

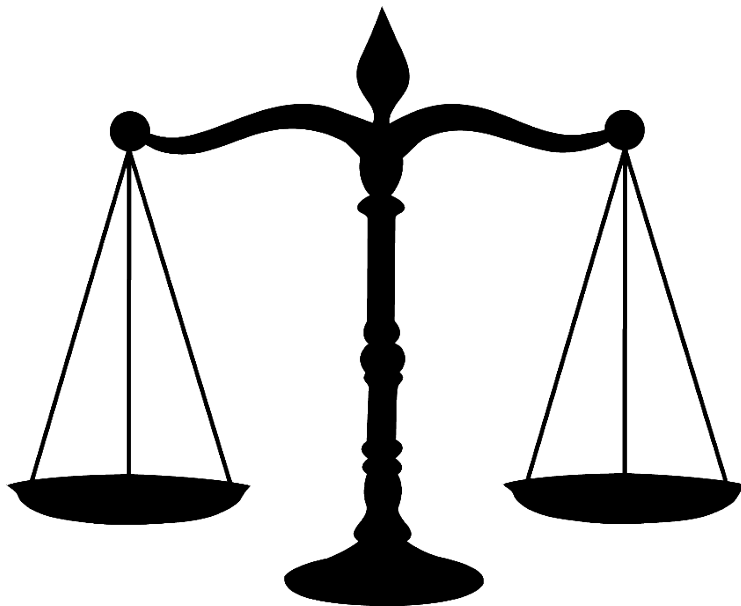
2023 First Annual
Closing Argument Competition
Only for 1L and 2E Students

State of Eureka

v.

Jackie Lu

A Criminal Case of DWI



By Collin Tierney
Hennepin County Public Defender, Berkeley Law '14

SYNOPSIS

On June 21, 2022, Officer Jean Kahler from the Landon City Police Department observed a crashed vehicle engulfed in flames on the side of the highway. The officer identifies two individuals, defendant Jackie Lu and their friend Justine Chou, standing outside the vehicle. Upon contact, both provide inconsistent stories as to the identity of the driver. At first, both insist there is a phantom third driver. But then, once separated, they both change their stories and blame the other individual. The car is in the defendant's name, and the keys are in the defendant's pocket. Both suspects behave differently than each other when questioned; the defendant is particularly obstructive and hostile. Following an investigation by the Simon County Sheriff's Office, the State of Eureka has filed criminal charges against Lu for DWI causing injury and criminal vehicular operation.

WITNESS LIST

Prosecution Witness: <ul style="list-style-type: none">• Officer Jean Kahler (police officer)	Defense Witness: <ul style="list-style-type: none">• Jackie Lu (defendant)
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INSTRUCTIONS

1. **Witnesses.** The Plaintiff called Officer Jean Kahler. Officer Kahler testified consistently with their police report. Jackie Lu testified for the Defense. A summary of Lu’s testimony is included in this packet.
2. **Materials.** These are the available documents and exhibits.

Legal Documents	Witness Statements	Exhibits
1. Complaint 2. PC Declaration 3. Stipulations 4. Relevant Law 5. Jury Instructions 6. Jury Verdict Form	1. Police Report of Officer Jean Kahler 2. Summary of Defendant’s testimony at trial.	1. Transcript of Officer Kahler’s Body Worn Camera 2. Photos of Scene

3. **Source of Information.** As always, this fact pattern constitutes a closed universe. This binds the parties to work within the closed, self-contained universe of facts provided in the case materials, with two exceptions.
 - a. Unlike in many mock trials, the defense is not bound by a particular part of any of the materials. As outlined in the stipulations, the defendant has reserved a decision on which of several different factual defenses to make at trial. Any of the three defenses articulated in the stipulations document may be offered by the defendant as long as the offered defense does not fall outside the materials of the case file.

SUPERIOR COURT OF THE STATE OF EUREKA
COUNTY OF SIMON

STATE OF EUREKA,

PLAINTIFF,

V.

JACKIE LU,

DEFENDANT.

CASE NO. 22-CR-002887

CRIMINAL COMPLAINT

THE STATE OF EUREKA HEREBY CHARGES THE DEFENDANT, JACKIE LU, WITH THE FOLLOWING:

**Count 1: Vehicle Code 169A Aggravated Driving While Intoxicated-2 factors
GROSS-MISDEMEANOR; MANDATORY PENALTIES**

That on June 21, 2022, the defendant did operate a motor vehicle within Simon County, State of Eureka, and that within two hours of driving in that geographic boundary, was lawfully tested for the presence of intoxicants and was found to have a blood-alcohol concentration greater than .08, while the presence of at least one aggravating factor existed.

AGGRAVATING FACTOR: That the defendant's blood-alcohol concentration was greater than .16.

MANDATORY PENALTY: 30 days county detention facility.

**Count 2: Vehicle Code 609 Criminal Vehicular Operation
FELONY; MANDATORY PENALTIES**

That on June 21, 2022, the defendant did operate a motor vehicle within Simon County, State of Eureka, and that within two hours of driving in that geographic boundary, was lawfully tested for the presence of intoxicants and was found to have a blood-alcohol concentration greater than .08, and that was operating the vehicle in a manner causing injury to another—to wit, Justine Chou.

MANDATORY PENALTY: 180 days county detention facility.

STATEMENT OF PROBABLE CAUSE

On the early morning hours of June 21, 2021, officers working for the Landon PD Safe Streets DWI Task Force spotted a burning vehicle in the SB lane of the 111 highway about two miles south of the 34th St exit. Officers approached and quickly determined two parties found outside the vehicle were heavily intoxicated. They were DEFENDANT and VICTIM, sitting together on the roadside next to the burning car. After verifying one party, VICTIM, was injured with a broken ankle, officers investigated the accident.

Both individuals, VICTIM and DEFENDANT, both jointly first claimed that there had been an earlier third occupant who had been the driver. They both falsely stated together that the driver had escaped the scene. However, later on, in response to questioning while separated, VICTIM apologized and admitted that she was covering for DEFENDANT, who was actually the true driver. VICTIM explained she'd sustained an injury to her foot during a car crash while DEFENDANT was operating the car, that it was DEFENDANT'S car, and that the keys would be in DEFENDANT's pocket.

All of these facts turned out to be true when police next questioned DEFENDANT, who was uncooperative and gave inconsistent, incomplete and hostile answers to questions. DEFENDANT acknowledged owning the car and possessing the keys but denied driving it. Officers arrested DEFENDANT, lawfully acquired a search warrant for a blood sample, and extracted the same within two hours of the accident. Results later revealed DEFENDANT'S BAC was .21, nearly three times the legal limit.

Hospital records revealed VICTIM suffered three fractured bones in her right foot / ankle area. Additionally, accident reconstruction analysis showed that the driver of the burning Ford Fusion had been driving the vehicle at 85 miles per hour shortly before the accident occurred. Tire tread markings showed that the vehicle swerved suddenly to the left during a bend rightward in the road, and then the driver overcorrected to the right, braked hard, and ran up onto the curb under an overpass, and hit the concrete wall of the overpass. The car caught fire and shortly thereafter burst into flames.

Because significant time has passed since this case has occurred and because Defendant has no felony criminal history, the State requests a summons out of custody for arraignment.

09/10/2022

Christopher Brown

Christopher Brown
Deputy District Attorney
Simon County District Attorney

SUPERIOR COURT OF THE STATE OF EUREKA
COUNTY OF SIMON

STATE OF EUREKA,

PLAINTIFF,

V.

JACKIE LU,

DEFENDANT.

CASE NO. 22-CR-002887

PRETRIAL STIPULATIONS AND
ORDERS

1. The parties agree that they have not attempted to call any other witnesses in this case that are listed in the police report. All listed witnesses were available to be called by either party, but neither party made efforts to call these witnesses. As such, pursuant to Eureka case law, neither party may comment on a failure of the other party to call a witness. The Defense may always comment on the prosecution's failure to meet its burden of proof, but it may not couch these arguments in terms of the prosecution's failure to call a particular witness.
2. The question of penalty may not be mentioned. The parties may not inform the jury of the "level" of offense (such as gross-misdemeanor or felony). Nor may the parties make any reference to the defendant's exposure to any incarceration time.
3. Accident Reconstruction Undisputed:
 - a. The parties agree that the following is all factually correct and accurate:
 - b. An accident scene construction report was completed in this case, and it determined that the driver of the burning Ford Fusion in this case was driving the vehicle at 85 miles per hour shortly before the accident occurred. Tire tread markings showed that the vehicle swerved suddenly to the left during a bend rightward in the road, and then the driver overcorrected to the right, braked hard, and ran up onto the curb under an overpass, and hit the concrete wall of the overpass. The car caught fire and shortly thereafter burst into flames.
 - c. The Ford Fusion did not roll over during the collision.
 - d. No one died as a result of the crash. Items inside were destroyed beyond recognition from the fire.
 - e. The posted speed limit on this entire stretch of highway was 55 miles per hour.
 - f. Neither party wishes to call any accident reconstruction witnesses or present findings or evidence from that investigation.

4. The Defense has already moved to suppress un-Mirandized, roadside questioning of the defendant by Officer Kahler and Hurtado. This Court denied that motion, and it may not be re-raised during trial.
5. The parties agree that on the early morning hours of June 21, 2021, the burning Ford Fusion found at the scene by police officers was owned and registered to Jackie Lu.
6. The parties agree that a valid blood sample was collected pursuant to lawful procedures from Jackie Lu within two hours of suspected driving conduct in this case. The parties further agree that the result of that blood sample was accurately above .16 grams of alcohol per 100 milliliters of blood. The result from the lawfully obtained sample was .21 BAC, which is greater than both the threshold legal limit of .08 BAC and the aggravated limit of .16 BAC.
7. The parties agree that Justine Chou suffered a fracture in the bones of her ankle as a result of the car crash in this case, which constitutes an injury of another for purposes of the elements of Criminal Vehicular Operation. However, the parties dispute the identity of the perpetrator who caused this injury. The defendant denies being the driver.
8. Officer Kahler's Body Camera Footage and Transcript:
 - a. The parties agree that they have received full copies of digital body worn camera video recordings from all officers involved in this case. Additionally, both parties agree a copy of Officer Kahler's body camera footage has been accurately transcribed in this case.
 - b. **Exhibit 1:** Both parties have chosen not to submit an actual copy of any officer's body-worn camera footage itself to the jury; however, the parties may elect to provide excerpts from Exhibit 1, the transcription of Kahler's body-worn camera footage, which the parties agree contains all of the relevant body camera-recorded statements in this case.
 - c. **Exhibit 2:** Neither party chose to take any screenshots from the body camera to display to the jury, with the exception of Exhibit 2, a small group of photos both parties agree accurately depict the still shot of the body camera video at that particular moment.
9. Affirmative Defenses: Alternative Perpetrator
 - a. The defendant has timely raised the affirmative defense of alternative perpetrator. The defendant may either argue that the case has not been proven beyond a reasonable doubt as to the identity of the defendant as the driver, or the defendant may choose to state that an unknown individual who escaped from the scene was the driver, or the defendant may choose to name Justine Chou as the driver.

- b. The prosecution has been timely noticed of these possible defenses and has not requested additional time to rebut any of these defenses regardless of which defense or defenses are raised at trial by the defendant.

10. Motion Awaiting Argument: Chou's Statements to Police Identifying Defendant

- a. The prosecution has submitted a timely filed motion *in limine* to offer out-of-court statements made by Justine Chou against the defendant at the scene of the car crash in this case.
- b. The defense has already objected that these statements violate the Confrontation Clause, and the court has overruled that objection on the basis that the questions and answers were made primarily to solve the potential ongoing emergency of a drunk driver fleeing the scene of a serious accident with injuries.
- c. The statements were admitted at trial.

State of Eureka v. Jackie Lu
JURY INSTRUCTIONS

Reasonable Doubt

The fact that a criminal charge has been filed against the defendant is not evidence that the charge is true. You must not be biased against the defendant just because they have been arrested, charged with a crime, or brought to trial.

A defendant in a criminal case is presumed to be innocent. This presumption requires that the Prosecution prove a defendant guilty beyond a reasonable doubt. Whenever I tell you the Prosecution must prove something, I mean they must prove it beyond a reasonable doubt.

Proof beyond a reasonable doubt is proof that leaves you with an abiding conviction that the charge is true. The evidence need not eliminate all possible doubt because everything in life is open to some possible or imaginary doubt.

In deciding whether the Prosecution has proved their case beyond a reasonable doubt, you must impartially compare and consider all the evidence that was received throughout the entire trial. Unless the evidence proves the defendant guilty beyond a reasonable doubt, they are entitled to an acquittal and you must find them not guilty.

Count 1. Aggravated Driving While Intoxicated—Blood Sample over .16 within Two Hours

The defendant, Jackie Lu, has been charged in Count One in the Complaint with Aggravated Driving While Intoxicated—Blood Sample over .16 within Two Hours.

In the State of Eureka, a crime is committed when a person operates a motor vehicle while having a blood alcohol concentration of .16 grams of alcohol per 100 milliliters of blood, as tested by blood sample within two hours of operating the motor vehicle.

Count 1. Definitions of Terms

- a. “Motor vehicle” means: any transportation machine capable of carrying a person, that is powered by an electric motor or combustible fuel engine.
- b. “Operate a motor vehicle” means: to drive the motor vehicle; to have control over the manipulation of gears or the steering system of the motor vehicle; or to be in a position capable of placing the vehicle in restraint. It is not a requirement of this term that the engine be running when the defendant has control over the vehicle or that the defendant have possession of the keys to the vehicle; however, you may consider facts such as these when deciding whether the defendant operated the vehicle.
- c. “As tested” means that a blood sample was retrieved from the defendant within two hours of operating a motor vehicle, and the sample was either immediately or later found to have a certain concentration of alcohol.

Count 1. Elements

To find the defendant guilty of Driving While Intoxicated, you must find that all three/~~four~~¹ of the elements below have been proven beyond a reasonable doubt:

1. The defendant operated a motor vehicle on or about June 21, 2021.
2. The defendant’s blood was tested for the presence of intoxicants and found to contain a blood-alcohol concentration of .16 or more grams of alcohol per 100 milliliters of blood. It is not necessary for you to determine whether the defendant was actually impaired by this amount of alcohol in the blood.
3. The defendant’s operation of the motor vehicle occurred within Simon County within two hours of the collection of the sample of blood.
4. [DELETED BY STIPULATION OF THE PARTIES; DO NOT READ TO THE JURY.]

¹ Count 1 Element 4 refers to a prior qualifying conviction. By agreement of the parties, this element is not given to the jury to decide, and the jury is only informed that there are three elements to decide instead of four.

If you find that all of the above elements have been proven beyond a reasonable doubt, then the defendant is guilty of Count 1. If you find that any of the above elements has not been proven beyond a reasonable doubt, then the defendant is not guilty of Count 1.

Count 2. Criminal Vehicular Operation—DWI over .08 with Injury.

The defendant, Jackie Lu, has been charged in Count Two of the Complaint with Criminal Vehicular Operation.

In the State of Eureka, a crime is committed when a person operates a motor vehicle and their operation of the vehicle causes injury to another person, while having a blood alcohol concentration of .08 grams of alcohol per 100 milliliters of blood, as tested by blood sample within two hours of operating the motor vehicle.

Count 2. Definitions of Terms

- a. “Motor vehicle” means: any transportation machine capable of carrying a person, that is powered by an electric motor or combustible fuel engine.
- b. “Operate a motor vehicle” means: to drive the motor vehicle; to have control over the manipulation of gears or the steering system of the motor vehicle; or to be in a position capable of placing the vehicle in restraint. It is not a requirement of this term that the engine be running when the defendant has control over the vehicle or that the defendant have possession of the keys to the vehicle; however, you may consider facts such as these when deciding whether the defendant operated the vehicle.
- c. “As tested” means that a blood sample was retrieved from the defendant within two hours of operating a motor vehicle, and the sample was either immediately or later found to have a certain concentration of alcohol.
- d. “Causes injury” means someone other than the defendant has suffered any physical injury to their body, however slight, as a result of the defendant’s operation of a motor vehicle. It does not mean the defendant intended to cause an injury or that the defendant acted dangerously, carelessly or recklessly in operating the motor vehicle, and nor does it mean that the defendant’s actions were the sole or most important cause of the injury. It is enough to cause injury if the defendant’s actions in operating the motor vehicle were a contributing factor to the other person’s injury.

Count 2. Elements

To find the defendant guilty of Criminal Vehicular Operation, you must find that all four of the elements below have been proven beyond a reasonable doubt:

1. The defendant operated a motor vehicle on or about June 21, 2021.
2. The defendant’s operation of the motor vehicle caused injury to Justice Chou.
3. The defendant’s blood was tested for the presence of intoxicants and found to contain a blood-alcohol concentration of .08 or more grams of alcohol per 100 milliliters of blood.

It is not necessary for you to determine whether the defendant was actually impaired by this amount of alcohol in the blood.

4. The injury to Justice Chou was sustained within Simon County and within two hours of the collection of the sample of blood from the defendant.

If you find that all of the above elements have been proven beyond a reasonable doubt, then the defendant is guilty of Count 2. If you find that any of the above elements has not been proven beyond a reasonable doubt, then the defendant is not guilty of Count 2.

1 SUPERIOR COURT OF THE STATE OF EUREKA
2 COUNTY OF SIMON

3 STATE OF EUREKA,

CASE NO. 22-CR-002887

4 PLAINTIFF,

JURY VERDICT FORM

5 V.

6
7 JACKIE LU,

8 DEFENDANT.
9

10 **We, the jury in the above-entitled cause, find the Defendant, JACKIE LU:**

11
12 1. How do you find the defendant on the charge of Aggravated Driving While Intoxicated?

13
14 ___ GUILTY

___ NOT GUILTY

15
16 2. How do you find the defendant on the charge of Criminal Vehicular Operation?

17
18 ___ GUILTY

___ NOT GUILTY

19
20
21 Date: _____

Signed: _____

22 Presiding Juror
23

24 After this form has been signed, deliver it to the Court Clerk.
25

**LANDON POLICE DEPARTMENT
STATE OF EUREKA
DWI FIELD REPORT**

ID Report	#21-01623	Reporting Officer: Kahler, Jean, Sgt.
Case Type:	DWI, CVO	LEU #24
Date of Incident:	06/21/21	South Precinct MV Patrol
Date of Completion:	09/08/21	Reviewed by: Jenson, Amy, Lt.

PARTICIPANTS:

LEU #24: Kahler, Jean; Hurtado, Alex	Arrestee: Lu, Jackie
	Victim: Chou, Justine
ASSISTING UNITS:	Witness: Gordon, Samantha (EMS)
LEU #7 : Harris, Ewan; Torres, Trent	Witness: Perez, Bethany (EMS)
LEU #9: Knapp, Aiden; Howard, Andrew	Witness: Wooten, Maria (EMS)
SO: Jenson, Amy, Lt.	Witness: Tagawa, Erica (Holiday Gas)

CERTIFICATION FOR DETERMINATION OF PROBABLE CAUSE

That J. Kahler, Sergeant of Landon Police Department, is a licensed peace officer with the City of Landon and has reviewed the investigation conduct and report summarized below for case #21-01623. There is probable cause to believe that JACKIE LU committed the crime of Driving While Intoxicated Over .16, a Gross Misdemeanor, and Criminal Vehicular Operation, a Felony, on June 21, 2021 in the City of Landon, State of Eureka. This belief is based on the following reports herein.

TRAINING AND LICENSURE

I, Sgt. Kahler of the Landon Police Department, was at the time of this case and am still now a trained and licensed peace officer in the State of Eureka. I received my bachelor's degree in criminal justice from Eureka State University in 2013, and in 2014 I received my certification and licensure to become a peace officer in the State of Eureka, following Eureka's mandatory five-month peace officer training program and the City of Landon's eight-week mandatory training program. Since Spring 2014, I have been a patrol officer with the Landon Police Department, located in Simon County, Eureka.

The standard training I received qualifies me in roadside stop and investigations; driving police vehicles and handling and firing firearms and nonlethal alternatives; the identification, collection and handling of evidence, such as weapons, narcotics and other contraband; interviewing witnesses; securing emergency and crime scenes; documenting and writing police reports; and acting as an emergency first-aid responder.

I have been further certified since 2015 to conduct alcohol-suspected DWI investigations, which includes conducting field sobriety tests, administering the Intoxilyzer Breath Test, and processing DWI cases as the primary reporting officer. In 2018 I received special, advanced

training through the State of Eureka's intensive 120-hour course on alcohol-related DWI case investigation, and in 2019 I completed the State of Eureka's three-phase, 72-hour Drug Recognition Expert (DRE) training, which allows me to handle driving cases in which non-alcohol intoxicants are suspected.

My specialty DWI training all includes subjects such as field sobriety testing (balance testing, horizontal and vertical gaze nystagmus testing, and cognitive and memory impairment testing). It also includes administering breath tests like the Portable Breath Test (PBT), the Intoxilyzer breathing machine test, and more than a dozen different drug-specific DRE field tests. I am also qualified to draft search warrants, administer implied consent advisories, observe voluntary blood draws, and assist with forcible blood draws under hospital supervision.

As of this case, I have personally handled, helped with, and/or supervised more than 500 DWI case investigations of various types. I am one of only two officers at LPD with this requisite level of training in DWI investigation. I currently work on Law Enforcement Unit #24, as a supervisor for a partner in training to become a DWI expert officer. My shift is always from 18:00 to 06:00 hours, between three to four times weekly.

CASE INVESTIGATION REPORT #21-01623

On June 21, 2021, I was in LEU #24 with my trainee partner, Officer Hurtado. Normally we are called to a scene after a driver has been pulled over, in order to conduct a thorough DWI investigation. On this particular night, at 02:18, we personally came upon a crashed vehicle on Highway 111 SB, about two miles south of the 34th Street exit, inside of Simon County, Eureka.

The crash was a white Ford Fusion, later connected to AP Jackie Lu. At the time of response, the car was unrecognizable, engulfed entirely in flame, as it rested on the roadside, on the right shoulder, up against the concrete wall of an overpass. The roads on this night were dry, with overcast cloud cover and some air humidity.

My partner and I pulled to a stop about 100 yards north of the crash and exited the squad with our flashlights.

We immediately saw two people sitting in the grass on the roadside ten yards away from the crash, in our direction. They were both talking to each other, and from the soot on their clothes and blood on their faces and arms it appeared that they had been in the car at the time of the crash.

Both individuals had trouble understanding what we were saying. We actually shouted at them from back near the squad as we approached. Neither one of them looked at us until we were about 50 yards away. They made eye contact at that time with us, but they did not respond until we were maybe five yards away. They were talking to each other during this time, but I could not hear what they said.

We first needed to determine if they were injured. It did appear that they had both suffered superficial injuries to their skin on their arms and face. The victim, later ID'd as Justine Chou, told us that her foot was apparently broken. The AP, later ID'd as Jackie Lu, denied serious medical issues, stating injuries observed on the arms were from broken glass.

I could immediately ascertain that both individuals were intoxicated, likely by alcohol. Their eyes were both bloodshot and watery, and they were swaying as they sat on the grass. They did not appear to be in serious pain. It was concerning to me that Chou did not seem bothered by her complaint about a broken foot. In fact, she appeared more concerned with the cold outdoor temperature, even though she was sitting ten yards away from a burning car in 80 F humid night heat.

My partner and I both noted a very strong odor of alcohol emanating from their bodies. I could smell it from several feet away easily in spite of the scent of acrid smoke from the burning car. Neither individual seemed bothered by the car wreck, even though it was an especially dangerous wreck. They had not removed any property from the car besides personal effects that they carried in their pockets. Both were clothed in regular summer clothing, however, Chou was missing a high heel and carrying the other one in her hand by its loose strap. I did not think at the time to ask if her feet were injured. Lu was wearing tennis shoes.

At the time, we treated both individuals as suspects. It is very common for intoxicated drivers to claim that someone else was the driver, often in nonsensical fashions. This happened here almost immediately. Before my partner and I could finish our questions about injuries, Lu immediately remarked that neither of them was the driver. Chou jumped in and said the same thing, except she gendered the third occupant differently. Lu frantically waved up the embankment, a thirty-foot-high hill that goes up a sharp angle for fifty feet and ends in a five-foot-tall chain link guard fence. Chou saw Lu pointing and joined in, pointing at the same location. They insisted the real driver had gone that direction.

After verifying they were OK to continue sitting on the roadside as EMS arrived, I stepped away with my partner and conferred. We both agreed on the signature evidence of alcohol intoxication, and we discussed the probable likelihood that both of them were lying about the identity of the driver in order to cover for each other. Not only was their story contradictory, but they appeared unwilling to go into any substantive detail, such as naming the third driver.

Moreover, we had specifically observed this same white Ford Fusion at a Holiday gas station just a matter of minutes earlier. Both myself and my partner recalled seeing just the two of Chou and Lu outside of their car together. They had gone into the gas station together to buy snacks, and we saw them going to the car, the only other car at the pumps, while we were paying for coffee.

Two notes about video at the gas station:

- (1) Later on, the day after this DWI field report was concluded, I called the Holiday store when I started my next shift, to ask if we could preserve a copy of the security footage at the time the Ford Fusion was parked at the store. I spoke to a store manager on the phone, Erica Tagawa, who advised she was looking at the system while speaking to me and observed that the video footage had failed to record on the night in question. She could not offer an explanation for why or how this occurred. I thanked her for her time and concluded the phone call.)
- (2) I also do not have body camera footage from the gas station. Our body cameras were not activated, due to department policy, at the time we were at the gas station because we were not responding to an incident or conducting an investigation at that time.

After conferring, my partner and I decided to interview each suspect individually. However, our priority was making sure that Chou saw paramedics as soon as possible to address her injuries. Just in case of a head injury, I also wanted Lu to be seen by paramedics, although Lu would continue to deny the need for medical help throughout the night.

We reapproached both occupants and separated them. Chou was held in place as the ambulance rolled up, and I questioned her there. We took down her name, and she very quickly changed her story, admitting that in fact Lu was the driver and that there was no third person in the car. She stated that she didn't want to embarrass Lu face to face, so she'd gone along with the false story about the hill runner.

Chou also explained with particularity how she had lost her second shoe, where she had injured her leg (in the passenger side front seat), and informed us that we would find the car keys in Lu's pocket. She identified Lu as the owner of the vehicle as well and stated Lu was supposed to be the designated driver for the night. I would describe her as intoxicated and agitated from increasing pain throughout this interview, but she was also forthcoming and cooperative. She choked up and began crying when telling us that Lu was her friend and that Lu was the true driver.

By contrast, the interview of Lu was the opposite. Lu was also obviously intoxicated, but Lu's demeanor was also much less alert in the beginning. Then Lu became agitated, angry, and increasingly uncooperative as the interview went on.

Lu first had trouble telling us their name. Lu insisted that they'd already given us a name. We corrected Lu and explained that is not the case. We reviewed the nonsensical story Lu had offered us earlier, and Lu doubled down on it, insisting it was "the truth." We asked for clarity on the gender of the phantom third vehicle occupant, and Lu clammed up and mumbled something.

I told Lu to be straight with me because I did not believe the story about a third person. Lu again had no response. I asked Lu for an ID, and Lu stalled for time, telling us that they had a driving license but that it was technically not valid and not in their possession.

Only after a great deal of difficulty did Lu honestly tell us their name, Jackie Lu. My partner ran the name and DOB in our database and found it was clear of warrants. Nonetheless, I determined we would arrest Lu at this time because we had an eyewitness telling us Lu was the real driver, Lu was obviously intoxicated, and because Lu's story was not making any sense.

I first asked Lu how much alcohol they had consumed. Lu gave a common dishonest answer that DWI offenders give: "one to two beers." From my training and experience, I know for a fact that this is impossible because Lu's alcohol-scented breath was profuse and overwhelming, which does not happen after just one or two beers. Furthermore, Lu's eyes were incredibly bloodshot and watery, and Lu was regularly slurring words, trailing off, and either forgetting or pretending to forget the topic of conversation.

I asked Lu to stand up for field sobriety tests. Lu refused to do so even after I explained that I had probable cause to get a search warrant for a blood sample. Lu told us to "do what you gotta do" and denied further cooperation. I asked Lu if they were the driver, and Lu denied it. I informed Lu that Chou identified them as the driver, and Lu suddenly changed their story, accusing Chou right back of being the driver.

I asked Lu if the keys would be in the car, and I told Lu that I knew the car was theirs. Lu avoided this topic, reverting to the simple claim that Chou was the driver, without explanation for how Lu came to possess any keys or why Chou was driving Lu's car.

Lu was informed about the arrest procedure at that time. Lu demanded a lawyer. I said OK and had Lu wait for a backup squad to take them back to the hospital. I then copied all of the above information verbatim into an exigent evidence search warrant affidavit and submitted a request for a signature at 02:45 hours over my squad car computer. At 03:12 hours, the Honorable Judge Bartolomei signed the search warrant and authorized a blood draw, which was performed under my supervision by an R.N.

At the time of the blood draw, my body camera was deactivated, pursuant to department policy, because we were in the middle of a busy hospital wing and there was no further incident. Lu did cooperate and agree to allow the nurse to take the blood sample once shown a paper printed copy of the search warrant.

Lu was released from custody at the hospital to await the results of the blood draw. Approximately three months later, on September 7, 2021, I received a message from the Landon Crime Lab, detailing a blood alcohol concentration of 0.21 grams of alcohol per 100 milliliters of blood. This was from a blood sample taken an hour after the driving conduct. Normally, the human body will metabolize alcohol at a known, predictable rate after consumption. Unless a defendant was drinking at the same time as they were driving, the alcohol level is known to decrease rapidly throughout the subsequent hours following the moment of driving.

This all means that, had we requested a reverse-extrapolation analysis on the blood sample, the true reading predicted to be in Lu's system at 02:00 hours would have been higher than .21. However, I did not request a reverse-extrapolation analysis be done because the sample was

already nearly three times the legal limit in the state of Eureka, and the law mandates that any result of .08 or higher taken from a blood, urine or breath sample within two hours of driving will constitute a basis to revoke the offender's driver's license and charge them with Driving While Intoxicated.

I have reviewed my body camera footage and transcript in Exhibit 1, as well as the still shots in Exhibit 2, and I can verify they are also accurate. The night-time shot is from my body camera footage on scene, and the day-time shot is from my body camera footage at the police evidence car lot the following day.

CHARGES REQUESTED

Because the BAC result is over .16, I do recommend this case for charging as a Gross-Misdemeanor Driving While Intoxicated. Because a passenger was injured as a result of Lu's driving conduct while intoxicated at .08 or greater, I also recommend this case for charging as Felony Criminal Vehicular Operation.

CERTIFICATION OF OATH

Under penalty of perjury under the laws of the State of Eureka, I swear that the foregoing is true and correct to the best of my knowledge and belief. Signed and sworn on September 8, 2021.

09/08/2022

Jean Kahler

Testimony of Jackie Lu

The following is a summary of the testimony Jackie Lu provided in her trial.

The Defendant Jackie Lu and her friend were supposed to be headed to a friend's party on the night in question. The friend who was hosting the party is the defendant's friend. The defendant invited Chou to this party on the condition that Chou was the designated driver. The defendant says she could not have driven because her license is suspended due to not paying previous traffic tickets. Furthermore, she invited Chou so that someone could drive the defendant. After leaving the party, Chou was the driver and crashed the car. The car is the defendant's car.

Once they crashed, the defendant and Chou developed a plan to blame a third party who allegedly ran away after the crash. Both the defendant and Chou had agreed to this original plan. While debating the plan, Chou realizes that the car keys are in her pocket and starts to panic. She asks the defendant what they should do with the keys but before they could figure out a plan the police arrive and start approaching with questions. Chou has the keys in her hand at the time and the defendant takes them from Chou in an attempt to get her to calm down and continue with the plan. After being questioned by the police and being informed that Chou has flipped on her, she tells the police that Chou is the real driver and that they both had agreed to lie about a third party driver. The police do not ask Chou for a blood alcohol test or check fingerprints on the car keys (to the best of the defendant's knowledge).

TRANSCRIPT OF OFFICER KAHLER'S BODY WORN CAMERA

Off. Kahler: Hey are you guys OK? Are you OK? Hey! Are you OK?

Off. Hurtado: The heck? Can they not hear us?

Off. Kahler: I don't know. Huh. Hey! Hey! Can you guys— OK, they're waving. Jeeze. [laughter]

Off. Hurtado: Ah, this is going to be a doozy. What a cluster.

Off. Kahler: Hey! Howdy! Good morning.

Lu: What? [inaudible] Is it morning?

Off. Kahler: Yep, sure is. Just twenty minutes after two A.M. Looks like quite an accident! Are you guys OK?

Lu: Yeah, we're cool. We weren't the drivers though.

Off. Kahler: Hold on. Can you chill here for a sec? I need to check her out.

Chou: I'm OK.

Off. Kahler: You sure? You guys look a little banged up. Is that your blood, or—

Lu: It's mine, and hers, yeah. But it's cool. Just got cut on the glass.

Off. Kahler: Oh OK. You, miss?

Chou: I'm OK. Oh my God that was fast! I can't believe we're alive! Ooooh my God!

Off. Kahler: Yeah?

Chou: Jesus! My foot's broken though.

Off. Kahler: Oh it is. Oh! Wow, yikes. My God, yeah. Are you in pain or, you know, adrenaline and all that—

Chou: Right.

Off. Kahler: Do you think that might be kind of a big deal, or—

Chou: I'm OK. Adrenaline, yeah. Hooooo God. Oh but I'm kind of cold? Christ that was so fast. Oh my God.

Off. Kahler: It's like eighty degrees. You're cold?

Lu: She's fine officers, just shaken up. We're OK. But officers, we weren't the drivers.

Off. Kahler: Drivers? OK, whoa, wait, there's more than one?

Chou: No, like, we weren't the one in the driver's seat.

Off. Kahler: Ah. OK. Who was?

Chou: He went up the hill thing.

Off. Hurtado: The embankment? Did you say his name?

Lu: She was, well, yeah. I don't know her.

Off. Kahler: Uh, huh? Is it— Wait, what's this person look like?

Lu: I mean, we only just met them. But like, they're way up there now.

Off. Kahler: Up that whole hill? Jeeze Louise! They just ran off on you guys, leaving you here next to this fireball?

Lu: Yep.

Off. Kahler: That's scary.

Lu: [inaudible]

Off. Kahler: Well tell you what, guys, are you injured enough that— Do you need medical attention for your foot, ma'am? Scratch that. You know, we're calling a fire and ambulance anyway, because you know, the crash and all. Better safe than sorry, you know? Just sit tight for me, OK?

Lu: Yeah.

Chou: OK. Um. My foot is hurt.

Off. Kahler: Your foot's broken, you think? I think it looks broken for sure, ma'am.

Chou: Yeah. I think it's broken.

Off. Kahler: OK. OK, well, I don't need you to stand up. Don't put any weight on it, OK? In fact, don't move your foot at all, if you can. You're a safe distance away, OK? Just sit tight right there. Ambulance on the way, so.

Off. Hurtado: We're just gonna step away for a second to radio for more help, yeah?

Chou: OK.

[PAUSE]

Off. Kahler: [laughter] They're so full of BS. Jesus Christ.

Off. Hurtado: Yup.

Off. Kahler: We saw their car right there at the Holiday, like five minutes ago. It was just the two of them buying snacks.

Off. Hurtado: I know. And they're both drunk as hell. Can smell it from like three feet away.

Off. Kahler: Easily. They couldn't even agree on the third driver's gender.

Off. Hurtado: [inaudible] I know.

Off. Kahler: Well, so. I guess we still play it by the book. Interview both, identify the driver, and go from there. Neither of them are going to be good enough to do FSTs, but we've got all the PC we need to take them in. What do you think?

Off. Hurtado: [laughter] Crash, check. The red-shot eyes, check. Odor, check. Injuries... Yeah, you're right, Logan. I mean, you're the DWI-certified one. Want to take the lead on this one and I'll do what I can to help?

Off. Kahler: How generous of you. [laughter]

[PAUSE]

Off. Kahler: OK guys. Ambulance pulling up right here. For procedural reasons, we need to separate the two of you when we ask questions. Since her foot is broken, I'd like EMS to check her out first, and I really don't want her to move. Can you— OK, you can walk? Good. Just right over there, with my partner. I'll be with you in a moment, OK?

Lu: OK.

Off. Kahler: OK, ma'am. These medics are going to check you out, OK?

Chou: OK.

Off. Kahler: Can you tell us your name?

Chou: Yeah. It's, um. Justine Chou.

Off. Kahler: Justine. OK. Do you have a driving license?

Chou: No. Jackie was the driver tonight. Supposed to DD me.

Off. Kahler: Oh OK. Is Jackie the one who ran up the hill there, or is that the person on the curb behind us?

Chou: That person, my friend. [pointing at Lu]

Off. Kahler: OK. Well, you're giving us two different stories here. What's the deal?

Chou: I know. I didn't want to get them in trouble in front of you. I don't want any trouble.

Off. Kahler: Uh huh.

Chou: But I mean, they're the driver. Yeah.

Off. Kahler: OK. Cause I mean, we saw the two of you at the Holiday.

Chou: Yep.

Off. Kahler: Was the other person the driver, then?

Chou: Yeah. They're the owner. They actually have the keys in their pocket. After we crashed, Jackie tried to give them to me, and I was like, um, no, we have to get the heck out of here! God! Jackie was supposed to be the designated driver.

Off. Kahler: Yeah. OK. Where'd you hurt your leg?

Chou: In the— the passenger seat. My high heel's still there. Oh my God.

Off. Kahler: Well, I mean, ma'am, that's a Ford Fusion? I can't even tell. Thing's a fireball.

Chou: Yeah.

Off. Kahler: Kinda doubt your shoe's still there. It's dust, you know?

Chou: Yeah.

Off. Kahler: Well, anyway. You stay here. Medics are going to take care of you. Thanks for your honesty, OK?

Chou: OK. I'm sorry. I'm sorry.

Off. Kahler: You're fine, ma'am. Look at me. You're going to be OK, OK?

Chou: OK. [inaudible]

[PAUSE]

Off. Kahler: All right. Thanks for waiting on us. You still OK? Good, good. Man... Hey, so what's your name again?

Lu: I told you.

Off. Kahler: No you didn't.

Lu: Yeah I did. It's [inaudible]

Off. Kahler: What? We just got here like three, four minutes ago. You said he or she or whatever ran up the embankment and that's all.

Lu: OK. Well, that's truth of it.

Off. Kahler: What is? Is it a he or a she who ran?

Lu: [inaudible]

Off. Kahler: I'll be honest, I'm having a hard time making out what you're saying.

Lu: [inaudible]

Off. Kahler: Yeah. OK. Well, do you have a driving license or anything?

Lu: No. Um, it's suspended.

Off. Kahler: Suspended why?

Lu: Unpaid tickets.

Off. Kahler: Oh, OK. So do you have any ID on you, or?

Lu: It's Jackie.

Off. Kahler: What? I said do you have an actual ID. It'd be nice if I could actually look at a physical—

Lu: No.

Off. Kahler: Right. So Jackie, do you have a date of birth for me?

Lu: Yeah. Um. March third, ninety-two.

Off. Kahler: OK. Perfect. My partner's going to run that name and DOB, and I've got some more questions for you. Tell you what Jackie, can you stand up?

Lu: No.

Off. Kahler: OK. Is that— Well, why can you not stand?

Lu: The accident.

Off. Kahler: The accident? OK. Is it also because you've been drinking, maybe a little?

Lu: No.

Off. Kahler: Jackie, come on. How much have you had to drink tonight?

Lu: I didn't. Well, I mean, a beer. Two beers. Like, just two drinks.

Off. Kahler: Really? Because I'm going to be honest. You've got bloodshot, watery eyes, your words are very slurred, you're having trouble remembering things clearly, and you're not being very forthcoming with me, you know what I mean?

Lu: What?

Off. Kahler: Look, Jackie, if you can't stand up to do some field sobriety tests, I'm going to have to get a warrant, and we'll just take a blood sample from you. How does that sound?

Lu: I mean, whatever. You do what you gotta do, but I'm not consenting to anything.

Off. Kahler: OK. Tell me honestly, Jackie, were you the driver?

Lu: No.

Off. Kahler: Where were you guys coming from?

Lu: That's none of your business.

Off. Kahler: Actually, it's exactly my business, Jackie, because one of you crashed this car and nearly killed both of yourselves in a giant fireball on the roadside! Do you understand that?

Lu: So I'm being detained?

Off. Kahler: Hell yes, you're being detained. You're both completely smoked with booze, Jackie. It's my job to figure out which one of you was operating this car.

Lu: [inaudible]

Off. Kahler: What? I'm sorry?

Lu: Yes! I said yes! God. You don't have to be such a—

Off. Kahler: Excuse me? Jackie, are you serious right now?

Lu: [inaudible]

Off. Kahler: Let's start over. I asked where you were coming from.

Lu: [inaudible] A party.

Off. Kahler: Yeah? With alcohol?

Lu: I said yes already, didn't I?

Off. Kahler: OK. Any drugs?

Lu: I don't have to answer that question.

Off. Kahler: I mean, OK, but—

Lu: There were drugs but I didn't have any. Weed and some other stuff, I don't know.

Off. Kahler: K. All right. Well where were you trying to get to? Do you have anyone you want me to call?

Lu: No. Not really. I haven't worked in a while, you know. I'm kind of between jobs, you know?

Off. Kahler: Sure.

Lu: My folks don't have to know we're here. We're just OK now, though.

Off. Kahler: Uh, I mean, OK then. Well, Jackie, I'm sorry to tell you this, because, you know, I'm am going to have to arrest you for probable cause DUI. We've got a witness who's now ID'ing you as the driver. Says the car is in your name. Is that going to be true?

Lu: [inaudible] So what? Like what would that have to do with anything?

Off. Kahler: [laughter] OK, Jackie. Fair enough. I appreciate honesty. Thing about it is, though, when I put you under arrest, I have to search you, OK? Now tell me honestly, am I going to find your own car keys in your pocket there?

Lu: OK, fine! God this is stupid. Can I just tell you what actually happened?

Off. Kahler: You haven't so far, so I'd certainly appreciate that.

Lu: She was the driver!

Off. Kahler: She? Which she? The phantom runner, or—

Lu: Justine! Seriously, officer. This is ridiculous. She told me she take the keys. So I did.

Off. Kahler: Justine Chou, the lady back there?

Lu: Yes.

Off. Kahler: So, ah, why'd she do that, exactly?

Lu: I'm not a mind-reader.

Off. Kahler: [laughter] So it's your car, and you've got the keys in your pocket, and her shoe's in the passenger seat from where she broke her ankle there, and you're going to tell me she's the driver now, huh?

Lu: Just, whatever, officer. It's the truth.

Off. Kahler: K. Well, sounds like you have an interesting view of the truth.

Lu: Huh?

Off. Kahler: Nothing. Just sit tight. You're under arrest, but I'm going to wait for more backup to arrive before we take you back.

Lu: I want a lawyer.

Off. Kahler: Good for you. You'll get one, but just so you know we are not required to provide counsel before we execute the blood raw warrant.

Lu: Like I care? Wow, big cop talk! You're really special, officer, you know that?

Off. Kahler: Yep, OK. That's what I thought.

Lu: You know, screw you, officer.

Off. Kahler: Cool. Have a good night, Jackie.

[END OF STIPULATED EXHIBIT SECTION]



