

IN THE COURT OF COMMON PLEAS
OF NORTHAMPTON COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA, :

:

vs.

:No.

[REDACTED]

:

[REDACTED] [REDACTED] [REDACTED] :

:

Defendant :

PRELIMINARY HEARING

Taken in the offices of District
Justice Roy Manwaring, II, 402 E. Broad Street,
Bethlehem, Pennsylvania, on [REDACTED], [REDACTED]
[REDACTED], 2013, commencing at 3:15 p.m., before
Kimberly L. Gibney, RPR, Registered Professional
Reporter.

BEFORE: Roy Manwaring, II, District Justice

APPEARANCES:

Officer [REDACTED] F. Manfredo
Bethlehem Police Department

-- For the Commonwealth

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1 THE COURT: This is the matter
2 of Commonwealth versus [REDACTED] [REDACTED] [REDACTED]

3 THE WITNESS: Exactly.

4 THE COURT: Matter scheduled for
5 preliminary hearing this date pursuant to
6 charges filed against the defendant by the
7 Bethlehem City Police Department. Those charges
8 were filed on or about October 16th, 2013, and I
9 believe the criminal charge is one count of
10 DUI general impairment, refusal, under
11 3802(a)(1). The remaining charges are, I
12 believe, summaries.

13 Attorney Madsen, you represent
14 Mr. [REDACTED]

15 MR. MADSEN: Yes, Judge.

16 THE COURT: And Mr. [REDACTED] is
17 going to exercise his right to a preliminary
18 hearing?

19 MR. MADSEN: Yes, Judge.

20 THE COURT: All those
21 testifying, please stand and raise your right
22 hand.

23 (Witnesses sworn.)

24 Please be seated. The court
25 will hear from the Commonwealth.

1 OFFICER MANFREDO: I am employed
2 by the City of Bethlehem as a police officer
3 where I've been employed for over ten years.

4 On the date of the violation,
5 which was the 11th of October of 2013, I was
6 working day shift in a marked patrol vehicle in
7 full uniform in Northampton County.

8 THE COURT: What was the date?

9 OFFICER MANFREDO: 10/11 of '13
10 at approximately 7:50 in the morning.

11 I was in the area of the 500
12 Block of East Broad Street enforcing inspection
13 violations on vehicles that were traveling
14 westbound.

15 At approximately at that time I
16 observed a gray Ford Escort, 1998, with
17 Pennsylvania Registration HCPE3217 traveling
18 westbound in the 500 Block of East Broad Street
19 with an expired inspection and emissions
20 stickers that were expired July of 2013.

21 I effected a traffic stop on the
22 vehicle in the 200 Block of East Broad Street.
23 Made contact with the operator, [REDACTED] -- I
24 don't want to butcher your name.

25 MR. MADSEN: [REDACTED]

1 OFFICER MANFREDO: -- who is
2 seated to the right of counsel here. He was the
3 lone occupant of the vehicle, and he was the
4 driver of the vehicle.

5 He provided the registration for
6 the vehicle, the insurance and also an Arizona
7 driver's license. He stated that the vehicle
8 belonged to his girlfriend, which was a Danielle
9 [REDACTED] and he had lived in Pennsylvania now for
10 about a year and a half.

11 I asked him if he ever changed
12 his license over to Pennsylvania, and he stated
13 no. While I was speaking with [REDACTED] I could
14 smell a moderate odor of alcoholic beverage
15 emitting from his breath. He had glassy,
16 bloodshot eyes and was slow of speech.

17 He admitted he drank some
18 alcohol last night. I administered a battery of
19 field sobriety tests that he performed poorly. I
20 attempted to administer a PBT, but he refused to
21 submit due to just using mouthwash. And he
22 stated before he would submit that he wanted to
23 call his girlfriend who was an attorney before
24 submitting to any test.

25 Based on his poor performance of

1 the field sobriety tests that I administered, I
2 placed him in custody. And upon doing so,
3 [REDACTED] stated he was -- he had a little bit of
4 an attitude towards myself. He stated that I
5 was making a big mistake for arresting him. I
6 asked him for permission to remove the car to a
7 legal parking spot so it would not be towed, and
8 I secured the car.

9 I ran his Arizona license, which
10 was valid. And then I also ran him for a
11 Pennsylvania license, which I usually do if
12 someone's from out of state. And when I ran him
13 through NCIC, Operator No. [REDACTED] returned
14 that it was expired as of 1/4 of 2013.

15 I transported [REDACTED] to
16 headquarters where I obtained a chemical testing
17 form because the DUI Center was closed at that
18 time. I read him the 1547 chemical test
19 warnings, and [REDACTED] refused to submit to the
20 test or sign the paper. And I placed him into
21 the cell block, then I called his girlfriend to
22 come pick him up.

23 I did place the ignition key in
24 the -- our evidence room for safekeeping. I
25 have my certificates which have to do with the

1 field sobriety testing. I also attended an
2 update for field sobriety test. And this is the
3 refusal form.

4 MR. MADSEN: Thank you.

5 THE COURT: You can just leave
6 those on the bench there.

7 OFFICER MANFREDO: Based on my
8 years of experience, Judge, having to do with
9 dealing with people that are under the influence
10 or impaired, it was in my opinion that he was
11 under the influence, that he was incapable of
12 safe driving. That's all I have.

13 THE COURT: Cross?

14 CROSS-EXMINATION

15 BY MR. MADSEN:

16 Q. Officer, how many DUI arrests have you
17 made?

18 A. Total or?

19 Q. Total.

20 A. I would say close to probably 500.

21 Q. How many of them have you taken in for
22 blood and then they were under the legal limit?

23 A. That, I don't know right off the top of
24 my head.

25 Q. Rough estimate?

1 A. Maybe two.

2 Q. And where were you parked that you saw
3 my client first?

4 A. I was parked in the middle of the road
5 in the safety zone.

6 Q. And which way were you facing?

7 A. I was facing eastbound.

8 Q. So was there any shrubbery, anything
9 that could have blocked your view?

10 A. No.

11 Q. And were there any vehicles in [REDACTED] of
12 him when he drove by?

13 A. There may have been. It was a Friday
14 morning.

15 Q. But you're not sure?

16 A. No.

17 Q. Any vehicles following him?

18 A. I would suppose so because it was a
19 Friday morning, but I'm not sure.

20 Q. And you stopped him for an invalid
21 inspection sticker?

22 A. That's correct.

23 Q. So you pulled out immediately to follow
24 him?

25 A. Yes.

1 Q. How long did you follow him before
2 stopping?

3 A. About the time I got turned around and
4 caught up to him, three blocks I think it was.

5 Q. And you never saw him weaving?

6 A. No.

7 Q. Never saw him weave over a line?

8 A. No.

9 Q. Never straddled a line?

10 A. No.

11 Q. Didn't swerve?

12 A. No.

13 Q. Make any turns?

14 A. No.

15 Q. He wasn't drifting at all?

16 A. Not that I recall.

17 Q. He didn't hit anything?

18 A. No.

19 Q. Did it look like he was in danger of
20 hitting anything?

21 A. I don't believe so.

22 Q. And he didn't display any problems
23 stopping when you pulled him over?

24 A. No.

25 Q. And he wasn't stopping for no reason as

1 you were following him?

2 A. No.

3 Q. And he didn't speed up for any unknown
4 reason?

5 A. I don't believe so.

6 Q. He didn't slow down for any unknown
7 reason?

8 A. No.

9 Q. And he wasn't driving in the [REDACTED]
10 lane?

11 A. No.

12 Q. Wasn't following anybody too closely?

13 A. No.

14 Q. Didn't change lanes at all?

15 A. No.

16 Q. Were his headlights on?

17 A. I don't know.

18 Q. How long did it take for him to stop
19 once you turned your lights on?

20 A. I threw my lights on at Broad and
21 Linden, and he stopped within half a block.

22 Q. So there's nothing about his driving
23 itself which led you to believe he was
24 intoxicated?

25 A. No.

1 Q. So when you pulled him over, how far
2 behind him did you stop your car?

3 A. I would say ten feet.

4 Q. And when I was involved with the police,
5 they told us to pull our cars behind them at an
6 angle. Did you do that?

7 A. I think so.

8 Q. Why did you do that?

9 A. Just in case any vehicles hit my patrol
10 vehicle, so they could hit the patrol vehicle
11 and not veer off into me and the other car.

12 Q. It's also so you can use the car for
13 cover if you want to.

14 A. Yes.

15 Q. For your safety.

16 A. Yes.

17 Q. And you're also told to keep yourself
18 between the suspect and the vehicle for safety
19 reasons.

20 A. Yeah.

21 Q. And you did that in this case?

22 A. Yes.

23 Q. And so then you approached the
24 vehicle?

25 A. Yes.

1 Q. And did you ask him if he knew why he
2 was pulled over?

3 A. I advised him why he was pulled over.

4 Q. And what did you tell him?

5 A. For the inspection.

6 Q. What did he say?

7 A. I don't remember.

8 Q. And did you ask him for his paperwork?

9 A. Yes, I did.

10 Q. Did he have any problem giving that to
11 you?

12 A. I believe that he couldn't find the
13 insurance card right away, valid insurance card
14 right away, I believe.

15 Q. Is it because it was lost or because he
16 was fumbling?

17 A. I don't remember.

18 Q. And you asked him to turn off the car at
19 some point?

20 A. I don't remember if I told him to turn
21 it off or he turned it off before he got out of
22 the vehicle.

23 Q. So either way, you never observed any
24 troubles he had turning it off?

25 A. No.

1 Q. And he never gave you any false
2 information?

3 A. No.

4 Q. He never gave you any inaccurate
5 information?

6 A. No.

7 Q. His eyes weren't bloodshot, were they?

8 A. Yes, they were.

9 Q. They were. At what point did you begin
10 to suspect that he might have been drinking?

11 A. When I had first contact with him.

12 Q. And why is that?

13 A. The smell, the moderate odor.

14 Q. Where was the smell emanating from?

15 A. From his person.

16 Q. So when you got him out of the car, did
17 the smell dissipate or did it stay the same?

18 A. Stayed the same.

19 Q. So different types of alcohol have
20 different smells, right?

21 A. I believe so.

22 Q. Could you tell what type of alcohol it
23 was?

24 A. To me it smelled like beer.

25 Q. And beer has less alcohol than wine,

1 right?

2 A. I think regardless how much --

3 THE COURT: I think it depends
4 on the beer and the wine, so it's actually an
5 unfair question.

6 Can you be more specific?

7 MR. MADSEN: I'll skip the
8 question, Judge.

9 Q. You asked him if he had any alcohol?

10 A. On him?

11 Q. If he had drank any alcohol?

12 A. Yes, I did.

13 Q. What did he answer?

14 A. I believe he stated that he drank last
15 night.

16 Q. And did he say how much over what period
17 of time?

18 A. I believe he gave me the number of five
19 beers.

20 Q. So you had him out of the car at that
21 point?

22 A. That was in the car.

23 Q. So you get him out of the car at some
24 point?

25 A. Correct.

1 Q. And then you decide that you have to
2 give him a field sobriety test?

3 A. Yes.

4 Q. Why didn't you take him in to give him a
5 blood test?

6 A. Because I give a field sobriety test
7 before I'm going to arrest anybody.

8 Q. Did you believe you would have been
9 authorized to arrest him prior to the field
10 sobriety test?

11 A. I would think so.

12 Q. So was he free to leave before taking
13 the field sobriety test?

14 A. No, he was not.

15 Q. So at that point you were going to
16 arrest him either way?

17 A. No, I was not.

18 Q. But he wasn't free to leave?

19 A. No.

20 Q. So you told him he had to take the field
21 sobriety test.

22 A. I asked to submit to the test.

23 Q. And what was his response?

24 A. He submitted to the test other than the
25 portable breath test.

1 Q. Did he ask for an attorney at that time?

2 A. For which?

3 Q. Before he took any field sobriety test.

4 A. No, he did not.

5 Q. Did he didn't put up a fight with you at
6 that point?

7 A. The only time he put up a fight was when
8 I went to administer the PBT.

9 Q. How long after you completed the field
10 sobriety test was that?

11 A. After the PBT --

12 Q. After all the FSTs were completed?

13 A. I would say it took about five, seven
14 minutes for the sergeant to come with the
15 portable breath test.

16 Q. How long after the initial stop was
17 that?

18 A. I stopped him at 7:53, and --

19 Q. Well, how long do you think it took him
20 to take the field sobriety test?

21 A. I would say maybe, at the most, seven
22 minutes.

23 Q. So you asked for the PBT about 58
24 minutes after the initial stop?

25 A. I asked for the PBT before I started

1 the -- before I started the field sobriety test.
2 Then I did the field sobriety test. Then we had
3 to wait another five or so minutes until the PBT
4 got there, so 13 minutes.

5 Q. Throughout this whole time did he ever
6 ask if he had the right to remain silent?

7 A. No, he did not.

8 Q. Did he ever ask if he was under
9 arrest?

10 A. No, he did not.

11 Q. Did he ever ask if he was being
12 detained?

13 A. No, he did not.

14 Q. So what order did you give these tests?

15 A. Started with the HGN.

16 Q. And so where was Mr. [REDACTED] when you
17 started with the HGN?

18 A. On the sidewalk.

19 Q. And in relation to the cruiser, where
20 was he?

21 A. He was right by his bumper of his car.

22 Q. All right. So he was facing east or
23 west?

24 A. He was facing the east.

25 Q. He was facing eastbound, all right. And

1 you're not licensed in any way to diagnose eye
2 function?

3 A. No.

4 Q. To determine the causes of nystagmus?

5 A. No.

6 Q. And you've never been qualified as an
7 expert?

8 A. No.

9 Q. You did receiving training in nystagmus
10 somewhere, though, right?

11 A. Yes, I did.

12 Q. Where was that? Can we list them?

13 A. That was in Bucks County when I first
14 took the field sobriety test. I'm not definite
15 on the date.

16 Q. How many hours was this training?

17 A. I don't remember how many hours it was.
18 It's on the -- it was eight hours a day, I
19 believe.

20 Q. But you got the same training as every
21 other officer?

22 A. Yes.

23 Q. So you don't have any specialized
24 training relative to other officers?

25 A. I have specialized training in ARIDE,

1 which is another 16 hours.

2 Q. And what is that exactly?

3 A. Advanced Roadside -- can I just look at
4 the --

5 THE COURT: Advanced Roadside
6 Impaired Driving. November 9-10, 2010.

7 MR. MADSEN: Thank you, Judge.

8 Q. So when you gave the HGN, did you give
9 that from a manual?

10 A. From what I learned from the school.

11 Q. Do you carry a manual in the car?

12 A. No, I do not.

13 Q. So you started by telling the defendant
14 to put his feet together?

15 A. I told him to stand up straight.

16 Q. Why don't you give me all the
17 instructions as you gave them to him.

18 A. Told him to stand up straight, keep his
19 head still. Held up a pen. Told him to look at
20 the top of the pen. Keep his head still.
21 Follow the pen with his eyes only, which he did.

22 Q. Did you demonstrate that to him at all?

23 A. I held a pen up.

24 Q. To yourself. Did you do it in [REDACTED] of
25 yourself at all?

1 A. No, I did not.

2 Q. So you told him to keep his head
3 still?

4 A. Yes.

5 Q. Did he keep his head still?

6 A. Yes, he did.

7 Q. Did he keep his arms at his sides?

8 A. Yes.

9 Q. Did he not sway -- was he swaying at
10 that point?

11 A. I do not recall if he was.

12 Q. So as you were eyeballing him for the
13 test, how far away from him were you?

14 A. I was -- if I could show you.

15 Q. Show me with your hand, I guess.

16 A. I was like this and he was about right
17 there.

18 THE COURT: For the record,
19 we're talking about two to three feet. Two feet
20 in [REDACTED] of you?

21 OFFICER MANFREDO: A foot.

22 Q. So he was a foot in [REDACTED] of you, face
23 to face?

24 A. Yes.

25 Q. Did you check to see if his pupils were

1 the same size?

2 A. Yes, I did.

3 Q. Did you ask if he was wearing contact
4 lenses?

5 A. Yes, I did.

6 Q. What was his answer?

7 A. No.

8 Q. Were his pupils the same size?

9 A. Yes, they were. Would you like to see
10 the DUI investigative report? All those
11 questions are on there.

12 Q. We'll go through the questions. I'll
13 look at them later. Thank you.

14 So which eye did you start with
15 first?

16 A. Started with the right eye -- well, my
17 right his left.

18 Q. How far away were you holding the pencil
19 or light?

20 A. Approximately, say, half -- there was
21 eight to six inches.

22 Q. You were holding it six inches away from
23 his eyes?

24 A. Yes.

25 Q. How far did you go in each direction?

- 1 A. The required amount.
- 2 Q. And what is that amount?
- 3 A. To follow for which test?
- 4 Q. For the HGN.
- 5 A. For which part of the HGN?
- 6 Q. At the most, how far did you go?
- 7 A. Maximum deviation.
- 8 Q. And how many inches is that?
- 9 A. Which is (Indicating.) I would say
10 maybe six inches to his left or right.
- 11 Q. You know the proper distance for the
12 test is to hold the pencil or whatever object 12
13 to 15 inches away, right?
- 14 A. Yes.
- 15 Q. And that would be impossible to do
16 because your face was 12 inches away.
- 17 A. I'm estimating. I'm not exactly sure.
18 I did it the same way I always do it.
- 19 Q. But you're sure it was six inches away.
- 20 A. I'm not sure.
- 21 Q. How many passes did you make?
- 22 A. For which part of the test?
- 23 Q. Each part.
- 24 A. Two passes for each eye.
- 25 Q. And how many degrees did you observe the

1 nystagmus at?

2 A. It was prior to 45.

3 Q. How do you know that?

4 A. The maximum is 45 degrees. It was prior
5 to that.

6 Q. How do you know what 45 degrees was?

7 A. That is when his eye is all the way
8 either to the right or left.

9 Q. So when his eye was all the way to the
10 right, could you see any white of his eye
11 between his iris and the side of his eyelid?

12 A. No, I could not.

13 Q. So you were holding the tip of this
14 object level with his eyes, below them, above
15 them?

16 A. Slightly above.

17 Q. And nystagmus occurs naturally in
18 people, is that right?

19 A. For some, yes.

20 Q. And disease can cause it as well?

21 A. Yes.

22 Q. And do you know if the flu was one of
23 those?

24 A. I do not know.

25 Q. How about hypertension?

1 A. I do not know.

2 Q. Vertigo?

3 A. I don't know.

4 Q. Osteosclerosis?

5 A. I do not know.

6 Q. Sunstroke?

7 A. I do not know.

8 Q. Do you know the consumption of caffeine
9 can cause it?

10 A. I'm not a doctor, I don't know.

11 Q. How about aspirin, do you know that?

12 A. I'm pretty sure aspirin would not.

13 Q. How about nicotine, can nicotine cause
14 it?

15 A. I don't know.

16 Q. Do you know if he had a cigarette before
17 you stopped him?

18 A. I don't know.

19 Q. Do you know if he had coffee before you
20 stopped him?

21 A. I do not know.

22 Q. Do you know if he had any soft drink
23 before you stopped him?

24 A. I have no idea.

25 Q. Do you know whether eye strain can cause

1 nystagmus?

2 A. Eye strain?

3 Q. Looking at a computer too long, for
4 example?

5 A. I don't know.

6 Q. How about circadian rhythm, do you know
7 whether that can cause it?

8 A. I don't know.

9 Q. How about a hangover?

10 A. I have no idea.

11 Q. Do you consider yourself an expert in
12 this test?

13 A. No, I do not.

14 Q. Can you explain to us exactly what
15 nystagmus is?

16 A. The involuntary bouncing of the eye.

17 Q. So what does that look like?

18 A. If you're staring at an object and your
19 eyes bounce.

20 Q. And you can't tell me at exactly what
21 angle you started to realize he had nystagmus?

22 A. No, I do not. I know it was present at
23 the maximum deviation.

24 Q. So was there smooth pursuit?

25 A. No, there was not.

1 Q. In either eye?

2 A. No.

3 Q. In which eye was there nystagmus in
4 prior to 45 degrees?

5 A. Both of them.

6 Q. And did each eye exhibit nystagmus at
7 the maximum deviation?

8 A. Yes.

9 Q. So you're saying he failed every single
10 part of this test?

11 A. Yes, he did.

12 Q. So if somebody has nystagmus, can they
13 even tell themselves?

14 A. I don't know.

15 Q. Do you know whether it affects your
16 vision?

17 A. I would think it would.

18 Q. So you think that it impairs somebody's
19 ability to drive if they have nystagmus?

20 A. No.

21 Q. But you think it impacts the vision?

22 A. It could. I'm not a doctor. I don't
23 know.

24 Q. What test did you do next then?

25 A. The walk and turn.

1 Q. Did you conduct this from a manual or
2 you have no manual in the car?

3 A. I have no manual in the car.

4 Q. And he's supposed to walk a certain
5 number of steps in one direction and then a
6 certain number of steps back in another
7 direction?

8 A. That's correct.

9 Q. Can you give me the instructions exactly
10 as you gave them to him?

11 A. I told him, the next check I'm going to
12 check his balance. I showed him how I want him
13 to stand by placing one foot on an imaginary
14 line. His left foot on the imaginary line. His
15 right foot in [REDACTED] of it, touching heel to toe,
16 standing with his arms at his side.

17 I advised him to stay like that
18 until I'm finished explaining the test and ask
19 if he understands.

20 Q. Did you demonstrate the test for him at
21 all yourself?

22 A. Yes, I did.

23 Q. How many steps did you walk?

24 A. I walked three and then I stayed to
25 nine.

1 Q. How long was this imaginary line that we
2 were walking on?

3 A. However long it takes him to walk nine
4 steps.

5 Q. And where was this? Was it on the
6 sidewalk?

7 A. On the sidewalk.

8 Q. In the cracks on the sidewalk during
9 this whole thing?

10 A. I think so.

11 Q. So he took it when you asked him to take
12 the test?

13 A. Yes.

14 Q. He didn't start before you asked him to
15 take it?

16 A. No.

17 Q. He wasn't loud, rude or violent or
18 anything at that time, was he?

19 A. No.

20 Q. And you didn't threaten him or trick him
21 into taking it, he took it voluntarily?

22 A. Yes.

23 Q. The point of the test is to give you
24 some idea about foot coordination, balance and
25 his ability to understand instructions?

1 A. Correct.

2 Q. So this is a subjective test, right?

3 A. Yes.

4 Q. It's your opinion whether he passes or
5 fails it?

6 A. Well, there's certain clues --

7 Q. Okay.

8 A. -- that if he exhibits.

9 Q. How many clues is a pass or how many
10 clues is a fail?

11 A. It's subjective, like you said.

12 Q. So it's different for different
13 individuals or different for different officers
14 or both?

15 A. I would think both.

16 Q. So there's no form or chart by which you
17 determine whether he passed or failed?

18 A. Yes. There is a chart of what are the
19 clues.

20 Q. So when you give instructions, it's
21 important he understands the instructions,
22 right?

23 A. That's correct.

24 Q. Because if you give instructions, he
25 doesn't understand the instructions, he's not

1 doing the test as you think you're giving it to
2 him?

3 A. That's why I ask if he understands
4 before he starts.

5 Q. So besides -- you already said you have
6 500 DUI arrests?

7 A. I would estimate that.

8 Q. And besides that you've stopped people
9 for routine traffic violations.

10 A. Very often, yes.

11 Q. And a lot of these people are sober?

12 A. Yes.

13 Q. And they weren't being investigated for
14 anything as serious as drunk driving?

15 A. No.

16 Q. And for the most part are not in any
17 jeopardy of going to jail, are they?

18 A. I don't think so.

19 Q. And despite these sober people who have
20 no possibility of going to jail, a lot of them
21 are nervous?

22 A. Correct.

23 Q. And sometimes their hands shake?

24 A. Yes.

25 Q. And sometimes it's simply because of

1 anxiety or a fear?

2 A. Yes.

3 Q. Some of them even have difficulty
4 understanding you speaking to them clearly?

5 A. I would suppose.

6 Q. So when you ask my client to take this
7 test it was no secret he was under investigation
8 for DUI, was it?

9 A. He was -- I was administering a field
10 sobriety test. At that point he wasn't under
11 arrest. He was being investigated.

12 Q. But this is much more serious than most
13 of your traffic stops.

14 A. I would say so.

15 Q. And even the people that are stopped for
16 a simple non-serious traffic stops can be
17 frightened or nervous?

18 A. Correct.

19 Q. And that affects their ability to listen
20 to you sometimes?

21 A. Sometimes.

22 Q. And this is the first time you saw my
23 client, is that correct?

24 A. That's correct.

25 Q. And altogether you were with him for,

1 what, an hour and a half before he left your
2 custody or how long?

3 A. I would say about an hour, hour and a
4 half, somewhere in that range.

5 Q. And all the information you got
6 regarding his background and health is contained
7 in your police reports?

8 A. Yes.

9 Q. So you don't know of any health
10 conditions that he has?

11 A. I asked when I put him in the cell block
12 and he stated no.

13 Q. And people with poor health could fail
14 these tests, right?

15 A. I would think so.

16 Q. A person with naturally poor
17 coordination or balance would fail the test?

18 A. Perhaps.

19 Q. I would fail the test. Do you think I
20 would fail the test?

21 A. I don't know.

22 Q. Well, you're not supposed to give this
23 to anybody over 50 pounds overweight, are you?

24 A. I don't know about that.

25 THE COURT: The walk and turn?

1 MR. MADSEN: Yes.

2 Q. You never heard of a large thigh
3 syndrome, anything like that?

4 A. I consider myself overweight and I can
5 do it just fine with 50, 40 pounds of gear on.

6 Q. But we can both agree somebody that's
7 fearful and anxious can have their balance
8 affected?

9 A. Perhaps.

10 Q. So the straight line you asked my client
11 to walk down was an indeterminate length?

12 A. Correct.

13 Q. And there was no actual line?

14 A. No.

15 Q. And you've given this test multiple
16 times before?

17 A. Yes.

18 Q. And I imagine if you have a line to use,
19 you use that line?

20 A. That's correct.

21 Q. Do you have chalk available in the cars?

22 A. No, I do not.

23 Q. Do you have anything you can draw a line
24 with available?

25 A. (Indicating.)

1 Q. What was my client wearing at that time?

2 A. I believe he had a pair of pants and a
3 jacket. A shirt, I assume, under the jacket.

4 Q. And what was on his feet?

5 A. I don't remember if they were like dress
6 type shoes or sneakers. I don't remember.

7 Q. So you can't tell us exactly what were
8 on his feet?

9 A. No.

10 Q. Can you tell us -- he had shoes on his
11 feet?

12 A. Yes, he had shoes.

13 Q. You would agree that different types of
14 footwear can affect this test?

15 A. Could.

16 Q. So oversized boots would affect the test?

17 A. Yes.

18 Q. Undersized dress shoes would affect the
19 test?

20 A. Perhaps.

21 Q. So you asked him to walk nine steps in
22 each direction.

23 A. Yes.

24 Q. So in his first seven steps, how many
25 did he get correct?

1 A. He kept his balance. He didn't start
2 too soon. He stopped walking on the first set
3 of nine. He missed the heel to toe on the first
4 set of nine. He stepped off the line once. And
5 he did not turn how I showed him to.

6 Q. At how many steps did he miss his heel
7 to toe?

8 A. I don't remember.

9 Q. How much did he miss it by?

10 A. It was not heel to toe, I know that.

11 Q. But you can't tell me how much he missed
12 it by?

13 A. It was not how I instructed him to do.

14 Q. And how much did he step off of this
15 imaginary line by?

16 A. He stepped off the line, off the
17 straight line that he was walking.

18 Q. At what step was that?

19 A. I don't recall which step that was
20 either.

21 Q. You didn't ask him to stop the test,
22 though, did you?

23 A. No, I did not.

24 Q. And he didn't ask to stop the test?

25 A. No, he did not.

1 Q. When he gets to the first end of nine
2 steps, what happens, he turns around?

3 A. I showed him when I explained the test
4 how to turn.

5 Q. Okay.

6 A. And then replace that foot back on the
7 line and then take heel-to-toe steps up the
8 line.

9 Q. You asked him to -- he's facing one
10 direction and then you ask him to turn around
11 after taking his eye off the imaginary line and
12 place his foot back on the imaginary line?

13 A. He keeps his eyes down on his feet the
14 entire time. So when he takes nine, on his
15 ninth step he keeps his [REDACTED] foot planted and
16 turns by taking a series of small steps with his
17 right foot. He places that foot back on the
18 line and then places --

19 Q. And he did that? He turned around
20 well?

21 A. He turned around, but not as I showed
22 him.

23 Q. And how about the second set of nine
24 steps, what happens there?

25 A. He only took eight steps and he missed

1 the heel to toe once.

2 Q. So he missed the heel to toe once on the
3 second set of steps?

4 A. Correct.

5 Q. And he only walked eight steps?

6 A. That's correct.

7 Q. But other than that everything was fine?

8 A. Yes.

9 Q. So he missed a total of two steps?

10 A. He had five clues total.

11 Q. But he missed a total of two steps?

12 A. Yes.

13 Q. Out of 18 steps?

14 A. Correct.

15 Q. So that's essentially he walked 90
16 percent of the steps right approximately?

17 A. Approximately.

18 Q. And so this sidewalk had cracks in it,
19 you said, previously?

20 A. What is that?

21 Q. The sidewalk had cracks in it?

22 A. Just normal cracks that a sidewalk has.

23 Q. So it wasn't exactly a flat surface?

24 A. It was a flat surface. It just had the
25 normal cracks that a sidewalk has.

1 Q. Do you think people hungover would do
2 poorly on this test?

3 A. Perhaps.

4 Q. The next one we have here is the one-leg
5 stand, correct?

6 A. That's correct.

7 Q. And you didn't give this test from a
8 manual either?

9 A. No, I did not.

10 Q. And this test, can we both agree that
11 you're not supposed to give this to fat
12 people?

13 A. It's a test for people -- if a person
14 has problems with back, legs, which he did not
15 state that he has.

16 Q. But you didn't write that down in your
17 report.

18 A. I wouldn't have gave the test if he
19 would have said that.

20 Q. And it's not supposed to be given to
21 people over 60 years old either.

22 A. I suppose.

23 THE COURT: Is that over 60?

24 MR. MADSEN: Yes.

25 Q. And not supposed to be given to people

1 that may affect their balance?

2 A. Correct.

3 Q. And this is typical for sober people
4 too, isn't it?

5 A. For some, not -- a very minimal amount.

6 Q. A very minimal amount?

7 A. Yes.

8 Q. So you're trained -- you have National
9 Highway Traffic Safety Administration training,
10 right?

11 A. I believe that's who administered that,
12 yes.

13 Q. Do you remember if they told you that
14 that test is only 65 percent, correct?

15 A. I remember a number, I don't remember
16 the exact number.

17 Q. But you remember there was a number.

18 A. Yes.

19 Q. So did you demonstrate this
20 one-leg-stand test for him?

21 A. Yes, I did.

22 Q. And then can you give me the
23 instructions exactly as you gave them to him?

24 A. I told him I was going to check his
25 balance again. I told him to stand up straight

1 with his arms at his side. I told him to begin.
2 He was to lift one foot that you choose
3 approximately six inches off the ground.

4 While you're in that position,
5 you look at your raised foot. You keep it
6 parallel to the ground. Keep your leg straight
7 and you count in the following manner; one, one
8 thousand, two, one thousand, three, one thousand
9 and so on until I tell him to stop.

10 I told him not to stop the test
11 until he was finished and I asked him if he
12 understood. And he stated yes.

13 Q. And then he did the test?

14 A. Correct.

15 Q. And he didn't grab onto you for balance
16 while he was doing the test, did he?

17 A. I was too far away. I wasn't right on
18 top of him that he could grab me.

19 Q. He didn't try to reach to grab for you,
20 did he?

21 A. No.

22 Q. And he never asked you to stop the
23 test?

24 A. No.

25 Q. And his hands never touched the

1 ground?

2 A. No.

3 Q. And he didn't hop up and down, did he?

4 A. He put his foot down once.

5 Q. And he didn't fall?

6 A. No.

7 Q. And he looked at his toes during the
8 test?

9 A. Yes.

10 Q. And how far is the foot supposed to be
11 off the ground?

12 A. Six inches. Approximately six inches.

13 Q. Is that the heel or the toe?

14 A. The entire foot because it's supposed to
15 be parallel to the ground.

16 Q. So that would be both the heel and the
17 toe are supposed to be six inches?

18 A. Theoretically, yes.

19 Q. So let's go step by step. He took the
20 test when you asked him to take it.

21 A. Yes.

22 Q. Not before.

23 A. Yes.

24 Q. Many times when you tell people about
25 this test, they don't wait for you to start, do

1 they?

2 A. Some do. But he did not.

3 Q. Aside from the one time when his foot
4 touched the ground, he kept his foot six inches
5 off the ground?

6 A. Yes.

7 Q. Did he count out loud for you?

8 A. Yes.

9 Q. What number did he get to?

10 A. I believe it was 22.

11 Q. And why did we stop at 22?

12 A. People count slowly.

13 Q. What did you count to?

14 A. 30.

15 Q. And did he miss any numbers as he was
16 counting to 22?

17 A. I don't believe so.

18 Q. So this test only has one clue.

19 A. No. There was a total of four possible.
20 He had three out of the four. He was swaying
21 while he was standing. And he raised his arms
22 once.

23 Q. How far did he raise his arms?

24 A. Not that far.

25 Q. How far?

1 A. They came off of his side. And I told
2 him to put them back on the side.

3 Q. But not more than six inches?

4 A. No.

5 Q. So you get done with all these field
6 sobriety tests and you decide that you were
7 taking him in?

8 A. At that point I was.

9 THE COURT: Counselor, I'm going
10 to recess for about two minutes. Something I
11 need to discuss with my staff.

12 (Brief recess.)

13 THE COURT: You may proceed.

14 BY MR. MADSEN:

15 Q. So after the PBT you decided you were
16 going to take him in?

17 A. That's correct.

18 Q. So you handcuff him.

19 A. Yes, I did.

20 Q. You put him in the back of the
21 cruiser?

22 A. Yes, I did.

23 Q. And you transported him?

24 A. To our station, yes.

25 Q. Did he make any statements during this

1 transport?

2 A. Just that I was going to be sorry for
3 arresting him.

4 Q. That's said after you told him he
5 couldn't talk to an attorney, though, right?

6 A. He stated it again once he was in the
7 car.

8 Q. Which was after you told him he couldn't
9 talk to an attorney.

10 A. That's right.

11 Q. He was very nice to you before you told
12 him he couldn't talk to an attorney.

13 A. Yeah.

14 Q. So when you got to the station you gave
15 him one of these, I guess it's actually a DL-26
16 warning, right?

17 A. That's right.

18 Q. Where did you get this warning from?

19 A. From our station.

20 Q. Did you read it verbatim?

21 A. Yes, I did.

22 Q. Where do you keep these forms in the
23 station?

24 A. On the server to print out.

25 Q. Do you know which version of the DL-26

1 this was, because they have different updates
2 for different years?

3 A. I could look at the form and tell you.

4 Q. I believe it's March 2013.

5 THE COURT: 3/12.

6 Q. And did you show him the form?

7 A. Yes, I did.

8 Q. Did he take the time to read it?

9 A. I handed him one that I sat on his lap.
10 I had the light on and he was reading along as I
11 was reading.

12 Q. And he then renewed his request for an
13 attorney at that point?

14 A. What was that?

15 Q. He renewed his request for an attorney
16 at that point?

17 A. I don't believe -- I don't remember
18 exactly what he said but he stated that he was
19 not going to submit to the test.

20 Q. But you don't remember exactly what he
21 said?

22 A. But I know for a fact that he said he
23 was not going to submit to the test. I don't
24 know if he mentioned the attorney or not.

25 Q. You're required to tell the truth in

1 court today, are you not?

2 A. Yes, I am.

3 Q. But you're also authorized by the
4 Supreme Court of the United States to lie to
5 suspects, is that right, as long as it's not in
6 court?

7 A. Yeah.

8 Q. So you are authorized to lie to suspects
9 as long as it's not in court.

10 A. I believe so, yes.

11 Q. And did you have any chance to observe
12 my client while he was at the center?

13 A. He never went to the center.

14 THE COURT: I think you said it
15 was closed.

16 THE WITNESS: Yes.

17 Q. While he was at the station, did you
18 have a chance to observe my client?

19 A. Yes.

20 Q. And how was his interaction with other
21 officers?

22 A. I was with him the entire time, and I
23 don't recall anything out of the ordinary.

24 Q. So you didn't see his -- did you see his
25 interactions with anybody other than yourself?

1 A. No, I did not.

2 Q. And he -- he only screwed himself by not
3 taking the blood test, right?

4 A. Right.

5 Q. And that's because the blood test is
6 a pretty important factor in determining whether
7 somebody is actually intoxicated.

8 A. Correct.

9 Q. It's important to determine if they're
10 sober instead of intoxicated?

11 A. It's also to prove the Subsection of
12 3802, yes.

13 Q. And out of all the field sobriety tests
14 and the PBT and everything else, the blood test
15 is the most important?

16 A. Yes.

17 Q. It's more important than all the FSTs?

18 A. Not necessarily because you can still be
19 arrested for general impairment even with the
20 blood test being under the .08.

21 Q. And you said that you remembered some
22 numbers about some -- the effectiveness of the
23 FST?

24 A. I don't remember the number. I remember
25 there are numbers, but I do not have any -- I

1 don't remember any number exactly.

2 Q. Do you remember -- I don't need the
3 exact numbers, but do you remember where the
4 numbers come from?

5 A. Probably I would think the highway
6 safety.

7 Q. Do you remember if those numbers are by
8 comparing their pass rates of the FSTs to the
9 blood alcohol level where they draw blood?

10 A. I don't know.

11 Q. But the blood alcohol test is probably
12 more important than your personal opinion, is that
13 right?

14 A. Perhaps.

15 Q. So if somebody fails all the FSTs and
16 you smell alcohol on them but they take a blood
17 test and it comes back under .08 and it's not a
18 drug DUI, you cut them loose, don't you?

19 A. What do you mean? I don't understand
20 what your question is.

21 THE COURT: Do you mean they
22 probably don't even get charged?

23 Q. Yes. They don't get charged if they
24 fail the FSTs but blood alcohol level comes back
25 under .08?

1 A. As per what, the blood?

2 Q. Yes.

3 A. Not necessarily. Because if someone is
4 under arrest for the DUI and they're either
5 taken to DUI or up to the hospital, there is the
6 Rules of Criminal Procedure that the complaint
7 has to be filed within five days. And there's
8 no -- we usually do not get the result of the
9 blood until after the five days.

10 Q. But if it comes back under .08, you
11 withdraw it?

12 A. Correct.

13 Q. How many people have you charged with
14 alcohol -- how many people have you not
15 withdrawn on that came back under a .08?

16 A. That I have not withdrawn?

17 Q. Yes.

18 A. Zero.

19 Q. Zero. You happy with that number?

20 A. What do you mean?

21 THE COURT: I think he meant
22 that he withdrew on all of them.

23 THE WITNESS: Yes.

24 A. I withdrew all of them that would come
25 back underneath the .08 unless there's extra

1 circumstances, and we confer with the DA's
2 office before we do that.

3 Q. So you think that's the very most
4 important factor is the blood test.

5 A. Yes.

6 Q. And you're not going to change this
7 policy in the future, are you?

8 A. No.

9 Q. And if he would have come back, if he
10 would have took the blood test and come back
11 under a .08 we wouldn't be here today?

12 A. I would have conferred with the DA's
13 office, but most likely we would not be here.

14 THE COURT: Well, we wouldn't be
15 here on the DUI. There are summary offenses.
16 We'd be having a summary trial rather than a
17 preliminary hearing.

18 Q. Sometimes you get the blood test from a
19 hospital rather than giving it yourself, is that
20 right?

21 A. Where we take him, to take the defendant
22 to the hospital to draw blood, yes.

23 Q. Or sometimes they just end up at the
24 hospital due to an accident before you even get
25 to the scene?

1 A. Perhaps, yeah, sometimes.

2 Q. So this may be too technical for you,
3 but your test that you guys do at the DUI Center
4 are whole blood, is that right?

5 A. I believe it's whole blood ethanol.

6 Q. And do you know that the tests that are
7 done in a medical setting are actually plasma
8 rather than whole blood?

9 A. I actually do know that.

10 THE COURT: Counselor, in light
11 of the fact that your client refused to take the
12 blood test, why are we talking about the
13 different types of blood tests?

14 MR. MADSEN: It will most likely
15 be relevant shortly, Judge.

16 THE COURT: I hope so.

17 MR. MADSEN: I can make an offer
18 of proof right now if you would like.

19 THE COURT: I'll give you a
20 little more leeway.

21 Q. And so you know those numbers are
22 different, you have to use a formula on the
23 medical BAC?

24 A. Yes.

25 Q. What is that formula?

1 A. I have no idea.

2 Q. If I told you it was divided by 1.5,
3 would that make sense to you?

4 A. I don't know.

5 Q. So if you found out my client got a
6 blood test immediately after you let him go,
7 would that surprise you?

8 A. That would have been several hours after
9 he was arrested, yes.

10 THE COURT: So that's the
11 relevance. There is a blood test.

12 MR. MADSEN: There may be a
13 blood test, Judge.

14 THE COURT: The plot thickens.

15 Q. You let him go at 9:30. He was out of
16 there at 9:30.

17 A. I don't know what time he left.

18 Q. Don't you have it in a report
19 somewhere?

20 A. I don't release him myself. I do not.

21 Q. So if those test results came back under
22 the legal limits, would you be surprised?

23 A. I would not be. I don't know what
24 relevance it has if it comes back underneath.

25 Q. Would you be surprised? I mean, yes or

1 no?

2 A. I have no opinion. I don't care if it
3 comes back underneath.

4 Q. Okay.

5 MR. MADSEN: No further
6 questions, Judge. We may put on evidence. Just
7 one moment, Judge.

8 THE COURT: Does the
9 Commonwealth rest?

10 OFFICER MANFREDO: Judge, I
11 forgot to admit the driving record from
12 Pennsylvania.

13 THE COURT: Did you want to see
14 that, Counselor? Doesn't that really just go to
15 the summary?

16 THE WITNESS: Yes.

17 THE COURT: I don't need to see
18 it.

19 With that does the Commonwealth
20 rest?

21 OFFICER MANFREDO: Yes, I do,
22 Judge.

23 THE COURT: Counselor, I think
24 you said there was one witness, the young lady
25 behind you?

1 MR. MADSEN: Yes, Judge. I
2 would at this point call Attorney [REDACTED] I'm
3 going to try to limit the scope of this.

4 DANIELLE [REDACTED] having been
5 called as a witness, being duly sworn, testified
6 as follows:

7 BY MR. MADSEN:

8 Q. Could you state your name?

9 A. Danielle [REDACTED] [REDACTED]

10 Q. Ms. [REDACTED] are you an attorney?

11 A. Yes, I am.

12 Q. What is your relationship with [REDACTED]
13 [REDACTED]

14 A. He's my fiance.

15 Q. And do you remember the day of October
16 11th, 2013?

17 A. I do.

18 Q. What time -- did you pick up [REDACTED] at some
19 point?

20 A. Yes, I did.

21 Q. What time was that?

22 A. Approximately 9 o'clock.

23 Q. Being an attorney, what was your first
24 reaction to everything going on here?

25 A. Oh, boy.

1 Q. What was your second reaction?

2 A. Let's go get a blood test.

3 Q. And did you indeed?

4 A. Yes, we did.

5 Q. Where did you do that?

6 A. Quest Diagnostics.

7 Q. What time did you get there?

8 A. Approximately 9:30 a.m.

9 Q. Do you remember what time the blood was
10 drawn?

11 A. Approximately 10 o'clock.

12 Q. And have you gotten results back from
13 that blood test?

14 A. Yes, we did.

15 MR. MADSEN: And may I approach,
16 Judge?

17 THE COURT: You may.

18 Q. I'm showing you a piece of paper here.
19 Can you tell me what that is?

20 A. This is the ethyl alcohol blood results
21 for [REDACTED] [REDACTED]

22 Q. Can you tell me what his blood alcohol
23 content was based off of that paper?

24 A. It was 36, which breaks down to .036.

25 Q. And does it indicate on there whether it

1 was plasma or whole blood?

2 A. Actually, I don't --

3 THE COURT: Did you say .036?

4 THE WITNESS: Correct.

5 A. It breaks down over the end range versus
6 the reference range. I'm actually not sure. I
7 don't know if it's blood or plasma.

8 MR. MADSEN: We would submit
9 this at this point for evidence, Judge.

10 THE COURT: Any objection?

11 OFFICER MANFREDO: I object to
12 it, Judge. It was after the two-hour range that
13 he was arrested.

14 THE COURT: I thought it was
15 three hours.

16 MR. MADSEN: The Commonwealth is
17 held to a burden of two hours, Judge, however
18 the defense is not.

19 I have a statute that says it is,
20 75 Pacs(a)1547 that says independent blood
21 test results shall be admissible. It gives no
22 reference to time. There's just requirement
23 that it relates back.

24 THE COURT: Okay. I'll admit
25 the document. Can I take a look at it?

1 THE WITNESS: Yes, sir.

2 THE COURT: Are you done with
3 your questioning, Counselor?

4 MR. MADSEN: Yes, Judge.

5 THE COURT: Cross?

6 CROSS-EXAMINATION

7 BY OFFICER MANFREDO:

8 Q. Were you present when they drew the
9 blood?

10 A. Yes, I was.

11 Q. Why would you take your fiance for a
12 blood test after he was released?

13 A. Because I knew the importance of it.

14 Q. Okay. And upon looking at that form you
15 don't --

16 THE COURT: Hold on. What do
17 you mean by that, you knew the importance of it?
18 What do you mean by that?

19 THE WITNESS: I knew that it was
20 unlikely that he was intoxicated and that would
21 prove it.

22 THE COURT: Okay.

23 Q. Do you know why he wouldn't give the
24 test when he was asked by the police?

25 THE COURT: I think that calls

1 for speculation.

2 MR. MADSEN: Objection.

3 THE COURT: It's an unfair
4 question.

5 Q. If you were arrested by the police in
6 the same situation and asked to submit to a
7 blood test, would you submit to the blood test
8 by the police?

9 MR. MADSEN: Objection.

10 THE COURT: Sustained.

11 Q. And upon looking at the form that
12 counsel provided you, you're not trained to
13 interpret what the findings are on that piece of
14 paper, correct?

15 A. No. It's simple math.

16 OFFICER MANFREDO: That's all I
17 have, Judge.

18 THE COURT: I wish you hadn't
19 said that.

20 THE WITNESS: I'm sorry.

21 THE COURT: Because I don't
22 understand. But then, again, the Judge wasn't
23 real good at math.

24 When these documents are
25 obviously submitted in just about every case I

1 have. And DUI is by far the number one criminal
2 case in my district.

3 MR. MADSEN: You would have to
4 convert it to grams per liter. I don't know
5 what the D is doing in [REDACTED] of it, but the D
6 has no meaning in [REDACTED] of the L.

7 THE COURT: I mean, it says in
8 range 36, and then I thought you had said .036.

9 Is this the formula here?

10 THE WITNESS: Right.

11 THE COURT: Any other questions
12 for the witness?

13 OFFICER MANFREDO: No, Judge.

14 MR. MADSEN: Defense would rest
15 at this point, Judge.

16 THE COURT: Thank you, ma'am.
17 You may be seated.

18 Your argument, Trooper, is that
19 his driving was erratic.

20 OFFICER MANFREDO: Yes.

21 THE COURT: He was stopped
22 mainly for the inspections and emissions, so there's
23 a valid basis for a stop.

24 OFFICER MANFREDO: Yes.

25 THE COURT: He stopped

1 immediately. He was cooperative. He took the
2 test except the PBT.

3 OFFICER MANFREDO: Yes, and
4 except the blood test.

5 THE COURT: PBT is not
6 admissible. PBT is really designed to help you
7 because it can only be used to establish
8 probable cause. If you had taken the PBT and it
9 comes back negligible, we're probably not here
10 today.

11 If you took the blood test,
12 we're probably not here today. Your attorney
13 said -- and when I used to be an attorney, I
14 used to like to write down things that the other
15 attorney said so I could use it against them in
16 my closing, but I'm going to use it against you.

17 He only screwed himself by not
18 taking the blood test. I believe you said that,
19 Counselor.

20 MR. MADSEN: I did, Judge.

21 THE COURT: It's a true
22 statement, sir, because now you've exposed
23 yourself to an automatic one-year license
24 suspension regardless of whether you were drunk
25 or not.

1 He performed fairly well on the
2 field sobriety test. I'm telling you right now
3 that I would fail these field sobriety tests.
4 And in 20 years of practicing law, I could count
5 on maybe one finger the number of people who
6 successfully passed field sobriety tests.

7 Frankly, I think they're a joke.
8 The law presumes that you're incapable of
9 driving a motor vehicle safely if you're .08 or
10 above. Who knows how they came up with .08? It
11 used to be .10. Now it's .08. Who knows,
12 maybe it will be .04 or 06, and we'll all be
13 driving under the influence after one beer. But
14 that's what the law is.

15 Now, you've submitted a
16 document, which reflects that a blood test was
17 taken by your client shortly after he was
18 released. And according to the expert witness
19 in the back of the courtroom, it translates to a
20 .036.

21 MR. MADSEN: That would
22 actually --

23 THE COURT: I'm not calling you
24 a liar, ma'am, but unless it says to me on here
25 that it's .036 and without someone from Quest

1 Diagnostic here to interpret this -- I know this
2 is admissible in and of itself, but it's not
3 really self-explanatory, Counselor.

4 MR. MADSEN: Yes, Judge.

5 THE COURT: Again, I'm not
6 disputing what you said. I think you're
7 probably right. But I can't be absolutely sure
8 that that's what this says.

9 You've raised a lot of issues,
10 Counselor, that I think are relevant at trial.
11 But as you know this is a preliminary hearing
12 and the burden here is a prima facie case. And
13 when we get the admission to five beers, the
14 alleged failure of the field sobriety tests, the
15 odor, the indicia of alcohol with the bloodshot
16 eyes and the odor, and then I think there was
17 even something about mouthwash that was
18 testified to -- there was one final thing -- the
19 refusal -- my recollection is that refusals come
20 in at trial, the fact that your client refused
21 to take the test. Is that your understanding?

22 MR. MADSEN: That would most
23 likely come in at trial. I think at trial it
24 would be offset by the fact that he refuses by
25 not being able to speak to an attorney.

1 THE COURT: But you're not
2 entitled to an attorney at that point.

3 THE WITNESS: I didn't know
4 that.

5 THE COURT: But then again the
6 refusal was reversed, essentially shortly after
7 the release. I have to say this is a first for
8 me that someone went for a blood test
9 immediately after being released, but not
10 everyone is engaged to an attorney.

11 I happen to be
12 married to an attorney, so good luck with that.

13 Counselor, I'm going to bound
14 this over for trial. I feel prima facie case
15 has been established. This matter's concluded.

16 (Proceedings concluded at 4:39 p.m)

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C E R T I F I C A T E

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I do hereby certify that I am a Notary Public in good standing, that the aforesaid testimony was taken before me, pursuant to notice, at the time and place indicated; that said deponent was by me duly sworn to tell the truth, the whole truth, and nothing but the truth; that the testimony of said deponent was correctly recorded in machine shorthand by me and thereafter transcribed under my supervision with computer-aided transcription; that the deposition is a true and correct record of the testimony given by the witness; and that I am neither of counsel nor kin to any party in said action, nor interested in the outcome thereof.

WITNESS my hand and official seal
this [redacted]th day of [redacted], 201[redacted].

Notary Public

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