

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

*CHRISTINE TOWNSEND
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 CHRISTINE TOWNSEND, 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 12:30 p.m. before Nicole
Rotoli, Notary Public.

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APPEARANCES:

THE LAW OFFICES OF MATTHEW ALBERT, ESQ.
BY: MATTHEW ALBERT, ESQ.
254 Richmond Avenue
Buffalo, New York 14222
mattalbertlaw@gmail.com
Appearing for the Plaintiff

CITY OF BUFFALO CORPORATION COUNSEL
BY: DAVID M. LEE, ESQ.
1102 City Hall
65 Niagara Square
Buffalo, New York 14202
dlee@city-buffalo.com
Appearing for the Defendants

Also present:
Jessica Morrill

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(Retained by counsel)

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1 (Whereupon, Plaintiff's Exhibits 11-17,
2 Photographs, were marked for identification.)

3
4 (Whereupon, the following stipulations were
5 entered into by the respective parties:

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

12
13 C H R I S T I N E T O W N S E N D, [REDACTED]
14 [REDACTED] having first been duly
15 sworn, was examined and testified as follows:

16
17 EXAMINATION BY MR. LEE:

18 Q. Good afternoon, Ms. Townsend. My name is David Lee
19 and I'm a lawyer with the City of Buffalo and I
20 represent the City of Buffalo, the two police
21 officers who previously testified, as well as some
22 other defendants in connection with this action you
23 filed relating to an incident in May of 2014?

24 A. Yes.

25 Q. As we go through this today keep in mind the court

1 reporter sitting next to us is taking down everything
2 that we say so try to make sure all your responses
3 are verbal as opposed to head nods, shoulder shrugs,
4 things like that. We'll try not to talk over each
5 other, so try to let me finish asking my question
6 completely before you begin your response. And if I
7 ask a question and you don't understand it please let
8 me know and I'll rephrase it, okay?

9 A. Okay.

10 Q. I would like to start -- and we touched upon this off
11 the record, but I would like to start by showing you
12 some photographs that depict various parts of your
13 body and marks on those parts of your body and the
14 reason I'm doing that basically is because I would
15 like you to tell me what part of your body is shown
16 in the photograph and what you attribute the mark in
17 each photograph to in relation to this incident. Do
18 you understand?

19 A. I do.

20 Q. Let's start with Exhibit Number 6.

21 A. This is my left arm, this is the upper part. That
22 would be the elbow area and that would be the lower
23 arm (indicating).

24 Q. How about the marks that are shown on this exhibit,
25 what do you attribute that to?

- 1 A. Being grabbed by the officer.
- 2 Q. At what point in time?
- 3 A. I'm not sure at what point in time but I'm going to
4 make a guess and say when I was being pulled out of
5 the house these were the bruises.
- 6 Q. Let's take a look at Exhibit Number 7. What part of
7 your body --
- 8 A. This is my wrist. I think it's my left wrist, but
9 it's my wrist.
- 10 Q. Do you attribute that mark on your left wrist to the
11 handcuffs?
- 12 A. Yes.
- 13 Q. How long were you in handcuffs for?
- 14 A. I was in handcuffs from the time they put the
15 handcuffs on me at my house until I was walked out of
16 the ramp to be released.
- 17 Q. The ramp, are you referring to the Erie County
18 Holding Center?
- 19 A. Is that where you're taken when you're arrested? I
20 guess it's the holding center. I'm not really
21 familiar with all the buildings, but, yes, they drive
22 down -- it is the holding center but it's underneath.
- 23 Q. Actually, I should go back to Exhibit Number 6 and
24 these marks that are shown, are they still on your
25 body?

- 1 A. No.
- 2 Q. They went away?
- 3 A. They did.
- 4 Q. How about on Exhibit Number 7, the marks from the
5 handcuffs, do you have any marks still on your wrists
6 from the handcuffs?
- 7 A. No.
- 8 Q. What part of your body does Exhibit Number 8 show?
- 9 A. This is my forearm and I think it's my left forearm.
- 10 Q. Those -- fair to call them scratch marks they sort of
11 look like?
- 12 A. To me they look like scratch marks.
- 13 Q. What do you attribute those marks to?
- 14 A. I'm guessing that these were from when I was lifted
15 off the ground on the sidewalk by the officer.
- 16 Q. On Exhibit Number 8, are those marks still on your
17 body?
- 18 A. No.
- 19 Q. How about Exhibit Number 11, what part of your body
20 does that show?
- 21 A. This is my left upper arm.
- 22 Q. And that mark, how do you believe you got that?
- 23 A. I believe this is when I was pulled out of the house
24 to be placed under arrest.
- 25 Q. How about that mark, is it healed?

1 A. It is.

2 Q. What part of your body is Exhibit Number 12?

3 A. This is the left arm earlier, closer to the time I
4 would have gotten home and when I noticed that the
5 arm was still red from being grabbed. This is the
6 upper arm.

7 Q. Is the condition shown in Exhibit Number 12 healed?

8 A. Yes. Is that a duplicate? I think I just cropped it
9 out.

10 Q. You're comparing Exhibit Number 12 and Exhibit Number
11 11?

12 A. 11 and 13 because I can see this was earlier in the
13 day and it was later in the day when the bruises were
14 changing colors.

15 Q. Let me ask you. The photographs that we've marked so
16 far and have shown to you, were all these photographs
17 taken on the same day?

18 A. Yes.

19 Q. Who took them?

20 A. I took them.

21 Q. What day was that in relation to this incident?

22 A. May 9th.

23 Q. What date is this incident again?

24 A. I believe that I first started calling on the 8th but
25 I think it rolled over into the 9th after midnight.

- 1 Q. This incident happened in the earlier morning hours
2 on May 9th, so you would have taken these photographs
3 later that day?
- 4 A. Yes.
- 5 Q. How about Exhibit Number 13, what does that show?
- 6 A. My left upper arm.
- 7 Q. We have established that mark has healed?
- 8 A. Yes.
- 9 Q. How about Exhibit Number 14, what does that show?
- 10 A. I'm not sure if that is my upper arm, the middle of
11 my arm rather. Not sure to be honest with you what
12 part of the arm that is.
- 13 Q. Maybe just to speed things up a little bit, all the
14 marks that are shown --
- 15 A. They're all arms and wrist.
- 16 Q. Are they all healed?
- 17 A. Yes.
- 18 Q. What is Exhibit Number 17?
- 19 A. That's the left wrist again just, I think, from
20 another angle.
- 21 Q. How about Exhibit Number 16?
- 22 A. That's left arm.
- 23 Q. And Number 15?
- 24 A. Left arm. Is that the same as the other one? I
25 think it's just a --

1 Q. That looks like the same picture. So, Exhibit Number
2 12 and 15 look to be an identical copy?

3 A. Right.

4 Q. Thank you for going through those.

5 You reside at [REDACTED]

6 A. Yes.

7 Q. And you resided at [REDACTED] at the time of this
8 incident?

9 A. Yes.

10 Q. What type of property is that?

11 A. It's a single family home.

12 Q. Do you own that home?

13 A. Yes.

14 Q. How long have you owned it for?

15 A. It's actually deeded in my father's name but they
16 haven't lived there and we've made a personal
17 arrangement that that's my home probably twenty years
18 ago.

19 Q. It's a family home?

20 A. It is.

21 Q. Did you grow up there?

22 A. I was in high school when we moved there.

23 Q. Who do you live there with my now?

24 A. My daughter, Cassandra Pope.

25 Q. I thought I heard Cassandra referred to earlier as

- 1 Barkley, is that correct or no?
- 2 A. Pat Barkley is the neighbor across the street and
3 Cassandra is Pope, P-O-P-E.
- 4 Q. Who is Cassandra's father?
- 5 A. Kenneth Pope.
- 6 Q. Are you married to Kenneth?
- 7 A. We're separated.
- 8 Q. When were you married?
- 9 A. In '07 or '08, I think it was, October 28th.
- 10 Q. When did you become separated?
- 11 A. It was when Cassandra was in pre-k. It was about a
12 year after we were married.
- 13 Q. Do you know where Kenneth lives currently?
- 14 A. I do not.
- 15 Q. Do you still maintain contact with him?
- 16 A. There is contact but more at this point I've made it
17 through my daughter and him directly on their own.
- 18 Q. Does your daughter see Kenneth?
- 19 A. She's free to see him any time she wants to see him
20 and any time he would like to see her he's able to
21 see her.
- 22 Q. How often do they see each other?
- 23 A. They don't see each other too frequently.
- 24 Q. When they do see each other do you have to take
25 Cassandra to Kenneth?

- 1 A. Kenneth has to come pick her up because I don't know
2 where he lives.
- 3 Q. If you needed to get in touch with Kenneth how would
4 you do that?
- 5 A. On his cell phone.
- 6 Q. What's his number?
- 7 A. [REDACTED]
- 8 Q. When's the last time you talked to him?
- 9 A. I can't give you an exact date. I can pull my phone
10 out and tell you if you want to know all the details.
- 11 Q. That's okay. Just a ballpark.
- 12 A. I try not to have verbal conversations with him. I
13 try to do it in text message form. Probably a few
14 weeks ago.
- 15 Q. Who is Wilfredo Pena?
- 16 A. My neighbor.
- 17 Q. Where does she live?
- 18 A. He lives next door. It's the house immediately next
19 door.
- 20 Q. So, if I'm looking at your house from the sidewalk is
21 it to the right or the left of you?
- 22 A. If you're facing the house he's the house to the
23 right.
- 24 Q. What type of property is that property?
- 25 A. It's a two family home. Upstairs flat and downstairs

- 1 flat.
- 2 Q. Upper and lower?
- 3 A. Upper and lower flat.
- 4 Q. Where does Wilfredo live?
- 5 A. In the upper flat.
- 6 Q. Is Wilfredo a female or --
- 7 A. No. It's a male.
- 8 Q. How long have you known Wilfredo for?
- 9 A. They moved in a few years ago at least. I don't know
- 10 them personally. We're not friends. We're friendly
- 11 neighbors but I don't know them on a personal level.
- 12 Q. Does anyone live with Wilfredo, do you know?
- 13 A. His wife lives with him.
- 14 Q. What's her name?
- 15 A. I do not know.
- 16 Q. Anyone else live there?
- 17 A. In the downstairs it's their family. I think a
- 18 daughter and her husband and not sure who else.
- 19 They're also adults.
- 20 Q. Did you talk to any of the members who live in the
- 21 downstairs at Wilfredo's place about this incident?
- 22 A. Someone from that house told me that there was a
- 23 video, that he had a video, and he told me I should
- 24 see him about it.
- 25 Q. Someone who lives downstairs told you that Wilfredo

- 1 has a video?
- 2 A. Yes.
- 3 Q. Have you ever seen that video?
- 4 A. I have.
- 5 Q. When did you see it?
- 6 A. Shortly after the incident.
- 7 Q. Where did you see it?
- 8 A. It was a video that was recorded with his phone.
- 9 Q. Were you at home or were you at Wilfredo's place?
- 10 A. At Wilfredo's.
- 11 Q. Did you talk to the people who live downstairs next
12 door about anything else?
- 13 A. We didn't really talk about what happened.
- 14 Q. It was just more like Wilfredo has a video?
- 15 A. When Wilfredo's wife saw me she told me she had been
16 upset by what had happened and she had been praying
17 for me all night and she was so happy that I was
18 home. So, there was that conversation.
- 19 Q. Do you know one way or the other whether Wilfredo's
20 wife saw the incident, saw what happened, actually
21 live when it was happening?
- 22 A. I don't know.
- 23 Q. Who is Patricia Barkley?
- 24 A. She is a neighbor that lives across the street.
- 25 Q. Directly across the street?

- 1 A. She lives more across from Wilfredo's house.
- 2 Q. How do you know Patricia?
- 3 A. Because we've both lived on the street ever since --
- 4 they lived there before we lived there.
- 5 Q. Is your relationship with Patricia like it is with
- 6 Wilfredo where you guys are friendly neighbors or is
- 7 it a little more of a closer relationship?
- 8 A. I would say we know each other on a more personal
- 9 level than Wilfredo, yes.
- 10 Q. Who lives with Patricia?
- 11 A. Her husband, Roger.
- 12 Q. Is that a single family home where Patricia lives?
- 13 A. It is.
- 14 Q. Does anyone else live over there?
- 15 A. No.
- 16 Q. Have you talked to Patricia's husband about this
- 17 incident?
- 18 A. No.
- 19 Q. I may have already asked you this but in May of 2014
- 20 when this incident happened in your house it was just
- 21 you and Cassandra?
- 22 A. Yes.
- 23 Q. And it's the same way now?
- 24 A. Yes.
- 25 Q. And you have a dog in that house?

1 A. Yes.

2 Q. How many?

3 A. Three.

4 Q. Are you making any allegation in this case, ma'am,
5 about what Officer Vara did with respect to the dogs
6 when he entered your home to obtain your driver's
7 license, at least as he testified to?

8 A. Since I wasn't in the house it would be hearsay
9 but --

10 Q. What have you heard?

11 A. I heard that the neighbor had to ask him at least
12 once or twice to not try to reach out to pet the dog
13 or to talk to the dog, just to leave the dog be
14 because he's deaf and he was scared.

15 Q. You don't know anything else about anything that
16 occurred between Officer Vara and the dog?

17 A. No.

18 Q. Officer Vara didn't harm your dog in any way?

19 A. No.

20 Q. The neighbor that night who was ultimately tasked
21 with watching Cassandra, who was that?

22 A. Pat Barkley but I didn't give permission for my
23 daughter to be left in her care and I had actually
24 told them they needed to call a family member or
25 adult protection if they were taking me and leaving

1 my daughter. I can't leave my daughter in the care
2 of a neighbor. That's a great responsibility.

3 Q. Did you feel uncomfortable about leaving your child
4 with Patricia Barkley?

5 A. I did feel uncomfortable with it but not that I
6 thought she was going to harm her or wouldn't take
7 good care of her but I didn't know if she had the
8 ability, she works, and I didn't know if she had the
9 ability to care for her if she was gonna have
10 obligations of her own. So, I was concerned what the
11 whereabouts would be at that time if she had to tend
12 to her own responsibilities.

13 Q. You don't have any information, ma'am, that would
14 lead you to believe that when Officer Vara went into
15 your home that -- he didn't upset or harm your
16 daughter in any way, did he?

17 A. It was upsetting to my daughter to have him in the
18 house.

19 Q. Is there anything specifically he did or said to your
20 daughter?

21 A. From what I was told he asked my daughter if I was
22 her mother and he referred to me in a derogatory way,
23 something about psycho or crazy bitch.

24 Q. Who told you that?

25 A. My daughter told me that. He also told Pat,

1 according to what Pat told me, that I was on drugs
2 and that was also in front of my daughter, which was
3 upsetting to her.

4 Q. Is there any other information that you have
5 regarding the interaction between Officer Vara and
6 members in your household when he went back in or
7 have you already described them all?

8 A. From what I'm told there was conversations where Pat
9 Barkley said she was going to follow them downtown
10 when they took me downtown so that when they were
11 done she would be able to bring me back home and they
12 told her, "No, you can't do that. She won't be
13 coming home." So, that was upsetting to my daughter
14 also. It was my daughter who had to retrieve my
15 identification and wallet to produce to Officer Vara
16 at his request, she complied.

17 Q. Are you aware of any other interactions that took
18 place in the house between Officer Vara and other
19 members in the household?

20 A. I can't recall right now. It's all hearsay because I
21 wasn't in the house.

22 Q. Has your weight fluctuated at all since this incident
23 took place?

24 A. I have gained weight since the incident has taken
25 place because I have not been able to be as

- 1 physically active as I once was.
- 2 Q. How much weight have you gained?
- 3 A. Probably 40 pounds.
- 4 Q. Have you ever pled guilty to or been convicted of a
5 crime?
- 6 A. No. Traffic violation is not what you're referring
7 to as a crime, right?
- 8 Q. What was the traffic violation?
- 9 A. Speeding ticket.
- 10 Q. No.
- 11 Q. What's your Social Security number?
- 12 A. [REDACTED].
- 13 Q. You've resided at [REDACTED] for a long time, right?
- 14 A. Yes.
- 15 Q. How many years?
- 16 A. Around twenty.
- 17 Q. Cassandra is your only child?
- 18 A. She is.
- 19 Q. Does Kenneth provide any type of support for
20 Cassandra?
- 21 A. He does not.
- 22 Q. It sounds like he has visitation but it might be --
- 23 A. There's nothing formal or legal. It's just --
- 24 Q. Something you guys have arranged together?
- 25 A. Yes.

- 1 Q. What's your middle initial?
- 2 A. M.
- 3 Q. What's that stand for?
- 4 A. Marie.
- 5 Q. You completed the nursing program at ECC?
- 6 A. Yes.
- 7 Q. That was a two year degree?
- 8 A. Yes.
- 9 Q. When did you attain that degree?
- 10 A. I believe it was in January of '94.
- 11 Q. Where did you graduate from high school?
- 12 A. McKinley.
- 13 Q. Did you go to ECC right after McKinley?
- 14 A. I did.
- 15 Q. And you've been employed at -- well, at least at the
16 time of this incident you were employed at Kaleida
17 Health?
- 18 A. Yes.
- 19 Q. Are you still employed there?
- 20 A. Yes.
- 21 Q. And you're a registered nurse case manager?
- 22 A. Yes.
- 23 Q. Are you a registered nurse now?
- 24 A. Yes.
- 25 Q. Did you have to go back to school to do that?

- 1 A. When you graduate from ECC with your Associate
2 Applied Science Degree in nursing you take state
3 boards and then you become a registered nurse.
- 4 Q. When did you become registered?
- 5 A. I don't think the boards were immediately after
6 graduation. At that time they were on paper and I
7 think only held a couple times a year. I don't know
8 the exact date. A guess could possibly be March of
9 '94. I would have to check on that.
- 10 Q. So, soon after you graduated from ECC?
- 11 A. Yes.
- 12 Q. Do you have any additional schooling after ECC?
- 13 A. No.
- 14 Q. Is it right to say that you have a certificate to be
15 a registered nurse?
- 16 A. No. It's a - what's the word I'm looking for. It's
17 from the Office of Professionals. It's a license.
- 18 Q. Do you hold any other professional licenses?
- 19 A. No. And I've maintained licensure throughout that
20 time.
- 21 Q. How much time did you miss from work, if any, from
22 Kaleida as a result of this incident?
- 23 A. I think I was out of work for roughly nine days on
24 New York State Disability.
- 25 Q. Which nine days were those in relation to this

1 incident?

2 A. Once that incident happened on the 9th I didn't
3 return back to work. I missed nine days roughly of
4 work and then once I was cleared to return I
5 immediately returned.

6 Q. Do you have any type of benefits through Kaleida with
7 respect to like if I don't come in to work I can
8 still get paid?

9 A. We accrue paid time off.

10 Q. Did you use your PTO for those nine days?

11 A. I would have used for the first five days PTO time
12 and that would be considered during the waiting
13 period for New York State Disability and then after
14 that it would come out of either a PTO bank or an
15 extended sick bank but it would offset what New York
16 State Disability paid you. You can only make up what
17 you would make in a normal work day. You can
18 supplement New York State Disability pay.

19 Q. So, for those first five days of the nine days you
20 missed from work you were able to use PTO time?

21 A. Yes.

22 Q. Fair to say you were paid in full for those days?

23 A. Yes.

24 Q. And at the same time you were on New York State
25 Disability?

1 A. New York State Disability pays you a set amount, a
2 maximum, I want to think it's 30 something dollars a
3 day, and if you earn more than that in a regular work
4 day you are allowed to use your time to supplement
5 the difference to make your full pay for that day.

6 Q. Can you give me an estimate as to your loss wages as
7 result of this incident, if you have any?

8 A. When you say loss wages, wages that wouldn't have
9 been paid --

10 Q. I guess like if you worked those nine days let's say
11 I make -- whatever you make, you make X amount of
12 dollars for working those nine days.

13 A. Probably would have made \$38 or \$39 an hour at that
14 time. I don't know what you're asking. I was able
15 to pay myself with my time that I earned, time that I
16 would have normally used for a vacation, but I was
17 able to pay myself. I did have loss of my normal
18 overtime because it's very rare that I would have a
19 week that was forty hours and that would be it.
20 You're not allowed to earn over, you're only allowed
21 to supplement disability up to your base pay.

22 Q. Maybe I'll phrase the question this way. When you
23 got your first paycheck after you missed those nine
24 days was it short anything?

25 A. It wouldn't have been a normal paycheck and I would

1 have had to wait for New York State -- there was a
2 delay in my New York State Disability check. There
3 was a delay because after the first five days waiting
4 period I couldn't collect any supplemental pay until
5 disability was approved and disability was not
6 initially approved because I was honest in saying
7 that there was an arrest, a legal altercation that
8 occurred that led to the injury. So, at that time
9 they denied it and I had to appeal it and provide
10 paperwork from the Court saying that the charges were
11 dismissed, that no crime had been committed, and then
12 they turned around and paid, but I can't tell you
13 exactly the timeframe from the checks.

14 Q. How many days of PTO time did you have at the time of
15 this accident?

16 A. I don't know.

17 Q. Did you have more than nine?

18 A. I would assume so.

19 Q. Did you use PTO time?

20 A. I had enough PTO time to cover. Is that what you
21 want to know?

22 Q. Yeah. Did you have enough PTO time to cover your
23 nine days that you missed from work?

24 A. Yes.

25 Q. You worked full-time at Kaleida at the time of this

1 incident?

2 A. Yes.

3 Q. How many hours would you work on a typical week?

4 A. Between forty and fifty.

5 Q. Anything over forty was time and a half?

6 A. Yes.

7 Q. What was your hourly wage?

8 A. I'm going to guess that it was roughly around 38,
9 maybe 38 and some change.

10 Q. That was straight time?

11 A. Yes. And if you need accurate I would be able to
12 probably get that from payroll for you, exact
13 figures.

14 Q. What are your duties at Kaleida?

15 A. I'm a registered nurse. I perform case management so
16 that is making home visits on a daily basis to
17 actually make assessment visits and teaching visits
18 on patients, usually anywhere between five and seven
19 patients a day, and I oversee the care they receive
20 from other disciplines - physical, occupational
21 therapy, speech therapy, social work, nutrition,
22 supervision of home health aides, and LPNs.

23 Q. What services do you provide when you go into these
24 homes?

25 A. We provide teaching to the patients. We teach

1 management of chronic illnesses, wound care. It's
2 geared towards a lot of teaching, maintaining
3 independence and self management of a patient in a
4 home following an acute illness. And that can vary.
5 It's just depending on -- from patient to patient.
6 There are some long term patients that you may be
7 doing medication management.

8 Q. Currently, are you able to fulfill your job duties
9 the same way you were able to before this incident
10 happened?

11 A. I'm performing my job duties without restrictions.

12 Q. Did any doctor hold you out of work for those nine
13 days?

14 A. Yes.

15 Q. Which doctor?

16 A. Dr. Gentile. I believe it was initially the MASH on
17 Sheridan Drive where I went that told me I wasn't
18 able to work and I would need to follow up with Dr.
19 Gentile.

20 Q. Dr. Gentile is your primary?

21 A. He is.

22 Q. This incident, Ms. Townsend, happened on May 9th,
23 2014 at approximately 1:30 a.m., is that fair, or do
24 you have a different understanding?

25 A. To me I thought I remembered it starting on the 8th,

1 maybe around 11:30 at night.

2 Q. Let me be more particular by what I mean by incident.
3 I mean the actual encounter between you and the
4 police.

5 A. That would be on May 9th.

6 Q. The early morning hours of May 9th?

7 A. Yes.

8 Q. Let me just represent to you, because it might be
9 easier to sort of talk about the events leading up to
10 this, that May 9th was a Friday. So, this was the
11 early morning hours on a Friday.

12 A. Okay.

13 Q. Do you remember what you did that Thursday night?

14 A. Housework. I was in the middle of cleaning the
15 house.

16 Q. Did you work that day, a Thursday?

17 A. I don't remember to be honest with you.

18 Q. Is there any reason why you wouldn't have worked that
19 day?

20 A. No. I mean, unless it was a day off because I worked
21 a weekend day. We do get weekdays off if we work on
22 a weekend.

23 Q. What you remember about Thursday night was basically
24 just cleaning the house?

25 A. Yes.

1 Q. Do you remember anything else about that night,
2 anything else stand out?

3 A. You mean before the dogs came to the house and I
4 needed to call the place, I don't remember anything
5 significant happening that day.

6 Q. There came a point in time on Thursday night close to
7 midnight when you saw loose dogs?

8 A. Yes. I heard them first. I heard barking.

9 Q. Where were you when you heard them?

10 A. In the living room.

11 Q. Is that late to be up for you if you were up?

12 A. Not really. Some nights I go to bed early, sometimes
13 I go to bed late.

14 Q. You said you were in the living room?

15 A. Yes.

16 Q. What were you doing in the living room when you heard
17 the dogs?

18 A. I think I was just tidying up and getting ready to go
19 to bed at that point.

20 Q. Where was Cassandra at the time?

21 A. She was in bed. The bedrooms are in the upstairs.

22 Q. Were your dogs around somewhere?

23 A. They were sleeping.

24 Q. When you heard the dogs outside barking did your dogs
25 react at all?

- 1 A. They did, yes, they started barking.
- 2 Q. Is that what drew your attention to the dogs?
- 3 A. It probably was but I can't be certain what initially
- 4 alerted me to it.
- 5 Q. You hear dogs barking or your dogs bark and --
- 6 A. Yes.
- 7 Q. Either way, do you go to the window or something
- 8 then?
- 9 A. I did, yes.
- 10 Q. The living room at your house, is it in the front of
- 11 the house?
- 12 A. Yes.
- 13 Q. If you were looking out your living room window you
- 14 could see the street?
- 15 A. Yes.
- 16 Q. When you looked out your window what did you see?
- 17 A. That's when I saw the dogs were actually on my porch
- 18 jumping and barking.
- 19 Q. You have an open front porch at [REDACTED] ?
- 20 A. Yes.
- 21 Q. There's stairs that go up it?
- 22 A. Yes.
- 23 Q. What were the dogs doing on the porch?
- 24 A. Barking, jumping, jumping at the house, jumping at
- 25 the window, jumping at the door.

1 Q. Did you know these dogs?

2 A. I have seen the dogs before, yes.

3 Q. Have they been in your house prior to this?

4 A. No. They're dogs that I've avoided because they're
5 running through the neighborhood loose. They have
6 been on several occasions.

7 Q. Who do these dogs belong to?

8 A. They belong to a house that's three doors down from
9 my house on the same side of the street going towards
10 Tonawanda Street.

11 Q. So, if I'm on the sidewalk looking at your house
12 these dogs belong to a house three doors down to what
13 side?

14 A. To the left side.

15 Q. Had you met these dogs before?

16 A. I've never met the dogs but I've seen the dogs and
17 knew where the dogs lived. They're not dogs that I
18 would go up and introduce myself to.

19 Q. Why is that?

20 A. They appear in an unfriendly manner barking and
21 jumping, makes me very uncomfortable. There's been
22 times we pulled up on the street and they'll be
23 running out. We've sat in the car and waited until
24 they were gone before we feel comfortable to get out
25 of our car to get in the house.

1 Q. Have you ever called the police on these dogs before?

2 A. I called Animal Control, City of Buffalo, when it
3 would be during the day when they're open and I had
4 called the SPCA in the past about that. I think I
5 have called the police but I'm not certain if I
6 actually did or didn't.

7 Q. Have you ever talked to the owners of these dogs
8 about their dogs running at large?

9 A. I did. There was an occasion that I did see the dogs
10 take off and go towards Niagara Street and they were
11 out of sight at that time and I did go over to their
12 house and let them know that their dogs were loose
13 and it's a continuous problem.

14 Q. What was their response?

15 A. They didn't really have much to say about it. They
16 went off running after their dogs. There wasn't any
17 altercation but there wasn't any resolution either.

18 Q. What types of dogs were these?

19 A. They were a type of terrier mix, probably pit bull
20 mix.

21 Q. How much did they weigh, if you can estimate?

22 A. Maybe 70 pounds, 80.

23 Q. What type of dogs do you have?

24 A. I have two Boxers and a Boston Terrier.

25 Q. Were they bigger or smaller than your Boxers, same

1 size?

2 A. Our one Boxer is small, she only weighs 40 pounds, so
3 they're definitely bigger than her, and they may have
4 been roughly the same size as the deaf Boxer and the
5 Boston Terrier is obviously a lot smaller.

6 Q. What color is the deaf Boxer?

7 A. White.

8 Q. What about the one that can hear?

9 A. She's white with a brown patch over her eye.

10 Q. You called 911 about these dogs on May 8th, 2014?

11 A. Yes.

12 Q. Where were the dogs when you called 911?

13 A. On my porch.

14 Q. When you called 911 what did you say to the 911
15 operator?

16 A. As best I can recall at this time I called and
17 informed them that there were dogs loose and on my
18 property acting aggressively and would like
19 assistance.

20 Q. What did she say back?

21 A. I believe she said that they took the address
22 information and were going to dispatch someone to the
23 house.

24 Q. What did you do then?

25 A. I waited. I tried to get my dogs into their kennel

1 so that they would, you know, be safe. I didn't know
2 what was gonna happen. I didn't feel comfortable
3 leaving them loose and barking and going to the
4 window and antagonizing the other dogs because it
5 would be too much for me to handle.

6 Q. Did a period of time pass where the police didn't
7 arrive?

8 A. There was a time and I did call back and I was
9 getting agitated at that point that I was still
10 waiting and the dogs were still here and I felt like
11 I was not getting any help with the situation.

12 Q. How many times did you call back?

13 A. Not certain how many times I called back but I
14 believe I had three conversations with 911. One of
15 the calls at the end may have been when they actually
16 called me back to either tell me the officers had
17 arrived or to ask me if they arrived. I was very
18 upset on the phone when I talked to 911 so they would
19 be aware that I was very upset and hoping to get some
20 help.

21 Q. How much time passed between when you initially
22 called 911 and the last time you called 911?

23 A. I don't recall. To me it seemed like a long time
24 because I was upset but I can't be exact on any
25 timeframe.

1 Q. Did you call from your cell phone or a house phone?

2 A. I can't tell you that either. I think I may have
3 used both phones. I think maybe the cell phone might
4 have died or the cordless died and I switched to the
5 other phone but I can't be certain because I do have
6 access to both phones.

7 Q. During this time period when there were calls being
8 made to 911 were these dogs on your porch the entire
9 time?

10 A. Yes. Let me rephrase that. The initial call they
11 were on the porch but during the last conversation
12 when the police had arrived I don't think they were
13 on the porch at that time. I thought they had gone
14 back down on the sidewalk possibly towards their
15 house but I wasn't certain what direction they went.

16 Q. When you say the last conversation are you referring
17 to the time that 911 called you back?

18 A. I think that was the time. I'm almost certain that
19 they're the ones who called me back.

20 Q. Ma'am, you were here for the officer's testimony that
21 -- I believe it was Officer Craig tried to call you?

22 A. And I did not get any call and if I did the only
23 thing I can think of is that I was getting a call
24 back from dispatch, from 911, at the same time and I
25 answered the call that came in. I did not ignore any

1 calls or it could have went to one of the phones that
2 the battery had died on.

3 Q. If you don't, you don't, but do you have any
4 recollection of what phone you originally used to
5 call 911?

6 A. I don't.

7 Q. How about the phone calls after that initial call, do
8 you remember what phones you used for those?

9 A. I don't.

10 Q. When 911 called back do you remember what phone that
11 was?

12 A. I don't.

13 Q. When 911 calls back what do they say to you? Are the
14 officers there?

15 A. I believe they're asking me if the officers had
16 arrived. Either they were telling me they were
17 coming back or asking if they had arrived.

18 Q. Had they arrived at that point?

19 A. They were there, yes, at that point.

20 Q. Where were they?

21 A. They were parked outside on the street but not
22 directly in front of my house. More towards the
23 house where the dogs resided.

24 Q. Did you see the dogs at that point in time?

25 A. I didn't notice the dogs at that point.

1 Q. Did you tell the 911 operator then that, yeah,
2 they're here?

3 A. I did, yes.

4 Q. Did you have any other further conversation with the
5 911 operator?

6 A. No. Then my dealings from that point were with the
7 officers.

8 Q. Did you ever see the officers' car as they testified
9 to drive up towards Niagara?

10 A. I saw the officers at one point drive down the
11 street.

12 Q. Was that before or after 911 called you?

13 A. That was before.

14 Q. You heard what their testimony is, they were sort of
15 driving up towards Niagara, would you agree with that
16 at least from what you saw?

17 A. I don't remember what direction they were driving but
18 I thought they were driving towards Tonawanda Street,
19 which was the opposite of Niagara, but I might not be
20 certain.

21 Q. Is the next time you saw the police car when you were
22 on the phone with 911 when they were near the dogs'
23 owner's house?

24 A. Yes.

25 Q. How much time passed between those two points in

1 time?

2 A. It was pretty close together. I don't know the exact
3 time. Seemed like very chaotic at that point.

4 Q. How about when you saw the police car, whether it was
5 driving towards Tonawanda or towards Niagara, did you
6 see the dogs at that point?

7 A. I don't recall.

8 Q. Do you recall when the last time was that you saw the
9 dogs before you saw the police car driving?

10 A. I don't recall.

11 Q. I think we already established that once you saw the
12 police car for the second time you didn't see the
13 dogs?

14 A. Right.

15 Q. You have a specific recollection of not seeing or you
16 don't recall one way or the other?

17 A. I don't recall one way or the other because then my
18 eyes were focussed on the officers at that point.
19 But they were not on my porch when they came back for
20 the second time.

21 Q. When you had that phone conversation with 911 and
22 right around the same time you can sort of see the
23 police car parked on the street in front of the dogs'
24 owner's house where are you?

25 A. In my living room window.

- 1 Q. And then you more or less, fair to say, sort of hang
2 up with 911?
- 3 A. Yes.
- 4 Q. What happens next?
- 5 A. I wanted to get the officers' attention at that
6 point. They were getting out of their car. Officer
7 Vara was very angry at that point. As soon as he got
8 out of the vehicle he was already yelling.
- 9 Q. When he got out of the vehicle was he actually right
10 in front of your house?
- 11 A. He was not right in front of my house. He was closer
12 to where the dogs --
- 13 Q. Owner lived?
- 14 A. Yes.
- 15 Q. And the car was parked?
- 16 A. Yes.
- 17 Q. And he got out of the car?
- 18 A. Not immediately. He eventually did, yes.
- 19 Q. He got out of the passenger's side?
- 20 A. I don't remember which side he got out of.
- 21 Q. Where were you when he got out of the car?
- 22 A. I was at my front door at that point, the screen
23 door.
- 24 Q. Let me just talk about your house a little bit. If I
25 were to, say, need to come in your front door I would

- 1 walk up some steps to the front porch?
- 2 A. You would.
- 3 Q. And there's an open porch?
- 4 A. Yes.
- 5 Q. And then there is a screen door?
- 6 A. Yes. It's a step up and there's a screen door and
7 then an inside door.
- 8 Q. So, there's just a screen door and an inside door?
- 9 A. Yes. There's no hallway. Opens right up into the
10 living room.
- 11 Q. There's no little area, say, between the screen and
12 the inside door?
- 13 A. It's just the door jam, the door frame.
- 14 Q. So, there's a screen door and there's the main door
15 and they're like right next to each other?
- 16 A. Right. I mean, enough to frame the door into the
17 opening of the house.
- 18 Q. I would open the screen, I would open the door, and
19 then if I walked in I would be in your living room?
- 20 A. Right. Open the door, walk up the step and you would
21 be in, yes.
- 22 Q. When Officer Vara got out of the police car you were
23 behind the screen door?
- 24 A. Yes.
- 25 Q. You were inside your house then?

1 A. Yes.

2 Q. What happened next?

3 A. He immediately got out of his car and started
4 screaming something about me not answering the phone
5 when he was calling me and something about the
6 scumbags in this fucking neighborhood thinking the
7 police are at their beck and call.

8 Q. Where was he when he was saying that?

9 A. Walking towards the house away from his vehicle.

10 Q. Did you hear Officer Vara's testimony, and perhaps
11 Officer Craig's too, that you actually came out of
12 the house?

13 A. I was listening to their testimony but I don't know
14 if that's -- I may have stepped out of the front door
15 to get their attention once the verbal started to,
16 you know, engage.

17 Q. Did you ever leave your property during this incident
18 before you were placed under arrest?

19 A. They were both shouting at me and the female officer
20 told me, "Where do the dogs live?", she kept asking
21 over and over again, so I kept telling her, "Three
22 doors down." She said, "Come out here and show me",
23 so I did have to go out of the house down on the
24 sidewalk to show her.

25 Q. Was the police car still parked at that point?

1 A. Yes.

2 Q. In the same spot we talked about?

3 A. Yes.

4 Q. Was Officer Vara in or out of the car at that point?

5 A. He was out of the car.

6 Q. When Officer Craig said something like, "Come out and
7 show me where the dog owners live", you walked out of
8 the house?

9 A. I did.

10 Q. How far did you proceed?

11 A. I stopped at the sidewalk in front of my house.
12 That's as far as I was gonna go. I was able to point
13 to her the house at that time and tell her it was
14 three doors over.

15 Q. Where were the dogs at that time?

16 A. At that point I did not see the dogs.

17 Q. When was the last time you did see the dogs?

18 A. I'm not certain exactly the last time I saw the dogs.

19 Q. Do you recall Officer Vara's testimony about you
20 saying words to the effect like, "Get out of your car
21 and do your fucking job"?

22 A. After this altercation about the female officer
23 asking me to show them the house and he was
24 continuing to scream his profanities they did get
25 back in the car at that time and I did ask them if

1 they were gonna get back out of their fucking car and
2 do their job, what they were called there to do.

3 Q. Let me just get the timing right.

4 You went out to the sidewalk and you sort of pointed
5 to where the dog owners live?

6 A. Yes.

7 Q. And Officer Vara at that point is saying what?

8 A. I don't know exactly what he was screaming. He was
9 swearing and yelling and it was difficult to
10 distinguish what was going on because I had two
11 officers yelling to me at the same time.

12 Q. Did Officer Vara then get back into the car?

13 A. I don't recall.

14 Q. Once you pointed out the house where the dog owners
15 live what did the officers do?

16 A. I think they did get back in their car at that time
17 and I was getting yelled at by them that I needed to
18 get back in the house and mind my own fucking
19 business.

20 Q. Did Officer Craig ever get out of the car?

21 A. She did.

22 Q. At what point in time?

23 A. They both initially got out of the car at the same
24 time when he was screaming about not answering the
25 phone call. They were both out of the vehicle at

1 that point.

2 Q. And then you pointed out where the dog owners live?

3 A. I did after she was repeatedly asking me to come down
4 and show me where they live, so I did.

5 Q. They didn't go over to the dog owner's house though
6 or did they?

7 A. No.

8 Q. What did they do?

9 A. They were talking amongst themselves and they got
10 back into the car.

11 Q. Is that when you made the comment something to the
12 effect like, "Get out of your car do your fucking
13 job"?

14 A. Yes. And I was asked if they shot the dogs would
15 that make me happy.

16 Q. Is it fair for me to say that at that point in time
17 when they got back into the car you don't have a
18 recollection one way or the other whether these dogs
19 were in the area or not in the area?

20 A. Correct.

21 Q. Is it also fair for me to say, take a step back, that
22 when you saw the police car for the second time when
23 it was parked in front of the dog owner's house you
24 don't have a recollection one way or the other
25 whether the dogs were around the police car or not

1 around the police car?

2 A. I don't recall.

3 Q. When you said those words about getting out of the
4 the car, doing your job, what were the officers'
5 response?

6 A. So much yelling and swearing back and forth and
7 Officer Craig repeating herself, "Where do the dogs
8 live? Where do the dogs live?", them shouting over
9 each other. I can't be clear on what exactly was
10 said.

11 Q. Was there yelling and vulgar language being exchanged
12 between you and the officers?

13 A. Vara. Kelly Craig was more, "Where do the dogs live?
14 Where do the dogs live?", and I pointed several times
15 and verbalized several times which house it was but I
16 don't know if she could not hear me because Officer
17 Vara was shouting over her. I don't know.

18 Q. I'm just trying to get a picture of this. You have
19 Officer Craig sort of adamant about where do the dogs
20 live and you've got yourself and Officer Vara engaged
21 in yelling at each other and each of you are using
22 vulgarity against each other?

23 A. Yes, but I was clear in identifying the house where
24 the dogs lived.

25 Q. You may not be able to answer this but if you were so

1 clear why did Officer Craig keep asking you?

2 MR. ALBERT: I'm going to object because
3 it calls for speculation.

4 THE WITNESS: I could assume that it's
5 because Vara was so loud, maybe she couldn't hear. I
6 don't know why she wouldn't be able to see my hand
7 gestures telling her which house and repeating three
8 doors down.

9 BY MR. LEE:

10 Q. You mentioned earlier, ma'am, that one of the
11 officers or maybe it was both of them told you to go
12 back in your house?

13 A. Yes.

14 Q. This was sort of during this entire thing we've been
15 talking about here?

16 A. Yes.

17 Q. Do you recall which officer told you to go back in or
18 was it both?

19 A. It was Vara.

20 Q. How did you respond to that?

21 A. I went back in the house.

22 Q. Did you go back in the house the first time he told
23 you to or did he have to ask you more than once?

24 A. I don't know if he asked me more than once but I did
25 go back into the house.

1 Q. When you were having this back and forth were you on
2 the sidewalk or in the street?

3 A. Part of it started when I was still at my door and
4 the other part would have been on the sidewalk.

5 Q. Did you ever go any farther than the sidewalk?

6 A. No.

7 Q. What happened after you started to walk back into
8 your house?

9 A. I went back into my house and there may have been
10 some more verbal communication with Officer Vara
11 telling me to shut the door and mind my own business.

12 Q. Did you say anything back to him?

13 A. I don't recall.

14 Q. It's fair for me to say there was a pretty heated
15 exchange going on between you and Officer Vara?

16 A. Yes.

17 Q. Where obscenities were being exchanged on both sides?

18 A. Yes.

19 Q. But eventually you did go back into your house and it
20 sounds like even on your way back into the house this
21 same sort of thing was happening?

22 A. Yes.

23 Q. Did you eventually get in your house though?

24 A. I did.

25 Q. Did you go behind the screen door?

- 1 A. I did.
- 2 Q. What happened next?
- 3 A. At that point I was trying to get my dog back in the
4 house so I could shut the inside door but at that
5 point the officers were coming back out of their
6 vehicle and back up on the porch to the house.
- 7 Q. Dogs or dog?
- 8 A. It was the deaf dog.
- 9 Q. I thought you said something earlier that they were
10 crated?
- 11 A. I was trying to get them crated. I don't have crates
12 for each of them because it's not something that's
13 normally done.
- 14 Q. When you came back in the deaf Boxer was by the door?
- 15 A. He was not near the door. He was a little bit
16 further back but he then started walking towards the
17 door when he saw me.
- 18 Q. And you closed the screen door?
- 19 A. I did.
- 20 Q. On that step up is there like a threshold there and
21 then it's your living room?
- 22 A. Yes.
- 23 Q. Were you standing on the threshold or somewhere else?
- 24 A. I would have been over the threshold onto the wood
25 floor.

1 Q. Where was Officer Vara when you initially went into
2 your house and closed the screen door?

3 A. At that point he was already up the steps pretty
4 quick and right at the screen door.

5 Q. He was sort of like following you in a sense?

6 A. I'm guessing. I don't know because I was walking
7 forward.

8 Q. I take it there came a point in time when you were
9 told you were under arrest?

10 A. I don't recall them ever telling me I was under
11 arrest, no. It was pretty obvious when the handcuffs
12 were on that I was arrested but, no, they never said,
13 "You're under arrest."

14 Q. Did you know when you were going back into your house
15 that you were going to get arrested?

16 A. No. I was following their instructions to go back in
17 the house and shut the door and mind my own fucking
18 business.

19 Q. You shut the screen door and Officer Vara is sort of
20 following you in a sense?

21 A. Yes.

22 Q. When that's happening where is Officer Craig, if you
23 know?

24 A. I think she was behind him, maybe on his left-hand
25 side.

1 Q. So, both officers were sort of coming towards you?

2 A. Yes. I remember once I was back in the house and
3 they were there I asked Officer Vara for his name. I
4 asked him if I could please have his name and that's
5 when he got even angrier and that's when he actually
6 pulled the door open and started to pull me out of
7 the door.

8 Q. Were you having an exchange with Officer Vara between
9 the screen door?

10 A. The conversation was pretty much done by the time I
11 was in the house. I figured we're done here.
12 They're doing nothing, the dogs aren't on my
13 property, and that's the best I can hope for.

14 Q. Is that when you asked for his name?

15 A. Yes.

16 Q. How did you ask him?

17 A. I looked over to the screen and asked him if I could
18 have his name and tried to see on his chest if he had
19 any identification.

20 Q. What did he say or do response?

21 A. I don't remember what he said but his response was to
22 pull me out of the door at that point.

23 Q. Does your screen door have a lock on it?

24 A. It has a lock on the handle.

25 Q. You didn't have it locked?

- 1 A. I did not.
- 2 Q. Officer Vara - did he open the door or did you open
3 the door for him?
- 4 A. He opened the door.
- 5 Q. Where were you at the time?
- 6 A. In the living room at the door, from the inside of
7 the door able to see out.
- 8 Q. When he tried to pull open the door did you try to
9 pull it closed?
- 10 A. I don't recall.
- 11 Q. Does the door open out or in?
- 12 A. Out.
- 13 Q. He would have pulled it out?
- 14 A. Yes.
- 15 Q. What did you do when that happened?
- 16 A. I don't remember. I do recall at some point yelling
17 and letting him know that I needed to secure my dogs,
18 I can't just have my door being pulled open, and that
19 my daughter was inside.
- 20 Q. Which dogs were loose at that time?
- 21 A. I think it was just Bentley, the deaf all white one,
22 that was loose.
- 23 Q. What's your other Boxer's name?
- 24 A. Avery.
- 25 Q. And what about the Boston Terrier?

- 1 A. Frida.
- 2 Q. When Officer Vara opened the door what did he do
- 3 next?
- 4 A. He grabbed me to pull me out of the door.
- 5 Q. Do you know which hand he grabbed you with?
- 6 A. Which hand of his he used, I don't.
- 7 Q. Where did he grab you on your body?
- 8 A. On my left arm.
- 9 Q. Whereabouts on your left arm?
- 10 A. My left upper arm.
- 11 Q. When he grabbed you did he sort of pull you out of
- 12 the house or how did it work?
- 13 A. He did. He pulled me forcibly.
- 14 Q. Did you fall?
- 15 A. No.
- 16 Q. Did Officer Craig grab you?
- 17 A. At that point I don't think she did because I think
- 18 she may have been on the opposite side of the door
- 19 when it got pulled open but I'm not certain.
- 20 Q. When he grabbed you did he pull you onto your porch?
- 21 A. He did.
- 22 Q. What happened next?
- 23 A. Turned me around and pushed me against the house.
- 24 Q. Against the front of the house obviously?
- 25 A. Yes.

- 1 Q. So, your back would have been facing him?
- 2 A. My side initially was pushed into the house and then
3 my back would have been towards him, yes.
- 4 Q. When he opened the door and grabbed you did you know
5 at that time you were under arrest?
- 6 A. No. I was never told I was under arrest.
- 7 Q. You said something about it became clear. When did
8 it become clear?
- 9 A. In my mind if officers are grabbing you and pulling
10 you out of your home it's not to have a picnic.
11 You're probably being arrested.
- 12 Q. Did Officer Vara tell you to put your hands behind
13 your back?
- 14 A. I don't recall.
- 15 Q. After he sort of pulled you out of the house, turned
16 you around, what did he do next?
- 17 A. My arms were pulled behind my back and handcuffs were
18 placed.
- 19 Q. Did you struggle at all?
- 20 A. I don't recall.
- 21 Q. Were you placed in handcuffs?
- 22 A. Yes.
- 23 Q. Did you ever complain at any point in time about the
24 handcuffs being too tight?
- 25 A. I did.

- 1 Q. What point or points in time?
- 2 A. Once I was in back in the vehicle I made it clear to
3 the female officer that the cuffs were too tight.
4 Another police vehicle did actually pull up and the
5 windows were down, they were exchanging words
6 wondering if I was being arrested and taken downtown.
7 They confirmed yes and I did also tell that other
8 officer in the other vehicle that I was in pain. He
9 laughed because it was quite humorous apparently.
- 10 Q. After you were placed in handcuffs were you then led
11 down your porch steps?
- 12 A. I was dragged down the front steps.
- 13 Q. Were you able to walk though, were you on your feet
14 though and able to make steps down?
- 15 A. I don't think my feet probably made contact with
16 every step. It was not a walk down the steps. I was
17 being forced down the steps in not a comfortable
18 manner.
- 19 Q. Did your knees come into contact with the steps?
- 20 A. My knees didn't touch the steps, no.
- 21 Q. Who escorted you down the steps?
- 22 A. Both of the officers were present at that time but if
23 my memory serves my right it was Officer Vara who had
24 his arm on my --
- 25 Q. He was on your left side?

- 1 A. Behind me when he was pushing me down the steps.
- 2 Q. Was he directly behind you or was he more to your
3 left?
- 4 A. He would have been on the left.
- 5 Q. What about Officer Craig?
- 6 A. I couldn't see her but in my mind she was behind me
7 possibly on the right side.
- 8 Q. What happened when you got to -- do you have a
9 walkway that sort of leads up to your steps?
- 10 A. After the last porch step there's a short walkway and
11 then there's another step right there that leads to
12 the sidewalk.
- 13 Q. After you got off the steps did anything --
- 14 A. I was pushed to the ground at that time after the
15 steps were completed and we were at the sidewalk.
- 16 Q. When you say sidewalk do you mean the actual sidewalk
17 for pedestrians or the walkway?
- 18 A. The sidewalk, the pedestrian sidewalk.
- 19 Q. You went down the steps, you started to walk towards
20 the sidewalk?
- 21 A. Yes.
- 22 Q. When you got to the sidewalk --
- 23 A. That's when I fell, when I was pushed.
- 24 Q. How would you describe how it is that you fell?
- 25 A. I felt force from behind my body that caused me to go

1 forward and not be able to balance myself and went
2 onto the ground forward facing.

3 Q. Do you know which officer would have applied that
4 force?

5 A. At that point I was only aware of feeling pressure,
6 you know, on the left side of my body from behind.
7 So, my thought it was Officer Vara.

8 Q. During this time period between when you were pulled
9 out of the house and when you went to the ground near
10 the sidewalk were any words being exchanged?

11 A. No.

12 Q. What emotional state were you in at that time?

13 A. I was in a state of panic and fear at that time.

14 Q. What part of your body came into contact with the
15 ground?

16 A. It was the left side of my body. My leg. I don't
17 know if both knees did or if -- I just think it was
18 the left knee because that's where I felt pain on the
19 left side of my body. My ankle had a lot of pain at
20 that point. It felt like it had twisted, like it had
21 rotated some unnatural motion into that leg, but the
22 fall to the ground was so fast. I don't really know
23 certainly what position I landed but I do recall I
24 landed forward and then had to get myself onto the
25 left side of my body so I could sit on my butt.

1 Q. What did you do when you were on the ground?

2 A. Sat there. There was nothing I could do. I was
3 yelling at that point trying to get attention to a
4 neighbor so they could come over and help my daughter
5 make a call so that she could call a family member to
6 come and get her.

7 Q. That's Patricia?

8 A. Well, I was loud enough the whole street probably
9 heard me at that point but, yes, I wanted Patricia to
10 come over and help make phone calls with Cassandra.

11 Q. Did you fall onto the sidewalk or did you fall onto
12 the grass?

13 A. The sidewalk.

14 Q. And then after you fell you were able to sit up?

15 A. I didn't really sit up. I kind of rolled to the side
16 so I could get my legs adjusted, my ankle.

17 Q. Were you able to get up under your own power?

18 A. No.

19 Q. How were you able to get up?

20 A. I was able to get up when Officer Vara yanked me off
21 the ground and pulled me upright and he said I was
22 being uncooperative. He said, "Get up", and I said,
23 "I can't get up", and he said, "You were fine a
24 minute ago, now you can't get the fuck up. I'll get
25 you up."

1 Q. How did he get you up?

2 A. He grabbed me by my arm, I think it was the lower
3 part of my arm, the left side, and he yanked me up.

4 Q. By using the lower part of your left arm?

5 A. Yes.

6 Q. Did you use your feet as well?

7 A. Well, I tried to use my feet the best I could. It's
8 not a natural position. I'm not accustomed to being
9 able to get off the ground in that manner especially
10 being restrained.

11 Q. What happened next?

12 A. Then I was placed in the cop car at that point and
13 Officer Craig was in the vehicle at that time and the
14 windows were still down and that's when I did notice
15 my daughter in the front door observing and I did see
16 that Pat had made it over to my side of the street
17 and I was going to communicate with her and that's
18 when the officer rolled the windows up so there would
19 be no communication.

20 Q. Officer Craig was in the driver's seat?

21 A. I don't remember which seat she was in.

22 Q. Which officer put you in the police car?

23 A. Vara.

24 Q. What did he do after he did that?

25 A. He was gone at that point. I don't know where he

1 went. I think that's when he went in the house.

2 Q. Did you find anything to be inappropriate about the
3 way that Officer Vara put you in the police car?

4 A. He was rough putting me in there but I'm not sure how
5 else you get somebody inside of the vehicle. He did
6 shove. He wasn't gentle. Do you have your footing,
7 get in the vehicle. He didn't give me the
8 opportunity to do that.

9 Q. Did you sustain any injuries when you were put into
10 the vehicle?

11 A. Not that I'm aware.

12 Q. After you were put in the vehicle Officer Vara went
13 back into your house?

14 A. Yes.

15 Q. Did you know he was going to do that?

16 A. No.

17 Q. I think we already talked about what happened inside
18 the house to the best of your knowledge between
19 Officer Vara and whoever was inside?

20 A. Yes.

21 Q. Did Officer Vara come out of the house?

22 A. Yes.

23 Q. What did he do?

24 A. Got back in the vehicle and at that point that's when
25 the vehicle left from [REDACTED] Avenue.

1 Q. I think it's going to be your testimony that the
2 vehicle made a stop but did you eventually go to the
3 holding center?

4 A. Yes.

5 Q. How many stops did you make between [REDACTED] and the
6 holding center?

7 A. One.

8 Q. Where was that?

9 A. The parking lot of Tim Hortons on Niagara Street.

10 Q. What was done during that stop?

11 A. At that time they started yelling at me again asking
12 me why would I want to get them into trouble, which
13 was an odd question because I didn't know there was
14 any trouble for them. Officer Vara said they were
15 good people that came from good families and did I
16 even have a job and what the fuck did I do for a
17 living and that's when I did answer his questions at
18 that point. At one point Officer Craig asked me if I
19 thought they deserved to be treated that way after
20 what they do all day, was it right that I treated
21 them the way that I did. Without them my daughter,
22 mother, and I would be victims of gang rape. They
23 were very threatening and vulgar. At that point I
24 was scared for my safety since we were in a parking
25 lot and I was alone with them. At that point I just

1 kept my mouth shut and refused to engage in any more
2 conversations at that point.

3 Q. Did you ever in the car ride threaten to try to get
4 them fired?

5 A. No. I did at some point during this incident tell
6 911 if they didn't get me help I was going to report
7 it to the supervisor and I think it was clear when I
8 was asking for Officer Vara's name that I did intend
9 to file some kind of a complaint.

10 Q. Did you ever file a complaint about this?

11 MR. ALBERT: Object to vague.

12 BY MR. LEE:

13 Q. Did you file a complaint with the Internal Affairs
14 Division?

15 A. I sought the attention of an attorney.

16 Q. Did you ever file a complaint with the Internal
17 Affairs Division of the Buffalo Police Department?

18 A. No.

19 Q. When did you retain Mr. Albert?

20 A. I retained Mr. Albert because I needed --

21 Q. No, no. When?

22 A. Sometime before my arraignment. In the timeframe
23 between the arrest and my scheduled court
24 arraignment.

25 Q. After there was the discussion in the Tim Hortons

1 parking lot that you just described I think you
2 basically said that you decided you weren't going to
3 engage in any more conversations?

4 A. Yes.

5 Q. And then you were taken to the holding center?

6 A. Yes.

7 Q. Were there any conversations that took place between
8 you and the officers from [REDACTED] to the holding
9 center that you haven't already told me about?

10 A. No.

11 Q. What happened when you got to the holding center?

12 A. I was removed from the vehicle and put into a cell
13 and at some point I was brought out of the cell into
14 another room to have mug shot and fingerprints and
15 put back into the cell.

16 Q. How long were you in the holding center all together?

17 A. I don't recall.

18 Q. Did you have any interaction with either officer
19 after you were brought to the holding center?

20 A. I did. Officer Vara came back and told me that there
21 was a warrant for my arrest in Cheektowaga.

22 Q. Different person? You didn't have a warrant for your
23 arrest, did you?

24 A. No. But I thought he was probably trying to
25 antagonize me and engage in something, I don't know,

1 but I knew that was not correct.

2 Q. Did you have any other interaction with either
3 officer in the holder center?

4 A. Not until I was told to get up by Officer Craig and
5 was walked back up to the exit and she removed the
6 handcuffs, gave me a piece of paper, and told me that
7 they did me a favor and I should be thanking them.

8 Q. She gave you an appearance ticket?

9 A. I didn't look at it at the time but, yes, that's what
10 it was.

11 Q. How long were you in the holding center for in total?

12 A. I don't recall.

13 Q. Can you give me an estimate - was it an hour?

14 A. Maybe it was an hour.

15 Q. Do you recall being asked at the holding center
16 whether you were injured?

17 A. No.

18 Q. You don't have a recollection, maybe you were, maybe
19 you weren't, you just don't remember?

20 A. I was not asked if I was injured.

21 Q. Other than your complaints to the officers about the
22 handcuffs being too tight did you make any other
23 complaints regarding your physical condition?

24 A. When Officer Vara was telling me that I needed to get
25 up I told him I couldn't get up without the use of my

1 hands, that I was in pain at that point, and was not
2 able to get up but I didn't make any other formal
3 complaints of pain at the holding center.

4 Q. I know you complained to the officers about -- during
5 this entire event you complained to the officers
6 about the handcuffs being too tight and I know that
7 you were complaining when you were on the ground.
8 Any other points in time where you made complaints
9 about your condition to the officers?

10 A. No.

11 Q. Did you ever ask for medical attention?

12 A. No. You probably don't want to know why.

13 Q. Now I have to ask why.

14 A. At that point I was very uncomfortable and at that
15 point had no confidence that any of the people I
16 encountered that worked for the Buffalo Police
17 Department were interested in providing any
18 assistance to me at that point, so I was not going to
19 ask them for any type of attention.

20 Q. Did you ask anyone at the holding center, any of the
21 deputies there, for attention?

22 A. I did not. The woman who actually did my
23 fingerprints was someone that appeared to be well
24 known to Officer Craig, they were carrying on
25 conversation, so I did not feel like I was in company

1 that was to be trusted and interested in my well
2 being. So, I was going to do what I needed to do to
3 get the hell out of there.

4 Q. Officer Craig gave you the appearance ticket and sort
5 of escorted you out of the holding center?

6 A. She did.

7 Q. What did Officer Craig do then? Did she sort of go
8 her own way and you had to do your thing?

9 A. Yes.

10 Q. What did you do?

11 A. At that point I needed to find a way to get home and
12 figure out where my daughter was.

13 Q. You would have been downtown right now on Delaware?

14 A. At night.

15 Q. Were you able to get home?

16 A. I thought I was going to walk until I realized that
17 the pain in my ankle as I was walking was not going
18 to allow me to walk all the way back home. So, as
19 far as I could make it was a convenience store on
20 Niagara Street. I think the side street might be
21 Georgia. I think it's about five blocks. There's an
22 apartment complex across the street. And I had to go
23 in there and ask the store owners if they would allow
24 me to use their phone.

25 Q. Did they?

- 1 A. They did.
- 2 Q. Who did you call?
- 3 A. I tried to call several people, none of which
4 answered. The person I was able to get ahold of was
5 a cousin who lives in Maryland. She, at that point,
6 got on top of trying to get ahold of a relative to
7 try to find out where my daughter was. At that point
8 she was able to actually somehow get Pat Barkley's
9 number, I didn't know it because I didn't have it
10 memorized, she was able to do that and then get in
11 touch with my brother at that point and the store
12 owners were able to call a cab for me even though I
13 told them I had no money and I did get home that way
14 and had my cousin pay for that cab ride over the
15 phone with a credit card.
- 16 Q. When you made that phone call you didn't call home?
- 17 A. I did call home and nobody answered. Actually, no, I
18 didn't. I did not call home. I asked my cousin to
19 take care of it for me. I asked her to do that.
- 20 Q. What time did you get home?
- 21 A. I don't recall. We did stop in Kenmore on the way
22 home on Palmer Avenue where my mother-in-law lives
23 thinking that maybe that's where my daughter would
24 have been but nobody answered.
- 25 Q. What happened when you got home?

- 1 A. When I got home my cousin actually -- I had to call
2 her back to get her to make a payment for the cab
3 ride and that's when she was able to give me the
4 information about my brother who had my house keys
5 and my wallet and my daughter and he would turn
6 around and come back.
- 7 Q. It sounds like Patricia made arrangements with your
8 brother regarding your daughter?
- 9 A. Yes.
- 10 Q. When you got home that night was it dark or light
11 out?
- 12 A. It was dark.
- 13 Q. When was your first court appearance?
- 14 A. I don't remember the date.
- 15 Q. How long after - was it like a week after the
16 incident or two weeks?
- 17 A. I want to think it was probably two weeks.
- 18 Q. Did you appear in Buffalo City Court?
- 19 A. Yes.
- 20 Q. Do you recall who the judge was?
- 21 A. I do not.
- 22 Q. Did Mr. Albert represent you at that appearance?
- 23 A. Yes.
- 24 Q. What happened at that first appearance?
- 25 A. That was the first and only appearance and I don't

1 know what the legal terms for the disposition of it
2 were but the case was dismissed and the record was
3 actually sealed.

4 Q. You only had one court appearance then after this
5 incident?

6 A. Yes.

7 Q. And you had no court appearances after you were
8 arraigned?

9 A. Yes.

10 Q. It's your understanding that at the arraignment the
11 charges were dismissed?

12 A. Yes.

13 (Discussion held off record.)

14 BY MR. LEE:

15 Q. Ms. Townsend, at your arraignment when you were
16 present with your attorney, Mr. Albert, were the
17 officers also present?

18 A. I actually did not notice the officers, no.

19 Q. Is it fair for me to say then your last interaction
20 with these officers was with Officer Craig at the
21 holding center basically when she gave you the
22 appearance ticket?

23 A. Yes.

24 Q. You haven't had any interaction with either officer
25 since this incident happened?

1 A. No.

2 Q. What parts of your body are you claiming you injured
3 in this incident?

4 A. My left ankle, that would be the injury that is
5 unresolved at this point. I initially had pain all
6 over my body, muscle soreness, had pain in my back.

7 Q. So, we have your left ankle. When you say pain in
8 your entire body I don't really know what you mean.

9 A. Did you ever fall and your muscles are sore? Muscle
10 soreness, wide spread muscle soreness.

11 Q. Do you have muscle soreness as you sit here right
12 now?

13 A. I have pain in my left ankle right now but I don't
14 have any muscle soreness right now.

15 Q. How long did the muscle soreness last for?

16 A. I'm guessing but I think it was roughly around three
17 months.

18 Q. You said that you had back pain as a result of this
19 incident?

20 A. I did.

21 Q. Do you have back pain as you sit here right now?

22 A. No.

23 Q. What other parts of your body, if any, did you injure
24 in this incident?

25 A. No other parts of my body. I had soreness and pain

1 in my wrists but that was probably the first pain
2 that resolved.

3 Q. How long did that last for?

4 A. Probably a few weeks.

5 Q. How long did the pain in your back last for?

6 A. I don't recall the duration. I'm going to guess
7 maybe four or five months.

8 Q. You said guess. Could I say is that a fair estimate?

9 A. Yes.

10 Q. Any other parts of your body?

11 A. No.

12 Q. Did you injure your back before this incident?

13 A. No. I may have had chiropractic care for muscle
14 aches in the back before but I was never under any
15 treatment or had any specific back injury. I did
16 have a motor vehicle accident in 1999 but that was
17 more of a hip and pelvic sacroiliac area.

18 Q. When is the last time you you saw a chiropractor
19 before this incident?

20 A. I don't recall.

21 Q. Can you give me any estimate? Are we talking like a
22 month or six months?

23 A. No. It would have been longer than six months before
24 that.

25 Q. Less than a year?

- 1 A. I'm not sure. It could have been a year.
- 2 Q. Did you injure your back in the motor vehicle
3 accident in '99?
- 4 A. No.
- 5 Q. Actually, just to take a quick step back here. When
6 this incident was happening and you were having those
7 exchanges with Officer Vara do you remember anything
8 specifically that he said?
- 9 A. Other than what I've already stated?
- 10 Q. Other than what you've already stated.
- 11 A. Nothing other than I've already stated.
- 12 Q. I think it would be fair for me to say that you don't
13 have any loss wages with respect to this incident,
14 you were able to use your PTO time?
- 15 A. I was able to use my PTO time. To me that is a loss
16 of wages.
- 17 Q. But you lost your PTO time?
- 18 A. I did.
- 19 Q. You lost nine days of it?
- 20 A. Yes. And I lost any overtime that you can assume I
21 was going to earn during that time as well.
- 22 Q. We're talking a two week period, those nine days.
23 Would you work overtime every week before this
24 incident?
- 25 A. Yes.

- 1 Q. You would work up to fifty hours?
- 2 A. That's a guess.
- 3 Q. Was it ever more than fifty hours?
- 4 A. Fifty hours of overtime or fifty hours a week?
- 5 Q. Total.
- 6 A. There were times when it could have been, yes.
- 7 Q. Majority of the time though it was less than fifty?
- 8 A. I more gauge it in a two week pay period to be
- 9 honest.
- 10 Q. Maybe this is the best way to ask it. Can you give
- 11 me an estimate had this incident not happened and you
- 12 worked those nine days how much overtime would you
- 13 have worked in those nine days?
- 14 A. Ten to fifteen hours.
- 15 Q. Has this incident affected the relationship with your
- 16 daughter?
- 17 A. Can you be more specific?
- 18 Q. Is the relationship with your daughter -- I take it
- 19 before this incident it was a good relationship?
- 20 A. Yes.
- 21 Q. Is it still a good relationship?
- 22 A. Yes.
- 23 Q. Are you claiming any mental or psychological
- 24 injuries?
- 25 A. I have psychological suffering.

1 Q. In what respect?

2 A. I did see a psychotherapist for a short time because
3 I was concerned about fear of encounters with the
4 police and an overall uneasy feeling that I had still
5 related to the incident that I was hoping to find a
6 way to cope with it so I could put the incident
7 behind me.

8 Q. Were you able to cope with it through your therapy
9 sessions?

10 A. I was given some coping mechanisms. Therapy was not
11 for me because, once again, to me it made me feel
12 like I was in an uncomfortable situation reliving the
13 incident that I had already gone through. Very much
14 embarrassment to seek treatment from the medical
15 doctors or from a therapist when they want to know
16 specifics of what happened in this encounter with the
17 police. It was embarrassing to disclose that
18 information to them.

19 Q. Have you been able to put this incident behind you?

20 A. No. It's not behind me. It still affects me but I'm
21 doing the best I can to function because I have no
22 choice.

23 Q. What ways does it still affect you?

24 A. I'm still afraid. Any potential encounters with the
25 police make me almost sick to my stomach, very

1 nervous, makes me avoid encounters with the officers,
2 seeing incidents that I would normally have reported
3 to them, potential crime or suspicious activity, I've
4 avoided that. Just a generalized very uneasy feeling
5 and I do want to get more treatment on my left ankle
6 with the surgeon but that's going to mean another new
7 doctor and they're going to want to know exactly the
8 details of how the injury was sustained. They're not
9 satisfied with vague answers so that makes me
10 uncomfortable. I would like to get my ankle
11 addressed and maybe then I can move on.

12 Q. Your therapy sessions, were they all at Western New
13 York Psychotherapy?

14 A. They were.

15 Q. How many did you have all together?

16 A. I don't remember. It was a few. She recommended a
17 book that I could read to help myself.

18 Q. You've seen Dr. Graham Huckell?

19 A. Yes.

20 Q. How many times have you seen him?

21 A. I think I saw him two or three times. I'm not
22 certain but after the cast -- the casting was not
23 successful to resolve the pain and get everything
24 healed. There was nothing else he could do. He
25 doesn't do surgery on ankles. It's a specialized

1 orthopedic area.

2 Q. You saw Dr. Huckell for your ankle?

3 A. Yes.

4 Q. You saw him two or three times?

5 A. I think it was two or three times.

6 Q. Do you have any future appointments with Dr. Huckell
7 scheduled?

8 A. No.

9 Q. You don't have any future appointments at Western New
10 York Psychotherapy?

11 A. No. I may down the road but at this time I do not.

12 Q. How many times have you seen Dr. Ryan Snyder? If
13 that rings a bell.

14 A. That name does not ring a bell.

15 MR. ALBERT: That might be the Urgent
16 Care guy.

17 THE WITNESS: I don't remember his name
18 to be honest but I was only seen at Urgent Care one
19 time.

20 BY MR. LEE:

21 Q. When is the first time you sought medical treatment?

22 A. MASH Urgent Care on May 9th.

23 Q. Tell me a little bit about that appointment.

24 A. That appointment they had me explain what was the
25 cause of my injuries so I did explain to them that it

1 was an interaction with the police at that time and
2 how the fall occurred and where the pain was. I was
3 treated with compression for the left ankle at that
4 time, instructed to take anti-inflammatories, rest,
5 not to work, use ice, and follow up. They're not
6 someone you would follow up with there. You would
7 follow up on your own with your own physician.

8 Q. Did you have to call in to work that Friday?

9 A. I did.

10 Q. You said Dr. Snyder was at Urgent Care?

11 A. I don't recall his name but -- I don't recall a
12 doctor with that name.

13 Q. How about Dr. Kartha, do you know who that is?

14 A. Doesn't ring a bell either.

15 Q. How about Dr. Kozlowski?

16 A. She's the cardiologist that I did see during all this
17 when I started having chest pain and fluid retention
18 in my leg. I was directed to see a cardiologist at
19 that time to see if there was something cardiac and
20 it was determined at that time after some cardiac
21 testing done that it was actually related to the use
22 of the anti-inflammatories I was taking for pain and
23 I was advised at that point to stop taking them for
24 the pain and if I couldn't bear the pain to follow up
25 with my primary doctor to see if he would recommend

- 1 pain management.
- 2 Q. Who prescribed the anti-inflammatories?
- 3 A. At the Urgent Care I was told to take
- 4 anti-inflammatories.
- 5 Q. How many times did you present at Buffalo Cardiology?
- 6 A. I think I had a total of -- I had an appointment with
- 7 a doctor, I had a follow up appointment, and I don't
- 8 know if the echocardiogram and stress test were done
- 9 at one of those appointments. I think that was a
- 10 separate visit. So, possibly three.
- 11 Q. They basically determined that your heart was fine
- 12 and that it was these anti-inflammatories that was
- 13 causing fluid buildup in your leg?
- 14 A. It was causing some kind of a side effect because
- 15 from what I understand it's metabolized through your
- 16 kidney causing the fluid retention that was leading
- 17 to the chest pain and the fluid retention.
- 18 Q. That was related to the anti-inflammatories?
- 19 A. Yes.
- 20 Q. You mentioned something about a cast on your ankle?
- 21 A. Dr. Huckell put the cast on my left leg.
- 22 Q. Hard or soft cast?
- 23 A. A hard cast.
- 24 Q. How long was it on for?
- 25 A. I think it was six weeks.

1 Q. What injury did you sustain to your left ankle?

2 A. I don't know what the medical terminology was for the
3 injury to be honest with you. From my understanding
4 there was a bone that had a break in it and something
5 possibly with a tendon or ligament. I'm not quite
6 sure. Damage sustained from an unhealed sprain and
7 whatever was going on with the bone.

8 Q. Who diagnosed you with that?

9 A. Dr. Huckell.

10 Q. When did you first see Dr. Huckell after this
11 incident?

12 A. Dr. Owens, the chiropractor, referred me to him and I
13 don't know when. I remember the cast came off at
14 Christmas time, so that would have been in December
15 of '14, and it had been on for about six weeks.

16 Q. Did Dr. Huckell put it on at the first visit?

17 A. One of his associates put it on.

18 Q. Did you go anywhere for any diagnostic testing?

19 A. I had an MRI done. I don't remember where or when
20 that was. I think the records have been obtained.

21 Q. Do you remember where it was though or no?

22 A. It was downtown somewhere, possibly on Michigan.

23 Q. I think I'll need an authorization for the MRI.

24 Well, was it on Genesee?

25 A. Could have been, yeah.

1 Q. Was it at Dr. Huckell's office?

2 A. I don't remember. He did an x-ray and I think from
3 whatever was on the x-ray is what led him to order an
4 MRI.

5 Q. And you don't recall whether you had that MRI
6 performed at his office or whether --

7 A. I don't know if it was in the same building or not.
8 I don't remember.

9 Q. Dr. Owens is the chiropractor?

10 A. Yes.

11 Q. How many times have you seen him?

12 A. I haven't seen him in quite some time. I don't
13 remember how many treatments I had with him.

14 Q. He treated you for your back?

15 A. He did. He followed the issue with the left ankle
16 but it was out of his scope of practice.

17 Q. You don't have any future appointments with
18 Chiropractor Owens scheduled?

19 A. No.

20 Q. What future appointments, if any, do you have
21 scheduled currently?

22 A. Currently, nothing scheduled at the moment but I will
23 be scheduling something for my ankle to be further
24 evaluated by the advice of my primary doctor for the
25 surgeon.

- 1 Q. That's Dr. Gentile?
- 2 A. Yes.
- 3 Q. Has Dr. Gentile actually made a referral?
- 4 A. We don't need referrals. He gave a recommendation of
5 who I should see. I think it's Northtown
6 Orthopedics.
- 7 Q. Why not go back to Dr. Huckell?
- 8 A. Because Dr. Huckell doesn't do anything surgical or
9 anything specialized any more in the ankle than he
10 already did.
- 11 Q. Did you see Dr. Ann Lillis as a result of this
12 incident?
- 13 A. Is she from Western New York Psychotherapy?
- 14 Q. No. She's Gastroenterology Associates LLP.
- 15 A. I have seen a gastroenterologist but that wasn't
16 related to --
- 17 Q. This incident?
- 18 A. No.
- 19 Q. How about James Fitzgerald? That's at Western New
20 York Immediate Care.
- 21 A. Okay.
- 22 Q. The first time you sought medical attention --
- 23 A. I don't even think it was a doctor at Western New
24 York -- it was the MASH, not Western New York
25 Immediate Care.

1 Q. Did you also go to Western New York Immediate Care
2 though?

3 A. I've been there.

4 Q. But for this incident?

5 A. No.

6 MR. ALBERT: I got WNY Imaging Group for
7 the MRI so I'll follow up with that.

8 BY MR. LEE:

9 Q. Are there any health care professionals whom you've
10 seen as a result of this incident that we haven't
11 talked about?

12 A. No.

13 Q. Is your left ankle in pain right now?

14 A. When I walk it's in pain. Sitting down right now it
15 feels fine.

16 Q. On a scale of 1 to 10, with 10 being the greatest
17 amount of pain, what type of pain is your ankle in
18 when you walk?

19 A. 4 or 5 depending on the type of activity I'm doing
20 but I've learned to limit my activity and not
21 participate in activities that increase the pain.

22 Q. How did you get around when you had the cast on?

23 A. I had to walk with a boot on.

24 Q. Were you able to drive an automobile during that
25 time?

- 1 A. It was my left leg, yes. I didn't have a choice.
2 Dr. Huckell said I should be non-weight bearing on it
3 but I could work, which was contradictory. He said
4 he would not fill out any paperwork as far as a
5 degree of a disability. He was not going to fill out
6 any paperwork to assist with restrictions at work so
7 I was kind of left to my own device. We'll treat you
8 but we're not getting involved in anything that looks
9 like we're going to need to do any documentation
10 that's going to get us into any legal situation.
11 They also do not prescribe pain medication.
- 12 Q. Are you taking any pain medication right now?
- 13 A. I can't take anything for pain right now. The doctor
14 offered to prescribe a pain medication but it's not
15 an anti-inflammatory, it would be a narcotic, and I'm
16 not going to take any narcotics because I'm not going
17 to be able to drive a vehicle and see patients --
- 18 Q. Which --
- 19 A. Dr. Gentile -- if I'm taking narcotics.
- 20 Q. Did you have any injuries to your left ankle before
21 this incident?
- 22 A. No.
- 23 Q. Did you ever seek any medical treatment for your left
24 ankle before this incident?
- 25 A. No.

1 Q. Did you ever have any diagnostic testing done to your
2 left ankle before this incident?

3 A. Not that I'm aware of, no.

4 Q. Did you do anything to reinjure your left ankle after
5 this incident?

6 A. No.

7 Q. You weren't involved in any accidents or incidents
8 after this subject incident that involved your left
9 ankle?

10 A. No. I did have a car accident, I think it was last
11 December, but I would barely call it a car accident.
12 I was stopped at a red light and two cars behind me
13 had rear-ended each other and gently bumped the rear
14 of my car but there was no real damage and I didn't
15 have any pain or seek any attention.

16 Q. You weren't injured in that accident?

17 A. No.

18 Q. Have any of the daily activities that you were doing
19 before this incident happened been restricted or
20 limited since the incident?

21 A. Yes.

22 Q. Can you tell me about that?

23 A. I cannot ice skate. I cannot take my dogs for a
24 walk. I have to limit places that I can take my
25 daughter that would require a lot of walking,

1 especially if it's a day that I've worked. I have to
2 be very careful what shoes I wear so that I can try
3 to keep my ankle in a stable position and keep it
4 comfortable. I have not been able to do much in my
5 yard or the exterior of my house especially. I
6 haven't been able to do a lot of inside work that
7 needs done as well.

8 Q. Have you had to hire anyone to do any of these things
9 in terms of your yard work or house work?

10 A. I didn't hire anyone to do house work. I've kind of
11 trained my daughter how to do a lot of the stuff
12 around the house. At this point I have hired a
13 person to come in and do different repairs around the
14 house. There are neighborhood kids that will come by
15 and offer to cut the grass for you, shovel for you.
16 I have paid them to do that. Pat Barkley's husband
17 has been wonderful with snow removal for me with the
18 snowblower because that is about impossible for me.

19 Q. How much money have you spent to pay people to do
20 some of these things that you can't do?

21 A. I haven't paid Pat Barkley's husband anything. He
22 won't accept anything for his assistance. The times
23 that the grass have been cut by the people that will
24 come around I'll give them \$10 or \$20 depending on
25 what they will do it for.

1 Q. Is your relationship with your daughter any different
2 now than it was before the incident?

3 A. My relationship with her is the same. I think we
4 still have a good relationship. There are some
5 issues but I wouldn't classify them as relationship
6 issues.

7 Q. When you say there are issues do those issues at all
8 relate to this incident?

9 A. They do. My daughter has developed a feeling that
10 she cannot seek help from the police and that they
11 are a negative being, I guess that would be the word.
12 That's something that I'm trying to work on because I
13 definitely don't want her growing up feeling that she
14 can't get help from the cops even though she saw that
15 her mother asked for help and she didn't get help,
16 didn't turn out positive. I do try to instill in her
17 that the police are there to protect her and if she
18 ever needs them she should be comfortable in getting
19 help from them.

20 Q. Do you have any information about anything your
21 daughter saw in relation to this incident? She was
22 sleeping, right?

23 A. She was. I did notice her at the door, so she did
24 see.

25 Q. When did you notice her at the door?

1 A. I was on the ground on the sidewalk before I was in
2 the car. I don't know when she came down. At this
3 point her memory of what happened is pretty vague at
4 this point.

5 Q. When you say skate, did you ice skate before this
6 incident?

7 A. Yeah.

8 Q. Where?

9 A. We would go to the rink at Riverside.

10 Q. How often would you do that each year before this
11 incident?

12 A. Four or five times a year.

13 Q. Have you been back on skates since this happened?

14 A. I tried to put skates on in the house and it caused
15 so much pain to try to stand up with a skate around
16 the ankle that that was not gonna happen.

17 Q. When you used to skate in the past who would you go
18 with?

19 A. I would go with my daughter when she was little. I
20 don't know if she remembers that. I would skate by
21 myself. Years before that my father would make an
22 ice skating rink in the yard that we would skate on.
23 We grew up on skates.

24 Q. Is your daughter still able to skate?

25 A. We don't skate anymore, no.

- 1 Q. Nobody else takes her?
- 2 A. No. Not able to walk the dogs. I probably shouldn't
3 be skating anymore at this point with my age maybe
4 but walking the dogs would really be a nice thing to
5 be able to walk the dogs.
- 6 Q. How often would your dogs get walked before this
7 incident?
- 8 A. Every day.
- 9 Q. Would you do all three at one time?
- 10 A. I could, yes.
- 11 Q. How often do they get walked now?
- 12 A. They don't get walked ever. The only time they're
13 walked is from the house to the car to go to a vet
14 appointment or the kennel.
- 15 Q. Do you have any unpaid medical bills?
- 16 A. No. I was able to use my insurance to cover the
17 expenses and pay co-pays out of pocket as I went
18 along.
- 19 Q. Do you have private health insurance?
- 20 A. I do.
- 21 Q. How much in co-pays have you had to pay?
- 22 A. For each visit it was between \$15 and \$20.
- 23 Q. Can you give me an estimate what the total is?
- 24 A. Maybe \$300. And that would be a guess.
- 25 Q. Do you have health insurance through Kaleida?

1 A. I do.

2 MR. LEE: I don't have any other
3 questions.

4 (***2:32 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.

Notary Public
State of New York

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