

NEW YORK STATE DEPARTMENT OF MOTOR VEHICLES
ADMINISTRATIVE ADJUDICATION BUREAU

IN THE MATTER OF:

AMANDA K.

Case No.: 15-76176

ADMINISTRATIVE LAW JUDGE WALTER ZULKOSKI

HEARING DATE: August 19, 2015

HEARING LOCATION: WESTCHESTER DEPARTMENT OF MOTOR VEHICLES
1 Larkin Plaza/ 2nd Floor
Yonkers/ New York 10701

APPEARANCES: AMANDA K.
Respondent

REX M. PIETROBONO, ESQ.
Attorney for Respondent

OFFICER STEVE ESKIAM
North Castle Police Department

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OFFICER STEVE ESKIAM
North Castle Police Department

1 OFFICER ESKIAM: I do.

2 S T E V E E S K I A M, having been first duly sworn,
3 testified as follows:

4 DIRECT EXAMINATION

5 BY THE COURT

6 Q: Officer, were you working on August 8, 2015?

7 A: Yes I was.

8 Q: On that day did you have occasion to come in contact
9 with Ms. K.?

10 A: Yes I did.

11 Q: Please state the nature of that contact, what
12 happened?

13 A: I responded to a motor vehicle--one-car motor vehicle
14 accident on State Route 22.

15 Q: And what happened?

16 A: And I came in contact with Ms. K.. Upon contact
17 and observation, visualized that Ms. K. did have an odor of
18 alcoholic beverage on her breath, emanating from her person.
19 Ms. K. did mention that she was coming from White Plains
20 and she did have something to drink, had an alcoholic beverage
21 in White Plains. Ms. K. was offered and requested for her
22 to submit to a breath test with the Alco-Sensor in which she
23 refused.

24 Q: What about the accident?

25 A: The vehicle--well Ms. K.'s vehicle veered into

1 the northbound embankment going north.

2 Q: Anybody else in her vehicle?

3 A: No, she was the sole occupant of the vehicle.

4 Q: Okay, what happened after that?

5 A: The ambulance came to check Ms. K., treat her for
6 her injuries. She did have, I believe, bruising to her upper
7 eye, along with other bruising. She refused medical attention
8 on the scene. Also on the scene Ms. K. was given sobriety
9 testing, field sobriety testing. Ms. K. did appear, during
10 the walk-and-turn test, to step off the line.

11 Q: Did she pass or fail? Walk-and-turn, she pass/fail?

12 A: She passed the walk-and-turn.

13 Q: She passed the walk-and-turn? Did you do any others?

14 A: Yes, I did the horizontal gaze nystagmus.

15 Q: Pass/fail?

16 A: She failed.

17 Q: And any others?

18 A: And she refused to take the one-legged stand.

19 Q: Okay, then what happened?

20 A: And again, she was asked to submit to a--

21 Q: [Interposing] PBT?

22 A: Yes.

23 Q: Okay, then what happened?

24 A: At that point, after all that was done, Ms. K.--
25 also on the scene Ms. K. was a little bit uncooperative

1 with Sergeant McCormack [phonetic], who was on scene. He was
2 the one who asked Ms. K. to submit to the breath test.

3 Q: Okay, then what happened?

4 A: After all that was said and done on scene, the
5 vehicle was towed, Ms. K. was transported to North Castle
6 Police Department.

7 Q: What happened at North Castle Police Department?

8 A: In North Castle Police Department Ms. K. was
9 asked to submit to a breath test with the DataMaster. Ms.
10 K. was also booked and fingerprinted, photographed.

11 Q: The reason we're here is because of the breath test.
12 What happened, did she take the breath test or not?

13 A: No she did not.

14 Q: Why not?

15 A: Ms. K. was asked several times. Ms. K. kept
16 stating that she had to go to the bathroom several times. Ms.
17 K. was explained that she would be able to go to the
18 bathroom after the test was given. Ms. K. was given a
19 chance to step to the DataMaster, which she refused.

20 Q: Do you use form notices up there?

21 A: Which form, Your Honor?

22 Q: Is there a form that she signs that you read from?

23 A: There is a form that she's supposed to sign. Ms.
24 K. refused to sign it.

25 Q: Do you have that form with you?

1 A: I do.

2 Q: Let me see. Can I keep this or do you need it back?

3 A: You can keep that.

4 Q: Who read her the warning?

5 A: I did.

6 THE COURT: [inaudible: 1 second] will be Exhibit 2,
7 consisting of one page.

8 [Whereupon Hearing Exhibit 2 was admitted into evidence.]

9 Q: Officer, just ID that document, tell me what it is.

10 A: This is the report for prior to refusal to submit to
11 the chemical test.

12 Q: Your signature in the lower left-hand corner?

13 A: Yes sir.

14 Q: Did you prepare that document?

15 A: Yes I did.

16 Q: True and accurate on the day you prepared it?

17 A: Yes.

18 Q: True and accurate today?

19 A: Yes.

20 Q: Any changes been made in it since it was originally
21 prepared?

22 A: No. Just on this copy, while preparing it, I added--
23 on this copy here, the witness.

24 Q: Which was PO Sharp [phonetic]?

25 A: PO Sharp, correct.

1 THE COURT: Counsel, do you have a copy of this?

2 A: Along with all of the other copies.

3 MR. PIETROBONO: I do not.

4 THE COURT: I'll give you one. Okay, the report of
5 refusal will be admitted as Exhibit 3, consisting of one page.

6 [Whereupon Hearing Exhibit 3 was admitted into evidence.]

7 THE COURT: Counsel, your witness.

8 CROSS-EXAMINATION

9 BY MR. REX M. PIETROBONO

10 Q: Is there any notes that you have from this incident?

11 A: I don't, the only notes that I do have is just the
12 paperwork.

13 Q: There's no notes like in your personal pad or
14 somewhere else, it's not present?

15 A: No.

16 Q: Okay, no notes, okay. Do you know--isn't it true
17 that Ms. K., she actually called 911 for the accident, to
18 report the accident?

19 A: Yes.

20 Q: Okay. And when you arrived, I think you just
21 testified, you suspected there was a DWI incident?

22 A: I did.

23 Q: Right from the start?

24 A: Well it doesn't happen right from the start, it
25 happens after speaking and observing.

1 Q: Okay, but in this case when?

2 A: After speaking and observing Ms. K.. Q:

3 Where was she when you spoke to her?

4 A: On the side of the embankment.

5 Q: Was she standing or sitting?

6 A: She was standing.

7 Q: Okay, did she indicate that she was injured in any
8 way?

9 A: She had visible injuries on her person.

10 Q: Which injuries did you see?

11 A: From what I can recall she did have a type of
12 bruising above her eye.

13 Q: Okay, what about her ankle? She told you her ankle
14 was injured?

15 A: Yes.

16 Q: She did say that.

17 A: She did.

18 Q: Okay. Any other injuries that you said were visible?
19 You said that you saw the eye, but you couldn't see the ankle.
20 But she told you the ankle. What else did you see?

21 A: You know, she did have just general bruising. I
22 believe she had a bruise on her arm, on her right arm.

23 Q: Was her car a total loss, or do you think it's
24 repairable?

25 A: Just from looking at it, I would say it was a total

1 loss. But I'm not a mechanic, so I do not know. But from my
2 experience, it was a total loss, yes.

3 Q: Okay, a lot of damage to the car? That it happened
4 within some short time from before when you were speaking to
5 her, recent?

6 A: Yes.

7 Q: Yeah, okay. Did she tell you of any other injuries,
8 complain of any other?

9 A: I can't recall.

10 Q: You can't recall. But she may have.

11 A: I can't recall.

12 Q: Okay, all right. So at that point in time, if I'm
13 correct, you're saying that you suspected a DWI incident, is
14 that correct?

15 A: Yes.

16 Q: Okay, so now you're in the gathering evidence mode,
17 weren't you?

18 A: Correct.

19 Q: Okay, so at that point you--you say she declined to
20 take the Alka-Seltzer test?

21 A: Alec-Sensor, yes.

22 Q: Alco-Sensor, yeah. And how did she decline? What
23 was said?

24 A: She said that, from what I could recall, she said she
25 didn't have to, or she didn't have to take that.

1 Q: Okay, did you tell her she had to take it? Do you
2 remember saying to her, you have to take the test?

3 A: We explained to her, yes, that she did.

4 Q: You explained to her she had to take the test.

5 A: Yes.

6 Q: Okay.

7 THE COURT: Now are we talking about at the scene?

8 MR. PIETROBONO: On the scene. It's relevant to later
9 though.

10 THE COURT: Yeah, I understand.

11 Q: Okay, so it wasn't that you like asked her, or told
12 her it was optional, you told her she had to take the test,
13 isn't that correct?

14 A: We explained to her, yes, she had to take the test.

15 Q: Okay, when you say explained to her, how did you
16 explain?

17 A: Well I did explain to her, but Sergeant McCormack,
18 who was also on scene, was telling her that she was required to
19 take the test.

20 Q: Were you part of that conversation?

21 A: Yes.

22 Q: All right, so he said she was required to take the
23 test. So how did he tell her she was required to take the
24 test?

25 A: I can't recall his specific words.

1 Q: Do you remember if he said, you have to take the
2 test?

3 A: He said, you are required by the law to submit to the
4 test.

Q:
6 didn't take the test?

7 A: He said she would be cited for that, yes.

8 Q: How did he say that?

9 A: I can't recall his specific words •cause I'm not--and
10 he would have to be here.

11 Q: Okay, all right. But I mean are you sure he said--

12 A: [Interposing] I'm positive he said.

13 Q: He said that, yes, that she would be cited. And what
14 did she say?

15 A: I don't recall what she said.

16 Q: But she then took the field sobriety test that you
17 asked.

18 A: Yes.

19 Q: Okay, and you said she passed the walk-and-turn, is
20 that correct?

21 A: Yes.

22 Q: And what comprised the walk-and-turn?

23 A: The walk-and-turn, you're required to take nine steps
24 heel-to-toe, hands down. But you're not allowed--technically
25 you're not allowed to step off the line, or you're not allowed

1 to bring your hands up from your sides.

2 Q: And she did all of that?

3 A: She did step slightly off the line once.

4 Q: But you said she passed.

5 A: But from the rest of the test she was heel-to-toe
6 [inaudible: 1 second].

7 Q: She did pass.

8 A: Yes.

9 Q: Yes, okay. And the gaze nystagmus you say she
10 failed.

11 A: She did.

12 Q: And how did she fail that?

13 A: Jerking of her eyes was visible at the onset of 45
14 degrees and at maximum deviation, which is when you extend the
15 point of the pen to the [inaudible: 1 second]

16 Q: Where did you perform the test?

17 A: On the side of the road.

18 Q: And where was she?

19 A: She was directly in front of me.

20 Q: And where was--was she standing or leaning on
21 anything?

22 A: At that point she was standing.

23 Q: And which way was she facing?

24 A: Facing southbound.

25 Q: Okay, and you were facing northbound?

1 A: Correct.

2 Q: Okay, and your car, I presume, was being you.

3 A: Correct.

4 Q: Okay, and you had your lights on?

5 A: Correct.

6 Q: Okay, did you have you emergency lights on too?

7 A: Yes.

8 Q: Okay.

9 A: For hazardous...

10 Q: So she was facing in the direction of your vehicle.

11 A: She was, but the way she was facing, she wasn't
12 facing directly into the light, as I was in front of her
13 blocking the light that was directly in her eye.

14 Q: But she was facing the vehicle with the lights on.

15 A: She was facing the vehicle, correct.

16 Q: Okay. Also you indicated she had an eye injury which
17 you saw.

18 A: Just above her eye. But if I might add, that has
19 nothing to do with nystagmus.

20 Q: And that's because you're medically trained to know
21 if the eye injury would have no impact on her nystagmus?

22 A: Say that again.

23 Q: Do you have any medical training or certification for
24 that to back up that opinion?

25 A: There is no medical training, but we are trained in

1 field sobriety testing, and I would know that jerking of the
2 eye. The way it's visible has nothing to do with that injury
3 over her eye.

4 Q: Okay, but you don't know what the extent of--

5 A: [Interposing] I'm not--

6 Q: [Interposing] You don't know the extent of the
7 injury, you just observed an injury.

8 A: Correct.

9 Q: You don't know if she had a concussion or anything
10 like that, do you?

11 A: I didn't know at the time, no, correct.

12 Q: Okay, and you indicated that she--how did she refuse
13 the one-leg stand?

14 A: She stated that she could not--from what I remember,
15 number one, was something about her shoes. She couldn't take
16 it in the shoes that she had, and she couldn't take it because
17 of her balancing.

18 Q: You're just flipping through the--

19 THE COURT: [Interposing] Her shoes and because of what?

20 THE WITNESS: Her balancing.

21 THE COURT: Balancing.

22 Q: You were just flipping through your notes. You have
23 some document there that's got a lot of detailed information,
24 it looks like full of typed--

25 A: [Interposing] If you're referring to my report, yes

1 it is.

2 Q: Okay, so that would constitute Rosario that I was
3 asking for.

4 THE COURT: Rosario is not relevant here. Officer, he can
5 look at anything you referred to for preparation for this
6 hearing.

7 THE WITNESS: And if I understand, this is a refusal
8 hearing, not a trial.

9 THE COURT: Right.

10 MR. PIETROBONO: It is, but I'm still entitled to Rosario.
11 But he's also--

12 THE COURT: [Interposing] Forget Rosario. I'm telling
13 you, he can look at anything you referred to to prepare
14 yourself for this hearing. If you did not use it to prepare
15 yourself for this hearing, he can't look at it, that's the
16 rules.

17 MR. PIETROBONO: He's referring to it also during the
18 hearing as well.

19 THE COURT: During the hearing, right.

20 MR. PIETROBONO: Yeah, so I'd like to be able to see that.
21 I'd like to be able to see it.

22 THE WITNESS: You don't have a copy of the report?

23 MR. PIETROBONO: I don't.

24 THE COURT: He doesn't have it. You're talking about the
25 incident report, right?

1 THE WITNESS: Correct.

2 THE COURT: Did you refer to the incident report during
3 the hearing?

4 THE WITNESS: I didn't look at it. I didn't even get a
5 chance to look at the incident report. It's right as I was
6 going through the documents, but as you can clearly see, I
7 didn't take it out to actually look at the incident report.
8 This here is a copy of the call. The incident report is right
9 here, which I clearly didn't look at.

10 MR. PIETROBONO: I don't know about clearly, you're the
11 one looking through the documents. I just believe I should be
12 entitled to the document.

13 THE COURT: Well you can't get it unless he looked at it
14 to prepare for or use during the hearing.

15 Q: So did you prepare for the hearing today?

16 A: I really didn't have a chance as I was working today.

17 Q: All right, but still that wouldn't preclude you
18 necessarily from taking a look at the file.

19 A: I really didn't have a chance to prepare for today,
20 to be quite honest with you.

21 Q: All right, so your answer is--

22 A: [Interposing] No.

23 Q: --you did not prepare for the hearing.

24 A: No I did not.

25 Q: Did not review any documents in preparation.

1 A: Just to my recollection. To

2 Q: your recollection? Everything

3 A: to my recollection.

4 Q: Okay. Earlier you said that she told you she had an
5 ankle injury, yet you're asking her to take the one-legged
6 stand, is that correct?

7 A: Yes.

8 Q: Okay, and you just indicated that she refused, but
9 she mentioned--

10 A: [Interposing] Ms. K. clearly was standing at the
11 time.

12 Q: Okay.

13 A: What were you going to say?

14 Q: Well I was going to say it's Karachi [phonetic],
15 Karachi anyway.

16 A: Karachi.

17 Q: And secondarily, standing on two legs would be easier
18 than one leg, wouldn't it be?

19 A: Of course.

20 Q: And if somebody has an ankle injury, and they're
21 asked to stand on that ankle, that may be a problematic
22 situation, right?

23 A: Yes.

24 Q: Okay, and you already testified she told you she
25 couldn't--she had an ankle injury, before you even asked her to

1 take the FSTs.

2 A: She did not mention that she couldn't stand due to
3 the ankle injury, or the ankle injury inhibiting her ability to
4 perform the test.

5 Q: Okay, okay, but correct me if I'm wrong. She told
6 you she had an ankle injury prior to you asking her to take the
7 field sobriety test.

8 A: 100 percent correct.

9 Q: Okay. And she did just have an accident to boot,
10 right?

11 A: Yes.

12 Q: So she may not have been unaffected by the accident,
13 would that be a correct way of--

14 A: [Interposing] Just rephrase that.

15 Q: Was she still under the duress of the accident that
16 occurred prior to you arriving?

17 A: Yeah, I'd say it's possible, yes.

18 Q: Yes, okay. And you didn't see the accident, is that
19 correct?

20 A: I did not.

21 Q: Okay.

22 THE COURT: I'm sorry, you said that you thought the car
23 was totaled, right?

24 THE WITNESS: Yes.

25 THE COURT: Okay. Sorry counsel, go ahead.

1 THE WITNESS: All if not most of the airbags were deployed
2 in the vehicle.

3 THE COURT: Okay.

4 Q: Okay, so at this point in time, after she--and how
5 did she refuse to take the one-leg stand, can you tell me?
6 What did she say when she refused?

7 A: She said she couldn't take it due to her balancing.
8 Or she said there's no way she could take that.

9 Q: Okay, so there's no way she could take it. That may
10 also include because she has an ankle injury, isn't that
11 correct?

12 A: It could, but it wasn't referred to.

13 Q: Specifically she didn't expressly say those magic
14 words again, but she did--

15 A: [Interposing] But yes it could.

16 Q: Yeah, okay, she couldn't do it, okay. So then what
17 probable cause did you have for her arrest at that point?

18 A: Based on observation.

19 Q: You got the gaze nystagmus.

20 A: You got an odor of an alcoholic beverage emanating
21 from her person, from her breath. You got bloodshot eyes,
22 glassy eyes. I mean there's other things other than the Alco-
23 Sensor.

24 Q: So that's what I'm asking you though now. I mean
25 because you said your probably cause is the--she didn't take

1 the Alco-Sensor, right?

2 A: Right.

3 Q: And she passed the walk-and-turn. You say she failed
4 the gaze nystagmus, didn't do the one-leg stand.

5 A: Refused.

6 Q: Right, and you've got an odor--was it a strong, weak,
7 mild odor of alcohol?

8 A: It was an odor.

9 Q: It was an odor.

10 A: Yes.

11 Q: Okay. And you say she did say she had a drink
12 earlier?

13 A: Yes.

14 Q: Okay. And what else, what other probable cause did
15 you have? You had the odor, bloodshot eyes, what else?

16 A: The odor, bloodshot eyes, her failing the nystagmus,
17 and just her--just observing. And based on my past experience
18 as a police officer.

19 Q: Okay, but in terms of for your training, to be able
20 to testify that she was in an intoxicated state, it was
21 essentially those, those are the symptoms that you observed?

22 A: Yes.

23 Q: That's it. Is there anything else to add?

24 A: I would have to refer to the report.

25 Q: Well I'm asking you now if you...

1 A: On this form is everything that I stated here. Just
2 her admittal to--also her admittal to having drank an alcoholic
3 beverage prior to the accident.

4 Q: Okay, so would that by itself mean she's intoxicated
5 if she had a drink earlier in the evening?

6 A: If she just had one drink?

7 Q: Yes.

8 A: That by itself would mean no.

9 Q: Okay.

10 A: But I don't know, I can't tell if she just tells me
11 one, I don't know how many drinks she had, which is usually the
12 case.

13 Q: Okay, what else was there?

14 A: This is the only thing that's on this form.

15 Q: Okay, so is there any other observation you made of
16 intoxication? Now is the time I'm asking you.

17 THE WITNESS: Is this necessary for the refusal, or is
18 this necessary for the hearing?

19 THE COURT: Yeah, if there's anything else you're aware of
20 to make the arrest, that's what he's asking for, so it's a good
21 question. I need that back please.

22 MR. PIETROBONO: Sure.

23 THE COURT: Thank you.

24 Q: So is there anything you want to add? Because this
25 will probably come up at a future date. I want to know now.

1 A: I understand. Like I said, I would have to recall
2 notes.

3 Q: Okay.

4 A: I don't have my specific notes with me.

5 Q: Is there any document with you that would refresh
6 your recollection?

7 A: There is. I mean the report, like I said.

8 Q: Okay, other than that, what other notes would help
9 refresh your recollection?

10 A: That would be it.

11 Q: Well you just referred, you have to refer to your
12 notes.

13 A: Yeah, well the report, and any notes that I did take
14 that day, which I don't have my pad on me.

15 Q: Okay, so when we first started, one of the first
16 questions I asked, if you had any notes anywhere, you said no.

17 A: No, correct. I said which I don't have my pad on me.

18 Q: No, I asked if you had your notes anywhere, a pad or
19 anything. You said no, isn't that correct?

20 A: Right, notes.

21 Q: But you actually do have notes of the arrest.

22 A: Well you asked if I had anything here.

23 Q: No, I said anywhere.

24 A: Oh.

25 Q: So you want to change that? What notes do you have

1 as material that I asked earlier?

2 A: I have all the documents with me. And I have
3 anything that, at the time of the incident, that I recorded
4 down.

5 Q: And what would that be? 'Cause I wasn't there, I
6 don't know.

7 A: Time of the incident, just specific details of what I
8 observed.

9 Q: Well that's the part I find interesting is specific
10 details, because that's what I'm trying to ascertain. What
11 were the specific details?

12 THE COURT: Where would that have been, officer? Do you
13 have a memo book you keep?

14 THE WITNESS: Well it would be in like--sometimes we--like
15 if in any case, if I record anything on a little sketch pad or
16 so.

17 THE COURT: That you have with you at the scene?

18 THE WITNESS: Yes. Or like a little piece of paper.

19 THE COURT: Right. In this case did you have anything
20 like that that you can remember?

21 THE WITNESS: I did not, no, I did not have a memo book
22 with me, but I did record on like a little piece of paper.

23 THE COURT: Okay, but you don't have the little piece of
24 paper with you.

25 THE WITNESS: No.

1 THE COURT: Okay.

2 Q: All right. So I'll just ask for an answer. Is there
3 any other observations you made of the alleged intoxication?

4 A: Just give me one second. If there's anything else
5 that I could think of, I will--

6 Q: [Interposing] Okay, take your time.

7 A: At this time I can't recall anything else.

8 Q: Okay. How many DWI arrests have you been involved
9 with since you've been a police officer?

10 A: I don't know.

11 Q: Less than five?

12 A: Maybe three, yeah probably, maybe.

13 Q: Okay. And at this point in time, since she's passed
14 one, failed one, didn't take another, you don't have an Alco-
15 Sensor, you still needed more evidence for your arrest, didn't
16 you? Were you looking for more evidence for an arrest for DWI
17 to make the case? Earlier you stated you were making a case
18 for DWI. Were you looking for more evidence of DWI following
19 the field sobriety test? You wanted more evidence, isn't that
20 correct?

21 A: Which is why--what do you mean, which is why I was
22 giving her the field sobriety test?

23 Q: Well that's part of it, right?

24 A: Right.

25 Q: You're making your case, right? It was important to

1 get more evidence.

2 A: Correct.

3 Q: **Yes**, okay. And that's why you and the sergeant were
4 insistent that she had to take that Alco-Sensor test, isn't
5 that correct?

6 A: Well she is required to take the test, right? Isn't
7 that something that when you get your license, your New York
8 State driver's license privileges, that you kind of give up, so
9 to speak?

10 Q: There might be a different way of putting it than you
11 have to take the test, two police officers at the time, at the
12 scene.

13 A: Well she's given the option to do whichever she
14 pleases, but she is required by New York State--

15 Q: [Interposing] So what time did the accident occur?

16 A: Around 4:04.

17 Q: Okay, and you indicated that later at the station
18 that she kept saying she had to go to the bathroom, is that
19 correct?

20 A: Correct.

21 Q: Okay, and what time was that about?

22 A: I don't recall the specific time that she mentioned
23 that she had to go to the bathroom. I'd say around 5, a little
24 after 5.

25 Q: Little after 5? Okay. And do you know when she had

1 gone to the bathroom last?

2 A: Before that no.

3 Q: You don't know.

4 A: I don't, I don't.

5 Q: All right, so it's possible she really had to go to
6 the bathroom, isn't that true?

7 A: Very well possible.

8 Q: She had an accident.

9 A: Yes.

10 Q: Time has passed since the accident. Had she gone to
11 the bathroom anytime since you arrived at the accident scene,
12 to the police station?

13 A: No.

14 Q: Okay. So she told you she had to go to the bathroom.

15 A: Yes, multiple times.

16 Q: Multiple times, right. And in response to her
17 multiple times saying she had to go to the bathroom, what did
18 you do, if anything?

19 A: I told her she would be able to go to the bathroom.

20 Q: Okay, but that's different from saying okay, I'll
21 take you to the bathroom, isn't it?

22 A: Right.

23 Q: Okay, what did you do then, did you let her go to the
24 bathroom?

25 A: Ms. K. eventually did go to the bathroom, yes.

1 Q: Okay, but before she went to the bathroom you said,
2 you have to take a test? Isn't that correct, isn't that what
3 you said?

4 A: Yes I explained to her.

5 Q: Okay. Now that would take how long to administer
6 that test?

7 A: Just maybe five minutes.

8 Q: Have you performed tests?

9 A: Have I performed--

10 Q: [Interposing] Are you certified to operate the test?

11 A: Yes, yes I am.

12 Q: And you've performed that DataMaster? Is it a
13 DataMaster?

14 A: DataMaster breathalyzer.

15 Q: Intoxilyzer 5000 or--

16 A: [Interposing] It's a DataMaster.

17 Q: DataMaster?

18 A: Correct.

19 Q: Have you administered that test in any of those three
20 or so arrests to date?

21 A: I have not personally, no.

22 Q: You have not, okay. So how do you know it takes five
23 minutes to do it?

24 A: I have witnessed the test before.

25 Q: Yeah, and don't some take longer than that?

1 A: Some can, yes, take longer than others, depending on
2 the, I guess, the person or--

3 Q: [Interposing] Right. Okay, but so you didn't say it
4 would just take five minutes. You didn't let her go to the
5 bathroom, is that correct, when she said she had to go to the
6 bathroom?

7 A: At the time that she said she had to go to the
8 bathroom, no, I didn't allow her.

9 Q: Okay, and instead of that you said take this test, is
10 that correct?

11 A: Well I explained to her that she would be able to go
12 to the bathroom after the test was administered.

13 Q: After the test, *okay*, all right. Did there come a
14 time that she had some sort of panic attack in front of you?

15 A: She *did*, yes.

16 Q: Okay, and how would you describe what occurred?

17 A: Crying, heavy breathing.

18 Q: Yeah. Did she seem to be a little bit--how would
19 you--highly emotional at that point?

20 A: I'd say so.

21 Q: Yeah, and what triggered that, if you know? What
22 precipitated--

23 A: [Interposing] Well it could have been [inaudible: 1
24 second] of things, but I can't say.

25 Q: What occurred--not guessing, what occurred

1 specifically before--

2 A: [Interposing] Well the incident.

3 Q: No, I mean that didn't occur at the scene, did it?

4 I'm talking about the station still.

5 A: At the station, but still, I mean the incident, and

6 everything that was going on. I'm not Ms. K., so I don't

7 know--

8 Q: [Interposing] All right, that's fair enough. So

9 you're still saying she still could be suffering under the

10 symptomology of just having had an auto accident, right?

11 A: Multiple reasons.

12 Q: All right, okay. You didn't administer--you weren't

13 going to administer the chemical test, is that correct?

14 A: The chemical--

15 Q: [Interposing] Breath test. That evening, on that

16 morning at this particular time, you weren't prepared to

17 administer the test, it was someone else, is that correct?

18 A: No.

19 Q: You were going to administer the chemical breath

20 test?

21 A: Yes.

22 Q: Yes you.

23 A: Yes.

24 Q: Was there anyone else present?

25 A: PO Shurf [phonetic], which is who I included on the

1 [inaudible: 1 second].

2 Q: Okay. And you--I'm sorry, go ahead.

3 A: Go ahead.

4 Q: You read her the Miranda warnings?

5 A: Yes.

6 Q: Right?

7 A: Yes.

8 Q: And what did she say in response to the Miranda
9 warnings?

10 THE COURT: I don't care about the Miranda warnings, move
11 on counsel.

12 Q: Did she then have her panic attack right after that?

13 A: I don't recall at what point she had [inaudible: 1
14 second].

15 Q: Okay, okay. And at the end of the evening you were--
16 or I should say at the end of the evening, prior to her--
17 withdrawn. Where was this form--showing you the evidence,
18 People's 2, I guess, or 2--where was this document filled out?

19 A: At headquarters.

20 Q: And who filled that out?

21 A: I did.

22 Q: Okay, and when did you fill that out?

23 A: This was filled out during that time in headquarters.
24 What do you mean--

25 Q: [Interposing] Right, like where, like at the end of

1 the evening, just before she was released?

2 A: While preparing the report. [inaudible: 1 second]

3 Q: All right, so in the chain of all these events, was
4 it at the beginning, the middle, or the end?

5 A: I'd say more towards the middle.

6 Q: In the middle. You do all that paperwork in the
7 middle of the case?

8 A: All this [inaudible: 1 second]?

9 Q: Well you said you did this when you were doing the
10 paperwork. So in the middle of this--I'm trying to ask you,
11 I'm trying to help you. But where would you tell me that this
12 occurred that you filled out the paperwork, what time?

13 [inaudible: 1 second] time.

14 A: Well it depends on--I mean the report obviously you
15 will out after, 'cause there's certain paperwork that you fill
16 out--

17 THE COURT: [Interposing] But we're talking about that one
18 piece of paper in front of you.

19 A: Are you referring to this specific--

20 Q: [Interposing] I only mentioned the others 'cause you
21 said when you did other paperwork. So I'll just define it as
22 this one document. What time was this prepared?

23 A: This document was prepared more towards the middle
24 I'd say.

25 Q: What time?

1 A: Around the time that's stated on the form. Somewhere
2 around 5, maybe a little after.

3 Q: Is it 05:32?

4 A: Correct, sometime a little after.

5 Q: All right, after that. But the accident occurred at
6 4--she's at the station--

7 A: [Interposing] The accident occurred at 4:04.

8 Q: 4:04. How much longer after 5:30 was she there with
9 you?

10 A: You know, I don't recall the time she was released.

11 Q: So if the accident occurred at 4, is 5:32 the middle
12 of the incidents, or is that--isn't it true that at the end of
13 the night you did this document?

14 THE COURT: Yeah, he testified he did in the middle of the
15 time [inaudible: 1 second].

16 MR. PIETROBONO: The end of her processing.

17 THE COURT: But I don't see what the relevance of all this
18 is, counsel.

19 Q: Her signature doesn't appear on here, does it?

20 THE COURT: It speaks for itself, it doesn't appear.

21 MR. PIETROBONO: Well I don't know that that speaks for
22 itself. I see it's written out.

23 THE COURT: Give me Exhibit 2.

24 MR. PIETROBONO: Is there an exhibit there?

25 THE COURT: Give me Exhibit 2.

1 THE WITNESS: If I can just explain to my [inaudible: 1
2 second]--

3 THE COURT: [Interposing] I don't see anyone's signature
4 on here. I see a defendant, Amanda K.. You printed that
5 out?

6 THE WITNESS: Yes.

7 THE COURT: Okay, she didn't say anywhere on here, did
8 she?

9 THE WITNESS: No she did not.

10 THE COURT: Okay.

11 THE WITNESS: If I could just state again, as I stated
12 earlier, Ms. K. did refuse to sign any documents.

13 Q: Okay, but you personally didn't read her her refusal
14 warnings.

15 A: I did advise Ms. K. of her warnings, yes.

16 Q: You advised her of her warnings.

17 A: Yes.

18 Q: How did you advise her of her warnings?

19 A: Ms. K. was explained that if she did not submit
20 to the test, as New York State law, her license will be
21 revoked.

22 Q: That was at the scene.

23 A: At the scene Ms. K. was advised [inaudible: 1
24 second].

25 Q: At the scene she was advised what specifically?

1 A: At the scene Ms. K. was advised that she was
2 required to submit to the Alco-Sensor.

3 Q: Okay, and how was she advised of that?

4 THE COURT: Haven't we already covered this, counsel?

5 MR. PIETROBONO: Well he's just now testifying. He's just
6 testifying what do you think. I'm asking what--

7 THE COURT: [Interposing] She was advised that she had to
8 take the test by law. I mean he said it about three or four
9 times.

10 MR. PIETROBONO: And that's the whole warning?

11 THE COURT: That's at the scene [inaudible: 1 second]
12 answer, and that has nothing to do with this hearing.

13 MR. PIETROBONO: Well it does from our position that it
14 wasn't read to her.

15 Q: So what did you tell her--

16 THE COURT: [Interposing] [inaudible: 1 second] He is
17 required to read the chemical test warning for the DataMaster,
18 not for the Alco-Sensor.

19 MR. PIETROBONO: Please, Your Honor, can I ask him to
20 answer the question and not you?

21 THE COURT: Counsel, you keep repeating yourself. Ask the
22 question.

23 Q: What warning did you give her?

24 A: Ms. K. was advised that under New York State law
25 she is required to submit to the test. If she fails to submit

1 to the test, her license is subject to [inaudible: 1 second].

2 Q: And you told her that yourself.

3 A: Yes, she was advised several times.

4 Q: By you or someone else?

5 A: By me, myself, and--

6 THE COURT: [Interposing] Okay [inaudible: 1 second] four
7 or five times already.

8 Q: Did she ask you if she had to take the test? Do you
9 remember her asking that question? Do you remember her asking
10 if she had to take the test?

11 A: Now we're talking about the DataMaster.

12 Q: No, at the station.

13 THE COURT: No, we're talking about the scene right now.

14 MR. PIETROBONO: No, I'm not talking about the scene, I'm
15 talking about the station.

16 THE COURT: Then I'm confused. What did you tell her at
17 the station?

18 THE WITNESS: Ms. K. was advised that she was required
19 to take the test.

20 THE COURT: I don't care about that, was she read this
21 warning?

22 THE WITNESS: Ms. K. was advised [inaudible: 1
23 second].

24 MR. PIETROBONO: She was advised. So I'm asking what he
25 said, Your Honor, because there's a difference. He didn't read

1 it, he's told her.

2 THE COURT: Hold it, did you read the warning?

3 THE WITNESS: I did not read word for word, no, Your
4 Honor.

5 THE COURT: Okay, so what did you tell her as to what she
6 had or not have to do?

7 THE WITNESS: Ms. K. was advised that she was
8 required. If she did not submit to the test then her license--

9 THE COURT: [Interposing] Like you're telling me now.

10 THE WITNESS: Yes.

11 THE COURT: Okay, but you never read her the chemical test
12 warning.

13 THE WITNESS: No, no, no, Your Honor, not word for word.

14 THE COURT: Okay, did you read her the chemical test
15 warning from the report of refusal?

16 THE WITNESS: Did I read her--

17 THE COURT: [Interposing] Yeah. It says here after being
18 arrested the [inaudible: 1 second] as follows: Your refusal to
19 submit to a chemical test, et cetera, et cetera.

20 THE WITNESS: Yes.

21 THE COURT: Did you read this form to her?

22 THE WITNESS: No. Can I just take a look at that form,
23 Your Honor?

24 THE COURT: Sure.

25 THE WITNESS: This form was not read.

1 THE COURT: Okay, I need it back.

2 MR. PIETROBONO: No more questions, Your Honor.

3 THE COURT: No, I'm going to close it, that's it.

4 Officer, you're required under the law to read the warning
5 exactly as it states on the piece of paper. You can't just
6 tell her that she's going to be suspended. So Ms. K., I'm
7 not taking any action against your license. This has nothing
8 to do with the criminal case. And that's it, you're all free
9 to go.

10 MR. PIETROBONO: Thank you, Your Honor.

11 [END OF HEARING]

C E R T I F I C A T E

I hereby certify the foregoing/ consisting of 38 pages/
inclusive/ to be a true and accurate transcription from the
tapes provided to be to the best of my skill and ability.

Witness my handr this the 2nd day of October/ 2015.



Walter Baker
Transcriptionist