

**In the Supreme Court of the State of Nevada**

**Stella Sindelar**

**Appellant**

**vs.**

**The State of Nevada,  
Appellee.**

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**No. 68789** Electronically Filed  
Oct 26 2015 04:54 p.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

**Appellant's Appendix Volume 2**

<b>State's Motion to Introduce Res Gestae Evidence</b>	<b>110</b>
<b>State's Submission of Prior Conviction</b>	<b>118</b>
<b>Supression Motion Transcript</b>	<b>122</b>
<b>Trial Transcript</b>	<b>148</b>

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NICHOLE BALDWIN  
WHITE PINE COUNTY CLERK  
BY [Signature]  
DEPUTY

1 Case Number: CR-1304037

2 Dept. No. 1

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6 IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,  
7  
8 IN AND FOR THE COUNTY OF WHITE PINE  
9

10 THE STATE OF NEVADA,  
11 PLAINTIFF,

12 vs.

13 STELLA LOUISE SINDELAR,  
14 DEFENDANT.

MOTION TO INTRODUCE RES GESTAE  
EVIDENCE (PETROCELLI)

15 COMES NOW THE STATE OF NEVADA, Plaintiff, by and through its attorney, Michael  
16 A. Wheable, Deputy White Pine County District Attorney, and moves this Court for its Order allowing  
17 the admission of Res Gestae Evidence on the basis of the attached Affidavit in support of this Motion,  
18 the Memorandum of Points and Authorities attached, and all the pleadings and evidence contained in  
19 the court file.

20 Date: JUNE 5 2015

21 [Signature]  
22 Michael A. Wheable, Esq.  
23 White Pine County District Attorney  
24 801 Clark Street #3  
25 Ely, Nevada 89301

District Attorney • White Pine County, Nevada  
801 CLARK STREET, SUITE 3 • ELY, NEVADA 89301



MEMORANDUM OF POINTS AND AUTHORITIES

FACT STATEMENT

On March 27, 2013 around 7:38 p.m., White Pine County Sheriff's Deputy Caleb Sumrall was on patrol in Ely, White Pine County on Great Basin Blvd, heading toward the East Aultman Street intersection when he observed a gray Dodge sedan bearing license 538XWZ in front of his vehicle being operated with only one functional brake lamp, in violation of the Nevada Revised Statutes. Deputy Sumrall observed the vehicle turn right onto East Aultman Street, and then after initiating a right turn signal, pulled right off the road into the parking lot at Shooter's bar and grill. As the vehicle was turning into the parking lot, Deputy Sumrall initiated his patrol vehicle's emergency red and blue lights to initiate a traffic stop, and pulled in behind the gray Dodge.

Deputy Sumrall then approached the vehicle and made contact with the driver of the gray Dodge identified as Stella Sindelar by her Nevada Driver's License, the Defendant herein. While speaking with the Defendant, Deputy Sumrall detected the odor of an alcoholic beverage emitting from her vehicle. During the course of contact, Deputy Sumrall determined that the odor of the alcoholic beverage was actually emitting from the Defendant's person. Deputy Sumrall asked the Defendant if she had been drinking and where she was heading. The Defendant replied that she had not been drinking and that she had to get toilet paper, and food at Taco-Time and was now heading home to McGill. Deputy Sumrall then inquired why, if she was heading home, did she pull into the Shooter's parking lot. To this inquiry the Defendant hesitated and then replied that she was going home.

While speaking with the Defendant about these things, Deputy Sumrall observed the defendant to have slurred speech and watery eyes.

Deputy Sumrall invited the Defendant to exit her vehicle to perform Standardized Field Sobriety Tests. Upon exiting the vehicle, the Defendant was asked again if she had been drinking, to which she





1 stated she had not. All these, and other statements are captured on Deputy Sumrall's "Lapel Camera"  
2 video, a copy of which is attached hereto as Exhibit A.

3 As Deputy Sumrall performed Standardized Field Sobriety Tests on the Defendant, the  
4 Defendant showed signs of impairment during the Horizontal Gaze Nystagmus test, the Walk and  
5 Turn test and the One Leg Stand. After being administered a Preliminary Breath Test, the Defendant  
6 was arrested for suspicion of Driving While Intoxicated and transported to the Public Safety Building  
7 without incident. A records check revealed that the Defendant had been convicted of a previous  
8 Felony DUI.

9 At the Public Safety Building, the Defendant was read Nevada's implied consent language,  
10 submitted to a blood draw and was advised of her rights per *Miranda*. Among other statements, the  
11 Defendant admitted to Deputy Sumrall that she had consumed a number of beers at the McGill Club.  
12 The Defendant made other statements at the Public Safety Building while in custody, prior to, during,  
13 and after being *mirandized* and all are audible on the Booking DVD attached hereto as Exhibit B.

14 Subsequent to the Defendant being arrested, an inventory was conducted of the contents in her  
15 vehicle prior to it being towed. During the inventory, empty alcoholic beverage containers were found  
16 inside the console of the vehicle. These were photographed as evidence.

#### 17 Argument

18 The State hereby moves this Court to allow the admission of the aforementioned evidence, and  
19 other such relevant evidence as may arise as *res gestae*.

20 NRS 48.035(3) provides:

21 Evidence of another act or crime which is so closely related to an act in controversy or  
22 a crime charged that an ordinary witness cannot describe the act in controversy or the  
23 crime charged without referring to the other act or crime shall not be excluded, but at  
24 the request of an interested party, a cautionary instruction shall be given explaining the  
25 reason for its admission.

The Nevada Supreme Court, in applying NRS 48.035(3), held:

[W]here the *res gestae* doctrine is applicable, the determinative analysis is not a weighing of the prejudicial effect of evidence of other bad acts against the probative value of that evidence. If the doctrine of *res gestae* is invoked, the controlling question is whether witnesses can describe the crime charged without referring to related uncharged acts. If the court determines that testimony relevant to the charged crime cannot be introduced without reference to uncharged acts, it must not exclude the evidence of the uncharged acts. State v. Shade, 111 Nev. 887, 894, 900 P.2d 327, 331 (1995).

In this case, the aforementioned evidence is necessary to allow the State to fully describe the crimes charged. The witnesses must be able to describe all the incidents that occurred giving rise to the initial contact, and the reasons for the Field Sobriety Tests and their tendency to confirm the findings of the lab results. The jury needs to hear the evidence in its entire light from the beginning, so as not to confuse the jury and to address any possible defenses should they be raised, otherwise they could speculate that the witnesses are hiding something, forgot something or otherwise are incompetent. This is the spirit and the letter of the *Res Gestae* doctrine and that doctrine is applicable here.

Additionally, such evidence is also admissible pursuant to NRS 48.045(2) and Tavares v. State, 117 Nev. 725, 731, 30 P.3d 1128, 1131 (2001). Such evidence is not unfairly prejudicial and can be proven by clear and convincing evidence, supporting an element of the crime charged.

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1 The State submits such evidence is admissible pursuant to both NRS 48.045(3) and NRS  
2 48.045(2). Accordingly, the State provides moves to introduce such evidence to allow for sufficient  
3 time to schedule a *Petrocelli* hearing, should Defendant so request.

4  
5 Date: JUNE 5<sup>th</sup>, 2015

6 

7 Michael A. Wheable, Esq.  
8 White Pine County District Attorney  
9 801 Clark Street #3  
10 Ely, Nevada 89301

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District Attorney • White Pine County, Nevada  
801 CLARK STREET, SUITE 3 • ELY, NEVADA 89301






AFFIDAVIT OF MICHAEL A. WHEABLE

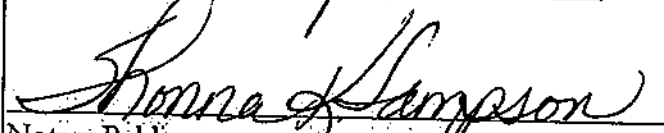
STATE OF NEVADA )  
COUNTY OF WHITE PINE )

The undersigned Affiant makes this Affidavit under penalty of perjury and based upon personal knowledge, as to those matters asserted on information and belief by Caleb Sumrall, Affiant believes those assertions to be true.

  
Michael A. Wheable

SUBSCRIBED AND SWORN TO BEFORE ME

this 5th day of June, 2015.

  
Notary Public



AFFIDAVIT OF CALEB SUMRALL

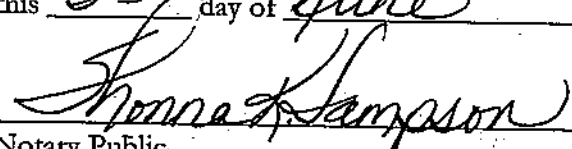
STATE OF NEVADA )  
COUNTY OF WHITE PINE )

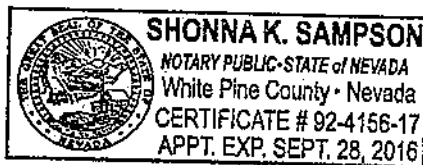
The undersigned Affiant has read the foregoing motion and makes this Affidavit under penalty of perjury and based upon personal knowledge, as to those matters asserted on information and belief, Affiant has personal knowledge and believes those assertions contained herein to be true.

  
Caleb Sumrall

SUBSCRIBED AND SWORN TO BEFORE ME

this 5<sup>th</sup> day of June, 2015.

  
Notary Public



District Attorney • White Pine County, Nevada  
801 CLARK STREET, SUITE 3 • ELY, NEVADA 89301





CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I am an employee of the office of the District Attorney, Michael A. Wheable and on the date below I served a copy of the foregoing Opposition to Motion to Suppress by delivering a copy via the U.S. Mails, properly addressed and posted, to the following:

Richard W. Sears, Esq.  
White Pine County Public Defender  
457 Fifth Street  
Ely, Nevada 89301

Date: June 5, 2015

*Honora K. Simpson*

District Attorney • White Pine County, Nevada  
801 CLARK STREET, SUITE 3 • ELY, NEVADA 89301



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NICHOLE BALDWIN  
WHITE PINE COUNTY CLERK  
BY [Signature]  
DEPUTY

Case No. CR-1304037

Dept. No. 1

IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF  
NEVADA, IN AND FOR THE COUNTY OF WHITE PINE

\*\*\*\*\*

THE STATE OF NEVADA,

Plaintiff,

-vs-

STELLA LOUISE SINDELAR,

Defendant.

SUBMISSION OF DEFENDANT'S  
PRIOR CONVICTIONS

COMES NOW the State of Nevada by and through its attorney, ANGELA M. GIANOLI, ESQ., Deputy White Pine County District Attorney and hereby submits certified copies of the Defendant's prior convictions.

DATED this 27<sup>th</sup> day of August, 2015.

MICHAEL A. WHEABLE, ESQ.  
WHITE PINE COUNTY DISTRICT ATTORNEY

[Signature]  
ANGELA M. GIANOLI, ESQ., #11138  
White Pine County Deputy District Attorney

3RD DISTRICT COURT - WV DEPT.  
SALT LAKE COUNTY, STATE OF UTAH

STATE OF UTAH, : MINUTES  
Plaintiff, : SENTENCE, JUDGMENT, COMMITMENT  
vs. :  
STELLA LOUISE SINDELAR, : Case No: 031100411 FS  
Defendant. : Judge: PAT B. BRIAN  
Date: May 10, 2004

PRESENT

Clerk: randyn  
Prosecutor: TANGARO, CARA  
Defendant  
Defendant's Attorney(s): BAUTISTA, RUDY

DEFENDANT INFORMATION

Date of birth: September 29, 1963  
Audio  
Tape Number: 0459 Tape Count: 8:31

CHARGES

1. DRIVING UNDER THE INFLUENCE OF ALC/DRUGS - 3rd Degree Felony  
Plea: Guilty - Disposition: 02/24/2004 Guilty

SENTENCE PRISON

Based on the defendant's conviction of DRIVING UNDER THE INFLUENCE OF ALC/DRUGS a 3rd Degree Felony, the defendant is sentenced to an indeterminate term of not to exceed five years in the Utah State Prison.

The prison term is suspended.

SENTENCE JAIL

Based on the defendant's conviction of DRIVING UNDER THE INFLUENCE OF ALC/DRUGS a 3rd Degree Felony, the defendant is sentenced to a term of 62 day(s)

SENTENCE FINE

Charge # 1 Fine: \$5000.00  
Suspended: \$3700.00  
Surcharge: \$599.49  
Due: \$1300.00

Total Fine: \$5000.00  
Total Suspended: \$3700.00  
Total Surcharge: \$599.49  
Total Principal Due: \$1300.00

Plus Interest  
The fine is to be paid in full by 10/01/2005.

ORDER OF PROBATION

The defendant is placed on probation for 24 month(s).  
Probation is to be supervised by Adult Probation & Parole.  
Defendant to serve 62 day(s) jail.  
Defendant is to report by May 12, 2004 by 7.

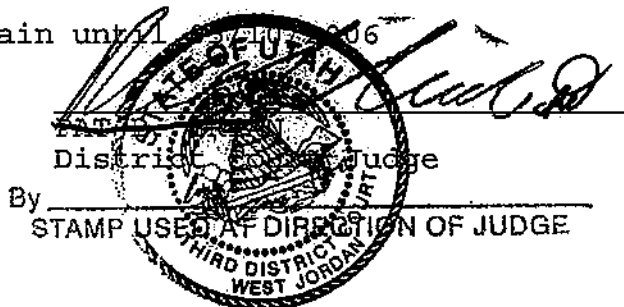
Defendant is to pay a fine of 1300.00 which includes the surcharge.  
Interest may increase the final amount due.  
Pay fine on or before October 1, 2005.  
Pay fine to The Court.

PROBATION CONDITIONS

No other violations.  
Comply with Adult Probation and Parole.  
Not to possess/consume alcohol or non prescribed controlled substance.  
Random urinalysis.  
Random drug testing.  
Not to associate with persons or frequent places where drugs or alcohol are being used or are the chief item of sale.  
Submit to search of self or property by probation agent.  
Receive drug and alcohol evaluation and comply with recommendations.  
Court orders an interlock system be installed on each motor vehicle owned or operated by the probationer, at probationer's expense.  
Calibration of the interlock system to be set at .00 or not exceed .02 pursuant to recommendation of device installer  
Serve 62 days jail. Report 5-12-04 at 7 pm  
Obtain antabuse if medically approved  
Attend 2 AA meeting per week  
Pay fine at \$100 a month commencing 9-1-04  
Defendant not to drive unless properly insured, licensed and registered, and current with interlock device.  
Court credits \$500 to \$1800.00 fine for previously paid treatment, leaving the now current balance of \$1300 owing.  
Complete a Level 2 DUI course approved by APP  
Complete approved intensive treatment program.  
Report to APP within 24 hours of release from jail.

The ignition interlock is to remain until

Date: May 10 - 2004



1 CERTIFICATE OF SERVICE

2 I, the undersigned, hereby certify that I am an employee of the White Pine County  
3 District Attorney and that on the 27<sup>th</sup> day of August, 2015, I served a true and correct  
4 copy of this document on:

5 RICHARD W. SEARS, ESQ.,  
6 White Pine County Public Defender  
7 457 Fifth Street  
8 Ely, Nevada 89301

9 by:

- 10 ☐ mailing a copy thereof, first class mail, postage prepaid.  
11 ☐ delivering by hand to the person of, office of, or dwelling.  
12 ☐ leaving a copy with the Clerk of the Court (whereabouts unknown).  
13 ☐ electronic-mail address or facsimile number (with consent).  
14 ☒ by placing it in their box located within the District Attorney's office.

15 DATED this 28<sup>th</sup> day of August, 2015.

16   
17 Shonna K. Sampson  
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1 CASE NO. CR-1304037

2 Dept. 1

3  
4 IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF  
5 NEVADA, IN AND FOR THE COUNTY OF WHITE PINE

6 \* \* \* \* \*

7 THE STATE OF NEVADA,

8 Plaintiff,

9 vs.

10 STELLA LOUISE SINDELAR,

11 Defendant.  
12 \_\_\_\_\_ /

13 TRANSCRIPT  
14 of  
15 CRIMINAL MOTIONS  
16 September 24, 2013

17 COUNSEL APPEARING:

18 For the State:

MICHAEL WHEABLE, ESQ.  
Deputy District Attorney  
801 Clark Street, Ste. 3  
Ely, NV 89301

19 For the Defense:

CHARLES ODGERS, ESQ.  
P. O. Box 51690  
Ely, NV 89315

20  
21  
22  
23  
24 Transcribed by: Linda Davies, Sworn Court Transcriber

1 BAILIFF: All rise.

2 THE COURT: Court's in session, please be seated.

3 This is case number CR one three zero four zero three seven,  
4 State of Nevada versus Stella Louise Sindelar. Miss  
5 Sindelar's present represented by Mr. Odgers. The State's  
6 represented by Mr. Wheable and this is the time and place set  
7 for a hearing on the motion to suppress that was filed by Mr.  
8 Odgers on June fifth. There has been an opposition. The  
9 Court has reviewed everything and so we set this matter for  
10 an evidentiary hearing. Are the parties prepared to go  
11 forward?

12 MR. WHEABLE: The State is Your Honor.

13 MR. ODGERS: Miss Sindelar is Your Honor.

14 THE COURT: All right, and so Mr. Wheable, the -  
15 they've made a prima facie case so you can go ahead and  
16 proceed.

17 MR. WHEABLE: What I'd like to do Your Honor at this  
18 time is call Deputy Caleb Sumrall to establish some  
19 additional facts for the Court to consider in its decision.

20 THE COURT: All right. Please come forward. Go ahead  
21 and face the Clerk, raise your right hand and take the oath.

22 CLERK: Do you solemnly swear the testimony you are  
23 about to provide in this matter before the Court shall be the  
24 truth, the whole truth, and nothing but the truth so help you

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1 God?

2 MR. SUMRALL: I do.

3 THE COURT: Please be seated. Please state your name  
4 and spell your last name.

5 MR. SUMRALL: Caleb Sumrall.

6 S - U - M - R - A - L - L.

7 THE COURT: Thank you.

8 MR. WHEABLE: Thank you. Your Honor, may I be seated?

9 THE COURT: You may.

10 MR. WHEABLE: Deputy Sumrall, I'm just going to go  
11 through some background questions real quick, okay. Without  
12 giving me an exact address, where do you live?

13 MR. SUMRALL: Ely, Nevada.

14 MR. WHEABLE: And how long have you been in Ely?

15 MR. SUMRALL: For about two years, almost two years.

16 MR. WHEABLE: What's your current occupation?

17 MR. SUMRALL: Deputy Sheriff.

18 MR. WHEABLE: How long have you been a Deputy Sheriff  
19 for?

20 MR. SUMRALL: For almost two years.

21 MR. WHEABLE: Okay.

22 MR. SUMRALL: Couple months shy of two years.

23 MR. WHEABLE: Do you have any prior law enforcement  
24 experience?

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1 MR. SUMRALL: I do.

2 MR. WHEABLE: What are your duties as a Deputy Sheriff?

3 MR. SUMRALL: For calls for service and enforce local  
4 and state laws.

5 MR. WHEABLE: What kind of training have you received  
6 for those duties?

7 MR. SUMRALL: I went to the POST Academy and completed  
8 sixteen weeks on and due to an F. T. O. Program, Field  
9 Training Program.

10 MR. WHEABLE: And when did you graduate from POST?

11 MR. SUMRALL: I believe it was May of two thousand  
12 eleven.

13 MR. WHEABLE: Okay. Tell me about the field training  
14 or the - your F. T. O. experience. What was that?

15 MR. SUMRALL: When was it?

16 MR. WHEABLE: What was it?

17 MR. SUMRALL: Oh, what was it?

18 MR. WHEABLE: What does it consist of? Yea.

19 MR. SUMRALL: I went around with field training  
20 officers, sergeants, and then they just kind of showed me how  
21 to - how to do the job pretty much.

22 MR. WHEABLE: How long did that last for?

23 MR. SUMRALL: It was - I believe it was eight weeks.

24 MR. WHEABLE: Okay. Now, in either of the POST Academy

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1 or the F. T. O., did you receive any training with regards to  
2 investigating D. U. I.s?

3 MR. SUMRALL: Yes I did.

4 MR. WHEABLE: What kind of training did you receive?

5 MR. SUMRALL: On how to conduct field sobriety tests.

6 MR. WHEABLE: Okay.

7 MR. SUMRALL: How to - what to look for.

8 MR. WHEABLE: What do you mean, what to look for?

9 MR. SUMRALL: As far as impaired drivers go, signs  
10 that will lead you to believe that they had been drinking -

11 MR. WHEABLE: Okay.

12 MR. SUMRALL: - under the influence of alcohol.

13 MR. WHEABLE: Okay. For the purposes of this hearing  
14 today Your Honor, I'm going to skip through some - some  
15 things and just highlight a couple of facts. Were you on  
16 duty on March twenty-seventh, two thousand thirteen?

17 MR. SUMRALL: Yes I was.

18 MR. WHEABLE: Okay. Do you recall when your shift  
19 started that - that day?

20 MR. SUMRALL: I believe it was around six o'clock p.m.

21 MR. WHEABLE: What occurred around seven thirty that  
22 evening?

23 MR. SUMRALL: I noticed a vehicle taillight out.

24 MR. WHEABLE: Oh. Now, for the purpose of this

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1 hearing, I'm going to skip to - we're going to submit Your  
2 Honor on the records in the Preliminary Hearing what occurred  
3 after and during the traffic stop, and I believe that's going  
4 to be okay with counsel. I'm going to skip right to what  
5 occurred when he was transporting the Defendant on that  
6 traffic stop.

7 THE COURT: All right.

8 MR. ODGERS: But since there are priors then we will  
9 stand by the facts as - as brought out in the preliminary  
10 hearing relative to the entire process. I didn't know we  
11 were doing transport all the way up to the time and place of  
12 sentence.

13 MR. WHEABLE: No, transport's not included. Just at  
14 the Public Safety Building.

15 MR. ODGERS: Okay.

16 MR. WHEABLE: Yea, that's fine.

17 THE COURT: Okay.

18 MR. ODGERS: (Unintelligible word) and flight  
19 insurance.

20 MR. WHEABLE: Including the identification of the  
21 Defendant Miss Sindelar.

22 MR. ODGERS: Yea, and we'll stipulate.

23 THE COURT: Go ahead.

24 MR. WHEABLE: Okay. Now, Deputy, you had transported

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1 - just to pick up, transported Miss Sindelar to the Public  
2 Safety Building following that stop. What occurred at the  
3 Public Safety Building?

4 MR. SUMRALL: Um, she - she was booked and then the -  
5 a drug tech was called to draw Miss Sindelar's blood.

6 MR. WHEABLE: Okay.

7 MR. SUMRALL: And then she was read Nevada implied  
8 consent.

9 MR. WHEABLE: Okay. So lets break that down a little  
10 bit and discuss the process okay. Do you know if the booking  
11 process is captured on film or video taped at all?

12 MR. SUMRALL: Yes sir.

13 MR. WHEABLE: How do you know that?

14 MR. SUMRALL: Because we get a copy of the booking  
15 video and then we submit that into evidence.

16 MR. WHEABLE: Okay. Was the booking including the  
17 blood draw of Miss Sindelar captured on video?

18 MR. SUMRALL: I believe so, yes.

19 MR. WHEABLE: How do you know?

20 MR. SUMRALL: Because I saw the video.

21 MR. WHEABLE: Okay. Your Honor, I have here a copy of  
22 the booking process of Miss Sindelar on B. V. D. and I have a  
23 copy for the Court's move into evidence. I'd like to have it  
24 marked State's Exhibit One if possible and introduce it at

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1 this time.

2 THE COURT: Any objection?

3 MR. ODGERS: Um, Court's indulgence real quick.

4 THE COURT: You may.

5 MR. ODGERS: Do you have a discovery label on that?

6 MR. WHEABLE: Forty-seven.

7 MR. ODGERS: Okay. I have no objection Your Honor.

8 THE COURT: All right. We'll have it marked as One A,  
9 it's admitted.

10 MR. WHEABLE: May I approach Your Honor?

11 THE COURT: You may.

12 MR. WHEABLE: So Deputy, you watched that video  
13 earlier today?

14 MR. SUMRALL: Yes I did.

15 MR. WHEABLE: And - and I could have asked this  
16 question before, was it - did it truly and accurately reflect  
17 what occurred that evening on March twenty-seventh with Miss  
18 Sindelar?

19 MR. SUMRALL: Yes.

20 MR. WHEABLE: Okay. Now you said you read Miss  
21 Sindelar Nevada's implied consent. How do you know that?

22 MR. SUMRALL: Well because it was on the video.

23 MR. WHEABLE: Okay. Do you have an independent  
24 recollection of reading her in that implied consent?

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1 MR. SUMRALL: I do.

2 MR. WHEABLE: Okay. How did you read her that from  
3 memory?

4 MR. SUMRALL: No, from a form that we read off of.

5 MR. WHEABLE: Do you know what that form is called or  
6 what it looks like?

7 MR. SUMRALL: I believe its B. L. D. Forty-five. It  
8 would be on the form and I do recall what it looks like.

9 MR. WHEABLE: Your Honor, for the record I'm showing  
10 Defense counsel that what has not yet been marked an exhibit.  
11 May I have this marked Your Honor?

12 THE COURT: Sure.

13 MR. WHEABLE: State's Exhibit Two. I'm going to show  
14 this to the witness prior to moving (unintelligible word -  
15 microphone noise). I'm handing you State's Exhibit Two. Do  
16 you recognize that?

17 MR. SUMRALL: Yes I do.

18 MR. WHEABLE: And what is it?

19 MR. SUMRALL: This is the B. L. D. form which has the  
20 Nevada implied consent on the back of it.

21 MR. WHEABLE: Okay. Is that the form you use when you  
22 read Nevada implied consent?

23 MR. SUMRALL: Yes it is.

24 MR. WHEABLE: Could you please turn it over to the

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1 other side of the Exhibit? Is the Nevada implied consent  
2 language on there?  
3 MR. SUMRALL: Yes it is.  
4 MR. WHEABLE: Is that the same language you read to  
5 Defendants prior to May first, two thousand thirteen?  
6 MR. SUMRALL: Yes.  
7 MR. WHEABLE: Okay. Move State's two into evidence  
8 Your Honor.  
9 THE COURT: Any objection?  
10 MR. ODGERS: Not for purpose of the hearing. I'll  
11 cross-examine more appropriately there.  
12 THE COURT: All right. Two's admitted.  
13 MR. WHEABLE: All right. So let me ask you a little  
14 bit more in detail. When you arrived at the Public Safety  
15 Building with Miss Sindelar, what occurred?  
16 MR. SUMRALL: We walked into the jail from the  
17 sallyport and then we come in and then she stands in a little  
18 black box marked on the floor and then the jailer asks his  
19 questions and then - and then we get a criminal history on -  
20 on the person that we bring in and then that'll tell you if  
21 they've had any priors in their criminal history. Then at  
22 that point I - I recall that she had prior D. U. I.s and then  
23 a blood tech was called.  
24 MR. WHEABLE: Okay. So just to be clear, once you

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1 learned that she may have had prior convictions you called  
2 the blood tech?  
3 MR. SUMRALL: Correct.  
4 MR. WHEABLE: Why?  
5 MR. SUMRALL: Because after - if you've had more than  
6 one, you don't have a choice of breath. Blood is your  
7 evidence through testing.  
8 MR. WHEABLE: Okay. So after you called the blood  
9 tech, what occurred?  
10 MR. SUMRALL: The blood tech came and then he agreed  
11 to sample the blood from Miss Sindelar.  
12 MR. WHEABLE: Lets back up a little bit.  
13 MR. SUMRALL: Okay.  
14 MR. WHEABLE: Between calling the blood tech and him  
15 taking the blood samples -  
16 MR. SUMRALL: Oh, okay.  
17 MR. WHEABLE: - what did you do?  
18 MR. SUMRALL: I read Miss Sindelar Nevada implied  
19 consent from that form.  
20 MR. WHEABLE: Who else was present when you read her  
21 that?  
22 MR. SUMRALL: The jailer and - and I can't remember  
23 what the jailer's name was.  
24 MR. WHEABLE: Okay. Where was Miss Sindelar at when

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1 you read her that?  
2 MR. SUMRALL: She was in that little black box in the  
3 jail, in booking.  
4 MR. WHEABLE: In a black box?  
5 MR. SUMRALL: It's a -  
6 MR. WHEABLE: How would you describe -  
7 MR. SUMRALL: - black square marked with paint on the  
8 floor.  
9 MR. WHEABLE: Oh, so it's a marking on the floor.  
10 Okay. Did she have handcuffs on at that time?  
11 MR. SUMRALL: (Unintelligible word - microphone  
12 muffled).  
13 MR. WHEABLE: Okay. What occurred after you read her  
14 the Nevada implied consent?  
15 MR. SUMRALL: She - if I recall she said okay when I  
16 read her that blood was going to be taken.  
17 MR. WHEABLE: And did she ask any questions?  
18 MR. SUMRALL: No. Just started - she started to ask  
19 something and then - and then - then said okay.  
20 MR. WHEABLE: What if you recall - how would you  
21 characterize the Defendant's mood at that time?  
22 MR. SUMRALL: Um, almost kind of joyous. She kind of  
23 laughing, ah, chuckling, when before and as I asked her the  
24 questions.

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1 MR. WHEABLE: Did Miss Sindelar ever tell you that she  
2 did not want to submit to a blood test?  
3 MR. SUMRALL: No she did not.  
4 MR. WHEABLE: Okay. Now I'd like to ask you about the  
5 blood tech - the blood tech sir. Do you know the blood  
6 tech's name?  
7 MR. SUMRALL: It was Horace Herrin I - I believe was  
8 his name.  
9 MR. WHEABLE: And what occurred when he showed up?  
10 MR. SUMRALL: He was given the - the kit for the blood  
11 draw and then he took two samples and then placed them into  
12 the evidence bag and sealed it.  
13 MR. WHEABLE: Okay. Were you present when that  
14 occurred?  
15 MR. SUMRALL: I was.  
16 MR. WHEABLE: What was the Defendant Miss Sindelar's  
17 attitude towards having her - did she demonstrate any  
18 attitude - any behavior?  
19 MR. ODGERS: I'm going to move to strike -  
20 THE COURT: Then rephrase it.  
21 MR. ODGERS: - the attitude.  
22 THE COURT: Rephrase it.  
23 MR. WHEABLE: Could you describe your observations of  
24 Miss Sindelar when her blood was taken?

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1 MR. SUMRALL: Um, she - she was willing. She wasn't -  
2 I - I - I don't know, just kind of normal I guess.

3 MR. WHEABLE: Okay.

4 MR. SUMRALL: Normal attitude.

5 MR. WHEABLE: Could you - could you indicate any facts  
6 to the Court to show that she was willing?

7 MR. SUMRALL: She - she didn't like pull away or she  
8 didn't say no or anything like that.

9 MR. WHEABLE: Okay. Um, all right. Deputy, what kind  
10 of training have you received with administering these blood  
11 draws, not personally, let me rephrase that Your Honor. I  
12 apologize. What kind of training have you received for  
13 conducting or administering - I - I guess that's the way to  
14 put it. What kind - what kind of training have you received  
15 in regards to reading implied - Nevada implied consent and  
16 then conducting these blood draws?

17 MR. SUMRALL: During F. T. O., um, they took me in and  
18 showed me how it was supposed to be done and then also just by  
19 experience. Um, whether it's by myself doing them or viewing  
20 another officer doing them.

21 MR. WHEABLE: Okay. Where did you learn how to read  
22 Nevada implied consent?

23 MR. SUMRALL: During - I took a form to POST and they  
24 had us go over that when we were doing our D. U. I. course.

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1 MR. WHEABLE: This form, the State's two that I showed  
2 you?

3 MR. SUMRALL: Correct.

4 MR. WHEABLE: Okay.

5 MR. SUMRALL: Yes, cause I took a copy of that form  
6 with - with me.

7 MR. WHEABLE: Okay. How many of these Nevada implied  
8 consents have you done prior to Miss Sindelar, if you could  
9 estimate?

10 MR. SUMRALL: I've done a few. I - I can't recall how  
11 many exactly, but I know - I know I've done a few of them and  
12 witnessed - witnessed more.

13 MR. WHEABLE: Pass the witness Your Honor.

14 THE COURT: Cross?

15 MR. ODGERS: Thank you. I want to move back to March  
16 twenty-seventh of two thousand thirteen. How long had you  
17 been out of POST at that point?

18 MR. SUMRALL: March twenty-seventh, two thousand  
19 thirteen? Um, I think almost a year.

20 MR. ODGERS: And you did your F. T. O. before you went  
21 to POST or after?

22 MR. SUMRALL: Both before and after.

23 MR. ODGERS: Now, if the Court would hand him State's  
24 Exhibit Two, that would be great. Deputy, I'd like to look

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1 at the back - well strike that. I'd like you to look at the  
2 front. Do you remember completing one of these forms on Miss  
3 Sindelar?

4 MR. SUMRALL: I do.

5 MR. ODGERS: Do you remember providing that to  
6 anybody?

7 MR. SUMRALL: I do.

8 MR. ODGERS: Do you remember who you provided it to?

9 MR. SUMRALL: It goes in with my - my case.

10 MR. ODGERS: Now, I'd like you to go on the back and  
11 show me or tell me what you actually read to Miss Sindelar on  
12 March twenty-seventh, two thousand thirteen.

13 MR. SUMRALL: I read her right there where it starts  
14 evidentiary testing implied consent warning.

15 MR. ODGERS: Okay.

16 MR. SUMRALL: And I read -

17 MR. ODGERS: And in that can you read one, two, three,  
18 the fourth (unintelligible words - somebody coughing into  
19 microphone) please.

20 MR. SUMRALL: Out loud?

21 MR. ODGERS: Yes.

22 MR. SUMRALL: If you fail to submit to requests - or  
23 to required testing, the law allows me, the officer, to  
24 direct the reasonable force be used to the extent necessary

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1 to obtain up to three blood samples from you.

2 MR. ODGERS: And you read that to Miss Sindelar,  
3 correct?

4 MR. SUMRALL: Correct.

5 MR. ODGERS: And she - and did she make any inference  
6 to you as to whether or not she understood if she failed you  
7 were going to force the blood draw?

8 MR. SUMRALL: I don't believe so.

9 MR. ODGERS: Did she understand that if she refused it  
10 you were going to force her to give blood?

11 MR. SUMRALL: Well, I - I read the Nevada implied  
12 consent and then I asked her if she understood and she said  
13 yes.

14 MR. ODGERS: Okay. And you read her that component,  
15 correct?

16 MR. SUMRALL: Correct.

17 MR. ODGERS: And that component says that if you  
18 refuse then I'm going to force it, is that correct?

19 MR. SUMRALL: Correct.

20 MR. ODGERS: And you understood that she understood  
21 that correct?

22 MR. SUMRALL: Correct.

23 MR. ODGERS: All right. Now, as a - you can give that  
24 back to the Judge, I'm sorry. As a deputy, you expect people

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1 to be compliant with their instructions, correct?  
 2 MR. SUMRALL: Correct.  
 3 MR. ODGERS: What happens if somebody's noncompliant  
 4 with your instructions?  
 5 MR. SUMRALL: Then we - we use reasonable force as  
 6 directed.  
 7 MR. ODGERS: Okay. And I don't mean - I don't mean  
 8 just in a D. U. I. context, I mean in general, right, you use  
 9 force necessary to - to force compliance right?  
 10 MR. SUMRALL: Correct.  
 11 MR. ODGERS: All right. So when somebody acquiesces  
 12 to your authority as a deputy, in your opinion are they  
 13 acquiescent to your authority, are they acquiescent to the  
 14 law, or do you have an opinion one way or the other?  
 15 MR. SUMRALL: Um, I - probably both.  
 16 MR. ODGERS: Okay. I'd like to go to your post  
 17 training okay. Did you have any type of course work during  
 18 your D. U. I. component that talked about search warrants?  
 19 MR. SUMRALL: I don't believe so.  
 20 MR. ODGERS: Did you have any discussions as you  
 21 recall regarding a case out of California called Schmerber?  
 22 MR. SUMRALL: I don't believe so.  
 23 MR. ODGERS: Okay. Did you have general Fourth  
 24 Amendment search and seizure in POST?

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1 MR. SUMRALL: Yes.  
 2 MR. ODGERS: What did the general Fourth Amendment  
 3 search and seizure in POST teach you?  
 4 MR. SUMRALL: That the people have the right - that  
 5 the people have the right to - how can I word that, um -  
 6 MR. ODGERS: Be secured?  
 7 MR. SUMRALL: Correct.  
 8 MR. ODGERS: In their persons and property and things?  
 9 MR. SUMRALL: And their home, correct.  
 10 MR. ODGERS: Okay. And they taught you this theory  
 11 called exceptions to the Fourth Amendment warrant  
 12 requirement?  
 13 MR. SUMRALL: Correct.  
 14 MR. ODGERS: What were some of the exceptions that  
 15 they taught you?  
 16 MR. SUMRALL: That if you have reason - reasonable  
 17 suspicion, um, that um -  
 18 MR. ODGERS: Let me see if I can help you. All right.  
 19 They taught you that the suspected somebody maybe involved in  
 20 some criminal activity to pat them down for weapons -  
 21 MR. SUMRALL: Correct.  
 22 MR. ODGERS: - right?  
 23 MR. SUMRALL: Correct.  
 24 MR. ODGERS: That's called a Terry stop, right?

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1 MR. SUMRALL: Correct.  
 2 MR. ODGERS: We've talked about that?  
 3 MR. SUMRALL: Yes.  
 4 MR. ODGERS: All right. And they told you that if you  
 5 suspected somebody's vehicle had drugs in it and they refused  
 6 to allow you to search it, you had to obtain a warrant -  
 7 MR. SUMRALL: Correct.  
 8 MR. ODGERS: - right? Did they talk about any - in  
 9 your training, did they talk to you about based on Nevada  
 10 implied consent the Fourth Amendment doesn't apply? Did they  
 11 teach you something to that effect?  
 12 MR. SUMRALL: Correct.  
 13 MR. ODGERS: That's what you were taught at post?  
 14 MR. SUMRALL: Correct.  
 15 MR. ODGERS: All right. And so on March twenty-  
 16 seventh, two thousand thirteen you reasonably relied on the  
 17 training you received out of POST?  
 18 MR. SUMRALL: Yes.  
 19 MR. ODGERS: Okay. Had you ever in fact read Nevada  
 20 Revised Statute that actually talks about implied consent?  
 21 MR. SUMRALL: I - I believe I have.  
 22 MR. ODGERS: Okay. And do you believe that this  
 23 warning that you gave is for com - five component bullet  
 24 points?

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1 MR. SUMRALL: Um hum.  
 2 MR. ODGERS: Does that read word for word out of what  
 3 the statute for Nevada implied consent says?  
 4 MR. SUMRALL: Ah, not word for word.  
 5 MR. ODGERS: Okay. So when you say you read Nevada  
 6 implied consent, what you mean is you read whatever this  
 7 administrative form says?  
 8 MR. SUMRALL: Correct.  
 9 MR. ODGERS: Okay. You didn't actually read the  
 10 statute to her?  
 11 MR. SUMRALL: No, I read that form.  
 12 MR. ODGERS: Okay. Miss Sindelar was under arrest  
 13 when you read her Nevada implied consent, correct?  
 14 MR. SUMRALL: Yes, she was placed under arrest prior  
 15 to that, yes.  
 16 MR. ODGERS: And she was nervous wasn't she?  
 17 MR. SUMRALL: She didn't appear to be.  
 18 MR. ODGERS: Chuckling?  
 19 MR. SUMRALL: Yes.  
 20 MR. ODGERS: No nervous behavior?  
 21 MR. SUMRALL: I don't believe so.  
 22 MR. ODGERS: Okay. I believe you testified earlier  
 23 that if you have more than one D. U. I., that you don't have  
 24 a choice - the individual doesn't have a choice as to whether

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1 to give breath or blood, is that correct?

2 MR. SUMRALL: Correct.

3 MR. ODGERS: And if I remember your testimony  
4 correctly, which I'll defer it to the Court, you testified  
5 that you did not call for a blood tech until after she was in  
6 the booking area?

7 MR. SUMRALL: Correct.

8 MR. ODGERS: All right. You realize you testified  
9 differently at the prelim?

10 MR. SUMRALL: I don't. I don't - didn't realize that,  
11 no.

12 MR. ODGERS: Okay.

13 MR. SUMRALL: Because our standard protocol is we  
14 bring them into the jail and then the criminal history is ran  
15 and then the blood tech or breath is chosen.

16 MR. ODGERS: Okay. So in this case, do you - do you  
17 recall that it was about seven thirty, correct, when you  
18 stopped her?

19 MR. SUMRALL: Correct.

20 MR. ODGERS: And you arrested her about eight o'clock?

21 MR. SUMRALL: Yes.

22 MR. ODGERS: Approximately?

23 MR. SUMRALL: About, yes.

24 MR. ODGERS: Would the CAD report help you or would

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1 you trust that I'm giving you information correctly?

2 MR. SUMRALL: It would, it would.

3 MR. ODGERS: You want to look at it?

4 MR. SUMRALL: Sure.

5 MR. ODGERS: For - for purposes of the record, what is  
6 a CAD report?

7 MR. SUMRALL: What dispatch creates whenever we do a  
8 call.

9 MR. ODGERS: And it's the declaration probable cause  
10 form that you fill out as well, that's part of the CAD  
11 report?

12 MR. SUMRALL: Correct.

13 MR. ODGERS: I'm going to show you the criminal  
14 complaint that you signed under - that you signed under oath,  
15 it has attached to it the declaration of probable cause of  
16 arrest, may I approach Your Honor?

17 THE COURT: You may.

18 MR. ODGERS: I'm going to ask you if you recognize  
19 that (unintelligible word - microphone faded out).

20 MR. SUMRALL: Yes sir.

21 MR. ODGERS: Okay. And that declaration of probable  
22 cause shows that you stopped Miss Sindelar at what time?

23 MR. SUMRALL: That I saw her?

24 MR. ODGERS: Stopped her.

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1 MR. SUMRALL: Oh, stopped her, at nineteen thirty-  
2 eight.

3 MR. ODGERS: And you arrest her at?

4 MR. SUMRALL: At twenty hundred.

5 MR. ODGERS: So that would be seven thirty-eight and  
6 eight o'clock, right?

7 MR. SUMRALL: Correct.

8 MR. ODGERS: P. M.?

9 MR. SUMRALL: Yes.

10 MR. ODGERS: Yes. All right. And what time did the  
11 blood draw occur?

12 MR. SUMRALL: Um, I don't have that form in front of  
13 me. Um, the blood tech put the time down that he drew the  
14 blood.

15 MR. ODGERS: All right. I'm going to show you what's  
16 been marked previously as D. A. discovery six. May I  
17 approach Your Honor?

18 THE COURT: You may.

19 MR. ODGERS: Is this the form you're referring to?

20 MR. SUMRALL: Yes.

21 MR. ODGERS: Okay, and what time was the blood draw?

22 MR. SUMRALL: The blood draw was at twenty twenty-  
23 eight.

24 MR. ODGERS: So at twenty-eight minutes after you

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1 arrested her meaning you placed her handcuffs down at  
2 Shooters?

3 MR. SUMRALL: Correct.

4 MR. ODGERS: Okay. Then you transported her?

5 MR. SUMRALL: Correct.

6 MR. ODGERS: Then you read her Nevada implied consent?

7 MR. SUMRALL: Yes.

8 MR. ODGERS: And then you waited for her criminal  
9 history to show, correct?

10 MR. SUMRALL: Yes.

11 MR. ODGERS: How long does it take for criminal  
12 history to come up?

13 MR. SUMRALL: It - it's usually pretty fast. Um,  
14 usually dispatch will - depending on the dispatcher will have  
15 that in the process while in transport.

16 MR. ODGERS: Okay. So their standard protocol is once  
17 you call in and say I've got one in custody, they start  
18 running background?

19 MR. SUMRALL: Yes.

20 MR. ODGERS: Okay. All right. What time do you  
21 recall leaving Shooters?

22 MR. SUMRALL: Just after eight o'clock. Just after  
23 she was placed under arrest.

24 MR. ODGERS: All right. Your badge number is four

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thirty?

MR. SUMRALL: Correct.

MR. ODGERS: And what is ten seventy-six ten nineteen?

MR. SUMRALL: En route to the -

MR. ODGERS: Okay.

MR. SUMRALL: - Public Safety Building.

MR. ODGERS: All right. So about thirty minutes after you arrived, or thirty minutes after you placed Miss Sindelar under arrest, you drew the blood of Horace -

MR. SUMRALL: Correct.

MR. ODGERS: - drew the blood at your direction?

MR. SUMRALL: Correct.

MR. ODGERS: Okay. Now, on March twenty-seventh of two thousand and thirteen, was Miss Sindelar bleeding?

MR. SUMRALL: Bleeding?

MR. ODGERS: Was she bleeding?

MR. SUMRALL: Prior to getting to the jail?

MR. ODGERS: Correct.

MR. SUMRALL: No.

MR. ODGERS: Was she in any type of medical emergency?

MR. SUMRALL: No.

MR. ODGERS: Were you investigating any type of an accident?

MR. SUMRALL: No.

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MR. ODGERS: Were you investigating any type of anything that would have prevented you from applying for a search warrant?

MR. SUMRALL: None, no.

MR. ODGERS: Did you take any efforts whatsoever to contact a neutral magistrate to obtain a warrant?

MR. SUMRALL: No.

MR. ODGERS: Why not?

MR. SUMRALL: Ah, because at that point I don't believe I needed to.

MR. ODGERS: Okay. And that was based on your training and experience out of the POST Academy?

MR. SUMRALL: Correct.

MR. ODGERS: If you had to describe Miss Sindelar's demeanor with you the entire time that you were with her, would you describe it as compliant?

MR. SUMRALL: Yes.

MR. ODGERS: With everything you told her to do?

MR. SUMRALL: I believe so.

MR. ODGERS: When she - when you told her to do it?

MR. SUMRALL: I believe so, yes.

MR. ODGERS: Didn't deviate one bit did she?

MR. SUMRALL: No.

MR. ODGERS: Nothing further Your Honor.

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THE COURT: Redirect?

MR. WHEABLE: Deputy Sumrall, on cross examination Mr. Odgers asked you something like if she refused, you would force it, that those are the words that you used. Are those the words you used or did you actually read word for word the back of that form, State's Exhibit Two?

MR. SUMRALL: I read word for word the back of that form.

MR. WHEABLE: So you read to her if you fail to submit to required testing, the law allows me, the officer, to direct that reasonable force be used to the extent necessary to obtain up to three blood samples from you. Is that the language you read to her?

MR. SUMRALL: It is.

MR. WHEABLE: Okay. No more questions Your Honor.

THE COURT: Anything on that?

MR. ODGERS: No Your Honor.

THE COURT: All right. I don't have any questions for him so the officer's excused?

MR. WHEABLE: Yes Your Honor.

THE COURT: All right. Thank you. Any additional witnesses?

MR. WHEABLE: No Your Honor.

THE COURT: Any witnesses for you?

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MR. ODGERS: No Your Honor.

THE COURT: All right. Lets do this first. So by - I've met with counsel in Chambers and I'm going to be using the testimony of the preliminary hear - hearing transcript. There's been reference to his - there's a report that was - the P. C. sheet and so just factually, I just want it stated make sure I don't - there's something here that we're all in agreement in or not in agreement in. It looks like for the purposes of this hearing and the preliminary hearing, we have a break light was out. I think the Defense concedes a lawful basis for the initial stop.

MR. ODGERS: That's correct. Understood.

THE COURT: According to testimony officer smelled alcohol from the vehicle, observed the Defendant with watery eyes, slurred speech, bloodshot eyes, asked her to get out of the vehicle, noted an odor of alcohol on her person, performed field sobriety test, the H. G. N. was failed, the walk and turn, her arms were up and there's - and - and I note the conflict in - in - in the - that was raised in the cross-examination. One leg stand, she put her foot down, her arms were up. There was a P. B. T. but - oh yes, in the - in the report it said that she failed that obviously draw taken, no warrant, and - and no argument of exigent circumstances, right?

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1 MR. WHEABLE: That's correct.

2 THE COURT: Okay, so then - so then I guess the first  
3 part of the argument Mr. Odgers was about the reasonable  
4 suspicion to extend the stop, get her out, is that still part  
5 of it?

6 MR. ODGERS: Yes Your Honor. That would be the second  
7 component of Terry.

8 THE COURT: Okay. All right, so lets go ahead and  
9 address that first.

10 MR. ODGERS: Yes Your Honor.

11 MR. WHEABLE: Your Honor, I think it's clear by the  
12 law that all is we need to prolong the stop is reasonable  
13 articulable suspicion, more than just a mere hunch, that a  
14 crime is being, a crime has occurred or is being committed to  
15 justify and to make it reasonable to de - to delay the stop  
16 and - and prolong the investigation. Here the Court  
17 identifies that it wasn't just odor of alcohol beverage,  
18 okay, but it was an odor of alcohol beverage. There's an  
19 articulate fact. Also you have over here watery eyes,  
20 bloodshot, slurred speech, those are two separate articulable  
21 facts that Deputy Sumrall was able to articulate at the  
22 preliminary hearing which together with the odor of alcoholic  
23 beverage indicated to him through his training and experience  
24 that Miss Sindelar may be impaired. It wasn't enough for

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1 probable cause for arrest but that's not the standard to  
2 bring out a car, it's just articulate suspicion. It was at  
3 that time he had her removed out of the vehicle and conducted  
4 a field sobriety test. That's about as standard as it goes  
5 and - and I can't ima - Your Honor, these are the indicators  
6 and this is about all the evidence that they're going to get.  
7 Maybe the only other thing he could have seen were alcoholic  
8 beverages in the car and that's not part of this case and I  
9 don't think its necessary. Certainly there was more than a  
10 mere hunch here Your Honor with those articu - articulated  
11 facts and that justifies the stop and that is where we stand  
12 on that your Honor.

13 THE COURT: Um hmm. Mr. Odgers?

14 MR. ODGERS: Your Honor, this isn't your typical  
15 D. U. I. case where we have somebody exceeding the speed  
16 limits, somebody failing to maintain travel lane. There's no  
17 negative driving pattern. Now I agree that the Deputy had  
18 reason to pull her over for a safety issue, the traf - the  
19 brake light or the taillight was not operable. I have no  
20 problem with that. What happens from that point is it is not  
21 illegal for me to have a beer and drive home. If I have no  
22 negative driving pattern that the Deputy can say, well, you  
23 know, he was all over the lane, he was speeding, he was doing  
24 this, he was doing that, he was doing the other thing, then

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1 you have some reason - reasonable suspicion of further  
2 criminal activity of driving under the influence. The mere  
3 presence of alcohol on the breath kind of like Mr. Wheable's  
4 argument is not in and of itself reasonable suspicion of  
5 driving impaired.

6 THE COURT: We - we -

7 MR. ODGERS: You have -

8 THE COURT: But we have - we have watery bloodshot  
9 eyes and slurred speech, don't we?

10 MR. ODGERS: Well we have - we have what he believes  
11 to be slurred speech.

12 THE COURT: Okay.

13 MR. ODGERS: What we have is and unfortunately, not  
14 everybody speaks as articulate as Mr. Wheable, myself,  
15 yourself and other people in the room. You could have  
16 slurred speech as a result of dentures. You could have  
17 slurred speech as a result of any number of things including  
18 a speech impediment. It is not incumbent upon me to  
19 articulate all of the factors that negate reasonable  
20 suspicion but it is incumbent upon me to point out that there  
21 are other alternative reasons for the slurred speech, so, if  
22 we put that piece aside because there's a logical explanation  
23 that could be invoked on any of those issues. Lets talk  
24 about the red bloodshot watery eyes in March at eight o'clock

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1 at night. There was no testimony about whether or not Miss  
2 Sindelar had slept the night before. There is any number of  
3 reasons she should have had her window down. I know that I  
4 drive with my window down quite often and the Court is well  
5 aware that allergy season, other people have red bloodshot  
6 watery eyes that are not related to alcohol. Now, the test  
7 under Terry is a totality of circumstances for the reasonable  
8 articulable suspicion. There was no real testimony by the  
9 Deputy today that those factors led him, gave him reasonable  
10 articulable suspicion. Those are Mr. Wheable's arguments and  
11 - and I'll concede that Mr. Wheable has made those arguments,  
12 but, where I won't concede is those are enough for the Deputy  
13 absent something further, cause again, the purpose of the D.  
14 U. I. statute is to keep impaired drivers, people that cannot  
15 drive safely, off the street.

16 THE COURT: Well isn't it also to keep off per se  
17 drivers?

18 MR. ODGERS: Ah.

19 THE COURT: So a person could drive perfectly  
20 straight, never violate the law and yet be over a point zero  
21 eight and they're in violation, right?

22 MR. ODGERS: They are technically in violation but  
23 again if we go back to the legislative intent of Neva - of  
24 the D. U. I. statutes to keep impaired drivers off the road.

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1 Now how do we go from got a blown light on the back with no  
2 negative driving pattern to be unsafe to operate the motor  
3 vehicle because when the officer makes the arrest, the  
4 officer says I made the determination that you're unsafe to  
5 drive.

6 THE COURT: Mmm, I don't care about he thought at  
7 that point because at that point he could believe she's over  
8 an oh eight, she has a reasonable basis, probable cause to  
9 believe she's over an oh eight or unsafe to drive. Now, are  
10 you advocating that he needs to follow her all the way out to  
11 McGill and on the highway and see if there's a driving  
12 pattern?

13 MR. ODGERS: I do believe that in order to arrest  
14 somebody for being a driver under the influence, you have to  
15 have something more than a safety violation of a - of a - of  
16 the motor vehicle. If I have a taillight out, does that make  
17 me an unsafe driver. Does it make it unsafe for me to  
18 operate? That safety equipment can be overrun by statute if  
19 I use hand and arm signals. So if I use hand and arm  
20 signals, and this was a right hand turn, the evidence is that  
21 the left hand break light was not operable, so the turn  
22 signal was working, the right break worked. Again he had a  
23 safety reason to pull her over because the vehicle didn't  
24 have all functioning lights.

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1 THE COURT: So if - so if he pulled up and she could  
2 barely speak, but she's still driving okay, and he just says  
3 here's your fix it ticket, see you later?

4 MR. ODGERS: If she can operate the vehicle safely  
5 and at this point he has nothing more than the odor of  
6 alcohol. He doesn't know if she's had one or fifteen beers.

7 THE COURT: So - right, but if - so he comes to the  
8 door and she can't even talk but she's been driving fine for  
9 two or three blocks, you say let her go?

10 MR. ODGERS: I would say that based on those facts  
11 you have to let her go because there's not an articulable  
12 reason -

13 THE COURT: Okay.

14 MR. ODGERS: - to pull her out of the vehicle, A - is  
15 it the law does not prohibit me from having a beer. I am  
16 going to have the odor of alcohol on my breath and still be  
17 able to drive safely and not be either per se or otherwise  
18 under forty-four C point one one zero, I'm able to safely  
19 operate my vehicle.

20 THE COURT: Okay.

21 MR. ODGERS: So the articulable issue is can be  
22 explained. The red blood wat - bloodshot watery eyes. There  
23 is any number of reasons that that can exist. Again, are you  
24 having an allergy attack, are you having some other type of

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1 attack?

2 THE COURT: Should he ask her that?

3 MR. ODGERS: I think he should.

4 THE COURT: So she - if she says I have allergies, I  
5 was up - I was up really early this morning and ah -

6 MR. ODGERS: I just got off the night shift this  
7 morning.

8 THE COURT: - I had a stroke. I had a stroke a few  
9 years ago and um, I'm really tired so, she says those things  
10 then he just says okay, you can go?

11 MR. ODGERS: Well I - I - when we start getting into  
12 I'm really tired issues, that leads me to a different  
13 argument that's not related to this.

14 THE COURT: But whatever she says, then he's supposed  
15 to -

16 MR. ODGERS: Well -

17 THE COURT: - say okay, well that explains it or I  
18 have a natural H. G. N. in my eyes, and he says okay, then I  
19 - I - then you're a pass -

20 MR. ODGERS: Well first of all I -

21 THE COURT: - and he says why are your eyes red? I  
22 have hay fever, okay, you pass so then, all right, here you  
23 go. Bopeful - is that really what your advocating?

24 MR. ODGERS: What I'm advocating is to have something

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1 more concrete than red - red shot - red bloodshot watery  
2 eyes. The reason for that is - quite frankly, is I've seen  
3 people at night and by - the Court can take judicial notice  
4 that on March twenty-seventh of two thousand and thirteen at  
5 eight o'clock at night, it was dark, because at seven-thirty  
6 at night here on August twenty-third yesterday, at seven  
7 o'clock, it was dark, and I know because I was out cutting.  
8 How do you really see if somebody has red bloodshot watery  
9 eyes in the dark? The way they know that individual has red  
10 bloodshot watery eyes is when they get them into the jail.  
11 The only other way to do it is to have the high beams and if  
12 you have the high beams on when you're doing a testing you  
13 have the lights going when you're doing the testing, that's  
14 going to affect how one performs on the horizontal gaze  
15 nystagmus. It does. It has an impact because when those  
16 lights are flipping around or blinking on and off, it is a  
17 distraction and the horizontal gaze nystagmus is not a  
18 multiple task test.

19 MR. WHEARLE: There's no evidence of this Your Honor.

20 THE COURT: Okay. I mean, we're - we're off the -

21 MR. ODGERS: There is in the - in the preliminary  
22 hearing.

23 THE COURT: - we're off what - what we're looking at  
24 though. Um, bottom line is what you're saying is there has

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1 to be basically a driving pattern, pretty much, or - or what  
2 else?

3 MR. ODGERS: Well -

4 THE COURT: What else - what else could there be?

5 MR. ODGERS: Nevada Supreme Court has already said  
6 that driving slow is not an indicator of driving under the  
7 influence, so we already know that you have to have some sort  
8 of driving pattern to correspond with the inability to safely  
9 operate the vehicle. Now, I don't want to see a Jessica  
10 Williams situation January sixth, the kids get killed.  
11 That's not the point. The point being, however, this  
12 occurred in less than a hundred feet. He saw the brake  
13 light, he saw her stop. It may very well have been two or  
14 three blocks before she violated some other traffic rule by  
15 going over into the fog line or passing over into the other  
16 lane or making a lane change without a - a turn signal or a  
17 hand and arm signal. He saw her. His intent when he pulled  
18 over was to tell her she had a bad light. Everything else  
19 from that point on is a hunch. Fishing expedition, smells  
20 odor of alcohol, has her get out of the vehicle, and then  
21 begins - does a field sobriety test which according to this  
22 preliminary transcript, she fails the horizontal gaze  
23 nystagmus, passes the one leg stand, passes the walk and turn  
24 although I think she counted in a way that he was not

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1 familiar with but none the less, not enough indicators  
2 documented nor did he testify to enough indicators to show  
3 that she did not successfully complete those tests. Then we  
4 have the cuda (?) draw which is the P. B. T. which is  
5 inherently unreliable which is why it's not allowed in any  
6 court. From that he then arrests her, transports her up to  
7 the Public Safety Building. Now in the light of the Public  
8 Safety Building, sure, he can see bloodshot, red, bloodshot  
9 watery eyes. He can see that clear as day, but at eight  
10 o'clock at night in the parking lot of Shooters, I don't see  
11 how he can see that, and there is no explanation and again,  
12 there is no explanation as to whether or not she should  
13 continue to mumble while she was in there. He indicated she  
14 was compliant. She didn't give him any resistance. We all  
15 know -

16 THE COURT: Okay, now we're getting into the next  
17 part. Okay.

18 MR. ODGERS: So.

19 THE COURT: So I got all that, okay. So now the next  
20 part is the blood draw. The - your argument and you might as  
21 well stay up with this because you've got the initial burden.  
22 Your argument that implied consent itself is  
23 unconstitutional, right?

24 MR. ODGERS: That's correct.

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1 THE COURT: Lets go with that. Lets - lets do this  
2 first. Lets take this back. Lets go to the issue of consent  
3 because obviously the way I see it is this way. We have  
4 implied consent that the State's relying on as the basis -  
5 initial basis for the consent. Consent is determined by the  
6 totality of the circumstances. Now obviously, I suppose in  
7 this case if the Court found that consent was given on the  
8 totality of the circumstances, the Court could potentially  
9 avoid the constitutional issue in - in its entirety if that's  
10 just one of the components, okay. You follow what I'm saying.

11 MR. ODGERS: Correct.

12 THE COURT: On - on the other hand if the Court  
13 doesn't find that consent in the totality of circumstances is  
14 all valid or that its really based on the statute then we get  
15 to the constitutional issue. So lets first hear about the  
16 arguments on why we think - why or why not we think her  
17 consent was either given or not given or valid or not valid.

18 MR. ODGERS: And I'll leave part of this up to the  
19 Court to review the booking video. My recollection of the  
20 booking video is the deputy read complied consent, my client  
21 said nothing. I think Mr. Wheable will concede that point as  
22 well.

23 MR. WHEABLE: The Court will have to listen -

24 THE COURT: Yes, I'll watch it.

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1 MR. WHEABLE: - I couldn't - I couldn't hear it.

2 MR. ODGERS: Right.

3 THE COURT: He said she - he thought she said okay -

4 MR. ODGERS: That's right.

5 THE COURT: - or something like that.

6 MR. ODGERS: But there's no - there's no indication on  
7 the - on the video of a refusal to go forward.

8 THE COURT: Clearly we don't have a Repinec refusal.

9 MR. ODGERS: No. We do not have a Repinec refusal.

10 THE COURT: All right. Go ahead.

11 MR. ODGERS: But what we have is we'll go back into  
12 and the Court will recall in my underlying motion compliance  
13 with officer instruction is not the same as consent. Consent  
14 to be given has to be known voluntarily given. Now, and I  
15 had the deputy do this on purpose and I'm sure the Court did  
16 not miss it. I had him read point four, and I'm not saying  
17 the deputy read this in a harsh way. I'm not saying that -  
18 please, I don't want anybody reviewing the record to think  
19 that I think that Deputy Sumrall did anything inappropriate.  
20 But the simple fact of the matter is the following words. If  
21 you fail to submit to required testing, the law allows me,  
22 the officer to direct a reasonable force to you to the extent  
23 necessary to obtain up to three blood samples from you. So,  
24 you get into jail and the officer reads that to you, you

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1 consent or you comply with the officer's demand that you give  
2 blood or you give urine or you give a breath test, is that a  
3 knowing voluntary waiver of your right to require to State to  
4 obtain a warrant, and that's what this is really about is  
5 whether or not implied consent can nullify the warrant  
6 requirement that McNeely talks about. But for consent not to  
7 be coerced, it has to be knowing and voluntarily given where  
8 you have a threat of force, that's coercion. You're in  
9 custody, you're standing in a little black box in front of  
10 the - in front of the booking desk, you have the deputy  
11 reading you implied consent saying if you don't voluntarily  
12 do this we're going to hold you down, maybe not in those  
13 words, but we're going to use reasonable force to withdraw  
14 blood. You have the jailer standing in front of you. You  
15 have the deputy standing in front of you. That's coercive.  
16 At that point, you know, a reasonable person knows that if I  
17 refuse, they're going to do something that's very unpleasant  
18 to me. If I fight them on this, they're going to be very  
19 unpleasant. They have guns. I have nothing. This is a  
20 coercive environment, is a coercive test. If it's coerced,  
21 then it's not voluntary. It's not given knowingly in simple  
22 acquiescence to an officer instruction. We're all taught from  
23 the time we're two years old, a police officer tells you to  
24 do something, you do it. And that's what happened here.

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1 That does not mean that Miss Sindelar gave her consent. She  
2 acquiesced to the instructions of the officer. There's a  
3 difference. By analogy Your Honor, if I can make this  
4 analogy, when you take a plea agreement, you stand up - you  
5 sit up on the bench, my client sits next to me, you go  
6 through my client's constitutional rights, and you discuss my  
7 client's right to a trial, you talk about their right to have  
8 a lawyer, you talk about the right to have a trial in front  
9 of a jury of their peers, you talk about the right to require  
10 the State to prove the charges against them beyond a  
11 reasonable doubt and then only when you are satisfied that my  
12 client understands fully their constitutional rights and that  
13 nobody's threatened them, coerced them or forced them into  
14 taking a deal, do you accept that plea agreement? Yet we're  
15 allowing the police officer, and they have a very tough job,  
16 and I envy, you know, I respect them for what they do. They  
17 have a very tough job, but you're allowing them if implied  
18 consent is not found to be unconstitutional, you're allowing  
19 them to violate my client's constitutional right to be free  
20 from un - from warrantless searches because if my client  
21 refused them, said I'm not doing it, then he has the right if  
22 you fail to submit to required testing, the law allows you  
23 need the officer to direct that reasonable force be used to  
24 the extent necessary to stick a needle in your arm and take

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1 up to three samples of blood. That could be at three  
2 different times. That could be all at one time, but the  
3 reading of this is coercive and the reading of that makes it  
4 to the point where it cannot be knowing, voluntary  
5 acceptance, knowing and voluntary waiver of the right to  
6 require them to obtain a warrant.

7 THE COURT: But let me ask you this. Suppose -  
8 suppose implied consent was the version that it was years ago  
9 that said if you refuse, you lose your license but no test is  
10 taken, okay -

11 MR. ODGERS: Your Honor, I think you're -

12 THE COURT: - does that - would that save it?

13 MR. ODGERS: - you're - you're referring to nineteen  
14 ninety-five, the version in nineteen ninety-five prior to the  
15 nineteen ninety-six revisions that we live under today.

16 THE COURT: Does that save it?

17 MR. ODGERS: It's - well, there's two components of  
18 this and - and for my purposes I - in my motion I've already  
19 admitted and conceded to the fact that there's a legitimate  
20 State interest in keeping drunk drivers off the road and I've  
21 already discussed the administrative component of that so for  
22 the - for the purpose of my argument today, I don't want to  
23 go back down that road on the administrative side. Now with  
24 that being said, the nineteen ninety-five version said that

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1 an individual could refuse to take the test and the fact that  
2 they refuse to take the test would be admissible at trial  
3 along with all the other factors to show that somebody was  
4 driving impaired. What the legislature did in my humble  
5 estimation -

6 THE COURT: Well no, that's my question. If that is  
7 what - if that - if - if we struck out those parts that said  
8 your - you could be forced to give blood, you don't have a  
9 choice, we're going to use force, if those are all stricken  
10 and it just says, you know, lose your license, then this may  
11 be used against you or could be used against you in a Court  
12 or a hearing, does that save it?

13 MR. ODGERS: That - if - if - if we were to parse out  
14 the subsections that I find offensive and that I've argued  
15 are offensive, I think that that does in fact save the  
16 implied consent to some degree because there's yet another  
17 component, because what the statute actually says and what is  
18 actually read to them is not exactly the same, okay. And -  
19 and the Court can take judicial notice and - and read that  
20 book. Here's where I - I find the statute itself to be  
21 repugnant is that the statute says by you obtaining a license  
22 in the State of Nevada, you forever waive your right to  
23 require the State to obtain a warrant before we test your  
24 blood, breath or urine. Now, this is the only statute, not

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1 just in Nevada, but across the nation, the implied consent  
2 statutes across the nation and they vary just as many - I  
3 think there's five different versions out there, some that  
4 require a warrant and some that don't require a warrant. But  
5 the simple fact is is that it requires you to prospectively  
6 waive your right to require the State to obtain a warrant, to  
7 stroll in front of a neutral magistrate and say, Judge - only  
8 I'll use this case. If Deputy Sumrall is to go to a neutral  
9 magistrate and say neutral magistrate these are the things.  
10 I pulled her over because she didn't have an operating light,  
11 I smelled the odor of alcohol, she had what appeared to be  
12 red bloodshot watery eyes and she had what I think is slurred  
13 speech and based on that I want - and then I had to do a  
14 field sobriety test, one of which she failed, one of which is  
15 questionable because it's a T. B. T., the other two she  
16 successfully completed, then let the magistrate make the  
17 determination as to whether or not the individual obtains a  
18 sample, the - the police officer obtains a sample. That is  
19 not repugnant because that secures my client's rights, your  
20 rights, my rights in securing my person and that's the part  
21 that keeps getting missed here is that the Fourth Amendment  
22 allows me to be secure in my person.

23 THE COURT: Well how about this. If - if the law was  
24 like it used to be like we were talking about, I'm still on

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1 that, and so you can't force blood, you can't force a test,  
2 you can only take their license and use the refusal as  
3 evidence, then aren't we in essence saying, yea, we're  
4 implying consent but you're going to basically revoke it  
5 because if you say no I'm not going to do it then you don't  
6 do it?

7 MR. ODGERS: And that's correct.

8 THE COURT: Doesn't that work?

9 MR. ODGERS: And here's the other part that makes this  
10 so that it's non-repugnant to the Fourth Amendment, is that  
11 the individual was advised you have the right to refuse to  
12 take these tests but if you do, and this is what the nineteen  
13 ninety-five version pre-nineteen ninety-six version said, if  
14 you refuse we're going to use that against you. So at least  
15 at that point the individual makes a knowing and voluntary  
16 waiver of their right to require them to obtain a warrant.  
17 The other option would be and we can -

18 THE COURT: So why can't I just strike out subsection  
19 seven -

20 MR. ODGERS: Well -

21 THE COURT: - and say, you know what, this statute if  
22 - if they take out all the stuff about - about forced and we  
23 just strike subsection seven, doesn't that - the rest of the  
24 statute remain in tact and it be constitutional?

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1 MR. ODGERS: The remaining portions does not remain  
2 constitutional. It - first of all, if we strike subsection  
3 seven which is a forced blood draw component, that only  
4 addresses those individuals say the Repinec refusal for the  
5 lack of a better term. That protects those individuals that  
6 came outright and said uh uh, yo ain't doing it. Then they  
7 strap them down and did it anyway. In this case, we have  
8 the acquiescence to that based on the fear of being strapped  
9 down -

10 THE COURT: Okay. But that's a factual thing.

11 MR. ODGERS: Okay.

12 THE COURT: Im - we're talking purely about the  
13 statute. We could have a Defendant that says after hearing  
14 you're asked to give, well it used to say you are requested  
15 to give blood or breath -

16 MR. ODGERS: Right.

17 THE COURT: - and the person goes okay, I'll get -  
18 take a blood test. I have no problem with taking a blood  
19 test. Give me a blood test. So in a situation like that it  
20 pertains to like a confined consent.

21 MR. ODGERS: Right.

22 THE COURT: Right? So we can't say the statute goes  
23 out simply because they give them those choices and they  
24 didn't refuse, right? Factually, you might have a situation

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1 that said this was coercive to this person, right?

2 MR. ODGERS: Correct.

3 THE COURT: Or, get in their face, hold them, shake  
4 them, blood or breath, what is it, right?

5 MR. ODGERS: Right.

6 THE COURT: In those situations.

7 MR. ODGERS: Right.

8 THE COURT: Okay. But for the pure con - facial  
9 constitutionality issue, it - aren't we really getting to the  
10 point that if seven goes out, the rest kind of stays but your  
11 argument then becomes this was coercive in this context?

12 MR. ODGERS: Right. And I mean -

13 THE COURT: Okay.

14 MR. ODGERS: I've already argued regarding the  
15 constitutionality of subsection seven and I don't wish to be  
16 the hors -

17 THE COURT: And we know what the answer on that is.

18 MR. ODGERS: Those facts are not applicable here.

19 THE COURT: Right. Well.

20 MR. ODGERS: What it is is even if you have that  
21 component taken out -

22 THE COURT: In this case.

23 MR. ODGERS: In this case.

24 THE COURT: I understand.

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1 MR. ODGERS: Even if you ignore that component, it  
2 doesn't negate the coercive nature of it. The fact that I  
3 can force you to give blood or urine. Well, guess what? How  
4 are you going to give urine. They're going to have to stick  
5 a catheter in the individual's body. Male or female. The  
6 only way to force urine is to put a catheter in.

7 THE COURT: Well I agree with you. This is a far cry  
8 from what the statute says. Far, far cry from what the  
9 statute says.

10 MR. ODGERS: And the problem is is that it doesn't  
11 necessarily reflect the statute. So when they say they've  
12 read them implied consent, what they mean is they've read  
13 them what the Department of Motor Vehicles says they have to  
14 read. Well, this is not what implied consent says. If you  
15 actually go back to the statute, it talks about in - in four  
16 eighty-four C point one six zero subparagraph one, except as  
17 otherwise provided in subsections three and four which deal  
18 with hemophilia and heart conditions, who drives or are in  
19 actual physical control of a motor vehicle on a highway or on  
20 a premise to which the public has access - access to shall be  
21 deemed to have given his or her consent to an evidentiary  
22 test of his or her blood, urine, breath or other bodily  
23 substance to determine the concentration of alcohol. And this  
24 is where I find the issue to be repugnant because I'm sixteen

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1 years old, I get my driver's license in another jurisdiction,  
2 I move to the State of Nevada, I transfer my license over  
3 from that other jurisdiction to here, I've never seen - I  
4 don't sign through the Nevada Department of Motor Vehicles  
5 anything that says I Charles H. Odgers hereby now and forever  
6 waive my rights to the Fourth Amendment to require the State  
7 to get a warrant in order to obtain an evidentiary sample of  
8 my breath, blood or urine. I don't do that. So how can I  
9 impliedly waive a constitutional right? This is a  
10 fundamental right and our U. S. Supreme Court which is the  
11 Supreme Court of the land, the supreme law of the land, says  
12 that you cannot do this, you cannot obtain blood, breath or  
13 urine without a warrant unless there's an exigent  
14 circumstance.

15 THE COURT: Well, unless there's an exception to the  
16 warrant.

17 MR. ODGERS: Any exception to the warrant.

18 THE COURT: All right.

19 MR. ODGERS: But in this case, exigency isn't there  
20 and I would argue that N. R. S. forty-four C point one six  
21 zero does not create an exception to the warrant.

22 THE COURT: So - so in the context of your position,  
23 then, aren't we really saying that in this case the Court  
24 could say that the statute, except for subsection seven,

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1 seven's unconstitutional, the Court could say the rest of it  
2 stands but in this case, the reading of that form was  
3 coercive and it was not voluntary?

4 MR. ODGERS: You could do that.

5 THE COURT: I mean that's - that's one option, right?

6 MR. ODGERS: That's one option.

7 THE COURT: Because isn't the Court's obligation to  
8 try to avoid and issue of constitutionality if possible and  
9 resolve the case without finding something unconstitutional?

10 MR. ODGERS: It is. And here's the problem with  
11 making that ruling. I'm going to go - I'm going to have you  
12 go back and look at subsection one of forty-four C point six  
13 zero because unless you strike out other portions of the  
14 statute then your removal of subsection does not take away  
15 the coercive nature -

16 THE COURT: I understand.

17 MR. ODGERS: - of this, because in subsection one -

18 THE COURT: Shall be deemed, I understand.

19 MR. ODGERS: No. It goes back more than that. It  
20 sets a test as administered at the direction of a peace  
21 officer having reasonable grounds to believe that the person  
22 to be tested was - see subsection seven cannot be read and  
23 avoid and you can't just carve out subsection seven. There  
24 are other sections in there that still even if you take

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1 subsection seven out, now you have portions of the - of  
2 forty-four C point one six zero that don't make sense.

3 THE COURT: All right. Okay. I understand.

4 MR. ODGERS: So, we either - we either have to - I  
5 would strongly advocate and I would think the Court is aware  
6 of this, for going back to the nineteen ninety-five version  
7 of the implied consent. Again, this is only in the context of  
8 the criminal component and not on the administrative side  
9 because I believe in - in my papers I argue that the State  
10 has a great public interest in keeping drunk drivers off the  
11 road. I will be the first to - to admit but there are less  
12 intrusive ways to accomplish that and if we go back to the  
13 nineteen ninety-five pre-nineteen ninety-six version which  
14 says Mr. Wheable refused to give blood, breath or urine, he  
15 loses his license for a year. That keeps the drunk driver  
16 off the road, arguably. Not that Mr. Wheable is a drunk  
17 driver, but that allows the State to look at their compelling  
18 state interest to meet their compelling state interests  
19 without violating Mr. Wheable's Fourth Amendment Rights or  
20 Mr. Taylor's Fourth Amendments Rights or my Fourth Amendment  
21 Rights and yours. And at the end of the day, part of our job  
22 as litigators and your job as a Judge and the Supreme Court's  
23 job is to make sure the constitution rights are not trampled  
24 upon, and Nevada implied consent does just that. It tramples

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1 upon every driver and not just Nevada drivers. Every driver  
2 that crosses into Nevada from another jurisdiction who may  
3 have different requirements. Your Honor, the - the simple  
4 fact is is that this version of Nevada implied consent based  
5 on McNeely, based on requiring the prospective waiver of a  
6 Fourth Amendment right is unconstitutional and I don't  
7 believe that the legislature has the authority to negate  
8 somebody's constitutional rights. Now, I will say and - and  
9 I'll make another analogy there are times such as parole and  
10 probation individuals who give up, knowingly give up their  
11 Fourth Amendment rights so that they can have the privilege  
12 of being on probation or parole after having been convicted  
13 of a felony. That's a legitimate State interest, but there  
14 is no other way for the State to read its compelling State  
15 interest and in monitoring parolees and probationers and to  
16 monitor their activities than by allowing peace officers the  
17 ability with or without probable cause to go into the house  
18 to make sure that these individuals who have been convicted  
19 of a crime, of a felony, to make sure that they're not  
20 continuing criminal activity. What we've done is we've put  
21 the cart before the horse with Nevada implied consent. We're  
22 con - we're using the Fourth Amendment, we're - I'm sorry,  
23 we're aggregating the to convict an individual before they've  
24 even had the ability to voluntarily, knowingly, and

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1 intelligently waive their Fourth Amendment right to require  
2 the State to obtain, or the police officers to obtain a  
3 warrant before they obtain that evidence that they could use  
4 to convict the person on a criminal basis. With that, I'll  
5 submit Your Honor.

6 THE COURT: Okay. Lets hear from Mr. Wheable on the  
7 voluntary issue and the constitutional issue.

8 MR. WHEABLE: Your Honor, may I use the light board in  
9 the courtroom and ask Mr. Cazares to step aside?

10 THE COURT: Sure.

11 MR. WHEABLE: Your Honor, We're here today because the  
12 decision in Missouri v. McNeely, started this Court, counsel  
13 and the State and the rest of the nation to start reviewing  
14 on (unintelligible word - noise in microphones) laws and the  
15 constitutionality of warrantless blood draws, okay. We look  
16 in Missouri v. McNeely, there's a word in there and its word  
17 is nonconsensual. I can't spell it. Okay. That word is  
18 used in that opinion thirteen times, not including the  
19 (unintelligible word) another three times. The focus of the  
20 analysis in McNeely coming before the Court now is its  
21 nonconsensual nature. I really like the Repinec refusal,  
22 that term, because that is a very descriptive term, it's  
23 going to help a guy in Court today. You have an arrest and  
24 you have a four eight four C one sixty statute that talks

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1 about this implied consent, and that it's read to every  
2 individual once they're in custody back in the booking room,  
3 okay, and that can go to a couple ways. Once its read it can  
4 either go to Repinec refusal, this is all demonstrative of  
5 course, if it's a Repinec refusal and this Court's already  
6 heard that case and it's very specific this Court found it's  
7 unconstitutional to direct at force that we take that blood  
8 draw, okay, and if its refused and a blood draw is taken it's  
9 unconstitutional, and I'm not going to - that - that's where  
10 the Court's gone already. I'm not going to submit to that at  
11 this time. Their (unintelligible word, somebody coughing) is  
12 forty eighty-four C one sixty is read to the Defendant and  
13 the Defendant complies with action, sticks out her arm, has  
14 conversation, there is no intimidation, laughing. You look  
15 at the factual significance of every single case to determine  
16 whether it was nonconsensual. The other inquiry is, when was  
17 consent given. Is it here, or was it to the actions of  
18 driving on Nevada's roads? I'll submit to the Court Your  
19 Honor and I'm going to argue that consent was given before it  
20 was even read up here for the actions of driving on Nevada's  
21 roads. Now, in the natural process when an officer gets  
22 consent to search a vehicle, okay, that person may limit the  
23 scope of that consent and say you can look in the glove box  
24 but not in the trunk. You can look in the car but not - not

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1 the glove box. They have control over the scope of that  
2 consent and they can revoke it at any time. Here, you have  
3 the actions of driving which indicate through Schneckloth v.  
4 Bustamonte to (unintelligible word - somebody coughing into  
5 microphone) circumstances some consent. Follow me -

6 THE COURT: Wait. Okay. Go ahead. Go ahead, then  
7 I'll ask.

8 MR. WHEABLE: Okay. A person gets in trouble or is  
9 suspected of driving under the influence, they're read Nevada  
10 implied consent and we're going to have to talk about that,  
11 over here you have this compliance with Nevada's implied  
12 consent. Okay. So on this and what you're doing is ratifying  
13 that previously given consent. You're certainly not refusing  
14 it. Okay. I can't say what would have happened had she  
15 refused. Those facts are before the Court today. There's  
16 plenty of indications that she's ratifying her consent to the  
17 Nevada implied consent laws.

18 THE COURT: When you waive a fundamental right, don't  
19 you have to do it knowing, voluntarily? Isn't that required  
20 in all the law?

21 MR. WHEABLE: We had this discussion before Your Honor  
22 about the - what is a waiver.

23 THE COURT: This is a new record we're making.

24 MR. WHEABLE: Of course. Of course. Um, is it a

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1 fundamental to right to be free of a search of your home?  
2 The answer to that is clearly yes.

3 THE COURT: Unreasonable search. Let's make sure  
4 we're correct.

5 MR. WHEABLE: Okay.

6 THE COURT: You're not - you're - you're - you're free  
7 - lets - lets - lets clarify that, kay. Fourth Amendment  
8 says everyone's secure from unreasonable searches.

9 MR. WHEABLE: Unreasonable search and seizure.

10 THE COURT: Which is presumed no warrant, right? If  
11 you have a warrant, it's presumed reasonable.

12 MR. WHEABLE: Without any exception.

13 THE COURT: No. If you have a warrant it's presumed  
14 reasonable.

15 MR. WHEABLE: That's correct.

16 THE COURT: If you don't have a warrant then no ex -  
17 well if you don't have a warrant it's presumed unreasonable  
18 unless there's an exception. With me?

19 MR. WHEABLE: Yes.

20 THE COURT: Okay.

21 MR. WHEABLE: One of the exceptions, and excuse me, I  
22 have a cold, I'm not -

23 THE COURT: Well I have hay fever. I don't know if my  
24 eyes are red and watery or not.

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1 MR. WHEABLE: Red and watery. If the -

2 MR. ODGERS: Mine are.

3 MR. WHEABLE: Excuse me.

4 THE COURT: Voluntary waiver, that's what we're  
5 talking about.

6 MR. WHEABLE: No exceptions to that one requirement  
7 Your Honor.

8 THE COURT: Yes.

9 MR. WHEABLE: One of the exceptions is consent. As to  
10 a person's home an officer can approach someone at their home  
11 or to have - be making contact with someone on their porch.  
12 An officer can ask and answer at your home. The law fully  
13 recognizes that a person is allowed to give consent has the  
14 master of their consent in their own rights and can give  
15 consent while the officer (unintelligible word) freely  
16 waiving their right to be protected.

17 THE COURT: And they can always revoke that consent at  
18 any time.

19 MR. WHEABLE: That's right. And they can limit it.

20 THE COURT: Right.

21 MR. WHEABLE: There's -

22 THE COURT: Okay.

23 MR. WHEABLE: - jurisprudence all over the nation -

24 THE COURT: Yup.

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1 MR. WHEABLE: - about the limitation of consent and  
2 the scope it serves.

3 THE COURT: The same with Miranda. Another fundamental  
4 right not to incriminate yourself.

5 MR. WHEABLE: Right.

6 THE COURT: You can - you can waive it and then you  
7 can revoke it.

8 MR. WHEABLE: Now the Court has found with Miranda  
9 that the - the circumstances surrounding forced coer - that  
10 the coercion, the overbearing of will requires that State  
11 actors advise of rights, advise of the potential to protect  
12 them of potential coercion in those - in those force  
13 confessions because of the inherently reliability of such  
14 ethics. Those weren't the facts for the case before the  
15 Court today. What you have here is just like the person  
16 about their home who has a protected interest behind them in  
17 their home. The officer asks for consent or - or asks that  
18 they can search. Mainly uses special words consent. May I  
19 take a look at your home. There was no need to canvass that  
20 person to make sure that was voluntary - that consent was  
21 voluntary and (unintelligible word - slurring words together)  
22 given. The Court has recognized that and we can - we can  
23 research a finding of that and come up with plenty of  
24 authority and the Court knows that. Likewise, and certainly

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1 Your Honor, when a person acts on those roads and it's a part  
2 of the law and it can be found there, they give their  
3 consent, like the search of the home, a full waiver and a  
4 full canvass to let them be apprised of their rights is not  
5 necessary before they waive it. They are the rights - they  
6 have - they are in control of their lives, control and master  
7 of their domain and their own body and certainly here, when  
8 officer reads what the law says, look, we have the language  
9 today. It wasn't as he repeated I'm forcing out of you. In  
10 fact it was different than that. The law says if you fail to  
11 submit to required testing the law allows me the officer to -  
12 to direct that reasonable force to be used to the extent  
13 necessary to obtain up to three blood samples from you. That  
14 is not that different than saying if you refuse I'm going to  
15 apply for a warrant and we could force it out of you. The  
16 end result being the forced blood draw whether it be through  
17 a warrant to protect to make sure there is enough reasonable  
18 suspicion there or the officer saying that he may be direct -  
19 he may be forced - may have to force it out of you. This is  
20 absolutely true. See, the truth of this is that reasonable  
21 force is going to be used to get it out of you whether you  
22 allow us to do it now or if - if a Judge finds that the  
23 warrant is supported by probable cause, then. It's not all  
24 that coercive Your Honor.

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1 THE COURT: Well wait a minute. Doesn't it say if you  
2 fail to submit to the required testing the law allows me in  
3 parentheses the officer parentheses and parentheses to direct  
4 that reasonable force be used to the extent necessary, it  
5 doesn't say I'll wait till I get a warrant and then I'll force  
6 it?

7 MR. WHEABLE: No it does not. It - it says to direct  
8 reasonable. It does - you know, and the arg - argue - and -

9 THE COURT: Lets go back to one of the first things.

10 MR. WHEABLE: Sure.

11 THE COURT: How do we - so you're just saying because  
12 the legislature says everybody knows - well everybody should  
13 know the law and because they drive here that's all the  
14 consent we need period, right?

15 MR. WHEABLE: We know that we have a duty to know the  
16 law and that its no excuse (unintelligible words - slurring  
17 words together) the law and here we have a law that says and  
18 you know, yes, this is a very short paragraph that I read to  
19 you because we have three pages of statute - it's -

20 THE COURT: Right.

21 MR. WHEABLE: - it's completely cumbersome for an  
22 officer to have to read exactly what the law is but the  
23 common driver, anyone, even if they come into state from out  
24 of state, we expect them to know the laws of our state and -

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1 THE COURT: Okay.

2 MR. WHEABLE: ~ to know this long statute.

3 THE COURT: So the legislature can deem a waiver of a  
4 constitutional right, a fundamental right, period.

5 MR. WHEABLE: See its implied. That's correct.

6 THE COURT: Okay.

7 MR. WHEABLE: Because they still have the opportunity  
8 to do Repinec refusal.

9 THE COURT: Well not according to this law. No,  
10 that's my new law. This law says no refusal, we're going to  
11 force it. The law of this jurisdiction says you can't force  
12 it anymore.

13 MR. WHEABLE: That's true, but those facts aren't in  
14 front of the Court.

15 THE COURT: Exactly. So - so we're saying legislature  
16 can say you can force blood. You can waive the right  
17 prospectively.

18 MR. WHEABLE: That's correct.

19 THE COURT: Okay.

20 MR. WHEABLE: And she can ratify it through her  
21 behavior.

22 THE COURT: Right.

23 MR. WHEABLE: Through driving. She can ratify it  
24 again in the jail.

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1 THE COURT: How about this? What if the law said that  
2 if you operate a vehicle on Nevada law roads just like this  
3 says, instead of shall - shall be deemed to have given  
4 consent to an evidentiary test, it said shall be deemed to  
5 have given consent to a full custodial interrogation  
6 regarding your alcohol consumption.

7 MR. WHEABLE: Clearly, there is the United Sprates -  
8 United States Supreme Court that would have precedence in  
9 your - in - you're not going to help me.

10 MR. ODGERS: Sorry to cite you.

11 MR. WHEABLE: Yes, you know, the Supreme Court law is  
12 the - is the law of the land and would - that would be  
13 unconstitutional.

14 THE COURT: Why? Why?

15 MR. WHEABLE: Because its supremacy clause of - of the  
16 Supreme Court -

17 THE COURT: Because its -

18 MR. WHEABLE: - and that it - it takes -

19 THE COURT: Because we're talking about -

20 MR. WHEABLE: - there's a word and it's failing me  
21 right now.

22 THE COURT: - the right to not incriminate yourself,  
23 right. The right to not incriminate yourself in the context  
24 of a custodial interrogation -

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1 MR. WHEABLE: And they -

2 THE COURT: Right?

3 MR. WHEABLE: - provided outlines for what is  
4 required.

5 THE COURT: Very strict, right?

6 MR. WHEABLE: Very strict.

7 THE COURT: Very strict.

8 MR. WHEABLE: That's right.

9 THE COURT: And this one that we're talking about is a  
10 needle going in your arm. A search of your person, so - so  
11 when we say okay, this one they're going to try to get you to  
12 say something. This one they're actually attacking your  
13 body. And they're both fundamental rights. Are we saying  
14 that this one's a more important fundamental right cause we  
15 can't put it - Nevada Legislature can't say that?

16 MR. WHEABLE: We - we can't anticipate exact - I would  
17 argue Your Honor that the reason why we don't want these  
18 confessions, because they're inherently unreliable unlike a -  
19 a scientific test.

20 THE COURT: So the means justify - are justified by  
21 the ends?

22 MR. WHEABLE: Which moves me to the second point of my  
23 argument Your Honor.

24 THE COURT: All right.

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1 MR. WHEABLE: We discussed Repinec prior -

2 THE COURT: I think - I think Miranda says this. The  
3 law of Miranda is you are not allowed to be self - forced to  
4 self-incriminate yourself period. And, oh, by the way, we  
5 don't think those are reliable. But you know what, they're  
6 pretty reliable, sometimes.

7 MR. WHEABLE: Sometimes.

8 THE COURT: Okay. And it was - and it's not  
9 phenobarbital, its sodium pentothal, all right. So lets do  
10 this. Here's the deal. Lets change our law that says you're  
11 deemed to give implied consent, we're going to force blood  
12 from you and we want a confession from you so when we stick  
13 the needle in, we're going to squirt some sodium pentothal in  
14 your vein and then we're going to take blood. So now we have  
15 a double whammy to get these drunk drivers off the road  
16 because number one the minute the sodium pentothal hits their  
17 brain they're going to start blabbing about everything  
18 they've been drinking and now we have the blood. Wouldn't  
19 that work?

20 MR. WHEABLE: No.

21 THE COURT: Why?

22 MR. WHEABLE: I'd have to go back to the argument that  
23 this Court has identified that we don't want forced coercions  
24 and that's why they passed the - well that's why they decided

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1 the way they did in - in - in Miranda. I don't believe the  
2 Supreme Court was interested in the interrogation techniques.  
3 They were interested in the end result of having a forced  
4 coercion which may be inherently unreliable Your Honor. We're  
5 still allowed to use enhanced interrogation techniques to a  
6 point, lying, this is - this is - these things have been  
7 approved. Its just that as long as they are apprised of  
8 their rights so they can have an attorney present or they  
9 should know that its going to be used against them it's to  
10 protect them and their interests in being in a custodian to  
11 their interrogation and that's why there's a two part  
12 analysis. We want to make sure they're not in - if they're  
13 in custody, we start thinking about the unreli - inherent  
14 unreliability of their statements of where we're going with  
15 this, the - the classic fourteen year old who just wants to  
16 go home, and make his statement. We're concerned about the  
17 actual end result there, okay.

18 THE COURT: But aren't those really the exceptions to  
19 the rule? Isn't the truth of the matter is really if - if  
20 you get a good experienced interrogator in a room with  
21 somebody who committed a crime, they're going to break them  
22 down, they're going to get the truth? Isn't that really the  
23 rule?

24 MR. WHEABLE: That's part of it Your Honor.

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1 THE COURT: It is, isn't it?

2 MR. WHEABLE: That's - it's part of it.

3 THE COURT: Doesn't water boarding work?

4 MR. WHEABLE: I - I -

5 THE COURT: It does.

6 MR. WHEABLE: I don't know.

7 THE COURT: I saw the movie, okay. It does. All  
8 right.

9 MR. WHEABLE: In this -

10 THE COURT: Okay.

11 MR. WHEABLE: Well let me - let me -

12 THE COURT: All right. Go ahead.

13 MR. WHEABLE: - go - let me go there Your Honor, when  
14 we're talking about - lets go ahead and jump the strict  
15 scrutiny analysis because we went over this -

16 THE COURT: Lets go to the - lets go to the least  
17 restrictive. We know there's a compliant State interest.  
18 There's no doubt -

19 MR. WHEABLE: Right.

20 THE COURT: - undisputed. For one - isn't there any  
21 least restrictive way to get the blood?

22 MR. WHEABLE: Yea. So we discussed this previously in  
23 this - in this Court in Repinec just - I mean and we went off  
24 and talked about least restrictive and - in that case that

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1 was a felony case the prosecution of unlawful use of  
2 controlled substances, the Court made a very good record  
3 about this is not a D. U. I. case. Well guess what? This is  
4 a D. U. I. case and a less restrictive means if its Mr.  
5 Odgers or the - or the Court's opinion that we could just  
6 take their license and that would solve all the world's  
7 problems, we know as a practical experience, that will keep  
8 drunk drivers off the road. It may abate some of but it does  
9 not give the State the evidence it needs to prosecute that  
10 drunk driver and keep him off the road. What gives the State  
11 the evidence it needs is a very good and reliable blood test.  
12 And so how does - what is the best means to get that blood  
13 Stest Your Honor? It's by telling everyone you know if you  
14 don't want to do a blood test, you don't have to, just stay  
15 off our roads. If you drive on our roads you're going to -  
16 that means that's your (unintelligible word) consenting to  
17 giving that blood test so we remind them when they're in the  
18 station. Why do we even read that thing to them then? Why  
19 don't we just poke them and start taking their blood? Well,  
20 we remind them again, we - you have deemed to give your  
21 consent, you can have this choices if it's a first. It's not  
22 a first its under the statute it says we can direct that  
23 blood be taken.

24 THE COURT: So why read it? Why not just go down -

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1 MR. WHEABLE: Why not?

2 THE COURT: - and take the blood?

3 MR. WHEABLE: Because that's not the case. We're  
4 reminding them that they had given consent and they can give  
5 us a Repinec refusal. Those are the facts before this case  
6 because we didn't get that far. Instead, in this case the  
7 facts show that this Defendant was cooperative, and more than  
8 willing to give her blood.

9 THE COURT: I mean that's your - that's your twofold  
10 argument.

11 MR. WHEABLE: It is Your Honor.

12 THE COURT: Number one the legislature can imply  
13 consent.

14 MR. WHEABLE: Yes.

15 THE COURT: Because of the compelling State interest  
16 and two in this case factually she gave consent.

17 MR. WHEABLE: That's correct.

18 THE COURT: Okay. Now, what about isn't the most  
19 least restrictive - I mean we're talking about least  
20 restrictive on the Fourth Amendment. We're talking about  
21 trampling on the Fourth Amendment and wouldn't the same  
22 result happen if the person just had a call for a warrant?  
23 Doesn't that protect all interest because here's the deal.  
24 It - you already said it. We'll force your blood once we get

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1 a warrant so isn't that really what it should be is to say  
2 the officer has all these factors and he presents them to a  
3 Judge and the Judge says yes or no and if the Judge says, you  
4 throw her down and you take the blood. If the Judge says no,  
5 then it wasn't a high enough standard, all right, and if you  
6 can't find a Judge maybe you have exigent circumstances.  
7 Isn't the really the most least restrictive way?

8 MR. WHEABLE: No.

9 THE COURT: Why not?

10 MR. WHEABLE: It is the most appropriate way.

11 THE COURT: Ah, okay.

12 MR. WHEABLE: Okay. There's a distinction. Clearly a  
13 warrant would be a felt safe mechanism to get that blood.

14 THE COURT: And - and to insure what, that its not an  
15 unreasonable search? That's what we're talking about.

16 MR. WHEABLE: To insure that there is reasonable -  
17 well probable cause in the warrant standard that that search  
18 is justified, okay. I stand by it today, Your Honor, that  
19 consent is still and in this case a very legitimate, a very  
20 efficient way to obtain the evidence at it - I mean, if all  
21 parties are on board, with the Defense on board, it's really  
22 not that big of a deal.

23 THE COURT: Not that big.

24 MR. WHEABLE: It's not, to giving a compelling State

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1 interest.

2 THE COURT: Sure.

3 MR. WHEABLE: Here we have like I said back - and I  
4 don't have to keep beating it, we have the actions, the  
5 driving and the law, published for the public to see, and we  
6 have the behavior in the jail. If it was a big deal we'd be  
7 in a Repinec situation.

8 THE COURT: How about this though? Doesn't this fix  
9 Acoya (sp) and its what you started out with, that the  
10 statute would be okay if it says various things? You're  
11 implied to give consent, which one do you choose, without all  
12 this stuff about we're going to force it, or will you give us  
13 a blood or breath sample? You're deemed that but you can  
14 refuse it and if you refuse it we're going to go apply for a  
15 warrant. Doesn't that solve everything?

16 MR. WHEABLE: Certainly that -

17 THE COURT: Because then the person can say, you know  
18 what, don't bother getting a warrant, here's my arm.

19 MR. WHEABLE: Certainly that discussion between the  
20 suspect and the officer would clear up a lot of these  
21 problems. I don't know that it's that different than where  
22 we're at today because the actual understanding the  
23 conversation between the two, when - when the officer reads  
24 this language here he explains that look, this is what we're

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1 after and - and you can - you can end up giving it to us if  
2 you refuse.

3 THE COURT: He be - and we're going to get it.

4 MR. WHEABLE: Well, it talk - it does imply that if  
5 you fail to submit, okay, it says that if you fail to submit,  
6 so what is that telling that person? It's telling the  
7 individual they still have a choice here. If you fail to  
8 submit which means guess what, if you refuse to take this -

9 THE COURT: Okay.

10 MR. WHEABLE: - I can direct that one's taken. They  
11 still - they still can refuse like Repinec and say no, I  
12 don't want you to do this and we don't know, I - I mean I'm  
13 not going to make the argument that Deputy Sumrall's going to  
14 run out and get a warrant at that point, but that's not  
15 before us.

16 THE COURT: But doesn't that fit his argument to say  
17 when I tell you that you can refuse, if you refuse, I'm going  
18 to use force against you and so the person says you're going  
19 to take it from me I - I guess I'll give in? Isn't that the  
20 acquiescence argument?

21 MR. WHEABLE: Certainly there's some merit to that  
22 argument Your Honor. We'll concede that. I just don't know  
23 that it rises to the fact the aggregate the overall consent  
24 the totality of circumstances in Schneckloth v. Bustamonte.

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1 THE COURT: I understand.

2 MR. WHEABLE: Okay.

3 THE COURT: That's the bottom line.

4 MR. WHEABLE: Given both parts. The first part being  
5 the driving of the road, the second part being the behavior  
6 in the jail. You know, we have this language, maybe this  
7 language is not that good but I don't know that it aggregates  
8 and takes away the consent the overall totality of the  
9 circumstances.

10 THE COURT: Okay.

11 MR. WHEABLE: Especially given the compelling nature  
12 of the State's interest.

13 THE COURT: Okay. Lets go to the last part then

14 MR. WHEABLE: Let me grab my -

15 THE COURT: Water? Get some water. You want water?

16 MR. WHEABLE: No. I just -

17 THE COURT: Okay. Now as long as you're up, you can  
18 go and then Mr. - Mr. Odgers can be heard. So lets do this.  
19 Suppose, and obviously the Court's not ruling on this case  
20 and not making any findings on the record right now but in  
21 the event that Mr. Odgers' argument is accepted first of all  
22 that the statute is unconstitutional or at least the reading  
23 of this and the contest of - this is troublesome because this  
24 is not what the statute says and obviously whoever boiled

1 this down, D. M. V. and the A. G.'s Office probably, this  
2 seems a little harsher than if you read implied consent, sort  
3 of, maybe. Anyway, so lets say the Court says, you know  
4 what, we think the whole statute's unconstitutional or at  
5 least subsection seven at the time was unconstitutional. He  
6 didn't have to get there but it was still coercive and  
7 therefore we don't think the consent was voluntary. Then  
8 what about exclusion of the evidence, lets hear about that.

9 MR. WHEABLE: Thank you Your Honor. Your Honor, this  
10 Court, and let me find my notes here for the use, just a  
11 second. In this Court's order denying Defendant's motion to  
12 suppress filed on August second in the James Allen Repinec  
13 case, this - the - the Court went to Krull,  
14 K - R - U - L - L, Illinois v. Krull, and talked about  
15 excluding evidence and the purposes of exclusion of evidence  
16 and whether this case is appropriate for such. This Court  
17 quoted that in Krull the U. S. Supreme Court held that an  
18 exception of the exclusionary rule exists when officers act  
19 in objectively reasonable alliance on a statute that is later  
20 found to violate the Fourth Amendment. That's exactly what  
21 we're talking about here. If this Court were to say you know  
22 what, reliance on the statute to get consent is coercive.  
23 That's essentially the Court's saying because -

24 THE COURT: Well that's what he said, I'm just saying

1 assuming that's right.

2 MR. WHEABLE: Assume - assuming - that's - that's  
3 where we're going whether it be the reading of this paragraph  
4 that the A. G. boiled down with D. M. V. or because it is - I  
5 still think it's very close to the statute. It's just  
6 written in a way that people can understand, kay? The high  
7 court held that a statute cannot support a finding of  
8 objective reasonable reliance in two instances. One in  
9 passing a statute the legislature wholly abandons its  
10 responsibility to enact constitutional laws or two if the  
11 reasonable officer should have known the statute was  
12 unconstitutional. In both these cases Your Honor, before  
13 Illinois v. Mc - or I'm sorry, Missouri v. McNeely, there was  
14 abundant case law out there that suggested these implied  
15 consent laws or - or the taking of blood was constitutional.  
16 Well at least it wasn't very clear, kay, so I don't know that  
17 the legislature wholly abandoned their responsibility.  
18 Second the Court's analogous talked about that the officer  
19 should have know clearly, I'm arguing today that its not  
20 constitutional, however, how is an officer who is not trained  
21 in law supposed to under - recognize that it is? The Court  
22 found in the - in the Repinec case the officer's reliance on  
23 four eight four C one sixty at least as subsection seven  
24 found that it was objectively reasonable for officers to rely

1 on subsection seven when they conducted a forced warrant with  
2 a blood draw on the instant case, and in this case we have  
3 the issue of making reference to that forced blood draw and  
4 so it still gets us pretty close. You, know they're relying  
5 on - on that provision in reading that consent - the implied  
6 consent to the Defendant. They're relying on the statute  
7 clearly. They're relying on what they've been trained in  
8 POST clearly. Well the statute the Court - and this is on  
9 page fifteen - first of all the statute is discussed in  
10 detail about infringes on one's Fourth Amendment rights.  
11 There's nothing in the record to indicate that the  
12 legislature wholly abandons this to be con - to the  
13 constitution or enacted this statute. Statutes are presumed  
14 constitutional, kay, and so if a statute is presumed  
15 constitutional its still good law and the officer's relying  
16 on it, that's a good faith - that's that good faith reliance  
17 that we're talking about. By quoting the laws and quote by  
18 quoting laws of presumption of the constitutional validity  
19 courts presume that legislature acts in a constitutional  
20 manner, kay. A reasonable officer charges enforcing this  
21 statute would not have known that this particular Nevada  
22 statute was clearly unconstitutional, its not just  
23 unconstitutional, but clearly unconstitutional, is a  
24 standard. The contrary appears in the Nevada Supreme Court

1 has authorized forced blood draws in D. U. I. cases since the  
2 late nineteen eighties, okay, so that's my argument Your  
3 Honor. These officers were acting according to a statute  
4 that is not clearly unconstitutional, it may end up being  
5 constitutional though Your Honor, depends on how the Court  
6 goes or how the Supreme Court rules. The legislature did not  
7 abandon (unintelligible word) we have to presume they're  
8 acting constitutionally until proven otherwise in the Supreme  
9 Court or in the District Court, and that's the officer's  
10 objective reliance, further the policy, and this the Court  
11 knows, the policy of the exclusionary rule is to deter bad  
12 police acts and bad police conduct. If they're not acting  
13 with that - with that required mens rea then (unintelligible  
14 word) to do nothing certainly. All - this - this occurred  
15 prior to McNeely, certainly since these cases in the  
16 litigation in this District, these officers are doing  
17 something entirely different. I'm almost reluctant to tell  
18 the Court how I've advised these deputies because it would  
19 tip our hat to - to you know, how I feel about some of this  
20 stuff, but Your Honor, clearly these officers acted in good  
21 faith and exclusion of the evidence is not appropriate.

22 THE COURT: So did I have a hint of there's at least  
23 restrictive method to do it?

24 MR. WHEABLE: In this order?

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1 THE COURT: No, no. In - in the District now.

2 MR. WHEABLE: No.

3 THE COURT: Oh, okay.

4 MR. WHEABLE: There's a hint that there's a sure shot  
5 way to make sure this is admissible and that's what I'm  
6 having the officers do.

7 THE COURT: All right. Okay. Thank you.

8 MR. WHEABLE: Um hmm.

9 THE COURT: Mr. Odgers.

10 MR. ODGERS: And to tip the D. A.'s hand, they're  
11 required to get a warrant. Your Honor, lets talk about  
12 Krull. Mr. Wheable, while the facts of Repinec are not  
13 before the Court, Mr. Wheable relies heavily on this Court's  
14 finding in that case so lets talk about Krull. Lets about  
15 what Krull actually was. Krull analogized an administrative  
16 law that allows for warrantless administrative searches of  
17 junk yards to ensure that vehicle parts and vehicles that  
18 were on the lot or in the junk yard weren't stolen. Now what  
19 the Supreme Court said in that case which I thought was  
20 interesting, Miss Sindelar does not have this ability but the  
21 individuals involved in Krull did. Unlike the person searched  
22 pursuant to a warrant, a person subject to a statute  
23 authorizing searches without a warrant or probable cause may  
24 bring in action seeking a declaration that the statute is

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1 unconstitutional and in injunction barring its  
2 implementation. Miss Sindelar does not have standing until  
3 she's actually arrested and offended by the statute. Krull is  
4 not applicable. Krull says and I quote, because the officers  
5 are merely carrying out their responsibility and implementing  
6 the statute. See, these are things that Mr. Wheable wants  
7 you to ignore in trying to make the analogy that Krull  
8 applies in this case. So, lets look at what Krull says. What  
9 action did the deputy do that was merely carrying out the  
10 responsibility in implementing the statute by applying Nevada  
11 implied consent? See, there's a difference. Words have  
12 meaning for a reason. They're not implementing Nevada  
13 implied consent, they are applying Nevada implied consent.  
14 They are forcing individuals, coercing individuals to obtain  
15 evidence against themselves. See, Krull was an administrative  
16 rule that said we're going to grant you a business license  
17 but part of that business license says you have to agree to  
18 allow us to come on your location, you have to agree to allow  
19 us to look at your books to see where you bought things from,  
20 who you sold them to, to ensure that we're not - you are not  
21 actively engaged in the sale of stolen property, specifically  
22 automobile parts - a legitimate State interest. We want to  
23 prohibit or deter a location for you to sell the product of  
24 which you have gained by illegal means. Legitimate State

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1 interest, no problem, and that Your Honor is an implementing  
2 statute. The statute that was ultimately held to be  
3 unconstitutional was an implementing statute. We're not here  
4 saying Nevada Revised Statute four eighty-four C point one  
5 one zero is unconstitutional. That's the implementing statute  
6 applicable here, and if we're here arguing that four eighty-  
7 four C point one one zero was - was illegal or  
8 unconstitutional then I would say Krull applies, but that's  
9 not what Krull says. Were not implementing a statute, we're  
10 enforcing and using a statute to enforce a different statute.  
11 Krull is not applicable because again at the end of the day,  
12 Miss Sindelar does not have the ability to go in front of a  
13 federal court, seek an injunction to prevent the State of  
14 Nevada from doing what it's already done and that is to stick  
15 a needle in her arm and take blood.

16 THE COURT: But didn't Krull - didn't they ultimately  
17 - the problem with Krull was they did the - they checked the  
18 books, they found hot parts and then they prosecuted it.  
19 Right?

20 MR. ODGERS: Correct.

21 THE COURT: So they took the statute that the officer  
22 said I - here's what I can do under the statute and then he  
23 took that evidence and gave it to the prosecutor and the  
24 prosecutor filed criminal charges, right?

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MR. ODGERS: Yes.

THE COURT: So - so - and the peer statute that you're saying is unconstitutional doesn't say anything about - doesn't say anything about criminal law or administrative law, one six zero.

MR. ODGERS: One six zero specifically discusses - well, you have to - I - I guess the short answer is -

THE COURT: No.

MR. ODGERS: - it's no.

THE COURT: All right.

MR. ODGERS: The short answer is it covers both because what it says is -

THE COURT: Hearing more administrative, okay.

MR. ODGERS: Correct. It - it talks both about the criminal as well as the administrative. The statute involved in Krull and - and - and I think the Court's reliance on Krull and Repinec was misplaced because again its an implementing statute that they ultimately found to be unconstitutional but as part of the analysis that was utilized to say its unconstitutional but you don't get to complain about it was that several of the businesses involved in the junk yard business had gone forward to the federal court and had sought an injunction. You have to have standing to go to federal court to get an injunction. And

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the problem the problem is is that they - they attempted to enjoin the implementation of that administrative law before it was implemented, if that makes sense. It was an administrative law that - that several of the - at least according to the case indicated several of the individuals had gone - several other businesses had gone to federal court to seek injunction, and that was in the interim of - of Krull and - and implementation of the statute.

THE COURT: Well actually one six zero - four - four eight four C one six zero does not talk about administrative or criminal. Those words are not used anywhere. The statute just said - the one you're attacking just says if you drive on our roads and an officer has these beliefs and these conditions he can direct that blood or breath be taken so why isn't that just like the Krull that says if you're in this business - if you're in this business and you're driving on our road, if you're in this business then you're subject to these requirements. If you're driving on our road you're subject to these requirements. Then, when you're talking about the next step, what happens to that evidence, that's the second part of Krull when they prosecuted, same part - aren't they the same really?

MR. ODGERS: No.

THE COURT: Okay.

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MR. ODGERS: And again, I - I disagree with the Court's analysis because of you look at subparagraph one the for eight four C point one six zero, it says evidentiary test of his or her blood. It's not administrative that evidentiary is for both purposes, administrative as well as criminal, and its location within the four eight four C identifies it as both criminal and administrative because the shortly thereafter or shortly before that, one or the other, I don't remember which one, talks about the D. M. V. revocation process, and even if you look at State's Exhibit Two -

THE COURT: So Krull is limited - Krull is limited only to administrative reliance, is that right?

MR. ODGERS: In my opinion - in my reading -

THE COURT: A cop can't rely on the statute unless it's just administrative?

MR. ODGERS: Well my reading of it is that the police can reasonably rely upon it as an implementing statute, and that's what I think the Court hung its hat on in Krull was the - they are implementing what the legislature put into place. We're going to go in, we're going to investigate on a routine basis, we're going to look at your books, we're going to try to determine, we're trying to stop the sale of stolen cars or car parts, as an implementing statute. What we have

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in forty-four C point one six zero is not an implementing statute. The implementing statute is forty-four C point one one zero which makes it - which criminalizes driving under the influence if that - if my argument's making sense to the Court.

THE COURT: I understand.

MR. ODGERS: That's the implementing statute.

THE COURT: I understand.

MR. ODGERS: Forty-four C one six zero is not an implementing statute. Forty-four C is a tool that was created by the legislature to allow the officers to bypass the Fourth Amendment and that's plain and simple. I'm going to try a different analogy to the Court and I think by doing this I'm hoping to tie in the implementing statute along with forty four C one six zero.

THE COURT: Okay.

MR. ODGERS: The legislature is not allowed to write laws that violate an individual's constitutional rights unless there's a compelling State interest and it must be the least restrictive means available. So, if the State of Nevada were to say, you know, drug use is ramped, drug trafficking is ramped so we are going to allow, we are going to implement a statute, we're going to call it statute number one. Statute number one says you drive on the roads in the

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1 State of Nevada you give up the right to say you can't go in  
2 and check my vehicle. When that officer pulls me over, he  
3 says get out, I'm going to check your vehicle cause I don't  
4 care if there's drugs in there or not, I just want to check,  
5 that is repugnant to the Fourth Amendment, but doesn't that  
6 meet a compelling state interest to stop the flow of drugs  
7 north, south, east and west? The State does not have the  
8 ability to trample upon, and this is what the forefathers  
9 fought over, going all the way back to the very rich that  
10 caused the Fourth Amendment to come into place. The State  
11 does not have the ability or the right to implement statutes  
12 that violate personal liberties. That's what this has always  
13 been about. There's a compelling State interest. I'm not  
14 arguing that, but the State can't do whatever it thinks it  
15 wants to do and violate the individual's rights as guaranteed  
16 by the Fourth Amendment. As Mr. Wheable stumbled over, the  
17 supreme law of the land is the Fourth Amendment. Our  
18 constitution can give more protection but it can't give less.  
19 The issue really isn't Krull. The issue isn't really did the  
20 officer reasonably rely upon. The issue, and the issue that  
21 was missed in Repinec is this. Does McNeely create new law?  
22 The answer is no it does not because McNeely itself goes back  
23 forty-six years to Schmerber which is the basis under which  
24 all D. U. I. laws have evolved. The problem is our state

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1 along with the other forty-nine states may have taken it a  
2 stop too far although there are states that implemented such  
3 as Missouri a warrant requirement in their implied consent.  
4 They said by driving on the roads you impliedly consent and  
5 if you refuse we're going to get a warrant. And there's that  
6 whole process in there. Our state didn't do that.

7 THE COURT: It did in the beginning.

8 MR. ODGERS: Well -

9 THE COURT: It did in the beginning. It said -

10 MR. ODGERS: It may have in the beginning but the  
11 evolution that we're arguing about today is really the part  
12 that is repugnant is that it completely says that Judge, you  
13 don't have a Fourth Amendment right to be secure in your  
14 person and property if we think you have been driving under  
15 the influence.

16 THE COURT: But what I'm - but what I'm - the last  
17 fish we were talking about is now you say Krull doesn't  
18 apply, well, that's to be determined obviously, but - but the  
19 exclusionary rule, isn't it intended to deter improper police  
20 conduct, not just when they make a mistake. Just like if you  
21 have a warrant, here's a good sample. Suppose in your  
22 situate - in this case - lets talk about this case. You say  
23 that the - what the officer saw or said he saw or saw - I'm  
24 stumbling over saws, what he saw or testified that he saw

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1 that for example, in this case, if he would have called the  
2 magistrate and said look, I pulled over for a break light,  
3 there's no driving pattern, I smelled a slight odor of  
4 alcohol, I got her out of the car, she had red bloodshot  
5 eyes, some slurred speech, of course, I've never talked to  
6 her before, I've never heard her talk, and I smelled alcohol,  
7 she sort of failed some F. S. T.s and - and your argument,  
8 that's not good enough to get a warrant so suppose he gets a  
9 warrant in this case based on those facts, and then goes to  
10 the P. S. B. and - Public Safety Building and calls the blood  
11 tech, the blood tech draws the blood. So now we're arguing  
12 Leon, okay?

13 MR. ODGERS: That's correct.

14 THE COURT: All right. So, to me - and obviously this  
15 Court believes Krull applies, okay, and I'll - and I'll re-  
16 analyze with the new arguments that you're making there, I'm  
17 going to do that, but I have to say that looking at Leon in  
18 this context, if he got a warrant, if he did everything that  
19 you said and got a warrant but the magistrate was wrong  
20 because your argument says there wasn't enough, so lets hear  
21 about how you argue Leon.

22 MR. ODGERS: Well -

23 THE COURT: Didn't he rely on good faith on - on - on  
24 the magistrate in that situation?

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1 MR. ODGERS: See, and this is where the Fourth  
2 Amendment comes in because the Fourth Amendment says that  
3 we're secure unless a neutral magistrate issues a warrant  
4 upon probable cause. The officer can reasonably be - if the  
5 officer goes to a neutral magistrate and says magistrate here  
6 are the facts, here's what I want to do. The magistrate says  
7 omdi padre you're good to go, go get it. He can reasonably  
8 rely on that. I agree -

9 THE COURT: That's not -

10 MR. ODGERS: I disagree -

11 THE COURT: - the law in Nevada though. In Nevada the  
12 law is if the magistrate wholly sheds his - its analogous to  
13 Krull.

14 MR. ODGERS: Well.

15 THE COURT: If he wholly sheds his obligation to be  
16 objective and look - he can't rely on it.

17 MR. ODGERS: If he wholly sheds - so - but the problem  
18 is that as I said. Lets we're - two comp - two parts to  
19 this. The Fourth Amendment is the baseline to which we know  
20 that the State cannot go (unintelligible word - someone  
21 coughing into microphone). Our analogous Fourth Amendment  
22 for the - the State of Nevada can give more but not less than  
23 the baseline -

24 THE COURT: Understood.

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1 MR. ODGERS: So Leon would apply as to the baseline  
2 but the case law that you're referring to creates a higher  
3 standard. It says that yea, this is the bottom, you can't go  
4 below this rung, and that's Leon, but if you're in here in  
5 between these two you're probably okay, but if you get up  
6 here to that case where I totally abandoned my responsibility  
7 to determine probable cause, then that's not reasonable  
8 reliance. My argument would be is the officer knew that that  
9 wasn't reasonable when he went to that - went to the neutral  
10 magistrate anyway, because he presented facts or he lied to  
11 the magistrate or whatever the case may be to get the  
12 magistrate to issue that or the magistrate was so incompetent  
13 that they issued it without looking at probable cause. That's  
14 what our Fourth Amendment from the State Constitution  
15 provides for. But this case is not analogous to Krull.  
16 What's applicable in this case and what Mr. Wheable argued  
17 originally was retroactivity, and retroactivity is governed  
18 by Griffin v. Kentucky and United States v. Johnson both of  
19 which I think the Court is familiar with. And without going  
20 - and if you want I can give you the citation.

21 THE COURT: No - I don't think McNeely's not new law.  
22 That's the holding of this District. It's not new law.

23 MR. ODGERS: If it's not new law then -

24 THE COURT: It's not new law.

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1 MR. ODGERS: - then comes the next question. If it's  
2 not new law and Schmerber was the - the law of the land,  
3 which it is, it said absent exigent circumstances, one must  
4 get a warrant. If that's the law of this jurisdiction, then  
5 there is no reasonable reliance upon Nevada implied consent  
6 because Schmerber -

7 THE COURT: No, wait a minute though. Let - let me  
8 say this. McNeely dealt with one very specific exception to  
9 the warrant rule the exigent circumstances -

10 MR. ODGERS: Correct.

11 THE COURT: - okay? Schmerber dealt also with exigent  
12 circumstances only. Its - it - it cannot be argued that  
13 there's no such thing as consent.

14 MR. ODGERS: And I agree, but we've already argued -

15 THE COURT: So - and this is not an exigent case -

16 MR. ODGERS: Right.

17 THE COURT: - so to the extent to me, McNeely doesn't  
18 have anything to do with this case other than it made  
19 everybody's brains open up and Schmerber doesn't have  
20 anything to do with this case because none of those facts  
21 should be in argue either.

22 MR. ODGERS: Well but it does on both of those from  
23 the standpoint that it - it creates the baseline much like  
24 Leon.

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1 THE COURT: Get a warrant.

2 MR. ODGERS: Get a warrant.

3 THE COURT: Unless you have an exception.

4 MR. ODGERS: Okay. And I've already argued and if the  
5 Court would like I can go back over the consent issue.

6 THE COURT: No. No. No. I'm just - we're down to  
7 exclusionary rule and I think you -

8 MR. ODGERS: And - and -

9 THE COURT: - kind of milked it pretty good.

10 MR. ODGERS: - but the problem is is that the  
11 exclusionary rule when you look at a violation of the Fourth  
12 Amendment and again going back to Griffin and Johnson -

13 THE COURT: What's the purpose of it?

14 MR. ODGERS: The purpose of it is not just to deter  
15 bad conduct but it also said that just because we plucked  
16 your case out of the stream of cases that are pending, you  
17 shouldn't have the benefit and everybody else gets screwed or  
18 visa versa. If the Court had ruled against McNeely and said,  
19 no, you know what, this is okay, there was exigent  
20 circumstances, then that still doesn't foreclose everybody  
21 else's case hasn't already been settled. And that's the part  
22 of Repinac and that's the part of this case that is truly the  
23 issue, and all the cases that are pending prior to the - the  
24 police starting to obtain warrants -

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1 THE COURT: But see -

2 MR. ODGERS: - because -

3 THE COURT: - but see, the one part about - about  
4 Repinac that think no one even argued about is the Brocket  
5 case, one oh seven Nevada six thirty-eight. And in that case  
6 clearly the officer misapplied the statute, forced flood  
7 without any justification under the statute, but the prior  
8 wasn't from Nevada, it was a prior from California and that's  
9 back in the late eighties and ninety-one and the Nevada  
10 Supreme Court said yea, he was wrong, he had no - he had  
11 absolutely no authority under this law. To me isn't that  
12 more compelling than to say this guy followed that law, he  
13 followed the law to the tee, he did everything he was  
14 supposed to do under the law when he suppressed evidence but  
15 yet the case where the officer violated the law and force  
16 blood when he had zero authority under the law we don't  
17 suppress it. How do we - how do we reconcile that with  
18 Brocket?

19 MR. ODGERS: The Supreme Court was wrong.

20 THE COURT: Okay. Anything else?

21 MR. ODGERS: I - the - the simple fact of the matter  
22 is Your Honor is that we're all human beings and as you aptly  
23 pointed out in Repinac everyone of us that have been criminal  
24 defense attorneys, criminal prosecutors and judges has been

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1 remiss -

2 THE COURT: All right.

3 MR. ODGERS: - because we're - we've become complacent.  
4 We've become complacent in that we believe in the virtuous -  
5 virtuous nature of the legislature but sometimes it takes a  
6 case like McNeely to say hey, wait a minute.

7 THE COURT: I agree.

8 MR. ODGERS: And that's essentially what has occurred  
9 and I think Justice Sotomayor did a good job of waking up all  
10 of us in our line of work because at the end of the day  
11 Schmerber, McNeely, all of them require a case by case  
12 analysis. We have to know what the parameters are. We know  
13 that exigent circumstances on one end trumps the warrant. We  
14 also know consent on the other end trumps a warrant. The  
15 question is is as applied to this case, Nevada implies  
16 consent. Bold point number one. You are required to submit  
17 to evidentiary testing.

18 THE COURT: We're repl - we're replowing now because -

19 MR. ODGERS: Well -

20 THE COURT: - I'm just talking about exclusion now.

21 MR. ODGERS: I understand but that's that I'm trying  
22 to get to Your Honor is that what you are required to submit  
23 and if you don't we're going to force it, that is coercive  
24 and that is bad behavior. Not necessarily that the officer

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1 did something (unintelligible word) because he followed what  
2 he was trying to do. That doesn't make it right. Doesn't  
3 make it right that this field training officer got it wrong.  
4 It doesn't make it right if the POST Academy got it wrong. It  
5 doesn't make it right if the legislature got it wrong. The  
6 simple fact of the matter is they got it wrong and by getting  
7 it wrong they violated the Fourth Amendment and because the  
8 violated the Fourth Amendment it must be suppressed.

9 MR. WHEABLE: Your Honor may I be heard and steal five  
10 more minutes of this Court's time?

11 THE COURT: Well, we probably old ground.

12 MR. WHEABLE: Yes Your Honor.

13 THE COURT: Go ahead.

14 MR. WHEABLE: Your Honor with regret - regard to Krull  
15 and whether it applies and this criminal versus  
16 administrative, I need to give the Court something else to  
17 chew on that has not been discussed here that is highly  
18 relevant. We've discussed these warrant exceptions. We  
19 discussed - and this is where its relevant because it goes to  
20 the officer's reliance on the statute, okay. There's other  
21 exceptions to the warrant requirement besides consent, and  
22 that's highly regulated activities and the administrative  
23 exceptions to the warrant requirement such as commercial  
24 vehicle inspections. A semi-truck can be pulled over at any

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1 time for any reason and its cab can be tossed. Now is that  
2 not a violation of someone's rights. Fishing and hunting,  
3 highly regulated activity. We can go in and open a cooler  
4 without a warrant if you believe and have reason to believe  
5 there is something going on there.

6 THE COURT: I don't think that one's been litigated  
7 yet, has it?

8 MR. WHEABLE: Well I'm just saying, these are  
9 statutes.

10 THE COURT: Okay.

11 MR. WHEABLE: These officers are authorized to do  
12 these - this peace officer here is authorized on the Fish and  
13 Game statutes to do that activity both in the semi-truck and  
14 in the cooler. And see, these are exceptions to the warrant  
15 requirement. Now are they supposed to distinguish between  
16 those exceptions to the warrant requirement and this  
17 exception to the warrant requirement because I would argue  
18 that the D. M. V. and the traffic code are highly regulated  
19 activities. Perhaps there needs to be another approach to  
20 this analysis, Your Honor. I just want to throw that out  
21 there because we do need to address it and I didn't properly  
22 brief it. Mr. Odgers did not properly brief it nor is he  
23 prepared to, but it came to my mind sitting here listening to  
24 Mr. Odgers as he, and I so appreciate him bring the fact that

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1 I stumbled over the federal law and point out my  
2 inadequacies, the word I was looking for was preemption. The  
3 United States Supreme Court does give us laws that do take  
4 effect and preempt our statutes but when an officer is trying  
5 to distinguish between these various statutes, one which  
6 allows him to toss the cab of a semi-truck without a warrant,  
7 one that allows him to get in the cooler without a warrant,  
8 one that allows him to take blood without a warrant, how is  
9 he supposed to know - are all of them unconstitutional, some  
10 of the are constitutional, some of them not constitutional?  
11 And on that Your Honor, an officer cannot turn a blind eye  
12 and when a building inspector goes in and sees a bunch of  
13 stolen car parts, he's not going to say well, we're going to  
14 revoke your license then walks out. No. They're lawfully  
15 preset just like the commu - the commercial vehicle  
16 inspection. That officer is lawfully present. He's not  
17 going to turn a blind eye. And that's why Krull was because  
18 that evidence was there. It was - it's just as analogous  
19 just as the Court indicated that once you go through that  
20 analysis the prosecution is the same. We don't need to step  
21 back and punish that officer for something he (unintelligible  
22 words).

23 THE COURT: Thank you counsel. Obviously the Court  
24 has not made a ruling and has not made any factual findings

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1 in this hearing. My comments that have been made are not to  
2 be intended to be a ruling or factual finding, simply from  
3 points of argument. The Court will take it under submission  
4 and prepare a written order. Anything further?

5 MR. WHEABLE: No Your Honor.

6 MR. ODGERS: No Your Honor.

7 THE COURT: All right. Court will be in recess.

8 BAILIFF: All rise.  
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1 ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of  
2 Appellant Procedure, I acknowledge that this is a rough draft  
3 transcript, expeditiously prepared, not proofread, corrected,  
4 Ser certified to be an accurate transcript.  
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Court Transcriber

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SEP 28 AM 9:10

CASE NO. CR-1304037

Dept. 1

NICHOLE BALDWIN  
WHITE PINE COUNTY CLERKBY DM  
DEPUTY

IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF  
NEVADA, IN AND FOR THE COUNTY OF WHITE PINE

\* \* \* \* \*

THE STATE OF NEVADA,

Plaintiff,

vs.

STELLA LOUISE SINDELAR,

Defendant.

TRANSCRIPT  
of  
JURY TRIAL  
June 30 - July 1, 2015

## COUNSEL APPEARING:

For the State:

MICHAEL WHEABLE, ESQ.  
District Attorney  
ANGELA GIANOLI, ESQ.  
Deputy District Attorney  
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For the Defense:

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Transcribed by: Linda Davies, Sworn Court Transcriber



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(VOID DIRE EXAMINATIONS OF JURORS NOT REQUESTED).

BAILIFF: All rise. The Seventh Judicial District Court of the State of Nevada in and for the County of White Pine is now in session, the Honorable Steve L. Dobrescu presiding.

THE COURT: Court's in session, please be seated. Good morning ladies and gentlemen. This is case number CR one three zero four zero three seven, State of Nevada versus Stella Louise Sindelar. Miss Sindelar's present represented by Mr. Sears. The State's represented by Mr. Wheable and Miss Gianoli, and this is the time and place that was set for a jury trial in this matter. Are the parties prepared to go forward?

MR. WHEABLE: The State is Your Honor.

MR. SEARS: Miss Sindelar is ready Your Honor.

THE COURT: All right. So ladies and gentlemen, what's going to happen in this case at this point is we're going to start out with some questions that I have for you and then as we progress through that then the attorneys will get an opportunity to ask you questions up here. As we go through this process its very important for the rest of you to listen to what's going on up here because if someone gets excused and another person comes up, it will go a lot faster if you've been listening to the questions and you're thinking

about what we're - what we've been talking about here. So at this part - point what we're going to do is have all the prospective jurors, that includes all of you back there, please stand, raise your right hand and take the oath as a perspective juror.

CLERK: Do you solemnly swear that you will and truly answer all questions put to you touching upon your qualifications to serve as jurors in the case now pending before this Court so help you God?

JURORS: I do.

THE COURT: Please be seated. All right, at this point then we'll have the attorneys please stand introduce themselves starting with - over here.

MS. GIANOLI: Good morning ladies and gentlemen, my name is Angie Gianoli.

MR. WHEABLE: Good morning. Mike Wheable, I'm the District Attorney here in White Pine County.

MR. SEARS: Good morning, Rich Sears. Pleased to see you all.

THE COURT: All right, ladies and gentlemen, the attorneys in this case are advocates for a position and they're held to very high standards so even if you know them or are acquainted with any of them, you might see them in the hallway, they're really not even supposed to say hello to you

1 during the course of the trial so keep that in mind if you -  
2 if you see them, you're better off not to say anything, but  
3 if you slip out and say something, they - they probably  
4 should just ignore during the pendency of this case. They're  
5 advocates as well as the Clerk's Office. If you know any -  
6 any of the Court personnel as well, you may have an  
7 opportunity to divulge that information but again don't -  
8 don't talk to them until we're done with the whole trial,  
9 okay. So at this point what's going to happen is the Clerk  
10 will read the second amended criminal information. This is  
11 the charges that the State has filed against Miss Sindelar.

12 CLERK: Case number CR one three oh four oh three  
13 seven, Department Number One, in the Seventh Judicial  
14 District Court, County of White Pine, State of Nevada, The  
15 State of Nevada, Plaintiff, versus Stella Louise Sindelar,  
16 Defendant. Second Amended Criminal Information for driving  
17 under the influence of alcohol. In the Seventh Judicial  
18 District Court of the State of Nevada against Stella Louise  
19 Sindelar, Defendant, Angela M. Gianoli, Esquire, Deputy  
20 District Attorney within and for the County of White Pine,  
21 State of Nevada, in the name and by the authority of the  
22 State of Nevada informs the Court that the date hereinafter  
23 set forth in the County of White Pine, State of Nevada, said  
24 Defendant did commit the following, to-wit, count one. On or

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1 about March twenty-seventh, twenty thirteen, the Defendant  
2 committed the criminal offense of driving under the influence  
3 of alcohol which criminal offense consists of being found by  
4 the measurement within two hours after driving or being in  
5 actual physical control of a motor vehicle to have zero point  
6 zero eight percent or more by weight of alcohol in her blood  
7 by the Defendant operating her motor vehicle on Great Basin  
8 Boulevard in Ely, County of White Pine, State of Nevada, and  
9 being found by measurement within two hours after driving or  
10 being in actual control of said motor vehicle to have zero  
11 point zero eight percent or more by weight of alcohol in her  
12 blood, all of which is in violation of N. R. S. four eight  
13 four C point one one zero, N. R. S. four eight four C point  
14 zero two zero and N. R. S. four eight four C point four one  
15 zero, and all of the foregoing is contrary to the form, force  
16 and effect of the statute in some cases made and provided and  
17 against the indignity of the people of White Pine County,  
18 State of Nevada. Dated this thirtieth day of June, twenty  
19 fifteen. Michael A. Wheable, Esquire, White Pine County  
20 District Attorney, Angela M. Gianoli, Esquire, White Pine  
21 County Deputy District Attorney.

22 THE COURT: Now to this charge Miss Sindelar has pled  
23 not guilty and that's thus the issue we join for this trial.  
24 So before I start talking to you and asking you questions,

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1 I'll go over some procedural matters. Basically what happens  
2 is this we will take a break about every hour to an hour and  
3 a half. If someone has a need that they need to break sooner  
4 than that, they just need to let me know. We can do that, we  
5 can handle that. We - we break for lunch. We usually try to  
6 finish up the day around five o'clock. This trial is  
7 scheduled for two days. We - we - chances are we won't  
8 finish today but we'll finish sometime tomorrow. We won't go  
9 into the third day. The - the attorney's have assured me  
10 that. We know the holiday's coming up as well. So before I  
11 start my questions with you I need to advise you of a couple  
12 legal concepts which you're going to hear about in this case  
13 and this is to kind of give you the idea what we're talking  
14 about. The presumption of innocence. A defendant in a  
15 criminal action is presumed to be innocent until the contrary  
16 is proven and in case of a reasonable doubt whether her guilt  
17 is satisfactorily shown, she's entitled to be acquitted. The  
18 burden of proof. The burden of proof in every criminal case  
19 is solely on the State. The State has to prove each and every  
20 element of the offense that they have charged and the  
21 Defendant has no burden to prove anything. A reasonable doubt  
22 is one based on reason. It is not mere possible doubt but is  
23 such a doubt as would govern or control a person in the more  
24 weighty affairs of life. If the minds of the jurors after

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1 the entire comparison and consideration of all the evidence  
2 are in such a condition that they can say they feel an  
3 abiding conviction of the truth of the charge, there's not a  
4 reasonable doubt. Doubt to be reasonable must be actual, not  
5 mere possibility or speculation. The jury's duty is to find  
6 the facts in the case. And what's going to happen is you're  
7 going to hear testimony and - and you may see exhibits and  
8 from those you have to deliberate and decide what are the  
9 facts in the case. That's your sole duty. Then I will  
10 instruct you as to what the law. I accept whatever facts you  
11 find and likewise whatever law is instruction to you you have  
12 to apply to the facts. So now we're going to start with the  
13 individual questions. I'm going to ask a question and then  
14 we'll start with the back row and if it applies to you or you  
15 think it applies to you please raise your hand and we'll - and  
16 we'll flush that out a little bit. As we go through this,  
17 none of the questions are intended to embarrass anybody or  
18 have you reveal something very private or something that you  
19 don't want to divulge. If that's the situation, then you  
20 just say I would prefer to talk to you privately about it and  
21 then on a break what we will do is I will meet with you with  
22 the lawyers in Chambers or in the courtroom with no one else  
23 is around and we'll talk about the situation. The most  
24 important thing is to think about the question and answer

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1 openly and honestly. That way we have the best short of  
2 getting twelve fair and open-minded jurors. Now, when you're  
3 being open and honest, sometimes people try to get a little  
4 too honest, so if you see my hand go like this, that means  
5 stop, all right. So we may need to caution you a little bit.  
6 I know everyone would rather be doing something else today.  
7 The pay isn't good. If - if you're finally selected to serve  
8 on the jury, its forty dollars a day. It's certainly not  
9 enough for your time and everyone would rather be somewhere  
10 else but - but its important for the system, its important  
11 for Miss Sindelar, its important for the State and so the -  
12 the main think that I want to tell you is if - if you serve  
13 on a jury, we excuse you for a full year from that point and  
14 I was looking at the calendar prior to coming into Court  
15 today and between now and Thanksgiving, we have fourteen more  
16 jury trials scheduled and a couple of them look like they're  
17 about two week trials so this one's two days, those are two  
18 weeks, its up to you guys. We don't sequester you at the end  
19 of the day, you're going to go home, and I'll give you an  
20 admonition. It's a very important admonition that you don't  
21 talk about the case with anybody and those sorts of things,  
22 okay. So we're looking at two days. And so - so the first  
23 question that I have, I want to know about really serious  
24 inconvenience to anyone. Oh, and first of all, the people

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1 that you heard called on the roll that didn't show, what  
2 happens is I send them a letter asking them to explain what's  
3 going on and anybody if it's happened more than once with  
4 them, they're going to come to Court and they're going to  
5 explain why they shouldn't be held in contempt which could be  
6 a fine for it could be jail. And some Courts what they do is  
7 they say, you know what, if you don't show, what we're going  
8 to do is if it was a two day trial, you got two days  
9 community service. We haven't really instituted that yet,  
10 but we may, you never no, so - so they didn't get off scot-  
11 free, trust me. Oh, and also the other thing too is we'll  
12 add them to the list again. That's even better. I just  
13 thought of that, so they'll be on for a whole other yea, all  
14 right. (VOID DIRE QUESTIONING - NOT REQUESTED TO BE  
15 TRANSCRIBED).

16 THE COURT: And then before we fill that box what  
17 we're going to do is we're going to take a break because it's  
18 been almost an hour and a half now. Okay, so ladies and  
19 gentlemen, I'm going to give you the admonition and this  
20 applies to all of you as well as all of you perspective  
21 jurors and its very important - this is the first example of  
22 what the law is and you have to follow it. Do not  
23 communicate among yourselves or with anyone else on any  
24 subject connected with the trial. Do not communicate with any

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1 of the witnesses or attorneys on any subject. What does  
2 communicate mean? Talk, listen, make signals, this. This  
3 means communicate, so you don't immediately go and text and  
4 say I'm on a trial, I'm at a trial, here's the Defendant,  
5 here's the lawyers, here's what its about, because if you do  
6 that you've violated the law and why is it so important?  
7 Because you can text something to somebody and bam, it comes  
8 back and they say, oh, that's that case and now you've  
9 tainted yourself and maybe anybody else in the - and so  
10 that's why communicate means e-text, mail, Twitter, whatever,  
11 all that stuff, you can't do it about the trial. You can say  
12 I'm in jury selection. All right? Do not read, watch or  
13 listen to any report or commentary on the trial or any person  
14 connected with the trial by any medium of information  
15 including without limitation newspapers, television, radio or  
16 any form of social media. Do not form or express any opinion  
17 on any subject connected with the trial until the cause is  
18 finally submitted to you. So we'll go ahead and take about a  
19 - we'll take a fifteen minute break because we've got a lot  
20 of people here and then what will happen is once - once  
21 everybody's use the facilities, and we have them downstairs,  
22 there - there's more restrooms downstairs than just here and  
23 there's some way downstairs, then everybody come back, all of  
24 you come back in your chair, we'll fill that chair and then

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1 we'll - we'll get the process going, so we'll go ahead and do  
2 the recess for about fifteen minutes at least. Court will  
3 be in recess.

4 BAILIFF: All rise.

5 BAILIFF: All rise.

6 THE COURT: Court's in session, please be seated.  
7 This is a continuation of our case. Miss Sindelar's present  
8 with counsel, the State's present and we'll go ahead and fill  
9 position number - (VOID DIRE QUESTIONING - NOT REQUESTED TO  
10 BE TRANSCRIBED). All right, the record should reflect the  
11 return of the prospective jurors and so ladies and gentlemen,  
12 we've completed the peremptory challenge process so at this  
13 time what I'm going to do is call out the names of the final  
14 twelve jurors and alternate and we'll start again with the  
15 first one being up on the right top here to my right, and so  
16 as I call your name, please come up and then we'll get you  
17 settled and then we'll move forward, so juror number one is  
18 Kexxy Nelson. Number two Miss Natcher. Number three Miss  
19 Jarman. Number four Miss Southworth, Miss Southworth back,  
20 is she -

21 UNKNOWN PERSON: She's breast feeding.

22 THE COURT: She's - she's feeding now? All right, so  
23 we'll leave a spot for her for a second. Any problem with me  
24 finishing filling it up while she's out there?

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1 MR. SEARS: No Your Honor.

2 MR. WHEABLE: No. We'll bring her in before then -

3 THE COURT: So we'll skip the next chair and then  
4 we'll go to Miss Joyner will be number five. All right, and  
5 then Miss Tallerico and starting at number seven here Mr.  
6 Martin, Mr. Ivins, Mr. McGray, Mr. Wallace, Preston Hill,  
7 Michael Davis, and our alternate will be Miss Steel. All  
8 right, and so we can go ahead and excuse the rest of you. If  
9 you want to stay, we're going to do some initial instructions  
10 and some admonitions and then we're going to take a lunch  
11 break. Thank you Miss Southworth, we saved a spot for you.

12 MS. SOUTHWORTH: I'm sorry about that.

13 THE COURT: No that's all right. We - we'll be more  
14 considerate too when - while - when you're busy we'll take a  
15 break, okay. All right, so ladies and gentlemen at this  
16 point if all of you will please stand and raise your right  
17 hand the Clerk will give you an - the oath as a juror.

18 CLERK: Do you and each of you solemnly swear that  
19 you will well and truly try the case now pending before the  
20 Court and a true verdict render according to the evidence  
21 given so help you God?

22 JURORS: I do.

23 THE COURT: All right. Please be seated, and I have  
24 an admonition and a couple of things to go over with you.

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1 First of all, no juror may declare to his fellow jurors any  
2 fact relating to the case as of his own knowledge, and if any  
3 juror discovers during the trial or after the trial has  
4 retired that he or any other juror has personal knowledge of  
5 any fact in controversy in the case, he shall disclose the  
6 situation to the Judge out of the presence of the other  
7 jurors. So what is that really saying in - in - in regular  
8 language? It means this. Lots of times when you go through  
9 a trial, especially in a small town, you - you're going along  
10 and then you - you hear testimony or you see something and  
11 you go you know what, I did know something about this case  
12 and I didn't think about it or I forgot about it and so if  
13 that happens, your - your duty is not to say anything to any  
14 other jurors but on a break grab a hold of the Bailiff or -  
15 or my Law Clerk and get to me - the information to me.  
16 Likewise, if you hear another juror saying, oh, yea, you know  
17 I did - you know I saw that or I remember this or this or  
18 that, if you hear that, get away from that juror, tell the  
19 Bailiff or my Law Clerk so we can deal with that as well okay,  
20 cause we - we really want to - we don't keep you sequestered  
21 but we want to keep - keep the information that you get in  
22 accordance with the laws is pretty much what it's about.  
23 Okay, now, what's going to happen is when you come back from  
24 lunch, I guess what I'm going to do is I'll give my initial

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1 instructions, then we'll turn them loose and we'll do our  
2 motions is that right? Okay. Okay. So what's going to  
3 happen is I'm going to give you some initial instructions  
4 that kind of help you and give you a guidance of how - how  
5 the trial's going to go, what should you use to determine  
6 what the facts are, how you're listening to witnesses, those  
7 kind of things, and then we'll turn you loose for lunch and  
8 when we come back, you'll come back in your chairs, these  
9 seats will be gone and you'll have a note pad with you that  
10 you can take notes during the trial if you want to. I also  
11 allow this. You want to bring in water, pop, juice, I'm okay  
12 with all that, just if you bring in a can open it first. I  
13 don't want to hear popping like that. I'm okay with chewing  
14 gum also, but don't pop it, cause if you pop it you're going  
15 to be embarrassed and you're going to ruin it for everybody,  
16 okay, so you can chew gum quietly. Those are the main  
17 things. The alternate has the most important job because the  
18 alternate has to listen to the testimony just like everybody  
19 else does and may or may not get the satisfaction of  
20 deliberating if somebody gets removed, and we've had a lot of  
21 people not being able to make the trial and so the alternate  
22 is often plugged into the trial at the end to deliberate with  
23 the other jurors so your job is really hard because you may  
24 not get that end thing but you've got to stay with it just

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1 the same, okay. And we've always - we always work on ways to  
2 try to figure to get around that and there's just - we just  
3 haven't come up with it yet okay. So, and at this point what  
4 I'm going to do is to read you these initial instructions and  
5 then I'll give you the admonition again that you're going to  
6 hear at every break and then please follow that. (JURY  
7 INSTRUCTIONS GIVEN - NOT REQUESTED TO BE TRANSCRIBED). So  
8 those are the initial instructions ladies and gentlemen so  
9 now you get the admonition again and then you can go to  
10 lunch. Do not communicate among yourselves or with anyone  
11 else on any subject connected with the trial. Do not  
12 communicate with any of the witnesses or attorneys on any  
13 subject. Do not read, watch or listen to any report or  
14 commentary on the trial or any person connected with the  
15 trial by any medium of information including without  
16 limitation newspapers, television, radio, or any form of  
17 social media and do not form or express any opinion on any  
18 subject connected with the trial until the cause is finally  
19 submitted to you. So what can you tell somebody, employer,  
20 significant other, spouse, whatever? You can tell them  
21 you've been selected to serve on a jury, it's a criminal  
22 case, that's all. Don't say anything else. You should be  
23 home about five o'clock tonight we'd expect, give or take and  
24 the case will finish tomorrow. Don't say anything more than

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1 that because if you say a name or anything that you've heard  
2 about today, it's tainted and then you've not followed m law.  
3 Okay. And we know how important that is. We'll excuse you.  
4 Counsel, you think fifteen, twenty minutes on a motion is  
5 max?

6 MR. WHEABLE: That's all I need Your Honor.

7 THE COURT: Mr. Sears?

8 MR. SEARS: Perhaps a little longer Your Honor. Okay,  
9 so if we sent them til quarter to two is that plenty of time  
10 for our work?

11 MR. WHEABLE: Yes.

12 MR. SEARS: Yes it is.

13 THE COURT: Cause we've got a bunch of other work we  
14 have to do. It comes up during the course of the trial as  
15 you know. We don't want to delay you guys, so its noon now,  
16 be back here at one forty-five. Huh?

17 MR. WHEABLE: Do you think we can do it before one-  
18 thirty, will that be time enough?

19 THE COURT: We're going to do our motions up right  
20 now before you guys get to eat and then -

21 MR. WHEABLE: Yea, one forty- five works.

22 THE COURT: Okay, and we'll be sure that we don't  
23 have you come back and have to wait around so go ahead and  
24 take off. So remember the admonition. Come back, be ready

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1 to be seated at one forty-five, okay? All right, go ahead  
2 and be seated. The record should reflect the jurors and  
3 alternate have all left the courtroom and so a couple of  
4 things. First of all, during a break I met with counsel in  
5 Chambers and there was a question raised in regard to Ms.  
6 Jarman, juror number three, who had said she had been charged  
7 with a felony but it didn't resolve. We clarified in Chambers  
8 that she - the case was dismissed or - or it reduced down to  
9 a misdemeanor and both counsel had an opportunity to ask her  
10 questions and then both were satisfied with her answers. Is  
11 that right Mr. Wheable?

12 MR. WHEABLE: That's correct Your Honor.

13 THE COURT: Mr. Sears?

14 MR. SEARS: Yes Your Honor.

15 THE COURT: All right. Now also, with respect to the  
16 second amended information the Court received that this  
17 morning and as it normally does, redacting things that  
18 shouldn't be read to the jury. The Court inadvertently  
19 redacted that information off the original second amended  
20 information that was filed and so the part that's blocked out  
21 on the original on line twenty-two and twenty-five and on  
22 page three - page two line three, four and five should not be  
23 redacted so we'll probably lets do a - just file another  
24 second amended because you can just run it out right and so

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1 we'll clarify without redact okay. So then we have -  
2 anything else on the record before our motions?

3 MR. WHEABLE: No.

4 THE COURT: No? Okay. We have some motions by the  
5 State and motions by Mr. Sears, so initially we have two  
6 motions by the State, one is motion to introduce res gestae  
7 evidence and motion to introduce Defendant's statements so -  
8 and I've read all of these and reviewed all of them, is there  
9 anything to add about them briefly, Mr. Wheable, with respect  
10 to either of those?

11 MR. WHEABLE: You know if -

12 THE COURT: How do you want to break it down?

13 MR. WHEABLE: Your Honor, in the - in the ones - in  
14 the Jackson (unintelligible word) it made reference to other  
15 statements on the D. V. D. provided - that I provided the  
16 Court that weren't specifically mentioned in there and there  
17 were some specifically mentions made that we are seeking to  
18 have put in and if this Court reviewed the D. V. D., they're  
19 all in the D. V. D., specifically when the Defendant had said  
20 that she drank some shots of vodka now and again. That's on  
21 the D. V. D., its not in the actual paperwork but its  
22 incorporated that - it's - it's included under that.

23 THE COURT: Well lets do this, lets break it down  
24 into two different D. V. D.s, how about that?

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1 MR. WHEABLE: Okay, good. On - and I'm talking the  
2 lapel cam D. V. D. first.

3 THE COURT: Okay.

4 MR. WHEABLE: And what I've done is and I've provided  
5 the Court in the unredacted version she makes those  
6 statements. I'm moving to have those statements in. I do  
7 believe they all occurred while the Defendant was out of  
8 custody and it was not until the T. B. T. was issued that she  
9 was - she understood she was under arrest and she was in fact  
10 detained with handcuffs. I did - I have Mr. Sumrall's here  
11 should Mr. Sears want to ask him some questions about that  
12 but I have nothing more to add to that because the D. V. D.  
13 captures it. There's no better evidence than the actual  
14 D. V. D., the lapel cam D. V. D. that played so I really  
15 don't have any additional evidence to add to that Your Honor  
16 other than just I can argue with Mr. Sears about it if the  
17 Court needs to hear it.

18 THE COURT: All right then, how about the booking?

19 MR. WHEABLE: Um, the booking D. V. D. is - there's  
20 two parts to that really. The first part is when - and  
21 here's the issue, we had a - a bid motion almost a year ago  
22 now to litigate implied consent language and the  
23 constitutionality of that and this Court ultimately found  
24 that implied consent was unconstitutional but the evidence

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1 would not be suppressed because it was - last name was Krull,  
2 it was done in - in good faith essentially so on that  
3 D. V. D. does capture that exchange between Deputy Sumrall  
4 and Miss Sindelar in which case he's telling her that she  
5 doesn't have a right to an attorney during the testing  
6 process and that he - she's surprised by that many errors of  
7 an exchange back and forth were he reiterated that she does  
8 have a right to an attorney later. In fact, it came back  
9 later in - after the blood and he read her Miranda from a  
10 card and she waived in talking again about. That's all on  
11 that D. V. D. Now, we intend to show that D. V. D. to the  
12 jury so we can see the process, they can see Mr. Herrin  
13 taking her blood, they can see - the can hear the admissions  
14 that Miss Sindelar made. She did not invoke her Miranda  
15 rights so I do not believe it needs to be kept away, that -  
16 that her rights remain silent, that that would prejudice her  
17 because she did waive those rights. It's on that D. V. D. so  
18 that she would not suffer any additional prejudice by having  
19 it shown other than evidentiary prejudice. Finally, just for  
20 the Court's information, State's Exhibit One which I will try  
21 to move in today and the Court's rulings has been redacted,  
22 the version I'm going to show. It came to us in two separate  
23 parts. She had to play it and then - it ends and then it  
24 picks up again and made a second copy. It plays for three or

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1 four minutes and then stops and then I had to click on the  
2 next file to show the remaining of the contact. We've  
3 spliced those together to make it easier for the jury to see  
4 and I terminated the lapel cam D. V. D. prior to any  
5 discussion of blowing in the P. B. T. device because then  
6 there would be a poor perceive it does not have evidentiary  
7 value and so I didn't want to get into that so I cut off the  
8 contact right before Miss Sindelar said on the - on the lapel  
9 cam D. V. D. I've got to blow and Deputy Wilkin said, yes,  
10 you have to blow into this - this device and so that's not on  
11 there anymore, nor are the results or the actual handcuffs  
12 and arresting on my State's Exhibit.

13 THE COURT: Anything after that point though?

14 MR. WHEABLE: That's correct.

15 THE COURT: All right.

16 MR. WHEABLE: It's all out.

17 THE COURT: Okay.

18 MR. WHEABLE: So, with that Your Honor, I - I do move  
19 this Court to allow me to introduce State's One and State's  
20 Two which is the lapel cam and D. V. D. which contain Miss  
21 Sindelar's statements. Mr. Sears, I believe does have some  
22 issues with the status of custody and when Miranda was read  
23 and when it should have been read and Mr. Sumrall is here  
24 should he need to - to talk we can bring him in.

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1 THE COURT: All right. Mr. Sears?

2 MR. SEARS: I can take these sort of in reverse  
3 order. Lets talk about the lapel cam first.

4 THE COURT: Okay.

5 MR. SEARS: And we have a redacted video. The first  
6 time I learned about the redacted video was this morning. I  
7 did not participate in any of the redaction of the video. I  
8 didn't see what was taken out. I don't know what was taken  
9 out. I in fact saw the original video but my concern now is  
10 I have a tampered with video and I'm supposed to confront,  
11 okay, in front of a jury, without knowing exactly whether or  
12 not it was done correctly, whether it was done improperly, if  
13 there was something cut out its going to be a surprise, and I  
14 think its improper. I don't think any of that video should  
15 be coming in now. First of all, with respect to - to the  
16 lapel cam, we've got an officer who can testify to the events  
17 as he recalls it. We don't need it. We don't have any  
18 missing witnesses. I mean, this is just I guess C. S. I.  
19 flash for the jury so they get to see some lapel cam. There's  
20 nothing there that cannot be testified to. In fact, a lot of  
21 what you see on the lapel cam is nothing. I mean, you're not  
22 looking at any particular testing. I think you might see  
23 Miss Sindelar raise an arm once in the midst of one of their  
24 tests, but its of no particular special value, and now its

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1 been tampered with without any sort of purview by an expert  
2 by the State, okay, or even by me. Ah, next, we've got  
3 admissions on there that are given when she was detained,  
4 when she was defacto under arrest. She wasn't cuffed, but she  
5 wasn't freely. She asked if she could go into Champs to get  
6 somebody to drive her car home. At that point its clear she  
7 was under arrest. He didn't say the magic words, okay, but  
8 she was under arrest. She did not receive Miranda at any  
9 point until she got to the jail later, unless he gave her  
10 Miranda in the car and we don't have any evidence of that.  
11 What we've got is a bunch of questioning that goes on with  
12 this woman without being Mirandized. The State's right.  
13 When she's in there in booking, she's told you don't have a  
14 right to an attorney during testing and she's shocked. She  
15 thought she had a right to an attorney. It's clear that she  
16 didn't understand what her rights were. It's clear that she  
17 didn't have Miranda read to her earlier than that. She  
18 didn't know what Miranda was at that point. I mean granted,  
19 we expect everybody sees it on T. V. and everybody knows, but  
20 it wasn't read to her when it should have been read to her  
21 which was at that - at the point when she was no longer  
22 detained. She was formally arrested, and from the point when  
23 she says can I go into Champs and get somebody to watch my  
24 car or to take care of my car, she knows she's under arrest.

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1 Nothing after that in terms of admissions should be allowed  
2 before the Court and after that is when the statement is  
3 made, yea, I took some shots during the day. Her prior  
4 answer was no, I haven't had anything to drink, and we think  
5 that's the end of it. After the no I didn't have anything to  
6 drink, none of those admissions should come in, okay, with  
7 respect on the lapel cam. With respect to the booking video,  
8 I'm not sure I see any value whatsoever to the booking video,  
9 except we have a recitation of the testing that we're going  
10 to have witnesses testify to, and I guess I'm concerned about  
11 the time wasting. It's cumulative. We've got what we need  
12 in terms of the witnesses who are here. We don't need it  
13 Your Honor. I don't know if the booking video's been tampered  
14 with or not, it's not clear, but I just think it's cumulative  
15 and it's unnecessary. Thank you Judge.

16 THE COURT: Thank you. Anything else?

17 MR. WHEABLE: I - I believe Your Honor has reviewed  
18 the lapel cam video (unintelligible words - noise in front of  
19 microphone). I do have a duty to keep nonadmissible evidence  
20 away from the jury and I just could not be sure that our  
21 technology we have that I can get up to press the stop button  
22 in time. That's why we redacted that. Mr. Sears can review  
23 it over lunch and I do have the other unredacted video here  
24 and you know, we can do it that way if the Court has concern

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1 with that. You know, I think that if - if the Court watched  
2 the video I think the Court would remember the pivotal turn  
3 in events when during the P. B. T., and this is where it's  
4 relevant, during the P. B. T., and - and I'll - I'll talk  
5 frankly now because there's no jury here, Miss Sindelar has  
6 some experience with D. U. I.s. She asked if she had to blow  
7 into the device, probably because either she saw Deputy  
8 Wilkin get it out or not and it was at that point, this is  
9 after all the admissions, it was at that point because  
10 there's no admissions made on the scene, on the lapel cam  
11 after the P. B. T., so at that point she blew in the device.  
12 Deputy Wilkin was saying keep blowing, keep blowing, keep  
13 blowing and then Miss Sindelar did not blow in the device  
14 completely. She stopped, she gave a look to Deputy Wilkin.  
15 It took a second to register and then when he read the  
16 results which aren't necessary, Miss Sindelar said just  
17 enough, just enough, isn't it. She knew at that point she  
18 was gone and that was what - they do that for a reason.  
19 That's when they make their final decision to arrest. And  
20 that's when she turned around and was placed into handcuffs.  
21 She knew, the officers knew. They had another discussion  
22 then about the car. Sergeant Marquez was on scene and said  
23 I'm sorry we - we have a pol - we - we don't do that and then  
24 said - oh was it the car still running and he said no it's

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1 turned off, I'll get your purse. She said thank you. I mean  
2 that was - that unequivocally was a time when she was - when  
3 Miranda at that time would have triggered for any statements  
4 that be used after that point. We're not seeking any of  
5 those admissions of those - those - there's no relevance to  
6 any of those statements to the case today and so we are  
7 seeking to have the lapel cam video shown up to the point I  
8 think we're stopping it right before she says do I need to  
9 blow into the machine, so. As the booking D. V. D. you know,  
10 a lot of this evidence is cumulative a little bit but it's  
11 still provident. We still have statements on there that are  
12 provident. It - it bolsters what our witnesses are saying,  
13 it shows the process, it helps the jury to understand the  
14 layout how the blood was taken, how the kits are used, and  
15 the entire process. It's - it's definitely relevant, and you  
16 know what, it's our case for the State. We have to produce  
17 our evidence and let the jury see its entirety, so the  
18 booking D. V. D. has not been redacted whatsoever. It's the  
19 same one we discovered to Mr. Sears and we ask that they both  
20 be allowed in.

21 MR. SEARS: Just one thing Your Honor. That did  
22 raise a factual issue right there. I hadn't planned on  
23 putting Sumrall on the stand but that fact statement by the  
24 State was Sumrall will say it wasn't until after she took the

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1 P. B. T., she wasn't free to leave. Well, we don't know  
2 that. We don't have that statement anywhere. We haven't  
3 explored Deputy Sumrall's mind. My hunch is if we put Deputy  
4 Sumrall on the stand and we ask him after the first test was  
5 she free to leave, he'll say no, but if that's the test the  
6 State wants to use, I'm willing to go with it. We'll have to  
7 question Sumrall.

8 THE COURT: No. No. We're not going there.

9 MR. WHEABLE: Not. That's not the standard here.

10 THE COURT: We're not going there. We're not going  
11 in anybody's mind because that's not the standard. The  
12 standard is objective reasonable person, not what he thought  
13 or what she thought. So with respect to the lapel cam here's  
14 what it is. The - even though she said can I leave my car  
15 with someone at Shooters, after a couple of tests had gone on  
16 or something, and - and maybe - maybe whether she knew it -  
17 it was crunch time or she knew she wasn't free to leave or  
18 she knew she wasn't - she was being detained, she couldn't  
19 have left being detained, but I don't think she was in  
20 custody at that point, even within her own mind she was,  
21 cause then there's still - he's still investigating. He's  
22 asking about her quite - about how much she's had to drink,  
23 how much did you have, are you sticking with that, and then  
24 she makes those admissions and then they do the P. B. T. and

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1 clearly that process was flawed with the discussion of the  
2 result on the camera and then she was formally arrested. I  
3 don't think she was - I don't think it was a custodial  
4 interrogation until after she was formally arrested in this  
5 case so I'm going to - I'm going to allow the - the lapel  
6 cam, the redacted version up to the point of prior to the  
7 P. B. - just prior to the P. B. T. as you've represented that  
8 you've done. Now, we'll play it if there's something  
9 ultimately taken out of that or there's another problem with  
10 it then that could be a real problem but I'm not going to  
11 watch the whole thing again to make sure. You - have you lay  
12 your foundation for it is what you'll do because I don't  
13 think subjective believe, even Sumrall's subjective belief  
14 doesn't have anything to do with what I see on that video.  
15 Okay, so that's the first part. Then when we go to the  
16 booking video, actually there's a couple things that I saw  
17 here. In the booking video, implied consent is read and then  
18 there's this extensive - I guess I had - yea, I hadn't - I  
19 hadn't paid attention cause - because I think in our prior  
20 motions, we didn't have the whole thing. We just looked at  
21 the implied consent, but this extensive questioning about the  
22 booking questions now, oh my God, it's not just ten  
23 questions, it's a hundred questions, and it goes on and on  
24 and on, and some of it - I don't know. Some of it I guess

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1 maybe for liability purposes or something, I don't know why -  
2 what it's all being done for but anyway, I - I - I have - I -  
3 I - don't find a lot of relevance with that but here's what I  
4 do get. The booking questions go for a long time and the it -  
5 on my timer on the video at eighteen point oh five, there's  
6 discussion about this being a felony and there - to the  
7 phlebotomist and therefore we need to draw blood. That's not  
8 coming in. And then, here's the problem I have though with  
9 the Miranda. Here's what happened. He reads Miranda off the  
10 card and then he closes it like this. With these rights in  
11 mind, where were you headed? He doesn't say with these  
12 rights in mind, do you understand your rights? With these  
13 rights in mind, do you waive your rights? There's absolutely  
14 no waiver. None, with respect to Miranda. There's a waiver  
15 on implied consent. I found that previously but that's what -  
16 the quote I wrote and I listened to it as queue times and you  
17 can look again but I don't think its there. It said having  
18 these rights in mind, where were you headed? And she starts  
19 - and the questioning goes on and on and on and - and - and  
20 in order to prove the reading of Miranda alone, my - and I  
21 don't think I'm wrong but I could be, the reading of Miranda  
22 alone is the first step, then the State has to show a knowing  
23 waiver of those rights and he - he's - I think the cloud says  
24 having these rights in mind will you waive them and talk to

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1 me and I think he jumped the track there cause I didn't hear  
2 it. So, ah, so I guess if you wanted to put on the initial  
3 implied consent part and the booking questions up to about  
4 the time when the phlebotomist comes in, I don't know how  
5 you're going to cut that out.

6 MR. WHEABLE: So, just so we're clear, this Court is  
7 excluding everything after when he says having those rights  
8 in mind, where were you going, everything after that's out.

9 THE COURT: For sure.

10 MR. WHEABLE: And then the discussion about that it -  
11 that someone mentioned the word felony in there, that's out.

12 THE COURT: That's out.

13 MR. WHEABLE: Okay, so I'm not -

14 THE COURT: I mean here's a question that I have and  
15 I didn't look at it from this view. Clearly, when she was  
16 arrested she was in a custodial situation, and normally - and  
17 I didn't analyze all those booking questions, you know. In  
18 the past its simple booking stuff and I don't note if there  
19 was anything incriminating that were asked.

20 MR. WHEABLE: I - I don't like because its personal,  
21 you know, but -

22 THE COURT: It's huge personal information -

23 MR. WHEABLE: Yea.

24 THE COURT: - and I don't know the - I don't know - I

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1 mean you're - I understand you're showing them how we do it  
2 all that kind of stuff but the relevance seems pretty mar -  
3 relevance seems really marginal to me.

4 MR. WHEABLE: Okay.

5 THE COURT: You know, have you - have you ever had -  
6 it used to be did you get a bump on the head tonight to  
7 eliminate that I had a bump on the head when it was - it was  
8 like it was all kinds of medical stuff talked about too I  
9 guess. Anyway. So, I'll - I guess I'll leave that to your  
10 better judgement on what you think with respect to that.

11 Okay, so now, then we have what, the motion to dismiss?

12 MR. SEARS: Yes, Your Honor.

13 THE COURT: All right. Anything to add to that? I've  
14 read it. I've researched. Anything to add?

15 MR. SEARS: If you read my papers, none. If I clear  
16 enough, then no.

17 THE COURT: Okay.

18 MR. SEARS: My argument is simple, it's the same or  
19 similar and it's not - it's not the same. The question is is  
20 it similar law?

21 THE COURT: And you guys?

22 MS. GIANOLI: Your Honor -

23 MR. WHEABLE: Miss Gianoli - I'm sorry, Miss  
24 Gianoli's going to handle this part.

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1 THE COURT: Go ahead.

2 MS. GIANOLI: And Your Honor, I'll rely upon my  
3 brief. I think it fairly states our opposition and I'm  
4 certainly willing to argue that if the Court wishes to hear  
5 more.

6 THE COURT: Okay. All right. I don't care - I don't  
7 need to. So here's what I find. With respect to the part  
8 that it's not the same or similar, I looked at some other  
9 law. I - we had a - we had a case a while ago, it was very  
10 technical in the law. It was about you had to have - and the  
11 State - it was on a marijuana, second conviction of  
12 misdemeanor marijuana. I think it was in - in a situation  
13 where - I can't remember but I threw it out. It was State  
14 versus DeLucia, probably a couple years ago and there was -  
15 and their law was very specific about what - our law's  
16 requiring you had to have a prior conviction and there's  
17 something that wasn't clear from the other law. I don't  
18 think the fact that it's ten years for enhancement purposes  
19 of seven years changes the fact that it's still substantially  
20 similar law and the same conduct - it was the same offense,  
21 the same type of conduct and the fact that they do  
22 enhancement for ten years or allow them and we allowed seven  
23 at the time doesn't change that part of it. With respect to  
24 the - what I thought the very interesting issue was at first

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1 until I guess I really got in the law was the - the fact that  
2 when she pled guilty to the - oh, and also I could say with  
3 res - I've read - reviewed the prior carefully and I think  
4 the factually the prior spells out clearly that it's a  
5 felony, spells out clearly that it - it has those significant  
6 penalties. I think that belies the affidavit of the  
7 Defendant that it would be treated as a misdemeanor, that it  
8 was in fact a misdemeanor. I mean the - the prior speaks for  
9 itself and it says felony at least two or three times on  
10 there. It also recites the prior convictions and this is an  
11 enhancement, so that doesn't get it. The - what was  
12 interesting was the fact that when she pled to the felony it  
13 wasn't a felony in Nevada, or it wouldn't have been enhanced  
14 as always a felony in Nevada and I didn't look up Utah law at  
15 the time but I did find this Nevada - in Nevada law, the  
16 Nolette case is one eighteen Nevada three forty-one and then  
17 that leads into a whole bunch of Ninth Circuit cases and -  
18 and in fact they're - they're very close that the enhancement  
19 fact is a collateral consequence of her plea and it was  
20 something that's based on the fact that now she's in Nevada  
21 and now it's a felony, it wasn't then. She doesn't have to be  
22 advised of it. She doesn't have to waive it and she doesn't  
23 have to know about it at the time because that is a collateral  
24 consequence which definition is this. The collateral

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1 consequence flows from the future conduct of the Defendant  
2 and or the decision of a separate Court. It's not a direct  
3 consequence as a result of her plea in Utah. The fact that  
4 she got a D. U. - got arrested for D. U. I. in Nevada later  
5 is future conduct of the Defendant and now we're in this  
6 Court which is a decision of a separate Court so that's  
7 Nolette defining collateral consequences. The other cases  
8 that talk about the plea bargains, those are based I think  
9 firmly on the fact that they were plea bargains, they were  
10 specifically pled out in the plea bargain or by the Court.  
11 That was Spear one sixteen Nevada six seventy-seven or Christ  
12 one oh eight Nevada one zero five eight and they're enforcing  
13 plea agreements or they're enforcing a bargain that the Court  
14 made with the person when they sentenced them and took a plea  
15 and I don't see any of that in the Utah prior. I see  
16 basically she pled to a felony. She was advised about a  
17 felony and the Court didn't send her to prison, so, that's my  
18 finding on that. Any - were there any other issues that I -

19 MR. SEARS: Those were the ones I raised Judge.

20 THE COURT: Okay. Anything else, either one, on the  
21 record?

22 MS. GIANOLI: No Your Honor, thank you.

23 THE COURT: Okay. Any other loose ends?

24 MR. SEARS: Well just the booking video's still lose.

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1 THE COURT: Oh, the booking video. Ah, well, I mean,  
2 it's - it's marginally relevant. It shows her mannerism, it  
3 shows her action but I don't know.

4 MR. WHEABLE: We just - we're probably just not going  
5 to use it at all.

6 THE COURT: Okay.

7 MR. WHEABLE: But I do have one concern that is this.

8 MR. SEARS: (Laughter).

9 MR. WHEABLE: You know when Caleb Sumrall is on the  
10 stand, you know, I really don't think it's an appropriate  
11 place for Mr. Sears to get into the consensual nature of the  
12 blood draw. We've mitigated that. It's a legal issue. I'm  
13 not going to ask about consent. I'm not going to ask about  
14 Nevada implied consent, you know, because that's going to  
15 confuse the jury if it comes out that it was  
16 unconstitutionally taken from her.

17 MR. SEARS: Well I don't - I'm not sure it's relevant  
18 for a jury to even hear about it.

19 MR. WHEABLE: No, its not -

20 THE COURT: Well it isn't.

21 MR. WHEABLE: - and that's my point.

22 THE COURT: And certain -

23 MR. SEARS: I wasn't going to go into it.

24 THE COURT: I mean if he went - if he tried to go

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1 into it and you didn't do anything about it, it would open  
2 the door, you could play the whole thing probably, I mean,  
3 that's - that's the other part of it.

4 MR. WHEABLE: Sure.

5 THE COURT: But that's not their decision, that was  
6 already made, yea.

7 MR. SEARS: Yea, that's not a -

8 THE COURT: Yea.

9 MR. SEARS: - a jury call, Your Honor.

10 THE COURT: Okay.

11 MR. WHEABLE: So the mo - the motion to dismiss is  
12 denied.

13 THE COURT: Denied.

14 MR. WHEABLE: The booking video as to the felony and  
15 any admissions made after Miranda are inadmissible and -

16 THE COURT: And again, see I didn't - I didn't listen  
17 to that - the standard booking questions to think about  
18 incriminating. And there was a whole bunch of them so unless  
19 you want to watch it while you're eating your sandwich -

20 MR. WHEABLE: Sure.

21 THE COURT: ~ because if - if - if - if you do decide  
22 to play that and something and - and eyebrows pop up all  
23 around because it sounds incriminating, that was in violation  
24 of Miranda then, and so there could be a problem.

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1 MR. WHEABLE: We'll avoid that.

2 THE COURT: That sounds sweet. All right. Anything  
3 further? Okay. So we'll be back. We'll be in recess until  
4 - make sure you guys are back here a little bit early incase  
5 there's some other issues.

6 MR. SEARS: Okay.

7 THE COURT: We'll be ready to go to at a quarter to  
8 two. All right. Court will be in recess.

9 BAILIFF: All rise.

10 BAILIFF: All rise.

11 THE COURT: Court's in session, please be seated.  
12 This is a continuation of our case. Miss Sindelar's present  
13 with counsel, the State's present and the jury and the  
14 alternate are present and so the State can proceed.

15 MS. GIANOLI: Thank you Your Honor. Your Honor, do  
16 you mind if I mind the podium to the middle of your  
17 courtroom?

18 THE COURT: That's fine.

19 MS. GIANOLI: Thank you. Good afternoon ladies and  
20 gentlemen. As the Court indicated and now I speak to while I  
21 explain, my name is Angie Gianoli and I along with Mr.  
22 Wheable are representing the State in this case.  
23 (Unintelligible word) we have charged the Defendant with  
24 driving while under the influence. Now the course of the

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1 next two days, you're going to hear evidence and hear from  
2 several witnesses and hear their testimony. And as you're  
3 analyzing this testimony you're going to realize that this is  
4 a straight forward case about driving while under the  
5 influence. Over the course of the next two days, we  
6 anticipate you listening to and hearing from three of the  
7 State's witnesses. The first witness is Deputy Caleb  
8 Sumrall. Deputy Sumrall's going to explain to h's a deputy  
9 of the White Pine County Sheriff's Office has - and has been  
10 so employed for the last four years. He'll talk to you about  
11 his training and experience, how he's received training and  
12 experience in conducting D. U. I. investigations, how he does  
13 certain tests to determine whether a person's impaired and  
14 how he conducts his investigations. He'll also tell you that  
15 his duties as a deputy are to enforce local and state laws.  
16 One such law is to make sure that individuals while driving  
17 on a public roadway are not driving while impaired. As we go  
18 through his testimony, he's going to indicate to you that  
19 back on March twenty-seventh, two thousand and thirteen he  
20 came in contact with the Defendant. He'll tell you that this  
21 contact initially occurred at the corner of Great Basin  
22 Boulevard and Aultman. He sees a motor vehicle with a break  
23 - break light out which is a traffic infraction. He observes  
24 as the vehicle drives into the Shooter's parking lot. He then

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1 activates his light and stops the motor vehicle based upon  
2 what he previously observed as a traffic violation. Now he  
3 makes contact with the Defendant who was the sole occupant  
4 and driver of the motor vehicle. Now in making contact with  
5 the driver he starts to notice certain physical observations,  
6 observations which will tell you in his training and  
7 experience maybe indicative of a person driving under the  
8 influence of alcohol or impaired. In making contact with  
9 her, he notes that there is - she's got watery eyes. He  
10 notes that that there's an odor of intoxicants coming from  
11 her breath and her speech is slurred. Based upon this, he  
12 asks the next logical question, have you been drinking today,  
13 to which the Defendant denies. He then asks the Defendant  
14 why she was pulling into the Shooter's parking lot which the  
15 Defendant hesitates for a moment and then indicates that she  
16 had been driving from McGill to Ely in order to get some  
17 (unintelligible word - noise in microphone) and some toilet  
18 paper. He will next tell you that based upon his training  
19 and experience and the physical observations he made of the  
20 Defendant he asks her to exit the motor vehicle so he can  
21 perform field sobriety tests. He'll tell you that these are  
22 standardized tests that he's trained to determined and  
23 trained to engage in when he believes somebody is under the  
24 influence. He then utilizes these three tests. They're

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1 called the horizontal gaze nystagmus, the walk and turn test  
2 and the one leg stand test. He'll explain those tests to you  
3 as he did with the Defendant, he'll demonstrate those tests  
4 to you and he'll indicate how the Defendant performed on  
5 those tests, and in short he'll tell you that after  
6 conducting those tests, he made the determination the  
7 Defendant was impaired and unable to safely operate a motor  
8 vehicle. Following these tests, Deputy Sumrall arrests the  
9 Defendant and takes her to the police station, the Public  
10 Safety Building is what we call it. While he's at the Public  
11 Safety Building, a draw - a blood draw is requested and  
12 performed on the Defendant, and this is where you're going to  
13 be introduced to the State's second witness. This is Horace  
14 Herrin. Horace Herrin is a medical technician. Back in March  
15 twenty-seventh of two thousand thirteen he was employed with  
16 William B. Ririe as a medical technician. He was employed  
17 there for five years. He'll tell you about his training and  
18 experience and in fact he'll tell you that he has been a  
19 medical technician for approximately thirty years. He has  
20 thirty years of experience in the medical field. He'll talk  
21 about his licensure in Nevada when he lived here. He'll tell  
22 you that his licensure allows him not only to do blood draws  
23 but also to train phlebotomists and blood technicians to do  
24 blood draws as well. He'll then talk to you generally about

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1 the blood draw process and how he conducted the blood draw on  
2 the Defendant on the particular date. He'll also tell you  
3 that when he conducted the blood draw it was within two hours  
4 - approximately just over an hour after the Defendant had  
5 been driving her motor vehicle. Next you'll be introduced to  
6 the State's final witness. Our final witness is Richard Bell.  
7 Richard Bell is a criminalist with the Washoe County Crime  
8 Lab. He will talk to you as well about his training and  
9 experience. He'll tell you he's been a criminalist at the  
10 Washoe County Crime Lab for the past fifteen years and has  
11 over thirty years of experience in the laboratory field and  
12 in the medical field. And Richard Bell will tell you about  
13 again his training and experience. He'll talk to you about  
14 the protocol utilized by the Washoe County Crime Lab when  
15 they receive a sample, how they test the sample, how they  
16 hold on to the sample to assure that it's not tainted, it's  
17 not contaminated. He'll also talk to you about peer review  
18 process, so after he conducts his tests and determines if  
19 there's any alcohol content or the presence of alcohol in a  
20 person's blood, there's a peer review to insure the accuracy  
21 and the reliability of the results that he obtains. After  
22 going through that process I will then ask him what the  
23 results of the Defendant's blood was and he'll tell you that  
24 within two hours of driving the Defendant had a blood alcohol

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1 level of point one four five grams per hundred milliliters of  
2 alcohol which he'll tell you is in excess of the point zero  
3 eight percent. That's it, ladies and gentlemen. That's  
4 essentially what the evidence is going to show and the  
5 testimony the State anticipates being provided to you. Now  
6 you'll have an opportunity at the end of the case, it's  
7 called closing. Mr. Wheable will have the opportunity to  
8 address you again. It will be at that time that he'll review  
9 the evidence with you, what you've heard, what you've seen,  
10 what's been admitted and he'll ask you to find the Defendant  
11 based upon everything you've heard guilty of driving while  
12 under the influence. Thank you.

13 THE COURT: Thank you. Mr. Sears will you be heard  
14 now?

15 MR. SEARS: I will Your Honor, thank you. Your  
16 Honor, ladies and gentlemen of the jury, I am Rich. I have  
17 been asked to represent Mrs. Sindelar in this case so I'm  
18 doing the defense. I am not the government. This case  
19 belongs to the government. They are the ones who brought  
20 this. They are the ones who have all the burdens. The burden  
21 on the government is straight forward. They have the burden  
22 to produce evidence in this case and Mrs. Gianoli just told  
23 you now what that evidence was going to consist of. It's  
24 your burden and your job to decide whether or not that

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1 evidence proves the charge. You heard what the charge is.  
2 It's driving under the influence of alcohol. What I want you  
3 to do during the course of the case is listen carefully to  
4 the evidence. You're going to get a chance to see the - the  
5 camera, it's called a lapel camera I think. It sits on the  
6 officer. You're going to be able to look at Miss Sindelar for  
7 yourselves and I want you to pay careful attention to what  
8 you see. Remember the State has the burden, the government  
9 has the burden to show exact proof of every element of the  
10 charge in this case. What you're going to see is that Deputy  
11 Sumrall never saw Miss Sindelar driving erratically. He  
12 never saw her speeding. He never saw her weaving in the  
13 lane. He never saw her driving without her headlights on. He  
14 never saw her driving without any lights on. And point of  
15 fact, the only thing he saw was the taillight. So he pulls  
16 her over, okay, and then you're going to watch the encounter  
17 at the car. You'll see Miss Sindelar, she's not stumbling.  
18 She's able to park her car. She speaks clearly. You're not  
19 going to see watery eyes. You're not going to see slurred  
20 speech. You're not going to see her weaving around. This  
21 case, yea this is a case about the evidence of driving under  
22 the influence of alcohol. You're not going to hear anything  
23 about driving. What you're going to hear is scientific  
24 evidence. You're going to have an expert come in and

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1 testify, Mr. Bell, and another expert who is an expert in  
2 blood draw. But what you're not going to see is the evidence  
3 of driving under the influence. I would ask you to watch the  
4 scientific evidence very carefully because that's what this  
5 case is going to be about. Science. Not driving. I would  
6 ask you to bring your everyday common sense and to understand  
7 what you're going to hear, and at the close of the case I'll  
8 be coming back and asking you to make a decision in this case  
9 and its an important decision and it affects someone  
10 (unintelligible word) interest. We all want to be  
11 (unintelligible word - bad recording).

12 THE COURT: Thank you Mr. Sears. The State can call  
13 its first witness.

14 MR. WHEABLE: Thank Your Honor. The State will call  
15 Deputy Caleb Sumrall.

16 THE COURT: Please come forward over here and raise  
17 your right hand. The Clerk will give you the oath.

18 CLERK: Do you solemnly swear the testimony you are  
19 about to provide in this matter before the Court shall be the  
20 truth, the whole truth, and nothing but the truth so help you  
21 God?

22 MR. SUMRALL: Yes I do.

23 THE COURT: Please be seated. Please state your name  
24 and spell your last name.

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1 MR. SUMRALL: Caleb Sumrall. Last of  
2 S - U - M - R - A - L - L.

3 THE COURT: Thank you.

4 MR. WHEABLE: Good afternoon Caleb. Um, without  
5 giving your exact address, where do you live?

6 MR. SUMRALL: I live in Ely in White - in White Pine  
7 County.

8 MR. WHEABLE: How long have you lived in Ely?

9 MR. SUMRALL: Almost four years.

10 MR. WHEABLE: And what is your current occupation?

11 MR. SUMRALL: Deputy Sheriff with the White Pine  
12 County Sheriff's Office.

13 MR. WHEABLE: How long have you been a Deputy Sheriff  
14 for?

15 MR. SUMRALL: For almost four years.

16 MR. WHEABLE: So what are your duties as a Deputy  
17 Sheriff?

18 MR. SUMRALL: To enforce local and state laws, to  
19 conduct traffic stops, calls for service, interact with the  
20 public.

21 MR. WHEABLE: Okay. What kind of training have you  
22 received for - what kind of training do you receive to be a  
23 Deputy Sheriff?

24 MR. SUMRALL: I've received a sixteen week POST

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1 Academy where - where they train the (unintelligible words).

2 MR. WHEABLE: When you say POST, what is that?

3 MR. SUMRALL: It's a Peace Officer Standards  
4 Training. I've gone through a field training program and  
5 along with on the job training - training.

6 MR. WHEABLE: Okay and I'm going to ask you some  
7 followup questions about those things okay. First of all,  
8 this Peace Officer Standards Training, where did that take  
9 place?

10 MR. SUMRALL: That takes place in - in Carson City,  
11 Nevada.

12 MR. WHEABLE: And tell me, is it a national standard,  
13 a state standard, what is it?

14 MR. SUMRALL: State and national standard.

15 MR. WHEABLE: Okay. And how long was that course  
16 again?

17 MR. SUMRALL: Sixteen weeks.

18 MR. WHEABLE: Okay. And during this Peace Officer  
19 Standards Training did you receive any training with regards  
20 to investigating driving under the influence crimes?

21 MR. SUMRALL: Yes I did.

22 MR. WHEABLE: Well - well tell us about that  
23 training.

24 MR. SUMRALL: During - during that training it was a

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1 week long course before the other course. In that they  
2 showed what to look for. They also had us do a wet lab  
3 which where both intoxicated individuals and sober and then  
4 they teach us how to do a field test on those individuals.

5 MR. WHEABLE: I'm sorry, Deputy, but that sounds  
6 interesting so I want to hear more about this wet lab. Tell  
7 me - tell me exactly what happens.

8 MR. SUMRALL: They actually have volunteers that  
9 will - that will come in, donate their time, and they will -  
10 they will actually drink in various - various amounts. Some  
11 will get, if my experience was, pretty drunk. They - they  
12 also had sober - sober drivers that almost appeared to be  
13 drunk, and we went off of that off - off of what they taught  
14 us during that forty hours because that takes place after the  
15 forty hour work week I guess.

16 MR. WHEABLE: So Deputy, why don't you tell me a  
17 little bit about the things you learned and how you applied  
18 it in that wet lab?

19 MR. SUMRALL: As far as the standard field sobriety  
20 testing?

21 MR. WHEABLE: Yes

22 MR. SUMRALL: With that there's - there's a series of  
23 three tests that they train us to conduct on these  
24 individuals, the first being a H. G. N. test which is a

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1 horizontal gaze nystagmus test, and then the nine-step test -  
2 a walk and turn test, and then also the one leg stand test.

3 MR. WHEABLE: Okay. And I'll ask you more about that  
4 later but do you need to - do you have to pass that course to  
5 get out of POST? How does that work?

6 MR. SUMRALL: Correct. Within in all the courses  
7 throughout the POST Academy, you had to pass with an eighty  
8 percent or above on both on the written portions of the test  
9 and the practical portions of the test.

10 MR. WHEABLE: Okay. And what other training have you  
11 received with regards to investigating the driving under the  
12 influence of crimes - or I mean crimes.

13 MR. SUMRALL: Well like I said, with the F. T. O.,  
14 which is my field training - field training program, with  
15 that I drive around, I don't recall how long of a period with  
16 the F. T. O., to the department. They are basically field  
17 training officers, and I ride with them and officially on the  
18 job training. With that that's how it (unintelligible words -  
19 had recording) along with the POST curriculum. Hearing the  
20 F. T. O. - at first you kind of just like ride along - you  
21 ride along just to kind of observe to see how things are done  
22 and there's different phases of the field training program  
23 there on - you're more hands on and then by the final phase  
24 you're doing all the work and then the training officer's

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1 just basically a shadow, and during that time he's - he's  
2 teaching you all aspects of the job.

3 MR. WHEABLE: So more specifically, what kind of  
4 training did you do with regards to D. U. I. investigations  
5 while on the F. T. O. program - on the field training  
6 program?

7 MR. SUMRALL: Um, we - we conducted traffic stops on  
8 - on D. U. I. drivers and I participated in those field  
9 testing - that field testing.

10 MR. WHEABLE: Okay. Um, are there other requirements  
11 for you - any other training that you need to do for D. U. I.  
12 investigations?

13 MR. SUMRALL: There are.

14 MR. WHEABLE: And what's that?

15 MR. SUMRALL: Every year there's a certain amount of  
16 POST credits that we have to - it's like continuing  
17 education credits that we have to abide by each year. During  
18 - during that year it's kind of spaced out. If you fall out  
19 of compliance with that then the POST administration will -  
20 they'll take your license as a cat one officer.

21 MR. WHEABLE: So you're saying there's D. U. I.  
22 continuing education requirements?

23 MR. SUMRALL: Correct.

24 MR. WHEABLE: And are you in compliance with those

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1 requirements?

2 MR. SUMRALL: Yes I am.

3 MR. WHEABLE: Okay. And so since you got off the  
4 field training, you know a few years ago, have you had  
5 occasion to conduct D. U. I. investigations?

6 MR. SUMRALL: Yes I have.

7 MR. WHEABLE: How many do you think you've conducted  
8 over the last few years?

9 MR. SEARS: Objection. Relevance Your Honor. I  
10 think the relevant time period is up to this offense, not  
11 over all these years.

12 THE COURT: Rephrase it.

13 MR. WHEABLE: On March twenty-seventh, two thousand  
14 thirteen, how long had you been on duty Deputy?

15 MR. SUMRALL: Um, been over a year cause I started  
16 November of two thousand eleven.

17 MR. WHEABLE: Okay. And on March twenty-seventh, two  
18 thousand thirteen had you conducted D. U. I. investigations  
19 prior to the one we're going to talk about today?

20 MR. SUMRALL: Yes I have.

21 MR. WHEABLE: Okay. And how many do you think you  
22 have conducted?

23 MR. SUMRALL: I don't recall off hand. I - I know I  
24 was - I've been in part of - of a few, whether I was either

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1 directly involved or I was with a partner that was conducting  
2 F. S. T.s.

3 MR. WHEABLE: I understand. So on March twenty-  
4 seventh two thousand thirteen, you had just over a year of  
5 law enforcement experience?

6 MR. SUMRALL: Correct.

7 MR. WHEABLE: Were you a rookie? Is that fair to  
8 say?

9 MR. SUMRALL: Yes.

10 MR. WHEABLE: Okay. All right. So I'm going to shift  
11 gears now. I want to talk about that event. Were you on  
12 duty on March twenty-seventh, two thousand thirteen?

13 MR. SUMRALL: Yes I was.

14 MR. WHEABLE: Okay. And when did your shift start  
15 that - that day?

16 MR. SUMRALL: It started at six P. M.

17 MR. WHEABLE: Okay. And did anything peculiar occur  
18 after about seven P. M. that evening?

19 MR. SUMRALL: Yes. At - at approximately I believe  
20 the time was seven thirty-eight P. M. I was on patrol in the  
21 City of Ely, County of White Pine. As I was driving down  
22 Great Basin Highway, if you're familiar with the area, you  
23 come down Great Basin by the Copper Queen headed towards the  
24 main intersection of East Aultman and Aultman, I noticed a -

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1 a gold four-door sedan to have a driver's side break light  
2 out.  
3 MR. WHEABLE: Okay. And so you observed this break  
4 light that was out and what about that is peculiar to you  
5 Deputy?  
6 MR. SUMRALL: Um, as - as I mentioned earlier I - I  
7 enforce state laws and as far as N. R. S. four eight four D  
8 one two five, that states that two brake lights are required  
9 for that vehicle.  
10 MR. WHEABLE: Okay. And you said you were heading  
11 down Great Basin towards the intersection of Aultman Street,  
12 is that - where is that located at in our - around here?  
13 MR. SUMRALL: The City of Ely.  
14 MR. WHEABLE: And in which County is that?  
15 MR. SUMRALL: In White Pine, State of Nevada.  
16 MR. WHEABLE: Okay. All right. So when you - when  
17 this sedan with this inoperable brake lamp caught your  
18 attention, what occurred then? What occurred after it caught  
19 your attention?  
20 MR. SUMRALL: Um, I noticed - I noticed the vehicle  
21 to turn right onto East Aultman. As it turned right, I  
22 followed behind it and then immediately turned into Shooter's  
23 parking lot - Shooter's Bar and Grill parking lot. Um, at  
24 that point I activated my emergency lights and conducted a

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1 traffic stop on that vehicle.  
2 MR. WHEABLE: Okay. So I'm just going to go through  
3 that real quick with you step by step. Which vehicle - so  
4 you followed the - you followed this vehicle onto East  
5 Aultman?  
6 MR. SUMRALL: Correct.  
7 MR. WHEABLE: As you turned right onto East Aultman -  
8 MR. SUMRALL: Towards the hospital.  
9 MR. WHEABLE: Towards the hospital, and then which  
10 vehicle turned into Shooter's?  
11 MR. SUMRALL: The sedan - the gold four-door sedan  
12 that had the inoperable taillight.  
13 MR. WHEABLE: Did you have your lights on - was she -  
14 at that point?  
15 MR. SUMRALL: At that point, no I did not.  
16 MR. WHEABLE: Okay, and so once that vehicle turned  
17 into Shooter's what did you do?  
18 MR. SUMRALL: That's when I activated my patrol  
19 lights to conduct an enforcement stop.  
20 MR. WHEABLE: Why - why were you conducting an  
21 enforcement stop?  
22 MR. SUMRALL: Because of the inoperable tail lamp.  
23 MR. WHEABLE: Okay. Do you know where - you - you  
24 remember what time when you made that traffic stop?

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1 MR. SUMRALL: As I recall it was seven thirty-eight  
2 P. M.  
3 MR. WHEABLE: Okay. Seven thirty-eight. Ah, what  
4 kind of road is Great Basin and Aultman?  
5 MR. SUMRALL: It's a highway that the public has  
6 access to.  
7 MR. WHEABLE: Okay. All right. So you operate - you  
8 flipped on your red and blues. What did you do - what did you  
9 do then?  
10 MR. SUMRALL: At that point I exited my patrol  
11 vehicle and then approached the - Miss Sindelar's vehicle and  
12 made contact with her. As I made contact with her at her  
13 driver's door, I could smell the odor of an alcoholic  
14 beverage emitting from the vehicle. I -  
15 MR. WHEABLE: Well, let me ask you a couple questions  
16 first please. You said Miss Sindelar's vehicle - as you  
17 approached Miss Sindelar, why don't we - lets talk about that  
18 for a second. How do you know - did you know it was Miss  
19 Sindelar prior to stopping the vehicle?  
20 MR. SUMRALL: I did not, no.  
21 MR. WHEABLE: Okay. Did you know Miss Sindelar  
22 before stopping the vehicle?  
23 MR. SUMRALL: No.  
24 MR. WHEABLE: When did you iden - how did you

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1 identify Stella Sindelar?  
2 MR. SUMRALL: I identified her by her Nevada driver's  
3 license. When I - when I went up to the vehicle I asked for  
4 registration, insurance and her Nevada's drivers license - or  
5 a driver's license.  
6 MR. WHEABLE: And for -  
7 MR. SUMRALL: And at that point that's when I - I  
8 identified her as Stella Sindelar.  
9 MR. WHEABLE: Okay. Was there anybody else in the  
10 vehicle?  
11 MR. SUMRALL: There was nobody else in the vehicle.  
12 MR. WHEABLE: Okay. And where - where was Miss  
13 Sindelar in the vehicle?  
14 MR. SUMRALL: She was in the driver's seat.  
15 MR. WHEABLE: Okay. Is Miss Sindelar in the courtroom  
16 today?  
17 MR. SUMRALL: Yes she is.  
18 MR. WHEABLE: Can you please identify an article of  
19 clothing she's wearing for the record?  
20 MR. SUMRALL: She's wearing a black flowery vest,  
21 glasses, and a looks like a locket necklace.  
22 MR. WHEABLE: Okay. The record would reflect the in  
23 Court identification of Stella Sindelar as the Defendant  
24 herein.

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1 THE COURT: The record would so reflect.

2 MR. WHEABLE: Okay. All right, so you had the - you  
3 asked for her driver's license and smelled the odor of  
4 alcoholic beverage emitting from the car. What happened  
5 then?

6 MR. SUMRALL: At that point I asked for her driver's  
7 license, registration, her - again - for her registration and  
8 insurance. At that point I could smell the odor of an  
9 alcoholic beverage emitting from her person because the odor  
10 was much stronger at that point as she was speaking with me.

11 MR. WHEABLE: What was she speaking to you about?

12 MR. SUMRALL: She was speaking to me about her  
13 whereabouts. At that point I had asked her also where she -  
14 where she was coming from - or where she was heading and she  
15 said she was headed home but that she had first stopped at  
16 the dollar store to pick up toilet paper and then she went to  
17 the Taco Time to get dinner.

18 MR. WHEABLE: Okay. Did you ask her any follow-up  
19 questions with regards to those answers?

20 MR. SUMRALL: I asked her at that point since I could  
21 smell the alcoholic beverage I asked her if she had been  
22 drinking and which she stated she had not been.

23 MR. WHEABLE: Did you make any other observations  
24 while you were having this interaction with Miss Sindelar in

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1 your view?

2 MR. SUMRALL: During my conversations with - with  
3 Miss Sindelar I could see that she had watery eyes and that  
4 her speech - or pardon me, her speech was slurred.

5 MR. WHEABLE: Okay. We talked about this odor coming  
6 from her person as she was talking with you. How do you know  
7 it was the odor of alcoholic beverage?

8 MR. SUMRALL: I've - I've been around - around it  
9 quite a bit um through - through the job. We do frequent walk  
10 throughs through the bars, um, and through the training that  
11 I've been - been to, I - I know the smell of an alcoholic  
12 beverage.

13 MR. WHEABLE: Besides all this training and being a  
14 cop and all that stuff, do you have any personal experience  
15 with people smelling like -

16 MR. SUMRALL: I do.

17 MR. WHEABLE: -alcohol?

18 MR. SUMRALL: I do.

19 MR. WHEABLE: Okay. All right, and so what was it  
20 about that odor of alcohol that concerned you?

21 MR. SUMRALL: Um, I - I had suspicion that Miss  
22 Sindelar may have been driving under the influence of - of  
23 alcohol so definitely I wanted to conduct further  
24 investigation.

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1 MR. WHEABLE: Okay, so you said you wanted to conduct  
2 further investigation, so what did you do that day?

3 MR. SUMRALL: At that point I asked my dispatch for -  
4 for another unit and that's just standard protocol, just for  
5 backup. I had - I asked Miss Sindelar if she would step back  
6 with me to my patrol vehicle. I advised her that I'll be  
7 conducting F. S. T.s which is standardized field sobriety  
8 testing.

9 MR. WHEABLE: Okay, so up to this point just so we're  
10 clear, she was in her vehicle. At this point you asked her  
11 to step out of the vehicle?

12 MR. SUMRALL: Correct.

13 MR. WHEABLE: Okay. And where did you guys go?

14 MR. SUMRALL: We went to the front of my patrol car.

15 MR. WHEABLE: All right.

16 MR. SUMRALL: Kind of between her car and - and my  
17 vehicle.

18 MR. WHEABLE: And where were your vehicles parked at?

19 MR. SUMRALL: As she pulled into Shooter's parking  
20 lot, she kind of pulled in and then kind of parked in the  
21 middle of the parking lot and then as I pulled in I was kind  
22 of in the driveway facing kind of sideways to her vehicle.

23 MR. WHEABLE: Okay. What was the -

24 MR. SEARS: Your Honor, just for the record the

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1 officer held his hands in a parallel direction with his right  
2 hand slightly behind his left.

3 THE COURT: So noted.

4 MR. WHEABLE: Um, Deputy, tell me a little bit more  
5 about the environment real quick before we get into the - the  
6 next step. What was the weather like that night?

7 MR. SUMRALL: The weather - the weather was clear.  
8 It wasn't - wasn't too cold outside. I don't - I don't  
9 recall any wind or anything like that. It was a pretty  
10 decent night out. The surface on which we were parked was on  
11 a flat level I believe it was asphalt parking lot.

12 MR. WHEABLE: Okay. And was it dry, wet, anything  
13 like that?

14 MR. SUMRALL: It was dry flay and level.

15 MR. WHEABLE: All right. So we talked a little bit  
16 about these before when I started going through training, but  
17 tell us more about what a field sobriety test is.

18 MR. SUMRALL: What a field sobriety test is is with  
19 each - each test, there's three tests in the field sobriety  
20 tests, and with each test there are certain clues that you  
21 look for and then in each test you have to have a certain  
22 number of clues in order to prove that the driver is under  
23 the influence.

24 MR. WHEABLE: All right. Are these tests

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1 standardized?

2 MR. SUMRALL: They are standardized.

3 MR. WHEABLE: What is that - what do you think that  
4 word means?

5 MR. SUMRALL: That it's - it's a standard that  
6 everybody has to abide by. It's a in fact a national  
7 standard.

8 MR. WHEABLE: Okay. And in this -

9 MR. SEARS: Objection. Foundation Your Honor.

10 MR. WHEABLE: He can testify to it Your Honor. He  
11 knows what he's talking about. I'm going to ask him some  
12 followup questions anyway.

13 THE COURT: Go ahead.

14 MR. WHEABLE: So what do you - what do you know about  
15 it being a national standard?

16 MR. SUMRALL: That NHSTA which is the National  
17 Highway Safety Administration, it is - is the - a group that  
18 sets these standards. They've done - they've been doing lots  
19 of tests throughout the years I guess to - to back their -  
20 their standards.

21 MR. WHEABLE: Okay. And which tests - and you said  
22 earlier, but can you tell us again which - which tests are  
23 proved as a standard test?

24 MR. SUMRALL: The horizontal gaze nystagmus test, the

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1 nine-step walk and turn and the one-leg stand test.

2 MR. WHEABLE: Do you know why they chose those tests?

3 MR. SUMRALL: Because those tests as a whole, and if  
4 you have all of the clue - or you have clues - they give a  
5 number of clues that you have to have, shows I - I believe  
6 it's a ninety percent success rate that drivers are under the  
7 influence.

8 MR. SEARS: Objection. Foundation Your Honor for the  
9 why.

10 MR. SUMRALL: Of point zero eight.

11 MR. WHEABLE: He's explaining it Your Honor. I don't  
12 see any reason for an objection on foundation.

13 THE COURT: Well the ninety percent you better lay  
14 some there.

15 MR. WHEABLE: Okay. How do you know there was ninety  
16 percent or did - how did you learn that?

17 MR. SUMRALL: In the NHSTA manual. It's - it's a  
18 really thick manual, probably about an inch and a half thick  
19 manual.

20 MR. WHEABLE: All right, so lets talk about those  
21 F. S. T.s. Did you administer those three standard tests on  
22 the Defendant, Stella Sindelar, on March twenty-seventh, two  
23 thousand thirteen?

24 MR. SUMRALL: Yes I did.

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1 MR. WHEABLE: Okay. Which test did you administer  
2 first?

3 MR. SUMRALL: The horizontal gaze nystagmus test.

4 MR. WHEABLE: That's a mouthful. Horizontal gaze  
5 nystagmus. Can you explain that test to the Court and to the  
6 jury.

7 MR. SUMRALL: You want me to explain it like how it's  
8 done or what the test is about?.

9 MR. WHEABLE: Yes.

10 MR. SUMRALL: Okay. The horizontal gaze nystagmus  
11 test is - nystagmus is the involuntary jerking of the eyes  
12 which appears when an individual is under the influence of a  
13 intoxicating liquor and or a controlled substance. The  
14 H. G. N. there - there's six clues that you look for.  
15 There's three clues per eye with three clues per eye, it's a  
16 total of six. There is the - you're looking for lack of  
17 smooth pursuit which is where if the - if the eyes equally  
18 track one another. Another clue is on - or nystagmus at  
19 maximum deviation and then also onset priors of forty-five  
20 degrees.

21 MR. WHEABLE: I'm going to stop you for a second and  
22 just so we know what we're talking about. You talked about  
23 smooth pursuit, onset prior to forty-five degree - you know,  
24 I know what you're talking about. Explain to us, what do you

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1 mean? What are we pursuing when you say smooth pursuit? Show  
2 me - you better demonstrate for us.

3 MR. SUMRALL: Okay. Well what - what I do is I have  
4 the individual look at the stimulus whether it's the tip of  
5 my finger or the tip of a pen and - and I hold my finger out  
6 in front of their face approximately twelve inches. As I do  
7 this I move my finger to the right which will be the  
8 subject's left and I move it in a side to side motion and as  
9 I do this I'm looking for the eyes to equally track on my  
10 finger. As I do this, if there's H. G. N. present which is  
11 the involuntary - involuntary balancing of the eyes, then as  
12 I move my hand back and forth from side to side, I - I - I  
13 visually saw that there was involuntary jerking of the eye.

14 MR. WHEABLE: Are you talking about in this case,  
15 Miss Sindelar?

16 MR. SUMRALL: Correct.

17 MR. WHEABLE: Okay. So just - I'm going to back up  
18 and make this clear. You hold your finger or pen out and  
19 you're moving it -

20 MR. SEARS: Objection Your Honor.

21 MR. WHEABLE: - back and forth -

22 MR. SEARS: He's repeating the testimony.

23 MR. WHEABLE: I'm clarifying his testimony Your  
24 Honor.

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1 THE COURT: I didn't - what was the objection?

2 MR. SEARS: He's repeating the testimony, Your Honor.  
3 I'd like to hear from the witness, not the State.

4 THE COURT: Go ahead.

5 MR. WHEABLE: Thank you Your Honor. In moving it  
6 back and forth and what you're looking for is the - the  
7 involuntary jerking or the movement of the - of the pupils is  
8 what you're saying?

9 MR. SUMRALL: Correct.

10 MR. WHEABLE: Okay. And that's one of the clues out  
11 of the three you're looking for, is that what you said?

12 MR. SUMRALL: One of the three per eye, yes.

13 MR. WHEABLE: Per eye. What are the other clues  
14 you're looking for?

15 MR. SUMRALL: The other clues I'm looking for are  
16 missing and sustained nystagmus at maximum deviation which is  
17 where when I - when I take my finger to the subject's face  
18 and I hold it out at approximately forty-five degrees from  
19 the subject's face. At that point what I'm looking for is  
20 also involuntary jerking of the eyes, nystagmus.

21 MR. WHEABLE: Okay.

22 MR. SUMRALL: And each - each eye is a clue so if -  
23 if both eyes are doing it then that's - that's one clue per  
24 eye.

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1 MR. WHEABLE: Now, you've explained the test. Walk  
2 us through what happened with Miss Sindelar when you had her  
3 out there upon you vehicle on March twenty-seventh doing the  
4 horizontal gaze nystagmus test.

5 MR. SUMRALL: While I was doing the horizontal gaze  
6 nystagmus test, as I conducted that on - on Miss Sindelar I -  
7 I did notice in both eyes that she did have lack of smooth  
8 pursuit. During the horizontal gaze nystagmus at maximum  
9 deviation I noticed the involuntary jerking of the eyes  
10 during that test and then also during the maximum deviation  
11 which is when you stop at forty-five degrees and you stop  
12 there, if the eyes have an involuntary jerk at that point as  
13 well.

14 MR. WHEABLE: So how many clues total did Miss  
15 Sindelar display on March twenty-seventh two thousand and  
16 thirteen?

17 MR. SUMRALL: Here in that test, out of six clues she  
18 had - she had all six.

19 MR. WHEABLE: And what does it - and how many clues  
20 does she need in the horizontal gaze nystagmus test to show  
21 impairment?

22 MR. SUMRALL: Ah, by NHSTA standard you only have to  
23 have four out of the six.

24 MR. WHEABLE: So what was the next test you

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1 administered?

2 MR. SUMRALL: The next test that I administered was  
3 the nine-step walk and turn test.

4 MR. WHEABLE: And I'm going to do the same thing to  
5 you. I want you to tell us about that test in detail please.

6 MR. SUMRALL: Okay. During the nine-step walk and  
7 turn, the individual is asked to stand in a certain position  
8 which is they are to stand with their left foot on an  
9 imaginary line, whether - whether there's a line there or  
10 not, they're instructed to imagine there's a line. They're  
11 instructed to put their left foot on the line, place their  
12 right foot in front of the left foot and keep their hands  
13 down at their sides and they're instructed to remain in this  
14 position until - until further instructed. At that point I  
15 then demonstrate and explain to that - to that person how the  
16 test is to be performed. During - during the test what  
17 I have them do is I have them take nine heel to toe step down  
18 the imaginary line and I demonstrate that by putting one foot  
19 in front of the other and then making sure that heel to toe,  
20 heel touching your toe, and then I count out loud one, two,  
21 three and so on until you reach nine. I advise this - the  
22 individual that on the ninth step you keep your lead foot on  
23 the line and then with your other foot you take a series of  
24 small steps making a circle or a - a hundred and eighty

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1 degree turn and then you take nine heel to toe steps back  
2 down the line to you end it off.

3 MR. WHEABLE: Okay. Now, I wasn't going to do this  
4 but Miss Gianoli told the jury that you're going to  
5 demonstrate it for us today -

6 MR. SUMRALL: Okay.

7 MR. WHEABLE: - so I would ask you real quick to  
8 demonstrate the nine-step walk and turn according to the  
9 instructions that you gave Miss Sindelar -

10 MR. SUMRALL: Okay.

11 MR. WHEABLE: - on March twenty-seventh two thousand  
12 and thirteen please.

13 MR. SUMRALL: Okay.

14 MR. WHEABLE: And you know, for the record it is be  
15 video taped Your Honor, so I don't know if needs to be  
16 narrated either.

17 MR. SUMRALL: Just demonstrate?

18 MR. WHEABLE: I could have him come in the middle of  
19 the well so we can capture it if necessary.

20 THE COURT: Your record, however you want it.

21 MR. WHEABLE: Why don't you start over here Deputy  
22 because we have a camera taking it. Start here and go  
23 through the instruction as you perform the test, if you will  
24 please.

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1 MR. SUMRALL: Okay. Like I said before, I advise - I  
2 advise the individual to stand, I then have them put their  
3 left foot on the imaginary line and then place their right  
4 foot in front of the left foot and, with their hands down in  
5 this position. At this point they're instructed to remain in  
6 this position until I - I told them to start the test. At  
7 that point I go into my instructions of the test and then I  
8 advise - I advise the individual that now what I want you to  
9 do is I want you to place your left foot on the line in this  
10 position and I want you to take a series of nine steps and  
11 then I count out loud, I go one, two, three, and so on until  
12 you reach nine. On your ninth step I want you to place your  
13 feet, position it on the line, take a series of small steps  
14 like this and then take nine heel to toe steps back, one,  
15 two, three and so on until you reach nine and that's - that's  
16 how I do the nine-step test, and then I ask the individual if  
17 they understand the instructions and it was if you replied  
18 yes or not. If they advised yes then I would say can you  
19 please begin. If they advised no then I'd clarify until they  
20 understand the instructions.

21 MR. WHEABLE: Thank you Deputy. Go ahead and take  
22 your seat. During the horizontal gaze nystagmus explanation  
23 you talk a lot about the clues that you're looking for, all  
24 right. Talk to us about the clues on the nine-step walk and

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1 turn that you just demonstrated for us please.

2 MR. SUMRALL: On the clues on the nine step, there's  
3 eight possible clues. By NESTA standards they require only  
4 two clues be present. Part of that - part of those clues is  
5 the instruction phase and there's two clues there and then  
6 each part of the test whether - whether or not they started  
7 too soon, that's a clue. If they use their hands to keep  
8 balance, if they sway while balancing, if they miss heel to  
9 toe, the number of steps is a clue, whether or not they took  
10 nine each way or eight one, ten the other, or if - if they  
11 missed or added a step, then that's a clue, or if the just  
12 step off line it's another clue.

13 MR. WHEABLE: Okay. And how many clues did you say  
14 they need to show impairment?

15 MR. SUMRALL: Two.

16 MR. WHEABLE: Okay. When you're in the POST - when  
17 you're in the POST Academy or doing your field training  
18 academy or officer training and also with your compliance  
19 training, what do they teach you about documenting the  
20 results that you - during the - the conducting of these  
21 tests, what are you supposed to do to document those things?

22 MR. SUMRALL: What - what you try to do is you've got  
23 to redocument as much information as you can to - to recall  
24 the even that took place - or the incident that took place

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1 during that and there's many ways to document whether it's  
2 video or typing it out in your report.

3 MR. WHEABLE: Okay. And did you document Miss  
4 Sindelar's results of her horizontal gaze nystagmus test in  
5 your report?

6 MR. SUMRALL: Yes I did.

7 MR. WHEABLE: Okay. Did you document the results of  
8 Stella Sindelar's when you administered the result - when you  
9 administered the test for the nine-step walk and turn?

10 MR. SUMRALL: I did not document that.

11 MR. WHEABLE: Oh oh. Well why not?

12 MR. SUMRALL: The reason being like I said earlier, I  
13 - I was fairly new. I had a bad habit of - and we have a  
14 F. S. T. sheet that we read our instructions off of and I had  
15 a bad habit of doing the front - it's a two sided page,  
16 filling out the front side and then I would set my clipboard  
17 down so that I can demonstrate the walk and turn and the one-  
18 leg stand test, so - a bad habit that I have since corrected.  
19 Because of documentation I didn't - I didn't write down the  
20 clues that were present at that time and I since forgot.

21 MR. WHEABLE: Well let me ask you a couple questions  
22 about that. So could you tell - you couldn't tell us which  
23 clues Stella demonstrated when you conducted that test on her  
24 on March twenty-seventh.

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1 MR. SUMRALL: Couldn't even try.

2 MR. WHEABLE: You couldn't tell us which clues she  
3 displayed during the nine-step walk and turn?

4 MR. SUMRALL: Not - not off of my reports, no. Off  
5 of a - from a video I could tell you a couple clues that I -  
6 that I noticed on the video.

7 MR. WHEABLE: Did the video refresh your recollect -  
8 recollection of the event?

9 MR. SUMRALL: Yes. Not - not to the extent of  
10 recalling all the clues that I did see.

11 MR. WHEABLE: Okay. Well, let me ask you this then.  
12 Could you testify today that - whether or not Miss Sindelar  
13 showed impairment during the nine-step walk and turn?

14 MR. SUMRALL: Yes I can.

15 MR. WHEABLE: How can you do that?

16 MR. SUMRALL: Because during - during the walk and  
17 turn test on the way back in the video it shows that she used  
18 her arms a couple of different times to regain balance and  
19 that - that is being one of the clues she's - she's showing  
20 signs of impairment.

21 MR. WHEABLE: Ah, let me ask you another question.  
22 In - in your report did you happen to document in your report  
23 whether she showed maybe not the details of which clues but  
24 whether she was impaired or not on that test?

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1 MR. SUMRALL: In my report I did state that she did  
2 show signs of impairment with the walk and turn. I just  
3 didn't go into detail.

4 MR. WHEABLE: All right. So I'm going to move on to  
5 the next test, the one-leg stand. Could you please explain  
6 the one-leg stand and then I'm going to make you get up and  
7 demonstrate it okay.

8 MR. SUMRALL: Okay. The one - the one-leg stand also  
9 has an instruction - an instruction phase. At this point the  
10 individual is asked to remain in a certain position which is  
11 to stand with his heels touching - touching each other and  
12 your hands down at your side and they are instructed to  
13 remain in that position until further instructed. At that  
14 point I then demonstrate and explain the one-leg stand. I  
15 advise them that its their choosing of their foot whether it  
16 be a right or left leg and what they're to do is raise their  
17 foot approximately six inches off of the ground and they're  
18 trying to keep their foot parallel with the ground. As they  
19 do this they are to look down at their foot and count out  
20 loud one thousand one, one thousand two and so on until I  
21 tell the to stop. And as I do this they are to remain with  
22 their hands down at their side.

23 MR. WHEABLE: Okay. Would you please demonstrate for  
24 us briefly?

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1 MR. SUMRALL: So the subject is asked to remain with  
2 heels touching like this and their hands down to their side  
3 and they are asked to remain in that position until further  
4 advised. As I explain the instructions, what I tell them to  
5 do - then I tell them to raise either foot approximately six  
6 inches off the ground just like that and then they do this.  
7 I tell them when you do this keep an eye on your foot, look  
8 at your foot with your hands down at your side at all times.  
9 As you do this I want you to count out loud one thousand one,  
10 one thousand two, one thousand three and so on until I tell  
11 them to stop.

12 MR. WHEABLE: Thank you. So what are the clues you're  
13 looking for on the one-leg stand and how many of - well,  
14 which are the clues you're looking for?

15 MR. SUMRALL: There's - there's a total of six clues  
16 in the one-leg stand test, we need two. All right - I'm  
17 sorry there's four. There's four clues and you need a minimum  
18 of two or more clues. Those clues are - there's - there's the  
19 instruction phase, whether or not they remain in that  
20 position or not or if they started the test too soon, whether  
21 or not they put their foot down, whether they hop or sway or  
22 use their arms for balance.

23 MR. WHEABLE: And did you administer that test on  
24 Miss Sindelar on March twenty-seventh two thousand thirteen?

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1 MR. SUMRALL: Yes I did.

2 MR. WHEABLE: And do you recall how she performed on  
3 that test?

4 MR. SUMRALL: I can recall due to the - the lapel cam  
5 I was wearing.

6 MR. WHEABLE: Did you document any of results in your  
7 report?

8 MR. SUMRALL: In my report I just stated that she had  
9 - that she had showed signs of impairment.

10 MR. WHEABLE: Okay. And what clues did you recall  
11 her showing at that - that night?

12 MR. SUMRALL: If I recall correctly off the video,  
13 she put - she puts her foot down. She uses her arms to keep  
14 her balance, sways while balancing and not - not counting -  
15 is - it's not a clue but it's a cue that -

16 MR. SEARS: Objection Your Honor, if its not a clear  
17 cue I'm relevance to the decision.

18 THE COURT: Followup on that.

19 MR. WHEABLE: Okay. Keep telling me about the clues  
20 that she showed please.

21 MR. SUMRALL: Um, I told her that - (unintelligible  
22 words) she had - she had put her foot down and she used her  
23 arms while - while balancing and as she was - as she was  
24 counting instead of a one thousand one, one thousand two

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1 count, it was a -

2 MR. SEARS: Objection Your Honor, if that's not a  
3 clue.

4 MR. SUMRALL: - ah nine hundred.

5 MR. WHEABLE: He - I believe he can -

6 THE COURT: He's got -

7 MR. WHEABLE: - explain what happened.

8 THE COURT: I'm ruling. He can describe what  
9 happened.

10 MR. SEARS: Okay. Thank you.

11 MR. WHEABLE: All right. So she - and how many - well  
12 - well let me do this first. A couple of questions ago I  
13 asked you if you documented I your report, do you recall  
14 that?

15 MR. SUMRALL: I do.

16 MR. WHEABLE: Do you remember exactly what you put in  
17 your report with regards to the one-leg stand?

18 MR. SUMRALL: Exactly, no.

19 MR. WHEABLE: Is there anything that might refresh  
20 your recollection of what you put in your report?

21 MR. SUMRALL: My report would.

22 MR. WHEABLE: Okay. Your Honor, I'm showing Mr. Sears  
23 what's been provided previously as D. A. discovery four and I  
24 - I'm going to pose to the witness in a second if that's

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1 okay.

2 THE COURT: You may.

3 MR. SEARS: We'd just like it marked Your Honor so  
4 we've got a good reference to it.

5 MR. WHEABLE: In that case, I'm going use a copy - a  
6 copy of it. And its marked next in order as State's Exhibit  
7 Three (unintelligible word).

8 MR. SEARS: Okay.

9 MR. WHEABLE: Now Deputy I'm handing you this.

10 MR. SUMRALL: Okay.

11 MR. WHEABLE: Do you recognize what that is?

12 MR. SUMRALL: Yes.

13 MR. WHEABLE: What is it?

14 MR. SUMRALL: This is my case note.

15 MR. WHEABLE: I'd like you to just read it to  
16 yourself briefly and let me know when your memory is  
17 officially refreshed.

18 MR. SUMRALL: Okay.

19 MR. WHEABLE: Your memory has been refreshed Deputy?

20 MR. SUMRALL: Yes.

21 MR. WHEABLE: Can I take this back? Now, can you  
22 tell me about what the - which clues you documented in your  
23 report?

24 MR. SUMRALL: During the one-leg stand - one-leg

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1 stand test and I documented that she had put her - her foot  
2 down, swayed while trying to balance and used her arms to  
3 balance as well.

4 MR. WHEABLE: Okay. So how many clues is that then?

5 MR. SUMRALL: That's three clues.

6 MR. WHEABLE: And how many do you need to show  
7 impairment on the one-leg stand?

8 MR. SUMRALL: Two clues.

9 MR. WHEABLE: Okay. Now earlier we got into this cue  
10 versus clue, okay. Can you explain that to me? What do you  
11 mean there was a cue because that sounds a lot like clue and  
12 I'm - help me out here.

13 MR. SUMRALL: What a cue is is its something that is  
14 - it kind of triggers your - I guess your memory to look for  
15 - for clues that may appear. Its kind of like a pretest to  
16 the clues that we are looking for.

17 MR. WHEABLE: Okay so these - in this case you  
18 referred - I think you testified to her - the manner in which  
19 she counted was a cue not a clue?

20 MR. SUMRALL: Yea.

21 MR. WHEABLE: What do you mean by that?

22 MR. SUMRALL: That it's - that it - it's a sigh that  
23 she's not able to focus on the instructions part of the - the  
24 test which was given to her at the beginning and with that,

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1 you know, with - with these - that test, the standardized  
2 field sobriety testing, it's a combination between focusing  
3 on - on the small instruction and actually conducting the -  
4 the test.

5 MR. WHEABLE: So after you con - concluded your  
6 conducting of the horizontal gaze nystagmus, the nine-step  
7 walk and turn and the one-leg stand, did you form an opinion  
8 as to Miss Sindelar at that point?

9 MR. SUMRALL: Yes.

10 MR. WHEABLE: And what was your opinion based on  
11 those three tests?

12 MR. SUMRALL: On those three tests, I - I determined  
13 that with the clues that I had that she had been - that she  
14 was driving under the influence and at that point she was  
15 taken to the Public Safety Building for booking.

16 MR. WHEABLE: Okay. Well lets - lets back up between  
17 the offense that - the last field sobriety test and her being  
18 transported for booking, okay. A couple things. Was it just  
19 the field sobriety test that led you to believe that she was  
20 driving impaired?

21 MR. SUMRALL: It wasn't.

22 MR. WHEABLE: Well what else - what else did you  
23 have?

24 MR. SUMRALL: It was a combination - a combination of

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1 - of the smelling the odor, her - her initial presence with  
2 the slurred speech and the watery eyes along with the  
3 F. S. T.s and her performance on those F. S. T.s.

4 MR. WHEABLE: Okay. Now. Did you have any more  
5 conversation with - af - after finishing that last test, the  
6 one-leg stand, right -

7 MR. SUMRALL: Um hum.

8 MR. WHEABLE: - in which she showed that impairment  
9 did you have a conversation with her?

10 MR. SUMRALL: I asked - I asked -

11 MR. SEARS: Your Honor, at this time I'd just like to  
12 register my objection for the record for the coming  
13 testimony.

14 THE COURT: So noted.

15 MR. WHEABLE: Did you have a conversation with her  
16 after concluding the one-leg stand?

17 MR. SUMRALL: I did.

18 MR. WHEABLE: And what was that conversation?

19 MR. SUMRALL: I asked her, are you still saying that  
20 you haven't had any - any beers and - and she said at that  
21 point that she had, that she had a couple.

22 MR. WHEABLE: And what were - think back to that  
23 night and what were the exact words she used.

24 MR. SUMRALL: I'll try to be as exact as I can with

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1 my recollection. I - I think I asked her did you have a  
2 couple mixed drinks and she said no, she had some shots of  
3 vodka. I can't remember exactly - it was kind of - um - I'm  
4 drawing a blank.

5 MR. WHEABLE: Well let me ask you this.

6 MR. SEARS: Your Honor at this time I think I've got  
7 to move to strike on the basis that he couldn't remember  
8 exactly what she said.

9 THE COURT: Overruled.

10 MR. WHEABLE: Let me ask you this Deputy. Did you  
11 put what she said in your paper report?

12 MR. SUMRALL: I may have put it in my report.

13 MR. WHEABLE: I'm showing Mr. Sears what's been  
14 marked previously as State's Exhibit Four. May I approach  
15 Your Honor?

16 THE COURT: You may.

17 MR. WHEABLE: I'm handing you State's Four. What is  
18 this? I'm sorry State's Eleven for the record. It looked  
19 like a four. What is that?

20 MR. SUMRALL: This is my case narrative.

21 MR. WHEABLE: Would you please read the narrative to  
22 yourself and see if your memory (unintelligible words).

23 MR. SUMRALL: Ah, there's nothing in my report about  
24 that.

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1 MR. WHEABLE: So just so the record's clear, Deputy,  
2 you didn't - you didn't put her admissions in your report?

3 MR. SUMRALL: Right.

4 MR. WHEABLE: Why not?

5 MR. SUMRALL: I just left it out. It's - I was new,  
6 report writing wasn't always the best, so I've since got  
7 better.

8 MR. WHEABLE: All right. Well lets talk about -

9 MR. SUMRALL: I - I do remember her saying that she  
10 had some shots of vodka though.

11 MR. WHEABLE: Okay. All right. Well lets talk about  
12 something else then. You didn't have it in your report but  
13 you had the video didn't you?

14 MR. SUMRALL: I did.

15 MR. WHEABLE: Okay. Tell me about this video.

16 MR. SUMRALL: The video - what it is it's a little  
17 lapel camera. It's - it's pretty small. It's probably about  
18 three quarters of an inch wide by an inch and a half long and  
19 it just clips on my - on my uniform. At that time, well,  
20 before - before I had initial contact with - with Miss  
21 Sindelar, I didn't have my camera but as soon as I - pardon?

22 MR. WHEABLE: I didn't say anything, sorry.

23 MR. SUMRALL: Oh, sorry, but as soon as I approached  
24 the vehicle I had suspicion that she was under the influence,

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1 or I could smell the presence of alcohol. That's when I  
2 grabbed it from my patrol car. I leave it in my patrol car  
3 on my little bag that I - my little bail out bag. And at  
4 that point then I - I grabbed it and clipped it onto my shirt  
5 and I usually clip it on right here about mid-chest and try  
6 to get the best angle or picture. Okay, and how does the  
7 camera work?

8 MR. SUMRALL: It works it's got two - two little side  
9 buttons that are on for voice and visual. You click both of  
10 those on and then its got a little button on the top that you  
11 push to record.

12 MR. WHEABLE: Does it light up and let you know its  
13 recording at all?

14 MR. SUMRALL: It does. A little green light blinks  
15 when its recording.

16 MR. WHEABLE: What's the field of view normally  
17 captured by this camera of yours?

18 MR. SUMRALL: It - it's not the best, it's usually  
19 just kind of probably just gives you proximal vicinity. I  
20 don't know, it - it might - it might reach out ten feet -

21 MR. WHEABLE: Okay.

22 MR. SUMRALL: - or plus.

23 MR. WHEABLE: And does it record sound?

24 MR. SUMRALL: Yes it does.

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1 MR. WHEABLE: Okay. How do you know if its  
2 functioning properly?

3 MR. SUMRALL: Um, if you look down, if - if you look  
4 down on top of the recorder if it's blinking green then its  
5 recording and if its blue its in standby mode. I know, I  
6 know with these lapel cams they're a little iffy. Sometimes  
7 they would stop recording if you're in the middle  
8 interaction.

9 MR. WHEABLE: Did you have any other cameras in your  
10 patrol vehicle like a dash camera or anything like that?

11 MR. SUMRALL: Not, no.

12 MR. WHEABLE: So when were - when you were out with  
13 Miss Sindelar did you actually activate the camera?

14 MR. SUMRALL: Yes I did.

15 MR. WHEABLE: When?

16 MR. SUMRALL: Well when?

17 MR. WHEABLE: Yea.

18 MR. SUMRALL: My second approach when I asked her to  
19 - to come back to a patrol car. That's when I grabbed the  
20 lapel cam from my vehicle.

21 MR. WHEABLE: Was the camera functioning properly  
22 when you were having this contact with the Defendant?

23 MR. SUMRALL: Yes.

24 MR. WHEABLE: And how do you know that?

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1 MR. SUMRALL: Because I have a recording of it and  
2 that the light was blinking.  
3 MR. WHEABLE: Okay. So what did you do with the  
4 recording of that incident?  
5 MR. SUMRALL: At that point the recording - it - it's  
6 stored on a little SIM disk. I take that and I download it  
7 onto our server at the Sheriff's Office to a shared folder  
8 where all of our photos and video go, and then at that point  
9 its downloaded and sent to the D. A.'s Office.  
10 MR. WHEABLE: Your Honor, I'm showing Mr. Sears  
11 what's been marked previously as State's Exhibit One for  
12 identification. May I approach Your Honor?  
13 THE COURT: You may.  
14 MR. WHEABLE: Deputy, I'm handing you State's  
15 Exhibit One for identification on the record. What is that?  
16 MR. SUMRALL: This is the lapel cam video.  
17 MR. WHEABLE: Well how do you know that, it's just a  
18 D. V. D., right?  
19 MR. SUMRALL: Yea. But I - I watched it and reviewed  
20 it in your office.  
21 MR. WHEABLE: How do you know you watched that one?  
22 MR. SUMRALL: Because I initialed the one that I  
23 watched.  
24 MR. WHEABLE: Okay. And is your initials on there?

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1 MR. SUMRALL: My initials are on it.  
2 MR. WHEABLE: Okay. Now, you said you watched that  
3 video. Is that video a fair and accurate or true and correct  
4 version of the events that happened that night with Miss  
5 Sindelar?  
6 MR. SUMRALL: Yes it is.  
7 MR. WHEABLE: Has that video there been altered at  
8 all?  
9 MR. SUMRALL: This video, I don't think so. No.  
10 MR. WHEABLE: Does it record the entire incident?  
11 MR. SUMRALL: Um, it does not because I didn't have  
12 it on prior to my contact with her.  
13 MR. WHEABLE: Okay. And does that video end at a  
14 certain time prior to the arrest of Miss Sindelar?  
15 MR. SUMRALL: Yes. It ends just before.  
16 MR. WHEABLE: Okay. So - but what's contained on that  
17 video is true and accurate?  
18 MR. SUMRALL: Yes it is.  
19 MR. WHEABLE: Okay. Your Honor, I'd move State's One  
20 into evidence.  
21 MR. SEARS: My objection's already been recorded in  
22 the record Your Honor. I'd like that repeated in the record.  
23 THE COURT: Yes.  
24 MR. SEARS: I'm just referring back to my prior

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1 objection.  
2 THE COURT: It's right. It's there.  
3 MR. SEARS: Thank you.  
4 THE COURT: You're welcome.  
5 MR. WHEABLE: Okay. Your Honor, I'd like to publish  
6 State's One to the jury at this time. This may require me  
7 putting it in the technology -  
8 THE COURT: Probably if they want to see it, it  
9 should go in there.  
10 MR. WHEABLE: Yea. It should come up on the big T.V.  
11 here. Blocking the view there?  
12 MR. SUMRALL: Yea.  
13 MR. WHEABLE: Why don't you have a seat there if  
14 you'd like Deputy. What's that?  
15 THE COURT: Put the lights on.  
16 MR. WHEABLE: No. If you're ready, I'm ready.  
17 LAPEL CAM RECORDING:  
18 MR. SUMRALL: (Unintelligible words - muffled). Go  
19 ahead and keep your eyes on my finger (unintelligible word).  
20 Keep your head still. Follow my finger.  
21 MS. SINDELAR: I am.  
22 MR. SUMRALL: (Unintelligible words) all right?  
23 MS. SINDELAR: Um hmm.  
24 MR. SUMRALL: All right. I'm going to ask you a

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1 series of questions okay?  
2 MS. SINDELAR: Okay.  
3 MR. SUMRALL: You were operating this motor vehicle?  
4 MS. SINDELAR: Yes.  
5 MR. SUMRALL: Okay. Where were you going?  
6 MS. SINDELAR: Home.  
7 MR. SUMRALL: Home?  
8 MS. SINDELAR: Um hmm. After (unintelligible words)  
9 at the dollar store.  
10 MR. SUMRALL: Okay. Where's home?  
11 MS. SINDELAR: In McGill.  
12 MR. SUMRALL: Oh, in McGill, okay.  
13 MS. SINDELAR: Um hmm.  
14 MR. SUMRALL: Where did you start from?  
15 MS. SINDELAR: McGill.  
16 MR. SUMRALL: McGill.  
17 MS. SINDELAR: And they just shut down the darn  
18 grocery store.  
19 MR. SUMRALL: All right. When did you leave?  
20 MS. SINDELAR: Um, gosh, could have been half an  
21 hour. I went to the Taco Time after the dollar store and -  
22 MR. SUMRALL: Okay.  
23 MS. SINDELAR: - went -  
24 MR. SUMRALL: For about half an hour?

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1 MS. SINDELAR: (Unintelligible words) yea, forty-five  
2 minutes.  
3 MR. SUMRALL: Do you know where you are right now?  
4 MS. SINDELAR: Yes.  
5 MR. SUMRALL: Where are you at?  
6 MS. SINDELAR: Shooter's parking lot in Ely, Nevada.  
7 MR. SUMRALL: Okay. Have you been drinking alcohol?  
8 MS. SINDELAR: No.  
9 MR. SUMRALL: No. When did you last drink?  
10 MS. SINDELAR: Oh, I got it - I think five o'clock  
11 this morning or something - something like that  
12 (unintelligible word).  
13 MR. SUMRALL: How long do you (unintelligible word).  
14 MS. SINDELAR: Oh about six or seven hours.  
15 MR. SUMRALL: Okay. Are you sick or (unintelligible  
16 word)?  
17 MS. SINDELAR: No.  
18 MR. SUMRALL: Do you have any physical defects?  
19 MS. SINDELAR: No.  
20 MR. SUMRALL: No. Okay. Are you under the care of a  
21 doctor?  
22 MS. SINDELAR: Yes, kind of sort of for -  
23 MR. SUMRALL: Sort of -  
24 MS. SINDELAR: - high blood pressure and anxiety.

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1 MR. SUMRALL: Who's your - what's your doctor's name?  
2 MS. SINDELAR: Seagull.  
3 MR. SUMRALL: Seagull?  
4 MS. SINDELAR: Um hmm.  
5 MR. SUMRALL: Are you diabetic or epileptic?  
6 MS. SINDELAR: No I'm not.  
7 MR. SUMRALL: No.  
8 MS. SINDELAR: Neither one, thank goodness.  
9 MR. SUMRALL: Do you take insulin?  
10 MS. SINDELAR: No.  
11 MR. SUMRALL: No. Corrective lenses?  
12 MS. SINDELAR: Ah no, but I need glasses.  
13 MR. SUMRALL: Okay.  
14 MS. SINDELAR: Just cause I'm getting old.  
15 MR. SUMRALL: Happens to all of us.  
16 MS. SINDELAR: Yup.  
17 MR. SUMRALL: You can go ahead and take your hands  
18 out of your pocket for me.  
19 MS. SINDELAR: Oh.  
20 MR. SUMRALL: Keep - keep them by your side  
21 (unintelligible word). Okay. Are you taking any  
22 prescription medication?  
23 MS. SINDELAR: Yes.  
24 MR. SUMRALL: What are they?

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1 MS. SINDELAR: High blood pressure.  
2 MR. SUMRALL: Do you know - you know what it is?  
3 MS. SINDELAR: No I don't. No -  
4 MR. SUMRALL: Okay.  
5 MS. SINDELAR: - I don't know.  
6 MR. SUMRALL: Is that (unintelligible word).  
7 MS. SINDELAR: And some anxiety pills.  
8 MR. SUMRALL: Anxiety, okay. Do you have any  
9 blindness in either of the eyes?  
10 MS. SINDELAR: No. No. I'm getting (unintelligible  
11 words) or I can't see.  
12 MR. SUMRALL: Okay. Okay. I'm going to have you do  
13 a walk and turn test for me okay.  
14 MS. SINDELAR: Okay.  
15 MR. SUMRALL: Just imagine there's a - go ahead and -  
16 take them back to your car for me. Face this way.  
17 MS. SINDELAR: This way.  
18 MR. SUMRALL: Yea. Imagine there's a imaginary line  
19 right there okay. I want you to go ahead and put your left  
20 foot on the line, okay.  
21 MS. SINDELAR: Okay.  
22 MR. SUMRALL: Put your left foot on the line, put  
23 your right foot in front of your left foot, okay, and when  
24 you do this I want you to keep your hands down at your side

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1 okay, looking down at your foot. Correct. Do you understand  
2 those instructions?  
3 MS. SINDELAR: Um hmm.  
4 MR. SUMRALL: Okay. I'm going to demonstrate and  
5 explain the rest of the test okay. So what I want you to do  
6 with your first foot on the line, I want you to take a series  
7 of nine steps, okay, like this. One, two, three and so on  
8 until you reach nine okay?  
9 MS. SINDELAR: Okay.  
10 MR. SUMRALL: As you get to nine with your lead foot,  
11 I want you to keep it on the and then take a series of small  
12 steps with our other foot and then I want you to take nine  
13 steps back, okay? Like this. one, two, three and so on  
14 until you reach nine, okay.  
15 MR. SINDELAR: Okay.  
16 MR. SUMRALL: Do you understand the instructions?  
17 MS. SINDELAR: Yup.  
18 MR. SUMRALL: Okay, you may begin.  
19 MS. SINDELAR: One, two, three, four -  
20 MR. SUMRALL: Okay.  
21 MS. SINDELAR: They're a little longer I guess.  
22 MR. SUMRALL: Right.  
23 MS. SINDELAR: Than the first time.  
24 MR. SUMRALL: Longer coming back.

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1 MS. SINDELAR: Yes.

2 MR. SUMRALL: Okay, go ahead and stand back at the  
3 back of your car for me. Keep your hands down at your side.  
4 This next - next test we're going to do would be one-leg  
5 stand test, okay. What's that?

6 MS. SINDELAR: Nothing.

7 MR. SUMRALL: Okay.

8 MS. SINDELAR: (Unintelligible words) my coat?

9 MR. SUMRALL: No, no, no, no, no, no. No. What I  
10 want you to do is I want you to stand with your heels  
11 together like this, okay.

12 MS. SINDELAR: Okay.

13 MR. SUMRALL: Keep your hands down at your side.

14 MS. SINDELAR: Okay.

15 MR. SUMRALL: Stay - stay in that position until I  
16 tell you to otherwise, okay?

17 MS. SINDELAR: Okay.

18 MR. SUMRALL: Do you understand me?

19 MS. SINDELAR: Um hum.

20 MR. SUMRALL: Okay. Do not begin the test until I  
21 tell you to do so. Okay, when I tell you to I want you to  
22 raise one leg, either leg, you can choose. I want you to  
23 raise it approximately six inches off the ground, okay?

24 MS. SINDELAR: (Unintelligible words).

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1 MR. SUMRALL: If - if it - I want it about where

2 mine's at okay? Can you see where my foot's at? Okay. As  
3 you do this I want you to keep your eyes on your foot and  
4 hands down at your side. I want you to count out loud one  
5 thousand one, one thousand two, one thousand three and so on  
6 until I tell you to stop, okay? You understand? Okay. As  
7 you do this I want you to keep a - keep an eye on your feet,  
8 okay, and you (unintelligible word) pointed out. Are you  
9 ready?

10 MS. SINDELAR: Okay.

11 MR. SUMRALL: Do you understand the instructions?

12 MS. SINDELAR: Read them to me again.

13 MR. SUMRALL: Okay. I want you to keep -

14 MS. SINDELAR: (Unintelligible words) six inches.

15 MR. SUMRALL: Correct. Here, let me explain it to  
16 you one more time okay?

17 MS. SINDELAR: Okay.

18 MR. SUMRALL: Okay, I want you to keep you foot six  
19 inches off the ground, hands by your side. Okay.

20 MS. SINDELAR: Okay.

21 MR. SUMRALL: Keep your eyes on your foot.

22 MS. SINDELAR: On my toe?

23 MR. SUMRALL: Yes. As you do this I want you to  
24 count out loud one thousand one, one thousand two and so on

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1 until I tell you to stop, okay. Keep your eyes on your toe.  
2 Keep your eyes on your toe. Keep your hands down your side.  
3 Do you understand?

4 MS. SINDELAR: Yes.

5 MR. SUMRALL: Okay, you may begin.

6 MS. SINDELAR: One thousand one, one thousand and -  
7 okay. Ninety-nine. Nine ninety-nine, nine ninety-eight,  
8 nine ninety-seven -

9 MR. SUMRALL: Keep going.

10 MS. SINDELAR: I am.

11 MR. SUMRALL: Okay.

12 MS. SINDELAR: Nine ninety-six, nine ninety-five,  
13 nine ninety-four, nine - nine ninety-nine three, nine ninety-  
14 two, nine ninety-nine one.

15 MR. SUMRALL: Okay. You can stop. Okay. Just one  
16 more test for me, okay. Keep your hands out of your pocket.  
17 Her eyes are (unintelligible word), she couldn't keep her  
18 eyes on (unintelligible word - bad recording).

19 MS. SINDELAR: (Unintelligible words- very faint) my  
20 car for me?

21 MR. SUMRALL: Yea, we might be able to do that. Do  
22 you know somebody in there? Okay. You said you haven't had  
23 anything to drink tonight, right?

24 MS. SINDELAR: I've had a couple but -

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1 MR. SUMRALL: Okay.

2 MS. SINDELAR: Okay.

3 MR. SUMRALL: Okay. What did you have to drink?

4 MS. SINDELAR: A couple of vodkas a little earlier.

5 MR. SUMRALL: Okay. What's earlier?

6 MS. SINDELAR: Mmm, within an hour. Well, probably  
7 later than an hour.

8 MR. SUMRALL: Okay.

9 MS. SINDELAR: I came over from McGill -

10 MR. SUMRALL: Okay.

11 MS. SINDELAR: - to get toilet paper because the darn  
12 grocery store was closed.

13 MR. SUMRALL: Got you. Were they like mixed drinks  
14 or just vodka?

15 MS. SINDELAR: Oh, yea.

16 MR. SUMRALL: What?

17 MS. SINDELAR: Just a shot of vodka.

18 MR. SUMRALL: Okay.

19 MS. SINDELAR: Now and again.

20 MR. SUMRALL: Okay. Okay.

21 MS. SINDELAR: Oh, God.

22 END OF LAPEL CAM RECORDING.

23 MR. WHEABLE: All right, so after watching that I had  
24 a couple of additional questions about the video. First of

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1 all you were talking to someone. Who were you talking to?

2 MR. SUMRALL: That was my partner, Deputy Wilkin.

3 MR. WHEABLE: Okay. So, where was he at when you were

4 doing these tests?

5 MR. SUMRALL: He was standing kind of behind me next

6 to my patrol car.

7 MR. WHEABLE: Why was he there?

8 MR. SUMRALL: Whenever we go on - on D. U. I.s, just

9 for officer safety, we always have another officer present.

10 MR. WHEABLE: And then did you happen to notice the

11 date and time stamp on the video?

12 MR. SUMRALL: Yes.

13 MR. WHEABLE: And what was up to that, was that

14 accurate?

15 MR. SUMRALL: No it was not. NO.

16 MR. WHEABLE: What was wrong with it?

17 MR. SUMRALL: It just hasn't - it hasn't been set. I

18 actually don't know how to set it so.

19 MR. WHEABLE: Okay. But the video and the contents of

20 the video is accurate?

21 MR. SUMRALL: Correct.

22 MR. WHEABLE: Also was there - while I was watching

23 it, was there any issues that you picked up with

24 the sound as opposed to the video playing?

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1 MR. SUMRALL: There was a little delay. A little -

2 little delay from the questions that were answered.

3 MR. WHEABLE: All right. There are also several

4 questions in there you asked her medical type questions, what

5 were those all about?

6 MR. SUMRALL: Those are on the - on the standardized

7 field sobriety test. It's a series of questions that just on

8 every - every form we ask that just to make sure that the

9 individual is actually able to perform the tests to see if

10 there's any physical defects or anything like that that may

11 lead us to believe that she can't conduct the tests.

12 MR. WHEABLE: Did any of those answers she gave you

13 cause you concern that she would be unable to conduct those

14 tests?

15 MR. SUMRALL: No they did not.

16 MR. WHEABLE: Or to perform those tests?

17 MR. SUMRALL: They did not.

18 MR. WHEABLE: All right, and then I have one final

19 question that - about the field sobriety test, then I'll move

20 away from it probably for a while. When you conducted the

21 horizontal gaze nystagmus, did you use a light source?

22 MR. SUMRALL: I used my flashlight. And how I do that

23 is I - I held in front of me and shine it backwards. That

24 way I can just usually see their eyes better instead of

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1 shining in their eyes where she can't see.

2 MR. WHEABLE: Okay. All right. So after the field

3 sobriety test and she made those admissions there, what did

4 you do then?

5 MR. SUMRALL: Miss Sindelar was then - then placed

6 under arrest for suspicion of driving under the influence and

7 transported to the Public Safety Building.

8 MR. WHEABLE: Okay. Now, did you transport her?

9 MR. SUMRALL: Yes I did.

10 MR. WHEABLE: And what did you do when you got to the

11 Public Safety Building?

12 MR. SUMRALL: When we got to the Public Safety

13 Building, Miss Sindelar and I went into the booking area and

14 where the booking process starts, and then the blood

15 technician was called.

16 MR. WHEABLE: Okay, so this blood technician, tell us

17 about why the blood technician arrived. How did that happen?

18 MR. SUMRALL: I had dispatch - dispatch call - call

19 the blood technician to - to come and draw the blood.

20 MR. WHEABLE: To draw whose blood?

21 MR. SUMRALL: Or sorry - to draw Miss Sindelar's

22 blood.

23 MR. WHEABLE: Okay. Why would - why would dispatch

24 call a blood tech to show up to draw her blood?

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1 MR. SUMRALL: The reason for that is to - for

2 evidentiary value, they draw blood to determine the blood

3 alcohol content.

4 MR. WHEABLE: Okay. Is - tell me about are there any

5 time frames with that? What are you doing?

6 MR. SUMRALL: There are. In the State of Nevada you

7 have to do evidentiary testing within two hours. Upon the

8 blood technician arriving, it was within - within an hour.

9 It was actually just over fifty minutes I believe.

10 MR. WHEABLE: Let me clarify some of that okay, or

11 I'll ask you some questions to clarify that a little bit.

12 You said for evidentiary testing they have to capture the

13 blood. Within - and then you talked about you have to do it

14 in this time frame. Within two hours of what occurring?

15 MR. SUMRALL: Of - of the particular individual, Miss

16 Sindelar having actual physical control of a motor vehicle

17 upon a public roadway.

18 MR. WHEABLE: Okay.

19 MR. SUMRALL: That the public has access to .

20 MR. WHEABLE: Okay. So - so lets, and I'm going to

21 come back to the time lines, okay. I'm just going to mark it.

22 Okay. So, and who did the - who was called over to - or who

23 arrived to take Miss Sindelar's blood?

24 MR. SUMRALL: A male subject by the name of Horace.

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1 MR. WHEABLE: Do you remember his last name?

2 MR. SUMRALL: Um, I can't recall right off the top of  
3 my head.

4 MR. WHEABLE: Okay. And who was Horace?

5 MR. SUMRALL: Horace is a phlebotomist. He was - he  
6 worked at the hospital but he was contracted through the  
7 White Pine County Sheriff's Office to administer those blood  
8 draws.

9 MR. WHEABLE: Okay. And had you worked with Horace  
10 before?

11 MR. SUMRALL: I have not personally, no.

12 MR. WHEABLE: Okay. So tell me about what happened  
13 when Horace arrived.

14 MR. SUMRALL: Before Horace arrived?

15 MR. WHEABLE: No. When - when -

16 MR. SUMRALL: Oh, oh.

17 MR. WHEABLE: - yea, when Horace arrived.

18 MR. SUMRALL: When Horace arrived I went back to  
19 where we store our - our blood kits which are provided by the  
20 Washoe County Crime Lab. I retrieved that kit for Horace,  
21 gave that to him then which he opened it and then took the  
22 contents out, and withdrew the blood from Miss Sindelar.

23 MR. WHEABLE: Were you present the entire time this  
24 blood was taken from Miss Sindelar?

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1 MR. SUMRALL: The entire time, yes.

2 MR. WHEABLE: Okay. Do you recall what time those  
3 samples were taken from Miss Sindelar?

4 MR. SUMRALL: Those samples were taken at eight  
5 twenty-eight I believe.

6 MR. WHEABLE: Okay. And what time did you stop Miss  
7 Sindelar?

8 MR. SUMRALL: At seven thirty-eight.

9 MR. WHEABLE: So approximately how much time had  
10 elapsed since Miss Sindelar was driving her vehicle and she  
11 was having blood taken from her at the Public Safety  
12 Building?

13 MR. SUMRALL: Approximately fifty minutes.

14 MR. WHEABLE: Okay. Um, tell me a little bit about  
15 any paperwork you might have prepared with regards to blood -  
16 the blood withdrawal or the blood sample.

17 MR. SUMRALL: With the - with the blood sample, in  
18 that kit since its evidentiary, there's a chain of custody  
19 sheet that is - that is included in that kit, and how that  
20 works is the blood technician will put the date and time that  
21 the blood was drawn, who it was from, and then what he does  
22 is signs it and then signs custody of that kit over to me  
23 after it has been sealed.

24 MR. WHEABLE: And did you in fact see a - what'd you

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1 call it, chain of custody form?

2 MR. SUMRALL: Chain of custody paper, yes.

3 MR. WHEABLE: Okay. Did you guys - did you happen to  
4 see one of those that night on March twenty-seventh?

5 MR. SUMRALL: I did.

6 MR. WHEABLE: Did you happen to sign for the blood  
7 sample that night on that - on that form?

8 MR. SUMRALL: Yes I did.

9 MR. WHEABLE: Okay.

10 MR. SUMRALL: Along with that form as well there's an  
11 identification number that coincides with the - the box. On  
12 that - or on that chain of custody form there's three other  
13 stickers that you peel of and you place on each individual  
14 vial of blood. Um, that way when it gets to the crime lab,  
15 they do - what they do is all those numbers coincide with  
16 each other.

17 MR. WHEABLE: Okay, and did you sign for that blood  
18 sample?

19 MR. SUMRALL: Yes.

20 MR. WHEABLE: Okay. Um, what did Horace do with the  
21 blood sample once he took it out of Miss Sindelar's arm?

22 MR. SUMRALL: Um, after he took it from her arm, it  
23 was placed in two little vials. Those vials were then  
24 subsequently placed back in the packaging that they came out

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1 of. They were placed into a evidentiary bag which then was  
2 sealed by Horace which was then packaged up in that little  
3 box that the kit - kit came in and sealed and signed by  
4 Horace.

5 MR. WHEABLE: And then what did he do with that  
6 package once he sealed it and signed it?

7 MR. SUMRALL: After then package, I then take it and  
8 place it into an evidence locker which is stored at the  
9 P. S. B. behind a locked door only - only deputies have but  
10 then in that room (unintelligible word) the locker for the  
11 blood - the blood draws, that the only person who has a key  
12 to that is Captain Henriod.

13 MR. WHEABLE: Okay. And who is Captain Henriod?

14 MR. SUMRALL: Captain Henriod is number two in  
15 command at the Sheriff's Office.

16 MR. WHEABLE: Who else has access to retrieve that  
17 evidence out of that locker?

18 MR. SUMRALL: Ah, Captain Henriod's the one that has  
19 a key to that.

20 MR. WHEABLE: Okay. So what happens to the - the  
21 sealed box once you drop it in that locker?

22 MR. SUMRALL: After that point then Captain Henriod  
23 ships it off to Washoe County Crime Lab where its analyzed.

24 MR. WHEABLE: Court's indulgence just for a second.

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1 THE COURT: We've almost gone an hour and a half, are  
2 you almost done?

3 MR. WHEABLE: I'm - yea, I'm done with it, I just  
4 need to make sure I caught everything.

5 THE COURT: All right.

6 MR. WHEABLE: Oh, right. In this case with Miss  
7 Sindelar that evening, did you see Horace Herrin seal the  
8 box?

9 MR. SUMRALL: Yes I did.

10 MR. WHEABLE: Okay. Did you see him sign it?

11 MR. SUMRALL: Sealed it and signed it as well.

12 MR. WHEABLE: Did you also sign it?

13 MR. SUMRALL: I believe I signed it.

14 MR. WHEABLE: Okay. Does he have - Your Honor I  
15 think that's all I have for my direct examination.

16 THE COURT: All right. We'll go ahead and take a  
17 break now. Mr. Sears, you all right with that?

18 MR. SEARS: Yes Judge.

19 THE COURT: All right. So do not communicate among  
20 yourselves or with anyone else on any subject connected with  
21 the trial. Do not communicate with any of the witnesses or  
22 attorneys on any subject. Do not read, watch or listen to  
23 any report or commentary on the trial or any person connected  
24 with the trial by any medium of information including without

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1 limitation newspapers, television, radio or any form of  
2 social media and do not form or express any opinion on any  
3 subject connected with the trial until the cause is finally  
4 submitted to you, so we'll go ahead and take twenty minutes  
5 here. We'll take about a twenty minute break all right.  
6 Court will be in recess.

7 BAILIFF: All rise.

8 BAILIFF: All rise.

9 THE COURT: Court's in session, please be seated.  
10 This is a continuation of our case. Miss Sindelar's present  
11 with counsel, the State is present and the jury and the  
12 alternate are present and so, Mr. Sears, you can cross  
13 examine.

14 MR. SEARS: Thank you Your Honor. Good afternoon  
15 Deputy.

16 MR. SUMRALL: Good afternoon.

17 MR. SEARS: You know me?

18 MR. SUMRALL: Yes.

19 MR. SEARS: My name is Rich. We've met before.  
20 Deputy, are you on duty today?

21 MR. SUMRALL: Yes I am.

22 MR. SEARS: Okay. So you're subject to going out on  
23 calls?

24 MR. SUMRALL: Yes.

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1 MR. SEARS: What time did you start on call today?

2 MR. SUMRALL: Today I started at six A. M.

3 MR. SEARS: Did you have any calls before Court?

4 MR. SUMRALL: Yes I did.

5 MR. SEARS: And when you're done today, you'll go  
6 back out on call again?

7 MR. SUMRALL: Correct.

8 MR. SEARS: Are you guys short handed?

9 MR. SUMRALL: Ah, from time to time, yes.

10 MR. SEARS: Okay. If you - could you be called out to  
11 go on duty right now, conceivably?

12 MR. WHEABLE: Kind of like -

13 MR. SUMRALL: Yea, I guess.

14 MR. SEARS: Where is your lapel cam?

15 MR. SUMRALL: Lapel cam right now?

16 MR. SEARS: Yea.

17 MR. SUMRALL: It's in the front seat of my patrol  
18 car.

19 MR. SEARS: You don't routinely wear it then when  
20 you're outside the motor vehicle?

21 MR. SUMRALL: No.

22 MR. SEARS: Okay. And your testimony in this case was  
23 that you didn't have it on when you initially approached the  
24 car. Was there some reason for not having it on?

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1 MR. SUMRALL: Just because I don't - I don't normally  
2 wear it.

3 MR. SEARS: Okay.

4 MR. SUMRALL: Um -

5 MR. SEARS: Did you take photographs in this case?

6 MR. SUMRALL: I believe there were photographs taken.  
7 I did not personally take photographs.

8 MR. SEARS: Okay. Now there were other officers  
9 present, is that true?

10 MR. SUMRALL: Correct.

11 MR. SEARS: Okay. Who else was present at the scene  
12 of this incident?

13 MR. SUMRALL: Um I believe Deputy Wilkin was there -

14 MR. SEARS: Okay.

15 MR. SUMRALL: - and Eric - Deputy Eric Kolada showed  
16 up -

17 MR. SEARS: Okay.

18 MR. SUMRALL: - at the latter end of it, and also  
19 Sergeant Steve Marquez.

20 MR. SEARS: Okay. So you had four police officers  
21 there throughout this incident?

22 MR. SUMRALL: Correct.

23 MR. SEARS: All right. Did you - did you photograph  
24 the condition of Shooter's parking lot?

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1 MR. SUMRALL: No I did not.

2 MR. SEARS: Okay. Do you know if any of the officers  
3 photographed the condition of Shooter's parking lot?

4 MR. SUMRALL: I don't believe so, no.

5 MR. SEARS: Okay. Not it's not your testimony that  
6 Jim Ramsey's parking lot is a perfect place for walking  
7 around without encountering pot holes, is it?

8 MR. WEARABLE: Objection. Confusing and compound.

9 THE COURT: Re - rephrase it.

10 MR. SEARS: I'll - I'll - I'll reconsider the  
11 question Your Honor. Now, at the time that you saw this gold  
12 vehicle I think the way you described it, the vehicle was not  
13 speeding, is that correct?

14 MR. SUMRALL: Correct.

15 MR. SEARS: Okay. And it was not weaving in the lane?

16 MR. SUMRALL: No.

17 MR. SEARS: And the headlights were displayed  
18 properly?

19 MR. SUMRALL: I believe so.

20 MR. SEARS: Okay. You testified that the reason you  
21 stopped the vehicle was because the law requires two brake  
22 lights?

23 MR. SUMRALL: Correct.

24 MR. SEARS: Okay. But didn't this car have a brake

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1 light on one side of the vehicle?

2 MR. SUMRALL: On one side, yes.

3 MR. SEARS: And it had a brake light in the center?

4 MR. SUMRALL: I don't recall.

5 MR. SEARS: The center windshield, you know the rear  
6 window?

7 MR. SUMRALL: I - I - I honestly don't remember the  
8 window.

9 MR. SEARS: Okay. Do you remember to see if it had a  
10 second brake light on?

11 MR. SUMRALL: The - the one I noticed to be - the  
12 tail lamps was the driver's side brake light was out.

13 MR. SEARS: But in fact if that center rear facing  
14 brake light was on, the vehicle would have been legal  
15 wouldn't it? It would have had two brake lights.

16 MR. SUMRALL: If it - the one in the window was on,  
17 yes.

18 MR. SEARS: And so you didn't even look to see if it  
19 had one of those?

20 MR. SUMRALL: I didn't notice it, no.

21 MR. SEARS: Now during your training in POST, you did  
22 a week long training with respect to folks who are suspected  
23 of driving under the influence, and one of the things you're  
24 taught to look for is weaving, isn't that right?

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1 MR. SUMRALL: Correct.

2 MR. SEARS: Watch for them weaving in or outside the  
3 lane?

4 MR. SUMRALL: Correct.

5 MR. SEARS: Okay. And that's a violation of the law  
6 and you stop for that, right?

7 MR. SUMRALL: Correct.

8 MR. SEARS: Okay. One of the other ones would be  
9 maybe excessive speed, people who are under the influence  
10 occasionally speed, don't they?

11 MR. SUMRALL: Yes.

12 MR. SEARS: Okay. Mrs. Sindelar, when she stopped the  
13 vehicle, she properly parked the vehicle in the parking lot?

14 MR. SUMRALL: No.

15 MR. SEARS: It was improperly parked?

16 MR. SUMRALL: It was in the middle of the parking  
17 lot.

18 MR. SEARS: Okay. And are there lines for parking in  
19 the Ramsey's parking lot? You know Ramsey owns -

20 MR. SUMRALL: Yes.

21 MR. SEARS: - Shooter's right?

22 MR. SUMRALL: Yes. I know that.

23 MR. SEARS: Okay.

24 MR. SUMRALL: I've never - I've never noticed any

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1 vehicles to park in the middle of the parking lot.

2 MR. SEARS: Okay.

3 MR. SUMRALL: They park on the outskirts and in front  
4 of the building.

5 MR. SEARS: But there's no lines directing parking  
6 right?

7 MR. SUMRALL: No there's not.

8 MR. SEARS: Okay. So she didn't park outside of any  
9 lines in the parking lot?

10 MR. SUMRALL: No.

11 MR. SEARS: Okay. Of course, you didn't give her a  
12 traffic ticket, did you?

13 MR. SUMRALL: I believe it was -

14 MR. SEARS: For parking.

15 MR. SUMRALL: - and it was - it's part of this case,  
16 yes.

17 MR. SEARS: You gave her a parking ticket?

18 MR. SUMRALL: Oh, for the parking? No, no, no.  
19 Sorry.

20 MR. SEARS: Okay. During your field training here  
21 with experienced officers, did they in fact teach you that  
22 when you suspected someone of drunk driving you should follow  
23 them for a while and develop probable cause?

24 MR. SUMRALL: Correct.

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1 MR. SEARS: Okay. And you didn't do this in this  
2 case?  
3 MR. SUMRALL: In this case I had no reason to believe  
4 that -  
5 MR. SEARS: No reason to believe she was under the  
6 influence then?  
7 MR. SUMRALL: No.  
8 MR. SEARS: Okay. So it wasn't until you approached  
9 the driver's side window, your testimony today is that you  
10 thought you smelled an odor of alcohol?  
11 MR. SUMRALL: Correct.  
12 MR. SEARS: Now alcohol is odorless and colorless, so  
13 how did you smell alcohol?  
14 MR. WHEABLE: Objection. Counsel's testifying.  
15 THE COURT: It's a fair question, go ahead.  
16 MR. SUMRALL: Um, through my training, experience and  
17 just - and just life experience in general, when individuals  
18 consume alcohol it has a distinct odor.  
19 MR. SEARS: Okay.  
20 MR. SUMRALL: Um, its an odor that I particularly  
21 can't stand.  
22 MR. SEARS: Okay.  
23 MR. SUMRALL: And Miss Sindelar did have that odor.  
24 MR. SEARS: Okay. Was it a very strong odor of

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1 alcohol?  
2 MR. SUMRALL: Um, up - upon initial contact, I could  
3 just smell it. Like I stated before, as I spoke with Miss  
4 Sindelar and had conversation with her it then became  
5 stronger, yes.  
6 MR. SEARS: Okay. What I'm ask you do, okay, when I  
7 ask you a question, try to just answer the question I've  
8 asked.  
9 MR. SUMRALL: Okay.  
10 MR. SEARS: Okay.  
11 MR. SUMRALL: I feel I did.  
12 MR. SEARS: Now you testified that during the year or  
13 so that you were on the job you had done some D. U. I. stops,  
14 is that correct?  
15 MR. SUMRALL: Correct.  
16 MR. SEARS: And of those stops, how many were done  
17 under a supervision of an F. T. O.?  
18 MR. SUMRALL: While I was on the F. T. O. program?  
19 MR. SEARS: Yup.  
20 MR. SUMRALL: Um -  
21 MR. SEARS: Do you remember?  
22 MR. SUMRALL: I don't remember.  
23 MR. SEARS: Okay. During a routine day as a police  
24 officer, as a sheriff's officer, do you have meetings before

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1 the commencement of your shift with the shift supervisor  
2 before going out on duty?  
3 MR. SUMRALL: We do.  
4 MR. SEARS: Okay. And what do you do at those  
5 meetings?  
6 MR. SUMRALL: Those meetings consist of any - any  
7 type of information that - that may carry over into the next  
8 oncoming shift, um whether it be pertaining to a case that  
9 another officer's working on or whether it's followup that  
10 needs to be conducted that the night shift can't perform.  
11 MR. WHEABLE: Your Honor, before the next question's  
12 asked, seeing this is outside the scope of direct, so I'm  
13 going to object to them. I've let it go because I don't know  
14 where he's going with this yet but -  
15 MR. SEARS: I can wait and call him as my witness  
16 Your Honor if you want.  
17 THE COURT: All right. Sustained.  
18 MR. SEARS: Thank you. When you smell an odor of  
19 alcohol on a person can you determine what kind of alcoholic  
20 beverage they have consumed -  
21 MR. SUMRALL: No.  
22 MR. SEARS: - from the smell?  
23 MR. SUMRALL: No.  
24 MR. SEARS: Okay. Are you able to determine what

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1 their level of intoxication is from the odor?  
2 MR. SUMRALL: Negative. No.  
3 MR. SEARS: Okay. If someone spilled alcohol in the  
4 vehicle then it would smell just the same as if they had  
5 drank it, would that be true?  
6 MR. SUMRALL: Sure.  
7 MR. SEARS: Okay. So when you approached the window  
8 at this stage, you didn't know whether or not she had spilled  
9 alcohol or had had in fact had a drink, correct?  
10 MR. SUMRALL: Can you - can you say the question  
11 again? Sorry.  
12 MR. SEARS: Well when you first approached the car  
13 and you said you smelled an odor of alcohol, at that point  
14 you didn't know if she had consumed alcohol or just spilled  
15 it somewhere.  
16 MR. SUMRALL: Correct.  
17 MR. SEARS: Okay.  
18 MR. SUMRALL: Thus the investigation.  
19 MR. SEARS: All right. Now, when you approached the  
20 car, did you start to write a ticket for a taillight?  
21 MR. SUMRALL: No I did not.  
22 MR. SEARS: Okay. When did you write the taillight  
23 ticket?  
24 MR. SUMRALL: The ticket didn't come out until after

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1 the booking process.

2 MR. SEARS: Okay.

3 MR. SUMRALL: After my investigation was about  
4 through.

5 MR. SEARS: Okay. So after she had been arrested for  
6 a D. U. I., then you started the ticket for this taillight?

7 MR. SUMRALL: Correct.

8 MR. SEARS: Did you take a photograph of the broken  
9 taillight?

10 MR. SUMRALL: I did not, no.

11 MR. SEARS: Okay. When you were doing your H. G. N.  
12 training at POST Academy, did they teach you that some people  
13 naturally have horizontal gaze nystagmus?

14 MR. SUMRALL: Um, I don't believe so. It's - because  
15 it's an involuntary jerking of the eyes that subjects don't  
16 even know that they have it.

17 MR. SEARS: Okay. So your testimony is nobody taught  
18 you that some people just have it?

19 MR. SUMRALL: Correct.

20 MR. SEARS: Okay.

21 MR. SUMRALL: So that's why the medical questions are  
22 asked.

23 MR. SEARS: Okay. Now in this case, you obviously  
24 then didn't ask Miss Sindelar if she had H. G. N. naturally?

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1 You wouldn't have asked that?

2 MR. SUMRALL: Not particularly.

3 MR. SEARS: Yea. About how long, and we saw it kind  
4 of on the video but it was difficult for me to tell, how long  
5 do you sustain the finger off to one side and watch for the  
6 nystagmus?

7 MR. SUMRALL: You hold it out there for - for a  
8 couple of seconds.

9 MR. SEARS: Okay. Not minutes?

10 MR. SUMRALL: No.

11 MR. SEARS: Okay. And then what exactly are you  
12 looking for? I know you testified to clues and at one point  
13 you said jerking and another point that you said bouncing.  
14 Can you describe for us what you see when you're seeing  
15 nystagmus?

16 MR. SUMRALL: When - when you see nystagmus, when you  
17 bring your finger out to the one side or the other, what the  
18 eyes do is if you look for equal tracking but also as the  
19 eyes go out, they kind of involuntary jerk like that and then  
20 at natural deviation when you hold it, when you hold your  
21 finger out there, you also hold your finger out there, the  
22 eyes will be at a rest and then they'll still have a  
23 involuntary jerking.

24 MR. SEARS: So when we looked at the video, we didn't

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1 have any kind of a view of her eyes from what I could see.

2 MR. SUMRALL: Correct.

3 MR. SEARS: But it appeared that you had her tip her  
4 head back, is that correct?

5 MR. SUMRALL: Ah, no.

6 MR. SEARS: Okay. And where was your vehicle at the  
7 time that you were having her do H. G. N.?

8 MR. SUMRALL: My vehicle was parked behind her  
9 vehicle off to the - a little bit off to the driver's side of  
10 her vehicle.

11 MR. SEARS: Okay. And were -

12 MR. SUMRALL: At - at an angle.

13 MR. SEARS: - and were you facing your vehicle when  
14 you were doing the H. G. N. testing?

15 MR. SUMRALL: We were kind of - not directly, no.

16 MR. SEARS: Okay. Was Miss Sindelar facing your de -  
17 vehicle at the time that you were doing H. G. N. testing?

18 MR. SUMRALL: She was facing more toward my vehicle -

19 MR. SEARS: Okay.

20 MR. SUMRALL: - but not directly, correct.

21 MR. SEARS: Because I thought I saw some lights on  
22 her face. Were those from your vehicle or from your  
23 flashlight?

24 MR. SUMRALL: No. When - then in the light - which

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1 light you talking about?

2 MR. SEARS: Well, I saw on the video, I thought I saw  
3 lights on her cheek.

4 MR. SUMRALL: A white light - that might -

5 MR. SEARS: Well I can't tell you that. I couldn't  
6 see it well enough in the video.

7 MR. SUMRALL: If it was my - if it was a white light  
8 like - like I explained earlier, I hold a flashlight kind of  
9 at my chest but it shines upward and then that gives me a  
10 view that I can look at her eyes without -

11 MR. SEARS: No, I understand that.

12 MR. WHEABLE: Your Honor, can we allow him to finish  
13 his - his answer.

14 MR. SEARS: It was nonresponsive Your Honor.

15 MR. WHEABLE: It is responsive.

16 THE COURT: Go ahead.

17 MR. SEARS: Thank you Your Honor. When you  
18 demonstrated for Miss Sindelar the nine-step walk and turn,  
19 did you do it the same way that you demonstrated it here in  
20 Court today?

21 MR. SUMRALL: Yes I did.

22 MR. SEARS: Okay. When you demonstrated the movement  
23 in Court today, you began with one foot in front of you and  
24 your hands at your side, okay, and when - when you began to

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1 describe the instructions, you moved your foot backwards and  
2 took a half a step back and put your hands on your duty belt,  
3 okay? Now if Miss Sindelar had done that, would that have  
4 been a clue for you because she failed the instruction phase?

5 MR. SUMRALL: In - in here?

6 MR. SEARS: Yes.

7 MR. SUMRALL: Yes.

8 MR. SEARS: Okay. So that would have amounted to a  
9 clue?

10 MR. SUMRALL: Correct.

11 MR. SEARS: So if we were giving you H. G. N., we'd  
12 have gotten at least one clue off of you today?

13 MR. SUMRALL: Sure.

14 MR. SEARS: Okay. During the period when you were  
15 demonstrating the nine-step walk and turn, you did three  
16 steps and then stopped. That would have been a clue as well,  
17 correct? If Miss Sindelar did that, in other words, if she  
18 takes three steps and then she stops, that's a clue, correct?

19 MR. SUMRALL: Correct.

20 MR. SEARS: Cause she's supposed to continue for nine  
21 steps, right?

22 MR. SUMRALL: As I demonstrated and described, yes.

23 MR. SEARS: Okay. So when you did it on the video,  
24 did you take the full nine steps?

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1 MR. SUMRALL: No I did not.

2 MR. SEARS: Okay. You did something like what you did  
3 in the courtroom today?

4 MR. SUMRALL: I did exactly that yes.

5 MR. SEARS: Okay.

6 MR. SUMRALL: That's how - that's how we were trained  
7 to do it.

8 MR. SEARS: So you tell them to do something, but  
9 then when you demonstrate it you don't demonstrate that same  
10 thing for them?

11 MR. SUMRALL: The demonstration, they're - they're -  
12 they're explained how its to be done and then they're asked  
13 to do it.

14 MR. SEARS: I'm going to ask you to try if you can  
15 and answer my question. My question was -

16 MR. WHEABLE: Objection Your Honor. It's not a fair  
17 question what he's answering.

18 THE COURT: Well lets hear it again.

19 MR. SEARS: When you demonstrated in the field you  
20 don't perform the testing the same way you expect to perform,  
21 for example, you did not take nine steps in the field?

22 MR. SUMRALL: Correct.

23 MR. SEARS: Okay. So when you demonstrate, you show  
24 them something that's not the same as what you want them to

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1 do correct?

2 MR. SUMRALL: Showing, correct.

3 MR. SEARS: Now, when you were demonstrating the one-  
4 legged stand, you counted I think one thousand one, one  
5 thousand - one thousand two, one thousand three and then on  
6 your own you just put your foot down correct?

7 MR. SUMRALL: Correct.

8 MR. SEARS: Okay. That - if Miss Sindelar did that  
9 same thing that would have been a fault wouldn't it?

10 MR. SUMRALL: Correct.

11 MR. SEARS: Okay. And did you demonstrate that to her  
12 in the same way that you demonstrated it to the jury and the  
13 Court?

14 MR. SUMRALL: Yes.

15 MR. SEARS: So again, you show something that's  
16 different than what you say to the person when you're  
17 instructing, corrected.

18 MR. SUMRALL: It's all part of the testing, yes.

19 MR. SEARS: And those would have all be clues?

20 MR. SUMRALL: If you don't complete the test  
21 correctly, yes.

22 MR. SEARS: So it's a little bit like Simon says,  
23 then, the game, remember the game Simon says when you were a  
24 child, Simon says stand up. Simon says sit down and if you

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1 don't say Simon says, then you're in trouble if you didn't,  
2 correct?

3 MR. SUMRALL: Exactly.

4 MR. SEARS: Okay.

5 MR. SUMRALL: What Simon says.

6 MR. SEARS: So you have to do what Simon says?

7 MR. SUMRALL: Yes.

8 MR. SEARS: Now when you approach people in your  
9 official duties with your uniform as you're (unintelligible  
10 word) taser, generally people get nervous when they're around  
11 you? At least on an initial stop?

12 MR. SUMRALL: Initially.

13 MR. SEARS: It's not unusual for people to be scared  
14 or nervous?

15 MR. SUMRALL: No reason to be though.

16 MR. SEARS: Okay. I understand that. What I'm asking  
17 for is in your experience, are people nervous or scared when  
18 you first approach them?

19 MR. SUMRALL: It - it depends on the situation.

20 MR. SEARS: Okay. In this case you had your lights on  
21 correct?

22 MR. SUMRALL: Yes.

23 MR. SEARS: And there were three other officers on  
24 the scene correct?

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1 MR. SUMRALL: After a while, yes.

2 MR. SEARS: Okay. And were they all in the same kind  
3 of (unintelligible word) you were, in other words, you had  
4 four police cars, correct?

5 MR. SUMRALL: Correct.

6 MR. SEARS: Okay. Did they all have their lights on?

7 MR. SUMRALL: I don't know if they all had their  
8 lights on.

9 MR. SEARS: Okay. Do you know whose lights were on  
10 during the giving of the H. G. N. testing?

11 MR. SUMRALL: I believe at that time it was just  
12 myself and Deputy Wilkin.

13 MR. SEARS: Okay. And where was Wilkin parked?

14 MR. SUMRALL: He was parked next to me, kind of  
15 behind me though.

16 MR. SEARS: And his lights were on as well?

17 MR. SUMRALL: Both our rear lights were on. No front  
18 lights.

19 MR. SEARS: During training, okay, what were you  
20 taught to understand about the affect of flashing lights on a  
21 person taking the H. G. N.?

22 MR. SUMRALL: Um, it's - it's definitely a lot harder  
23 to see.

24 MR. SEARS: Okay.

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1 MR. SUMRALL: That's the reason we shut our front.

2 MR. SEARS: Your front flashers off?

3 MR. SUMRALL: Correct.

4 MR. SEARS: And your take down lights were not on?

5 MR. SUMRALL: At that time my patrol car didn't -

6 MR. SEARS: Take down?

7 MR. SUMRALL: - have take down lights.

8 MR. SEARS: In the video I could see headlights when  
9 you turned around. Whose headlights were those?

10 MR. SUMRALL: You know, I don't - I can't say for  
11 sure.

12 MR. SEARS: Okay. Sufficient to say you did not  
13 instruct the people that may have had lights on that were on  
14 Miss Sindelar during testing to turn them off?

15 MR. SUMRALL: Headlights?

16 MR. SEARS: Yea.

17 MR. SUMRALL: No. Yea, we - we don't turn our  
18 headlights off.

19 MR. SEARS: When you asked Mrs. Sindelar to exit her  
20 vehicle, did she stumble?

21 MR. SUMRALL: Not that I can recall.

22 MR. SEARS: Did you watch her get out of the vehicle?

23 MR. SUMRALL: Yes I did.

24 MR. SEARS: Okay. Did she have to hold onto the side

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1 of the vehicle to support herself as she walked?

2 MR. SUMRALL: (Unintelligible words - very faint  
3 recording).

4 MR. SEARS: Have you conducted stops on people before  
5 that were having difficulty leaving their vehicle when the  
6 were under the influence?

7 MR. SUMRALL: Yes.

8 MR. SEARS: And you didn't see that on her?

9 MR. SUMRALL: I did not. Not that I could recall.

10 MR. SEARS: All right. Excuse me. I'm sorry, I  
11 can't get rid of this cough. How well do you remember this  
12 incident from the point when she gets out of the vehicle to  
13 the point when she's arrested?

14 MR. SUMRALL: I - I remember it fairly well.

15 MR. SEARS: Okay. Your testimony was that the  
16 mistake you made was failing to put all the documentation in  
17 your report of everything that occurred, is that true?

18 MR. SUMRALL: Yes.

19 MR. SEARS: And when you were doing report writing at  
20 the academy, obviously somebody taught you that you were  
21 supposed to do that didn't they?

22 MR. SUMRALL: Correct.

23 MR. SEARS: Okay.

24 MR. SUMRALL: It's a basic structure of how to write

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1 a report.

2 MR. SEARS: Okay. And obviously you took a class in  
3 that and you passed the class so you knew that you were  
4 supposed to be doing those things when you didn't do them,  
5 correct?

6 MR. SUMRALL: Correct.

7 MR. SEARS: Your testimony was that on - with respect  
8 to the D. U. I. checklist, I think that's what it was called.  
9 It's the one that you use to rely on while you're instructing  
10 that field sobriety testing, do you take and check off the  
11 things that you say to the person when you're instructing on  
12 the checklist itself, while you're instructing?

13 MR. SUMRALL: No.

14 MR. SEARS: Okay. You stated that you laid the - the  
15 board down, I forget what you call it, the clipboard down  
16 while something was going on and then you failed to mark the  
17 back of it, is that correct?

18 MR. SUMRALL: Correct.

19 MR. SEARS: If you watched the video you will see  
20 that you held that board in your hand the entire time when  
21 she was walking both directions and that's the reason I'm  
22 asking you how well you remember this stuff. Do you remember  
23 holding on to the clipboard when she was walking both  
24 directions and yet still not marking down what she did?

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1 MR. SUMRALL: I do remember.

2 MR. SEARS: Okay. Cause we can't see her steps based  
3 on the one your stand.

4 MR. SUMRALL: Right.

5 MR. SEARS: Okay. Now at the time of this incident,  
6 did you have a dash cam on your vehicle and it just didn't  
7 work or you didn't have one?

8 MR. SUMRALL: I just didn't have one.

9 MR. SEARS: Okay. What about Wilkin, did he have one?

10 MR. SUMRALL: No.

11 MR. SEARS: Okay. How about Fincher, did he have  
12 one?

13 MR. SUMRALL: Ah, Fincher wasn't there.

14 MR. SEARS: Ah, that's Marquez. Stevie was there,  
15 wasn't he?

16 MR. SUMRALL: Correct.

17 MR. SEARS: Did he have one?

18 MR. SUMRALL: I don't know if he had one at the time  
19 or not.

20 MR. SEARS: Okay.

21 MR. SUMRALL: I think his car did have one but he  
22 showed up afterwards.

23 MR. SEARS: During the video - well that video,  
24 during your explanation of the nine step, when you watched

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1 the video did you observe yourself walking forward during  
2 your instructional on the nine-step because it didn't appear  
3 to me that the camera moved.

4 MR. SUMRALL: It did.

5 MR. SEARS: It did?

6 MR. SUMRALL: Yes it did.

7 MR. SEARS: Okay. Could you have moved in such a way  
8 so that you would have preserved for all of us the nine-step  
9 walk and turn instead of just the - I think her head and  
10 shoulders for a very short portion?

11 MR. SUMRALL: It could - could have been, yes.

12 MR. SEARS: Okay.

13 MR. SUMRALL: I - the - the view of those cameras is  
14 pretty limited.

15 MR. SEARS: That's sufficient thank you. And you  
16 have never worked with this blood person, Mr. Horace before?

17 MR. SUMRALL: No I have not.

18 MR. SEARS: Okay. Did you sign the seals on the  
19 blood at all?

20 MR. SUMRALL: The seal on the blood -

21 MR. SEARS: Itself.

22 MR. SUMRALL: - on - on the chain of custody  
23 paperwork I did.

24 MR. SEARS: Okay. But you don't sign the actual

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1 seal?

2 MR. SUMRALL: I do now, yes.

3 MR. SEARS: Okay. You didn't at this time?

4 MR. SUMRALL: No, and that - Horace signed it.

5 MR. SEARS: Okay. And did you ask Miss Sindelar to  
6 seal it.

7 MR. SUMRALL: Ah, do what?

8 MR. SEARS: Miss Sindelar to sign it - sign the seal,  
9 and did you show her what you were doing when you packaged up  
10 the box?

11 MR. SUMRALL: I - I believe she was present.

12 MR. SEARS: Okay. I understand that you dropped this  
13 box into a locker located somewhere into the back of a  
14 locker, is that the way it works?

15 MR. SUMRALL: Yea. It's in - in a - in the closed  
16 room. There's a - there's a small little slot that the blood  
17 kits fit in.

18 MR. SEARS: Okay. And then prior to dropping these  
19 kits into the locker, do you make some attempt to make sure  
20 that the blood vials are not somehow contaminated by dropping  
21 into that locker? I mean, how far is the drop?

22 MR. SUMRALL: Um, I - wouldn't really consider it a  
23 drop. I'd consider it a placement.

24 MR. SEARS: Okay.

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1 MR. SUMRALL: Um, and its -

2 MR. SEARS: So it only goes down like an inch or  
3 something?

4 MR. SUMRALL: Yea, may - maybe three to four inches.

5 MR. SEARS: Okay. And then you couldn't fish it out  
6 if you wanted it back out of there?

7 MR. SUMRALL: Ah, my - my hand won't fit, no.

8 MR. SEARS: Okay.

9 MR. SUMRALL: The box is only like an inch and a half  
10 - two inches wide.

11 MR. SEARS: How big is the slot?

12 MR. SUMRALL: Ah, just bigger than the box.

13 MR. SEARS: Okay. And actually there's a box sitting  
14 right there on the desk.

15 MR. SEARS: I - yea, I see the box. So this is the  
16 size - referring to State's Exhibit Ten, Your Honor. I'm not  
17 going to admit it just for the record. You mentioned State's  
18 Exhibit Ten, this is the box. Now was this the box that you  
19 used in this case?

20 MR. SUMRALL: That's the type of box yes.

21 MR. SEARS: Oh, it's the type of box?

22 MR. SUMRALL: Yes.

23 MR. SEARS: But this isn't the one?

24 MR. SUMRALL: No.

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1 MR. SEARS: Okay. But that's similar in size and  
2 shape?  
3 MR. SUMRALL: Exactly.  
4 MR. SEARS: Okay. Did you know that there was a  
5 problem with contamination in this case with the blood  
6 evidence?  
7 MR. WHEABLE: Objection Your Honor. There's no  
8 evidence of that at all.  
9 THE COURT: Over - overruled, he can ask the  
10 question.  
11 MR. SUMRALL: I don't know if - contamination.  
12 MR. SEARS: Okay. Very good. So you don't know if  
13 it occurred when it dropped into the box. Did - did you ever  
14 see the box of blood again?  
15 MR. SUMRALL: After it was placed into the evidence  
16 locker, no.  
17 MR. SEARS: Okay. So you put in there and you washed  
18 your hands of it at that point, you never see it again?  
19 MR. SUMRALL: Correct.  
20 MR. SEARS: Okay. So you can't testify to what Deputy  
21 Henriod or Captain Henriod did with the blood?  
22 MR. SUMRALL: No.  
23 MR. SEARS: Okay. When you use your lapel video, when  
24 you have it on your body, you have the power then to stop it

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1 and start it, is that correct?  
2 MR. SUMRALL: I do, yes.  
3 MR. SEARS: Okay. How would we know, watching the  
4 video, whether or not you stopped that video during the  
5 course of a stop?  
6 MR. SUMRALL: I - I guess you wouldn't know.  
7 MR. SEARS: Okay. There's no way for us to tell is  
8 there?  
9 MR. SUMRALL: Right.  
10 MR. SEARS: Do you always use a lapel video when  
11 you're conducting stops on citizens?  
12 MR. SUMRALL: No.  
13 MR. SEARS: About how far into that stop was it, was  
14 Wilkin first on the scene before he arrived?  
15 MR. SUMRALL: Yes.  
16 MR. SEARS: Where were you in your investigation when  
17 Wilkin showed up?  
18 MR. SUMRALL: No, I don't recall. It would be on the  
19 CAD report.  
20 MR. SEARS: Hmm?  
21 MR. SUMRALL: It would be on the CAD report.  
22 MR. SEARS: Okay. But you don't remember.  
23 MR. SUMRALL: No I don't.  
24 MR. SEARS: Do you remember testifying at a prior

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1 hearing in this case, I think two thousand thirteen, that  
2 Wilkin arrived within three minutes?  
3 MR. SUMRALL: I don't remember testifying, that -  
4 that could be two and a half years ago. It's like you said,  
5 it was back in two thousand thirteen.  
6 MR. SEARS: Can I approach Your Honor?  
7 THE COURT: You may.  
8 MR. SEARS: May I approach the Clerk?  
9 THE COURT: You may.  
10 MR. SEARS: May I approach the witness? I'm going to  
11 show you a piece of paper that has a blue tag on the bottom.  
12 MR. SUMRALL: Okay.  
13 MR. SEARS: That piece of paper I will represent to  
14 you was your sworn testimony at a preliminary examination. I  
15 want you to ignore that blue tag and take a look at that  
16 piece of paper and read the lines on it and tell me if you  
17 remember that.  
18 MR. SUMRALL: Read it to myself?  
19 MR. SEARS: Yea.  
20 MR. SUMRALL: Okay.  
21 MR. SEARS: Okay. And you see where I've drawn a blue  
22 arrow?  
23 MR. SUMRALL: Yes.  
24 MR. SEARS: That was what I was referring to.

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1 MR. SUMRALL: Okay.  
2 MR. SEARS: Okay. Does that refresh your recollection  
3 about your testimony at the preliminary examination?  
4 MR. SUMRALL: Ah, yea.  
5 MR. SEARS: Okay. And so your testimony then was  
6 Deputy Wilkin arrived on scene at about three minutes after  
7 the stop began, is that correct?  
8 MR. SUMRALL: Yea, shortly after.  
9 MR. SEARS: Okay. Thank you. May I approach again  
10 Your Honor?  
11 THE COURT: You may.  
12 MR. SEARS: Now do you have a recollection of your  
13 testimony at the preliminary examination at all? Do you  
14 remember being in Court and testifying?  
15 MR. SUMRALL: Yes.  
16 MR. SEARS: Okay. May I approach again Your Honor?  
17 THE COURT: You may.  
18 MR. SEARS: B Your Honor. I'm showing you what's  
19 been marked as Exhibit B. Go ahead and review that paper to  
20 yourself.  
21 MR. SUMRALL: Okay.  
22 MR. SEARS: Does that refresh your recollection about  
23 the status of your lights?  
24 MR. SUMRALL: Yes.

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1 MR. SEARS: Okay. And in that testimony you said  
2 your forward lights were on is that correct?  
3 MR. SUMRALL: Correct.  
4 MR. SEARS: And you also testified that your head  
5 lamps were on, correct?  
6 MR. SUMRALL: Correct. But later it states that -  
7 MR. SEARS: I'm going to ask you to just answer my  
8 questions okay? May I approach Your Honor?  
9 MR. WHEABLE: Your Honor, I think it a - the laws of  
10 evidence allows him to read in the entire record to make good  
11 context to a statement that Mr. Sears brought up.  
12 THE COURT: You'll get - you'll get redirect.  
13 MR. WHEABLE: Okay. And that State - that's a Defense  
14 two, is that right? B - B.  
15 MR. SEARS: Do you remember if Mrs. Sindelar was  
16 wearing glasses when you had her do the H. G. N.?  
17 MR. SUMRALL: I didn't - I didn't recall.  
18 MR. SEARS: Okay.  
19 MR. SUMRALL: During the H. G. N. she was not wearing  
20 glasses though.  
21 MR. SEARS: Okay. Do you remember if you told her to  
22 take them off?  
23 MR. SUMRALL: I don't remember.  
24 MR. SEARS: Okay. So you remember if she had contacts

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1 on?  
2 MR. SUMRALL: I remember asking the questions, I  
3 don't remember what the responses were. They're on the F. S.  
4 T. sheet.  
5 MR. SEARS: Okay. You testify that you follow the  
6 same kind of procedure when you're doing the horizontal gaze  
7 nystagmus which is to say that you initially move your finger  
8 to the right or the suspect's left. Is that the way you  
9 always do it?  
10 MR. SUMRALL: Yes.  
11 MR. SEARS: Okay. After going to the right side,  
12 then you return to the center and then move your finger back  
13 to the left side, is that the way you do it?  
14 MR. SUMRALL: Yes.  
15 MR. SEARS: Okay. And you always do it that way?  
16 MR. SUMRALL: Yes.  
17 MR. SEARS: Now during your description of the  
18 H. G. N. to the State, the government, you said that you look  
19 for clues which were described as bouncing or jerking. When  
20 you were testifying a few minutes later, you said you saw a  
21 lack of pursuit. What is that all about?  
22 MR. SUMRALL: A lack of pursuit is the smooth  
23 pursuit, like a smooth pursuit.  
24 MR. SEARS: Okay.

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1 MR. SUMRALL: Exactly what that is is if - if the  
2 eyes are - are following each other the same.  
3 MR. SEARS: Okay. So if they move together you would  
4 call that a smooth pursuit?  
5 MR. SUMRALL: They move together it's a smooth  
6 pursuit.  
7 MR. SEARS: Okay. So that's a little bit different  
8 from the other business that we were talking about, the  
9 jerking?  
10 MR. SUMRALL: And that's - that's also in there cause  
11 a lack of smooth pursuit -  
12 MR. SEARS: Okay.  
13 MR. SUMRALL: - is means there's jerking involved, or  
14 nystagmus involved.  
15 MR. SEARS: Now when you reviewed the video prior to  
16 coming to Court today, you were unable to see any of what  
17 went on with her eyes, is that correct? In the video.  
18 MR. SUMRALL: Correct.  
19 MR. SEARS: Okay. But you had that thoroughly  
20 documented accurately in your report, isn't that true?  
21 MR. SUMRALL: Correct.  
22 MR. SEARS: Okay. But that's not the step for the  
23 nine-step walk and turn is it?  
24 MR. SUMRALL: Correct.

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1 MR. SEARS: Okay. Are you as certain about what you  
2 saw on the nine-step walk and turn as you were with what you  
3 have in your report with respect to the H. G. N.?  
4 MR. SUMRALL: As far as?  
5 MR. SEARS: Are you as certain that that's what you  
6 saw, what you testified today is what you remember seeing?  
7 MR. SUMRALL: Yes.  
8 MR. SEARS: Okay. Now you understand that this is an  
9 important case, correct?  
10 MR. SUMRALL: Yes.  
11 MR. SEARS: Okay. Because it affects someone's  
12 liberty interests, right?  
13 MR. WHEABLE: Objection Your Honor. That's actually  
14 information that's not to have the jury consider her liberty  
15 interests.  
16 THE COURT: Sustained.  
17 MR. SEARS: You don't want it to come into Court and  
18 make a mistake in your testimony, do you?  
19 MR. SUMRALL: Correct.  
20 MR. SEARS: Okay. And you don't want to make a  
21 mistake when you arrest somebody do you?  
22 MR. SUMRALL: No, never.  
23 MR. SEARS: Okay. Obviously your goal when you  
24 conduct an investigation and make an arrest is to make

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1 absolutely certain that the person you're doing that to has  
2 done something wrong, correct? And that's because if you do  
3 make a mistake and you arrest someone who hasn't done  
4 something wrong, there's two bad things, right? First of all  
5 you feel terrible, right?

6 MR. SUMRALL: Correct.

7 MR. SEARS: And then it's bad on your record, isn't  
8 it?

9 MR. SUMRALL: Correct.

10 MR. SEARS: Okay. Now in NHSTA standards with  
11 respect to the one-legged stand don't require a count, do  
12 they?

13 MR. SUMRALL: No they don't. It's not a clue.

14 MR. SEARS: Okay. So then why do you ask them to  
15 count if that's not part of the standard?

16 MR. SUMRALL: It's the way NHSTA standardized their  
17 testing.

18 MR. SEARS: Okay. But NHSTA doesn't say they have to  
19 count out loud, correct?

20 MR. SUMRALL: It's in the instructions.

21 MR. SEARS: Could I approach Your Honor?

22 THE COURT: You may.

23 MR. SEARS: My I approach?

24 THE COURT: You might want to view the paper that has

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1 the blue C on the bottom. I'm going to represent to you that  
2 that's another section of your testimony. For the record,  
3 I've already sew - shown it to the government. Go ahead and  
4 see if that refreshes your recollection.

5 MR. SUMRALL: Okay.

6 MR. SEARS: Well with respect to that question that I  
7 asked you before about the NHSTA standard, does the NHSTA  
8 standard, at least according to your answer there, you said  
9 they don't require you to have the count, is that correct?

10 MR. SUMRALL: That is correct.

11 MR. SEARS: Okay.

12 MR. SUMRALL: As I stated there -

13 MR. SEARS: Thank you.

14 MR. SUMRALL: - it's a cue.

15 MR. SEARS: Do you make them count out loud in order  
16 to make the test a little bit harder than the standard?

17 MR. SUMRALL: No. I mean, that's just the way that  
18 the testing was taught to me.

19 MR. SEARS: Okay. Do you fail to do the full  
20 demonstration for these people in order to make a little bit  
21 more difficult to perform?

22 MR. SUMRALL: I feel it's for officer safety.

23 MR. SEARS: Okay. That's with respect to all the  
24 testing. You're just not giving them a full demonstration

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1 for your safety?

2 MR. SUMRALL: I give them the full instruction.

3 MR. SEARS: Okay. But you're not doing a full  
4 demonstration?

5 MR. SUMRALL: Correct.

6 MR. SEARS: Okay. Were you afraid that Miss Sindelar  
7 was going to attack you while you were doing the nine-step  
8 walk and turn?

9 MR. WHEABLE: Your Honor -

10 MR. SUMRALL: You never know.

11 MR. WHEABLE: - this is argumentative.

12 THE COURT: I'll - I'll - I'll allow you to go a  
13 ways.

14 MR. SEARS: Thank you. Did she appear to be hostile  
15 towards you?

16 MR. SUMRALL: She didn't appear to be no.

17 MR. SEARS: Okay. And you had how any officers on  
18 scene at that point, three? Two?

19 MR. SUMRALL: At what point?

20 MR. SEARS: When you were doing the nine-step walk  
21 and turn demonstration.

22 MR. SUMRALL: I believe there was two.

23 MR. SEARS: Okay. So there was you and Wilkin?

24 MR. SUMRALL: Correct.

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1 MR. SEARS: Nobody else had - had arrived yet?

2 MR. SUMRALL: I don't believe. I don't know.

3 MR. SEARS: Okay.

4 MR. SUMRALL: I don't know the time of the arrival of  
5 the other two.

6 MR. SEARS: Okay.

7 MR. SUMRALL: Well like I say, there - there's a  
8 reason why -

9 MR. SEARS: There is no question on the floor,  
10 please. Thank you. You testified that you took the  
11 information from your lapel camera and you downloaded it onto  
12 a server, tell us what that means.

13 MR. SUMRALL: Okay, with -

14 MR. SEARS: For folks like me that are challenged  
15 electronically -

16 MR. SUMRALL: Okay.

17 MR. SEARS: - what are - what are you doing?

18 MR. SUMRALL: I'm with you. What - what that means  
19 is you take - you take the little disk out of the lapel cam  
20 and you place it into a like a drive at the office and then  
21 you download that video from - from that sandisk and put it  
22 onto our server which is our desktop with a computer. It's a  
23 - it's a shared server that all the officers put all their  
24 pict - well there's pictures, car video or little sandisk

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1 into that server.  
2 MR. SEARS: Okay.  
3 MR. SUMRALL: Onto the desktop.  
4 MR. SEARS: By shared server then does everybody have  
5 access to that?  
6 MR. SUMRALL: Yes.  
7 MR. SEARS: And so the detectives can look at it if  
8 they want to?  
9 MR. SUMRALL: Correct.  
10 MR. SEARS: Other officers can look at it if they want  
11 to?  
12 MR. SUMRALL: Yes.  
13 MR. SEARS: Okay. So there's no - no attempt whatever  
14 to protect the integrity of that if somebody else wants to do  
15 something with it? Anybody can download it or take it?  
16 MR. SUMRALL: Download or take that - that device?  
17 MR. SEARS: No. Download or take the video. Every  
18 other officer has access to the video right?  
19 MR. SUMRALL: Correct.  
20 MR. SEARS: Okay. How much time past between the  
21 point when you downloaded the video and when you provided the  
22 video to the State?  
23 MR. SUMRALL: I - I don't know because I don't  
24 provide it to the State.

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1 MR. SEARS: Okay. So you have no idea how much time  
2 it was on your server? If we looked at it today, would it  
3 still be there?  
4 MR. SUMRALL: It's probably in the - in the file,  
5 yes.  
6 MR. SEARS: Okay. But there's no attempt to protect  
7 the integrity, in other words, you don't password protect it  
8 or do anything like that with it?  
9 MR. SUMRALL: On our server we have in order to log  
10 into the computer we have a password that we have to enter to  
11 get into the computer, yes.  
12 MR. SEARS: And each officer has a password?  
13 MR. SUMRALL: It's a - yes.  
14 MR. SEARS: And is it a common password or do you  
15 each have your own?  
16 MR. SUMRALL: It's a common password.  
17 MR. SEARS: It's a common password. Okay. Now when  
18 you got the blood kit and handed it to Horace, was it closed  
19 or open, the kit, the box? I'm assuming this is a kit?  
20 MR. SUMRALL: That was it, yes, and it was closed.  
21 MR. SEARS: Okay. It was closed. Is it sealed?  
22 MR. SUMRALL: It's not sealed, no.  
23 MR. SEARS: It's just closed.  
24 MR. SUMRALL: Yes.

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1 MR. SEARS: Who has access to the room where those  
2 kits are?  
3 MR. SUMRALL: Deputies, jailers.  
4 MR. SEARS: Okay. Inmates?  
5 MR. SUMRALL: No.  
6 MR. SEARS: Is it in with the P. B. T. equipment?  
7 MR. SUMRALL: Yes it is.  
8 MR. SEARS: Okay. Isn't that door open? Can't  
9 trustee inmates walk into that room?  
10 MR. SUMRALL: It has a knob on it that's lockable,  
11 yes. I don't -  
12 MR. SEARS: You don't remember if it was locked?  
13 MR. SUMRALL: ~ I don't work the jail.  
14 MR. SEARS: Okay.  
15 MR. SUMRALL: I don't know if the room's - I don't  
16 know.  
17 MR. SEARS: But you would agree with me that inmates  
18 have access to that room?  
19 MR. SUMRALL: Ah, No.  
20 MR. SEARS: They can't walk into the room, trustees.  
21 MR. SUMRALL: If it is not a common area. And  
22 trustees are under supervision.  
23 MR. SEARS: Okay. But trustees can go into the room?  
24 MR. SUMRALL: I - I -

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1 MR. SEARS: Under supervision?  
2 MR. SUMRALL: I guess under supervision, yes.  
3 MR. SEARS: Okay. And you haven't worked in the jail  
4 so you don't know how closely they're supervised by jailers?  
5 MR. SUMRALL: Correct. I haven't worked the jail.  
6 MR. SEARS: Okay. So when you picked up the box, did  
7 you check the box thoroughly to make sure that the contents  
8 were what were supposed to be in there?  
9 MR. SUMRALL: As - as Horace opened the box, all the  
10 contents were there.  
11 MR. SEARS: Okay. Did Horace know what contents were  
12 supposed to be in the box, do you know?  
13 MR. SUMRALL: I believe there's a checklist in the  
14 box.  
15 MR. SEARS: Okay.  
16 MR. SUMRALL: Or an instruction. I - I - I don't  
17 know.  
18 MR. SEARS: I'll pass the witness Your Honor.  
19 THE COURT: Re-direct?  
20 MR. WHEABLE: All right. I'm showing the Defense what  
21 he had marked as Exhibit B, Defense B. May I approach Your  
22 Honor?  
23 THE COURT: You may.  
24 MR. WHEABLE: I'm handing you Defense Exhibit B. Do

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1 you recognize that?  
2 MR. SUMRALL: Yes I do.  
3 MR. WHEABLE: What is it?  
4 MR. SUMRALL: Pardon.  
5 MR. WHEABLE: What is it?  
6 MR. SUMRALL: This - this is the testimony gave -  
7 MR. WHEABLE: Okay.  
8 MR. SUMRALL: - a couple years ago.  
9 MR. WHEABLE: Okay. Do you recall Mr. Sears asking  
10 you some questions about that?  
11 MR. SUMRALL: Yes I do.  
12 MR. WHEABLE: Do yo recall him not letting you finish  
13 your answers?  
14 MR. SUMRALL: I do.  
15 MR. WHEABLE: Okay. So one of the questions he asked  
16 you and wanted to go over whether your front lights -  
17 flashing lights were on or not, right?  
18 MR. SUMRALL: Correct.  
19 MR. WHEABLE: Okay. So, what is your testimony say -  
20 what did you testify to about your flashing lights?  
21 MR. SUMRALL: Ah, that - that my front flashing  
22 lights were not on.  
23 MR. WHEABLE: Well I'm sorry, what?  
24 MR. SUMRALL: That my front flashing emergency lights

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1 were - were not on.  
2 MR. WHEABLE: Were not on. Were they ever on during  
3 that traffic stop?  
4 MR. SUMRALL: During - yes.  
5 MR. WHEABLE: Well when was that?  
6 MR. SUMRALL: Upon initial - upon my initial traffic  
7 enforcement stop they were on but its common practice that  
8 when we do F. S. T.s if - if I don't do it personally, the  
9 backup officer will turn off the front emergency lights.  
10 MR. WHEABLE: Okay. When you - when you conducted  
11 the field sobriety test, the horizontal gaze nystagmus  
12 specifically, were your front flasher lights on?  
13 MR. SUMRALL: No.  
14 MR. WHEABLE: Okay. Is that what you were going to  
15 explain to Mr. Sears?  
16 MR. SUMRALL: That was.  
17 MR. WHEABLE: Similarly I want to ask you a couple of  
18 questions about the cue versus clue again. Mr. Sears asked  
19 you on cross-examination about what - about the counting out  
20 loud, okay. Now it's not a clue that you look for?  
21 MR. SUMRALL: Correct.  
22 MR. WHEABLE: But you had testified earlier it's a  
23 cue?  
24 MR. SUMRALL: Correct.

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1 MR. WHEABLE: Okay. Does. NHSTA provide for you to -  
2 to have them count out loud?  
3 MR. SUMRALL: Yes it does.  
4 MR. WHEABLE: Okay, so that's part of your training,  
5 is that what you're saying?  
6 MR. SUMRALL: Correct.  
7 MR. WHEABLE: Okay. If someone's wearing corrective  
8 lenses, contacts, does that affect the results of H. G. N.?  
9 MR. SEARS: Objection, foundation.  
10 MR. WHEABLE: Mr. Sears asked the question on cross.  
11 He seemed to know all about the glasses.  
12 THE COURT: Go ahead.  
13 MR. WHEABLE: Would that affect the H. G. N. results?  
14 MR. SUMRALL: Wearing contacts?  
15 MR. WHEABLE: Yea.  
16 MR. SUMRALL: I don't believe so.  
17 MR. WHEABLE: Any - were you trained on that one way  
18 or the other?  
19 MR. SUMRALL: No. I mean we were trained to ask  
20 those questions -  
21 MR. WHEABLE: Okay.  
22 MR. SUMRALL: - um, about contacts and glasses and  
23 stuff like that.  
24 MR. WHEABLE: Okay.

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1 MR. SUMRALL: If they are wearing glasses we ask them  
2 to take them off.  
3 MR. WHEABLE: Okay. All right, lets talk briefly  
4 about that lapel video. Do you recall the first time you  
5 watched that video in my office?  
6 MR. SUMRALL: Yes.  
7 MR. WHEABLE: Do you recall that there were - how man  
8 different files was that video contained on?  
9 MR. SUMRALL: There was two files.  
10 MR. WHEABLE: Okay. And how many files played today  
11 in Court?  
12 MR. SUMRALL: One.  
13 MR. WHEABLE: Okay. What was the process there?  
14 What happened?  
15 MR. SUMRALL: With the -  
16 MR. WHEABLE: Why was it one today but - and - and  
17 you watched it a second time. How many times did you watch  
18 it in my office?  
19 MR. SUMRALL: I watched it twice.  
20 MR. WHEABLE: Okay. And did you watch this version  
21 that was one section?  
22 MR. SUMRALL: Yes.  
23 MR. WHEABLE: Okay. Do you know what - what happened  
24 there with why we - why it was on one section instead of two?

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1 MR. SUMRALL: I just - cause after my initial contact  
2 with - with Sindelar, I went back and spoke with my - my  
3 partner and then at that point I turned the camera off and  
4 then when we approached Sindelar I turned it back on.

5 MR. WHEABLE: Okay. Can you see that glitch when you  
6 watched this video today?

7 MR. SUMRALL: Um, I didn't notice it.

8 MR. WHEABLE: But it may be on there?

9 MR. SUMRALL: It might be, yes.

10 MR. WHEABLE: Okay. Mr. Sears essentially testified  
11 that alcohol doesn't have an odor, right, when he was asking  
12 questions earlier? Do the - does an alcoholic beverage have  
13 an odor?

14 MR. SUMRALL: Yes.

15 MR. WHEABLE: Okay. So did you smell the odor of  
16 alcohol or odor of alcoholic beverage when you were first  
17 dealing with Miss Sindelar?

18 MR. SUMRALL: Smelled the odor of an alcoholic  
19 beverage.

20 MR. WHEABLE: Okay. And finally, just because I - I  
21 want to make sure we're real clear on this. Did you receive  
22 any training at all at any time, did anybody ever tell you  
23 that wearing contacts affects H. G. N.?

24 MR. SUMRALL: No.

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1 MR. WHEABLE: Okay. Pass the witness Your Honor.

2 THE COURT: Re-cross?

3 MR. SEARS: Yes, thank you Your Honor. I'm not sure I  
4 understand your testimony. So your testimony is that when  
5 you went to speak to one of your partners you turned your  
6 video off. Why did you do that?

7 MR. SUMRALL: No - no particular reason.

8 MR. SEARS: Okay. Did you say something to the  
9 partner that you didn't want to come out in Court?

10 MR. SUMRALL: No.

11 MR. SEARS: You just turned it off?

12 MR. SUMRALL: Yes.

13 MR. SEARS: Okay. And no reason for doing it?

14 MR. SUMRALL: No reason at all.

15 MR. SEARS: All right. Your testimony is that you  
16 watched the video two times, okay, and the video refreshed  
17 your recollection about the stop right?

18 MR. SUMRALL: Yes.

19 MR. SEARS: Okay. So then if the video refreshed your  
20 recollection about the stop, that means you had to rely on  
21 that video to remember what happened at the scene, right?

22 MR. SUMRALL: Yes. All part of evidence.

23 MR. SEARS: Okay. So then how can you testify today  
24 that the video is an accurate representation of what happened

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1 at the stop when you didn't remember what happened at the  
2 stop without the video?

3 MR. WHEABLE: Objection. Compound and convoluted.

4 THE COURT: I'll - I'll let him if you can, if you  
5 understand it.

6 MR. SEARS: Did you understand my question?

7 MR. SUMRALL: Ah, may - maybe you know the reason we  
8 have the videos is to get information from - from the scene.  
9 When we go we review -

10 MR. SEARS: Let me re-ask it Your Honor.

11 MR. SUMRALL: - we review to go back and -

12 MR. SEARS: May I re-ask Your Honor? Well let me see  
13 if I can do this so it's simpler okay. So, you were asked to  
14 testify today that the video was an accurate representation  
15 of the stop -

16 MR. SUMRALL: Correct.

17 MR. SEARS: - based on your recollection?

18 MR. SUMRALL: Correct.

19 MR. SEARS: You also testified there were things  
20 about the stop you didn't recall, right, and you had to rely  
21 on the video to recall them, correct?

22 MR. SUMRALL: Things that happened prior to the  
23 video?

24 MR. SEARS: No. During the video.

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1 MR. SUMRALL: I - I - I don't get the question.

2 MR. SEARS: Do you understand what circular reasoning  
3 is?

4 MR. SUMRALL: Um hmmm.

5 MR. SEARS: Okay. That's circular reasoning. You  
6 didn't remember some things so you watched the video and now  
7 you remember some things and oh yes, the video is accurate  
8 based on what if you didn't remember -

9 MR. SUMRALL: That's the reason -

10 MR. SEARS: - what was on - occurred on the stop.

11 MR. SUMRALL: That's the reason for all of that  
12 evidence so that we can recall the information that took  
13 place.

14 MR. SEARS: But you couldn't recall the events of the  
15 stop without the video?

16 MR. WHEABLE: Asked and answered Your Honor.

17 MR. SUMRALL: Between my report and the video, so we  
18 can look back on it and recall what happened, especially two  
19 years later.

20 MR. SEARS: Okay. But the report didn't contain all  
21 of the things that you testified to today and neither did the  
22 video, correct?

23 MR. SUMRALL: What are you getting at as far as -

24 MR. SEARS: Well let me tell you -

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1 MR. SUMRALL: -Like what the clues are?

2 MR. SEARS: - I'm getting at. We couldn't tell from  
3 the video how many steps she missed and there's nothing in  
4 the report about how many steps she missed and you testified  
5 to the missed steps.

6 MR. WHEABLE: Objection. That's not the -

7 MR. SUMRALL: I - I did not.

8 MR. WHEABLE: -testimony he made Your Honor.

9 MR. SUMRALL: I didn't testify to missed steps.

10 THE COURT: That's -

11 MR. SUMRALL: And if - if I did it was mis -  
12 misspoken.

13 THE COURT: Go ahead.

14 MR. SEARS: You testified that she had to use her  
15 arms for balance when she was doing the nine - the nine-step.

16 MR. SUMRALL: Correct. Correct.

17 MR. SEARS: We don't see that on the video.

18 MR. SUMRALL: It's on the video.

19 MR. SEARS: And it's not in your report. Well the  
20 jury's going to have a chance to look at that and decide for  
21 themselves.

22 MR. SUMRALL: Okay.

23 MR. SEARS: It was not obvious to me on the video and  
24 it's not in your report.

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1 MR. SUMRALL: Okay.

2 MR. SEARS: When I showed you the Exhibit and asked  
3 you about your front lights, I never used the word flashing.  
4 Your testimony was the front lights were on and the  
5 headlights were on. I never said flashing. I wasn't  
6 concerned about flashing lights. I was concerned about -

7 MR. SUMRALL: You referring to testimony two years  
8 ago?

9 MR. SEARS: - front lights and headlights. Yes.

10 MR. SUMRALL: Okay. I think - I think that was kind  
11 of a misunderstanding there because it was clarified later  
12 that the emergency lights weren't on, the latter lights were  
13 on.

14 MR. SEARS: And front lights refers to what?

15 MR. SUMRALL: Headlights.

16 MR. SEARS: Okay. And headlights refers to what?  
17 You used both terms in your testimony.

18 MR. SUMRALL: I was asked both terms and it was  
19 clarified later.

20 MR. SEARS: Okay. So there's only two sets of lights  
21 on the front of that vehicle, one is flashing lights and one  
22 is headlights, correct?

23 MR. SUMRALL: Correct.

24 MR. SEARS: Okay.

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1 MR. SUMRALL: And in that particular vehicle there's  
2 - there's two small lights in the windshield.

3 MR. SEARS: Were those on or do you remember?

4 MR. SUMRALL: At the initial stop yes.

5 MR. SEARS: Okay.

6 MR. SUMRALL: During - during F. S. T.s, no.

7 MR. SEARS: Okay. If they had been on as you  
8 photographed the scene, would we have good pictures of the  
9 surface that she was asked to do those tests on?

10 MR. SUMRALL: Far - pardon?

11 MR. SEARS: Never mind.

12 MR. SUMRALL: Okay.

13 MR. SEARS: I'll scratch the question.

14 MR. SUMRALL: You can see in the video too that my  
15 emergency lights aren't on.

16 MR. SEARS: Your testimony was that you had no  
17 training on corrective lenses but you don't believe it  
18 affects performance on the H. G. N. Now as I understand the  
19 questionnaire, you ask them if they have corrective lenses  
20 right?

21 MR. SUMRALL: It's pretty obvious I can tell you're  
22 wearing corrective lenses.

23 MR. SEARS: I - I don't think that was the question.  
24 You Honor, would you direct him to answer my questions

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1 please?

2 THE COURT: Please answer the question.

3 MR. WHEABLE: I don't think we're there yet Your  
4 Honor.

5 THE COURT: Oh, I think its fair. You've offered a  
6 lot.

7 MR. WHEABLE: Okay.

8 THE COURT: Go ahead.

9 MR. SEARS: Thank you. What training did you have  
10 about whether or not corrective lenses affect their  
11 performance on H. G. N.?

12 MR. SUMRALL: Ah, the saying is is that if they're  
13 wearing corrective lenses, meaning glasses -

14 MR. SEARS: Okay.

15 MR. SUMRALL: - um, that we're instructed to have  
16 them take them off.

17 MR. SEARS: Okay. But you're not taught what happens  
18 if you do H. G. N. with them on? And I understand your  
19 statement is they weren't on in this case. I understand that.  
20 I'm just asking for your training purposes.

21 MR. SUMRALL: Training purposes we take the off.

22 MR. SEARS: Okay. And same question then with respect  
23 to - to contact lenses.

24 MR. SUMRALL: I don't believe so. I mean so then -

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1 MR. SEARS: Do you ask the to remove them?  
2 MR. SUMRALL: No.  
3 MR. SEARS: Okay. And you don't know affect  
4 corrective lenses contact type would have on them one way or  
5 the other?  
6 MR. SUMRALL: I don't believe (unintelligible word).  
7 MR. SEARS: Okay. So you believe - you don't believe  
8 that glasses would affect the H. G. N. test one way or the  
9 other?  
10 MR. SUMRALL: Whether glasses are on or off?  
11 MR. SEARS: Yea. So if somebody has - needs  
12 corrective lenses because they have bad eyesight, you don't  
13 think it affects the performance on the H. G. N. and did they  
14 teach you that? No matter how bad your eyesight is, it  
15 doesn't affect the H. G. N.?  
16 MR. SUMRALL: It is an involuntary reflex of the  
17 eyes.  
18 MR. SEARS: Your Hon - I'm - I'm not asking that.  
19 I'm asking what did they teach you at - at POST Academy?  
20 MR. SUMRALL: To take the glasses off.  
21 MR. SEARS: Okay. And did they teach you what affect  
22 it has when you take the glasses off on H. G. N. if someone  
23 has bad eyesight?  
24 MR. SUMRALL: I don't believe any affect.

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1 MR. SEARS: I know you don't believe it. You don't  
2 believe it because you don't want to answer my question. I'm  
3 not interested in what you believe. I want you to answer my  
4 question. What -  
5 MR. WHEABLE: Your Honor -  
6 MR. SEARS: - did they teach you?  
7 MR. WHEABLE: I'm going to object.  
8 THE COURT: This is ridiculous. He asked five times  
9 what they teach you.  
10 MR. WHEABLE: I understand.  
11 THE COURT: He's never answered that so its  
12 overruled.  
13 MR. WHEABLE: Okay.  
14 MR. SEARS: What did they teach you.  
15 MR. SUMRALL: I'm telling you they teach us to take  
16 the glasses off as far as - as far as -  
17 MR. SEARS: I give up Your Honor. I'll pass the  
18 witness.  
19 THE COURT: Okay. Anything further?  
20 MR. WHEABLE: No Your Honor.  
21 THE COURT: Any questions from the jury? Nobody  
22 indicates. Is he excused from the case?  
23 MR. WHEABLE: I'd like to hold him subject to recall  
24 please.

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1 THE COURT: All right.  
2 MR. SEARS: I do too Your Honor.  
3 THE COURT: You're excused from the courtroom.  
4 You're not excused from the case from either side.  
5 MR. WHEABLE: Um would it be alright if I let him go  
6 about his day and call on his phone to bring him back if  
7 necessary?  
8 THE COURT: Well certainly.  
9 MR. WHEABLE: Okay.  
10 THE COURT: Ah, you can go to work now. Do you have  
11 another witness ready?  
12 MS. GIANOLI: We do Your Honor.  
13 THE COURT: All right.  
14 MS. GIANOLI: The State would call Horace Herrin to  
15 the stand please.  
16 BAILIFF: I'm sorry, I couldn't hear you.  
17 MS. GIANOLI: Horace Herrin.  
18 BAILIFF: Thank you. Horace.  
19 THE COURT: Please come forward. Raise your right  
20 hand and the Clerk will give you the oath.  
21 CLERK: Do you solemnly swear the testimony you are  
22 about to provide in this matter before the Court shall be the  
23 truth, the whole truth and nothing but the truth, so help you  
24 God?

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1 MR. HERRIN: I do.  
2 THE COURT: Please be seated. Please state your name  
3 and spell your last name.  
4 MR. HERRIN: Excuse me.  
5 THE COURT: State your name and spell your last name.  
6 MR. HERRIN: Oh. Horace Herrin. Last name is  
7 H - E - R - R - I - N.  
8 THE COURT: Thank you. Go ahead.  
9 MS. GIANOLI: Thank you Your Honor. Sir, and where  
10 do you currently reside without giving your exact address?  
11 MR. HERRIN: (Unintelligible word) Nebraska.  
12 MS. GIANOLI: Okay. All right. And at some point sir  
13 did you live in Ely, Nevada?  
14 MR. HERRIN: In the years two thousand eight to two  
15 thousand thirteen.  
16 MS. GIANOLI: Okay. So fair to say on March twenty-  
17 seven two thousand thirteen you resided within Ely, Nevada?  
18 MR. HERRIN: Correct.  
19 MS. GIANOLI: And while you lived in Ely, Nevada,  
20 what was your occupation?  
21 MR. HERRIN: A medical technologist.  
22 MS. GIANOLI: And sir, for what agency did you work  
23 for as a medical technologist while living in Ely, Nevada?  
24 MR. HERRIN: William B. Ririe Hospital.

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1 MS. GIANOLI: And can you explain for the jury what  
2 is a medical technologist?  
3 MR. HERRIN: A medical technologist is a person who  
4 takes body fluids or tissue from an individual and analyze it  
5 for cause in a (unintelligible word).  
6 MS. GIANOLI: Okay. And sir, how long did you work  
7 for William B. Ririe as a medical technician?  
8 MR. HERRIN: Five years.  
9 MS. GIANOLI: And prior to your work at William B.  
10 Ririe, do you have any other medical related experience?  
11 MR. HERRIN: Repeat - well I mean I hear what you're  
12 saying but I'm trying to understand it.  
13 MS. GIANOLI: Sure. Talk about your medical  
14 experience as far as where you worked prior to William B.  
15 Ririe.  
16 MR. HERRIN: Platalbo Valley Medical Center for  
17 thirty years.  
18 MS. GIANOLI: And what was your position with  
19 Platalbo Medical?  
20 MR. HERRIN: Medical lab technician.  
21 MS. GIANOLI: Okay. And on March twenty-seventh two  
22 thousand thirteen did you have a license in Nevada to be a  
23 medical technician?  
24 MR. HERRIN: Correct.

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1 MS. GIANOLI: Okay. And what is the license  
2 requirement to be a medical technician in Nevada.  
3 MR. HERRIN: According to the State of Nevada that  
4 you be registered with the national registry and have a four  
5 year college education.  
6 MS. GIANOLI: Okay. And you were current with your  
7 licensure on that - on March twenty-seventh, two thousand  
8 thirteen?  
9 MR. HERRIN: Correct.  
10 MS. GIANOLI: Okay.  
11 MR. HERRIN: Correct.  
12 MS. GIANOLI: Now you indicated that as a medical  
13 technician you extract bodily fluids, correct?  
14 MR. HERRIN: Correct.  
15 MS. GIANOLI: And is one of those blood?  
16 MR. HERRIN: Blood, correct.  
17 MS. GIANOLI: Okay. Now through the course of your  
18 experience as a medical technician, are you able to train or  
19 educate others?  
20 MR. HERRIN: Correct.  
21 MS. GIANOLI: What staff?  
22 MR. HERRIN: Phlebotomists, M. L. T.s and M. T.s.  
23 MS. GIANOLI: Okay. And what - what are you able to  
24 teach phlebotomists, and when you say M. L. T.s what do you

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1 mean?  
2 MR. HERRIN: Medical laboratory technicians.  
3 MS. GIANOLI: Okay. And what was the third? I'm  
4 sorry.  
5 MR. HERRIN: Technic - technologists.  
6 MS. GIANOLI: Technologists. And what sort of  
7 training are you able to offer those three entities or  
8 people?  
9 MR. HERRIN: Usually - what we usually offer them is  
10 basic training of how - how certain procedures are done, how  
11 certain things are done.  
12 MS. GIANOLI: Procedures for - pertaining to what?  
13 MR. HERRIN: Blood - phlebotomy is a technique on how  
14 to stick a patient and how to care for a certain  
15 (unintelligible word).  
16 MS. GIANOLI: So you're talking about how to stick  
17 patients, you're talking about how to draw blood, that's what  
18 a phlebotomist does?  
19 MR. HERRIN: Correct.  
20 MS. GIANOLI: Okay. And your particular licensure as  
21 a medical technician allows you to teach them the appropriate  
22 mechanism -  
23 MR. HERRIN: No.  
24 MS. GIANOLI: Technologist to draw blood?

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1 MR. HERRIN: Correct.  
2 MS. GIANOLI: Okay. And sir have you been called to  
3 testify in a Court of law in the past with regards to your  
4 experience and training as a medical tech?  
5 MR. HERRIN: First time.  
6 MS. GIANOLI: Okay. And sir, what training and  
7 education have you undergone when you come into med?  
8 MR. HERRIN: I was originally trained in Atlanta,  
9 Georgia, at Atlanta College for medical and dental assistant.  
10 MS. GIANOLI: Okay. And do you have any other  
11 educational experience?  
12 MR. HERRIN: Ah, the University of Charlotte and the  
13 University of Phoenix.  
14 MS. GIANOLI: Okay. And the University of Charlotte,  
15 was that your undergrad education?  
16 MR. HERRIN: Undergrad, correct.  
17 MS. GIANOLI: Okay. And the University of Phoenix,  
18 what education did you receive there?  
19 MR. HERRIN: I obtained my Master's in health care  
20 administration.  
21 MS. GIANOLI: Okay. And sir, in your licensing in  
22 Nevada, and maintaining your licensing in Nevada, are you  
23 required to maintain certain continuing education credits?  
24 MR. HERRIN: Correct. It's a - for each year is ten

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1 units of continuing education but as I was here in Nevada, I  
2 was working on my Master's so I was able to use those credits  
3 to - to -

4 MS. GIANOLI: To satisfy your ten education units?

5 MR. HERRIN: Correct.

6 MS. GIANOLI: Now when you say ten units, is that  
7 equivalent to ten hours or what is the unit equivalent?

8 MR. HERRIN: Correct. Ten hours.

9 MS. GIANOLI: Okay. Now six can you tell the jury  
10 through the course of your career approximately how many  
11 blood draws have you completed?

12 MR. HERRIN: I'd say numerous. If I had to put a  
13 number to it I would say over a hundred thousand.

14 MS. GIANOLI: Now pursuant to the training and the -  
15 and the way in which you've been educated, what is the  
16 medically acceptable manner in which to draw blood?

17 MR. HERRIN: Number one, never use alcohol. Always  
18 use betadine or iodine.

19 MS. GIANOLI: Now what are you talking about never  
20 use alcohol? Describe for the jury what you're saying.

21 MR. HERRIN: Alcohol has alcohol content and so by  
22 wiping a person with alcohol you're adding content to their  
23 blood but by using betadine, which betadine contains no  
24 alcohol, so there is no (unintelligible word) there, no

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1 alcohol there.

2 MS. GIANOLI: So when you're doing blood draws where  
3 you're doing a blood draw based upon alcohol presence you  
4 never use a swab that contains alcohol?

5 MR. HERRIN: Never use alcohol with it, correct.

6 MS. GIANOLI: Okay. And where do you go from there?  
7 How else do you draw blood?

8 MR. HERRIN: Okay. My technique that I usually use  
9 is I first observe the area. If there is no - I mean if  
10 there is not a need for a tourniquet I do not use a  
11 tourniquet, but if there is a need for a tourniquet, I will  
12 use a tourniquet.

13 MS. GIANOLI: Okay. So you indicate first you observe  
14 the area. Now what are you talking about the area? Describe  
15 that.

16 MR. HERRIN: Lets say the middle arm is usually the  
17 site of prep and stuff every person that draws bloods.

18 MS. GIANOLI: Okay.

19 MR. HERRIN: But there are areas as well as on the  
20 side of the arm and as well as on the back of the hand.

21 MS. GIANOLI: Okay. So you look for the best area on  
22 a human body. You were talking about the forearm and there's  
23 other areas on the back of the hand on which you can draw  
24 blood?

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1 MR. HERRIN: Correct.

2 MS. GIANOLI: And you then stated you observe the  
3 areas and decide whether you're going to use a tourniquet or  
4 not?

5 MR. HERRIN: Correct.

6 MS. GIANOLI: Tell me when you - how you decide  
7 whether you use a tourniquet or not.

8 MR. HERRIN: Usually what a tourniquet does, it help  
9 the vein to swell. If the vein is already swell there's no -  
10 I think there is no real reason to use a tourniquet but it's  
11 a habit among technicians, technologists and phlebotomists.  
12 They always use a tourniquet.

13 MS. GIANOLI: Okay. All right. So after you make the  
14 decision whether or not to use a tourniquet where do you go  
15 from there?

16 MR. HERRIN: Then we prep the arm to make sure that  
17 you know the area's sterile.

18 MS. GIANOLI: Okay. Walk me through the prepping of  
19 the arm.

20 MR. HERRIN: It has what we call common germs on the  
21 arm whether or not - I mean whether or not we clean it or  
22 not, there are current germs so we want to prep it to  
23 eliminate as many germs as possible.

24 MS. GIANOLI: Okay. And is that the iodine swab that

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1 you're talking about?

2 MR. HERRIN: Iodine or alcohol.

3 MS. GIANOLI: Okay. But in a blood alcohol test you  
4 never use alcohol, correct?

5 MR. HERRIN: Never use alcohol.

6 MS. GIANOLI: Okay. So lets say here for the sake of  
7 argument we were using an alcohol doing an alcohol test.

8 MR. HERRIN: Okay.

9 MS. GIANOLI: You'd swab with iodine -

10 MR. HERRIN: Swab with iodine, um hum.

11 MS. GIANOLI: - to kill the germs? Okay. Now after  
12 you swab the site, what do you do next?

13 MR. HERRIN: I allow it to dry - air dry and after it  
14 air dry the we proceed.

15 MS. GIANOLI: Then I - I'm sorry, you what?

16 MR. HERRIN: Then we proceed with the stick.

17 MS. GIANOLI: Okay. Okay. Then you proceed and how  
18 do you proceed?

19 MR. HERRIN: By - most of the time I always pull back  
20 the skin because its less sensitive when you pull it back  
21 because sometimes I watch a lot of other, they just stick  
22 that right directly and allow the blood to come.

23 MS. GIANOLI: Okay. So you stick the needle in the  
24 vein?

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1 MR. HERRIN: Correct.  
2 MS. GIANOLI: Okay. And do you then withdraw the  
3 blood?  
4 MR. HERRIN: Correct.  
5 MS. GIANOLI: Okay. Now is this the manner in which  
6 you have been trained to draw blood?  
7 MR. HERRIN: Correct.  
8 MS. GIANOLI: And is this the medical acceptable  
9 manner in which to draw blood?  
10 MR. HERRIN: Correct.  
11 MS. GIANOLI: Okay And in each and every occasion  
12 that you withdraw blood, do you to the best of your ability  
13 stick to this medically acceptable manner?  
14 MR. HERRIN: Always.  
15 MS. GIANOLI: Okay. Now sir I want to bring your  
16 attention to the date of March twenty-seventh, two thousand  
17 and thirteen. To your recollection were you contacted to  
18 perform a blood draw on that date?  
19 MR. HERRIN: Correct.  
20 MS. GIANOLI: Okay. And do you recollect who  
21 contacted you or what agency contacted you?  
22 MR. HERRIN: The Sheriff Department.  
23 MS. GIANOLI: The White Pine County Sheriff's  
24 Department?

1 MR. HERRIN: The White Pine Sheriff Department, yes.  
2 MS. GIANOLI: Okay. And do you know why you were  
3 contacted to perform a blood draw?  
4 MR. HERRIN: Why? I have a contract with - I had -  
5 at that time I had a contract with them if they should have a  
6 what do you call it, alcohol, D. W. I., D. U. I., what - I  
7 was contracted to come and draw for them. I was on call that  
8 night.  
9 MS. GIANOLI: Okay. And you were on call that night?  
10 MR. HERRIN: I was on call that night.  
11 MS. GIANOLI: And you responded to their call?  
12 MR. HERRIN: Responded to their call.  
13 MS. GIANOLI: And where did you perform this blood  
14 draw?  
15 MR. HERRIN: The Sheriff's Office.  
16 MS. GIANOLI: Okay. Now is it at all uncommon that  
17 you would perform you're talking about with a D. U. I. or  
18 driving under the influence, was it uncommon that you would  
19 perform a blood draw in the Sheriff's Office?  
20 MR. HERRIN: Yes. I - I think the last few months  
21 that I was working there I performed I think about three or  
22 maybe six at the hospital -  
23 MS. GIANOLI: - Okay.  
24 MR. HERRIN: - because it was an automobile accident.

1 MS. GIANOLI: So let me ask you this and I think  
2 maybe I have a poor question in there. Was it common that you  
3 would go to the Sheriff's Office to do blood draws?  
4 MR. HERRIN: Normally, correct.  
5 MS. GIANOLI: That's correct?  
6 MR. HERRIN: Right.  
7 MS. GIANOLI: Okay. You indicated that the few you  
8 had done at the hospital, were most of those individuals  
9 injured and in the hospital for another reason?  
10 MR. HERRIN: For medical reasons, correct.  
11 MS. GIANOLI: They were in the hospital for medical  
12 reasons?  
13 MR. HERRIN: Correct.  
14 MS. GIANOLI: And in those situations you'd be called  
15 to the hospital to do a blood draw?  
16 MR. HERRIN: Not for that. Each time that was I was  
17 already at the hospital but I had clock out.  
18 MS. GIANOLI: Okay. Your Honor for the purposes of  
19 the record I'm handing to counsel what's been previously  
20 marked for identification as State's Exhibit Ten.  
21 THE COURT: Record would so reflect.  
22 MR. SEARS: There you are.  
23 MS. GIANOLI: Your Honor, if I may approach the  
24 witness?

1 THE COURT: You may.  
2 MR. SEARS: What was the numbering?  
3 MS. GIANOLI: Ten. Sir, I'm handing you what's been  
4 marked as State's Exhibit Ten. Does that appear to be  
5 familiar to you?  
6 MR. HERRIN: Very familiar.  
7 MS. GIANOLI: Very familiar. What is it?  
8 MR. HERRIN: This is a blood alcohol kit that was  
9 given to me by the Sheriff's Department each and every time  
10 that I would go to Sheriff's Office to do a collection.  
11 MS. GIANOLI: Okay. Now, and that's a sample kit,  
12 correct? That's not the kit on March twenty-seventh,  
13 correct?  
14 MR. HERRIN: Correct.  
15 MS. GIANOLI: Okay. I want you to take a look in  
16 that box if you wouldn't mind.  
17 MR. HERRIN: This is a form that is usually given you  
18 take out of this kit and on this kit it has a serial number  
19 here that - it also has labels here. What we usually do is  
20 label each one of these tubes with these labels here and  
21 these tubes once its labeled goes into this bag real similar  
22 like this and the front of it he tears off the front copy of  
23 this and put that in the front part of this right here. You  
24 pack all this back up, put it in here, close it, with the

1 necessary data on it, information, and you seal it with this,  
2 and while we have to initial this across here and as well on  
3 here to make sure that it has not been tampered with, and it  
4 goes to the State lab.

5 MS. GIANOLI: Mr. Herrin: I want to break that down  
6 into some pieces. So, you indicated in your prior testimony  
7 that when you arrived at the station you get a kit.

8 MR. HERRIN: Correct.

9 MS. GIANOLI: And is that provided to you by the  
10 deputy?

11 MR. HERRIN: Authorized - I will say the Sheriff's  
12 Department, correct.

13 MS. GIANOLI: Okay. And then do you go through that  
14 kit and make sure everything is in -

15 MR. HERRIN: Everything is there.

16 MS. GIANOLI: - order and everything's contained?

17 MR. HERRIN: Correct.

18 MS. GIANOLI: Okay. And lets say hypothetically  
19 speaking that the vials aren't in there or an iodine swab's  
20 not in there, what do you do?

21 MR. HERRIN: I return it back to the Sheriff or the  
22 Deputy and tell him we need another kit.

23 MS. GIANOLI: Okay. Now you went through quickly and  
24 kind of explained to the jury but I want them to really

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1 understand. Can you open up that kit and lets talk about  
2 each and every items that's contained within that kit?

3 MR. HERRIN: So here's the betadine swab that we swab  
4 the patient arm with. So here's a needle and the needle  
5 holder. These right here are the tubes, the label from here.  
6 This form here is also help me to identify the patient or  
7 person client and what we do here with the information that  
8 the Sheriff's Department gives us, what we do is we will fill  
9 it out according to and depending on what the officer ordered  
10 at that time. Usually here we've got a D. W. I., or accident,  
11 D. U. I. These are the type of draws that we are asked for.  
12 They are already premarked of what they want done and this is  
13 how we utilize what's - what we're going to draw with the  
14 kit. Usually on a D. W. I., what we usually do, we want to  
15 make sure that they always are grey tube because they have a  
16 certain anticoagulant that will hold till they get to the  
17 necessary laboratory, the grey - grey tube, and its very  
18 important that we have grey tubes and since I've done with  
19 the - and since I've taken blood for the Sheriff's Department  
20 they have always given tubes.

21 MS. GIANOLI: Okay. I'm sorry were you -

22 MR. HERRIN: Yes.

23 MS. GIANOLI: So you - you indi-

24 MR. HERRIN: As I explained this is the bag that it

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1 goes in.

2 MS. GIANOLI: Okay. So lets go thorough this. You  
3 indicated that you go through the box initially, you make  
4 sure -

5 MR. HERRIN: Everything's there.

6 MS. GIANOLI: - everything's in order, if not you ask  
7 for another -

8 MR. HERRIN: Right.

9 MS. GIANOLI: - box? Now Mr. Herring if I can  
10 approach, I want to go through the items that are in the box.

11 MR. HERRIN: Okay.

12 MS. GIANOLI: Just so the jury explains.

13 MR. HERRIN: Okay.

14 MS. GIANOLI: Your Honor if I may approach?

15 THE COURT: You may.

16 MS. GIANOLI: Now sir, this paperwork. I'll have you  
17 take a look at that. We have not published that to the jury  
18 yet so I'll just have you look at that for now. Okay. Now  
19 you indicated you're doing the blood draw, you start filling  
20 that paper work out -

21 MR. HERRIN: Correct.

22 MS. GIANOLI: - correct? What is the information  
23 that is contained in that paperwork?

24 MR. HERRIN: They want the - the subject name, the

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1 submitting agent, type of case, sample collection and place  
2 of analyze.

3 MS. GIANOLI: Okay. Now with regards to the subject  
4 name. There's a subject name and a date of birth. Where do  
5 you get that information?

6 MR. HERRIN: Normally it - it's already written on  
7 the report that the officer gives me and as well as most of  
8 the time driver's license and what I usually do from previous  
9 experience we always have two identifiers. Usually it's the  
10 person - I usually ask the person what their name is and  
11 usually ask them what their date of birth -

12 MS. GIANOLI: Okay.

13 MR. HERRIN: - along with what I already have just to  
14 verify that this is the correct person.

15 MR. GIANOLI: Okay. So you indicate that normally  
16 it'll be written on a police report when you get there -

17 MR. HERRIN: Correct.

18 MS. GIANOLI: - you ask the person for  
19 identification. You said something about a driver's license.  
20 Do you also ask them for the driver's license?

21 MR. HERRIN: No. I don't ask them for a driver's  
22 license. What usually happen, the officer has already taken  
23 the driver's license. They usually this here's the person,  
24 this goes with this information here.

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1 MS. GIANOLI: Okay.  
2 MR. HERRIN: That's the way we do it.  
3 MS. GIANOLI: I'm sorry. But in some manner you  
4 confirm the person is -  
5 MR. HERRIN: Correct.  
6 MS. GIANOLI: - who they -  
7 MR. HERRIN: By their driver's license -  
8 MS. GIANOLI: who they put on the paper?  
9 MR. HERRIN: - as well as the police report.  
10 MS. GIANOLI: Okay. And is it at that time that that  
11 person becomes quote unquote known to you?  
12 MR. HERRIN: Correct.  
13 MS. GIANOLI: Okay. Now then it talks about the  
14 submitting agency which is just essentially the agency as  
15 well as the case number. Do you get that from the police  
16 report as well?  
17 MR. HERRIN: Correct.  
18 MS. GIANOLI: Okay. Then we'll move onto the sample  
19 collection. What information do you include in this sample  
20 collection?  
21 MR. HERRIN: Usually on the sample collection we  
22 usually use the labels at the bottom of this because I found  
23 that in previous experience they do not want to see a  
24 person's name on this, as sort of I think from what I heard

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1 is blind sight the lab person to say well I know so and so so  
2 usually we just use numbers and these are the numbers that we  
3 use.  
4 MS. GIANOLI: Now when you look at those numbers, do  
5 you make sure that they all match up?  
6 MR. HERRIN: Correct.  
7 MS. GIANOLI: Okay. And if -  
8 MR. HERRIN: Along with what's on the box.  
9 MS. GIANOLI: Okay. So the numbers that are on the  
10 bottom of the form max - match what's in the box -  
11 MR. HERRIN: Correct.  
12 MS. GIANOLI: - the side of the box?  
13 MR. HERRIN: Correct.  
14 MS. GIANOLI: Okay. You also talked about serial  
15 numbers on top of that form. Do you make sure that they  
16 match as well with what's on the box as well as what's on the  
17 bottom of the form?  
18 MR. HERRIN: Correct.  
19 MS. GIANOLI: Okay. Now sir on that form I'll have  
20 you refer half way down with the middle, it says sample  
21 collection, it says date and time. How is it that you record  
22 that information?  
23 MR. HERRIN: Usually I ask the officer what time did  
24 they brought him in and then he gives me the time that they

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1 brought him in. There's a certain time span that goes, you  
2 know, that they cannot - once the arrest - the officer  
3 arrests the - the person that's been drinking under the  
4 influence, they have a certain time and so we was all within  
5 that time limit.  
6 MS. GIANOLI: Okay. So at the time that they come in  
7 and the time you do the blood draw do you ask the officer  
8 what time it is as you're doing the blood draw?  
9 MR. HERRIN: Correct.  
10 MS. GIANOLI: And you record that on that form?  
11 MR. HERRIN: Yes.  
12 MS. GIANOLI: And sir you can put that on the desk if  
13 you don't mind. Now sir, you indicated in doing blood draws  
14 you initially look at the arm?  
15 MR. HERRIN: Correct.  
16 MS. GIANOLI: Do you recollect doing a blood draw on  
17 Miss Sindelar on March twenty-seven, two thousand thirteen?  
18 MR. HERRIN: To be honest, no, but I believe  
19 according to the document that I have signed, I remember that  
20 my signature on the document.  
21 MS. GIANOLI: Ok. So you recollect doing a blood  
22 draw?  
23 MR. HERRIN: Correct.  
24 MS. GIANOLI: You just can't recollect whether it was

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1 Miss Sindelar right now?  
2 MR. HERRIN: Correct.  
3 MS. GIANOLI: Okay. But you indicated on the document  
4 you recorded in it?  
5 MR. HERRIN: Correct.  
6 MS. GIANOLI: Okay. Your Honor, if I may approach  
7 the witness?  
8 THE COURT: You may.  
9 MS. GIANOLI: Sir, I'm handing you what's been  
10 previously marked (unintelligible word) State's Exhibit  
11 Three. Do you recognize that?  
12 MR. HERRIN: Yes I remember this.  
13 MS. GIANOLI: Okay. What is it?  
14 MR. HERRIN: This is the form that the Sheriff  
15 Department - and once again, what we do we usually get a  
16 report from the Sheriff Department and you fill in the  
17 document from here and once again I do a verification with  
18 the person that - that your name's on the top of here and the  
19 person verify identify that they are the person.  
20 MS. GIANOLI: Okay. Now sir, is that form the exact  
21 form as what we were just talking about that you get out of  
22 the blood kit except that one's filled out and the one in the  
23 blood kit is -  
24 MR. HERRIN: Not.

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1 MS. GIANOLI: - not. Is that correct?  
2 MR. HERRIN: Correct.  
3 MS. GIANOLI: Okay. And when you look at that, is  
4 that a true and accurate copy of the blood draw that you  
5 conducted on March twenty-seven -  
6 MR. HERRIN: Correct.  
7 MS. GIANOLI: - two thousand thirteen?  
8 MR. HERRIN: Correct.  
9 MS. GIANOLI: And sir, do you recognize the  
10 handwriting on that document?  
11 MR. HERRIN: This is my handwriting.  
12 MS. GIANOLI: Your Honor, if I may have the Court's  
13 indulgence for a moment?  
14 THE COURT: You may.  
15 MS. GIANOLI: Your Honor, if we may have a side.  
16 MR. WHEABLE: About the box.  
17 MR. SEARS: Oh, okay. Never mind.  
18 MS. GIANOLI: Are you happy with that?  
19 MR. SEARS: Yea.  
20 MS. GIANOLI: Your Honor, if I may approach?  
21 THE COURT: You may.  
22 MS. GIANOLI: Your Honor, if I may approach once  
23 again?  
24 THE COURT: You may.

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1 MS. GIANOLI: Now sir that document that you have in  
2 front of you, through the course of your career and your  
3 experience as a medical technician, do you commonly rely on  
4 those documents?  
5 MR. HERRIN: Pretty much.  
6 MS. GIANOLI: Utilize those documents frequently?  
7 MR. HERRIN: Yes.  
8 MS. GIANOLI: Okay. And do you maintain those  
9 documents as well?  
10 MR. HERRIN: Until I went back to North Carolina I  
11 had - I had each and every one of these documents I have -  
12 MS. GIANOLI: Okay.  
13 MR. HERRIN: - had.  
14 MS. GIANOLI: So the State - I'm sorry Your Honor,  
15 the State moves to admit that Exhibit.  
16 THE COURT: Exhibit Three?  
17 MS. GIANOLI: Exhibit Three, yes.  
18 THE COURT: Any objection?  
19 MR. SEARS: No, Your Honor.  
20 THE COURT: All right. Three's admitted.  
21 MS. GIANOLI: Now sir you indicated and we talked  
22 about that those documents include a subject's name. What was  
23 the subject's name of this particular blood draw?  
24 MR. HERRIN: Stella Sinclair.

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1 MS. GIANOLI: How do you spell the last name?  
2 MR. HERRIN: S - S - I - N - D - E - L - A - R.  
3 MS. GIANOLI: Okay. So Miss Sindelar.  
4 MR. HERRIN: Sindelar.  
5 MS. GIANOLI: Okay. And what was Miss Sindelar's  
6 date of birth or is her date of birth?  
7 MR. HERRIN: On here nine twenty-six sixty-three.  
8 MS. GIANOLI: Okay. And sir the submitting agency,  
9 who is the submitting agency?  
10 MR. HERRIN: Submitting agency White Pine County  
11 Sheriff Office.  
12 MS. GIANOLI: Okay. And the agency case number?  
13 MR. HERRIN: Agency case number was zero zero one  
14 eight one dash thirteen.  
15 MS. GIANOLI: Okay and the county of the offense?  
16 MR. HERRIN: County of the offense is White Pine.  
17 MS. GIANOLI: Okay. Who was the submitting officer?  
18 MR. HERRIN: Caleb Sumrall.  
19 MS. GIANOLI: Okay. And so the sample collection,  
20 what was the date the sample was collected?  
21 MR. HERRIN: March twenty-seven date thirteen - I  
22 mean year thirteen, twenty twenty-eight.  
23 MS. GIANOLI: Okay. And so you talked about the  
24 time? Was that twenty twenty-eight the time of the sample

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1 collection:  
2 MR. HERRIN: Was eight - eight twenty-eight.  
3 MS. GIANOLI: Okay. And on the form you wrote  
4 military time, right -  
5 MR. HERRIN: Correct.  
6 MS. GIANOLI: - twenty twenty-eight?  
7 MR. HERRIN: Correct.  
8 MS. GIANOLI: Okay. Which would be eight twenty-  
9 eight.  
10 MR. HERRIN: Eight twenty-eight P. M.  
11 MS. GIANOLI: And what was the sample collection  
12 facility?  
13 MR. HERRIN: White Pine County Sheriff Office.  
14 MS. GIANOLI: And sir, what was the requested  
15 analysis for the blood?  
16 MR. HERRIN: Point to just the alcohol.  
17 MS. GIANOLI: And sir, towards the latter part of  
18 that document, it talks about the chain of custody.  
19 MR. HERRIN: Correct.  
20 MS. GIANOLI: Describe what that is for the jury  
21 please.  
22 MR. HERRIN: Chain of custody mean I'm the one who  
23 drew it, when I finish drawing and packing it up, I gave it  
24 to the - the officer which is Caleb - I think its down here

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1 four thirty and three twenty-seven twenty thirteen.  
2 MS. GIANOLI: Okay. So you do the blood draw and then  
3 eventually you give it to Deputy Sumrall?  
4 MR. HERRIN: Correct.  
5 MS. GIANOLI: And that's what you did in this case?  
6 MR. HERRIN: Correct.  
7 MS. GIANOLI: Okay. Sir if you wouldn't mind putting  
8 that Exhibit next to you there on the - the bench? Now I  
9 want to walk through - you generally talked about how blood  
10 draws are done. I want to talk to you about utilizing the  
11 items in the kit there, the blood draw that you conducted on  
12 the subject by the name of Stella Sindelar. Can you walk the  
13 jury through that piece by piece while using the items that  
14 are in the box there?  
15 MR. HERRIN: The complete blood drawing? Okay.  
16 MS. GIANOLI: Yes.  
17 MR. HERRIN: Okay, when I walks into the Sheriff  
18 Department I'm given the necessary information that I could  
19 write this up with and once I've written it up and I prepare  
20 to do a blood stick. And what I do with - what I do I get  
21 ready to do the blood stick, first I examine the person arm  
22 then use a tourniquet tie it around, I go ahead and tie the  
23 tourniquet around and (unintelligible word) tie the  
24 tourniquet around and then I do proceed with the blood draw.

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1 MS. GIANOLI: Okay. And let me interject for just a  
2 moment. On Miss Sindelar, do you recollect whether you used  
3 a tourniquet or not?  
4 MR. HERRIN: I recollect I - I did use because of it  
5 - in my line of work what I find a female has smaller veins  
6 than males and since I (unintelligible words) I mean looked  
7 at her arm, I saw that she didn't have any vein so I  
8 immediately went towards a tourniquet - there was a  
9 tourniquet here, make sure the veins is (unintelligible  
10 word).  
11 MS. GIANOLI: Okay. So you indicated that you  
12 determined whether you needed to use a tourniquet, on Miss  
13 Sindelar you did. You wrapped the tourniquet around her arm,  
14 where did you go from there?  
15 MR. HERRIN: Okay. And then I prep her arm with  
16 betadine or iodine.  
17 MS. GIANOLI: Um hmm, and you did that on this date?  
18 MR. HERRIN: Correct.  
19 MS. GIANOLI: And where do you go after you prep her  
20 arm with iodine?  
21 MR. HERRIN: I let it air dry for at least a minute  
22 and after it air dries then I proceed with the stick.  
23 MS. GIANOLI: Okay. And you indicated that the needle  
24 is in the box correct?

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1 MR. HERRIN: Everything was - everything was in - in  
2 the kit.  
3 MS. GIANOLI: Okay. So you stick her with the  
4 needle?  
5 MR. HERRIN: Stick her with the needle.  
6 MS. GIANOLI: And what happens next?  
7 MR. HERRIN: After I stick her with the needle the -  
8 the officer's standing on the side of me and I give her the  
9 blood and tell her to mix it real good because there  
10 shouldn't be any dried anticoagulant there.  
11 MS. GIANOLI: Okay.  
12 MR. HERRIN: Because the warmer blood is the quicker  
13 for it to dissolve the anticoagulant (unintelligible word).  
14 MS. GIANOLI: Okay. So you draw the blood and do you  
15 draw the blood into the vials with the grey tops?  
16 MR. HERRIN: Correct.  
17 MS. GIANOLI: Okay. You indicated the grey vials  
18 have anticoagulant in them?  
19 MR. HERRIN: Correct. Correct.  
20 MS. GIANOLI: Okay. And you stated on this date you  
21 gave the vials to another deputy and had her do what?  
22 MR. HERRIN: She was standing next to me.  
23 MS. GIANOLI: And what did you have that deputy do?  
24 MR. HERRIN: Mix it real good because we don't want

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1 any anticoagulant left in the bottom of the vial.  
2 MS. GIANOLI: Okay. Okay.  
3 MR. HERRIN: So do it real good.  
4 MS. GIANOLI: And what does the mixing of the blood  
5 do with an anticoagulant?  
6 MR. HERRIN: It keep that blood so that the alcohol  
7 is preserved in it.  
8 MS. GIANOLI: Okay.  
9 MR. HERRIN: Or the drugs are preserved in it.  
10 MS. GIANOLI: Okay. And in some manner do you insure  
11 that the anticoagulant is mixed?  
12 MR. HERRIN: Correct. Once I - once she mix it and  
13 I'm finished sticking I always receive the blood back and  
14 look at it and mix it a time or two (unintelligible word).  
15 MS. GIANOLI: Okay. And on this particular blood draw  
16 when you received the vials back from the deputy did you make  
17 sure that the anticoagulant was sufficiently mixed?  
18 MR. HERRIN: Correct.  
19 MS. GIANOLI: Okay. What do you do after you mix the  
20 anticoagulant?  
21 MR. HERRIN: I place them in that little holder.  
22 MS. GIANOLI: Would you mind, and Your Honor if I  
23 might can you grab them or I can grab them for you please. So  
24 you placed the vials you indicate in the holder, if you could

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1 show the jury that.

2 MR. HERRIN: They go in there, and along with that  
3 this right here must also be in there as well because this  
4 right here just in case the vials should somehow or another  
5 open or pop open there's something there to absorb the blood  
6 in the - in the bag so there's no biohazard situation.

7 MS. GIANOLI: So sir, what do you do after you put  
8 the vials in the tray, you're indicating you're securing the  
9 tray. What do you do with the vials as well as the  
10 absorption sheet?

11 MR. HERRIN: Put all this stuff in the container,  
12 place it into the box and once again we give it to the  
13 officer, sealed.

14 MS. GIANOLI: Now sir, this is what you did on March  
15 twenty-seventh two thousand thirteen?

16 MR. HERRIN: Correct.

17 MS. GIANOLI: Okay. Now you were talking about the  
18 paperwork. What do you do with the paperwork there that we  
19 just previously discussed.

20 MR. HERRIN: Paperwork goes on the outside of the  
21 bag.

22 MS. GIANOLI: Okay. Is there a - a lip or something  
23 in the bag that you place the paperwork in?

24 MR. HERRIN: Correct. The sample goes inside.

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1 MS. GIANOLI: So the sample and absorption sheet go  
2 inside the bag.

3 MR. HERRIN: Correct.

4 MS. GIANOLI: The paperwork on the outside. What do  
5 you do with the bag then?

6 MR. HERRIN: Place it back into the box. Seal the box  
7 and then there's this (unintelligible word) goes on the  
8 outside of the box here.

9 MS. GIANOLI: So you shut the box and you place the  
10 seal on the outside of the box essentially securing the box?

11 MR. HERRIN: Correct.

12 MS. GIANOLI: Now you stated something along the  
13 lines of you sign the seal as well?

14 MR. HERRIN: Correct.

15 MS. GIANOLI: Did you do that on March twenty-  
16 seventh? Is that yes?

17 MR. HERRIN: Correct. Yes.

18 MS. GIANOLI: Okay. What do you do after you sign the  
19 seal on the box?

20 MR. HERRIN: Give it to the officer.

21 MS. GIANOLI: Okay. Was the officer there standing  
22 with you throughout the duration of the blood draw?

23 MR. HERRIN: Correct. That's right.

24 MS. GIANOLI: And so you give it to the officer. Is

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1 that Officer Caleb Sumrall?

2 MR. HERRIN: Right. Or any of the officer that's  
3 standing there.

4 MS. GIANOLI: On this particular date was it officer  
5 Caleb Sumrall?

6 MR. HERRIN: As I remember, yes.

7 MS. GIANOLI: And sir you talked about insuring that  
8 the blood draw is not contaminated by swabbing with betadine  
9 or iodine.

10 MR. HERRIN: Correct.

11 MS. GIANOLI: What do you do? Do you take any other  
12 precautionary measures to make sure that things aren't  
13 contaminated?

14 MR. HERRIN: Usually that's what the betadine does to  
15 this make that it has no germs or bacteria. It's also known  
16 as a cleanser as well as antiseptic.

17 MS. GIANOLI: Okay.

18 MR. HERRIN: The betadine.

19 MS. GIANOLI: And let me ask you this. Do you use  
20 your bare hands -

21 MR. HERRIN: No.

22 MS. GIANOLI: - when you do blood draws?

23 MR. HERRIN: No.

24 MS. GIANOLI: What do you use?

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1 MR. HERRIN: Gloves.

2 MS. GIANOLI: Why?

3 MR. HERRIN: All the time. To keep from having  
4 contamination of the union with the patient.

5 MS. GIANOLI: Okay.

6 MR. HERRIN: Or client.

7 MS. GIANOLI: I'm sorry.

8 MR. HERRIN: In other words the reason why I wear  
9 gloves is to keep from having contamination from the patient  
10 from me or the client.

11 MS. GIANOLI: Okay. And on March twenty-seventh two  
12 thousand thirteen did you use gloves?

13 MR. HERRIN: Correct.

14 THE COURT: Counsel are you close? We've kept the  
15 jury pretty far -

16 MS. GIANOLI: I am close Judge.

17 THE COURT: - and then you have some cross  
18 examination?

19 MR. SEARS: A little bit.

20 THE COURT: Take a short break, do you guys want to  
21 go some more or do you want to go tomorrow? How much time -  
22 we're way past you know.

23 MS. GIANOLI: Probably about another five minutes  
24 Your Honor.

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1 THE COURT: Five minutes and then you have how much?

2 MR. SEARS: I don't know, it depends on the answer  
3 Your Honor.

4 THE COURT: Yea. I think we're going to - well we're  
5 going to take a break because we have all day tomorrow. He's  
6 not going to get out of here tonight anyway. So its been a  
7 long day for the jury and for everyone else. Is that okay.  
8 Are you okay a close place right now?

9 MS. GIANOLI: Yes Your Honor. Thank you.

10 THE COURT: Okay. And then you can - you can still  
11 wrap it up in the morning.

12 MS. GIANOLI: Yes.

13 THE COURT: All right. All right. So I'm going to  
14 give you the admonition to the jury and then I'm going to  
15 send you guys home. Do not communicate among yourselves or  
16 with anyone else on any subject connected with the trial. Do  
17 not communicate with any of the witnesses or attorneys on any  
18 subject. Do not read, watch or listen to any report or  
19 commentary on the trial or any person connected with the  
20 trial by any medium of information including without  
21 limitation newspapers, television, radio or any for of social  
22 media and do not for or express any opinion on any subject  
23 connected with the trial until the cause is finally submitted  
24 to you. So we'll go ahead and let the jury go. Nine-thirty

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1 okay for everybody? That works all right. Okay so we'll have  
2 you here. Be ready so if you'll get here a little early so we  
3 can have you seated at nine-thirty and get fired up right at  
4 nine-thirty. I mean, so do you need to meet with your  
5 witness after? You guys are off - okay to go.

6 BAILIFF: All rise. The Seventh Judicial District  
7 Court of the State of Nevada in and for the County of White  
8 Pine is now in session, the Honorable Steve Dobrescu  
9 presiding.

10 THE COURT: Court's in session, please be seated.  
11 This is a continuation of our case. Miss Sindelar is present  
12 with counsel, the State's present, the jury and the alternate  
13 are not present. Prior to Court this morning, counsel met  
14 with me in Chambers and indicated that there was issue that  
15 the - that the Defense wanted to raise, so Mr. Sears you can  
16 proceed.

17 MR. SEARS: Thank you Your Honor. What I'm going to  
18 do at this late date Your Honor is do a motion to suppress  
19 the evidence in this case that would result in dismissal. The  
20 suppression is based on a failure to have reasonable  
21 suspicion for the stop when the officer initially stopped the  
22 vehicle. As the Court will remember the testimony that we  
23 heard yesterday as well as the documents that were in the  
24 record in the preliminary examination, the officer testified

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1 that he stopped the vehicle because one of the tail lamps was  
2 inoperable. When asked on the stand he said something like  
3 he didn't remember or didn't notice the other lamps. We have  
4 a photograph of the rear of the vehicle that's been  
5 generously provided by the State and that's the only evidence  
6 we have in support of the record with respect of the  
7 existence of the tail lamps on the vehicle or stop lamps on  
8 te vehicle. During the testimony however Your Honor the  
9 State failed to show that there were two brake lamps unlit,  
10 and if I can approach I'm going to show the Court State's  
11 Exhibit Seven?

12 THE COURT: You may.

13 MR. SEARS: Thank you. This is came from the State  
14 and the State offered it to me this morning so that we could  
15 use this for the full explication of this issue.

16 THE COURT: Do you want to have it marked? Is it  
17 marked?

18 MR. SEARS: It's already marked.

19 THE COURT: Oh, the State's marked it.

20 MR. WHEABLE: It's marked as State's evidence - well  
21 for the purposes of the -

22 MR. SEARS: This -

23 MR. WHEABLE: - legal motions only, we'll submit to  
24 its admission.

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1 THE COURT: Okay. So Seven's admitted for this  
2 hearing.

3 MR. SEARS: The ticket that was issued cites only  
4 inoperable brake lamp so that's not much help for us. The  
5 report cites one brake lamp was out, therefore we would argue  
6 the State's failed to prove that there was more than one  
7 brake lamp out. N. R. S. four eight four D one twenty-five  
8 says an automobile must have two operable brake lamps and  
9 I'll - I've provided a copy of the statute for the Court. It  
10 does except as provided in subsection five which doesn't  
11 apply. Every motor vehicle must be equipped with two or more  
12 stop lamps except that any vehicle manufactured before July  
13 first nineteen sixty-nine must have at least one stop lamp if  
14 the vehicle was originally equipped with only one, that  
15 doesn't apply, the stop lamp or lamps must be on the rear of  
16 the vehicle, display red or amber yellow light visible from a  
17 distance of not less than three hundred feet to the rear - to  
18 the rear and normal sunlight, be activated upon application  
19 of the brake, okay. So we would argue that this vehicle had  
20 two stop lamps. Now the argument I'm sure is going to be,  
21 wait a minute, if there are two or more then more than two  
22 must be as widely spaced laterally as practical, but that  
23 does not limit the fact that it only requires two lamps. It  
24 talks about placement but not illumination. If you look down

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1 at the illumination section of this statute, nowhere does it  
2 say that the two outside ones must be illuminated.  
3 Accordingly we would argue that the police officer made a  
4 mistake of law as to the legal requirements of that statute  
5 and based on Lopez Soto as well as other cases a mistake of  
6 law will not support reasonable suspicion for a stop.  
7 Therefore, the stop was not based on reasonable suspicion.  
8 All the evidence arising from the stop must be suppressed.  
9 If the Court had a chance to look at Lopez Soto the Court  
10 would have noticed that there were two Fifth Circuit cases in  
11 there that came out of Texas, the same set of - or at least  
12 similar sets of facts. I think one was even a single stop  
13 lamp case and only it was with respect to a I think a  
14 trailer, the date of manufacture of the trailer, and the  
15 Court decided that law is what the law is and if only one  
16 brake lamp or two brake lamps are required and the car has  
17 two, there's no reasonable suspicion if one of the three is  
18 out. Thank you Your Honor.

19 THE COURT: Thank you. Let me ask this, so this  
20 picture, Exhibit Seven, are these - are these -- is the brake  
21 - are the brakes on? This is the brakes are not on.

22 MR. WHEABLE: I believe that's reflection from  
23 headlights. You can see the headlights -

24 THE COURT: So we don't know -

1 MR. WHEABLE: - reflecting off the trunk.

2 MR. SEARS: We don't know.

3 THE COURT: This doesn't show us -

4 MR. WHEABLE: No it just shows -

5 THE COURT: - what he saw?

6 MR. WHEABLE: Just the composition of what the car  
7 looked like.

8 THE COURT: All right. Just the fact that there is a  
9 center brake?

10 MR. SEARS: Yes.

11 THE COURT: Okay. Got it. All right. Mr. Wheable or  
12 Miss Gianoli?

13 MR. WHEABLE: Thank you Your Honor. And you know I  
14 have to make this record anyway before I get into the merits  
15 of Mr. Sears argument. That on April sixteenth two thousand  
16 and thirteen only a couple weeks after the stop Your Honor,  
17 the State provided D. A. discovery number twenty-three that  
18 contained that picture, so this is not a new issue that came  
19 up during trial that would give rise to motioning and then  
20 their motion to suppress during a jury trial as such I think  
21 the motion is improper and improperly timed and it should be  
22 stricken on those grounds alone. The Defense counsel, Defense  
23 they've filed many motions in this case and they've had this  
24 picture. They've known there's been three lights. They've

1 known that this - the stop was for a brake light the entire  
2 time and I think because of the time limits it should be  
3 stricken as well as the fact that I've had twelve minutes not  
4 to prepare a response to this motion which I can add that I'm  
5 going to do so at this time. If the Court looks at N. R. S.  
6 four eight four D one twenty-five, and uses principles of  
7 statutory interpretation that every line must - every word,  
8 every provision must be given meaning so that nothing is  
9 superfluous the plain meaning of the statute is if you look  
10 at section two A, it says be on the rear of the vehicle and  
11 that there are two or more, as in this case, Your Honor, then  
12 two must be as widely spaced laterally as practical.  
13 Practicable. I can't say that word very long. So laterally  
14 means straight across as practicable. You have the outside  
15 tail lamps on the cars. Now why would they put that in there  
16 if they didn't have to be operable? That wouldn't make any  
17 sense or give any meaning to the statute so the plain meaning  
18 the inference is clear that those two stop lamps that are  
19 spaced laterally as practicable must be operable. The third  
20 is more of a safety lamp. The statute doesn't require three.  
21 It's more of a safety thing that automobile manufactures  
22 imposed to help people see vehicles better and to raise the  
23 safety features of a vehicle. They're just talking about that  
24 the cue must be spaced as laterally as practicable. Those -

1 we have to infer that they mean two operable tail lamps. Why  
2 would they put that in there if they only needed one of them  
3 to be - to be functional? So I think that's a clear meaning  
4 of it Your Honor. I do think there was reasonable grounds  
5 because it's not a mistake of law case to stop when one of  
6 the two of those laterally spaced as practicable - I can't  
7 say that word practicable are not operable, that is a  
8 reasonable to make a traffic stop in viol - for the violation  
9 of four eight four D one twenty-five.

10 THE COURT: Mr. Sears, anything else?

11 MR. SEARS: Just this Your Honor with respect to  
12 statutory construction. We all know that penal statutes are  
13 narrowly construed and we would argue this - this statute  
14 needs to be construed in such a manner. It doesn't clearly  
15 state that the two outside lamps must be lit. Thank you  
16 Judge.

17 THE COURT: All right. Okay, lets - lets take a  
18 short little recess so that I can review a couple other  
19 things and we'll be right back.

20 MR. SEARS: Thank you Judge.

21 BAILIFF: All rise.

22 BAILIFF: All rise.

23 THE COURT: Court's in session, please be seated.

24 This is a continuation of our case. Miss Sindelar is present

1 with counsel, the State's present, the jury and the alternate  
2 are not present and the Court has had the opportunity to view  
3 some of the evidence and law and so just to sort of restate  
4 the - the factual basis, we have State's Exhibit number Seven  
5 which is a photograph of the back of the Defendant's car  
6 which shows two stop lamps on the farthest parts of the car  
7 on the level basis and there appears to be another stop lamp  
8 that's been stipulated to in the center trunk area of the  
9 car, um, I don't know a few inches higher than that level  
10 part, and we have the testimony yesterday from the officer  
11 that he stopped because a brake lamp was out and he didn't -  
12 on cross-examination he did not recall if there was also a  
13 brake lamp in the window, so that's the factual basis for it  
14 - for the motion. And so initially, first of all with  
15 respect to the late bringing of the motion, what we have is  
16 that we have this situation here. Certainly if this motion  
17 has merit and the Court were to - to strike it because  
18 counsel didn't - prior counsel didn't see it, then ultimately  
19 then if there was a conviction, we'd be doing this case again  
20 on - on post conviction because the prior counsel would have  
21 been found ineffective because if that has merit and they  
22 didn't see it after two years, then there's a - there's a  
23 problem there. So when we talk about the - the first thing  
24 that the Court wants to do is look at the law, and the law

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1 that we're all in agreement on and this is in fact a law that  
2 the officer cited here yesterday four eight four D one two  
3 five which is stop lamps. Subsection one - well first of all  
4 the Court has to read the statute and the Court gives - has  
5 to read the statute and look at the plain meaning of the words  
6 words. That's first, and if the plain meaning of the words  
7 are clear, then we don't get into interpretation.  
8 Interpretation or a statutory construction only applies if  
9 there's some ambiguity in the statute. And so here's the way  
10 I read the statute. Subsection one in essence says that  
11 every motor vehicle must be equipped quote with two or more  
12 stop lamps unquote. And I think we're in agreement this  
13 vehicle was manufactured after nineteen sixty-nine and it has  
14 two or more, all right. So every vehicle has to have two or  
15 more stop lamps. Based on the agreement of the parties, this  
16 car has three stop lamps. So then when we go to subsection  
17 two, the subsection two ways on the second line quote the  
18 stop lamp, that's the one that applies to prior to sixty-nine  
19 vehicles, or lamps, plural, must all right, that's a quote,  
20 and then subsection A tells where they need to be. Subsection  
21 B tells what they need to do, display a certain light, and  
22 subsection C to me is the most important, and subsection C  
23 says quote be activated upon application of the brake and  
24 quote. So we have - we have subsection one that says two or

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1 more stop lamps, subsection two says the lamps, and we could  
2 put a parenthesis and say the lamps referred to above in  
3 subsection one if we want, that's the clear meaning, the  
4 lamps must be activated upon application of the brake. I do  
5 not believe this statute says you can have two out of three.  
6 This statute to me says you have two or more stop lamps and  
7 the lamps must be activated upon pushing the brakes, period.  
8 It's a plain meaning, it's clear statutory language and  
9 actually the officer was mistaken thinking two out of three  
10 would apply. I don't think that's the law, so based on that  
11 factually, the - the - there's evidence and testimony that  
12 one of the brake lamps was not operable and I think that's  
13 sufficient under the statute so the motion is denied.

14 MR. SEARS: Thank you Your Honor.

15 THE COURT: All right. We ready for the jury?

16 MR. WHEABLE: Yes Your Honor.

17 THE COURT: All right. Lets go ahead and bring the  
18 jury and the alternate in.

19 MR. SEARS: Do we want to get that Exhibit back?

20 THE COURT: How about if I give it to the Clerk?

21 MR. SEARS: Okay.

22 MR. WHEABLE: That has been move in.

23 THE COURT: Cause it's in now.

24 MR. WHEABLE: But we've got to make sure it doesn't

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1 go to the jury.  
2 THE COURT: It's in for this motion.  
3 MR. SEARS: Yes it's in -  
4 MR. WHEABLE: But not for the jury.  
5 MR. SEARS: - for the motion but not for the jury.  
6 THE COURT: Well make sure if you're going to offer  
7 it for something else you do. You don't have to.  
8 MR. WHEABLE: Ah, well, you know what Your Honor,  
9 let's - let's hold the jury for a second. I've got to make  
10 sure the record's clear that Mr. Sears doesn't talk about  
11 this issue with - in front of the jury cause it's a legal  
12 issue.  
13 MR. SEARS: Yea that's true. We'll wait.  
14 MR. WHEABLE: Make a record of that and this Exhibit  
15 I've got to make sure cause we're not moving it in unless  
16 Rich does somehow, I'm not moving it in.  
17 THE COURT: It's not relevant to anything else so -  
18 MR. WHEABLE: I want to make sure it doesn't go -  
19 THE COURT: - yea, we're not going to talk about it.  
20 MR. WHEABLE: - on the pile that goes to the jury.  
21 MR. SEARS: And I don't get to argue it in front of  
22 the jury?  
23 MR. WHEABLE: I'm going to place it upside down.  
24 THE COURT: No. No.

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1 MR. SEARS: Okay.

2 MR. WHEABLE: All right. As long as we're clear on  
3 that.

4 THE COURT: The record should reflect the return of  
5 the jury and the alternate and so we can bring the witness  
6 back in and the State can proceed.

7 MS. GIANOLI: Thank you Your Honor. The State would  
8 recall Horace Herrin to the stand.

9 MR. WHEABLE: Horace.

10 MS. GIANOLI: Horace Herrin.

11 LAW CLERK: Horace.

12 THE COURT: Please come forward and have a seat. I  
13 will remind you that you're still under oath. All right, go  
14 ahead.

15 MS. GIANOLI: Now Mr. Herrin, just as a brief recap,  
16 last night when we left off, you were talking about the blood  
17 draw that you administered on a subject by the name of Miss  
18 Stella Sindelar on March twenty-seventh, two thousand and  
19 thirteen. Do you remember that?

20 MR. HERRIN: Correct.

21 MS. GIANOLI: Okay. When you got done telling the  
22 jury how you administered this blood draw, that you observed  
23 the injection site, swabbed it with iodine, applied a  
24 tourniquet, withdrew the blood into two vials with silver

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1 caps, shook those until the anticoagulant was mixed and then  
2 put them in the ~ in the white box, correct?

3 MR. HERRIN: Correct.

4 MS. GIANOLI: Okay. And is the medically acceptable  
5 manner in which to draw blood?

6 MR. HERRIN: Except for one thing I missed, that was  
7 to always wear gloves.

8 MS. GIANOLI: Always wear gloves. And on this  
9 occasion you wore gloves?

10 MR. HERRIN: Correct.

11 MS. GIANOLI: Thank you for that. With the addition  
12 of wearing the gloves and everything you just stated is that  
13 the medically acceptable manner in which you draw blood?

14 MR. HERRIN: Correct.

15 MS. GIANOLI: And that's the manner in which you had  
16 been trained?

17 MR. HERRIN: Correct.

18 MS. GIANOLI: Okay. Now sir, we talked as well about  
19 some paperwork that is included in the kit when you initially  
20 get it in paper that you fill out, correct?

21 MR. HERRIN: Correct.

22 MS. GIANOLI: Okay. Now in some way do you make a  
23 copy, do ~ do you retain a copy of those documents for your  
24 own records?

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1 MR. HERRIN: A copy is made so that the next day I  
2 can take it to the ah, the man at ~ what is it administrator  
3 to certify it.

4 MS. GIANOLI: Okay. So you fill out another document  
5 the following day?

6 MR. HERRIN: Correct.

7 MS. GIANOLI: Okay. Your Honor for the first of  
8 direct that I'm handing State - counsel what's been  
9 previously marked for identification as State's Exhibit Four.

10 THE COURT: Four? So noted.

11 MS. GIANOLI: Your Honor, if I may approach the  
12 witness?

13 THE COURT: You may.

14 MS. GIANOLI: Sir I'm handing you what's previously  
15 been marked as State's Exhibit Four. You can hold it like  
16 that. Do you recognize it?

17 MR. HERRIN: Correct. Yes.

18 MS. GIANOLI: What is it?

19 MR. HERRIN: This is an affidavit.

20 MS. GIANOLI: And is that the paperwork you stated  
21 that you take the information from the paperwork that you  
22 fill out the blood draw and make a subsequent document?

23 MR. HERRIN: Correct.

24 MS. GIANOLI: Okay. And do you understand or do you

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1 recognize the handwriting within that document?

2 MR. HERRIN: This is my handwriting.

3 MS. GIANOLI: Okay. And do you recollect filling out  
4 that affidavit?

5 MR. HERRIN: Yes I do.

6 MS. GIANOLI: And is that a true and accurate  
7 depiction of the affidavit you filled out?

8 MR. HERRIN: Correct.

9 MS. GIANOLI: Okay. And sir, what type of  
10 information is included within that affidavit?

11 MR. HERRIN: Ah, my - my name, my title, the place of  
12 contract by William B. Ririe Hospital and the date on which  
13 it's drawn and the person known as Stella Sin - Sind -  
14 Sindelar, and the officer in which (unintelligible words) the  
15 White Pine.

16 MS. GIANOLI: And was that officer in this case  
17 Deputy Caleb Sumrall?

18 MR. HERRIN: I believe it's Sumrall, correct.

19 MS. GIANOLI: And sir did you sign that document?

20 MR. HERRIN: Correct.

21 MS. GIANOLI: And did you sign that document in front  
22 of a Notary under penalty of perjury?

23 MR. HERRIN: Correct. Name is -

24 MS. GIANOLI: Okay. Your Honor - I'm sorry.

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1 MR. HERRIN: Name is Gioveno Jones.

2 MS. GIANOLI: Okay. Your Honor at this time the  
3 State moves to admit Exhibit Four.

4 MR. SEARS: No objection Your Honor.

5 THE COURT: Four is admitted.

6 MS. GIANOLI: Your Honor at this time the State also  
7 requests to publish both Exhibits - State Exhibit Three and  
8 Four to the jury if I may?

9 THE COURT: You may.

10 MS. GIANOLI: Thank you. If I may approach Your  
11 Honor?

12 THE COURT: You may.

13 MS. GIANOLI: Thank you. Your Honor if I may  
14 approach the jury? Your Honor if I may reapproach the jury?

15 THE COURT: You may.

16 MS. GIANOLI: I'll collect those. Thank you Mr.  
17 Herrin. I have no further questions of this witness.

18 THE COURT: Cross-examination?

19 MR. SEARS: Thank you Your Honor. Good morning Mr.  
20 Herrin, my name is Rich Sears.

21 MR. HERRIN: Good morning.

22 MR. SEARS: You indicated in your training that you  
23 were medically trained, you're a medical technologist, is  
24 that correct?

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1 MR. HERRIN: Correct.

2 MR. SEARS: Do you have any forensic training?

3 MR. HERRIN: No sir.

4 MR. SEARS: Okay. Can you tell me what the  
5 composition of betadine is?

6 MR. HERRIN: No sir.

7 MR. SEARS: Okay. You indicated yesterday that you  
8 had done somewhere around a hundred thousand blood draws?

9 MR. HERRIN: In the life of this career.

10 MR. SEARS: Okay. Do you know how many of those were  
11 in fact alcohol sticks or - or sticks that were a requirement  
12 for a -

13 MR. HERRIN: No sir.

14 MR. SEARS: - a drunk driving conviction?

15 MR. HERRIN: No sir.

16 MR. SEARS: Okay. It would have obviously not all  
17 hundred thousand were that?

18 MR. HERRIN: Correct.

19 MR. SEARS: Okay. Now you said that generally when  
20 you do an affidavit or fill out the paperwork you get a  
21 report from the officer. Do you remember if you had a report  
22 from Officer Sumrall the night that you did the draw?

23 MR. HERRIN: Correct.

24 MR. SEARS: Okay. Can you describe that report for

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1 me?

2 MR. HERRIN: It was the - describing the place of the  
3 arrest and it was describing the time of the arrest -

4 MR. SEARS: Okay.

5 MR. HERRIN: - and the place that we was at, White  
6 Pine -

7 MR. SEARS: And did it -

8 MR. HERRIN: - White Pine -

9 MR. SEARS: - it also have Miss Sindelar's name  
10 listed on listed on it?

11 MR. HERRIN: Correct.

12 MR. SEARS: And that's where you got that information  
13 then was from that report?

14 MR. HERRIN: Correct.

15 MR. SEARS: Okay. With respect to the time that you  
16 did the draw you indicated yesterday that you asked the  
17 officer for the time of the draw, was that right?

18 MR. HERRIN: Correct.

19 MR. SEARS: And do you double check that with your  
20 own watch?

21 MR. HERRIN: Or with the clock that's on the wall at  
22 the -

23 MR. SEARS: Okay.

24 MR. HERRIN: - Sheriff Department.

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1 MR. SEARS: So that would have been your normal  
2 routine?

3 MR. HERRIN: Correct.

4 MR. SEARS: Do you remember Mrs. Sindelar?

5 MR. HERRIN: As per se, no.

6 MR. SEARS: Okay. So do you remember the exact  
7 details of that draw if you don't remember her?

8 MR. HERRIN: I remember - I remember the draw but not  
9 necessarily the person cause most of the time when I stick a  
10 person I do not look at them just to say well I'm going to  
11 remember you. I don't do that.

12 MR. SEARS: Would you remember her arm? (Laughs).

13 MR. HERRIN: (Unintelligible word - laughing).

14 MR. SEARS: Cause you were focused on the arm, huh?

15 MR. HERRIN: Exactly.

16 MR. SEARS: Okay. I don't have any other questions  
17 Your Honor.

18 THE COURT: Re-direct?

19 MS. GIANOLI: Very briefly Your Honor. So Mr. Sears  
20 asked you if you know the composition of betadine but you - I  
21 think you testified that when you do blood alcohol, you know  
22 that you use betadine or iodine correct?

23 MR. HERRIN: Correct.

24 MS. GIANOLI: Why?

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1 MR. HERRIN: Because betadine contain no alcohol.  
2 Alcohol - alcohol swab contain alcohol.  
3 MS. GIANOLI: And it could contaminate the alcohol  
4 test correct?  
5 MR. HERRIN: Correct.  
6 MS. GIANOLI: Okay. And you also indicate that you  
7 didn't have any independent recollection of Miss Sindelar,  
8 correct?  
9 MR. HERRIN: Correct.  
10 MS. GIANOLI: Okay. When you do a blood draw, do you  
11 confirm their identity at the time?  
12 MR. HERRIN: Always.  
13 MS. GIANOLI: How?  
14 MR. HERRIN: By asking them what their name is and  
15 their date of birth.  
16 MS. GIANOLI: Okay. And you indicate you always did  
17 that so you did this on this occasion?  
18 MR. HERRIN: Correct.  
19 MS. GIANOLI: Okay. And she gave you your - her name?  
20 MR. HERRIN: Correct.  
21 MS. GIANOLI: Okay. Thank you. Nothing further Your  
22 Honor.  
23 THE COURT: Re-cross?  
24 MR. SEARS: Nothing from me Your Honor.

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1 THE COURT: All right. Is he excused?  
2 MS. GIANOLI: He is Your Honor.  
3 MR. SEARS: He is for us.  
4 THE COURT: All right you're excused from the case,  
5 free to go. Additional witnesses?  
6 MS. GIANOLI: Yes Your Honor, the State would call  
7 Richard Bell to the Stand.  
8 THE COURT: Please come forward and raise your right  
9 hand, the Clerk will give you the oath.  
10 CLERK: Do you solemnly swear the testimony you are  
11 about to provide in this matter before the Court shall be the  
12 truth, the whole truth and nothing but the truth, so help you  
13 God?  
14 MR. BELL: I do.  
15 THE COURT: Please be seated. State your name, spell  
16 your last name.  
17 MR. BELL: Richard G. Bell. B - E - L - L.  
18 THE COURT: Thank you.  
19 MS. GIANOLI: Good morning Mr. Bell. Without giving  
20 your exact address whereabouts do you reside?  
21 MR. BELL: In Reno, Nevada.  
22 MS. GIANOLI: And how long have you lived in Reno?  
23 MR. BELL: Ah, since nineteen eighty-two.  
24 MS. GIANOLI: And sir, what's your current

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1 occupation?  
2 MR. BELL: I work as a criminalist in the toxicology  
3 section of the Washoe County Sheriff's Office in the crime  
4 laboratory.  
5 MS. GIANOLI: And how long have you been employed as  
6 a criminalist with the Washoe County Crime Lab?  
7 MR. BELL: For about fifteen and a half years.  
8 MS. GIANOLI: Now prior to your employment as a  
9 criminalist with the Washoe County Crime Lab, do you have any  
10 other medical related experience?  
11 MR. BELL: Yes I do.  
12 MS. GIANOLI: And what's that sir?  
13 MR. BELL: I worked in the medical laboratory field  
14 for approximately twenty years performing a wide variety of  
15 tests on blood and body fluids including testing for drugs  
16 and alcohol.  
17 MS. GIANOLI: And sir can you tell the jury, what is  
18 a criminalist?  
19 MR. BELL: A criminalist, it's a title given to us by  
20 the county essentially, anyone who works in the crime lab  
21 within the sections of the crime lab is called a criminalist.  
22 Specifically I am a criminalist in the toxicology section and  
23 so I consider myself to be a toxicologist.  
24 MS. GIANOLI: And sir, what is a toxicologist?

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1 MR. BELL: Ah, it's a person who studies the affects  
2 of drugs and alcohol and poisons on the human body.  
3 MS. GIANOLI: And sir what are your duties with  
4 regards to being a toxicologist?  
5 MR. BELL: I perform testing on blood and urine for  
6 the presence of drugs and alcohol and then I provide  
7 testimony in relation to the work that I perform.  
8 MS. GIANOLI: And sir, what education have you  
9 received that qualifies you as criminalist or a toxicologist?  
10 MR. BELL: I received a Bachelor of Science degree in  
11 medical technology from the University of Nevada in Reno and  
12 that course work prepared me to perform a wide variety of -  
13 of testing in many different techniques for a lot of  
14 different compounds in the human body, and they - the  
15 instrumentation and the methods used for that type of testing  
16 and then I worked in the field and received additional  
17 training on the job and also through continuing education to  
18 maintain proficiency and knowledge in many different aspects  
19 of measurement of laboratory tests. Um, after joining the  
20 Sheriff's Office in nineteen ninety-nine I received specific  
21 training in performing testing for drugs and alcohol in a  
22 forensic setting.  
23 MS. GIANOLI: Now sir to back up you indicated that  
24 you received your degree from the University of Nevada Reno.

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1 Do you recollect in what year you received your Bachelor's  
2 Degree?

3 MR. BELL: It was nineteen seventy-nine.

4 MS. GIANOLI: And you talked in generalities about  
5 training that you received in your career of forensics. What  
6 specific have you received with respect to alcohol and - and  
7 chemical tests as far as the concentration of alcohol in the  
8 blood?

9 MR. BELL: At the Sheriff's Office I received  
10 training to perform alcohol testing using a method called ten  
11 phase dash chromatography. During that training I had to  
12 perform one hundred sample tests that had been done by  
13 another analyst prior to my analysis and I had to match all  
14 of those results within acceptable limits. I've had  
15 additional training through - my mentor was a P. E. D.  
16 Toxicologist who was my boss, Doctor Bill Anderson, and he  
17 gave me some good training in understanding the methodologies  
18 that are being used for testing and the interpretation of the  
19 effects of alcohol and drugs on the human body.

20 MS. GIANOLI: Okay. With regards to the effects of  
21 alcohol on the - on the body do you have any other additional  
22 training that qualifies you in that area?

23 MR. BELL: Yes. I - I attended a week long course  
24 given by the Indiana University. It's given several times a

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1 year. The faculty is a group of world renowned toxicologists  
2 that come from all over the world to teach specifically about  
3 testing of alcohol and how alcohol affects the human body.

4 MS. GIANOLI: Now sir in your estimation how many  
5 blood sample analyses do you think you've done through the  
6 course of your career?

7 MR. BELL: I don't know a specific number, it would  
8 be thousands.

9 MS. GIANOLI: Now does the training, experience and  
10 education you possess give you the ability to testify and  
11 examine blood for the presence of alcohol?

12 MR. BELL: Yes.

13 MS. GIANOLI: And does your training and experience  
14 that you've previously testified to give you the ability to  
15 testify as to the impact or affects alcohol can have on a  
16 human body?

17 MR. BELL: Yes.

18 MS. GIANOLI: Okay. Now sir have you been qualified  
19 in Nevada as an expert?

20 MR. BELL: Yes I have.

21 MS. GIANOLI: And in what field?

22 MR. BELL: In toxicology, specifically in my job  
23 duties in the testing for drugs and alcohol and  
24 interpretation of those results.

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1 MS. GIANOLI: Okay. And have you also been qualified  
2 in the expert field of determining the effects that alcohol  
3 has on a human body?

4 MR. BELL: Yes.

5 MS. GIANOLI: Okay. And sir in what Courts in Nevada  
6 have you been qualified as an expert?

7 MR. BELL: Ah, essentially all of the Courts north of  
8 Highway Fifty. Our crime lab services all of the northern  
9 counties. Las Vegas services the lower half of the state and  
10 so I have appeared in all of the Districts within northern  
11 Nevada.

12 MS. GIANOLI: Okay. And sir, is it fair to say that  
13 you've testified in these Courts regarding either the effects  
14 that alcohol has on the body or doing the blood alcohol  
15 analysis on blood samples?

16 MR. BELL: That's correct.

17 MS. GIANOLI: How many times would you say you've  
18 testified in Court?

19 MR. BELL: Again I don't have a specific number. It  
20 would be probably at least two hundred times.

21 MS. GIANOLI: Have you testified in this Court  
22 before?

23 MR. BELL: Yes I have.

24 MS. GIANOLI: Do you know how many times?

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1 MR. BELL: Um, two or three times I think.

2 MS. GIANOLI: And sir you had talked a little bit in  
3 your ongoing education that you engage in ongoing education,  
4 is that correct?

5 MR. BELL: Yes.

6 MS. GIANOLI: Are you required to maintain a certain  
7 number of credits or hours per year in ongoing education?

8 MR. BELL: I - I'm not by the State of Nevada for the  
9 purposes of forensic testing but I do maintain my medical  
10 laboratory license and that does have requirements for  
11 continuing education.

12 MS. GIANOLI: And do you know what those requirements  
13 are for the continuing education?

14 MR. BELL: I have to have fifteen credit units per  
15 year.

16 MS. GIANOLI: Fair to say that you're up to date on  
17 your licensure?

18 MR. BELL: Yes.

19 MS. GIANOLI: Now sir in discussing your training  
20 experience whether it be in analyzing blood for the presence  
21 of alcohol or determining the effects alcohol has on the  
22 body, is there any other training, education or experience  
23 that I've neglected to ask you about today?

24 MR. BELL: I would like to mention the requirements

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1 that we have within the crime laboratory itself. Our  
2 laboratory is inspected by the Medical Society of Crime Lab  
3 Directors Laboratory Accreditation Board and that's a very  
4 stringent program that looks at all of the operations that  
5 are performed by the laboratory, just following insurance  
6 procedures, everything that goes into making a good quality  
7 product, and we are inspected every five years by that group  
8 but annually we have additional inspections to make sure that  
9 we are doing everything correctly. Part of that requires me  
10 to do proficiency testing where samples are sent to us for us  
11 to test, and we don't know what the results are and we have  
12 to send those results back to the agency that sent it to us  
13 and we're evaluated for accuracy in the work that we perform.

14 MS. GIANOLI: Sir with regards to the inspection that  
15 the lab undergoes, is it fair to say the Washoe County Crime  
16 Lab has passed those inspections?

17 MR. BELL: Yes.

18 MS. GIANOLI: With regards to the proficiency  
19 inspections that you undergo, fair to say that you've passed  
20 those as well?

21 MR. BELL: Yes I have.

22 MS. GIANOLI: Okay. Sir have you been trained to use  
23 a scientific test or method to determine whether the presence  
24 or quantity of alcohol in a blood sample taken from an

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1 individual?

2 MR. BELL: Yes.

3 MS. GIANOLI: And what is that method?

4 MR. BELL: It's head space dash chromatography.

5 MS. GIANOLI: And can you explain that procedure for  
6 the jury please?

7 MR. BELL: Ah, the person's blood sample is placed  
8 into two glass vials. We measure two samples from the  
9 original tube that was collected by the officer and the  
10 phlebotomist, in the glass vials. They are sealed and heated  
11 and the alcohol that's present in the blood will become a  
12 gas. If you think about how steam rises from boiling water,  
13 it's the same thing. The alcohol will leave the liquid and  
14 go up into the top of that glass vial. Then the instrument  
15 takes a sample of that and it passes it through two different  
16 sections in a - to what we call a column. The column is a  
17 very long thing tube. It's about thirty meters long and the  
18 column is coated with chemicals that are designed to interact  
19 with the alcohol that we're trying to test and it will delay  
20 the sample going through there based on the chemical and  
21 physical properties of the alcohol, so once the sample is  
22 injected into the instrument it starts a timer and then it  
23 waits for it come out of this long column and it goes through  
24 a detector that's designed to detect any compounds that were

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1 coming through. We use two different columns that have two  
2 different chemistries associated with them so the inside of  
3 that tube is coated with different compounds that are  
4 designed to interact with the alcohol in different ways. So  
5 on one column it will take a certain amount of time for the  
6 alcohol to pass through. We call that the retention time.  
7 How long was it retained within that column. The other column  
8 because of its different chemistries, it will come out at a  
9 different time because of its different interaction with  
10 what's coated inside of that tube so it has a different  
11 retention time and so we use those two different columns to  
12 be sure that we're actually measuring ethanol which is what  
13 we're interested mainly for this case because ethanol will  
14 react very specifically with those chemicals coated inside of  
15 that tube and it will reproducibly come out at the expected  
16 times forced into those columns. We also include with each  
17 batch of case samples a set of calibration standards that are  
18 solutions that have been certified that have known alcohol  
19 concentration that start out at a low level and they go up to  
20 a higher level, and we use those to establish what we call a  
21 calibration curve. And that essentially just establishes the  
22 relationship of we inject a certain amount of alcohol into  
23 the instrument, we will get a certain response and we can do  
24 that for multiple levels and construct a line that describes

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1 the response of that instrument to various levels of alcohol.  
2 We can then use that for comparison for each case sample to  
3 determine what kind of alcohol, was it ethanol, methanol,  
4 isopropyl. In the case we are specifically looking for  
5 ethanol. So we can determine the type of alcohol and how  
6 much alcohol was present.

7 MS. GIANOLI: Sir you were talking using the terms  
8 ethanol and alcohol and in this case you were specifically  
9 asked to look at ethanol. Can you explain to the jury the  
10 relevance about ethanol and how it equates to alcohol?

11 MR. BELL: Ethanol is the type of alcohol that's  
12 contained in alcoholic beverages.

13 MS. GIANOLI: Now sir this methodology that you were  
14 just talking about, has this been experimentally verified?

15 MR. BELL: Yes it has. It's essentially the gold  
16 standard that's used through the world for this testing.

17 MS. GIANOLI: Now when you say it's the gold  
18 standard, how long has this method been used?

19 MR. BELL: I don't know specifically when it began  
20 use. It probably would have been more than fifty years ago.

21 MS. GIANOLI: And can you explain for the jury what  
22 experimental verification means?

23 MR. BELL: The method undergoes a rigorous procedure  
24 in which we look at all of the quality control criteria that

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1 must be met so those calibration standards must meet certain  
2 criteria. We also use control samples that are included with  
3 every run. These control samples are blood samples that are  
4 purchased with known amounts of alcohol and we must get the  
5 correct results for those control samples and again those  
6 control samples are compared against that calibration curve  
7 to obtain the results for them. So those samples are used to  
8 verify the performance of the instrument and of the method  
9 itself.

10 MS. GIANOLI: Now sir you - you told the jury that  
11 this is the gold standard. To your knowledge do other labs  
12 also utilize this same method?

13 MR. BELL: Yes, most laboratories do.

14 MS. GIANOLI: And sir this method that you talked  
15 about, is it widely recognized in your scientific community?

16 MR. BELL: Yes it is.

17 MS. GIANOLI: And this met - is this method generally  
18 accepted by those experts in your field as well?

19 MR. BELL: Yes it is.

20 MS. GIANOLI: Your Honor at this time the State  
21 offers Mr. Bell in both the field of explaining the effects  
22 of alcohol that it has on the human body along with being  
23 able to perform analysis on the presence in the amount of  
24 blood - or alcohol in the blood of a human being.

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1 THE COURT: Any objection?

2 MR. SEARS: No Your Honor.

3 THE COURT: All right. He's admitted as an expert in  
4 those areas.

5 MS. GIANOLI: Thank you Your Honor. Sir you  
6 previously testified you talked about your training and  
7 experience in determining the effects that alcohol has on a  
8 human being. What are those effects?

9 MR. BELL: Alcohol is a central nervous system  
10 depressant so it slows down your brain function and in cases  
11 like this, what is affected is a person's divided attention  
12 so if someone is performing a divided attention test such as  
13 driving, that means they have to process a lot of information  
14 simultaneously so their attention is being divided among many  
15 different things. So if you think about when you're driving,  
16 you have to perceive what's going on around you through your  
17 senses, what you're seeing, what you're hearing, and you  
18 have to make decisions constantly as you're driving and so  
19 you are looking and seeing perhaps it's a child running in  
20 front of you. You have to perceive that, that visual  
21 information has to be processed by your brain and it has to -  
22 you have to make a decision about it. Is there a threat, do I  
23 have to do something and you decide I have to hit the brakes.  
24 All of those things take time and alcohol will impair that

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1 ability and it will slow it down. It will - once you have  
2 decided I need to take action, I need to hit the brake,  
3 alcohol will slow down your response or your reaction time to  
4 actually hitting the brake. So all of those things would be  
5 affected by alcohol in the individual.

6 MS. GIANOLI: Okay. Now sir, you talked about alcohol  
7 being the - a - a depressant to your nervous system and the  
8 inward manifestations. What are the outward or external  
9 manifestations a human being might have when they're under  
10 the influence of alcohol?

11 MR. BELL: Um, there are observable affects and the  
12 field sobriety tests that are performed by law enforcement  
13 officers are designed to detect those observable affects, so  
14 for instance there is the horizontal gaze nystagmus that they  
15 may have talked to you about. That's where the person's eyes  
16 will move back and forth and that's an involuntary response  
17 that is something that's induced by alcohol, it's not  
18 something that the person can mask, it's simply a - an affect  
19 that alcohol has on the individual that is observable. It can  
20 also affect the person's balance. Again the divided  
21 attention paths so part of the field sobriety test the person  
22 is given instructions to do certain things. They have to  
23 listen to that, they have to perceive it, they have to  
24 process it in their brain and then implement it. So the

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1 field sobriety tests are also designed to implement any  
2 impairment in that area.

3 MS. GIANOLI: Sir aside from the field sobriety tests  
4 which you indicate are created to test impairment, what other  
5 objective or external manifestations might a person possess  
6 when they're under the influence of alcohol?

7 MR. BELL: They might be unsteady on their feet,  
8 could have slurred speech as well.

9 MS. GIANOLI: And sir I want to turn your attention  
10 to the laboratory testing that you did in this case. On or  
11 about April fourth, two thousand thirteen did you duce - did  
12 you conduct an analysis on the specimen of blood that was  
13 related to a person by the name of Stella Sindelar?

14 MR. BELL: Yes I did.

15 MS. GIANOLI: Okay. Do you recollect where you  
16 received that sample from?

17 MR. BELL: Um, it was received from - sent by Ely  
18 from Ely and went into our evidence section.

19 MS. GIANOLI: Okay, now when you say Ely is that the  
20 White Pine County Sheriff's Office?

21 MR. BELL: Ah, yes, that's correct.

22 MS. GIANOLI: Okay. Now before I get into the  
23 specific procedures and tests that you conducted in this case  
24 I want to jump forward to the end of your testing. Is there

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1 some sort of document that you create when you complete your  
2 testing?

3 MR. BELL: Yes. I create a declaration which is a  
4 report that contains the results of the analysis that I  
5 performed.

6 MS. GIANOLI: Your Honor for the purposes of the  
7 record I have handed counsel some previously marked for  
8 identification the State's Exhibit Five.

9 THE COURT: So noted.

10 MS. GIANOLI: Thank you Your Honor. If I may  
11 approach the witness?

12 THE COURT: You may.

13 MS. GIANOLI: Sir, I've handed you what's been  
14 previously marked for identification as State's Exhibit Five.  
15 Do you recognize that?

16 MR. BELL: Yes I do.

17 MS. GIANOLI: What is it?

18 MR. BELL: This is the declaration that I issued that  
19 contains the results of the analysis that I performed. My  
20 signature is at the bottom.

21 MS. GIANOLI: And sir, what is the date on that  
22 document?

23 MR. BELL: I executed this document on four four of  
24 two thousand fifteen.

1 MS. GIANOLI: Sir, what is the subject matter?

2 MR. BELL: This contains the results of the  
3 ethanol testing that I did and also makes it statements about  
4 when the sample was received, when the testing was completed,  
5 identification numbers, a lot of demographic information that  
6 identified the case so the person's name, the agency and the  
7 agency case number, multiple numbers that we use to identify  
8 this sample throughout the testing.

9 MS. GIANOLI: Okay. And sir, who is the listed  
10 officer on that case?

11 MR. BELL: Ah, Sumrall.

12 MS. GIANOLI: And you indicated it also includes the  
13 agency name. What's the agency name associated with that?

14 MR. BELL: White Pine County Sheriff's Office.

15 MS. GIANOLI: And is that document signed?

16 MR. BELL: Yes it is.

17 MS. GIANOLI: Do you recognize that signature?

18 MR. BELL: Yes. It is my sig -

19 MS. GIANOLI: And who is that - I'm sorry.

20 MR. BELL: It is my signature.

21 MS. GIANOLI: Okay. And sir in reviewing that does  
22 that appear to be a true and accurate copy of the declaration  
23 you prepared in anticipation of this case?

24 MR. BELL: Yes.

1 MS. GIANOLI: Your Honor the State moves to admit  
2 Exhibit Five at this time.

3 THE COURT: Any objection?

4 MR. SEARS: No Your Honor.

5 THE COURT: Five's admitted.

6 MS. GIANOLI: Now sir, what was the subject's name  
7 associated with this blood specimen analysis that you  
8 conducted?

9 MR. BELL: Last name is Sindelar, Stella L.

10 MS. GIANOLI: Okay. Now lets take a step back and I  
11 want to talk to you more generally about the tests that you  
12 conducted in this case. When you received this case what was  
13 your primary responsibility?

14 MR. BELL: When I received the sam - this sample, the  
15 testing for that day was assigned to me and I performed the  
16 testing for ethanol.

17 MS. GIANOLI: Okay. And you previously indicated that  
18 the specimen you received was from the White Pine County  
19 Sheriff's Office correct?

20 MR. BELL: Correct.

21 MS. GIANOLI: Okay. And how is it that you can ensure  
22 that the sample that is sent from the - from the White Pine  
23 County Sheriff's Office is the same one that makes it to your  
24 hands?

1 MR. BELL: At the time of collection, within that  
2 collection kit there is a laboratory request form hat has  
3 place for the office to fill out all the information about  
4 the case to identify the person so that person's name will  
5 appear, the officer's name, the agency name, case number. He  
6 also fills out what type of testing he wants. Included on  
7 that form are peel off labels that contain what we call the  
8 control number. That control number appears on that form  
9 itself and then the officer will place those labels on each  
10 blood tube to identify each tube and associate it with that  
11 case. Additionally once the sample is received into the  
12 crime laboratory its keyed into our computer system and the  
13 system generates another identifier called the laboratory  
14 number and that again associates that case with the  
15 submission form and the samples. As its processed through  
16 the system, we also assign a specimen identification number  
17 to each tube of blood and it's unique to each tube and a  
18 label is generated by our computer system and placed on each  
19 tube and all of that information has the person's name,  
20 laboratory number, the control number, all of that is it's on  
21 the labels. So we use all of those different numbers in  
22 labeling to track it throughout our system and there is an  
23 electronic chain of custody that is kept that has a record as  
24 every person who tests it and the transfer of the sample from

1 one person to another or into storage areas. We have storage  
2 refrigerators that can retain samples, so everything that's  
3 done throughout the system is tracked using all of those  
4 identifiers.

5 MS. GIANOLI: Your Honor if I may approach the  
6 witness?

7 THE COURT: You may.

8 MS. GIANOLI: For the purpose of the record I am  
9 handing what's been marked for identification as State's  
10 Exhibit Ten. Do you recognize that?

11 MR. BELL: Ah yes, this appears to be a blood  
12 collection kit that the Washoe County Sheriff's Office  
13 provides to various agencies across the state for the  
14 purposes of collecting forensic samples.

15 MS. GIANOLI: Now sir, you were talking to the jury  
16 and you were mentioning vials as well as identification,  
17 there's serial numbers as well as forms. Could you open that  
18 and see if those are all included there?

19 MR. BELL: Yes they are.

20 MS. GIANOLI: Okay. And what do you have in your left  
21 hand there sir?

22 MR. BELL: This is the evidence submittal form and  
23 this is what contains a place for all of the information to  
24 be filled out but also contains the control number peel off

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1 labels that I described earlier that will be placed on each  
2 individual tube at the time of blood collection.

3 MS. GIANOLI: Okay. Thank you. And sir you can  
4 place that back in the box if you wouldn't mind. Thank you.  
5 You can place it on the bench if you wouldn't mind as well.  
6 Thank you. And sir you've talked to the jury briefly about  
7 how evidence is logged when it enters into the lab. Is this  
8 the routine practices engages in the laboratory?

9 MR. BELL: Yes it is.

10 MS. GIANOLI: With every specimen that you see to  
11 your knowledge?

12 MR. BELL: That's correct.

13 MS. GIANOLI: Okay. And when the lab- when the lab  
14 receives a specimen how is it stored, and in this case blood,  
15 how is it stored?

16 MR. BELL: When it's received it's first processed  
17 into the system so the - this box will be examined for proper  
18 seals to make sure that it came in sealed. Any problems with  
19 the seals it would be noted within our system. A document  
20 would be generated and the sample would not be accepted. It  
21 would be returned to the submitting agency. Once the  
22 evidence has been accepted into the system and the  
23 information I discussed earlier has been entered into the  
24 system it will be placed into a refrigerator where it's kept

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1 until a person from the toxicology section goes, usually on a  
2 daily basis Monday through Friday to retrieve any evidence  
3 that was received.

4 MS. GIANOLI: Now sir you indicated that upon initial  
5 receipt into the lab they determine that - whether seal has  
6 been broken or whether is tact. In this case did you receive  
7 any sort of documentation that there was anything amiss with  
8 the seal in this case?

9 MR. BELL: No I did not.

10 MS. GIANOLI: And if there was something amiss would  
11 that have been documented?

12 MR. BELL: Yes it would.

13 MR. GIANOLI: And you would have been apprized of  
14 that?

15 MR. BELL: Yes that's correct.

16 MS. GIANOLI: Okay. Now sir you talked about when  
17 blood is received it's placed in a refrigerator. If the  
18 blood is not refrigerated prior to you receiving it is that a  
19 problem?

20 MR. BELL: It's not a big problem unless it was  
21 subjected to extremes of temperature then there could be a  
22 problem.

23 MS. GIANOLI: And would you be able to know that?

24 MR. BELL: Um part of the testing process that I do

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1 is to observe the sample for any signs of improper handling.  
2 So for instance if it were heated, lets say the officer  
3 collected it and threw it in the trunk of his car and left it  
4 there for a day or two and it gets hot, that could affect the  
5 results of the sample, but it also would have physical  
6 changes that you would see so it could be discolored, it may  
7 look brown. If you think about if you fry a steak and the  
8 blood comes out of it and its heated, you can see it changes  
9 from being red to a brown coagulated look to it and so we can  
10 look for signs of any issues there. I also look for any signs  
11 of contamination say from a bacteria or yeast, some kind of  
12 growth within the tube, and part of that is again looking for  
13 any discoloration. Also if there is an organism that's  
14 growing in there it may pressurize the tube. You think about  
15 a beer with the bubbles coming up, that's from fermentation  
16 that's causing those bubbles. The same type of thing would  
17 happen in the blood tube where it would pressurize that vial  
18 and part of what I do when I'm going to test it is observe it  
19 as I remove the stopper from it to see if it - if there is a  
20 depressurize. There are also some characteristic smells that  
21 may come out of a sample that has been contaminated in  
22 some way. If you think about if something has died and you  
23 have that smell, you can have certain smells associated with  
24 it as well. So I make all of those observations at the time

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1 I'm doing testing. If I saw anything like that I would make  
2 note of it and depending on the exact issue I may reject the  
3 sample and say that it should not be tested.

4 MS. GIANOLI: Okay. And sir you talked about your  
5 initial examination whether it be the sight, the smell,  
6 determine whether there's any sort of growth or contamination  
7 of the blood, did you do that in this case?

8 MR. BELL: Yes.

9 MS. GIANOLI: Was there anything that caused you  
10 concern about the blood in this case?

11 MR. BELL: No. I - I would have made note of it or I  
12 would not have reported results.

13 MS. GIANOLI: So no growth, no contamination, no  
14 belief that it was exposed to extreme temperatures?

15 MR. BELL: That's correct.

16 MS. GIANOLI: And you indicated had you observed that  
17 you would have made note of that correct?

18 MR. BELL: That's correct.

19 MS. GIANOLI: Now when you say make note of that how  
20 do you make note of that?

21 MR. BELL: We have a document that we call a note  
22 file and it basically is just a document that's used to write  
23 down any discrepancy or problem that we may have seen and any  
24 resolution to that problem what we determined should happen

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1 with it. If it were severe enough my report would have been  
2 issued saying that it was an inappropriate sample or if I  
3 felt that it may not completely invalidate the test I would  
4 include a comment on the report stating exactly what the  
5 issue was and how it would affect the results.

6 MS. GIANOLI: And sir you talked to the jury briefly  
7 about how the lab identifies blood samples when they come in.  
8 How does that occur?

9 MR. BELL: I'll - I'll go through those identifiers  
10 again. The control number that appears on the request form  
11 filled out by the officer and also the labels that were  
12 placed on the vials at the time of collection, a key number,  
13 it's a laboratory number that's assigned at the time that the  
14 evidence is logged into our computer system is also used to  
15 identify it and then the specimen identification numbers that  
16 were assigned within the toxicology section to each blood to  
17 each of those three numbers as well as the agency case number  
18 and the person's name to identify the sample.

19 MS. GIANOLI: Okay. And how is that tracked within  
20 the lab?

21 MR. BELL: It's tracked within our computer system. I  
22 mentioned the electronic chain of custody document and that  
23 tracks which piece of evidence was handled by whom and for  
24 what purpose.

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1 MS. GIANOLI: Now sir you're talking about a specimen  
2 I. D. number too. Is that specific with regards to individual  
3 vials of blood?

4 MR. BELL: That's correct.

5 MS. GIANOLI: Now you indicated you do your initial  
6 observation. How many vials of blood do you typically  
7 receive for these blood alcohol tests?

8 MR. BELL: Typically we receive samples throughout  
9 the week and then perform this analysis at least once a week.  
10 We can include up to fifty case samples in a single run.  
11 Typically its less than that but we can accommodate up to  
12 fifty on the instrument itself. That's the capacity of the  
13 instrument.

14 MS. GIANOLI: Now sir, walk me through the process  
15 after you've done your initial observation. How do you go  
16 about testing the blood? What do you do when you get the  
17 vials of blood?

18 MR. BELL: As I had talked about briefly, I take a  
19 sample of the blood from the tube, actually two samples and  
20 place it into the glass vial. It goes through that instrument  
21 and that process that I described before where it's heated,  
22 separation occurs, detection of the compounds occur. All of  
23 the results from the analysis of the calibration standards,  
24 the quality control samples and all of the case samples are

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1 stored within that computer system. Then I print out all of  
2 the work that's associated with that and I review all of it  
3 and I have to make sure that all of our quality control  
4 criteria is met so there are parameters associated with the  
5 calibration curve standards, with those quality control  
6 samples, with the two duplicate samples that we ran for each  
7 case. All of those have specific criteria that must be met  
8 before the run can be accepted.

9 MS. GIANOLI: Okay. And you talked about the vials  
10 having an identifying number on those. Do you verify those  
11 numbers prior to doing tests?

12 MR. BELL: Yes. From our computer system when I'm  
13 going to do an analysis I create what's called a work list  
14 and its simply a list of all of the cases that I'm going to  
15 be testing on that day, and also from the system I print  
16 labels that I place on those glass vials that I told you I  
17 put the samples into. Those labels have all of those  
18 identifying marks on them so all three of those numbers, the  
19 person's name, all of that information is on there. At the  
20 time that I'm transferring the person's blood sample I only  
21 have one tube open at a time and I compare the label on the  
22 blood vial so that's the label that we placed on there in the  
23 laboratory with all of the identifiers as well as the control  
24 number that was placed there at the time of collection. I

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1 compare those with the label on each analysis vial to make  
2 sure that I'm putting the correct sample into the correct  
3 vial. And sir can you recollect in this particular case of  
4 the subject matter of Stella Sindelar whether those labels  
5 were contained on the vials?

6 MR. BELL: Yes.

7 MS. GIANOLI: Okay. And do you recollect what the  
8 identification number on the subject number Stella Sinde - on  
9 the subject named Stella Sindelar was?

10 MR. BELL: I don't directly recall those numbers.  
11 It's almost impossible for me to memorize that.

12 MS. GIANOLI: Is there something that would help you  
13 refresh your recollection?

14 MR. BELL: My declaration --

15 MS. GIANOLI: Okay.

16 MR. BELL: - contains those numbers.

17 MS. GIANOLI: Your Honor if I may approach?

18 THE COURT: You may.

19 MS. GIANOLI: Sir I'm handing you what's been  
20 admitted as State's Exhibit Five. What is that?

21 MR. BELL: This is the declaration that I issued for  
22 the - contains the results of the testing that I performed  
23 for this case.

24 MS. GIANOLI: And what is the identification number

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1 associated with subject Stella Sindelar?

2 MR. BELL: Um, the laboratory number is one one seven  
3 Q dash thirteen dash zero, the control number is T zero four  
4 seven four two zero, agency case number is zero zero one  
5 eight one dash thirteen and the specimen identification  
6 number is S two zero one three zero one seven eight four.

7 MS. GIANOLI: And do one of those number six match  
8 with the label that's placed on the vials that you received?

9 MR. BELL: Yes the control number matches.

10 MS. GIANOLI: And sir when you received - or let me  
11 back up for a moment. Do you recollect how many vials of blood  
12 you received in this case?

13 MR. BELL: Um, for this case -

14 MS. GIANOLI: Um hmm.

15 MR. BELL: - specifically? Two vials.

16 MS. GIANOLI: Okay. And when you receive blood how do  
17 you determine what tests to perform?

18 MR. BELL: The tests are indicated on the request  
19 form that the officer has filled out, so part of our logging  
20 process and entering the data into the computer is to put in  
21 what tests he has requested and then when I'm going to do the  
22 analysis, a decision is made every week of what work will be  
23 performed by which individual and it was luck of my draw for  
24 this case that I did the alcohol testing and this case was

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1 included in what was assigned to me on that day.

2 MS. GIANOLI: Okay. So from what I'm hearing you say  
3 then the request was made that you do a test for alcohol on  
4 this blood?

5 MR. BELL: That's correct.

6 MS. GIANOLI: Okay. Now sir in this case when you get  
7 the blood and you're doing your initial examination was there  
8 any reason to believe that the blood specimen associated with  
9 Stella Sindelar or the packaging had in any manner been  
10 tampered with?

11 MR. BELL: No, there was no indication of that.

12 MS. GIANOLI: Was there any reason to believe that  
13 the blood specimen that you tested associated with Stella  
14 Sindelar was in anyway swapped or mixed with another sample  
15 of blood?

16 MR. BELL: No.

17 MS. GIANOLI: Now you talked about at times you'll  
18 run batches of fifty? How do you make sure that nothing is  
19 contaminated or mixed?

20 MR. BELL: For each sample again as I stated before I  
21 only open one sample at a time. And then between each sample  
22 I rinse the device that I used to measure the sample  
23 thoroughly so that there is no possibility of carryover from  
24 one sample to the next. We also have as part of the quality

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1 control requirements, we - I discussed the calibration  
2 standards. The very highest calibration standard we have is  
3 a zero point four zero zero grams per one hundred milliliters  
4 standards. We immediately follow that by a known negative  
5 control so we can demonstrate that even at the highest  
6 calibration levels that we have there is no carry over from  
7 one sample to the next. And if there were we would reject  
8 the run if we ever saw any alcohol presence in that negative  
9 control we would reject the run so we can verify that there  
10 is no carryover within the analysis system itself.

11 MS. GIANOLI: Now sir the blood samples that you  
12 received related to Stella Sindelar, did you test the for the  
13 presence of alcohol?

14 MR. BELL: Yes.

15 MS. GIANOLI: And you described for the jury the  
16 testing procedure you utilized. How many times do you engage  
17 in that test on a certain vial of blood?

18 MR. BELL: For each vial of blood we take two samples  
19 and place it into the glass vials for analysis.

20 MS. GIANOLI: Okay. So four tests total, two out of  
21 each vial?

22 MR. BELL: Ah, no, we only test one vial typically  
23 unless there is some problem indicated with the first vial.  
24 We normally retain the second vial that was submitted for any

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1 additional testing that might be requested. Occasionally a  
2 defense attorney may request a retest of the sample and we  
3 maintain that second sample untouched whenever possible for  
4 purposes of retesting.

5 MS. GIANOLI: Okay. And in this case did you find any  
6 problems with the original sample that you tested?

7 MR. BELL: No.

8 MS. GIANOLI: Okay. And which results are utilized in  
9 testing?

10 MR. BELL: Okay, as I stated the - the transfer is  
11 two different files and then also within the instrument it  
12 splits it into two different sections where it went to - to  
13 two different columns so it produces a total of four results  
14 for the case and those results must match, must have no  
15 greater deviation than five percent between the lowest and  
16 the highest and once it meets that criteria we report the  
17 average of those four results.

18 MS. GIANOLI: And you talked about five percent, is  
19 that the margin of error that exists?

20 MR. BELL: That's - that is also our stated margin of  
21 error but that is separate from the requirement for the four  
22 results to match.

23 MS. GIANOLI: Now sir after you perform the tests on  
24 the vials of blood associated with subject matter Stella

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1 Sindelar did you reach a conclusion as to the quantity of  
2 alcohol within the blood?

3 MR. BELL: Yes I did.

4 MS. GIANOLI: And sir what were your findings with  
5 respect to her blood?

6 MR. BELL: Zero point one four five grams per one  
7 hundred milliliters of blood.

8 MS. GIANOLI: And sir what is the percentage by  
9 weight there?

10 MR. BELL: It would be the same -

11 MS. GIANOLI: Okay.

12 MR. BELL: - one - point one four five percent.

13 MS. GIANOLI: Okay. Point one four five percent?

14 MR. BELL: Yes.

15 MS. GIANOLI: And sir is that above a point oh eight  
16 percent?

17 MR. BELL: Yes it is.

18 MS. GIANOLI: Okay. Now you previously talked about  
19 this margin of error being plus or minus five percent. Now  
20 if my math is correct it still would put her blood at about a  
21 point three eight, is that correct?

22 MS. BELL: Point one.

23 MS. GIANOLI: Point - I'm sorry, what did I say point  
24 one three eight?

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1 MR. BELL: Yes.

2 MS. GIANOLI: And that's still above the point oh  
3 eight percent?

4 MR. BELL: That's correct.

5 MS. GIANOLI: If I may have the Court's indulgence  
6 for just a moment Your Honor?

7 THE COURT: You may.

8 MS. GIANOLI: Thank you. Now sir after testing the  
9 blood what sort of checks and balances are in place in the  
10 lab to ensure the accuracy of your results?

11 MR. BELL: Once the analysis is complete I review all  
12 of the work associated with it so all the calibration  
13 standards, the controls, each case sample result and I  
14 observe it for all of the quality control information that I  
15 discussed before. When I'm satisfied with it, I sign every  
16 document or initial every document and it's submitted to  
17 another individual for what we call a technical review. That  
18 person essentially repeats the review that I did to make  
19 sure that we've done everything correctly, that everything  
20 met criteria. Once they're satisfied with it I receive it  
21 back. At that time I pull the case folder that contains all  
22 of the information that's associated with each case in the  
23 run so it would have any documentation, the request form that  
24 was filled out by the officer, other documents that we

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1 produce internally, the chain of custody document that shows  
2 who had it and when and what they did with it and I review  
3 all of that information and produce my declaration report at  
4 that time. I compare all of that information from the case  
5 file with my declaration to make sure that all of that  
6 information was transferred correctly to it so I'm looking at  
7 all of those identifying numbers, the agency name, the agency  
8 case number, the person's name, everything that's on that  
9 form I verify that it is correct with comparison with the  
10 case file. When I'm satisfied with it I sign my declaration  
11 and it's submitted to another individual and they do a  
12 complete review again. We call this an administrative review.  
13 And they again look at all of the criteria that must be met  
14 for quality control. They look at all of that data that was  
15 transferred onto the report to make sure that it's correct.  
16 They look at what the officer actually asks for and make sure  
17 that we answered the questions that he was asking, that we  
18 performed the testing that he needed, and when they're  
19 satisfied with it the results are released and they'll be  
20 sent to the requesting agency and to the District Attorney's  
21 Office.

22 MS. GIANOLI: Your Honor if I may have the Court's  
23 indulgence for a moment?

24 THE COURT: You may.

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1 MS. GIANOLI: And sir this peer review process as  
2 well as the chain of custody is it in someway memorialized in  
3 the lab?

4 MR. BELL: Yes. Its initials and signatures appear  
5 on the documents and chain of custody documents are printed  
6 and retained within the case file.

7 MS. GIANOLI: And is there also an electronic  
8 database where it's maintained as well?

9 MR. BELL: Yes.

10 MS. GIANOLI: Your Honor if I may approach this  
11 witness?

12 THE COURT: You may.

13 MS. GIANOLI: And for the record I have previously  
14 shown Defense counsel what's been marked for identification  
15 as State's Exhibit Six. Sir I've handed you what's been  
16 marked for identification State's Exhibit Six. Do you  
17 recognize that?

18 MR. BELL: Yes, this is a report of a discovery  
19 request that was received by our office asking for certain  
20 documentation associated with the case.

21 MS. GIANOLI: Now sir I want to briefly just walk  
22 through those documents for the jury. What is the - the  
23 first page is just the cover sheet for the discovery request?

24 MR. BELL: Essentially, yes. It - it has the - the

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1 same demographic information to identify the case so it has  
2 the laboratory number, the control number, the agency  
3 information, the person's name and then below that it just  
4 itemizes the list of documents that were included in this  
5 discovery packet.

6 MS. GIANOLI: Now sir if you can turn to I think what  
7 has a date stamp of D. A. discovery forty-one. Your Honor if  
8 I may approach the witness?

9 THE COURT: You may.

10 MR. BELL: Ah, I'm not seeing a forty-one.

11 MS. GIANOLI: D. A.'s discovery thirty-two. Do you  
12 recognize that?

13 MR. BELL: Yes this is a print out of the data that  
14 came out of the instrument for the analysis that I performed.  
15 The results - the four results that I discussed are included  
16 here along with the graphical representation of the  
17 instruments results.

18 MS. GIANOLI: Would you flip over the page and  
19 identify what that is please, the next page?

20 MR. BELL: This is what we call the case summary and  
21 this document contains again the laboratory number, the  
22 person's name, the control number, the agency case number and  
23 it summarizes the results of the testing that was performed  
24 for this case.

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1 MS. GIANOLI: Sir can you briefly flip through the  
2 remaining pages and just summarize for the jury what they  
3 are?

4 MR. BELL: The next document is the toxicology chain  
5 of custody and it contains all of the information about who  
6 had the sample and what they did with it so it starts out  
7 with its receipt in the evidence section that it was received  
8 from mail. It documents the transfer of the sample to the  
9 toxicology section. It also documents the additional logging  
10 information and at the time that the person placed the  
11 specimen identification numbers on each vial and then it  
12 contains the documentation of the analysis that I performed  
13 and the fact that I put it back into a locked storage  
14 refrigerator.

15 MS. GIANOLI: And if you could please continue going  
16 through that document.

17 MR. BELL: The next page is one that we discussed  
18 before. This is the evidence submittal form that is included  
19 in the collection kit and it contains all of that information  
20 what was filled out by the officer as well as the control  
21 numbers that were associated with this case.

22 MS. GIANOLI: Okay. Please continue sir if there's  
23 another document in there.

24 MR. BELL: The next page is what we call a specimen

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1 summary. It again has identifying marks to associate it with  
2 the case and its simply a log of what samples we received,  
3 how much sample was received in each blood vial and he  
4 specimen identification numbers that were associated with  
5 each of those vials.

6 MS. GIANOLI: Okay. And sir if you could briefly  
7 describe what the next document is.

8 MR. BELL: This is called the toxicology specimen  
9 transfer and this is just a document that's attached to the  
10 evidence upon receipt in our evidence section and it is used  
11 to document the transfer of the evidence into the toxicology  
12 section so it has a bar code that we can scan to use for  
13 entering additional information. It also has documentation  
14 about the fact that the sample was received sealed when it  
15 reached the laboratory.

16 MS. GIANOLI: Okay. Now sir these documents that you  
17 all discussed - that you just discussed to the jury are they  
18 created by heavily relied upon for their accuracy by  
19 employees of the Washoe County Crime Lab?

20 MR. BELL: Yes they are.

21 MS. GIANOLI: Your Honor the State would move to  
22 admit Exhibit I believe its Six.

23 THE COURT: Any objection

24 MR. SEARS: No Your Honor.

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1 THE COURT: Six is admitted.

2 MS. GIANOLI: And Mr. Bell I'm almost done. I have  
3 just a couple more questions. You talked about within that  
4 packet an evidence submittal form. Could I have you flip to  
5 that please? Now at the bottom of that form is there a  
6 notation?

7 MR. BELL: Yes there is.

8 MS. GIANOLI: What is that?

9 MR. BELL: It says original discarded due to  
10 contamination and it has the evidence person's initial and  
11 the date that they wrote that.

12 MS. GIANOLI: Okay. Now that's concerning when  
13 prosecutors see the word contamination. And you testified  
14 that the original was not contaminated. Do you know what that  
15 note is referencing?

16 MR. BELL: What its referencing if you can see there  
17 is a stain up at the top of this. So anytime we receive  
18 evidence the evidence clerks look for any signs of a  
19 biological contamination and if they see something like that  
20 they -their procedure requires them to make a copy of it and  
21 then discard that original submission form so that we don't  
22 have a biohazard being passed from person to person. So that  
23 notation simply indicates that the original submission form  
24 was discarded.

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1 MS. GIANOLI: Okay.

2 MR. BELL: It is - has no relation to the - the blood  
3 vials themselves.

4 MS. GIANOLI: So to be clear the blood is no way  
5 contaminated?

6 MR. BELL: Correct.

7 MS. GIANOLI: The physical paperwork had a  
8 contamination stain on it?

9 MR. BELL: That's correct.

10 MS. GIANOLI: Okay. No - nothing further Your Honor.  
11 Thank you.

12 THE COURT: Cross-examination?

13 MR. SEARS: Just briefly Your Honor. Mr. Bell do you  
14 know what that contamination stain was?

15 MR. BELL: I don't know specifically. I didn't see  
16 it. It potentially could be blood fro when they collect -

17 MR. SEARS: I'm going to ask you not to speculate.  
18 If you don't know what it was, you don't know what it was.  
19 Did you look at it at all?

20 MR. BELL: No I did not.

21 MR. SEARS: So you never even saw it?

22 MR. BELL: That's correct.

23 MR. SEARS: Okay. Nothing further.

24 THE COURT: Re-direct?

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1 MS. GIANOLI: No Your Honor. Thank you.

2 THE COURT: Is he excused?

3 MS. GIANOLI: He is.

4 THE COURT: All right. Thank you Mr. Bell you're  
5 excused from the case. There's still witnesses for the  
6 State?

7 MS. GIANOLI: Your Honor the State rests at this  
8 time.

9 THE COURT: The State rests. All right. Should we  
10 take a little break?

11 MR. SEARS: Yes Your Honor.

12 THE COURT: All right, ladies and gentlemen I'm going  
13 to give you the admonition and we'll take a little break. Do  
14 not communicate among yourselves or with anyone else on any  
15 subject connected with the trial. Do not communicate with any  
16 of the attorneys or witnesses on any subject. Do not read,  
17 watch or listen to any report or commentary on the trial or  
18 any person connected with the trial by any medium of  
19 information including without limitation newspapers,  
20 television, radio or any form of social media and do not form  
21 or express any opinion on any subject connected with the  
22 trial until the cause is finally submitted to you. So we can  
23 go ahead and do we need some time right?

24 UNKNOWN PERSON: Yes,

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1 THE COURT: Okay, so probably fifteen minutes good  
2 for everybody? All right so we'll take about a fifteen  
3 minute break. Court will be in recess.

4 BAILIFF: All rise.

5 BAILIFF: All rise.

6 THE COURT: Court's in session please be seated. This  
7 is a continuation of our case. Miss Sindelar's present with  
8 counsel, the State's present, the jury and the alternate are  
9 not present. During the break initially we - I met with  
10 counsel in Chambers and during discussion there I was advised  
11 that yesterday afternoon at the close of the case a juror  
12 approached my law clerk and wanted clarification about how to  
13 ask questions of - of witnesses and as well in deliberation,  
14 is that right?

15 LAW CLERK: Yes.

16 THE COURT: Okay. And so my law clerk advised them to  
17 follow the instructions that the Court had given and that -  
18 what also that there'd be also other instructions about  
19 deliberations or what did you tell them?

20 LAW CLERK: That they should get your attention if  
21 they had questions in Court or contact the Bailiff  
22 (unintelligible words - noise in microphone).

23 THE COURT: Very good. All right do you guys have  
24 any questions or issues about that?

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1 MR. WHEABLE: No.

2 MR. SEARS: No Your Honor.

3 THE COURT: Okay. So then with the State resting then  
4 Miss Sindelar I need to advise you and I know you've - I'm  
5 sure you've talked to your attorney about it - about your -  
6 have you discussed your right to testify with Mr. Sears?

7 MS. SINDELAR: Yes sir.

8 THE COURT: And so you understand that you have the  
9 right to testify. It's your decision solely. Certainly you  
10 - you get his advice and consider his advise, you don't have  
11 to follow it. You can make your own decision with respect to  
12 that. If you do choose to testify you would be subject to  
13 cross-examination by the prosecutors just like any other  
14 witness as you've seen in the trial. Do you understand all  
15 of that?

16 MS. SINDELAR: Yes.

17 THE COURT: Any questions about your right to  
18 testify?

19 MS. SINDELAR: No sir.

20 THE COURT: Okay. So then we can - can we bring the  
21 jury in at this point counsel?

22 MR. WHEABLE: Ah, yes Your Honor.

23 THE COURT: All right, Mr. Sears?

24 MR. SEARS: Yes Your Honor.

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1 THE COURT: All right, so lets bring the jury and the  
2 alternate in. Go ahead and be seated. All right the record  
3 should reflect the return of the jury and the alternate and  
4 so the State has rested and Mr. Sears?

5 MR. SEARS: Defense rests Your Honor.

6 THE COURT: All right Defense rests so ladies and  
7 gentlemen that concludes the taking of the evidence in this  
8 case so what the attorneys and I now have to do is settle the  
9 jury instructions that I will read to you, that's the law  
10 we've been talking about and also once we've settled the  
11 instructions then we have to make copies of them and -- and  
12 this is the basic sort of the proposed packets so it takes a  
13 while mostly to make the copies. Sometimes it takes a while  
14 to settle them and so what I'm going to do at this point is  
15 give you an early lunch break and then it generally will take  
16 us at least a half an hour to settle the jury instructions,  
17 its eleven thirty, twelve thirty, so probably so we don't  
18 have a delay I think if you're back at one fifteen that  
19 should give us plenty of time to settle the instructions,  
20 still take a break and then they would be ready for me to  
21 give you the instructions and then the attorneys at that  
22 point would argue their cases okay. So I'll give you the  
23 admonition again and then we'll send you for your break. Do  
24 not communicate among yourselves or with anyone on any

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1 subject connected with the trial. Do not communicate with any  
2 of the witnesses or attorneys on any subject. Do not read,  
3 watch or listen to any report or commentary on the trial or  
4 any person connected with the trial by any medium of  
5 information including without limitation newspapers,  
6 television, radio or any form of social media and do not form  
7 or express any opinion on any subject connected with the  
8 trial until the cause is finally submitted to you. So you  
9 can go ahead and leave your books there and then we'll -  
10 we'll excuse. I think one fifteen will give us plenty of  
11 time and then you guys can - can have prep so I think it will  
12 go a lot smoother cause then we're - we'll have it right to  
13 you guys right after lunch then so we'll excuse you guys, be  
14 back here ready to go at one fifteen okay.

15 JURY INSTRUCTIONS NOT REQUESTED TO BE TRANSCRIBED

16 BAILIFF: All rise.

17 THE COURT: Court's in session, please be seated.

18 This is a continuation of our case. Miss Sindelar is present  
19 with counsel, the State's present, the jury and the alternate  
20 and the alternate are present and so ladies and gentlemen at  
21 this point I'm going to instruct you in the law that will  
22 apply to this case and you've all got a packet there if you  
23 want to follow along - follow along you can. I've already  
24 previously given the first seven instructions so I'll begin

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1 reading instruction number eight if you want to follow along  
2 and then at the end you'll all be able to take those packets  
3 with you down into the jury box - jury room. (JURY  
4 INSTRUCTIONS NOT REQUESTED TO BE TRANSCRIBED). And then at  
5 this point we'll hear the first closing arguments from the  
6 State.

7 MR. WHEABLE: Your Honor can the Clerk pick me up on  
8 video here? Should I move a little bit, is that all right?  
9 A little bit back? Good? We should have a mark on the  
10 carpet. Well thank you for sitting through yesterday, kind  
11 of a long day and today. And this - the argument shouldn't  
12 take that long. Also you should know that isn't Law and Order  
13 so I don't - there's not a lot of motion here. It's more like  
14 I think the show is called Dragnet - just the facts. I'm  
15 going to go over just the facts and kind of interpret what  
16 you heard. You sat here listening and kind of - some of you  
17 took notes so I'm not going to give anything new to you but  
18 review what you each heard the witnesses talk about and how  
19 it applies to - to the law. You know during the voir dire it  
20 seemed there be this - I don't know, attitude now a days of  
21 mistrust of the system. You are the system. That's how  
22 important this is. You are able to participate not me. I  
23 don't get to decide the facts, not the Defense attorney, not  
24 the Judge. That's your job. It's the (unintelligible word -

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1 noise in microphone) is invested in you to decide these facts  
2 and that's how the - you know, it's not a perfect system but  
3 it's the best system we have and that's why it's so important  
4 so I do appreciate you sitting here regardless of - of the  
5 outcome of this case. So what I want to do is I want to dive  
6 right into the elements. And so you have the jury  
7 instructions there, I believe it's jury instruction fifteen  
8 if you want to turn to it. And just mark with your thumb  
9 jury instruction eleven also. Eleven is the little abstract  
10 of the charging document called the information we used in  
11 this case. We're going to be talking - we're going to talk  
12 about both. The elements refer back to the charging document  
13 so - and I'm kind of low tech. I was going to use this  
14 whiteboard and write out all the elements, but I really don't  
15 want you to see my handwriting so I'm going to put it right  
16 on this overhead right here and see if it comes up, and I'm  
17 going to put down the jury instruction fifteen first which  
18 has the elements of the crime so there's the entire jury  
19 instruction you have. So what do we mean when we say  
20 elements? Um, an element - every crime like the driving  
21 under the influence crime is made up of different parts,  
22 different things that need to exist for there to be a crime,  
23 okay. Those different parts, that ingredients of the crime  
24 are called elements, okay. As you know Miss Sindelar, the

1 Defendant is presumed innocent and then the burden is on us  
2 to come in here and - and bring in the - the experts and  
3 prove with evidence each one of these elements beyond a  
4 reasonable doubt, right? Okay. So what are those elements?  
5 What is it that we had to prove to you guys? Well, I'm going  
6 to zoom in a little so, let's see, we had the (unintelligible  
7 word) of course so you can really see - what's going on here?  
8 That's far too far. Okay. So the first one, number one says  
9 that at the time and place alleged in the information the  
10 Defendant did willfully - so there's a couple different  
11 pieces of that one element and it makes reference to the  
12 information. That's that jury instruction eleven that I  
13 asked you to put your thumb on okay. So what was the time and  
14 place that's alleged in the information? Well, the time  
15 would be March twenty-seventh, two thousand thirteen, right,  
16 and the place if you keep looking at it about line thirteen  
17 it says County of White Pine, State of Nevada, okay. What  
18 evidence - now this is where I reviewed the evidence implying  
19 to the - the element. What evidence did you hear while you  
20 were sitting here that this occurred on March twenty-seventh  
21 two thousand thirteen? Deputy Caleb Sumrall testified as on  
22 March twenty-seventh two thousand thirteen he stopped the  
23 Defendant and made contact with her out in front of  
24 Shooter's. Horace Horrin testified that he took a blood draw

1 on March twenty-seventh two thousand thirteen so you had two  
2 witnesses that talked about the date and frankly it's not  
3 contested. That's not an issue here you have to consider but  
4 the element still needs to be supported by evidence for us to  
5 - to do the job, okay. So we can go ahead and click off that  
6 first part of it and the place alleged in the information.  
7 What was the place alleged in the information? Great Basin  
8 Boulevard in Ely, County of White Pine. That's where the  
9 vehicle was being operated. So what evidence did you hear  
10 while you were sitting here? That this happened on Great  
11 Basin Boulevard in - in Ely, that this is where she was  
12 operating the vehicle. Remember - do you remember Deputy  
13 Caleb Sumrall talking about how they were traveling down  
14 Great Basin Boulevard towards the intersection of Aultman  
15 past the Copper Queen, so we know where that's at. That's  
16 Great Basin Boulevard so that evidence was put before you and  
17 that's uncontested so this is a good example of how the  
18 evidence that we presented to you supports those elements, so  
19 these elements have been proven beyond a reasonable doubt. I  
20 mean there's no doubt there. It's uncontested. Defendant did  
21 willfully. If you recall what - what evidence did we have to  
22 show that this was willful? Was there any evidence showing  
23 that it was against her will that she was driving that  
24 vehicle? Was there any evidence that showed she didn't know

1 she was driving a vehicle? No. The evidence showed this. She  
2 was a sole occupant in that vehicle. She was the one  
3 operating it and in fact as you heard in the video when asked  
4 she's the one who admitted that she was operating the vehicle  
5 so this is a willful act okay. So all three of those  
6 subelements I'd say of section one have been satisfied beyond  
7 a reasonable doubt. That's pretty straight forward. Going on  
8 to number two. Driver being in actual physical control of a  
9 motor vehicle. Well, we just covered that, right? The -  
10 then says that she admitted to driving and we know that the  
11 sedan is a motor vehicle. There's no evidence to contradict  
12 that, that's pretty straight forward so there's no problems  
13 there at all and that's been satisfied beyond a reasonable  
14 doubt. Okay, what - what's this next part here, it says  
15 public highway or on a premises to which the public has  
16 access? The information talks about Great Basin Boulevard  
17 where she was operating a motor vehicle. Is that a road to  
18 which the public has access? Is that a road open to the  
19 public? We know it is, and so that is also an element that's  
20 been satisfied by the evidence that you heard Deputy Sumrall  
21 talk about and you can see in the video the parking lot of  
22 Shooter's also is a parking lot open to the public but that's  
23 not necessary because the information talked about operating  
24 on Great Basin Boulevard, okay. So all those subelements

1 have also been satisfied by me by me by the evidence, okay,  
2 and so there's a really good example how straight forward the  
3 case is, how some of the uncontested elements just got  
4 satisfied by the evidence you have heard today and yesterday.  
5 So this is where the meat is, it's in number three. So let's  
6 take a look at that, the meat of the crime. Let's make sure we  
7 understand this too. While having been found by measurement  
8 within two hours after driving, okay. How do we find by  
9 measurement and what - what are we looking for, her - her  
10 blood alcohol level right? How do we find that within two  
11 hours after driving she had this number greater, an alcohol  
12 presence greater than point oh eight within two hours and  
13 that's the blood test. As you heard from Horace Herrin he  
14 came in here and he talked about taking the blood from Miss  
15 Sindelar, from the Defendant, and detective - I'm sorry,  
16 Deputy Sumrall also talked about how that process worked. So  
17 let's go through this. What time did Deputy Sumrall say he  
18 stopped the vehicle? Seven thirty-eight, okay. What time did  
19 Deputy Sumrall state that her blood was taken from her in the  
20 Public Safety Building? Eight twenty-eight and so he said it  
21 was about fifty minutes later under two hours, so that's how  
22 you collect that measurement within two hours. There's only  
23 fifty minutes of time elapsed from when she was stopped  
24 driving the vehicle and when her blood was taken, so if you

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1 look while having been found by measurement within two hours  
2 after driving or being in actual control of the vehicle.  
3 That's how you identify that. That's the evidence that you  
4 listened to. Horace Herrin the blood tech also talked about  
5 he recorded it as being at eight twenty-eight as well, so you  
6 have two witnesses tell you what time that blood was taken.  
7 Okay. So they captured her blood within two hours of oper -  
8 of operating that vehicle, pretty straight forward. What  
9 about the measurement? What is the measurement of her blood?  
10 Well, Richard Bell, the criminalist, the toxicologist that  
11 was here earlier today, what did he say the blood level was?  
12 Point one four five percent, and you have that on affidavit  
13 here. So I'm going to look at some of these Exhibits which  
14 will go back to the room with you and you'll be able to  
15 compare that. What did he say in comparison to what the point  
16 - was it more than point zero eight percent? He explained  
17 that point one four five is greater than point zero eight  
18 percent, and that's just simple math, okay, so when you look  
19 at jury instruction number three - I'm sorry, number fifteen  
20 element three, we have her blood being collected within two  
21 hours after driving or being in actual physical control of  
22 the vehicle and we have the point - to have a point oh eight  
23 or more by weight of alcohol in her blood. So you have  
24 State's Exhibit Five which will go back with you, blood

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1 alcohol, ethanol as he explained it, point one four five  
2 grams per hundred milliliters by weight is greater than point  
3 oh eight percent and so that's the - that was our job is  
4 coming to show all those things. Okay. So now what? We  
5 provided the evidence, we've satisfied the elements beyond a  
6 reasonable doubt and we do that simply by testimony. We  
7 talked about that in body here, it's not C. S. I. It's just  
8 testimony, okay. That's all pretty straight forward. What  
9 kind of questions might come up? How do we know it was  
10 Stella's blood? How do we know it was Miss Sindelar's blood?  
11 Certainly someone could have made a mistake. You had a rookie  
12 cop for crying out loud, right? What kind of procedures were  
13 in place to make sure that was her blood? First of all what  
14 kind of mistakes did the rookie cop make? He simply forgot  
15 to put all the details in the report. But there was enough  
16 there. He had the date, he had the time. He testified that  
17 the road was open to the public. You see the video  
18 corroborates what he was doing, okay. He had Miss Sindelar  
19 out in the scene, takes her back to - to the Public Safety  
20 Building and he's there but it's not him alone. Who else  
21 shows up? Horace Herrin. He was here today. He filled out  
22 an affidavit under penalty of perjury. Right here. And  
23 you'll have this. You guys saw it earlier. Okay. And he  
24 identified that the person that he was taking the blood from

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1 was the Defendant, Stella Sindelar. How did he do that cause  
2 that was a long time ago? Because he has a standing -  
3 standard procedure of looking at what the intake form says  
4 and then what? Looking at the driver's license and then  
5 finally he asks them their name. There's no - there's no  
6 doubt there. It was - it was Miss Sindelar, okay. But in  
7 case you're wondering - but wait a second, so we have a blood  
8 sample but it could have been an error at the lab. We heard  
9 for what was it over an hour or more at great length about  
10 the procedures and all the checks and balances to make sure  
11 that everything they did in the lab is protected and it's  
12 integrity is upheld. That's what he was talking about, okay.  
13 So you look at the actual blood result, a point one four  
14 five. What other evidence did he have to corroborate,  
15 supporting evidence, that this was in fact Miss Sindelar's  
16 blood level. It's greater than point oh eight. What other  
17 evidence did you hear? Odor of alcohol beverage coming out of  
18 her mouth, slurred speech. For better or worse Caleb's job on  
19 his field - I'm sorry, Deputy Sumrall's job on his field  
20 sobriety tests, okay. Yea he was a rookie but there is  
21 definitely the evidence there. What do you say, six out of  
22 six clues on the horizontal gaze nystagmus shows impairment.  
23 He didn't document how she showed impairment on the nine-step  
24 walk and turn but he did show in his report and he testified

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1 that she showed impairment there and then he did the one leg  
2 stand and then she - that she - she showed three out of four  
3 clues on the one-leg stand so there's impairment there.  
4 Okay. Is that all we have to corroborate this blood level?  
5 No. Then she made the admissions. I had shots of vodka now  
6 and then within the hour, it was a rough day, oh God, oh God,  
7 oh God. And that's all on the video then I'll go back wards  
8 and you can listen to it. So you have all that corroborating  
9 evidence. The use of the alco - the drinking of vodka within  
10 the hour, her performance of field sobriety tests,  
11 observations that the Deputy made and then you have the bold  
12 proof lab system all put together and that was presented and  
13 you'll have those documents from that so, you know, that's -  
14 that's how these straight forward cases are - are put  
15 together. We have to - we bring the - the burden's on us to  
16 bring this stuff in and show it to you, you know, and - and I  
17 don't know what the Defense attorney's going to say if he  
18 says anything at all but I do know this. He's not going to  
19 want you to focus on the facts that prove the Defendant's  
20 guilt. He's going to want to focus you somewhere else. Just  
21 keep that in mind, and then I'll come back up here and I'll  
22 be able to talk to you again and address some of the - the  
23 concerns that the Defense attorney will raise and - and  
24 that's okay, and then I'll come back and I'll ask you to go

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1 ahead and render a guilty verdict then. Okay.

2 THE COURT: Thank you Mr. Wheable. Mr. Sears?

3 MR. SEARS: Thank you Your Honor. Your Honor, ladies  
4 and gentlemen of the jury. This tie doesn't want to stay in  
5 place so we'll do a little housekeeping. Like the State I  
6 would like to thank you for your time and attention. I know  
7 some of you folks, I know this was an imposition after you  
8 gave you time. I don't to mean to bore you. I know I can be  
9 sort of drumming and so I'll do my best not to do that.  
10 However, there's a lot of things that I want you to take a  
11 look at. There's some details that I want you to focus on  
12 and I may pay a lot of attention to my notes to make sure I  
13 don't miss anything so if you'll forgive me for not  
14 maintaining good eye contact through some of this that's the  
15 reason why. Instruction eight is important. It gives you  
16 your duties and it says it is your exclusive providence to  
17 determine the facts in this case and to consider and weigh  
18 the evidence for that purpose. Okay. You're supposed to  
19 weight the evidence and I'm going to ask you to do that.  
20 Please weigh the weigh the evidence for the purpose of  
21 deciding this case. I'm going to refer to Mr. Sumrall as  
22 Caleb, not because I'm being disrespectful but that's because  
23 that's the way I know him. As an initial matter you should  
24 be aware that we contest all elements of the crime charges by

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1 the government in this case. We don't conceive a single  
2 element. Not the place, not the time, not even the date.  
3 Okay. The evidence that was presented to you demonstrates  
4 that Kelly - Caleb Sumrall, the Deputy, was a man with a  
5 hammer. He was a man with a hammer looking for a nail to  
6 drive. I say that because from the start of their case and  
7 it was admitted by Caleb that he was new on the job. He was a  
8 rookie. He was out to make his name and out in this case in  
9 particular to prove up a D. U. I. Caleb said early on on the  
10 stand he hated the smell of alcohol. He didn't just say he  
11 recognized it. He hated it. And that's how he knew Stella  
12 was under the influence of alcohol. Although Caleb admitted  
13 he couldn't how much alcohol somebody had in their system by  
14 smelling it. The amount is not related to the smell. In other  
15 words you couldn't tell just a little bit of alcohol from a  
16 lot of alcohol but once he got the smell that he hated he was  
17 ready to do his D. U. I. report. Caleb did admit that he did  
18 not prepare a proper report. You heard that. There were a  
19 lot of questions about that. No proper report documenting  
20 the every clue that was provided in Stella's performance of  
21 field sobriety testing. However, the government did not give  
22 you that report. You don't get to review it. When the  
23 government had important information they wanted you to see,  
24 they admitted it. You don't have the report.

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1 MR. WHEABLE: Objection Your Honor, it's not proper.

2 THE COURT: Sustained. Instruction number eight, not  
3 everything has to be offered or admitted. Go ahead.

4 MR. SEARS: I'm not denying that.

5 THE COURT: Go ahead. Continue arguing.

6 MR. SEARS: Thank you Your Honor. Caleb also  
7 admitted he had to rely on the video in order to remember  
8 Stella's performance and I asked some questions about that.  
9 He later testified that the video is accurate as to her  
10 performance but he could not remember her performance without  
11 the video. That's logically impossible. He cannot use  
12 something he did not remember, the performance he didn't  
13 remember, to verify the thing that he also didn't remember  
14 was accurate, the video. As I argued at the time and the  
15 question its circular reasoning. When it comes to F. S. T.S.,  
16 Caleb admitted that he used Simon says when giving Stella the  
17 field sobriety tests. In other words, it was a trick. You  
18 show one thing by demonstrating an act and say something  
19 different from the demonstration. There was a dep - in an  
20 attempt to confuse the person being tested. What this  
21 approach demonstrates is not impairment but confusion about  
22 the instructions. Oh by the way, confusion about the  
23 instructions is a clue used against you. Meanwhile we have  
24 this video. We know that clear - Caleb clearly exercised his

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1 power over the video, on his lapel, and he limited and edited  
2 what the viewer got to see on that video. He admitted he  
3 turned off that video when he went to speak to a fellow  
4 officer but he could not remember what was said during that  
5 incident, but it was off. He had to be reminded of the  
6 incident in fact by the District Attorney. If you review the  
7 video when you're back to deliberate, you'll notice that it  
8 is difficult to tell whether or not that video has been  
9 edited for content. The clock is off. That date is off.  
10 There is no way to verify whether any of those things  
11 occurred as stated at the time stated or they were later  
12 tampered with on the Sheriff's server by someone who wanted  
13 to help to strengthen this case. The video should be a  
14 verification of everything that the police office saw and  
15 said. It is not. The video is an edited document offered to  
16 show that the Sheriff's Officer did not make a mistake. We  
17 know however by his admissions that he did make mistakes. We  
18 were told about some of it. The problem with this case is we  
19 don't know the details that we don't know. One should be  
20 very concerned when the whole truth is not presented to a  
21 jury for deliberation on a serious case like this one. Lets  
22 talk about Mr. Herrin, clearly a very nice man. Mr. Herrin  
23 freely admitted that he was not forensically trained. He  
24 knew he said he shouldn't use alcohol on the swab, he knew he

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1 should use betatine, betadine or some sort of an iodine  
2 solution but he never clearly testified that he did not use  
3 alcohol but did use betadine. He testified he used the prod  
4 - products that were in the package. And we don't have the  
5 package in evidence. We had another package that we were told  
6 was similar but where was the real package? If you look at  
7 Herrin's affidavit you'll also see he said that he drew the  
8 blood in a medically acceptable manner. This is not a medical  
9 case, this is a forensic case. And Mr. Bell testified that he  
10 was a forensic criminalist. Mr. Bell knows about medical and  
11 forensic because he's trained in both. Mr. Bell never  
12 testified that medically acceptable was satisfactory for  
13 forensic testing purposes. The government might complain that  
14 I didn't ask any questions of him but it's the government's  
15 case, it's not my case. It's not my job to make sure that the  
16 people who testify put proper evidence before the jury.  
17 That's the government's job. Yesterday, you saw the  
18 government, lots of power, lots of money, bring in people  
19 from out of state, bring in people from Reno, in order to  
20 convince you that Stella Sindelar is guilty of a crime. Your  
21 job is to make sure that evidence presented was reliable,  
22 reviewable and convincing. That's not what happened here.  
23 There's too many things where we don't know what we don't  
24 know. We don't know what was supplied in the original

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1 package. We only know what was supplied in the sample  
2 package that was actually used - that was never actually used  
3 and - and the government never gave us the real package. They  
4 never gave us access to the blood. Richard Bell said there  
5 was biological contamination in the paperwork and if you'll  
6 remember the demonstration of that package, you'll recall  
7 that the paper was put into a plastic packet in the front,  
8 the blood was put into a sealed pocket elsewhere within that  
9 same package. You look at the paperwork that was provided you  
10 can see the piece of paper that was contaminated, at least a  
11 copy of it was inside that plastic pouch and the plastic  
12 pouch was inside a sealed box that got dropped into a locker,  
13 so that means something had to get inside of that sealed  
14 package in order to contaminate that piece of paper. It  
15 either came from inside that package or from outside the  
16 package. We know this package was sealed. Unfortunately we  
17 never saw the blood sample that was taken, we never saw the  
18 blood tube, never saw the blood evidence. We don't know how  
19 the contamination occurred that Bell testified about. We  
20 don't know what the original package looked like. We do know  
21 that the package was sealed by the government and when it was  
22 received by the lab it was still sealed, so the only logical  
23 answer is the biological specimen inside the box contaminated  
24 the paper. In other words the blood had to get out on that

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1 paper. In addition it sounds like the evidence sent the lab  
2 was destroyed by the lab due to that contamination. We also  
3 know logically sealed tubes don't seal themselves, and they  
4 don't unseal themselves unless something's gone on with that  
5 package. If you look at all the documentation, you will not  
6 see a single reference that somebody in the laboratory found  
7 an open tube of blood and sealed it up. It's not in there  
8 anywhere. You heard testimony from the expert about how the  
9 machine - I'm sorry. In addition, you heard testimony from  
10 the expert about how the machine passes alcohol gas between  
11 two tubes, I guess at different rates. You never heard any  
12 evidence about how the gas gets weighed. If you read the  
13 information carefully it says Stella Sindelar had a  
14 particular forbidden weight of alcohol in her blood, the  
15 affidavit has a decimal number, it never specified what was  
16 the weight of the alcohol and the information says they have  
17 to prove the weight of the alcohol was over point zero eight.  
18 As I explained in the beginning, this is the government's  
19 case. They're the ones who stopped Stella while she was on  
20 her way home for a taillight. She wasn't stopped for driving  
21 and weaving, she wasn't speeding, she wasn't driving without  
22 lights, not any of the ways people normally think about drunk  
23 drivers. The government has the entire burden to prove to  
24 prove to you that everything they did in this case in terms

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1 of gathering evidence, preserving evidence and presenting  
2 evidence was proper. The government didn't do that yesterday  
3 or today. Instead the government demonstrated too many ways  
4 in which the government's agent failed to gather, failed to  
5 preserve, and failed to present evidence to you in an open  
6 and honest manner. You saw the officer refuse to answer my  
7 questions on the stand on more than one occasion. Perhaps on  
8 the first answer to a question he didn't understand, but  
9 repeated refusals even after directed by the Court was not a  
10 failure to understand. The witness did not want you to hear  
11 the answer to my questions. When a witness wet - willfully  
12 refuses to give on - to give evidence, it's because it does  
13 not help the witness' case. Now Caleb testified he didn't  
14 want a mistake on this case because it affects his  
15 performance review. He had a stake in this case and wanted  
16 to prove it while he was on the stand, not just to answer  
17 fact questions. The instructions of law given by the Judge  
18 advise you to be weary of witness' testimony and I would rein  
19 - reinforce that for you. One major witness in this case  
20 wanted to be an - evasive in his answers. That witness is  
21 only wanted to give information to prove his case, not  
22 information that demonstrated that mistakes were made.  
23 Finally this case contained two few details of the evidence  
24 of the crime charged, an incomplete video, turn on and off

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1 apparently at the whim of the officer, improper field  
2 sobriety testing, failed police report, contaminated blood  
3 paperwork with no attempt to explain how a tube was open and  
4 closed, a prime witness did not want to answer questions and  
5 who does not remember important facts about field testing.  
6 Doesn't remember facts about discussions with fellow  
7 officers. Ladies and gentlemen the devil's in the details in  
8 these criminal cases. Of course the government's going to  
9 come back and say, ah, that stuff doesn't matter. Don't you  
10 believe it. Of course they matter. The details in this case  
11 are what are laid with you to weigh the evidence and  
12 determine whether things were done properly and there's  
13 sufficient evidence of guilty. We all believe and I agree law  
14 enforcement is an important function. We all want proper law  
15 enforcement. This case was not proper law enforcement.  
16 Stella should be found not guilty. Thank you.

17 THE COURT: Thank you Mr. Sears. State's final. The  
18 State gets two arguments because the burden is on the State.

19 MR. WHEABLE: Okay. Well you - you were able to watch  
20 Deputy Sumrall testify. Was that a man with a hammer?  
21 Because that's what defense ranger said. It was a man with a  
22 hammer. He didn't say anything about a performance review.  
23 He wants to do the job. All people in a profession usually  
24 want to do a good job. He was being evasive with his

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1 answers, well I don't - I recall - I recall some confusion  
2 for sure, but I recall more often he was trying to explain  
3 the facts and the defense attorney stopped him. No, no, no,  
4 no, no. Stop. Do you recall that? Remember that? He was  
5 trying to explain and he was leashed in by the Defense  
6 attorney, no. I just want the simple answer to my question  
7 and it - you know. I lost my cool yesterday and I apologize.  
8 Please don't let that be a reflection on deciding the facts  
9 of this case. The best (unintelligible word) just stood up  
10 and told you there was blood contamination on the paperwork.  
11 But when we try to get to the bottom of what type of  
12 contamination it was, remember again the Defense attorney  
13 leashed in Richard Bell and said no, no, no, I don't want you  
14 to tell me what it could have been. We don't even know what  
15 it was, could have been maybe iodine, could have been iodine,  
16 could have been anything, could have been blood. We don't  
17 know. It was on the paperwork and when Miss Gianoli was  
18 asking some questions of Richard Bell about the actual  
19 specimens themselves, any evidence of contamination, what was  
20 the answer? No. Nothing. They were untampered with,  
21 uncontaminated blood samples. That's all you really need to  
22 focus on. You're going to see the paperwork here in State's  
23 Exhibit Six, I'll show you real quick since we're talking  
24 about it. Okay. State's Exhibit Six which you'll have and

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1 take it back with you is a packet of the information that  
2 Richard Bell prepared for us and on D. A. discovery thirty-  
3 five it's a poor copy of the chain of custody paperwork. What  
4 it says on the bottom is star - a little asterisk, it's hand  
5 written, original discarded due to contamination, B. B. three  
6 nine seven six four one thirteen. So imagine when we first  
7 read that what we thought. Oh, but that's not what that  
8 means because that was on four one and that - yet the blood  
9 you'll see in the chain of custody was tested on the second  
10 and the third and there was final results on the fourth. So  
11 that original contamination is as Richard Bell stated so you  
12 know what that means, that's why I'm going over it again.  
13 You know, whose to say that that means the paperwork, the  
14 original pa - they're not going to take a piece of paper with  
15 a stain on it back into the lab. They wouldn't do that so the  
16 just made a copy of it, got rid of the - the bad copy that  
17 had the stain on it and had the fresh clean copy so you  
18 wouldn't contaminate the lab. And that's what that means.  
19 What they should have said was original discard - original  
20 paperwork discarded and hopefully they'll get that fixed and  
21 so this whole discussion of contamination's a nonissue. So  
22 what's really going on here? What - what - what did the  
23 Defense try and just do? He tried to shift this trial from a  
24 finding of guilt, deciding the facts, finding the guilt of

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1 the Defendant to putting the officer on trial. Don't focus  
2 here. Focus there. Were the mistakes that Deputy made of not  
3 putting those additional facts in his report, does it affect  
4 the blood result, does it affect what day the blood was  
5 taken, that it was taken within two hours of her operating a  
6 vehicle and I might argue you have your notes, you listen.  
7 Richard Bell did discuss that this was by one (unintelligible  
8 words - faint recording) information, okay, so I take issue  
9 with what the Defense attorney said on that as well. All  
10 right, jury instruction number two if you guys have the jury  
11 instructions out. Oh, that's - last line of the first - oh,  
12 its hard to say the second page of the jury instruction  
13 number two it says your purpose as jurors is to find and  
14 determine the facts from the evidence (unintelligible words -  
15 mumbling) and that reasonable inferences arising from the  
16 evidence and in so doing what? You must not indulge in guess  
17 work or in speculation right? No guess work, no speculation.  
18 What does the Defense attorney want you to do? I found it  
19 entertaining also the reference to us as the government, it  
20 was the government. Look at number four. Pull that seal. You  
21 are drained to the consideration of the evidence before you,  
22 your everyday common sense and judgment as reasonable men and  
23 women. What does common sense tell you in this case? You are  
24 not to fancy situations or circumstances which you would not

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1 draw from the evidence. What does the evidence show you?  
2 What day did it occurred, where did it occur? Defense  
3 attorney would have you speculate, draw fancy inferences not  
4 based on the evidence he heard. And then let me pull out I  
5 think it was nineteen. Copy this is nineteen, the legal  
6 explanation that the Court provided to you about the  
7 definition and reasonable doubt and you hear about this on  
8 T. V. and stuff sometimes, but here it really is the bottom  
9 line, literally the bottom line on nineteen, the last line  
10 there. What does it say? Doubt to be reasonable must be  
11 actual, not mere possibility, not mere speculation. It's not  
12 about Deputy Sumrall. It's not about these possibilities,  
13 speculations, the contamination, the - you know, none of  
14 that. It's about real doubt. It's about is there any real  
15 doubt here today and there's not. There's not. You can't -  
16 Defense they would have you imagine that there is some actual  
17 doubt here based on speculation. Lets pretend. Lets  
18 speculate that there might be some doubt here and that's not  
19 what is supposed to happen so, what stake did Deputy Caleb  
20 Sumrall have in a two and a half year old case? A man with a  
21 hammer. This was a D. U. I. This is a common occurrence when  
22 he testified, okay. He doesn't have a stake in this. I'll -  
23 I'll go over this real quick too. Then on jury instruction  
24 fifteen when I went over the elements, where does it say in

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1 there that I had to prove the vehicle was driving erratic or  
2 speeding. It's not part of this. You know, she was driving  
3 perfectly fine. She was stopped for a brake light. That  
4 doesn't mean that the evidence shows she was found within two  
5 hours of driving and having a blood alcohol level by weight  
6 over a point oh eight percent so all that stuff about we've  
7 got to have a - you know, a car is driving crazy, they've got  
8 to be drunk in the car. That doesn't matter. That's not what  
9 the law says and no matter what your personal belief or  
10 feelings about alcohol, the D. U. I. law, you know, he took -  
11 he took an oath to follow the law and this is what the law  
12 says. He may not like but that's what the law says. If  
13 you're found within two hours after driving, that's your  
14 blood alcohol level, no matter who you are. Thank you. So you  
15 don't need to have the actual pattern. Make no mistake this  
16 case is not about alcohol. Alcohol's not the issue, okay.  
17 There's no problem with alcohol. It's the D. U. I., the  
18 driving under the influence which is a crime. There's a  
19 difference there. All right. So jury instruction number  
20 twenty-five. I heard the Defense attorney say that the  
21 government is going to get up here and talk about all those  
22 things that we brought up are not important. If you look at  
23 jury instruction number twenty-five, on line ten because the  
24 argument of counsel often is of the most valuable assistance

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1 in enabling juries to sift, consider and collect the  
2 testimony. Sift. What are we talking about here. Was there a  
3 lot of evidence the last two days? Yes. Could there have been  
4 more as Mr. Sears says? Yes. Yes. There could have been a  
5 lot more. What about all that stuff about report saying  
6 Deputy Sumrall and what he put in or he didn't put in, you  
7 know, I need to help you sift, sift through what's not  
8 important and focus on the facts as they apply to the law.  
9 The facts are you know, she was driving on March twenty-  
10 seventh, two thousand thirteen. She got stopped for a simple  
11 traffic stop. When Deputy Sumrall smelled that alcohol he  
12 knew it wasn't a simple traffic stop anymore and when he got  
13 his lapel camera he said I better document this, and he at  
14 least did that right, put that on, walked her through the  
15 field sobriety tests, she made some admissions she was doing  
16 shots of vodka within the hour, okay, she had slurred speech,  
17 you can kind of hear that on the video, but most importantly  
18 what did her blood reveal? That's what's most important,  
19 okay. That's the - when I talk about sifting, that's what  
20 you need to sift out. This document right here, State's  
21 Five, is all you really need to return a guilty verdict. I  
22 satisfied the other elements with Deputy Sumrall who went  
23 through all the basic stuff but this is the (unintelligible  
24 word) point one four five grams per one hundred milliliters

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1 by weight of alcohol greater than point oh eight is what was  
2 testified to. Okay. So I am asking you to return a guilty  
3 verdict. I am asking you to go back and deliberate and check  
4 that box that says guilty because these elements, you know,  
5 as straight forward as this case, we still have to do our job  
6 and bring these witnesses in and prove it. That's our job.  
7 That's our burden. And that's what we've done here today so  
8 again I appreciate you for your time and your attention to  
9 this matter. It is really important and I as that you return  
10 a guilty verdict. Thanks.

11 THE COURT: Thank you Mr. Wheable. We'll have the  
12 Bailiff come forward and be sworn.

13 CLERK: Do you solemnly swear that you will take  
14 charge of this jury, conduct them to some private place for  
15 deliberation, allow no one to speak to them or speak to  
16 themselves on the subject of the case now on trial except to  
17 bring them into Court when required to do so, so help you  
18 God?

19 BAILIFF: I do.

20 THE COURT: All right ladies and gentlemen, we'll -  
21 we're going to gather up the evidence -

22 MR. WHEABLE: Admit six.

23 THE COURT: - the exhibits that were admitted into  
24 evidence you'll take with you, you'll go to the jury room,

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1 you can take your notepad with you and your - and take your  
2 instructions so you can all follow along in deliberation.  
3 The - the alternate will have to be separated at this point  
4 but you will still be here. All right. Court will be in  
5 recess. If you leave the courtroom - Courthouse, make sure  
6 you have a phone number to get a hold of you.

7 BAILIFF: All rise.

8 THE COURT: Oh. Go ahead and be seated and do you  
9 want to bring the jury in?

10 MR. SEARS: We'll stay up for the Judge.

11 THE COURT: Go ahead and be seated. Court's in  
12 session. This is a continuation of our case. The - Miss  
13 Sindelar is present represented by counsel, the State's  
14 present. All right, ladies and gentlemen, did you reach a  
15 verdict?

16 CHAIR PERSON: Yes Your Honor we did.

17 THE COURT: All right. And do you - where's the  
18 original?

19 CHAIR PERSON: I have the original.

20 THE COURT: Okay. We'll have the Bailiff pick it up  
21 and deliver it to me. Thank you. All right, Miss Sindelar  
22 please stand, the Clerk will read the verdict.

23 CLERK: Case number C R one three zero four zero  
24 three seven, Department Number One, In the Seventh Judicial

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1 District of the State of Nevada in and for the County of  
2 White Pine, The State of Nevada, Plaintiff, versus Stella  
3 Louise Sindelar, Defendant. Verdict. We, the jury in the  
4 above-entitled matter do find the Defendant Stella Louise  
5 Sindelar as follows: count one, driving under the influence  
6 of alcohol in violation of N. R. S. four eight four C point  
7 one one zero, N. R. S. four eight four C point zero two zero  
8 and N. R. S. four eight four C point four one zero guilty.  
9 Dated this first day of July twenty fifteen. Janet Netcher,  
10 foreperson.

11 THE COURT: Please be seated. Would either side like  
12 the jury polled?

13 MR. SEARS: We would, Your Honor.

14 THE COURT: All right.

15 THE CLERK: Juror number one is that your true and  
16 correct verdict?

17 JUROR NUMBER ONE: Yes.

18 THE COURT: You can remain seated.

19 JUROR NUMBER ONE: Okay.

20 THE COURT: All right. Thank you.

21 CLERK: Juror number two is that your true and  
22 correct verdict?

23 JUROR NUMBER TWO: Yes.

24 CLERK: Juror number three is that your true and

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1 correct verdict?

2 JUROR NUMBER THREE: Yes.

3 CLERK: Juror number four is that your true and  
4 correct verdict?

5 JUROR NUMBER FOUR: Yes.

6 CLERK: Juror number five is that your true and  
7 correct verdict?

8 JUROR NUMBER FIVE: Yes.

9 CLERK: Juror number six is that your true and  
10 correct verdict?

11 JUROR NUMBER SIX: Yes.

12 CLERK: Juror number seven is that your true and  
13 correct verdict?

14 JUROR NUMBER SEVEN: Yes.

15 CLERK: Juror number eight is that your true and  
16 correct verdict?

17 JUROR NUMBER EIGHT: Yes.

18 CLERK: Juror number nine is that your true and  
19 correct verdict?

20 JUROR NUMBER NINE: Yes.

21 CLERK: Juror number ten is that your true and  
22 correct verdict?

23 JUROR NUMBER TEN: Yes.

24 CLERK: Juror number eleven is that your true and

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1 correct verdict?

2 JUROR NUMBER ELEVEN: Yes.

3 CLERK: Juror number twelve is that your true and  
4 correct verdict?

5 JUROR NUMBER TWELVE: Yes.

6 THE COURT: Based on the poll of the jury, anything  
7 else Mr. Sears?

8 MR. SEARS: Not from me.

9 THE COURT: Based on that then the Court enters  
10 formal judgment that Stella Louise Sindelar is guilty of the  
11 offense of driving under influence of alcohol as charged in  
12 the information and so then what we need to do is set a  
13 sentencing date. How about - what about August to make sure  
14 Parole and Probation has plenty of time, August thirty-first,  
15 that's a Monday. Work for everyone?

16 MR. WHEABLE: Works for the State Your Honor.

17 MR. SEARS: That's the last day of my elk hunt Judge.

18 THE COURT: The last day of your elk hunt? Well you  
19 should have it by then.

20 MR. SEARS: That's what I'm hoping.

21 THE COURT: Well lets set it for that and if you  
22 don't we'll go from there -

23 MR. SEARS: Thank you Your Honor.

24 THE COURT: - but we'll set it for August thirty-

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1 first, nine thirty for sentencing and the Court orders the  
2 Clerk of the Court to formally notify the Department of  
3 Parole and Probation who will do their usual and customary  
4 investigation and we'll bring it back on that date and then  
5 is there anything further in this case at this time? Mr.  
6 Wheable?

7 MR. WHEABLE: Yes Your Honor but I think it'd be more  
8 appropriate outside the presence of the jury.

9 THE COURT: Um, well I'm - I - I - want to meet with  
10 them briefly before they leave so -

11 MR. WHEABLE: We can wait outside until you're done  
12 if you'd like.

13 THE COURT: Oh you want - you want to be heard  
14 afterwards?

15 MR. WHEABLE: Or we can excuse the jury briefly and  
16 give -

17 THE COURT: I'd rather if you guys want to wait here  
18 while I talk to you right, then you're leaving and come back  
19 right? They get to stay here. Okay. So Mr Sears.

20 MR. SEARS: That's fine with me. However you want to  
21 do it.

22 THE COURT: Okay. So we'll have a - so counsel and  
23 Miss Sindelar will stay and stay, hang around for a little  
24 bit?

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1 MR. SEARS: Yes Your Honor.

2 THE COURT: Okay. So then ladies and gentlemen what  
3 I'm going to do I'm not going to hold you long but as I  
4 always do I'm going to kick everybody out of the courtroom  
5 except for my Law Clerk and then I just want to meet with you  
6 very briefly just to tie up any loose ends you might have,  
7 make sure that the process is what you - you know. So at  
8 that point then we'll go ahead and excuse everybody else.

9 BAILIFF: All rise.

10 COURT: Court's in session please be seated. This is  
11 case number CR one three zero four zero three seven, State of  
12 Nevada versus Stella Louise Sindelar. Miss Sindelar is  
13 present represented by Mr. Sears. The State's represented by  
14 Mr. Wheable and Miss Gianoli and the State had a matter to  
15 bring to the Court?

16 MR. WHEABLE: Yes, thank you Your Honor. Look, at  
17 this time Miss Sindelar has been found guilty by the jury.  
18 She's no longer presumed innocent. She does have a history of  
19 driving under the influences. The last one was I believe in  
20 Utah around two thousand four and that was a felony  
21 conviction. This is now her felony conviction of driving  
22 under the influence which raises the spector of a danger to  
23 our community that we have a two time felon who still out and  
24 about so I would ask that she be remanded into custody at

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1 this time. Now, that's the public safety argument. Let me  
2 give you a more practical argument that is bothering me, and  
3 its this. This is an old case. This is an old case. Two  
4 and a half years ago we could have been done with this a long  
5 time ago and she'd probably be out of prison already. Okay.  
6 She already has some time served. If she went in today she  
7 would be able to accumulate more time towards her sentence  
8 awaiting on her sentencing. She'd be able to get in and out  
9 of the system because she has been doing pretty well. We did  
10 have that one issue where she was revoked from her - her  
11 ankle monitor from her own recognizance release while she had  
12 been out pending trial. What I don't want to see is that  
13 happen again. I - s we have the public safety argument but  
14 you also have the look, lets get some time, lets get this  
15 going because all that's going to happen down the road with a  
16 mandatory two year prison sentence is eventually she's going  
17 to go away regardless. So even if you logically look at it  
18 public safety aside, eventually she's going in. Why not now.  
19 Lets get that time clicking and get it done. It's an old  
20 sentence and she really needs to move on with her life. She's  
21 - this is nothing against her personally, it's just  
22 unfortunate the way the law is written. We don't have any  
23 discretion on it. So with those two concerns, the public  
24 safety concern, this is the second felony conviction for

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1 driving under the influence, it's just unacceptable to leave  
2 her out on that and also with lets just get this time going  
3 for her so she can get in and out of prison and get on with  
4 her life after that.

5 THE COURT: Thank you. Mr. Sears.

6 MR. SEARS: Your Honor she's presented no threat to  
7 the social structure of the community while she's been out  
8 pending this trial. It's been two and a half years Your  
9 Honor. So I'm not sure that I buy the public safety threat.  
10 With respect to the time served, I'm not sure any of us know  
11 exactly how the State is going to calculate time served on a  
12 fourth offense. Time served may come off the back end  
13 instead of off the front in which case it really won't do her  
14 any good for her early parole date and so I'm not sure  
15 there's any benefit to her putting more time into the system.  
16 I did ask her if she had land line. She indicated she does  
17 not. She has a cell phone. She does have substantial health  
18 issues with her heart that frankly are exacerbated by  
19 drinking and she can't drink. So that's one of the  
20 rationales for her continuingly remaining to be clean. She  
21 knows what will happen. As the Court saw she's got a lot of  
22 support in the community. They were here to help her. They  
23 will support her as well and accordingly we would ask the  
24 Court to go ahead and leave her out til the twenty-first when

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1 final sentence is determined.

2 THE COURT: Anything further?

3 MR. WHEABLE: Only that you now the Nevada  
4 Legislature has mandated that this is a prison mandatory  
5 sentence and so we shouldn't be wasting our time in keeping  
6 her outside of custody. She's been found guilty by the - by  
7 her peers. We need to forward with that.

8 THE COURT: Mr. Sears is your client still employed?

9 MR. SEARS: No Your Honor. Her mother had a massive  
10 heart attack in Idaho Your Honor and that was the rationale  
11 for the stop of working.

12 MS. SINDELAR: She's still in I. C. U.

13 MR. SEARS: Okay.

14 MS. SINDELAR: She's been there for five days.

15 MR. SEARS: So you've been going up there and seeing  
16 her?

17 MS. SINDELAR: Yea.

18 MR. SEARS: She's been traveling to Idaho to visit  
19 her mom in the I. C. U. Your Honor.

20 THE COURT: So this decision mentioned that she has  
21 the ability to get a land line, how long does that take? I  
22 have no idea. Do you know?

23 MR. SEARS: I don't. I've been told it's a couple of  
24 days. I think when I got my land line for the - for the

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1 office it depends on whether or not the house is wired. Do  
2 you have a land line wire? There is a land line wired to the  
3 house and she has the money to pay for it.

4 THE COURT: All right. I'm just looking at - I'm just  
5 - there's something in the file that I want to find. Okay.  
6 Here's what I'm going to do. First of all with respect to  
7 the second part of the argument that it's an old case and she  
8 would have the opportunity to accumulate time, certainly  
9 that's - that wouldn't be neces - I mean that's - that's a  
10 nice gesture but I think this is a cat B and my understanding  
11 is category Bs they apply it to the back end.

12 MR. SEARS: The back end.

13 THE COURT: Unless that's changed. And certainly that  
14 would be something for her to consider if it was different.  
15 The public safety issue is an issue and here's why, because  
16 as Mr. Wheable said the context of the case has changed.  
17 There's now a conviction, a second felony and it kicks in  
18 that - that statute in Nevada and granted even in light of  
19 health issues, it's a little bit, there's - there's a concern  
20 there so, I'll tell you what I'm going to do. I - I - I'm  
21 aware of a - we use it through Juvenile Probation. It's  
22 called Robo-Cuff and here's how it works. A person because  
23 here - because - because the only way I would consider  
24 allowing Miss Sindelar to be out is if I know she can't leave

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1 and go anywhere. So she still has the ability to take care  
2 of whatever business she may have but I know where she's at  
3 at all times and know that she's not drinking, especially not  
4 drinking and driving and Robo-Cuff is a situ - is a - is a  
5 type of a program that pegs to the person's home hand line  
6 and randomly throughout the day or night will call and the  
7 person basically about two minutes to get there and if  
8 they're not and there's a voice recognition thing and if it  
9 doesn't happen the we're immediately identified and - and  
10 contacted. But I don't have it set up yet.

11 MR. WHEABLE: May I be heard briefly?

12 THE COURT: Go ahead.

13 MR. WHEABLE: I - I do have a little concern. See -  
14 I the family things are tough and if she's been going to  
15 Idaho to be with her mom, we had no idea she was even out of  
16 the jurisdiction. None. Okay. And now she's probably going  
17 to want to see her mom again so that means she's leaving the  
18 land line so I just have some concerns how that whole thing's  
19 going to play and whether we can trust that the system is  
20 going to work when it is finally established, you know, so I  
21 just -

22 THE COURT: I understand.

23 MR. WHEABLE: - to make that record.

24 THE COURT: Well don't think there's been any

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1 restriction on her going to visit her mom or do anything like  
2 that.

3 MR. SEARS: If I can supplement too Your Honor.

4 THE COURT: Go ahead.

5 MR. SEARS: She has no car anymore

6 THE COURT: Yea.

7 MR. SEARS: So.

8 THE COURT: Yea.

9 MR. SEARS: So she's been relying on other people for  
10 rides.

11 THE COURT: Okay. Well here's - okay, so here's what  
12 I'm going to do. I'm going to give you an opportunity to see  
13 if you can get the Robo-Cuff set up Mr. Sears.

14 MR. SEARS: Okay.

15 THE COURT: But in the meantime and - and - and my  
16 understanding is and I - I have the website or Juvenile  
17 Probation has the website, they haven't used it in a while  
18 and it's really a matter of logging on, getting an account,  
19 putting in the number and then the person gets voice  
20 recognition set up because if that's - and - and it can be  
21 programmed to call every hour. I mean, it can be - it can -  
22 it can be that fantastic of a contact system and it's only a  
23 couple bucks a day.

24 MR. SEARS: Okay.

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1 THE COURT: That's the difference between Scram and  
2 those types of things which no one can afford to do. So it's  
3 only couple bucks, I mean, at last we - I think that last we  
4 used it was two dollars a day or something like that, and it  
5 might be five now, I don't know. I don't know what it is. But  
6 what I'm going to do is this is I'm going to allow Mr. Sears  
7 to get that information and have an opportunity to get that  
8 because lets face it, and this is the flip side of it,  
9 because the statute is clear. It's mandatory prison. There  
10 is not an option and so that can weigh very heavily on a  
11 person's conscience and what's going to happen to them and so  
12 to the one extent I want to allow Miss Sindelar an  
13 opportunity to get her affairs in order but on the other hand  
14 I have to protect public safety so here's what it's going to  
15 do. What I'm going to do is she's going into custody now.  
16 Mr. Sears can start working diligently Robo-Cuff thing.  
17 Juvenile told me they thought it takes a day or two is all to  
18 get it set up once there's a hand - once there's a land line.  
19 And then once you have it set up Mr. Sears, you can present  
20 the information of what you've got to Mr. Wheable and Miss  
21 Gianoli, you guys can come up with what you think is fair for  
22 how often the calls are made and you can learn about how what  
23 happens - what we - what has to be done to say okay, this  
24 person is getting a ride to the doctor and so we need to

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1 unhook it that day or whatever. And then once you have that  
2 set up, I'll - I'll - I'm not - I'm not opposed to allowing  
3 that.

4 MR. SEARS: Okay. Thank you Your Honor.

5 THE COURT: All right. So, but in the meantime, just  
6 four our own sake and - and plus obviously for Miss Sindelar,  
7 she's been out for a while and this is obviously, this is a  
8 shocking day I'm sure so I don't want to have her slip up for  
9 that so she'll be remanded into custody. We'll get that  
10 information, you can start putting it together and then give  
11 her a chance to do those things.

12 MR. SEARS: I will do that.

13 THE COURT: All right. Anything further?


14 MR. WHEABLE: No Your Honor.

15 THE COURT: All right. Court will be in recess.

16 BAILIFF: All rise.

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1 ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of  
2 Appellant Procedure, I acknowledge that this is a rough draft  
3 transcript, expeditiously prepared, not proofread, corrected,  
4 or certified to be an accurate transcript.

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7 LINDA DAVIS  
8 Court Transcriber  
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