

*CHRISTINE TOWNSEND vs.
CITY OF BUFFALO, et al.*

*KELLY CRAIG
September 29, 2016*



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AND ASSOCIATES

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UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT: WESTERN DISTRICT OF
NEW YORK

CHRISTINE TOWNSEND,
Plaintiff,

vs Index No. 1:15-cv-00704

CITY OF BUFFALO, CITY OF BUFFALO POLICE DEPARTMENT,
DANIEL DERENDA, COMMISSIONER OF THE CITY OF BUFFALO
POLICE DEPARTMENT, OFFICER MARK VARA, In His
Official and Individual Capacity, and, OFFICER KELLY
CRAIG, In Her Official and Individual Capacity,
Defendants.

Examination Before Trial of KELLY CRAIG, held
pursuant to Article 31 of the Civil Practice Law and
Rules, at the Erie County Courthouse, 92 Franklin
Street, Room 320, Buffalo, New York, on Thursday,
September 29, 2016 at 11:52 a.m. before Nicole
Rotoli, Notary Public.

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APPEARANCES:

THE LAW OFFICES OF MATTHEW ALBERT, ESQ.
BY: MATTHEW ALBERT, ESQ.
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Appearing for the Plaintiff

CITY OF BUFFALO CORPORATION COUNSEL
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Appearing for the Defendants

Also present:
Jessica Morrill
Christine Townsend
Mark Vara

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INDEX TO EXHIBITS
(None marked)

1 (Whereupon, the following stipulations were
2 entered into by the respective parties:

3 It is hereby stipulated by and between
4 counsel for the respective parties that the oath of
5 the referee is waived, that signing, filing and
6 certification of the transcript are waived, and all
7 objections, except as to the form of the question,
8 are reserved until the time of trial.)

9
10 K E L L Y C R A I G, 669 Hertel Avenue, Buffalo,
11 New York, 14207, having first been duly sworn, was
12 examined and testified as follows:

13
14 EXAMINATION BY MR. ALBERT:

15 Q. Good morning, officer.

16 A. Sir.

17 Q. Officer, you kind of heard the drill with your
18 partner. How long have you a member of the force?

19 A. Nine years.

20 Q. Were you in the academy with Officer Vara?

21 A. Yes.

22 Q. So, you guys have known each other for nine years?

23 A. Yes.

24 Q. Because I got yelled at a little bit, I'm going to
25 try to slow it down so that we have a nice clean

- 1 record for the court reporter.
- 2 You two were in the academy together. Have you guys
- 3 been assigned together for nine years?
- 4 A. Pretty much.
- 5 Q. Fair to say that Officer Vara is a close friend of
- 6 yours?
- 7 A. Yes.
- 8 Q. A best friend of yours?
- 9 A. A good friend of mine.
- 10 Q. You guys have actually been partners for nine years?
- 11 A. Since he came to Delta district, yes.
- 12 Q. You guys have answered a lot of calls together in
- 13 that time, right?
- 14 A. Yes, sir.
- 15 Q. Officer Craig, let me just ask you a little bit
- 16 about your career. You maintain the same rank as
- 17 Officer Vara, patrol officer, right?
- 18 A. Correct.
- 19 Q. Educational background. What's the furthest level
- 20 of education you've achieved?
- 21 A. I have an MBA.
- 22 Q. From what school?
- 23 A. D'Youville.
- 24 Q. Over your nine years assigned with Officer Vara have
- 25 you had any complaints against you?

1 A. I have not been the target of any investigation.

2 Q. You've been a witness maybe in cases in which
3 Officer Vara has been accused of wrong doing, is
4 that fair to say?

5 A. Yes, sir.

6 Q. Similar to where you stand right now, right?

7 A. Yes.

8 Q. In those instances Officer Vara was cleared of wrong
9 doing, right?

10 A. Yes.

11 Q. In your testimony, whatever those incidents were
12 exactly, you essentially said he didn't do anything
13 wrong; right?

14 A. I don't know exactly what I said.

15 Q. Well, thinking back to those incidents, and I don't
16 know what they are, I couldn't get ahold of them,
17 but do you recall Officer Vara acting properly in
18 all those incidents?

19 A. Yes, sir.

20 Q. He didn't do anything wrong?

21 A. I recall him acting properly in those incidents,
22 sir.

23 Q. And not doing anything wrong?

24 A. I recall him acting properly.

25 Q. Same thing here, right, he didn't do anything wrong,

1 right?

2 A. I recall him acting properly in this incident as
3 well.

4 Q. Obviously, you would not want to see your friend
5 face any disciplinary action, correct?

6 A. Obviously, I wouldn't want to see any police officer
7 face any disciplinary action that's unwarranted or
8 unfounded.

9 Q. Did you and Officer Vara discuss this matter before
10 coming to court today?

11 A. Today we did not.

12 Q. Not today, but did you discuss this matter at any
13 point with Officer Vara subsequent to May 9th?

14 A. I believe whenever we had court the first time we
15 had court with this case I'm sure we discussed it
16 with the DA.

17 Q. You were both noticed in, correct?

18 A. Yes, sir.

19 Q. And you both got your court slips signed, right?

20 A. I'm sure we did.

21 Q. You recall receiving this call about loose dogs,
22 right?

23 A. I do.

24 Q. Do you recall what came out over the radio relating
25 to both the dogs as well as the --

- 1 A. I do not.
- 2 Q. You don't remember whether they mentioned that my
3 client wanted to speak to your supervisor?
- 4 A. I do not recall that coming out over the radio at
5 all.
- 6 Q. And you don't recall my client saying that you guys
7 had driven by and not done anything?
- 8 A. I don't recall that.
- 9 Q. You called my client from your cell phone?
- 10 A. I did, sir.
- 11 Q. What is that number that you contacted my client
12 from? I'm not going to put it out but I do need
13 those records.
- 14 A. I no longer have that cell phone.
- 15 Q. That will make it easier then, but, still, what was
16 the number?
- 17 A. Honestly, I don't have the cell phone anymore so I
18 don't know. I have a new number now.
- 19 Q. You don't remember your old number?
- 20 A. I do not.
- 21 Q. How long did you have that phone for?
- 22 A. I do not know.
- 23 Q. You don't remember how long you had that phone for?
- 24 A. I do not know.
- 25 Q. Part of being an officer is being able to observe

- 1 things and remember things --
- 2 A. That's my own personal cell phone and I've had
3 several. I'm also in the Military. We're issued
4 phones there as well so I have a lot of cell phones.
5 I don't remember the phone number.
- 6 Q. You had a phone, you called my client, you have no
7 idea what number it was from?
- 8 A. I do not know, sir.
- 9 Q. But I guess if we got a comprehensive list of all
10 those numbers we would be able to track it down,
11 right?
- 12 A. Yes, sir. And I'm sure that also the dispatch, the
13 radio, will hear -- you'll hear me over the radio
14 saying I did call her with my cell phone, that we
15 couldn't get ahold of her, and the dispatch called
16 her.
- 17 Q. I'm more interested in actually seeing the records
18 as opposed to what one says because photos, videos,
19 they never lie as you know as an officer; right?
- 20 A. Yes, sir.
- 21 Q. People, not saying you are, but people sometimes do;
22 right?
- 23 A. Yes, sir.
- 24 Q. So, couldn't get ahold of Ms. Townsend. Let's talk
25 about these dogs. First of all, are you a dog

- 1 person?
- 2 A. I am, sir.
- 3 Q. Me too. We have that much in common.
- 4 I guess, in part, when you got a loose dog call you
- 5 want to protect the people but you also want to
- 6 protect the dogs and make sure they don't get hit by
- 7 a car or something like that as well; right?
- 8 A. Right.
- 9 Q. What did you do when you saw those dogs originally
- 10 on Briggs?
- 11 A. We verbally called to the dogs to come to us, they
- 12 came around our car, I don't remember everything
- 13 after that.
- 14 Q. Did you get out of your car?
- 15 A. We did not get out of the car initially. No, we did
- 16 not.
- 17 Q. You called out to them like out the window
- 18 basically, right?
- 19 A. Yes, sir.
- 20 Q. And then they did come to you?
- 21 A. Yes, sir.
- 22 Q. Why didn't you get out and --
- 23 A. There was no need to.
- 24 Q. What was the point of calling them over?
- 25 A. To see if they would come, sir.

- 1 Q. And they did come?
- 2 A. Yes, sir.
- 3 Q. And you said you don't remember anything after that.
- 4 What do you mean exactly?
- 5 A. Do you want me to tell you what I said to the dogs
- 6 because I don't remember talking to the dogs.
- 7 Q. I'm not worried about what you said. Which way did
- 8 they go?
- 9 A. Officer Vara testified that they went towards
- 10 Niagara Street.
- 11 Q. So, you followed them towards Niagara Street?
- 12 A. We went towards Niagara Street.
- 13 Q. Did they go on Niagara Street?
- 14 A. I don't recall.
- 15 Q. You don't recall where they went?
- 16 A. I do not.
- 17 Q. What did you do next?
- 18 A. We drove around to look to see where they went
- 19 because I don't recall exactly where they went.
- 20 Q. At some point you lost sight of them, right?
- 21 A. Yes, sir.
- 22 Q. So, you circled back down Briggs essentially,
- 23 correct?
- 24 A. That's the information that was put out, yes.
- 25 Q. So, you drove back by 59 Briggs, my client's house,

1 right?

2 A. Yes, sir.

3 Q. Did you see my client at this time?

4 A. Yes.

5 Q. Describe your interaction with my client at this
6 point. What happened?

7 A. We had verbal interaction with your client at this
8 point and she was swearing, using vulgarities, and
9 on the porch in that manner. She was acting in a
10 hostile manner using vulgar language and swearing at
11 us.

12 Q. In your years as a police officer things to that
13 effect -- unfortunately, it's part of the job,
14 you've had people swear at you before; right?

15 A. Yes, sir.

16 Q. And it's unpleasant, correct?

17 A. It is what it is, sir.

18 Q. But you don't get scared every time someone says
19 something not nice to you, right?

20 A. No, sir.

21 Q. It's not as if you were alarmed and annoyed -- you
22 weren't alarmed, you weren't petrified or alarmed
23 from my client; right?

24 A. I was not petrified of her behavior. I was very
25 alarmed to pull up to assist someone and to service

1 her and to be treated that way and talked to that
2 way. So, it was alarming for me to say, "How can I
3 help you?", and for me to then receive vulgarities
4 as a result. So, that is alarming for any officer.

5 Q. It's a matter of verbiage, I guess, but certainly no
6 one likes to be doing their job and being degraded
7 in such a manner, it's upsetting; correct?

8 A. That is our job, sir.

9 Q. My question is it's upsetting when someone treats
10 you in such a manner, right?

11 A. It is alarming.

12 Q. It's upsetting when someone disrespects you in such
13 a manner, right?

14 A. I've been disrespected several times. It doesn't
15 upset me. That's apart of the job.

16 Q. Officer Vara -- you heard him state that, yeah, he
17 was provoked, he was upset?

18 A. Okay. That's Officer Vara. I'm telling you that I
19 was not upset. I was alarmed, I was surprised at
20 her behavior when I'm rendering her a service. I
21 was not afraid of her. I was not upset. I was
22 alarmed.

23 Q. With all that in mind then do you have any
24 recollection about the specifics as to what my
25 client was saying?

1 A. I cannot tell you exactly what your client said.

2 Q. Again, all you remember is she wasn't being nice,
3 but you don't remember how she wasn't being nice;
4 fair to say?

5 A. I remember that she was using very vulgar language.
6 She was --

7 Q. Like what?

8 MR. LEE: Let her finish her response.

9 BY MR. ALBERT:

10 Q. I'm sorry. Go ahead.

11 A. She was using vulgar language. Like what - do you
12 want me to be specific with the words she was using?

13 Q. Yes. I really do because reading through all this I
14 get no specificity as to why client supposedly said
15 or didn't say. By all means, enlighten me and tell
16 me what my client said specifically.

17 A. She used MF words towards us. She used the F word
18 towards us. I'm positive she called me an A-hole.
19 Those were the words she was using.

20 Q. But you don't remember the context or anything else
21 as to --

22 A. This was several years ago.

23 Q. She was just blurting out swear words like she had
24 Tourette syndrome or what?

25 MR. LEE: Objection.

1 THE WITNESS: I couldn't testify to how
2 people act when they have Tourette's. I'm not a
3 doctor. I can tell you that her behavior was very
4 unbecoming of a rational adult. She was very
5 vulgar, she was loud, she was disrespectful. It is
6 what it is. It comes with the job. I was not upset
7 about it. I'm telling you what I observed with her.
8 That's the behavior I observed.

9 BY MR. ALBERT:

10 Q. She blurted out random swear words, that's your
11 testimony?

12 MR. LEE: Object to the form. That's not
13 what she testified to.

14 BY MR. ALBERT:

15 Q. That's what I'm asking though.

16 She was blurting out random vulgarities and swear
17 words?

18 A. I never told you that she blurted out anything. I
19 told you that upon initial response -- because you
20 asked how my contact was with her. Upon initial
21 response I came to render her service, as a result I
22 pull up to her house and I immediately get MF'ed and
23 I'm called names and I'm being disrespected and
24 she's using vulgarities toward me. That's what
25 happened.

1 Q. So, then what happens?

2 A. So, she continues to use vulgarities, we continue to
3 ask her to calm down, tell us where these dogs live.
4 She refuses to give us that information.

5 Q. I guess what I'm asking is is she explaining why
6 she's calling you these names?

7 A. She is not.

8 Q. She's just randomly calling you all these names at
9 first contact, that's your testimony?

10 A. Yes.

11 Q. She's not explaining what she's upset about, she's
12 just swearing at you?

13 A. Right. We're asking -- and I was the driver, I'm
14 closest to her, she's on her porch, I'm asking her
15 where these dogs belong, I'm asking her questions in
16 direct relation to why she called the police, which
17 was because she was upset about these stray dogs
18 that were running around. I'm asking direct
19 questions related to the dogs and in response I'm
20 getting vulgarities and swearing at me. I'm never
21 being told any information. I'm not getting any
22 information from her in regards to where these dogs
23 belong, although that's apparently what she called
24 for, yet, I never heard anything about that.

25 Q. And she's not even explaining to you in any way what

1 it is she's upset with you and Officer Vara about?

2 A. No, sir.

3 Q. Just swearing at you?

4 A. Yes, sir.

5 Q. Did you ask her, "Ma'am, why are you so upset with
6 us? What did we do? We're here to help you"?

7 A. I asked her the questions pertaining to me helping
8 her. She wanted help with the dogs. Those were the
9 questions I was asking her. She absolutely refused
10 to give me any of that information. I guess that
11 wasn't a concern of hers at that point.

12 Q. Did you see the dogs at this point?

13 A. The dogs resurfaced at some point.

14 Q. But, yet, you maintained your focus on Ms. Townsend
15 even though the dogs are back --

16 A. At some point the dogs resurfaced. As officers we
17 do something called a threat assessment. That means
18 you make an assessment of where is your most
19 immediate threat right now. These dogs were not
20 aggressive, we didn't get bit by the dogs, they
21 weren't in my eyesight at that point. The only
22 thing that I had to assess at that point was the
23 complainant who clearly wanted to make a complaint,
24 yet, for some reason she still had never mentioned
25 the dogs at this point. So, that was the assessment

1 I made when the dogs were out of eyesight and they
2 weren't there. During this threat assessment the
3 only thing I needed to deal with is the complainant.
4 How can I render service to her? She refused to
5 allow me to do that.

6 Q. But she's not a threat towards you in any way,
7 shape, or form; correct?

8 A. Her behavior, her demeanor, her language is a threat
9 to me at this point.

10 Q. She's not approaching you, she's staying on her
11 porch?

12 A. Her behavior, her demeanor, and her vulgar language
13 is a threat to me at this point.

14 Q. Whose decision was it to decide that you guys were
15 going to arrest my client?

16 A. It was a mutual decision that based on her behavior
17 she had to go to jail.

18 Q. Based on her behavior but specifically what crime
19 did she commit? Swearing is not a crime in and of
20 itself, correct?

21 A. Swearing in public.

22 Q. She's on her front porch, correct?

23 A. She's outside in public, swearing in public. Yes,
24 sir.

25 Q. You think swearing in public is a crime, that's your

- 1 testimony?
- 2 A. Yes, sir.
- 3 Q. So, every time you're at the mall and you hear
4 someone swear do you lock them up?
- 5 A. I don't work at the mall.
- 6 Q. My point is every time you hear someone swear you
7 decide to arrest that person?
- 8 A. I'm not always on duty either, sir.
- 9 Q. Do you ever swear when you're outside?
- 10 A. I do not swear.
- 11 Q. Does Officer Vara ever swear?
- 12 A. I'm sure he does.
- 13 Q. Do you lock him up when he does?
- 14 A. No.
- 15 Q. He doesn't swear in the privacy of his own bedroom
16 all the time, right?
- 17 A. Right.
- 18 Q. And you've spent nine years with him on the street,
19 correct?
- 20 A. Yes, sir.
- 21 Q. That's public, right?
- 22 A. Yes, sir.
- 23 Q. He said he was having words with my client that
24 night too?
- 25 A. Yes, sir.

1 Q. Did he swear?

2 A. I will tell you now our reaction and the way that we
3 treat others is a direct reaction to the way we're
4 being treated.

5 Q. That wasn't my question. Did he swear?

6 A. Yes, sir.

7 Q. Did you lock him up for swearing in public?

8 A. Absolutely not, sir.

9 Q. Just my client for swearing in public?

10 A. Absolutely.

11 Q. She's not an officer, right?

12 A. Right.

13 Q. It's you against them out there, right?

14 MR. LEE: Objection.

15 THE WITNESS: Can you rephrase that?

16 BY MR. ALBERT:

17 Q. Why is it that Officer Vara swears --

18 A. I'm sorry. I thought you asked if it was me against
19 someone else.

20 Q. Now I'm changing the question.

21 Why is it that Officer Vara swears in public and
22 that's not a crime but my client swears in public
23 and that is a crime?

24 A. Your client was asked several times questions in
25 direct relation to why she called the police for

1 help. She refused to give us that information.

2 Q. You stated a minute ago that her swearing in public
3 was the crime that made you decide to lock up my
4 client?

5 A. I never said that was what made me decide to lock
6 her up.

7 Q. What crime did my client commit that night?

8 A. She committed both violations and crimes, sir.

9 Q. You're aware that in a court of law a judge decided,
10 no, she really didn't do that whatsoever; right?

11 A. I'm aware of that.

12 Q. But, yet, you're sticking to, yes, she did?

13 A. Yes, sir.

14 MR. LEE: Object to the characterization.

15 BY MR. ALBERT:

16 Q. You know more than the judge in this instance,
17 right?

18 MR. LEE: Objection.

19 BY MR. ALBERT:

20 Q. Is it possible you guys made a mistake in
21 interpreting the law relating to my client?

22 A. No, sir.

23 Q. The judge made the mistake, everyone else made the
24 mistake, but not you?

25 A. That's your opinion, sir, not mine.

1 Q. I'm asking you.

2 It's your opinion that you and Officer Vara
3 interpreted the law just right by locking up my
4 client for swearing in public and not answering your
5 questions --

6 A. Sir, it is my opinion --

7 Q. Ma'am, you gotta let me finish the question.

8 A. Okay.

9 Q. You're gonna have a chance to answer. I promise.
10 It's your opinion that you and Officer Vara did not
11 make any mistake in interpreting the law relating to
12 my client that night, that she's guilty of crimes
13 for swearing in public and not answering your
14 questions?

15 MR. LEE: Objection.

16 BY MR. ALBERT:

17 Q. That's your opinion, right?

18 A. Can I answer now?

19 Q. Yeah.

20 A. My opinion is that she was disorderly, she resisted,
21 and she was arrested for it.

22 Q. My client was in between the screen door and the
23 exterior door when she was pulled out of her house,
24 correct?

25 A. When she was asked to come out of her house, yes.

1 Q. I didn't say when she was asked. You heard Officer
2 Vara's testimony, correct?

3 A. Yes, sir.

4 Q. He said he pulled her out of the house, correct?

5 A. Yes, sir.

6 Q. She was in between the screen door and the exterior
7 door when she was pulled out, correct?

8 A. Yes, sir.

9 Q. By you and Officer Vara, right?

10 A. No, sir.

11 Q. By who? Just by Officer Vara?

12 A. We were on the porch.

13 Q. I understand that. So, you didn't pull my client
14 out, right?

15 A. No, sir.

16 Q. Officer Vara did, right?

17 A. Yes. He placed her in cuffs.

18 Q. By getting her outside, right?

19 A. She was behind the screen door, sir.

20 Q. Did you see any of these photos or no? Showing you
21 7 and 8. Do those fairly and accurately depict my
22 client's wrists that evening based upon the cuffs
23 being placed upon her?

24 A. I don't know.

25 Q. Who placed the cuffs on her - you or Officer Vara?

- 1 A. I don't remember.
- 2 Q. You weren't upset, he was; correct?
- 3 A. If that's what he testified to.
- 4 Q. You heard him and you were there. I'm asking not
5 what he testified to. You were not upset, right?
- 6 A. No, sir.
- 7 Q. He was, right?
- 8 A. Yes, sir.
- 9 Q. He said he was being loud and swearing, correct?
- 10 A. Yes, sir.
- 11 Q. And he was provoked by my client's words, correct?
- 12 A. I don't recall him saying that.
- 13 Q. I'm not asking about what you recall him saying.
14 I'm asking what you remember about --
- 15 A. You want me to testify about something about him. I
16 can only testify about me.
- 17 Q. That's not exactly the case. You can testify as to
18 your observations. He pulled her out of the house,
19 put the cuffs on her; correct?
- 20 A. Correct.
- 21 Q. And then he starts walking her towards the car,
22 correct?
- 23 A. Yes, sir.
- 24 Q. Where are you when this is happening?
- 25 A. I believe I'm right behind her.

1 Q. Are you touching her in any way?

2 A. I'm not touching her.

3 Q. Just Officer Vara is?

4 A. Yes, sir.

5 Q. And there's stairs leading out to the street, right?

6 A. Yes, sir.

7 Q. And he starts pulling her down the stairs, right?

8 A. No.

9 Q. So, if neighbors filming say that she was being
10 pulled down the stairs they're lying too?

11 A. Absolutely.

12 Q. And the judge, when dismissing the case, he was
13 wrong too; correct?

14 MR. LEE: Objection. That's a completely
15 improper question.

16 BY MR. ALBERT:

17 Q. But you still gotta answer it.

18 A. The judge never made any implication of anyone being
19 pulled down the stairs.

20 Q. That's not what my question was.

21 A. I'm sorry. Can you rephrase the question?

22 Q. Was he mistaken when he dismissed this case as a
23 matter of law against my client?

24 MR. LEE: Objection.

25

1 BY MR. ALBERT:

2 Q. You gotta answer it.

3 MR. LEE: No. Actually, she doesn't have to
4 answer it.

5 MR. ALBERT: She does. Everything is
6 admissible in depositions. She's saying my client
7 broke the law.

8 MR. LEE: No. That's not true. It's a
9 completely improper question and I'm going to direct
10 the witness to not answer it.

11 MR. ALBERT: She's testifying my client broke
12 the law.

13 MR. LEE: She arrested your client based on
14 possible cause. She doesn't make an ultimate
15 determination on guilt and innocence and you know
16 that and that's why it's an improper question and
17 I'm directing the witness not to answer.

18 BY MR. ALBERT:

19 Q. You heard Officer Vara say that my client threw
20 herself onto the ground, correct?

21 A. Correct.

22 Q. But you're right behind her, right?

23 A. Correct.

24 Q. And she's cuffed, correct, with her arms behind her
25 back?

- 1 A. Correct.
- 2 Q. And Officer Vara is holding her by the arm, right?
- 3 A. He's escorting her.
- 4 Q. Which means he's holding her by the arm, right?
- 5 What do you mean by he's escorting her? How was he
- 6 doing so?
- 7 A. Because we have a way that we escort people. I can
- 8 hold someone by the arm or I can escort them
- 9 (indicating), so there's a difference.
- 10 Q. May the record reflect he had his arm around her arm
- 11 to escort her, correct?
- 12 A. Yes, sir.
- 13 Q. And, yet, still despite Officer Vara, physically
- 14 capable man having his arm around my client's locked
- 15 and her arms behind her back, you're stating she
- 16 still was able to throw herself onto the ground?
- 17 A. Yes, sir.
- 18 Q. The point of escorting someone is so that they can't
- 19 run or throw themselves on the ground and things of
- 20 that effect, correct?
- 21 A. That is correct.
- 22 Q. And, yet, here you're stating that somehow she was
- 23 able to?
- 24 A. Very able to.
- 25 Q. Evidently, he was not escorting her properly, right?

1 A. I can't say yes or no to that.

2 Q. If she was able to throw herself on the ground then
3 clearly he must not have had any pressure on her arm
4 whatsoever, right?

5 A. Right.

6 Q. And those bruises that appear on her arm, there's
7 absolutely no explaining those?

8 A. I cannot explain those.

9 Q. Because if you could that would mean Officer Vara
10 did use excessive force, wouldn't it?

11 MR. LEE: Object to the form.

12 THE WITNESS: No.

13 BY MR. ALBERT:

14 Q. No, he didn't, just like all those other times you
15 testified on his behalf too; correct?

16 MR. LEE: Object to form.

17 MR. ALBERT: Answer it.

18 MR. LEE: You haven't even laid a foundation,
19 Matt, as to what those incidents were about. You're
20 assuming it was excessive force.

21 BY MR. ALBERT:

22 Q. He said it was.

23 What was the nature of those other incidents? Tell
24 me about them. What happened those other times that
25 Officer Vara went through internal investigations?

- 1 A. I only testified for him once, so I've been there
2 once with him, and it was for verbal. It had
3 nothing to do with actual physical force.
- 4 Q. Swearing in public, the verbal?
- 5 A. No.
- 6 Q. When you say verbal describe what it was he was
7 accused of doing.
- 8 A. He had some sort of verbal altercation with someone
9 and we testified with that. That was it. It had
10 nothing to do with physical force whatsoever.
- 11 Q. What was he accused of doing? Describe the verbal
12 altercation.
- 13 A. I was a witness so whatever questions they asked him
14 I'm not aware of.
- 15 Q. He did have ahold of my client by the upper left
16 arm, correct?
- 17 A. If that's what he testified to.
- 18 Q. No explaining these bruises, correct?
- 19 A. No.
- 20 Q. Are they consistent based upon your years of
21 experience as a police officer with being grabbed,
22 these sorts of bruises and indentations?
- 23 A. No. We don't grab people to escort them.
- 24 Q. That's not what I asked.
- 25 A. No, not consistent.

- 1 Q. They're not consistent with being grabbed?
- 2 A. No, sir.
- 3 Q. What are they consistent with?
- 4 A. I do not know.
- 5 Q. If someone is grabbed what happens to their skin, it
6 doesn't turn black and blue?
- 7 A. It depends on the person.
- 8 Q. You're saying that these wounds aren't consistent
9 with being grabbed?
- 10 A. That's what I'm telling you because I'm not a
11 doctor.
- 12 Q. How are they not consistent with being grabbed?
- 13 A. I cannot tell you that. I'm not a doctor.
- 14 Q. You just did say they're not consistent with being
15 grabbed, didn't you?
- 16 A. I did.
- 17 Q. But you can't explain how?
- 18 A. Right.
- 19 Q. Did you have any interaction with any other
20 individuals in the neighborhood that night aside
21 from my client?
- 22 A. I believe the neighbor. There was a neighbor on the
23 top porch and I had a verbal conversation. I cannot
24 tell you exactly what it was but I'm sure I did.
- 25 Q. You don't remember the nature of that conversation?

- 1 A. No, I do not.
- 2 Q. Fair to say he was out there seeing what was going
3 on at this point, correct?
- 4 A. At some point he was outside, yes.
- 5 Q. Did you have any interaction with my client's
6 daughter - Cassandra Pope?
- 7 A. Not that I recall.
- 8 Q. Patricia Barkley - any interaction with her, the
9 neighbor who lives at 54 Briggs?
- 10 A. I don't remember.
- 11 Q. Eventually my client was transported to the station,
12 correct, downtown?
- 13 A. Downtown.
- 14 Q. And you did stop in the midst of transporting her
15 downtown, correct?
- 16 A. I do not remember that.
- 17 Q. You can't say yes, you can't say no?
- 18 A. I cannot say yes, I cannot say no.
- 19 Q. You guys don't have any sort of cameras or anything
20 like that that would record your interactions with
21 civilians, correct?
- 22 A. Inside the cars?
- 23 Q. Anywhere. Inside the cars, dash cams?
- 24 A. No, we do not.
- 25 Q. Obviously, if you're not doing anything wrong those

1 cameras would be conclusive proof that no excessive
2 force is being used, you're not making pit stops,
3 all that stuff; right?

4 A. Yes. If we do -- and I'm sure you heard in Officer
5 Vara's testimony as well, if we need to stop
6 somewhere, if we need to get out of a hostile
7 environment, which the environment was very hostile
8 at that point, we do it often. So, if we're at a
9 domestic call, if we're at a fight call, if there's
10 a lot of people around, if it's going to be an issue
11 for officers then we would take our paperwork and
12 we'll pull over somewhere and do the paperwork where
13 the environment isn't hostile.

14 Q. The environment at this time was hostile as Ms.
15 Townsend's neighbors were observing everything that
16 was taking place, that's your testimony, right?

17 A. My testimony is that there were a lot of people out
18 at this point after she began to flail and scream
19 and yell for help. There were a lot of people out.
20 We decided that we would finish our paperwork -- if
21 we stopped anywhere that would be the reason that we
22 would stop anywhere, to get out of that environment
23 and to finish our paperwork somewhere else. I
24 cannot say if we did or did not.

25 Q. But it would make sense given the environment that

1 you would stop somewhere to do the paperwork,
2 correct?

3 A. I cannot say if we did or did not.

4 Q. That's not my question.

5 You stated that when it's a hostile environment, a
6 lot of people outside and so forth, often times you
7 don't just sit there and do the paperwork, you stop
8 somewhere else to do it?

9 A. Right. We'll pull over and do paperwork.

10 Q. In this case given the environment it would make
11 sense, whether you remember or not?

12 A. It would make sense.

13 Q. Let's go back to that phone issue real quick.

14 You got a new number now, you don't remember the old
15 one. That's your testimony, right?

16 A. Yes.

17 Q. Do you have one phone for work, one phone for
18 personal, or do you just maintain, like most people,
19 one cell phone?

20 A. I don't have a work phone.

21 Q. So, you had one phone that you were using at that
22 time, correct?

23 A. Yes, sir.

24 Q. And obviously that one phone has one number, right?

25 A. Right.

- 1 Q. You have no idea what that number was?
- 2 A. I don't know.
- 3 Q. And you don't know how long you had that number for?
- 4 A. I don't recall.
- 5 Q. And you don't know how long you had that phone for?
- 6 A. I don't know how long I had the phone. I don't have
7 it anymore.
- 8 Q. When we're talking about videos the department
9 doesn't provide you with any sort of body cams or
10 dash cams?
- 11 A. No, sir.
- 12 Q. Did you make any recordings with your cell phone of
13 the incident in question?
- 14 A. I don't recall.
- 15 Q. Maybe, maybe not?
- 16 A. Maybe, maybe not.
- 17 Q. All you recall really about this incident is my
18 client saying a lot MFs and A-holes and things like
19 that upon your arrival?
- 20 A. That's not all I recall. I recall her refusing to
21 tell us where the dogs belong. I recall her
22 behavior. I recall her flailing around on the
23 ground. That's not all I recall.
- 24 Q. You remember all that, yet, you don't remember even
25 remember what cell phone number you had at the time?

1 A. That is correct.

2 Q. Just making sure we're on the same page.

3 A. Same page.

4 MR. ALBERT: We're good.

5 (***12:23 p.m.***)

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STATE OF NEW YORK
COUNTY OF ERIE

I, Nicole Rotoli, a Notary Public in and for
the State of New York, do hereby certify:

That the witness whose testimony appears herein
before was, before the commencement of his
deposition, duly sworn to testify to the truth, the
whole truth and nothing but the truth; that such
testimony was taken pursuant to notice at the time
and place herein set forth; that said testimony was
taken down in shorthand by me and thereafter under
my supervision transcribed into the English
language, and I hereby certify the foregoing
testimony is a full, true and correct transcription
of the shorthand notes so taken.

I further certify that I am neither counsel for
nor related to any parties to said action, nor in
anywise interested in the outcome thereof.

IN WITNESS WHEREOF, I have hereunto subscribed
my name this 12th day of October, 2016.

Nicole Rotoli

Notary Public
State of New York

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