Golub's mother in order to put Mr. Golub and his mother (car owner) on speaker phone and listen to their conversation while inside the squad car. "You say that when you got back into the car you read Mr. Golub his Miranda Rights. After that why did you try to access Mr. Golub's phone and offer to call his mother? " "According to federal surveillance law, could attempting to access a defendant's phone count as surveillance?" "Under this law, could trying to access a defendant's

phone without a warrant constitute a breaking of this law?" "What is the legal protocol for gaining access to a defendant's phone?"

[00:43:46.87]

Check what Mr. Golub actually said.

[00:44:06.95]

"How long did you spend in the car?" "Was it a lot of time? Was it pretty quick? Was it average?" "What's the longest you've spent? What's the longest arrest you've ever had? What's the shortest?"

[00:44:17.75]

NOTE Mr. Golub's transcription is very poor and incomplete. The transcription is missing large sections of dialogue. This is sometimes marked in brackets as [incomplete].

[00:45:10.62]

Cross reference

[00:46:55.89]

Did you demonstrate the balance test? "Is this a natural position for someone to take?" Did you demonstrate any heuristic the defendant can use to be able to raise his arms the perfect six inches?"

[00:52:44.14]

check "sudden movements" NOT TRUE

[00:59:42.90]

How long would you say it was?

ii. Transcript

[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 in 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.

Hearing II, Part II (i. transcript notes; ii. transcript)

i. Notes

[00:12:40.13]

So I can't hear any of this, but essentially my last line of questioning is: 1) Was the test administered correctly? A: Yes; 2) Was the test taken correctly? A: No. 3) If the test wasn't taken correctly, wouldn't that require you to perform the test again? A: Not if I administered the test correctly. 4) But not if the test was taken incorrectly? She basically started objecting... here and in other places, it almost seems like there's missing audio. Not suggesting anything or being paranoid. More just making an excuse for my inability to provide a better transcript.

[00:19:39.42]

So I'm not sure if it's on me to provide a proffer, but I was never asked to provide anything other than the motions. But Dunkelman mentions this six times, and in her closing statement seems to suggest that it is "inappropriate" for me to make my argument in the present or future. IDK what this means.

[00:32:22.19]

Essentially, we'd all been sitting in court for some five hours. This was the final matter on the docket, and I got the false impression that they didn't want me to go on, so I didn't present all the arguments or evidence. I thought that since they had read the motions, that THEY would present their counter-arguments and then I'd give my rebuttal and thereby defending my motions.

[00:35:55.79]

finally giving up and laying into the whole forest-gump/ pikachu-goes-to-court thing.

ii. Transcript

[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 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 in 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 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 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, 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.

ANALYSIS

Analysis of Arguments (0:00-1:26 of File 2) Regarding Motion to Dismiss:

This specific segment of the hearing primarily revolves around the **procedural attempt by the Defense Counsel (Mr. Golub) to introduce video evidence** after the main evidentiary phase, and the subsequent discussion about **laying proper foundation** for that evidence. Here's how it connects to the broader Motion to Dismiss:

1. Attempt to Introduce Supporting Evidence:

- Mr. Golub wants to show two specific video clips: 26 seconds of dashcam footage and 140 seconds of bodycam footage ([00:17]-[00:40]).
- **Relevance to Motion:** This directly relates to the Motion to Dismiss because these clips presumably contain the visual evidence Mr. Golub believes supports his arguments made *in the motion*.
 - The **dashcam clip** likely pertains to the argument that there was **no probable cause** for the initial stop (e.g., arguing the alleged failure to signal wasn't visible or didn't occur as described by the officer).

- The **bodycam clip** (specifically identified as 140 seconds long) clearly relates to the motion's argument that the **chemical breath test was improperly administered** due to excessive duration, potentially invalidating the result.
 - **Argument:** By seeking to show these videos, the defense is implicitly arguing that this visual evidence is crucial for the court to properly evaluate the claims in the motion (lack of probable cause, improper testing procedures) which could lead to suppression of evidence and dismissal.
2. **Foundation Objection and Discussion:**
- The Judge immediately raises the issue of reopening evidence and the need for foundation, referencing the Prosecutor's prior objection ([00:46]-[00:53]).
 - The discussion then centers on *how* to lay foundation. Mr. Golub initially questions if he needs to recall the witness ([00:43]). The Judge suggests the witness (Trooper Ernstsen) *could* potentially lay the foundation ([00:59]-[01:07]).
 - The Prosecutor insists it would be "procedurally cleaner" if the foundation were laid through the witness ([01:00]-[01:04]).
 - **Relevance to Motion:** This procedural discussion is critical. If the defense cannot lay proper foundation, the video evidence supporting the core arguments of the Motion to Dismiss (unlawful stop, invalid test) might not be considered by the court *during this hearing*. The argument over foundation becomes a gatekeeper for the evidence needed to argue the merits of the motion. The State's preference for foundation via the witness allows them to challenge the evidence's interpretation immediately upon introduction.
3. **Tying Evidence to Testimony:**
- The Judge and Defense Counsel briefly discuss whether the video evidence "ties in" to the witness's prior testimony ([01:11]-[01:22]). The defense believes it does and that it would "make sense" to show it.
 - **Relevance to Motion:** This reinforces the idea that the defense intends to use the videos either to directly contradict the officer's account (supporting the motion's factual claims) or to provide context the officer omitted, thereby strengthening the arguments for suppression and dismissal.

In summary: This audio segment doesn't contain direct arguments *about the merits* of the Motion to Dismiss itself (e.g., detailed legal arguments about probable cause standards or chemical test validity). Instead, it captures a crucial **procedural argument** concerning the *admissibility of evidence* intended to *support* those merits. The defense is arguing for the inclusion of video evidence central to their dismissal claims, while the prosecution is holding firm on the procedural requirement of proper foundation, ideally laid through the witness whose actions are depicted. The outcome of this procedural point directly impacts the defense's ability to visually substantiate the claims made in their written Motion to Dismiss during the hearing.

In a court hearing presided over by Judge Hruby-Mills, discussions centered around motions to suppress and dismiss evidence related to a DUI case. Defense attorney Golub and Prosecutor Dunkelman engaged in detailed exchanges concerning procedural and evidentiary matters. The defense argued against the probable cause of a traffic stop, citing the officer's alleged traffic violation during the U-turn and issues with the administration and results of a breathalyzer test. Trooper Ernstsen, a corporal with the Utah Highway Patrol, testified about his training, the events leading to the DUI arrest, and his administration of field sobriety and Intoxilyzer tests. Prosecutor Dunkelman called one witness to support the state's case, focusing on video evidence from the officer's body

camera and dash cam. Judge Hruby-Mills emphasized procedure, acknowledging procedural objections from the prosecutor regarding the submission of video evidence by the defense. The hearing also touched on possible next steps, including the submission of additional evidence and written arguments, with Judge Hruby-Mills scheduling a summary arguments phase for the motions.

In the second courtroom proceeding, the discussion centers on Defendant Mr. Golub's motion to suppress evidence, involving video evidence from a dash cam and a body cam, which he argues should be part of his defense. The central dispute lies in whether the dashcam footage can prove that Mr. Golub signaled when driving, which he claims contradicts the prosecution's assertions. Prosecutor Dunkelman raises objections regarding the foundation of the evidence and procedures, which the court addresses by advising Mr. Golub on necessary procedural steps to lay a proper foundation for his exhibits. During the hearing, Mr. Golub questions Corporal Ernstsen regarding the dash cam footage and Intoxilyzer test, arguing the tests were mis-administered and could demonstrate bias or mishandling by the officer. However, the Judge finds no sufficient evidence to support Mr. Golub's claims about the failure to signal and potential bias in administering the breath test, concluding that the tests were conducted properly according to standards. Mr. Golub also wants to suppress pre-Miranda statements, arguing they were made under custodial interrogation, but the court finds no supporting evidence presented. Despite Mr. Golub's various concerns, including an officer's arrest bias and procedural issues, the Judge denies the motion to suppress, stating that those arguments lack evidentiary support in the provided testimony. The court then moves to set a trial date for Mr. Golub's DUI case and discusses procedural steps, like selecting a jury and filing potential pretrial motions, establishing the timeline for the upcoming trial phase.

III. VIDEO IV. TROOPER ERNSTSEN—BODYCAM (86:09 min; B&W)

[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.

IV. Video VII (dashcam; color; 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.

[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.

V. 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

VIDEO IV. TROOPER ERNSTSEN; BODYCAM; LENGTH 1:26:09; B&W

NB: When Peter Golub speaks from the back of the vehicle it is difficult to hear, but the backseat camera catches the dialogue. Cross-reference time-stamps with VIDEO VI.

Trooper Ernstsen (Corporal Brock Ernstsen) [00:00:00] [Corporal Brock Ernstsen is driving squad car—a truck. Camera is pointed down. Cannot see road. Can see panel.]

[00:00:26] [Corporal Brock Ernstsen activates recorder near rearview-window.] First car just pulled away from the curb, went across the first lane, and into the middle lane. Never signaled, [mumbles] very aggressively. What do you want me to say?

NB I signaled pulling away from the curb, but automatically turned blinker off when I pulled into middle lane. There were no other cars on the road.

[00:01:33] [coms talk, unintelligible].

[00:01:39] [coms talk] 1098. I got a 741 Sierra Alpha.

[00:02:26] [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] [turns on lights].

[00:03:32] [exits squad truck].

[00:03:45] [Approaches vehicle. Peter Golub (Peter Golub) has window rolled down and license ready. Corporal Brock 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?"

Peter Golub [00:04:07] No.

Corporal Brock Ernstsen [00:04:08] Do you have proof of insurance?

Peter Golub [00:04:13] [Peter Golub reaches into glovebox and hands a document to Corporal Brock Ernstsen.]

Corporal Brock Ernstsen [00:04:14] That's the registration.

Peter Golub [00:04:15] Oh.

Corporal Brock Ernstsen [00:04:16] I need the insurance.

Peter Golub [00:04:17] It's somewhere here, but this isn't my car.

Corporal Brock Ernstsen [00:04:18] What's that?

Peter Golub [00:04:20] Here's the insurance.

Corporal Brock Ernstsen [00:04:25] Uh... this is some sort of... this is for the actual car, like a safety rating sheet...

Peter Golub [00:04:26] [*looking through various papers*] We definitely have it.

Corporal Brock Ernstsen [00:04:30] What are you up to tonight?

Peter Golub [00:04:31] I'm just going home. I've been teaching all day.

Corporal Brock Ernstsen [00:04:36] Teaching all day, huh?

Peter Golub [00:04:37] Yeah.

Corporal Brock Ernstsen [00:04:39] Where do you teach?

Peter Golub [00:04:40] University of Utah [*continues to look for insurance*].

Corporal Brock Ernstsen [00:04:41] What was that?

Peter Golub [00:04:43] The University of Utah.

Corporal Brock Ernstsen [00:04:44] What? What do you teach?

Peter Golub [00:04:48] English.

Corporal Brock Ernstsen [00:04:49] English?

Peter Golub [00:04:51] [*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.

Corporal Brock Ernstsen [00:05:01] Okay, well... I'm just trying to figure out if you have insurance.

Peter Golub [00:05:03] I think we have it somewhere here. I have insurance, definitely. [*Corporal Brock Ernstsen shines light inside car and looks in back seat.*] I guarantee you my mother has insurance."

Corporal Brock Ernstsen [00:05:10] Okay, you have it on your phone or anything?

Peter Golub [00:05:13] Not on my phone. (*Looks back through glovebox papers.*)

Question: Does he have probably cause to start criminal investigation? Does he have to announce that he's conducting a criminal investigation?

Corporal Brock Ernstsen [00:05:23] Anything to drink tonight?

Peter Golub [00:05:29] Um... I had... I had two Coronas at the bar

Corporal Brock Ernstsen [00:05:30] Two Coronas at the bar? How long do you think?

Peter Golub [00:05:32] I drank a glass of water before I came out.

Corporal Brock Ernstsens [00:05:34] Yeah.

Peter Golub [00:05:35] I don't know, an hour ago?

Corporal Brock Ernstsens [00:05:37] 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.

Peter Golub [00:05:43] What does it look like?

Corporal Brock Ernstsens [00:05:47] It can look like a lot of different things depending on the insurance company. But...

Peter Golub [00:05:50] This? [*Hands over another piece of paper.*]

Corporal Brock Ernstsens [00:06:35] 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.

Peter Golub [00:06:40] Okay. I'm so sorry.

Corporal Brock Ernstsens [00:06:59] You just look for the insurance. [*Walks back to squad car with license and enters vehicle.*] Salt Lake 311 10 60.

Dispatcher [00:07:16] "311."

Corporal Brock Ernstsens [00:07:18] About 2600 south State St on Echo 1 Sierra Alpha.

00:07:22] Looks up plates on computer.

Computer reader voice: "Vehicle inquiry. 471SA returns a 2016 Hyundai Sonata/limited passenger vehicle, owned by Golub, Tatiana. Out on Violator: Priority 2."

Corporal Brock Ernstsens "Well, hello."

Computer: "Out on 600 s. State Street. License is valid"

Corporal Brock Ernstsens (*Enters license into computer*) He dropped an F-bomb as I was walking away from the car. I have no idea... He... he said he just wanted to go home.

Computer: License is valid. Warning: Driving arrest conviction.

Computer: I didn't say anything about (*mumbles/slurs speech*)... 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.

Coms talk: (officer) Salt Lake 557 10 42.

Coms talk: (dispatch) 557 23.

Corporal Brock Ernstsens (9:10) 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.)

Computer: License is valid. Warning one driving arrest. Warning one driving conviction. Corporal Brock Ernstsen. 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 a... cause I think we're like up on the actually... uh... land 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] [*Exit squad car and walks back to Peter Golub's vehicle.*] Find it?

Peter Golub [00:10:28] No but she can dictate it to you.

Corporal Brock Ernstsen [00:10:28] What?

Peter Golub [00:10:28] My mom can dictate it to you.

Corporal Brock Ernstsen [00:10:28] Dictate what?

Peter Golub [00:10:28] The insurance number.

Corporal Brock Ernstsen [00:10:28] What's that?

Peter Golub [00:10:28] She says that she can just read it out to you.

Corporal Brock Ernstsen [00:10:28] Oh, that's okay. I'm gonna have you step out. I need you to step out of the car.

Peter Golub [00:11:06] [*speaks to mother on phone*] He says I have to get out of the car. [*Peter Golub exits vehicle*].

Corporal Brock Ernstsen [00:11:06] Let's get up here on the side. 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.

Peter Golub [00:11:06] That's okay.

Corporal Brock Ernstsen [00:11:06] 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?

Peter Golub [00:11:06] No.

Corporal Brock Ernstsen [00:11:06] You don't have any weapons on you do you?

Peter Golub [00:11:06] I don't have any weapons. I am very exhausted.

Corporal Brock Ernstsen [00:11:06] 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?

Peter Golub Yes. [*Takes out gum and tosses it next to headphones.*]

FIELD SOBRIETY

Corporal Brock Ernstsen [00:11:11] 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 Corporal Brock 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 and not in his pockets. He remains as is.*) 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 in response—not seen on video.*) 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?

Peter Golub Yes.

Corporal Brock Ernstsen Okay. Alright. So I want you... Do you wear contacts or glasses?

Peter Golub No.

Corporal Brock 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?

Peter Golub Yes.

Corporal Brock Ernstsen So I want you to follow my fingertip with your eyes.

Peter Golub Okay.

Corporal Brock Ernstsen [00:12:34–00:12:45] Don't move your head, okay [*moves his index finger in front of Peter Golub's face.*] Okay. You can blink if you need to. It can make your eyes dry.

Peter Golub [*laughs nervously*] Yes, okay.

Corporal Brock 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 in front of Peter Golub's face again.*)

[00:00:13:28–00:14:19] [*Corporal Brock Ernstsen ads jerking motions, moving finger slowly and then jerking his finger from left to right out of Peter Golub's line of sight. Peter Golub is standing straight—does not sway or stumble.*]

[00:14:20–00:14:34] [*mumbles, unclear*] Just look straight up, okay? [*Continues moving finger*] Okay.

[00:14:35] [*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. (*Corporal Brock Ernstsen points north. Peter Golub stands with feet together as before 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 point 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 stands with hands at sides and right heel on left toe.*) 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?

Peter Golub [00:14:55] Yes, Sir. (*Peter Golub's voice sounds hoarse, and he coughs after responding.*)

Corporal Brock Ernstsen [00:15:18] 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. (*Corporal Brock Ernstsen takes the same heel-to-toe position.*) When I tell you to begin, I want you to do it like this. (*Corporal Brock Ernstsen walks an imaginary line perpendicular to Peter Golub's line.*) One, two, three, all the way to nine steps. (*After taking three steps, Corporal Brock Ernstsen stops approximately two feet away from Peter Golub and shines his flashlight toward Peter Golub.*) 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. (*Corporal Brock Ernstsen turns himself around with five dainty steps and takes three more steps.*) And then one, two, three (*Corporal Brock Ernstsen clearly steps off line*) all the way to nine steps back. (*Throughout the demonstration, Peter Golub has been standing still in heel-to-toe position with hands at sides.*) 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.

Peter Golub [00:15:40] (*in the same position he's been standing in for minutes*) Left foot first?

Corporal Brock Ernstsen [00:15:41] Your starting position is a zero. Your first step is one. (*Doesn't answer yes/no question.*) Yep. Do you have any other questions?

Peter Golub [00:15:44] Every step I take I say, "One, two, three, four"?

Corporal Brock Ernstsen [00:15:46] Yep. Count every step out loud. Yep. Do you have any other questions?

Peter Golub [00:15:51] I think—

Corporal Brock Ernstsen [00:15:52] Feel like you understand everything?

Peter Golub [00:15:55] I think so, Sir.

Corporal Brock Ernstsen [00:16:00] Okay. Whenever you're ready, you can begin.

Peter Golub [00:16:10]: (*begins walking and counting*) One, two, three, four, five, six, seven, eight, nine... (*stops*). Is this when I turn around?

Corporal Brock Ernstsen Yeah, just do the best you remember.

Peter Golub (*turns around using two steps, not the five dainty steps taken by Corporal Brock Ernstsen*) So this is how I start again? One...

Corporal Brock Ernstsen Yeah, just like... Do the best you can.

Peter Golub (*begins walking back and counting*) One, two, three, four, five, six, seven, eight (*steps on own toe and stumbles*). Shh! (*repeats step*) eight, nine, ten... Oh, just nine, ten (stops). Wait, how many? Just nine, right? Nine. I already did it. Sorry.

Corporal Brock Ernstsen On this next one, just stand with your feet and toes together like this with your hands down to your sides. (*Peter Golub resumes the same rigid 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 (*Corporal Brock Ernstsen barely raises his left foot off the ground and puts his arms out.*) Put your foot down at the ground. Both legs need to stay straight. Arms stay down to your side (*Corporal Brock Ernstsen's arms are out 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 his foot down*), and just keep counting until I tell you to stop. Okay. So...

Peter Golub Either... either foot.

Corporal Brock 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?

Peter Golub (*shakes hands to loosen stress*) Um—

Corporal Brock Ernstsen What was that?

Peter Golub It's just stand on one foot and put the foot out?

Corporal Brock Ernstsen Yep. Okay? You understand it?

Peter Golub Yes, Sir.

Corporal Brock Ernstsen No questions?

Peter Golub No.

Corporal Brock Ernstsen Okay whenever you're ready.

Peter Golub So just hold one foot out?

Corporal Brock Ernstsen Yep, just like a showed you.

Peter Golub (18:16): (*stand on left foot and puts right foot out*)

Corporal Brock Ernstsen (*Before Peter Golub can begin, Corporal Brock Ernstsen interrupts him.*) Count out loud.

Peter Golub (*still standing on left foot, lifts right foot even higher*) I'm sorry. One, two, three, four, five—

Corporal Brock Ernstsen Put your foot down. (*Peter Golub begins to bring foot back but before it can touch the ground Corporal Brock Ernstsen interrupts again.*) Point your toe.

Peter Golub Oh, like that?

Corporal Brock Ernstsen There you go.

Peter Golub (*still standing on left foot*) One, two, three, four, five, six, seven, eight, nine, ten, ele—

Corporal Brock 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. (*Corporal Brock Ernstsen turns away and begins walking back to car. Peter Golub picks up his headphones.*) Yeah, you can grab those headphones if you want. (*Both walk Corporal Brock Ernstsen squad car.*) I just gotta grab something real quick. (*Peter Golub is standing in front of lights where Corporal Brock Ernstsen told him to stand. The car lights are shining straight into his eyes.*)

[NB The rest of this conversation is hard to hear as they are standing in the open road in front of the trooper's truck while the engine is running.]

Corporal Brock Ernstsen [19:10] (*returns from car with breathalyzer*) Do you have anything in your mouth?

Peter Golub No.

Corporal Brock Ernstsen So this thing is called a preliminary breath-test. Okay. You just put your lips around that straw and blow.

Peter Golub (*bold interlocked hands in front of him*) Can you please just let me go?

Corporal Brock Ernstsen [] Well, I'll let you know.

Peter Golub I'm gonna go to jail.

Corporal Brock Ernstsen Do you not wanna do this?

Peter Golub Come on. I mean just... I just wanna go home... come on...

Corporal Brock Ernstsen Any reason why?

Peter Golub (*quickly make the hands-up-don't -shoot gesture*) No! I mean. I just... I mean just... you know.

Corporal Brock Ernstsen You've had some drinks?

Peter Golub Yeah.

Corporal Brock Ernstsen (*inaudible*)

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.

Corporal Brock Ernstsen You know what I should do?

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.

Corporal Brock Ernstsen You think you should be driving?

Peter Golub (00:20:51): 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 the back, who is still standing in front of the truck with his head in the lights*). Yes, I probably should have just gone to sleep. I've been teaching since 7:30 [*sic*—7:15] till 8 p.m. I teach in the Granite School District and then I teach at the University of Utah.

Officer 2: (*unclear*) Do we have a problem here?

Corporal Brock Ernstsen Okay.

Peter Golub Um...

Corporal Brock Ernstsen It's Peter, right?

Peter Golub Yes.

Corporal Brock 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 puts hands behind back. Officer 2 and Corporal Brock Ernstsen each take a hand. Officer 2 takes headphones and speaks into his two-way radio*.) Is that too tight?

Peter Golub Yeah, they're fine.

Corporal Brock Ernstsen Let me just you turn and face me. I just gotta search your pockets. Do you have anything... (*inaudible*) (*Corporal Brock Ernstsen searches Peter Golub's pockets*.) Widen your stance for me. (*Peter Golub widens stance. Corporal Brock Ernstsen searches frisks legs*.) Alright. Will you just walk. Are those too tight (*checks handcuffs*). Thanks for being cooperative. We're gonna go into my car.

Officer 2: (*opens door*) Watch your step. (*Peter Golub enters vehicle*.)

Corporal Brock Ernstsen Do you need anything out of your car? Your wallet, phone...

Peter Golub No, thank you. Is there anyway the car could not be impounded?

Corporal Brock Ernstsen (23:04) I have to impound it.

Peter Golub Look. This is just, you know... It's a horrible thing. And I can call someone. [Both Officer 2 and Corporal Brock Ernstsen approach the vehicle, so I'm not entirely sure which is speaking in the following exchange.]

Corporal Brock Ernstsen I understand, but it's a state statute when you're arrested for a DUI.

Peter Golub Alright.

Corporal Brock Ernstsen You're sure you don't want your phone or walled? You want everything to be left in the car?

Peter Golub I just uh...

Corporal Brock Ernstsen It's probably good to get your wallet and phone in case you wanna call somebody.

Peter Golub I um... You can get my phone?

Corporal Brock Ernstsen Yeah, I can go grab it.

Peter Golub Can I just grab it?

Corporal Brock Ernstsen No. I'll go grab it. (*Door is closed. Corporal Brock Ernstsen and Officer 2 walk back to Peter Golub's vehicle. Corporal Brock Ernstsen reads plates into radio.*)

Officer 2 (O2): Did you get his driver's license?

Corporal Brock Ernstsen Yeah. (*Corporal Brock Ernstsen and Officer 2 walk back to Corporal Brock Ernstsen's squad truck*). I'm just gonna pull up a little bit. (*Corporal Brock Ernstsen opens truck door and speaks to Officer 2*) Oh, I guess, I'm just gonna (*inaudible*)...

O2: It's all good (*begins walking back to Peter Golub's vehicle*).

Corporal Brock Ernstsen [00:25:10] Okay (*Corporal Brock Ernstsen gets in truck, drives forward, and gets back out. Corporal Brock Ernstsen searches Peter Golub's vehicle.*)

Corporal Brock Ernstsen [*Corporal Brock Ernstsen and O2 search Peter Golub's vehicle.*] Actually, I guess, it might be easier to just... to transfer (*unclear—traffic*).

O2: Yeah, transfer it down to section.

Corporal Brock 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.

Officer 2: Okay.

Corporal Brock Ernstsen I can do it as well.

Officer 2: I don't wanna get up all in your business. [WHAT DOES THIS MEAN? WHAT IS THE IMPLICATION? WHAT MIGHT BE THE PROBLEM?]

Corporal Brock Ernstsen [00:26:00] It's all good. I mean, it'd be cool if you did. Thank you.

O2: [00:26:29] What caught your attention?

Corporal Brock 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 and tossing personal belongings throughout the cabin.*]

- 1) DID SIGNAL WHEN PULLED FROM CURB, SIGNAL AUTOMATICALLY TURNED OFF WHEN CROSSED LANE, SIGNALLED WHILE CROSSING LANE BUT TURNED OFF WHEN IN SECOD LANE
- 2) There was no traffic. No other cars on road. Peter Golub crossed into middle lane.
QUESTION: Is there a difference between LANES and LANES OF TRAFFIC?

O2: Do you wanna look... [*inaudible*]

Corporal Brock Ernstsen What?

O2: Are we gonna look through all this? [*unclear*]

Corporal Brock Ernstsen Yeah. Some of this stuff is pretty weird, huh? Alright. [*Corporal Brock Ernstsen walks back to driver-side; they continue searching.*] He didn't have the fob on him.

O2: What was that?

Corporal Brock Ernstsen He didn't have the fob.

O2: There's a cell phone here.

Corporal Brock Ernstsen Yeah.

O2: Here's the phone. Is this a Hyundai?

Corporal Brock Ernstsen Yeah.

O2: Keep looking?

Corporal Brock Ernstsen Yeah. [*He takes keys and closes doors.*] I opened the trunk so, it [*keys fob*] was just in the center consol. [*Troopers point their lights inside trunk and begin searching the trunk.*] 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 [*in reference to sample/seed bags inside hiking bag.*] They must have a dog. Look at all these plastic bags.

O2: I'm gonna put some hand sanitizer on.

Corporal Brock Ernstsen Yeah. [*Walks back to squad car and takes out hand sanitizer, walks around squad car, closes door, walks around, opens door gets in driver's seat.*]

Peter Golub Is there any way I could not go to jail?

Corporal Brock Ernstsen What's that?

Peter Golub Is there any way I could not go to jail? I need to go to work in the morning.

Corporal Brock Ernstsen Well.

Peter Golub I could lose my job. [*NB UT teacher license has been denied with a review after the case is settled.*]

Corporal Brock Ernstsen My agency requires for me to take everyone to jail who I arrest for a DUI. Sorry man.

Peter Golub [*inaudible*].

Corporal Brock Ernstsen From what agency, though?

Peter Golub [*inaudible*].

Corporal Brock Ernstsen Huh?

O2 [00:32:33] [*walks to Corporal Brock Ernstsen's driver's side*].

Corporal Brock Ernstsen [*rolles down window*] Sorry.

O2: Oh you're... I thought you were... Well, that's the inventory. It's done.

Corporal Brock Ernstsen Okay. Cool.

Peter Golub Could you...

Corporal Brock Ernstsen What's that? Sorry man. I can't hear you real good.

Peter Golub I'm exhausted, and I need to work in the morning.

Corporal Brock 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.

Q: DID HE HAVE TO ARREST ME FOR A DUI? At this point, his only indication that I've been drinking are: glossy/blood-shot eyes and the field sobriety test. IS IT NOT

POSSIBLE FOR SOMEONE WITH THESE INDICATIONS to be released? Small point. But this is technically a LIE.

Peter Golub So you really don't think I passed the field...

Corporal Brock Ernstsen What's that?

Peter Golub You really don't think I passed the field sobriety test.

Corporal Brock 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?

Peter Golub 801-618-7609.

Corporal Brock Ernstsen 7691?

Peter Golub 7609.

Corporal Brock Ernstsen 7609?

Peter Golub Yes, sir.

Corporal Brock Ernstsen Are you still at 3821 south 2000 east? [*correct address is 3921 south.*]

Peter Golub Yes. [Corporal Brock Ernstsen enters report into computer.]

Q: WHAT ARE THE CLUES? Look at testimony. Does he name these clues? Does he provide sufficient reason for saying, "I don't feel you're safe to drive"?

Question each of these:

- 1) Eyes: exhausted
- 2) Walk-and-turn test: walked straight line, took extra step (but was nervous, having numbness in arm/hand).
- 3) What are the "things" implied in "those types of things"?

BREATH Corporal Brock Ernstsen ST PERMISSION [00:38:25]

Corporal Brock Ernstsen [00:38:25] So I just need to read some things, okay? Um... okay? How do you pronounce your last name? Is it Golub?

Peter Golub [00:39:03] Mm-hm.

Corporal Brock Ernstsen [00:39:05] [reads breath test statement] 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 hear by request you submit to a chemical test to determine the alcohol and/or drug content of your body. I hear by 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 denial, revocation, or dismissal of your driving privilege, or refusal to issue you a license. What is your official response that you submit to a test.

Peter Golub [00:39:52] Um, I mean, you can. You do whatever the fuck you want.

Corporal Brock Ernstsen [00:39:54] What was that?

Peter Golub Yes. Thank you! Yes, I submit.

Corporal Brock Ernstsen Okay. [*enters statement into computer. Exits vehicle and walks toward squad car of Trooper 2.*] Did he give you a card?

O2: Yeah, just uh... [hands print-off to Corporal Brock Ernstsen]. Here you go.

Corporal Brock Ernstsen Good man, thank you.

O2: Not a problem.

Corporal Brock Ernstsen Preciate [*sic*] that [*walks back to squad car and enters vehicle*].

Peter Golub [*Corporal Brock Ernstsen is rustling paperwork next to mic making it hard to hear dialogue.*] Can you... [*unclear*].

Corporal Brock Ernstsen Sorry, what was that?

Peter Golub I take... [*unclear; papers still rustling*].

Corporal Brock Ernstsen So we're doing uh... I'm requesting a breath test now. That doesn't show any medications, right? It's just...

Peter Golub What I was wondering...

Corporal Brock Ernstsen What's that?

Peter Golub Do you take a blood test?

Corporal Brock 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?

Peter Golub Nothing, nothing. I was just... [*inaudible*]

Corporal Brock Ernstsen Sorry I can't hear you too good. [*Drive in silence*].

Corporal Brock Ernstsen [00:47:23] [*Speaks into coms*] Salt Lake 311. Entering Special Ops. [00:48:07]
[*Corporal Brock Ernstsen and Peter Golub exit vehicle and head towards SO Building.*]

Corporal Brock 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 into your mouth because the alcohol that's in your stomach could be in your mouth Blood test results. We don't want it to be elevated. We just wanna get out of here. So just don't burp in the next 15 minutes. Um, [*pats machine*] this is the machine ... okay. So, in a minute if you want me to enter your information into my ... 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 get a ... If you're not blowing enough air, Okay? I'll be right here and tell you to blow a little longer and take your time. When you blow enough air.

Peter Golub Yes, sir.

Corporal Brock Ernstsen What was that?

Peter Golub Oh, nothing.

Corporal Brock Ernstsen 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, now. If you don't, that's fine.

Peter Golub Obviously.

Corporal Brock Ernstsen What was that?

Peter Golub I have a fucking job.

Corporal Brock 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.

Peter Golub I need to be at work at 7 a.m.

Corporal Brock Ernstsen I got you.

Peter Golub I need to sleep.

Corporal Brock Ernstsen So here's some advice when you're over there.

Peter Golub Shut the fuck up, and follow directions.

Corporal Brock Ernstsen Well, just follow directions. Don't give the staff at the jail and 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 need to 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. And the end, I always feel responsible. Um, really doing a good thing here. Um, [coughs] do you have any questions?

NB: I was put in the pit. Does that imply that someone at the jail made the decision, I wasn't drunk?

Peter Golub No.

Corporal Brock 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?

Peter Golub Since 2008, actually.

Corporal Brock Ernstsen What was that?

Peter Golub [*loudly*] Since 2008, actually. I just came back for this first semester.

Corporal Brock Ernstsen This is your first time back?

Peter Golub I started teaching there in 2008. Then I taught at Columbia in 2010.

Corporal Brock Ernstsen I have an associate's from the community college. And then I've gone to the U.

Peter Golub Wow. Right here in Utah.

Corporal Brock Ernstsen Yeah.

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.

Corporal Brock Ernstsen Yeah.

Peter Golub Thank you so much.

Corporal Brock Ernstsen I do what I can. But I'm not here trying to ruin your life or anything.

Peter Golub Well, you're out to ruin everyone's life.

Corporal Brock Ernstsen What's that?

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.

Corporal Brock Ernstsen I got man. I'm not trying to ruin your license.

Peter Golub Oh, you've already succeeded.

Corporal Brock Ernstsen I doubt that man. I'm trying to...

Peter Golub I will commit suicide. This is fucking horseshit!

Corporal Brock Ernstsen Please try not to say that.

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?

NB: I have not got one of these yet, i.e. I'm saying I will very upset if I'm convicted of this one.

Corporal Brock Ernstsen Corporal Brock Ernstsen. My name will be on the report too.

Peter Golub Well, what's your badge number?

Corporal Brock Ernstsen Brock Ernstsen.

NB: Does him refusing to give a badge number mean anything?

Peter Golub Well, where'd you go to high school?

Corporal Brock Ernstsen Skyline.

Peter Golub Oh, cool. I was at Olympus.

Corporal Brock Ernstsen Really? I was 95.

Peter Golub Oh jeez. I graduated in 2000. That's pretty close.

Corporal Brock Ernstsen Yeah.

Peter Golub We may even have hung out.

Corporal Brock Ernstsen My little brother graduated in 2000. I'm trying to think... My friends played baseball a lot over at Olympus High School.

Peter Golub Did you ever do football.

Corporal Brock Ernstsen I played like a year of football Sky. Back when Skyline was a powerhouse.

Peter Golub Yeah.

Corporal Brock Ernstsen But then I just played rugby.

Peter Golub Yeah.

Corporal Brock Ernstsen And then I wrestled. Yeah.

Peter Golub What position did you play in football?

Corporal Brock 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...

Peter Golub Did you ever leave the city?

Corporal Brock Ernstsen Do I ever leave the city?

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.

Corporal Brock Ernstsen Yeah, well... I lived in Honduras for two years.

Peter Golub That's cool. Was that for your mission?

Corporal Brock Ernstsen Yeah.

Peter Golub Nice. You convert many Hondurans?

Corporal Brock Ernstsen What's that?

Peter Golub Did you convert many people?

Corporal Brock 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.

Peter Golub Cool, yeah. I sometimes translate up there. In the uh... in the... um... in the Open World Program for the Feds.

Corporal Brock Ernstsen Oh yeah.

Peter Golub You know. Dick Cheyney had two DUIs. And he seemed to have done fine.

Corporal Brock Ernstsen What?

Peter Golub Um... yeah... You should look me up.

Corporal Brock Ernstsen Huh?

Peter Golub You should look me up.

Corporal Brock Ernstsen What?

Peter Golub Look up my first and last name.

Corporal Brock Ernstsen Look you up on... like Google.

Peter Golub Yeah, you know how to use the internet.

Corporal Brock Ernstsen Why's that.

Peter Golub It'll be funny.

Corporal Brock Ernstsen What do mean?

Peter Golub I mean everyone—

Corporal Brock Ernstsen Huh?

Peter Golub I mean everyone... you know, it'll just... it'll be so funny. You can look at pictures.

Corporal Brock Ernstsen Like pictures from the U or what?

Peter Golub No, from California.

Corporal Brock Ernstsen From California? Like on Facebook or Instagram or something.

Peter Golub Nah, I don't use Facebook or Instagram. I mean I have some pictures on Facebook, like by my mom.

Corporal Brock Ernstsen It's just on, like, on Google. Just search your name and some funny pictures show up.

Peter Golub Look at the Beverly Hills ones.

Corporal Brock Ernstsen Beverly Hills?

Peter Golub Just... it doesn't matter. I have a pretty unique name. Um... you know—

Corporal Brock Ernstsens I got ya. So it's gonna show some stuff that, like, I probably don't want to see.

Peter Golub No, I'm relatively famous. You'll see picture of me and, like, James Franco.

Corporal Brock Ernstsens Okay.

Peter Golub What fucking 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.

Corporal Brock Ernstsens I hope not, man. I... I—

Peter Golub I might. But I have two jobs.

Corporal Brock Ernstsens Here's the thing. I'm not, like, gonna call up the University of Utah like, "Hey..."

Peter Golub No. Obviously, I'm not gonna lose my University of Utah job. I'm gonna lose my Granite Schol District job.

Corporal Brock Ernstsens Possibly. Yeah.

Peter Golub Absolutely.

Corporal Brock Ernstsens I don't know, man. A lot of people they're gonna lose their job, and then, like, I—

Peter Golub I'll lose my Granite School District job 100%.

Corporal Brock Ernstsens Do they do regular criminal history checks?

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.

Corporal Brock Ernstsens Where?

Peter Golub Um—

Corporal Brock Ernstsens You worked in Ukraine?

Peter Golub Yeah, I work in Russian stuff.

Corporal Brock Ernstsens Oh.

Peter Golub So, um... yeah... anyway. I absolute... You just... you just cost me one of my main jobs.

Corporal Brock Ernstsen Well, I hope not.

Peter Golub Oh, 100% I'm getting fired.

Corporal Brock Ernstsen I don't know anything about that.

Peter Golub I know you're not trying... it's just what you chose to do.

Corporal Brock Ernstsen What was that?

Peter Golub Do you pray still?

Corporal Brock Ernstsen Yep.

Peter Golub [1:00:00–1:01:15]: Ask Him. What He thinks about what you did today. Go ahead. See what He says [*machine beeps*]. [1:01:16] [*Corporal Brock Ernstsen enters information into machine.*] Thanks for waiting.

Corporal Brock Ernstsen [1:01:20] Huh?

Peter Golub [1:01:30] Thanks for waiting.

Corporal Brock Ernstsen [1:01:33] What do you mean? [1:03:01] Did you play sports at Olympus or anything?

Peter Golub [1:03:03] Safety. I mostly run.

Corporal Brock Ernstsen [1:03:10] What?

Peter Golub [1:03:12] I mostly run. You seem very fit. What do you do?

Corporal Brock Ernstsen [1:03:14] Gym.

Peter Golub [1:03:17] Nice.

Corporal Brock Ernstsen [1:03:34] You run any marathons now?

Peter Golub [1:03:36] Not very often. I'll do half-marathons sometimes. Oh, the Moab one is probably the best. It's nice.

Corporal Brock Ernstsen [1:03:45] Yeah. Like the full marathon.

Peter Golub [1:03:56] Well, you can do the full one or half.

Corporal Brock Ernstsen [1:03:45] You like the 13.1 better.

Peter Golub [1:03:34] Yeah, the last couple of times. Yeah, I like the baby one.

Corporal Brock Ernstsen [1:03:45] You ever see those guys who do, like, the ultra, like 100-mile? Those guys are nuts. I know couple guys who do that.

Peter Golub [1:04:20] Yeah, if you dedicate yourself to a thing. I mean, I'm not a marathon runner.

Corporal Brock Ernstsen [1:04:26] Yeah. Definitely takes a lot of commitment that's for sure.

Peter Golub [1:04:34] Yeah, that's true. You run for wrestling?

Chemical Breath Test [1:04:45]

Corporal Brock Ernstsen [1:04:45] For rugby. [1:05:03–1:05:30 *machine beeps*. *Corporal Brock Ernstsen attaches mouthpiece to machine*.] Alright. I just have to look in your mouth [*shines light in mouth*]. All ready for ya. [1:05:44–1:05:48 *Corporal Brock Ernstsen places mouthpiece into Peter Golub's mouth*. *Peter Golub blows into mouthpiece*.] Blow harder. [1:05:50] It's not registering at all. [*Peter Golub continues to blow as hard as he can*.] [1:05:52] It's not... [1:05:57 *The machine beeps in pulses, resets, and a makes a long beep*. *Peter Golub leans over and blows with maximum lung capacity*.] [1:06:00] Yeah, yeah. Keep going, keep going, keep going. [1:06:03] Yeah, stop. Okay, blow. [*Peter Golub continues to blow*. *Machine continues to make a long beep*.] [1:06:06] So when you hear that noise, you're blowing enough air, and you gotta do that until it tells you to stop. [1:06:10 *Machine continues to make a long beep*. *Peter Golub shows signs of being light headed and moves mouth away from the mouthpiece held by Corporal Brock Ernstsen*.]

NB In his testimony, Corporal Brock Ernstsen testifies under oath that there was nothing wrong with the machine. However, the breathalyzer lasts from 1:05:44–1:07:03; Peter Golub blows for a total of 75 seconds with minimal time to breathe. Machine seems to stall or malfunction. Corporal Brock Ernstsen keeps mouthpiece in Peter Golub's mouth even when he tries to breathe. Peter Golub visibly out of breath, flushed face, shakes.

Peter Golub [1:06:11] I'm outta...

Corporal Brock Ernstsen [1:06:13 *Corporal Brock Ernstsen places mouthpiece back in Peter Golub's mouth*] 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.

[1:06:19 *Peter Golub takes a breath*] You're gonna blow longer than that.

[1:06:21 *Peter Golub blows again with a full breath*] Keep going, keep going, keep going, keep going.

[1:06:27] Stop! [*Doesn't take mouthpiece out of Peter Golub's mouth*. *Peter Golub keeps blowing now with flushed face and puffed out cheeks*.]

[1:06:32] You gotta keep going. Make that noise the whole time.

[1:06:36] Keep going, keep going, keep going [Peter Golub takes breath.] Oh, you stopped! You gotta blow like a couple seconds longer.

[1:06:44 Peter Golub teeters on chair.]

[1:06:45 Corporal Brock Ernstsen puts mouthpiece back in Peter Golub's mouth and Peter Golub blows.] I'll tell you when to stop. Keep going, keep going, keep going, keep going.

[1:06:56 Peter Golub begins to shake and is visibly distraught but continues to blow with maximum output.]

[1:06:57] Keep going, keep going, keep going, keep going.

[1:07:03] Corporal Brock Ernstsen removes mouthpiece] Alright, you're good.

[1:07:05] Peter Golub doubles over

Corporal Brock Ernstsen [1:07:10] So the machine is gonna print that out for you.

Peter Golub [1:07:03] It's not gonna be very good [1) This is dark humor, sarcasm. Peter Golub expected it to be .00–.03 as he had consumed two beers at the bar. 2) Convinced the test was fake. 3) However, he was also under the impression that he had a zero limit. He was delirious, exhausted, and close to having a panic attack. Later, Peter Golub purchased a \$120 breathalyzer used by law enforcement—BACtrack model. After drinking two highpoint beers and waiting for 1.5 his BAC was .02.

Corporal Brock Ernstsen [1:07:03–1:07:30] 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—

Peter Golub [1:07:31] I don't have any drugs.

Corporal Brock Ernstsen [1:07:32] Or medications. It can be what they, what they uh, classify as an extreme DUI, which has more penalties.

Peter Golub [1:07:41] 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—

Corporal Brock Ernstsen [1:07:55] Subject test: 0.104.

Peter Golub [1:07:59] Yeah, that's bad... or good?

Corporal Brock Ernstsen [1:08:15] Alright, so. Let's go back out to my car. If you wanna call someone, you can.

Peter Golub [1:08:23 Peter Golub stands up. Both walk out door.] Well, I need them to get the car. Can you tell them about the car.

Corporal Brock Ernstsen [1:08:10] Well, do you think... it's a little. It's probably late.

Peter Golub [1:08:23] We need that fucking car. We both use it for work.

Corporal Brock Ernstsen [1:08:35] It is 12:30. You think they'll answer?

Peter Golub [1:08:42] Absolutely. They are super pissed. You have no idea.

Corporal Brock Ernstsen [1:08:43] Do they know that...

Peter Golub [1:08:45] Well, yeah. I just talked to them.

Corporal Brock Ernstsen [1:08:47] You were on the phone with your mom.

Peter Golub [1:08:48] Yeah, yeah.

Corporal Brock Ernstsen [1:08:49] Alright, well. I'm not gonna put the seatbelt on.

Question: Does he have to put the seatbelt on?

Peter Golub [1:08:52] I'm not going anywhere.

Corporal Brock Ernstsen [1:07:53] Well, we're just driving to the jail. [*Walks around squad car and gets in driver's side.*]

Peter Golub [1:09:11] 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.

Question: Is this late? Can he conduct a criminal investigation, including asking me questions (e.g. "Have you had anything to drink tonight?") without reading Miranda Rights?
Is anything before this admissible? If everything above is thrown out against me, does that mean I can't use it against him. NB To do this right, you need to cite the Fifth Amendment.

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

Real 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 an attorney. If you cannot afford an attorney, one will be provided for you."

Peter Golub [1:10:03] Yes, sir.

Corporal Brock Ernstsen [1:10:04] Having these rights in mind, do you wish to talk to me now? Wanna answer some questions?

Peter Golub [1:10:08] Sure.

Peter Golub [1:10:09] 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?

Question: What questions is he talking about? What questions?

Corporal Brock Ernstsen [1:10:19] Yes, sir.

Peter Golub [1:10:21] How do you get... Is it off? Did it die?

Corporal Brock Ernstsen [1:10:31] Actually, it might have died.

Peter Golub Yeah, because I was just getting home. I literally just stepped out to—

Corporal Brock Ernstsen [1:10:37] It's not turning on at all.

Peter Golub [1:10:39] Do you have a USB?

Corporal Brock Ernstsen [1:10:42] Uh, I have one for an iPhone. I'm gonna hurry and fill out this form real quick for the jail. [*Enters information into computer.*] [1:15:07] 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.

Peter Golub [1:15:20] Um, I don't know. It's some... it's not very high. I have three jobs but I don't make any money.

Corporal Brock Ernstsen [1:15:23] Whatever.

Peter Golub [1:15:24] Put it at 30.

Corporal Brock Ernstsen [1:15:25] Thirty thousand?

Peter Golub [1:15:26] Yeah.

Corporal Brock Ernstsen [1:15:25] Just you and the family size?

Peter Golub [1:15:27] What?

Corporal Brock Ernstsen [1:15:30] They want to know if you have any pending criminal charges, warrants, probation, parole, anything like that?

Peter Golub [1:15:36] No.

Corporal Brock Ernstsen [1:15:37] What was that?

Peter Golub [1:15:38] No.

Corporal Brock Ernstsen [1:15:39] They want to know who your current employer is. Again up to you.

Peter Golub [1:15:45] University of Utah, Granite School District, Netflix, Plint, and uh—

Corporal Brock Ernstsen [1:15:54] What? Granite School District and what?

Peter Golub [1:15:56] Granite School District, University of Utah, Netflix, Plint. We can stop.

Corporal Brock Ernstsen [1:16:07] Okay. They want to know how long you've lived at your current address.

Peter Golub [1:17:13] Um, eight years. [Corporal Brock Ernstsen types.] [1:17:35] Is there a way to charge my phone?

Corporal Brock Ernstsen [1:17:39] I don't have anything, man.

Peter Golub [1:17:41] What about the jail?

Corporal Brock Ernstsen [1:17:43] 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*]. [1:24:00] [*speaks into coms*] Salt Lake, 311, out at the jail [*begins driving*]. [1:24:20 *car seatbelt warning begins to beep*.] [1:25:04] [*to guard*] One male, no assistance.

Question: Did he fill out his report at this time?

GUARD [1:25:05]: Copy that. [Corporal Brock Ernstsen enters through gate.]

Corporal Brock Ernstsen [1:25:35] [*Parks, removes computer off stand, exits squad car, places print off inside computer, leaves firearm on floor of vehicle*.]

Peter Golub [1:26:13] [*exists vehicle*]

Corporal Brock Ernstsen [1: 26:17] This way [*both walk towards jail entrance*].

Peter Golub [1:26:38] Um, so regarding the car... [END OF VIDEO]

FILE 3

OLD

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

VI. 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

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

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

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

I. Hearing, May 29, 2024

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?

[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 roadside 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

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 in 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 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 happened on the balance test, that you didn't feel like putting down the one thing that he was... 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 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 make 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 in 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 Thornton 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-to-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:

6. 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.

7. 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).

8. **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.

9. **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.

10. **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.

[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

Notes

[00:13:51.44]

Where were you when you didn't see the blinking signal? Where you in the middle of the street or where you on the side of the road trying to conceal your presence to ensure you weren't seen? Have you ever not seen a blinking signal, but it later turned out there was a signal? For instance, during your training, where you ever made to observe signals of obstructed vehicles? So in general you've never missed a signal or accidentally thought there was no signal but later realized that there a signal? Do you think other officers have ever misidentified a traffic violation? Have any trials been overturned based on the lack of visual evidence or evidence for instance video evidence that showed the officer made a mistake and misidentified an offense? Etc. develop this line of questioning. the point is to get him to either admit to the possibility of him making a mistake, or to stubbornly insist he never makes mistakes which should then be exploited to show that the officer is presenting an unreasonable position, since clearly anyone can make such a mistake at any time, especially at night, from a far away distance, with multiple cars obstructing his view.

[00:15:04.40]

Ask questions about other establishments. Does he watch every establishment that serves alcohol? Based on what criteria does he watch some establishments and not others.

[00:15:36.88]

look up. cross reference with enitre Part 2 Applicability and Obedience of Traffic Laws" 41-6a-201 to 41-6a-217, as well as any other possibly relevant codes that relate to emergency vehicle protocols for responding to emergencies and conducting "emergency responses/investigations.

[00:16:28.15]

Were in any kind of hurry to get in position to observe Mr. Golub's vehicle? Were you rushed? Or did running the red light give you enough time to get in position?

[00:16:37.26]

Do people every automatically manually turn their signal off after using it to indicate a lane change, since that doesn't automatically turn off?

[00:17:39.54]

Why did you decide to pull him over then? Did you observe any violations when Mr. Golub was getting onto the freeway? Is stopping someone as they enter the freeway cause a higher or lower probability of a traffic accident than if you'd pulled them over on the road, especially if they were under the influence and weren't able to pull over without disrupting traffic? Did Mr. Golub pull over in a safe and composed matter? So thankfully, he wasn't exhibiting signs of reckless driving when he pulled over, otherwise he could have put other drivers in danger.

[00:18:13.70]

Does blocking a lane potentially put other drivers in danger? But this is just a part of your job, you didn't feel it was necessary to pull further ahead on the shoulder where there was maybe

more space, more light, and so forth so that other drivers could better avoid your squad car and Mr. Golub's car?

[00:18:34.33]

Is that what you noticed? How many time do you think you've noticed: read from the Handbook, since he repeats it almost verbatim? How long did it take you to make these observations? What order did you make the observations? Was it [read quote]? Is always in this order? What order do you usually give when you're filling out a report or you giving your testifying, as in the case of (cite the last cases he's testified in, including the one where he lost). Is there another order other than the one you've onOr could it have been give different order ([perhaps more logical order]) Is it at all possible that since you've "noticed" read again so many times in the past that you could expect to observe [read again]. Make the point that not only is he repeating memorized text, but that this type of memorization is a clear sign of priming that causes confirmation bias. give def of confirmation bias and an example where memorizing an outcome makes a person more likely to observe an outcome.

[00:20:08.53]

Define "initial approach." How are these things observed? Do they always occur together? Do they ever occur individually? How do you determine glossy bloodshot eyes? Slurred speech? etc. What's the difference between slurred speech and a person's normal speaking style? At 11 pm, when you see someone with bloodshot eyes, what is the normal assumption? Could someone have glossy eyes and not be under the influence? What causes eyes to be glossy? Red? (read back of visine package). Cite if relevant to his previous answer i.e. if there is a discrepancy or if there is too much of an overlap. If possible, suggest that when elements of a complicated story never change it's an indication of lying or fabrication.

[00:20:33.28]

Did the defendant speak English? Did you hear any other language? NB Mr. Golub was speaking Russian while on the phone. Mr. Golub is a native Russian, not English speaker.

[00:21:15.64]

Cite actual clip. Ask: Do you usually say [give quote] to yourself when in the vehicle? What was going through your mind when you were saying that? What would you say was the likelihood that you were going to arrest Mr. Golub by that point (give timestamp)? What do you think What do most people assume at this stage of one of your investigations? What did Mr. Golub think his chances of being let go were?

[00:21:43.44]

Play clip. Clearly shows Mr. Golub holding door from opening into traffic.

[00:22:02.88]

Note that Mr. Golub passed the balance test 100%. Trooper E. saw no sign of balance impairment according to his recording of the balance test.

[00:22:39.91]

Read a medical diagnosis /prognosis of fatigue. Can fatigue be an "illness" i.e. medical condition? Ask TE to give official medical screening procedure. Based on his screening did he notice any signs of fatigue? Is fatigue a medical indication? A medical diagnosis? What are it's

effects? The goal here is to have him say "No, there were no signs of fatigue" or "No, fatigue was not a factor" etc. Then to stress that Mr. Golub had been awake since 5:30 a.m. and taught until 8 p.m.

[00:22:41.79]

Ibid. Make it clear that either TE doesn't have enough medical knowledge to understand the influence of fatigue, or does not have the medical skill to identify fatigue.

[00:22:47.79]

Re-state that "fatigue" is not only a medical "illness" but can cause (name all the "signs" he'd observed up to this point) and is not only a typical interrogation technique but is the number one cause of psychosis, disorientation, and confusion in normal people, leading people to make false statements and can be lethal. NB throughout the defense's cross examination, try as much as possible to invalidate/question Mr. Golub's "confession" of having "gone out with friends" and not being able to pass a breath test.

[00:23:10.31]

Ask which is the most falsifiable field sobriety test? Define falsifiability for him. Stress that the HGS is the least falsifiable test vs the balance test which is the most falsifiable.

[00:23:32.07]

Quote the manual, including the verbatim quote about eyes, speech, breath, etc.

[00:23:56.27]

Q: You saw 6/6/ clues? Are the HGN clues less or more falsifiable than say the balance test?

[00:27:03.57]

This is good. He keeps emphasizing random balance "signs" but records nothing on the balance test. Reference report where he mentions these things but records nothing on the actual balance test. Either he's bad at recognizing balance problems or he's bad at recording signs of balance problems.

[00:27:09.85]

Quote manual. Show that this is verbatim from the manual. List all the times he recites the manual from memory. Especially when questioned about probable cause. So he's bad at recording/recognizing balance problems, and his other "signs" are repeated verbatim, i.e. are not the product of a natural observations, and are instead projections of predetermined signs.

[00:28:20.28]

Highlight that in the main manual and in the Utah Code of Law it stresses that the entire test be fully demonstrated (i.e. with the correct number of steps) especially when forcing a fatigued distraught stranger to walk an imaginary line in the dark.

[00:30:25.19]

Q: What are the four clues? Is it like with the eye test where there are three that are doubled for each eye for a total of six for people with two eyes. repeating clues. Presumably for someone with one eye there would only be three clues. In the balance test, are there two clues per foot or are these distinct clues?

[00:30:28.63]

Ask him to repeat the four clues. Q: And which of clues did you see but forgot to record? (He'll say he didn't forget. Make the correction and say "the clues you thought were borderline") Then repeat them yourself. Q: Is there a hierarchy to these clues? Like is there

[00:31:35.66]

Very important to address this false confession. Strategy: 1) review and show entire exchange; 2) argue that this was a false confession under duress. 3) get into the weeds about whether this even counts as a confession or a clue of impairment. If a person says they are drunk that doesn't mean they are drunk just as if they say they aren't drunk also doesn't mean that they are not drunk. Strategy: Repeat the statement as "I know I will blow over." State that this statement is biconditional. Since a person can be wrong about what they think they know, which is why the law requires a test be administered to determine intoxication. Thus the statement, "I will not blow over" biconditional with the statement "I will blow over" both statements neither confirm nor deny the whether a person will or will not blow over. Thus, the statement without the corroboration of an actual test is "hearsay" with no bearing on the actual fact of what someone's Breath Alcohol Content or more importantly Blood Alcohol Level might be. Indeed, a breath alcohol test is a corollary not proof of blood alcohol content, which is why in most DUI cases advise that a blood sample be taken at the Special Operations Center (cite), because it is the blood alcohol content that determines a person's impairment. If I use mouthwash and take a Breath Alcohol Test, I will score high (cite example), but that obviously doesn't mean the person who provided the sample is under the influence or impaired by alcohol.

Also note that Utah has a penalty for refusing to take a breath test, but no refusal was documented in the report. The penalty is having your license suspended and jail time. Mr. Golub's license was never suspended or any other penalty given, suggesting that the trooper himself did not consider Mr. Golub's answer "I just want to go home" as a refusal to take the test at the time. However, despite not having given Mr. Golub even a preliminary breath test, TE had the second trooper arrest him anyway.

Is saying you don't want to do something the same as refusing to do it. For instance, if I say, "I don't want to go to work on Monday, mean I'm refusing to go to work?" "Did you inform Mr. Golub that it was an offense to refuse to take a breath test when ordered by an officer?" "So would it be accurate to say that Mr. Golub was never instructed to take the PBT?" "Is it possible that Mr. Golub would have taken the PBT if the question had been worded differently? For instance, if instead asking him if he wanted to take the PBT, you said, 'Will you take the PBT?' or if you'd just plainly said, "To establish your Breath alcohol level, you need to take the PBT?" "Could not administrating the PBT potentially affect the validity of a DUI case? Would you agree that during the time between being pulled over and the administration of an alcohol test, the driver's BAC could fall below the limit set by the state?" Cit case where this occurred. "So you would agree that getting a test done is in the best interest of the case?" "So at the time of his arrest there was no evidence confirming that Mr. Golub was or was not over the limit?"

[00:31:50.86]

Q: Did you arrest him or did another officer arrest him? A second officer put Mr. Golub under arrest.

Q: What was it like? Did he struggle? Put up any physical resistance? Refuse to put his hands behind his back? Or keep his arms stiff? Or was otherwise uncooperative? So he was fully compliant both physically and verbally? So could you say he was resigned to the arrest? Do you think you should have administered a PBT at this point?

[00:32:00.34]

Q: What is the purpose of making sure the handcuffs were loose? Vehicle inventory was done by a second officer.

[00:32:53.21]

Mr. did not ask for his phone and he did not have a wallet. This is important: TE insisted Mr. Golub take his phone, then later in the arrest took Mr. Golub's phone and offered to call Mr. Golub's mother (who is the owner of the vehicle), to put the conversation of speaker phone, and to listen to the conversation while Mr. Golub was on the phone talking to his wife. FACT: This was a an attempt at unwarranted surveillance. See Motion.

[00:33:15.61]

Open line of questioning along the lines of "What is an Intoxylizer?" It's a breath test machine. "What kind of Intoxylizers are there?" There are many models. "What kind of a model is it?" It's an 8000 model. "Are you aware that no fewer than 30,000 Intoxylizer machines have been decommissioned and destroyed across thirteen states?" "Do you know why so many police departments might choose to destroy, not update or fix, but destroy?" "Are you aware of how many court cases have been dismissed and overturned based on a judge's conclusion that not only was a breath test from an Intoxylizer unreliable, but the machine tends to elevate Breath Alcohol Content, failing to automatically invalidate a test or require a retest, even when the parameters of test administration have been grossly violated?" Cite case. "Given all this concern with the accuracy of breath tests, especially the test results provided by the Intoxylizer 8000, why didn't you feel the need to take a blood sample or even administer a second test after the advised administration-time maximum was exceeded." "Do you remember what the advised maximum test time is in The manual for the Intoxylizer 8000?" It suggests that a test shouldn't take more than 12 seconds." "Do you remember how long it took you to administer Mr. Golub's test?" "It was 144 seconds."

[00:34:04.29]

In the car, it was discovered that Mr. Golub and TE knew each other in high school. TE and his brother were on the baseball team, while Mr. Golub and his brother we skateboarders, who on more than one occasion were bullied and on one occasion assaulted by Skyline athletes.

[00:34:30.44]

Q: "Is the DUI admission the same as the Miranda Rights?" "When did you read Mr. Golub his Miranda rights?" It was hours into the arrest, minutes before Mr. Golub was taken to jail.

[00:34:54.12]

Note th

[00:35:09.68]

Q: "What's the purpose of inspecting a prisoner's mouth?" He'll correct that "prisoner" isn't the right word. "Sorry, what is the right term?" "Right, so what is the purpose of inspecting his

mouth?" "Are there any other procedures that ensure that a test is administered correctly?" "After checking a defendant's mouth what might invalidate the test?" And what do you do if you discover one of these things?" "How often is a test invalidated because a defendant has something in their mouth?" "So not very often?" "And the purpose of adhering to all these recommendations is to ensure the test is accurate?" "So to the best of your knowledge you adhered to all testing recommendations?" "is there anything else that might invalidate a test or provide an inaccurate result?" "Is the duration of the test important?" "What does the Inoxylizer 8000 manual say is the recommended maximum duration of a test?" "Have you ever readministered a test because the test period was too prolonged?" "How often do you readminister a test?" "What about when the test is the only proof the state has confirming a defendant's violation of the law, because at this point Mr. Golub hadn't broken any laws, broken any traffic laws, resisted arrest, that type of thing." the point of this line of inquiry is to show that he followed minor, unimportant protocols while straying from one of the most important ones--the proper administration of the test and its duration.

IMPORTANT: Establish that taking the test multiple times automatically provides multiple results. Q: "But you only recorded one result?" "Do you remember the other results? Or were there other results?" "So technically the test wasn't administered multiple times or it was administered multiple times but you didn't record the result?" "When you say you "tried the test multiple times, did you reset the Breathalyzer 8000 like the manual instructs." Quote manual. "So did you 'try to take the test multiple times' or did you just administer one test over a length of time many tests could have been administered?" "So you wouldn't say you stacked the tests?" "And you don't think exceeding the recommended test time by nearly 12 times could affect the outcome of the test, that it could raise the result?"

[00:36:08.55]

IMPORTANT: Quote this exchange. Q: "Do you remember the prosecutor asking you what the process for getting the Intoxylizer going is?" "She said, Prosecutor Dunkelman: what's the process for getting the Intoxylizer going' to which you responded 'Trooper Ernstsen: It's pretty simple. We just push this little green button that says start.'" "So apart from pushing the little green button, are you familiar with any of the mechanics of the machine? How it works. Which parts do what. What the mechanical and chemical process is and how it establishes a Breath Alcohol Content, and what the relation of Breath Alcohol Content is to Blood Alcohol Content, and how Blood Alcohol Content is used to support the conclusion that a person was driving under the influence? Because the test is obviously not the cause of intoxication but its correlation." "We correlate test results with the effect alcohol may have on a specific individual. Of course, this is still all statistics; each person's reaction to alcohol is different, there's nothing definitive that says a breath alcohol content of .08 causes a person's driving to be impaired, the way say the speed of light causes time to slow, or that the faster someone moves causes them to experience greater gravity."

[00:36:12.43]

Cite statement that describes how the machine malfunctions.

[00:36:22.03]

Q: "What are the diagnostic tests?" Tell him if he doesn't know. "What would happen if X test fails?" "Have you ever run diagnostics and had the machine fail? Not on this or any other machine, for instance doing your training? Or, I apologize, let me back up, how are you trained

to use this machine? Do you administer it to real people? Do you maybe use some sort of prosthetic, like one of those CPR dummies?" Have him tell you as much as possible about the training. "Were the various causes and effects of malfunctions discussed during your training?" "Is it possible for the machine to malfunction?" "What would you say is the probability that a test result is gathered from a malfunctioning machine?"

[00:36:44.31]

Quote this exchange: "When Prosecutor Dunkleman asked you whether you received and failure messages indicating the machine wasn't working, you answered "Not that I recall.' Do you recall any times when the machine wasn't working?" "What are you instructed to do if the machine doesn't work? Do you have another machine? Do you use a backup machine? Or is it easier to take a blood sample? Or maybe you submit the machine printout with the blood test?" "What are the diagnostic tests?" Tell him if he doesn't know. "What would happen if X test fails?" "Have you ever run diagnostics and had the machine fail? Not on this or any other machine, for instance doing your training? Or, I apologize, let me back up, how are you trained to use this machine? Do you administer it to real people? Do you maybe use some sort of prosthetic, like one of those CPR dummies?" Have him tell you as much as possible about the training. "Were the various causes and effects of malfunctions discussed during your training?" "Is it possible for the machine to malfunction?" "What would you say is the probability that a test result is gathered from a malfunctioning machine?"

[00:36:52.07]

Quote: "When Prosecutor Dunkelman asked you if there was any conversation during the test, you said yes. Could talking during a test invalidate the result? Do you remember what you told Mr. Golub while he was taking the test? Do you remember what Mr. Golub said? Make sure to quote the exchange on the video or show the video where Mr. Golub voices his shortness of breath to which TE instructs Golub to keep blowing. "Did Mr. Golub seem to express any signs of distress?" IMPORTANT: During the testing period there should be no conversation. Q: "While a subject is taking the test, should he be talking?" "Could it be said that talking during the test might invalidate the test?"

[00:37:37.15]

IMPORTANT He leaves out the bag. repeat his description and ask "Is there any other piece of equipment?" etc. If he doesn't say, "Another piece of equipment is the bag" (video) "What is the purpose of the bag?" "Is the bag reusable or do you get a new bag for every test?" rf. taking plastic off: Q "Why is it important to take the plastic off?" Line of inquiry meant to show the importance of eliminating contamination.

"When Prosecutor Dunkleman asked you to describe the test, 'I put the mouthpiece in their mouth and have them blow for several seconds.' Would you say that 144 seconds counts as several seconds?" "What the longest you've had someone blow into the machine to give a sample?" "During this time did that machine ever flash that it was malfunctioning?" Quote manual about the error message that appears if the test is being misadministered. Ask TE if he's ever seen this message during his training or his investigations. "What is the recommended response to a machine malfunction? What is the contingency plan if the machine malfunctions?" Also, keep asking about the blood test. Q: "Have you ever decided to take a blood sample bc the machine was malfunctioning?" IMPORTANT "What is the correlation between a Breath Test and a Blood Test?"

[00:38:49.38]

IMPORTANT Can? or can't? Quote in either case, including the "little green bars" statement which makes him seem more a kid playing at cops and robbers as opposed to conducting a real investigation.

[00:39:15.50]

What is the difference between "each attempted breath" v "attempt at getting a full breath sample." Each attempt at getting a full breath sample does need to be restarted, which includes getting a new bag and mouth piece.

[00:39:34.42]

VERY IMPORTANT TO DEAL WITH THIS QUOTE.

"So if it times out you would have to enter all that information in and get it 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."

Q: "Do you need to select new sterilized equipment? Do you need a new bag?" What might be the reason you would need to get a new b

Apart from the timeframe, what the different things that could happen during a test for it to the machine to cancel the test? Would drinking a glass of vodka between test periods be picked up by the machine? Would displacing the bag cause the machine to stop the test? Does the machine stop the test when it malfunctions or does it give you a signal and you have to restart the test?

What does "it" mean? like new equipment. Use to show that TE is obv reluctant to retake a test bc it's too much of a hassle.

Quote. What constitutes an "attempt"?

[00:40:18.01]

QUOTE: Prosecutor Dunkelman: Okay. And to your knowledge do more breath attempts raise the level of the results at all?

Trooper Ernstsen: No.

CITATION showing that it can raise or lower the breath alcohol content measured.

SHOW that either TE doesn't know how the machine works or he is lying.

Make sure to quote because TE covers this whole issue in one monosyllabic word.

[00:40:32.85]

"How many times would you say?" "How much time did the machine have until it timed out?" If 180 sec total, 36 sec.

[00:41:13.00]

You said, "the machine will time out if you don't do it within a certain amount of time. And I can't remember exactly how long it is. It's probably like a minute or two." But the test took 144 s. "Do you know what the time is? How many seconds need to pass before the machine shows an error?" This should be 180 s.

[00:41:26.04]

See if you can quote relatively to show Prosecutor's lack of knowledge of the subject matter. Maybe even ask/suggest she doesn't understand how the machine works, how blood chemistry works, how FSTs work, or what the correct arrest and test admin procedure is supposed to be.

[00:41:47.84]

She's trying to shift the focus from the duration of the test to the amount gathered.

[00:42:11.64]

Maybe, open line of inquiry to underline the fact that after 90 minutes BAC should be lower. Q: "Did you notice anything different when you checked his mouth, or was he the same?" "You didn't notice the odor of an alcoholic beverage?" "Was it stronger or weaker than odor you noticed when you first encountered him?" "So the presumption would be that his breath alcohol content was even higher when you arrested him than what you recorded." "Would you say it could've been .14 ? .15? .16? "How many DUI arrests have you made in your career? Through a GRAMMA request the defense has received TE's 23 and 24 stop to arrest statistics showing 138 and 107, respectively." "Would a person with a BAC of .16 or possibly more be able to pass the balance test 0/4?" "Would they be able to drive a vehicle without showing any signs of weaving or swerving or making any traffic violations?" SHOW that logically the BAC should be higher earlier and that such a high BAC would have made Mr. Golub drive differently and to take the FST differently.

[00:42:24.56]

"What would a good result be?" "Does what Mr. Golub said suggest he thought he would blow over? And that blowing over would mean he was guilty?" "Does that seem strange to you?" "Did he seem confident to you?" "There wasn't any irony, like where 'bad' means good?" "Could Mr. Golub have thought the BAC would clear him?" "Do you think he still thought he might go home?"

[00:43:23.43]

Check! On video he says, "You know what never mind." He stops reading the questions. Mr. Golub is answering all the questions.

[00:43:28.83]

Again, saying you don't "want to" is not the same as "choosing to stop talking."

"What is the purpose of asking all these questions?" "Is it important to ask all the questions?" "Could not asking x, y, z potentially have a negative effect?"

[00:43:38.51]

Mr. Golub did not want to call anyone. However, TE had tried to access Mr. Golub's phone to call Mr. Golub's mother in order to put Mr. Golub and his mother (car owner) on speaker phone and listen to their conversation while inside the squad car. "You say that when you got back into the car you read Mr. Golub his Miranda Rights. After that why did you try to access Mr. Golub's phone and offer to call his mother? " "According to federal surveillance law, could attempting to access a defendant's phone count as surveillance?" "Under this law, could trying to access a defendant's phone without a warrant constitute a breaking of this law?" "What is the legal protocol for gaining access to a defendant's phone?"

[00:43:46.87]

Check what Mr. Golub actually said.

[00:44:06.95]

"How long did you spend in the car?" "Was it a lot of time? Was it pretty quick? Was it average?" "What's the longest you've spent? What's the longest arrest you've ever had? What's the shortest?"

[00:44:17.75]

NOTE Mr. Golub's transcription is very poor and incomplete. The transcription is missing large sections of dialogue. This is sometimes marked in brackets as [incomplete].

[00:45:10.62]

Cross reference

[00:46:55.89]

Did you demonstrate the balance test? "Is this a natural position for someone to take?" Did you demonstrate any heuristic the defendant can use to be able to raise his arms the perfect six inches?"

[00:52:44.14]

check "sudden movements" NOT TRUE

[00:59:42.90]

How long would you say it was?

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[00:12:40.13]

So I can't hear any of this, but essentially my last line of questioning is: 1) Was the test administered correctly? A: Yes; 2) Was the test taken correctly? A: No. 3) If the test wasn't taken correctly, wouldn't that require you to perform the test again? A: Not if I administered the test correctly. 4) But not if the test was taken incorrectly? She basically started objecting... here and in other places, it almost seems like there's missing audio. Not suggesting anything or being paranoid. More just making an excuse for my inability to provide a better transcript.

[00:19:39.42]

So I'm not sure if it's on me to provide a proffer, but I was never asked to provide anything other than the motions. But Dunkelman mentions this six times, and in her closing statement

seems to suggest that it is "inappropriate" for me to make my argument in the present or future. IDK what this means.

[00:32:22.19]

Essentially, we'd all been sitting in court for some five hours. This was the final matter on the docket, and I got the false impression that they didn't want me to go on, so I didn't present all the arguments or evidence. I thought that since they had read the motions, that THEY would present their counter-arguments and then I'd give my rebuttal and thereby defending my motions.

[00:35:55.79]

finally giving up and laying into the whole forest-gump/ pikachu-goes-to-court thing.

