

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

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*MARK VARA  
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

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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.

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Examination Before Trial of MARK VARA, 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 10:09 a.m. before Nicole  
Rotoli, Notary Public.

1 APPEARANCES:

2 THE LAW OFFICES OF MATTHEW ALBERT, ESQ.  
3 BY: MATTHEW ALBERT, ESQ.  
4 254 Richmond Avenue  
5 Buffalo, New York 14222  
6 mattalbertlaw@gmail.com  
7 Appearing for the Plaintiff

8 CITY OF BUFFALO CORPORATION COUNSEL  
9 BY: DAVID M. LEE, ESQ.  
10 1102 City Hall  
11 65 Niagara Square  
12 Buffalo, New York 14202  
13 dlee@city-buffalo.com  
14 Appearing for the Defendants

15 Also present:  
16 Jessica Morrill  
17 Christine Townsend  
18 Kelly Craig

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1 THE REPORTER: Usual stipulations?

2 MR. LEE: Yeah.

3 THE REPORTER: Can you state the billing  
4 on the record?

5 MR. LEE: Matt will supply me with the  
6 officers' testimony and I will supply Matt with his  
7 client's testimony.

8  
9 (Whereupon, the following stipulations were  
10 entered into by the respective parties:

11 It is hereby stipulated by and between counsel  
12 for the respective parties that the oath of the  
13 referee is waived, that signing, filing and  
14 certification of the transcript are waived, and all  
15 objections, except as to the form of the question,  
16 are reserved until the time of trial.)

17  
18 M A R K V A R A, 669 Hertel Avenue, Buffalo, New  
19 York, 14207, having first been duly sworn, was  
20 examined and testified as follows:

21  
22 EXAMINATION BY MR. ALBERT:

23 Q. Good morning, officer.

24 A. Good morning.

25 Q. Officer, I'm going to start just by asking you a few

- 1           general background questions.  What is your current  
2           rank as a Buffalo Police Officer?
- 3    A.    Police officer.
- 4    Q.    How long have you been a member of the department?
- 5    A.    I'm in my ninth year.
- 6    Q.    Have you served in any other police departments?
- 7    A.    No.
- 8    Q.    How old are you now?
- 9    A.    32.
- 10   Q.    So, you first became an officer when you were 23  
11       then, correct?
- 12   A.    I think I was 24.
- 13   Q.    Prior to that what was your, I guess, educational  
14       experience?  Do you have a high school diploma?
- 15   A.    I have a Bachelor of Science from Buff State.
- 16   Q.    So, you went to four years of school at state,  
17       correct?
- 18   A.    Correct.
- 19   Q.    Did you take any courses in criminal justice,  
20       constitutional law, anything along those lines at  
21       Buff State?
- 22   A.    Yeah.  I took at least one criminal justice course.
- 23   Q.    And then straight out of college you took a civil  
24       service exam, fair to say?
- 25   A.    Correct.

- 1 Q. Have you taken any exams, promotional exams, at the  
2 department, i.e., detective exams, and things to that  
3 effect?
- 4 A. Yes.
- 5 Q. When did you take that exam?
- 6 A. That was probably three or four years ago now.
- 7 Q. Are you on a list or anything?
- 8 A. The list, I believe, just expired.
- 9 Q. What districts have you served in your nine years  
10 with the Buffalo Police?
- 11 A. Adam district and Delta district.
- 12 Q. How long have you been assigned to Delta?
- 13 A. Probably about eight years now.
- 14 Q. So, you were only in A district for a year, right?
- 15 A. Yeah. Little less.
- 16 Q. Generally speaking, you're a patrol officer, correct?
- 17 A. Correct.
- 18 Q. Calls come in, you respond?
- 19 A. Correct.
- 20 Q. You have several of those a day, is that fair to say?
- 21 A. Yeah.
- 22 Q. In those nine years have you had any formal  
23 complaints against you that you are aware of?
- 24 A. Yes.
- 25 Q. How many?

- 1 A. I believe three.
- 2 Q. What were the nature of those complaints?
- 3 A. Usually just like verbal.
- 4 Q. They were complaints made by citizens or other police  
5 officers?
- 6 A. Citizens.
- 7 Q. Citizens who you arrested or did not arrest?
- 8 A. I believe arrested one of them, one of them was not  
9 arrested. He just made a complaint.
- 10 Q. What about the other one?
- 11 A. The other one was about time at work. That was my  
12 other disciplinary action.
- 13 Q. So, three complaints, two involving citizens making  
14 complaints, one something internal with the  
15 department; fair to say?
- 16 A. Correct.
- 17 Q. The two citizen complaints, are you considering my  
18 client's complaint one of them or not?
- 19 A. No.
- 20 Q. This is in addition to what you've mentioned,  
21 correct?
- 22 A. Correct.
- 23 Q. Those complaints, were they made to the internal  
24 investigation department?
- 25 A. Internal affairs.

- 1 Q. And they launched an investigation of some sort, is  
2 that fair to say?
- 3 A. Yeah.
- 4 Q. When were those complaints, ballpark?
- 5 A. The last one was probably about three years ago.
- 6 Q. Sort of around the time of this incident then, give  
7 or take, correct?
- 8 A. I guess but you can't quote me on that. I'm not  
9 sure. I would have to look.
- 10 Q. We're talking ballpark three years.  
11 First complaint, when was that?
- 12 A. First complaint --
- 13 Q. Made by a civilian.
- 14 A. I don't really recall.
- 15 Q. What was the outcome of those complaints?
- 16 A. Unsustained.
- 17 Q. The department investigated you and cleared you of  
18 any wrong doing, is that what you're stating?
- 19 A. Yes.
- 20 Q. In both of those complaints?
- 21 A. Yes.
- 22 Q. Now, when you started with the department nine years  
23 ago how long was the academy course?
- 24 A. About six months.
- 25 Q. Is de-escalation, in general, something taught to you

- 1 as a police officer?
- 2 A. Yeah.
- 3 Q. Describe all training, I guess, that you've received  
4 relating to de-escalation.
- 5 A. I don't know. It's in the academy. I couldn't say  
6 how long we were on it, how many weeks, what class it  
7 was. It's just part of our training.
- 8 Q. So, nine years ago you had some sort of training in  
9 de-escalation?
- 10 A. Yes.
- 11 Q. And that's taught in conjunction with firearms and  
12 how to utilize force, correct, take-downs and so  
13 forth, self-defense?
- 14 A. I guess, yeah.
- 15 Q. You are trained in the art of combat, is that fair to  
16 say?
- 17 A. I guess. Yeah, that's fair to say. It's not very  
18 high training in the art of combat. We're trained in  
19 firearms. They give us some sort of defensive  
20 tactics course but it's not very in depth.
- 21 Q. Aside from what you're taught there occupationally do  
22 you do anything else hobby wise in terms of physical  
23 activities?
- 24 A. Just exercise.
- 25 Q. You work out?

1 A. Yeah.

2 Q. But you don't do martial arts, anything like that?

3 A. No.

4 Q. When you're responding to calls what policies or  
5 guidelines kind of dictate how you handle each call?  
6 Do you have a manual that you have to abide by?

7 A. You mean the manual procedures you're talking about?

8 Q. Yes.

9 A. Call to call, you just deal with them as they come,  
10 and you rely on whatever training you do have.

11 Q. So, in other words, there's no --

12 A. And your experience.

13 Q. The training though takes place at the academy, which  
14 was nine years ago, generally speaking, correct?  
15 Have you taken courses since then?

16 A. A little bit.

17 Q. Describe the little bit of formal training that  
18 you've went through in the nine years that you've  
19 been a member of the department.

20 A. I believe we just had a course on elder abuse,  
21 dealing with gays and transgenders, dealing with  
22 animals, we had a course probably -- I don't know,  
23 maybe six months ago, we call it the academy, it's  
24 the second floor, we were on double up days so we'll  
25 do training. That was the last I remember.

- 1 Q. So, basically it's specific courses relating to  
2 specific events essentially or specific victims,  
3 right?
- 4 A. Correct.
- 5 Q. Elders, transgenders, or something along those lines,  
6 and then animals as well; correct?
- 7 A. Mm-hm.
- 8 Q. I guess with each course are you watching movies or  
9 is it hands-on? What type of teaching is given to  
10 you guys when it comes to those things?
- 11 A. Those types are usually movies and lectures.
- 12 Q. So, the animal course, how long was that?
- 13 A. I couldn't tell you how long it was. I don't know.  
14 Hours.
- 15 Q. It was within a day though, is that fair to say?
- 16 A. Yeah.
- 17 Q. There was a movie that you watched, is that fair to  
18 say?
- 19 A. Fair.
- 20 Q. Did any outside source come in, i.e., the SPCA or  
21 anyone else to train you on interacting with animals?
- 22 A. I don't believe so.
- 23 Q. Basically it was watching a movie and what else?
- 24 A. Lecture.
- 25 Q. Who gave the lecture?

1 A. It's usually one of our staff in the academy or one  
2 of our captains. I don't know who it was.

3 Q. And it was what to do when interacting with animals,  
4 more or less, correct?

5 A. Yes.

6 Q. You received that training long after the incident  
7 that occurred with my client, fair to say?

8 A. Yes. I believe it was after. I don't know if it's  
9 fair to say long after but it was after.

10 Q. Going way back to May 9th, 2014. What shift were you  
11 working at that time? In other words, when did you  
12 start --

13 A. Midnight shift. 8 p.m. to 6 a.m.

14 Q. You said 8 till --

15 A. 8 p.m. to 6 a.m.

16 Q. Do you recall what your activities or what calls you  
17 responded to between 8 and, say, 2:00?

18 A. I remember one of them.

19 Q. Which one?

20 A. The one that we're here on.

21 Q. That's it though, correct, you don't remember the  
22 calls that you were responding to beforehand?

23 A. No. I would have to have my memory refreshed.

24 Q. I don't know either.

25 Eventually you received a call about loose dogs on

- 1 Briggs, correct?
- 2 A. Yup.
- 3 Q. How were you made aware of this complaint that had  
4 come in?
- 5 A. Radio dispatch.
- 6 Q. What did your radio dispatcher say to you?
- 7 A. I couldn't tell you what they said word for word but  
8 I could just assume that they said, "Respond to this  
9 address for a call of loose dogs", and then we go  
10 over there and investigate.
- 11 Q. But you're saying you don't remember them saying  
12 anything else about that phone call or about the  
13 individual that was calling?
- 14 A. You mean right when we got dispatched the call?
- 15 Q. Right.
- 16 A. No, I don't.
- 17 Q. Typically speaking, you guys like to receive -- more  
18 information is better from radio, correct?
- 19 A. Correct.
- 20 Q. In other words, you want a location as to where  
21 you're supposed to respond, correct?
- 22 A. Yup.
- 23 Q. You want to know who was the original caller so you  
24 know who to look for, correct?
- 25 A. Correct.

1 Q. And you want to know the nature of the call? I mean,  
2 loose dogs is one thing but you want to know are  
3 these dogs aggressive, are they not aggressive, did  
4 they bite someone, you want to know these things;  
5 correct?

6 A. That would be helpful, yes.

7 Q. You're saying as you sit here today you have no idea  
8 whether you were given this information or not from  
9 radio?

10 A. The only information that we were given was two loose  
11 dogs. I think they described them as pit bulls but  
12 that will say in the call and that the complainant  
13 knew or believed that she knew what house they  
14 belonged to.

15 Q. What's a CAD, a CAD print-out, what is that?

16 A. I believe it shows the times and the information  
17 dealing with that one specific call.

18 Q. Who inputs that information?

19 A. I believe whoever radio dispatches. I don't know.

20 Q. At any rate, this is information put out over the  
21 radio that's then printed onto paper, correct?

22 A. Correct.

23 (Whereupon, Plaintiff's Exhibit 1, Complaint,  
24 was marked for identification.)

25

1 BY MR. ALBERT:

2 Q. Plaintiff's Exhibit 1 for deposition purposes. This  
3 indicates that the original call came right around  
4 12:48 a.m. on May 9th, correct?

5 A. Correct.

6 Q. Loose dogs might not be the highest priority of calls  
7 that you guys receive, right?

8 A. Right.

9 Q. Fair to say you didn't respond right away, right?

10 MR. LEE: Object to the form.

11 MR. ALBERT: Keep going.

12 MR. LEE: You can answer.

13 THE WITNESS: We responded right when we  
14 got dispatched.

15 BY MR. ALBERT:

16 Q. It doesn't take an hour to get anywhere else in D  
17 district, right?

18 A. Right, but I'm saying this call was probably on the  
19 board because we were backed up. So, when we got  
20 dispatched here we did show up.

21 Q. When you received the information you went there  
22 immediately?

23 A. Yes.

24 Q. But they held off on relaying the info because you  
25 guys were on other stuff?

- 1 A. Correct.
- 2 Q. You were dispatched at 1:41 it would appear, correct?
- 3 A. Yup. 1:41.
- 4 Q. D581 that's the -- well, what is D581?
- 5 A. D581 was our call sign that night.
- 6 Q. What's D582?
- 7 A. D582 was a different car that maybe backed us up.
- 8 Q. They dispatched two cars?
- 9 A. I don't know if they dispatched two cars. If it's at  
10 the same time they did.
- 11 Q. It looks like it, yeah.
- 12 A. They either dispatched them or they got ride on and  
13 said we'll cover them.
- 14 Q. And then there's a notation at 1:47 that the caller  
15 was irate, correct?
- 16 A. Yeah. Very irate.
- 17 Q. So, this is information that's put out over the radio  
18 and then ultimately written onto paper, correct?
- 19 A. I believe they put that out over the air. Sometimes  
20 they will have techs call and they won't put it out  
21 over the air.
- 22 Q. Understood. Obviously we would have to hear the  
23 actual transmissions to be sure, but, at any rate,  
24 it's possible, at least, that you knew that you were  
25 going to a caller who was upset, correct, possibly?

1 A. Incorrect. Not at first.

2 Q. Well, when?

3 MR. LEE: Object to the form.

4 MR. ALBERT: When?

5 MR. LEE: He said it's possible.

6 THE WITNESS: It says here we got  
7 dispatched at 1:47. This was added to the call,  
8 1:47. We did show up for a time and started to try  
9 to handle the call and then we went after the dogs  
10 and it wasn't until we came back the second time that  
11 this would have come out. So, when we originally  
12 showed up we didn't realize that she was irate.

13 BY MR. ALBERT:

14 Q. You originally showed up and did not have interaction  
15 with my client, is that fair to say?

16 A. Fair to say, yes.

17 Q. When you originally showed up what did you see when  
18 driving down Briggs?

19 A. We saw two loose dogs.

20 Q. What did those dogs do when you saw them?

21 A. They were just running around kind of in front of our  
22 car and throughout the little neighborhood.

23 Q. You saw them running around the neighborhood?

24 A. Yes.

25 Q. What did you do in response?

- 1 A. We tried to call the complainant back because we  
2 noticed that it said in the call that she knew what  
3 house they were from.
- 4 Q. So, you tried to call my client?
- 5 A. Correct.
- 6 Q. From what phone?
- 7 A. I couldn't tell you exactly what phone but then when  
8 she didn't answer we had our dispatcher call her back  
9 and they told us that they couldn't get ahold of her  
10 either at that point.
- 11 Q. You're stating that you called -- who actually called  
12 my client to try to obtain information as to what  
13 house these dogs were from?
- 14 A. I believe it was Officer Kelly Craig. I don't think  
15 I dialed it but I was with her, so one of us.
- 16 Q. Your partner, correct?
- 17 A. Correct.
- 18 Q. Did she call from -- well, must have been a cell  
19 phone, correct?
- 20 A. Yeah.
- 21 Q. Her personal cell phone?
- 22 A. Correct.
- 23 Q. I would ask at this point, Dave, at some point I'm  
24 going to be looking for records just from that night.  
25 I don't need anything beyond that from both officers'

- 1 cell phones.
- 2 Secondly, Ms. Craig, your partner, she's sitting next
- 3 to you; correct?
- 4 A. Correct.
- 5 Q. She called my client as far as you know, right?
- 6 A. Yes.
- 7 Q. And my client didn't answer the phone?
- 8 A. Right.
- 9 Q. Then what happened next?
- 10 A. Then we asked if radio would give her a try because I
- 11 think we may have called more than once.
- 12 Q. That would be a transmission that would be recorded,
- 13 correct? If you're saying, "Hey, radio. We can't
- 14 get ahold of her. Could you guys try calling her?"
- 15 A. You mean through our police radio?
- 16 Q. Yeah.
- 17 A. Yeah. That should be over the air. I don't know if
- 18 they would add it into the CAD.
- 19 Q. Not everything is added into the CAD?
- 20 A. Yeah. Over the air.
- 21 Q. But everything is recorded, all the radio signals?
- 22 A. Yeah.
- 23 Q. So, what happened next, what did you hear back from
- 24 dispatch?
- 25 A. That she wasn't answering.

1 Q. So, then what happened?

2 A. Then the dogs started going up towards Niagara Street  
3 and we followed them. When we got close to Niagara  
4 Street and Briggs we noticed that the dogs ran into a  
5 yard so we then went up to Niagara Street, I don't  
6 know exactly what street it is that's behind Briggs,  
7 but we went there to where the dogs ran in to see if  
8 they would pop out over there. We waited a little  
9 bit, I don't know, few minutes. Didn't see them.  
10 Decided to go back to Briggs and then when we went  
11 back to Briggs is when the complainant here was --  
12 that's when we made contact with her.

13 Q. So, you drove down Briggs, the dogs disappeared into  
14 a yard; right?

15 A. Correct.

16 Q. Then you turned around and drove back down Briggs, is  
17 that your testimony?

18 A. No. I drove up Niagara to whatever street backs  
19 right up to Briggs and sat there for a minute because  
20 I thought they might pop out over there and then when  
21 we sat there for a while and we didn't see anything  
22 that's when we went around the block and back up  
23 Briggs to see if they went back to Briggs.

24 Q. So, you basically made the same route twice, you  
25 circled around and then went the same direction you

1 had come from originally down Briggs?

2 A. Yup.

3 Q. So, the dogs were gone by this time as far as you  
4 knew, they had gone into a yard?

5 A. By the time that I went back to Briggs or when I was  
6 on the other street?

7 Q. When you were on the other street.

8 A. When I was on the other street I lost sight of them.

9 Q. You lost sight of them as they went into a yard?

10 A. No. I lost sight of them on Briggs and then when I  
11 went around thinking they might shoot out the other  
12 street I didn't see them anymore.

13 Q. Then you drove back down Briggs again, correct?

14 A. Correct.

15 Q. At this point how did you make contact with my  
16 client?

17 A. I believe she was on the porch and then she yelled at  
18 us to get out of the car and do our fucking jobs and  
19 that was the point when we told her that we were  
20 calling her, which then she argued more with us that  
21 we didn't call her, then we kept saying we did, we  
22 did, and then she kind of conceded that fact and  
23 said, "Maybe I went to the bathroom."

24 Q. She clearly is upset, fair to say, when you came  
25 across my client?

1 A. Correct.

2 Q. Typically, when people call the police, generally,  
3 they often are upset; correct?

4 A. Correct.

5 Q. They're not calling you guys to come over, have a  
6 beer since they had a good day, they're calling  
7 because there's a problem; right?

8 A. They usually need some sort of assistance. They're  
9 not all the time irate.

10 Q. But sometimes they are and in this case if two dogs  
11 are essentially almost breaking into one's home that  
12 could be an upsetting experience for anybody, right?

13 MR. LEE: Object to the form.

14 THE WITNESS: That's debatable.

15 BY MR. ALBERT:

16 Q. Maybe? You weren't there, you don't know what she  
17 encountered with these dogs before you got there?

18 A. I can't speak to what happened before I got there,  
19 right.

20 Q. You don't know if maybe there was something that  
21 happened that made her upset, as if the dogs were  
22 almost entering her home?

23 A. Right.

24 Q. You didn't ask that of her, correct?

25 A. No.

1 Q. So, she says to you, "Get out of the car." Did you  
2 get out of the car at that point?

3 A. No.

4 Q. What did you do?

5 A. At that point I believe that the dogs were still by  
6 our car, so there's no reason for us to get out of  
7 the car because no humans were really out there. She  
8 was on the porch but they weren't attacking her.  
9 There was no other civilians out there. Nobody was  
10 in danger. So, for us to get out of the car in that  
11 situation would have been probably the worst thing we  
12 could have done because we don't know these dogs, we  
13 don't know if they're vicious. So, first line of  
14 business, is anybody in real danger, no, don't get  
15 out of the car. First line of business was figure  
16 out whose dogs these were and go to their house and  
17 have them help us because if we get out of the car  
18 and the dogs attack us, well, now we're, one, either  
19 getting attacked by two dogs or, two, having to  
20 discharge our weapons at these dogs, which then  
21 bullets are flying throughout the neighborhood, we  
22 didn't want that.

23 Q. But you had just stated, and correct me if I'm wrong,  
24 that by the time you had circled back down Briggs you  
25 had lost complete sight of the dogs?

1 A. Incorrect.

2 Q. The record will speak for itself.

3 Describe to me then -- you did say that when you went  
4 down Briggs eventually you lost sight of the dogs on  
5 a different block, correct?

6 A. Yeah. Went down Briggs, saw the dogs, they ducked in  
7 the yard, we went around the block to see if they  
8 would come out the other side, then we lost sight of  
9 the dogs on that street. When we pulled back up to  
10 Briggs that's when we encountered the complainant  
11 here and the dogs were there.

12 Q. So, now, the dogs resurfaced?

13 A. The dogs resurfaced, yes. They probably came back  
14 out the same yard they went into and came back to  
15 where -- 59, I believe.

16 Q. You guys are in the car, my client lives at 59,  
17 correct?

18 A. Correct.

19 Q. You're parked parallel to her house, is that  
20 accurate?

21 A. Yeah. We're parked, yes.

22 Q. Or idled?

23 A. We're not facing the house. We're parallel to it, I  
24 guess.

25 Q. With that in mind which direction are the dogs at

1           this point when they resurface?

2    A.    They are towards Niagara Street, so they would be  
3           westbound of us.

4    Q.    How far away were they from you at this time, about?

5    A.    Obviously, they're animals so it fluctuates but there  
6           was a point in time when they were like circling our  
7           car.  There was another time when they were directly  
8           in front of our car and there were other times when  
9           they were up the block a little bit.

10   Q.    Had any other officers arrived at this point?

11   A.    No.  I don't believe so.

12   Q.    So, my client is saying get out of the car, you're  
13           not for the reasons you expressed.  What happens  
14           next?

15   A.    I believe at that point it was getting loud between  
16           myself, my partner, and the complainant here, so then  
17           we started to instruct her that she needs to go in  
18           the house and quit yelling.

19   Q.    You're saying all this from your car?

20   A.    Yes.  At that point from my car.

21   Q.    The windows are down and that's how you're  
22           communicating?

23   A.    No.  Yeah, the windows are down.  You're right.

24   Q.    You state it was getting loud.

25   A.    Correct.

1 Q. Describe the conversation that was occurring between  
2 my client and you and Officer Craig.

3 A. I can't say exactly what was said during this whole  
4 discussion. I just remember what I already said that  
5 she said to us to initiate this contact and then we  
6 were telling her to get back in the house and then I  
7 cannot tell you the exact words that she said to us  
8 or we said to them beyond that point but she wasn't  
9 cooperating at all and I believe at some point during  
10 this she started to mock us and say that we're too  
11 afraid to get out of the car. Why don't you get out  
12 of the car? What are you afraid? What are you  
13 afraid? Just kind of egging us on.

14 Q. Nobody likes to be told they're afraid to do their  
15 job, correct?

16 A. I guess nobody else likes to hear that. I don't  
17 know. I can't speak for anybody else.

18 Q. Fair to say that that wasn't something you wanted to  
19 hear at 2 in the morning when all you're doing is  
20 responding to a call, correct?

21 A. Yeah. There was no need for that.

22 Q. So, that did upset you to a certain extent, fair to  
23 say?

24 A. I would say aggravated.

25 Q. And you started getting loud as well as you

1 testified, correct?

2 A. Yeah. When she was getting loud I was getting loud  
3 with her.

4 Q. She was on her property, right?

5 A. Correct.

6 Q. She was standing on the front porch area at this  
7 time?

8 A. Yup. Front porch.

9 Q. Obviously, being unpleasant is not a crime in and of  
10 itself, fair to say?

11 MR. LEE: Object to the form.

12 BY MR. ALBERT:

13 Q. You can answer.

14 A. Being unpleasant isn't a crime but when you're kind  
15 of disturbing the peace in the neighborhood it  
16 becomes a crime.

17 Q. Again, she was on private property, not public  
18 property; correct?

19 A. Right, but she was outdoors in a residential  
20 neighborhood.

21 Q. We'll get to what the neighbors saw and thought and  
22 everything else soon, but you tell her go inside.  
23 What legal basis did you have at that point to demand  
24 that she not assemble on her front porch, if you  
25 know?

- 1 A. Like I said, when someone is getting that loud and  
2 swearing and yelling they're disturbing the peace.  
3 They need to go inside and if they don't it's  
4 disorderly conduct. The neighbors were coming out.  
5 I don't know if they were sleeping, I can't speak to  
6 that, but certainly at 2 in the morning usually  
7 everybody isn't wide awake so she was definitely  
8 causing a disturbance. There's only so long that you  
9 can let that happen.
- 10 Q. Let me ask you this though. You're stating now that  
11 my client was committing disorderly conduct and she  
12 was disturbing the neighborhood and specifically the  
13 neighbors. Is that your testimony?
- 14 A. I guess. I can't speak directly to these neighbors  
15 that you're going to talk about but, yeah, in general  
16 she was definitely disturbing the neighborhood.
- 17 Q. Ultimately, we'll get to the sequence of events that  
18 happened after that, but at that point you decided,  
19 you know what, I've got probable cause to arrest Ms.  
20 Townsend, she's being disorderly, she's disturbing  
21 the peace, I'm going to arrest her for disorderly  
22 conduct; is that fair to say?
- 23 A. After several warnings to go back in the house, yeah,  
24 at that point we were saying, "You're going to go to  
25 jail for disorderly conduct", yes.

1 Q. Because she was, as you said, disturbing the  
2 neighborhood, but you ultimately swore out a  
3 complaint under penalty of perjury against Ms.  
4 Townsend, correct?

5 A. I don't know what you are talking about.

6 Q. You charged her with crimes, correct?

7 A. Yes.

8 Q. When you do that you have to fill out a complaint,  
9 right?

10 A. Yes.

11 Q. That's how you charge someone with a crime?

12 A. Correct.

13 Q. And you swear under penalty of perjury that these  
14 allegations are true?

15 A. True. Yes.

16 Q. Let me ask you this. Obviously, in your line of work  
17 you are dealing with people all the time who are  
18 upset as we've discussed, right?

19 A. Correct.

20 Q. Part of your job is dealing with these individuals in  
21 some way, shape, or form; right?

22 A. Right.

23 Q. So, it's not as if every time you deal with someone  
24 who's upset and irate you get afraid for your life or  
25 anything like that, right?

1 A. No, you don't.

2 Q. And you don't get alarmed or anything like that,  
3 right?

4 A. Right.

5 Q. While my client was being unpleasant, there's a  
6 couple loose dogs, certainly you come across more  
7 stressful situations on a daily basis than what we're  
8 talking about here; is that fair to say?

9 A. It's fair to say that certain situations may be more  
10 stressful but the way that she was acting was  
11 inappropriate so we had to deal with that.

12 Q. But you weren't alarmed or anything like that, you  
13 weren't afraid or alarmed or anything, were you?

14 A. I was not afraid for my safety when it came to the  
15 complainant.

16 Q. And you weren't alarmed, correct?

17 MR. LEE: Object to the form.

18 THE WITNESS: When it comes to the  
19 animals, yeah, to step out of that car I would have  
20 been afraid for my safety, there was no reason for  
21 it, but when it comes to the complainant I was not  
22 afraid for my safety.

23 BY MR. ALBERT:

24 Q. Her actions weren't making you alarmed or afraid or  
25 anything like that, right?

1 MR. LEE: Object to the form.

2 THE WITNESS: Whatever the definition of  
3 the word alarmed is I can't answer yes or no to that  
4 but afraid, no, I was not afraid.

5 (Whereupon, Plaintiff's Exhibit 2,  
6 Misdemeanor/Violation information, was marked  
7 for identification.)

8 BY MR. ALBERT:

9 Q. Officer, I don't want to be putting words in your  
10 mouth so what I'm going to do is show you Plaintiff's  
11 Exhibit 2 for identification purposes. First of all,  
12 if you could just take a look through that document  
13 and say whether or not you recognize it. It's a two  
14 page document. Specifically, the first heading under  
15 disorderly conduct.

16 A. Okay.

17 Q. Looking at page 2. This is your signature, correct?

18 A. Correct.

19 Q. And it does state that you made this statement under  
20 penalty of perjury, correct?

21 A. Yeah.

22 Q. And you took the same oath then when you swore out  
23 this document as you're taking today, correct?

24 A. Yeah.

25 Q. In this document you state that her actions, her

1 words, caused you to be alarmed; right?

2 A. Right.

3 Q. Not the neighbors, right, in this document and, yes,  
4 feel free to look at that, it's a carbon copy, but  
5 you don't state that her actions caused the neighbors  
6 to be alarmed; right?

7 A. In that paragraph here, no.

8 Q. You state that her actions caused you to be alarmed?

9 A. Correct.

10 Q. But you state you weren't afraid, right?

11 A. Not afraid for my safety, no.

12 Q. Clearly, you were annoyed, right?

13 A. Right.

14 Q. And by provoking you, egging you on, saying, "What,  
15 are you scared of dogs?", that, in your own words,  
16 annoyed and upset you, correct? It was uncalled for,  
17 right?

18 A. Yeah. It was uncalled for. I guess it annoyed me,  
19 yeah.

20 Q. So, at this point you make a decision to do what  
21 relating to my client?

22 A. I believe at a certain point with the yelling going  
23 on the dogs had scattered out of sight and that's  
24 when we told her again she's gonna go to jail if she  
25 doesn't go inside. I believe at that point we got

1 out of the car and we were going up to the house and  
2 she went like she was going back in the house but  
3 only stood behind her screen door and continued to  
4 yell from the screen door.

5 Q. The screen door would be she's in her doorway,  
6 correct?

7 A. Correct.

8 Q. Which is technically within one's house, right?

9 A. Correct.

10 Q. So, she's basically in between the two doors speaking  
11 to you guys, she's continuing to say things you don't  
12 like; fair to say?

13 A. Fair to say.

14 Q. But, again, she's not the threat, as you stated, the  
15 dogs are the threat; right?

16 A. Yeah. They were when they were there.

17 Q. But you didn't see them run inside anywhere, right?

18 A. I didn't know where they were.

19 Q. If anything they were more of a threat now that you  
20 can't see them to a certain extent, is that fair to  
21 say?

22 A. Not -- I mean--

23 Q. Now they could be going towards Niagara Street,  
24 correct?

25 A. Yeah. They could be --

1 Q. And that is the area they were going towards, right,  
2 towards Niagara Street?

3 A. Originally, yeah.

4 Q. What I'm saying is when Ms. Townsend was yelling and  
5 you were telling her to get inside the dogs  
6 disappeared from your view, right?

7 A. Correct.

8 Q. But you didn't see them run into a house or anything  
9 along those lines?

10 A. No.

11 Q. And as you mentioned the dogs appeared aggressive,  
12 right?

13 A. I mean, they were barking. They didn't look like  
14 they were, you know, clawing at our doors aggressive  
15 but, yeah, they were aggressive enough where you  
16 probably shouldn't approach them unless you need to.

17 Q. I understand. And I'm a dog person more than anybody  
18 in the world but the point is loose dogs like that in  
19 a residential neighborhood could be a threat to any  
20 of these neighbors that were now coming outside due  
21 to this disturbance, right?

22 A. Well, I can't speak because I know one of the  
23 neighbors did eventually come over to her house but  
24 the majority of the people that I was seeing come out  
25 were on their porch. So, they weren't in the middle

1 of the street with the dogs running around them. The  
2 people next door, I believe, were on the top porch so  
3 there was no danger there.

4 Q. I guess I'm speaking in generalities that now people  
5 are coming outside, these dogs are going further away  
6 from you out of your view, they are no less of a  
7 threat than they were five minutes ago when you said  
8 they were a threat; correct?

9 A. Correct. A little less of a threat than they were  
10 when they were right by my car.

11 Q. To you they were less of a threat?

12 A. To me.

13 Q. But maybe more of a threat to someone else in  
14 whichever direction they were heading, say, towards  
15 Niagara Street; correct?

16 A. Could have been.

17 Q. And that were heading towards Niagara Street,  
18 correct?

19 A. Only the first time I saw them. I didn't see where  
20 they exactly ran off to during this exact moment.

21 Q. You said that when Ms. Townsend was dealing with you  
22 with all the yelling they came close and then they  
23 ran off?

24 A. They ran off but I'm not exactly sure where.

25 Q. I guess where I'm going with all this is that despite

1 the fact that you weren't afraid of Ms. Townsend and  
2 the dogs were a threat Ms. Townsend's words made you  
3 take your attention completely off the dogs and focus  
4 upon Ms. Townsend, correct?

5 A. I wouldn't say completely off the dogs.

6 Q. Once you lost sight of them you started walking  
7 towards Ms. Townsend, not going to look --

8 A. Yeah. Instead of dealing with what we --

9 THE REPORTER: Can you wait until he  
10 finishes the question? You're overlapping.

11 BY MR. ALBERT:

12 Q. It's my fault too. Just so we get a clean record is  
13 all.

14 So, just to slow it down. Ms. Townsend does go into  
15 her house, maybe not as far away as you would like,  
16 but she's between the two doors, right?

17 A. Yeah. She's right at the screen door inside the  
18 house.

19 Q. So, at this time you and Officer Craig approach the  
20 door, correct?

21 A. Yes.

22 Q. And you're not looking at the dogs at this point,  
23 correct?

24 A. Correct.

25 Q. Your attention is off the dogs at this point, right?

1 A. Correct.

2 Q. Even though they are the threat to the neighborhood,  
3 not Ms. Townsend, correct?

4 A. Well, I certainly wouldn't say she was a threat to  
5 the neighborhood but she was definitely creating a  
6 disturbance in the neighborhood and when the dogs ran  
7 off we did begin to then deal with the complainant  
8 here more.

9 Q. Describe how you did that.

10 A. Like I said, we gave several, several warnings, she  
11 never stopped, and then when we got out of the car  
12 and she went behind her screen door still the  
13 warnings that she needed to get back in the house and  
14 stop yelling whatever she was saying, like I said, I  
15 can't quote anybody at that point. She stood behind  
16 the screen and kept saying it so then we instructed  
17 her that if she keeps doing that she's going to go to  
18 jail for discon because now she's just standing  
19 inside the door but still yelling out of the screen  
20 door at us.

21 Q. In your mind that's illegal?

22 A. In my mind that is still disorderly conduct.

23 Q. Specifically, what is the law relating to disorderly  
24 conduct that you believe my client was violating at  
25 this time?

1 A. I couldn't quote the law from the book exactly but  
2 she's yelling, she's making a lot of noise, and she's  
3 disturbing the neighborhood.

4 Q. But obviously speech is protected under the first  
5 amendment. You know that, correct?

6 MR. LEE: Object to the form.

7 THE WITNESS: She can say what she would  
8 like but the way in which she's saying it, the  
9 volume, it's disturbing to the people that are trying  
10 to have a nice peaceful neighborhood at that point in  
11 time.

12 BY MR. ALBERT:

13 Q. You didn't charge her with excessive noise, right?

14 A. I don't believe I did.

15 Q. She wasn't being violent in any way, correct?

16 A. At that point, no.

17 Q. She wasn't threatening you with violence, correct?

18 A. I don't believe so. Like I said, I can't speak to  
19 every word that was said during this.

20 Q. Because it was several years ago at this point,  
21 correct?

22 A. Not only was it several years ago but when it was all  
23 going on I'm sure there was a lot of things that were  
24 said so it's just hard to recollect every single word  
25 that two people say in an exchange, let alone two

1           years ago.

2    Q.    Which is why when you're writing a complaint you want  
3           to be thorough in stating what someone did to commit  
4           a crime, correct?

5    A.    Correct.

6    Q.    And charging someone with a crime obviously is a  
7           serious action, correct?

8    A.    Correct.

9    Q.    You're taking away someone's liberty, correct?

10   A.    Correct.

11   Q.    So, therefore that's something that you take  
12           seriously and don't just do it out of whim because  
13           someone's annoying you, right?

14   A.    Correct.

15   Q.    So, you want to say specifically what it is that they  
16           did to commit that crime, correct?

17   A.    Correct.

18   Q.    And you want to say what it is that they, in this  
19           case, said to commit the crime that you're accusing  
20           them of, right?

21   A.    Correct.

22   Q.    But in this case when you charged my client with  
23           disorderly conduct you stated that she was engaging  
24           in violent and threatening behavior, right?

25   A.    That's what it says here.

1 Q. But as of today you certainly can't remember her  
2 making any violent or threatening comments towards  
3 you, correct, you just stated?

4 A. Yeah. I can't remember exactly what she said that  
5 was threatening but if I wrote that she was saying  
6 threatening things then I believe that she was.

7 Q. Even though now you just said you don't think she was  
8 saying threatening things two minutes ago?

9 MR. LEE: Object to the form.

10 THE WITNESS: If I said that I didn't  
11 think that she was I probably should have said I  
12 can't recall every single thing she said. I thought  
13 that's what I said.

14 BY MR. ALBERT:

15 Q. You didn't write down any of the things that my  
16 client said that were violent and threatening,  
17 correct?

18 A. I can't say for sure on that. I might have.

19 Q. Well, if so, they're certainly not in the compliant  
20 itself; correct?

21 A. I don't know. I thought maybe I wrote what she said  
22 at the initial -- when she said to get out of the car  
23 and do your fucking job that could come across as a  
24 little bit threatening.

25 Q. You think?

1 A. Yeah. So, I don't know if I wrote it somewhere. I  
2 thought I wrote it in the paperwork somewhere.

3 Q. I'm gonna have to ask you to look up a few my clients  
4 because sometimes they tell me to do my job.  
5 As you look through this you're not seeing any  
6 specific things that my client said to you that were  
7 violent or threatening, correct?

8 A. As I look through this?

9 Q. Right. The complaint.

10 A. For the disorderly conduct, yeah, it's not written  
11 right here.

12 Q. Where would it be written?

13 A. Maybe on a 1375.

14 Q. I've requested any and all police paperwork, but what  
15 is a 1375?

16 A. It's an arrest card.

17 Q. Is it this?

18 A. Yes, that.

19 (Whereupon, Plaintiff's Exhibit 3, 163  
20 Form, was marked for identification.)

21 BY MR. ALBERT:

22 Q. Is this the 1375 you're referring to? Showing you  
23 Plaintiff's Exhibit 3 identification purposes.

24 A. Correct.

25 Q. If you could look through that and say whether you

1           allege with any specificity -- did you cite any  
2           specifics as to what my client said?

3                       MR. LEE: Let me object to the form  
4           because there might be some confusion here. Is this  
5           a 1375 or no?

6                       THE WITNESS: No. This is a 163. I'm  
7           sorry. The 1375 would be the crime report.

8           BY MR. ALBERT:

9   Q.    The police report?

10 A.    Yeah. It's not the exact copy that we do.

11                       (Whereupon, Plaintiff's Exhibit 4, Police  
12           report, was marked for identification.)

13       BY MR. ALBERT:

14 Q.    To be clear, we've got three forms, Plaintiff's 2, 3,  
15       4 for identification. I guess in layman's terms  
16       we're dealing with a police report, a complaint, and  
17       an arrest data form; correct?

18 A.    Correct.

19 Q.    All narratives which were filled out by you, is that  
20       fair to say?

21 A.    Either me or my partner.

22 Q.    Nowhere in it does it state one specific thing that  
23       my client said, correct?

24 A.    Correct.

25 Q.    Obviously, when you're arresting someone for theft,

1           for example, you say what it is that they stole;  
2           right?

3    A.    Correct.

4    Q.    But in this case you're arresting my client for  
5           speech, right?

6    A.    No.

7    Q.    That's the original --

8    A.    For being disorderly.

9    Q.    Right, but her speech was disorderly, correct?

10   A.    Yeah. She was loud. Like I said, what she said is  
11           threatening so her yelling this out throughout the  
12           neighborhood, yeah.

13   Q.    So, yes, in this case my client's speech was, in your  
14           estimation, illegal; correct?

15                   MR. LEE: Object to the form. Go ahead.

16                   THE WITNESS: The way that she was saying  
17           her speech and the whole collective -- I don't want  
18           to say performance but the way that she was doing it  
19           all is illegal. The fact that she says to get out of  
20           the car and do your fucking job, I guess you could  
21           say that to me and it's not illegal, that one  
22           sentence that she said.

23                   BY MR. ALBERT:

24   Q.    As we sit here today that's the one sentence that you  
25           clearly recall as opposed to anything else my client

1           may have said, correct?

2    A.    Yeah because that was the first thing, you know, that  
3           was how we initiated the -- or the whole interaction  
4           was initiated with that comment.

5    Q.    Obviously, if she said, "I'm going to kill you", that  
6           would be a violent and threatening comment; correct?

7    A.    Correct.

8    Q.    And if she said something like that that would have  
9           been in one of these reports, correct?

10   A.    Probably.

11   Q.    As we sit here the most damning thing that you can  
12           remember my client saying, which was provoking,  
13           understood, would have been get out of your car and  
14           do your fucking job; right?

15   A.    Correct.

16   Q.    And that annoyed you, fair to say?

17   A.    Yes.

18   Q.    Now, you made the decision at some point after  
19           telling her to get back in that she was going to be  
20           arrested, correct?

21   A.    Correct.

22   Q.    Tell me how you went through that process.

23   A.    The process is pretty simple. I can't say how many  
24           times that we told her that she needs to get in the  
25           house and stop acting like that outside. Like I

1           said, however many number of times it was it was  
2           several. That's when we decide you can't just have  
3           this -- this is disorderly conduct, she's gonna go to  
4           jail for that.

5    Q.    So, what did you do in response?

6    A.    That's when we went up on the porch and then when she  
7           got behind the screen and still was yelling we opened  
8           up the screen door and said, "You're going to jail."

9    Q.    You went into her house at that point?

10   A.    At that point I don't know if I went in the house but  
11           I opened the screen and said, "You're under arrest.  
12           You're going to jail."

13   Q.    And pulled her out of the house?

14   A.    Yeah.

15   Q.    So, your arm would have had to have crossed the  
16           threshold of the screen door, correct?

17   A.    Probably but who knows. Her arm could have been  
18           outside. I don't know.

19   Q.    You know that the constitution protects citizens  
20           against unlawful seizures, correct?

21   A.    Okay.

22   Q.    Strike that.

23           You're job as an officer is to swear and uphold the  
24           constitution, correct?

25   A.    Yes, I guess. I don't know. I know that certainly

1 is part of it, but we have other duties too and when  
2 someone is acting like that I thought it was the  
3 right thing that this person should go to jail. You  
4 can't just act like this.

5 Q. My question is what amendment of the constitution  
6 protects my client from unlawful arrest?

7 MR. LEE: Object to the form.

8 BY MR. ALBERT:

9 Q. If you know.

10 A. Can you say it again?

11 Q. What amendment of the constitution protects my client  
12 against unlawful arrest and unlawful seizures?

13 MR. LEE: Object to the form.

14 THE WITNESS: I don't know. I couldn't  
15 say the exact number.

16 BY MR. ALBERT:

17 Q. But it is your job in large part to protect the  
18 constitution, not just go based upon your judgments  
19 as to when someone is doing something right or doing  
20 something wrong; correct?

21 MR. LEE: Object to the form.

22 BY MR. ALBERT:

23 Q. You still have to answer it.

24 A. I don't understand the question.

25 Q. I'll rephrase it.

1           What's wrong to me might not be wrong to Jessica,  
2           might not be wrong to Ms. Townsend, correct?

3    A.    Correct.

4    Q.    We all have different sensitivities, correct?

5    A.    Correct.

6    Q.    We all might think that someone should be arrested  
7           for this, but not for that, correct?

8    A.    Correct.

9    Q.    But, yet, someone else might think that someone  
10           should be arrested for that and not for this,  
11           correct?

12   A.    Correct.

13   Q.    So, that's why there's laws to kind of make it so  
14           everyone knows everyone gets a fair shake, right?

15   A.    Right.

16   Q.    Everyone's on notice what they can do, what they  
17           can't do, correct?

18   A.    Right.

19   Q.    That's why there's a constitution in place to protect  
20           people and make sure people are equally protected  
21           under the law, correct?

22   A.    Correct.

23   Q.    That way an officer can't say, "I don't like what  
24           you're doing. You're going to jail", correct?

25   A.    Yeah. If they're not breaking a law you can't just

1 take them to jail because you don't like the way  
2 they're walking.

3 Q. Or because they're provoking you and saying not nice  
4 things to you, which, admittedly, could be upsetting  
5 at 2 in the morning when all you're trying to do is  
6 answer a call?

7 MR. LEE: Object to the form.

8 THE WITNESS: If it was solely that, yes,  
9 but under the law disorderly conduct -- she went to  
10 jail for that. Not just because it was annoying.

11 BY MR. ALBERT:

12 Q. There's a difference between when you can go into  
13 someone's home and arrest somebody and when you  
14 can't, correct?

15 A. Correct.

16 Q. In other words, sometimes you could walk into  
17 someone's home and arrest them like if you had a  
18 warrant, correct?

19 A. Correct.

20 Q. And sometimes you can't, right?

21 A. Correct.

22 Q. Sometimes you have to fill out a complaint against  
23 them and give them a -- there was no warrant for you  
24 to enter my client's home, correct?

25 A. There was no warrant, no.

1 Q. What was your basis for entering her home and pulling  
2 her out of her home since she did finally go in the  
3 house?

4 MR. LEE: Object to the form. You can  
5 answer.

6 THE WITNESS: After several instructions  
7 of going in the house and stopping the behavior and  
8 then when she was at the screen door and yelling out  
9 still into public then I opened the screen door and  
10 took her to jail.

11 BY MR. ALBERT:

12 Q. Disorderly conduct - is that a crime or a violation?

13 A. I think it's a violation.

14 Q. Are you aware that the law doesn't allow you to enter  
15 one's homes just for committing a violation and  
16 making an arrest?

17 MR. LEE: Object to the form.

18 THE WITNESS: If you say that my arm  
19 entered the home, okay, but, like I said before, even  
20 that's debatable at this point.

21 BY MR. ALBERT:

22 Q. I'm going to ask you this question before I forget.  
23 You are the officer that's in charge of this case,  
24 correct?

25 A. I believe so. Me and my partner, but I'm the

1           arresting officer.

2    Q.    In fact, it states right here -- you swore out the  
3           complaint, right?

4    A.    Right.

5                   (Whereupon, Plaintiff's Exhibit 5, 710.30  
6                   Notice, was marked for identification.)

7    BY MR. ALBERT:

8    Q.    When you're making an arrest you're taught to gather  
9           evidence, correct?

10   A.    Correct.

11   Q.    That way the case holds up in court, correct?

12   A.    Correct.

13   Q.    That way you can remember what somebody did or what  
14           somebody said even six months, a year, two years  
15           later, correct?

16   A.    Correct.

17   Q.    And evidence comes in many forms, correct?

18   A.    Correct.

19   Q.    There's physical evidence?

20   A.    Correct.

21   Q.    And there's also things that people say otherwise  
22           known as testimonial, correct?

23   A.    Correct.

24   Q.    And part of your training is to memorialize or  
25           document everything someone says, correct?

1 MR. LEE: Object to the form.

2 THE WITNESS: To the best of our ability,  
3 but we don't have to write down every single word  
4 they say.

5 BY MR. ALBERT:

6 Q. If you intend to use a statement that they made  
7 against them at trial you do have to put that in a  
8 710.30 notice, correct?

9 A. I don't know if we have to or not.

10 Q. You don't know the law according to 710.30?

11 A. No. I know what a 710.30 is.

12 Q. What is a 710.30?

13 A. It's a statement that someone made either before or  
14 after the arrest, whatever.

15 Q. Why is it that you guys have to -- you've made  
16 arrests before, right?

17 A. Yes. Correct.

18 Q. And you filled out 710.30s related to those arrests,  
19 correct?

20 A. Correct.

21 Q. What's the reason that you do so?

22 A. Just to document something that was said.

23 Q. You're not aware of the fact that if you don't put  
24 something in a 710.30 you can't use it against  
25 somebody at a later date, you're not aware of that

1 fact?

2 A. Maybe not in court but -- I guess I'm not totally  
3 aware of that, if it's not 710 that there's just no  
4 way you can even bring it up.

5 Q. In this particular instance you stated my client --  
6 even though you can't say what she said, she's being  
7 loud and she did say things that made you alarmed,  
8 annoyed, and engaged in violent and threatening  
9 behavior; correct?

10 A. Threatening by the tone and what she said  
11 immediately. I remember that she said that but not  
12 every single word she said, I don't.

13 Q. If you wrote them down in a 710.30 statement then you  
14 probably would, right?

15 A. I could probably recall more of it.

16 Q. And you did fill out a 710.30 statement in connection  
17 with this case, correct?

18 A. Did I? I'm not sure.

19 Q. Let me show you Plaintiff's 5. If you could first  
20 take a look at the caption of the case. It says,  
21 "People of the State of New York versus Christine  
22 Townsend", right?

23 A. Right.

24 Q. Right underneath it it states there's an officer in  
25 charge of the case and that's you, correct?

1 A. Correct.

2 Q. It's your duty to collect the evidence and make sure  
3 that this case holds up in court, that this isn't  
4 some bogus arrest, right?

5 A. Correct.

6 Q. If you're taking away someone's liberty there's no  
7 shortcuts, you gotta collect the evidence and state  
8 what it is that they did that's illegal; right?

9 A. Correct.

10 Q. Yet, here when it asks what my client said it states  
11 that no statements were made and that box is checked,  
12 correct?

13 A. Correct.

14 Q. Even though it is what she said that supposedly got  
15 her arrested in the first place, right, and the  
16 manner in which she said it; right?

17 A. Yeah. Like I said, it was more procuring on than one  
18 specific thing. I'm just stating the one specific  
19 thing that do I remember that she said.

20 Q. The manner in which she said it, but here it states  
21 that, in fact, no statements were made, that she sat  
22 there like a mute as she's doing now; correct?

23 MR. LEE: Object to the form.

24 THE WITNESS: I think that's more of a no  
25 statement was 710.

1 BY MR. ALBERT:

2 Q. I'm asking you what it states here. It says,  
3 "Statements by a defendant. Evidence of the  
4 statement made by the defendant to a public servant  
5 engaged in law enforcement." And then states, "No  
6 statements were made." It does state that, right?

7 A. Yeah. It says, "No statements were made."

8 Q. That's something that you signed and you swore to but  
9 now you're, stating, no, she made a lot of  
10 statements?

11 MR. LEE: Object to the form. I don't  
12 think it's even been established that Officer Vara  
13 completed that form.

14 MR. ALBERT: He did say he did.

15 MR. LEE: Did you or not?

16 THE WITNESS: Most of the paperwork I  
17 did. I didn't initial that because it says initials  
18 but I don't know what was ripped off of here.

19 MR. ALBERT: This is a corner that I just  
20 ripped off a second ago.

21 MR. LEE: It speaks for itself.

22 BY MR. ALBERT:

23 Q. Moving along. You reached in there, you grabbed my  
24 client, correct?

25 MR. LEE: Object to the form.

1                   THE WITNESS: I got ahold of your client,  
2                   yes. Like I said, I know you're trying to put me in  
3                   there but I don't know if any part was -- her hand  
4                   was out of the house, so I will say at that point,  
5                   yeah, we placed her under arrest.

6                   BY MR. ALBERT:

7                   Q. Wherever it was in the screen door, but you did grab  
8                   her, correct?

9                   A. Yes.

10                  Q. And then what happened?

11                  A. We told her she was gonna go to jail, put her hands  
12                  behind her back, and she put up a bit of a fight.  
13                  She wouldn't give us her hands, she was still acting  
14                  irate, and didn't want to go to jail.

15                  Q. Who does?

16                  My client originally called for help relating to dogs  
17                  that were disturbing her, correct?

18                  A. Correct.

19                  Q. And now all of a sudden she's going to jail, right?

20                  A. I wouldn't say all of a sudden but, yes, the end  
21                  outcome was that.

22                  Q. You said you grabbed her and she was putting up a  
23                  fight of some sort, correct?

24                  A. Yeah. We weren't physically fighting but it's very  
25                  hard to get someone's arms behind their back if they

1           won't put them behind their back. She was putting up  
2           a fight in that regard.

3    Q.    What happened after that?

4    A.    We got her in cuffs and we were taking her to the car  
5           and when we got to the bottom of the stairs is when  
6           she kind of stopped moving forward and kind of pushed  
7           back like I'm not going that way and that's when I  
8           went to go move forward again and she just jumped  
9           forward and starting rolling around in the grass.

10   Q.    Like a grasshopper? I'm confused. She jumped  
11           forward or did her momentum --

12   A.    There was no momentum at that point. When we got to  
13           the bottom of the stairs she stopped going forward.  
14           So, like I said, I was going to pull her to come  
15           forward but I hardly even made any sort of force  
16           against her and she threw herself onto the ground and  
17           just as you imagined it was flailing herself around  
18           screaming for help.

19   Q.    It's your testimony that my client threw herself onto  
20           the ground?

21   A.    That's exactly what I'm saying.

22   Q.    You had her by her arm, correct?

23   A.    I had ahold of her to walk her because, actually, it  
24           never happens that you just tell someone, "Walk to my  
25           car." You escort them to the car. So, in the

1 escorting of her to my car right at the bottom of the  
2 stairs is, yes, when I believe that she embellished  
3 extremely by throwing herself on the ground and  
4 thrashing around screaming for help.

5 Q. You had her by one arm, correct?

6 A. I believe I had her by her left arm, my right arm.

7 Q. Did your partner, Ms. Craig, have her by the arm as  
8 well?

9 A. I don't recall.

10 Q. You don't know if you were the sole escorter of my  
11 client or if Ms. Craig was also helping you escort?

12 A. Yeah. Like I said, I had her left arm in my right  
13 arm. I don't know if Kelly was on the other side or  
14 had her hand on her back. I don't know anything that  
15 Kelly was doing at that point.

16 Q. You say it was the left arm that you had her by,  
17 right?

18 A. I believe it was the left arm because I was on the  
19 left side of her.

20 Q. Describe the grip that you had upon my client at that  
21 time.

22 A. I don't think it was a grip. It was just my arm was  
23 kind of inside of her arm, like in the back here  
24 (indicating). So, it wasn't really a grip. It was  
25 just my arm's here and I'm escorting her to the car.

1 Q. When you're escorting her you want to have her in  
2 such a way that she can't run off or, as you put it,  
3 jump forward and roll on the ground like she's on  
4 fire or something?

5 A. No. That's only true in certain incidents. If we  
6 have a person that was a real threat to run we will  
7 grab ahold tight on them. In this case once she was  
8 in cuffs she was just walking to the car at that  
9 point, so I really did not have a firm grip on her.  
10 I didn't consider her a flight risk.

11 (Whereupon, Plaintiff's Exhibit 6, Photograph,  
12 was marked for identification.)

13 BY MR. ALBERT:

14 Q. Officer, given that you had such a loose grip on my  
15 client, and showing you Plaintiff's 6, there would be  
16 really no way to explain these bruises and indentures  
17 on my client's left upper arm, would there be?

18 MR. LEE: Object to the form.

19 THE WITNESS: Correct. I didn't make  
20 those. Maybe when she was thrashing on the ground.

21 BY MR. ALBERT:

22 Q. You think when she was thrashing on the ground -- was  
23 she thrashing her arm on the ground like a chicken or  
24 something?

25 A. Yeah. If you want to put on the record like a

1 chicken, I don't know if I would go that far, but,  
2 yes, was on the ground in cuffs thrashing herself  
3 around screaming for help.

4 Q. I still don't see how one could thrash this portion  
5 of their inner arm. If you could describe how she  
6 could possibly do that.

7 MR. LEE: Object to the form.

8 THE WITNESS: I can't describe that. I  
9 don't know.

10 BY MR. ALBERT:

11 Q. But you were there?

12 A. I was there and I just saw a lot of thrashing and  
13 screaming for help.

14 Q. When she was thrashing did you just allow her to  
15 thrash or what did you do?

16 A. For probably a few seconds we did allow her to  
17 thrash.

18 Q. She was cuffed?

19 A. She was cuffed.

20 Q. Her arms are behind her back?

21 A. Her arms are behind her back.

22 Q. The inner portions of her arms are tucked in behind  
23 her back, correct?

24 A. It depends how flexible she is. I don't know how  
25 tucked they were or not. I've had people flip their

1 whole arms over the front.

2 Q. Does my client appear that she could flip her whole  
3 arms --

4 A. I couldn't say yes or no.

5 Q. I'm just, again, trying to figure out how it would be  
6 physically possible in the position that my client  
7 was in where her arms are behind her back, right, and  
8 the inner portions of her arms would be tucked in  
9 behind her back, right?

10 A. Possibly.

11 Q. And yet somehow her thrashing must have caused these  
12 bruises is what you're stating?

13 MR. LEE: Object to the form.

14 BY MR. ALBERT:

15 Q. If you know.

16 A. All I know is that, no, I didn't use force to make  
17 those marks and the thing that comes to my mind that  
18 could cause marks would be the thrashing she did  
19 while she was on the ground.

20 Q. And you just allowed her to thrash?

21 A. I said for a few seconds because at that point when  
22 she's yelling and screaming and thrashing about  
23 obviously this is going on right now so people will  
24 make claims that you did things to them that never  
25 even happened so sometimes when they're there, like I

1           said, for a few seconds and then we went to help her  
2           up, we were looking at her. We didn't jump on top of  
3           her because obviously that might look bad if someone  
4           is thrashing on the ground and I just immediately  
5           jump on top of them. So, here we are, there she is,  
6           she's doing this, she's thrashing around.

7    Q.    Let her thrash.

8    A.    Well, a few seconds later, like I said, we went up to  
9           her, stop, stop, and then got her up and into the  
10           vehicle. But we did not immediately jump on top of  
11           her.

12   Q.    You lifted her up, you lifted her up by her arms,  
13           correct?

14   A.    I'm assuming. I don't remember exactly how we lifted  
15           her up.

16   Q.    So, you don't know if you gripped her arm at that  
17           point causing bruising?

18   A.    At that point, yeah, getting her up we usually would  
19           grab someone's arm and help them get up, yes.

20   Q.    In theory then you grabbed the portion of her arm  
21           that ultimately you just saw bruises upon in  
22           Plaintiff's 6?

23   A.    I couldn't say exactly what arm I grabbed to get her  
24           up.

25   Q.    At this point are neighbors outside the house?

1 A. I believe so, yes.

2 Q. Are you interacting with them in any way, shape, or  
3 form?

4 A. I remember interacting with a neighbor that was at  
5 the house because when she was gonna go to jail we  
6 had to make sure that we had someone to look at after  
7 -- I believe it was her daughter, who was a young  
8 child.

9 Q. Did you know who this neighbor was?

10 A. No.

11 Q. Do you know her name as we sit here today?

12 A. No.

13 Q. So, there was no way of knowing whether this was a  
14 responsible adult that you left --

15 A. She said that she was okay with that.

16 Q. My client said that?

17 A. Yes.

18 Q. So, that is something that years later you do  
19 remember, right?

20 A. Yeah.

21 Q. But, again, at this time, as you put it, my client  
22 was irate; right?

23 A. She was.

24 Q. But, yet, you trusted her judgment that this child  
25 was safe in this other lady's care?

- 1 A. I trusted her judgment saying that, yeah, she can  
2 watch the kid and then when I dealt with the neighbor  
3 face-to-face, talked with her, she seemed like a  
4 responsible adult who cared about the child.
- 5 Q. You did fill out a use of force form related to this  
6 incident, right?
- 7 A. Correct.
- 8 Q. Describe the conversation you had with this neighbor,  
9 if you would.
- 10 A. I don't know exactly the conversation I had with the  
11 neighbor.
- 12 Q. Aside from will you watch the kid?
- 13 A. Yeah, along those lines.
- 14 Q. Did the neighbor inquire as to why Ms. Townsend was  
15 getting arrested?
- 16 A. I'm not sure if she did or not.
- 17 Q. That part you don't remember?
- 18 A. I don't remember.
- 19 Q. Do you remember whether the neighbor stated that my  
20 client was a nurse and a good person?
- 21 A. I remember the complainant saying that.
- 22 Q. But you don't remember the neighbor saying that?
- 23 A. No, not to me.
- 24 Q. Do you remember telling the neighbor that my client  
25 was on drugs?

1 A. I don't remember saying that.

2 Q. Is it possible you said that?

3 MR. LEE: Object to the form.

4 THE WITNESS: It could be possible. I  
5 don't know what I said, everything I said.

6 BY MR. ALBERT:

7 Q. Did you think my client was on drugs possibly?

8 A. If I uttered the words to the neighbor of that then,  
9 yes, I could have been asking if she was on drugs  
10 based on her irrational behavior.

11 Q. Are you a drug recognition expert?

12 A. I don't think I have some sort of certificate saying  
13 I'm an expert.

14 Q. That's what it is.

15 A. Well, then no.

16 Q. There was a child in my client's house, correct?

17 A. Correct.

18 Q. You didn't call CPS to voice your concerns about this  
19 irate lady who may be on drugs?

20 A. I don't believe we did.

21 Q. You left her with a neighbor that you never met  
22 before, right, the child?

23 A. Correct.

24 Q. Did you scream at Ms. Townsend to get the fuck out  
25 while you were pulling her onto the front porch when

1           you were making the arrest?

2    A.    I don't know.

3    Q.    There was a black female police officer that was in  
4           close proximity to you on the porch, correct, your  
5           partner was next to you the whole time basically,  
6           correct?

7    A.    Yeah.  I'm assuming she was right there.

8    Q.    While the arrest was being made at least, right?

9    A.    Yes.

10   Q.    And you stated some neighbors were outside at this  
11           point?

12   A.    Yes.

13   Q.    Because certainly now we are at a point where there's  
14           a neighborhood disturbance taking place, right?

15   A.    We're still at that point, yeah.

16   Q.    Everything has been greatly escalated, fair to say?

17   A.    I don't know about that.

18   Q.    Other cops are coming to the scene, fair to say?

19   A.    I believe a few more cops showed up.

20   Q.    The dogs are still at play, you don't know where they  
21           are at this point, right?

22   A.    I thought that at some point we had made contact with  
23           the dog owner.  I can't recall that part exactly.  I  
24           don't know.

25   Q.    55 Briggs would have been, what, directly across the

- 1 street from 59, give or take?
- 2 A. No.
- 3 Q. No, it wouldn't be?
- 4 A. No.
- 5 Q. Where would 55 be in relation to 59 Briggs?
- 6 A. I believe it was a few houses eastbound.
- 7 Q. It would be on the same side of the street. My
- 8 fault.
- 9 A. Yeah.
- 10 Q. And it's probably next door, right, or two down?
- 11 A. Yeah. I think it was a few down.
- 12 Q. There was an individual who was filming with a cell
- 13 phone, do you recall?
- 14 A. I don't recall that individual.
- 15 Q. If an individual said that my client was being pulled
- 16 down the steps in force which led her to fall he
- 17 would be lying or mistaken?
- 18 A. Yeah.
- 19 Q. Because, instead, my client threw herself like a
- 20 chicken onto the ground and started thrashing?
- 21 A. Yes. When we got to the bottom of the stairs she
- 22 completely embellished it, I know I said it before,
- 23 and threw herself to the floor. I never threw her to
- 24 the ground.
- 25 Q. But she is in handcuffs, correct?

- 1 A. Correct.
- 2 Q. And that's an awkward position for one to walk,  
3 correct?
- 4 A. I guess it is but even that's debatable. You can  
5 walk straight forward and it's not that awkward.
- 6 Q. But some people are more agile and nimble than  
7 others, right?
- 8 A. True.
- 9 Q. Some people might have an easier time walking down  
10 steps while cuffed than others, correct?
- 11 A. True.
- 12 Q. And some people would have an easier time walking  
13 down steps cuffed with their arms being held than  
14 others would, right?
- 15 A. I guess, yeah.
- 16 Q. When you're saying that you believe Ms. Townsend  
17 embellished the fall you have no way of knowing that  
18 or whether she lost her balance due to the amount of  
19 force and pressure that was being exerted upon her,  
20 fair to say?
- 21 A. There's no way that the force I applied would have  
22 violently threw her to the ground and caused her to  
23 start thrashing around. Nothing that I did would  
24 have caused that.
- 25 Q. The thrashing could be -- you are aware that my

1 client suffered a fracture in her ankle as a result  
2 of this fall, are you?

3 MR. LEE: Object to the form.

4 BY MR. ALBERT:

5 Q. Are you aware of that?

6 A. Am I aware of that now or was I aware of that?

7 Q. Are you aware of that now?

8 A. I wasn't even really aware of that now but I was  
9 informed that there may be some injuries involved but  
10 certainly at the scene no awareness of that at all.

11 Q. But she wasn't getting up once she fell to the  
12 ground, correct?

13 A. No, she wasn't.

14 Q. So, that could be an indication that she's not  
15 getting up because she's hurt, right?

16 A. Most people would say, "I'm hurt. Help me up", and  
17 not screaming for help as if me and my partner were  
18 the ones that were attacking her or causing this  
19 fall. That's what it was.

20 Q. When one's in pain one can scream, correct?

21 A. Sure.

22 Q. Sometimes when people get hurt they yell and scream,  
23 correct?

24 A. Correct.

25 Q. While you're taking it as she's trying to make you

1           guys look bad maybe my client's ankle was really hurt  
2           and that's why she's not getting up, is that fair to  
3           say?

4   A.    Yeah.  You could argue that, yeah.

5   Q.    Thank you.  I will.

6           At any rate, what happened when she didn't get up?  
7           Now neighbors are out, now they're filming you guys,  
8           now the situation is escalated at this point; is that  
9           fair to say?

10  A.    Yeah.  I guess if she's in cuffs on the ground like  
11           that, yeah, it's escalated at that point from when we  
12           first pulled up.

13  Q.    And she's not getting up at this point?

14  A.    She's not getting up immediately, no.

15  Q.    And you want to get her up so you at this point lift  
16           her up by her arms, correct?

17  A.    Like I said, I don't recall exactly how I grabbed her  
18           to get her up so I don't know exactly what arm I  
19           grabbed.

20  Q.    Are you trained as to how to lift someone up when  
21           they're immobilized in such a manner?

22  A.    Yeah.

23  Q.    What would be the proper technique to do it?

24  A.    When they're on the ground, they got their cuffs  
25           behind their back, you put your arm under the armpit

1 right there (indicating), and then you would help  
2 them up.

3 Q. Under their arms, the same region where Ms.  
4 Townsend's -- those photos that you saw where there  
5 was bruising, correct?

6 MR. LEE: Object to the form.

7 BY MR. ALBERT:

8 Q. You would pick her up by that same area where you  
9 just saw indicia of bruising on her arm, correct?

10 A. Right, but the picking up shouldn't cause that amount  
11 of marks and bruising.

12 Q. I agree. It shouldn't.

13 You stated this didn't seem like someone who was  
14 going to be a runner, so did you put the handcuffs on  
15 tight or loose?

16 A. I couldn't tell you. Whatever it was it wasn't done  
17 on purpose. It was just to get her in cuffs and,  
18 like I said, she was putting up a fight with her arms  
19 and she wouldn't get in the cuffs. So, sometimes  
20 when people do that it would cause the cuff to just  
21 go on however we can get it on.

22 (Whereupon, Plaintiff's Exhibits 7-8,  
23 Photographs, were marked for identification.)

24 BY MR. ALBERT:

25 Q. Showing you 7 and 8 for identification purposes. I

- 1           guess it's fair to say you didn't mean to put them on  
2           so tight so that these ligatures would surface?
- 3    A.    Like I said, we get the cuffs on.  I wasn't trying to  
4           put them on hard or soft.  I was just trying to get  
5           the cuffs on.  Sometimes if the cuffs are on even  
6           just a little bit tight it will cause an indentation.
- 7    Q.    With the cuffs on tight that could make it more  
8           difficult for someone to maintain their balance and  
9           walk especially when force is being used to get them  
10          down stairs, correct?
- 11   A.    No.  I don't think the tightness of the cuffs would  
12          affect someone's walk.
- 13   Q.    So, she's down on the ground, there's neighbors  
14          outside, you finally get her up, what happens next?
- 15   A.    At that point I think once she gets up she goes into  
16          the car.
- 17   Q.    Whose car?
- 18   A.    Our patrol car.
- 19   Q.    What happens next?
- 20   A.    In regards to taking her downtown to jail?
- 21   Q.    What I'm getting at I guess is she didn't have her  
22          driver's license on her at that exact time, correct,  
23          identification, things to that effect?
- 24   A.    I can't recall at that moment what she had on her,  
25          what she didn't.

1 Q. What I'm asking is do you recall walking into her  
2 house to obtain her driver's license?

3 A. I remember walking into the house. If it was to get  
4 her driver's license I wasn't positive of that.

5 Q. Why else would you be walking into her house?

6 A. Like I said, we were trying to make sure that we had  
7 someone to care for her daughter. That would be a  
8 reason to go back in the house to make sure  
9 everything was set up properly before we left.

10 Q. You used your judgment again at this point to go back  
11 in the house and say I'm going to go in the house and  
12 make sure things are in order, correct?

13 MR. LEE: Object to the form.

14 THE WITNESS: I just said that I'm not  
15 positive why I went back in. You said it was to get  
16 an ID, I said, yeah, I could have went back for the  
17 ID but I wasn't positive that that was the reason and  
18 I gave another reason as to why I may have went back  
19 in there.

20 BY MR. ALBERT:

21 Q. Do you remember my client saying, "Officer Vara,  
22 please, by all means going into my house", do you  
23 remember her saying anything like that?

24 A. No. I don't remember her saying that.

25 Q. Do you remember getting any sort of consent to go

1 into her residence at this time?

2 A. No.

3 Q. What did you do when you were in there?

4 A. I remember that the neighbor was there and the  
5 daughter was there but, like I said, I don't know if  
6 I just grabbed an ID or if I was just making sure  
7 that everything was okay here before I left.

8 Q. Do you remember having any interaction with the  
9 daughter?

10 A. No. I remember saying one thing to the neighbor  
11 while the daughter was there, which was that it's a  
12 shame that the daughter had to see a mother acting in  
13 this way.

14 Q. If the daughter, Cassandra Barkley -- if she states  
15 that you said to her, "Hey, that psycho bitch is your  
16 mom", do you remember saying that?

17 A. No.

18 Q. You were upset at this point though, correct?

19 A. It's aggravating. It's annoying.

20 Q. You were alarmed and annoyed?

21 A. Yeah. I was alarmed and annoyed, I guess, at this  
22 point.

23 Q. Just like when my client was "irate" and said things  
24 that were inappropriate maybe you did too maybe,  
25 correct?

1 A. Maybe.

2 Q. Did you do anything to my client's dog when you were  
3 in the house?

4 A. No.

5 Q. Did you see a dog?

6 A. I thought I saw like a small dog. I don't recall  
7 exactly what kind but I think it was like a really  
8 small dog kind of breed.

9 Q. You're stating that you didn't use force against my  
10 client or did you? I don't want to put words in your  
11 mouth.

12 A. I used as much force as necessary.

13 Q. So, you did use force but you don't think you used  
14 excessive force is your testimony?

15 A. Correct.

16 Q. Again, your department looked into it and  
17 investigated you and said you did nothing wrong,  
18 right?

19 A. Correct.

20 MR. LEE: Object to the form. I don't  
21 know if internal affairs investigated this.

22 BY MR. ALBERT:

23 Q. I said department. I didn't say internal affairs.

24 A. I don't know if internal affairs did or not.

25 Q. Your supervisor.

1 A. Yeah. I did the use of force form, which then I  
2 believe -- I don't know. I thought it might go to  
3 the internal affairs division, but maybe not. I  
4 don't know.

5 (Whereupon, Plaintiff's Exhibits 9-10, Use of  
6 Force forms, were marked for identification.)

7 BY MR. ALBERT:

8 Q. If you could take a moment and look through  
9 Plaintiff's 9 and 10. First just describe what those  
10 forms are.

11 A. This is a use of force form and this portion of it, I  
12 believe, you mark where you made contact with the  
13 individual.

14 Q. What points did you mark that you made contact with  
15 my client?

16 A. Looks like on the wrists.

17 Q. Anywhere else?

18 A. I don't see it on here. It looks like just wrists.

19 Q. It says 1, 2, 4, and 6, if I'm not mistaken, in terms  
20 of points of contact; correct?

21 A. No. The points of contact are 1 and 2 and then the  
22 regions of the body are 4 and 6. So, it means like I  
23 put my hand on her wrist, which is number 2, which is  
24 in the region 6, which is her left arm.

25 Q. What does 1 and 2 signify then?

1 A. 1 and 2 signifies that I used some sort of force on  
2 her wrists. Those are my contacts with her body was  
3 on her wrists.

4 Q. By your own admission when you were lifting her up  
5 and when you were bringing her down the stairs your  
6 hands were on her upper arms, right?

7 A. Yeah, but that wouldn't technically be part of the  
8 use of force because that was just me assisting her  
9 up. Whereas, when I was grabbing her wrists  
10 forcefully that was trying to get her in cuffs.

11 Q. Those bruises would absolutely make no sense given  
12 that you used absolutely no force upon that region of  
13 my client's body whatsoever, that's your testimony,  
14 right?

15 A. Correct.

16 Q. Unless this was completely inaccurate, right?

17 MR. LEE: Object to the form.

18 THE WITNESS: Well, that's not true.

19 BY MR. ALBERT:

20 Q. Once my client was under arrest you went back in her  
21 house, you talked to the daughter, you talked to the  
22 neighbor, my client was then taken downtown; is that  
23 right?

24 A. Correct.

25 Q. She's sitting in the back seat, correct?

1 A. Correct.

2 Q. In handcuffs?

3 A. Right.

4 Q. Is she crying?

5 A. She may have been crying at that point.

6 Q. Did you stop at Tim Hortons?

7 A. No.

8 Q. So, if there's a surveillance video showing that you  
9 didn't go straight to the holding center but, yet,  
10 you stopped at a Tim Hortons --

11 A. I don't know if --

12 MR. LEE: Object to the form.

13 THE WITNESS: The only time that we would  
14 ever pull over on the way there is if we still needed  
15 to finish something on the paperwork before we got  
16 downtown but, yeah, we didn't go to Tim Hortons.

17 BY MR. ALBERT:

18 Q. I didn't say you went in and got donuts or anything  
19 like that. I'm saying did you stop on the way down?

20 A. I don't recall if I stopped or not.

21 Q. It's possible you did stop on the way downtown?

22 A. It could be possible we pulled over.

23 Q. And it's possible that you continued a conversation  
24 with my client, correct?

25 A. It's possible.

1 MR. LEE: Can I just interject here and  
2 ask is there a surveillance video or no?

3 MR. ALBERT: There may be.

4 MR. LEE: Well, we requested all video  
5 and I didn't get any video. That's why I'm asking.

6 MR. ALBERT: No. We don't have one at  
7 this time.

8 BY MR. ALBERT:

9 Q. You may have stopped, as you stated, to finish the  
10 paperwork; correct?

11 A. There are times on arrests when we just need to  
12 finish up a little bit of paperwork and we'll just  
13 pull over but, like I said, on this particular one I  
14 don't remember doing that but it is in the realm of  
15 possibility.

16 Q. Do you remember carrying on a conversation with my  
17 client at this time?

18 A. Not an exact conversation but I know she was back  
19 there and she was saying some stuff but I don't know  
20 how a conversation went.

21 Q. These are more words that you don't remember and nor  
22 were they memorialized in any kind of 710.30 notice,  
23 police complaint, arrest data form, or police report;  
24 correct?

25 A. Yeah. In the back of the car I don't think that

1 really had anything to do with why she was going to  
2 jail, what was being said, so it wasn't documented.  
3 She was saying how she was a nurse or something.

4 Q. Originally, you were trying to locate where these  
5 stray dogs were and were asking her questions, she  
6 didn't provide you with answers, she wasn't  
7 cooperative; right?

8 A. Correct.

9 Q. One is not obligated by law to cooperate with the  
10 police, fair to say?

11 A. To a certain extent, yeah.

12 Q. One doesn't have to answer their questions, correct?

13 A. Not all the time.

14 Q. In this case she wasn't obligated to say, "Hey, those  
15 dogs belong to --"

16 A. No. I guess she wasn't.

17 Q. Yet, you charged my client with obstructing  
18 governmental administration for not answering your  
19 questions, correct?

20 A. I would have to read the charge again.

21 Q. Is it fair to say that the refusal to answer your  
22 questions certainly played a basis in you charging my  
23 client with obstruction of governmental  
24 administration, an A misdemeanor, correct?

25 A. Yeah. It says that in there but it also says,

1 "Interference to prevent myself and Officer Craig  
2 from arresting --", it says him, "For the disorderly  
3 conduct", so that would be obstructing -- that she  
4 wouldn't cooperate when she was told she was going to  
5 jail.

6 Q. You also put that she was not answering questions  
7 about the loose dogs?

8 A. That's in there.

9 Q. Now, describe the process when it comes to court pay  
10 relating to arrests that you make.

11 A. If we go to court for an arrest that we make or were  
12 involved in and it's not on our scheduled time to  
13 work, so we're off duty, we fill out a court slip and  
14 we bring it to court and when we're done with our  
15 court proceedings, whatever it is, the DA or whoever  
16 will sign our court slip and we will get paid for  
17 coming to court.

18 Q. And you work nights, 8 to 6 a.m., correct?

19 A. I did.

20 Q. So, at the time you were working nights, right?

21 A. Correct.

22 Q. So, clearly, whenever you went to court it would be  
23 either in the morning or afternoon, right?

24 A. Right.

25 Q. So, in other words, it would always fall outside of

1 the window when you would be scheduled to work any  
2 way. You would get paid every time you went to court  
3 is what I'm getting at, right?

4 A. Correct.

5 Q. From that standpoint you would have had a financial  
6 incentive to go out and make arrests, correct?

7 MR. LEE: Objection.

8 THE WITNESS: Incorrect.

9 BY MR. ALBERT:

10 Q. Why is that?

11 A. You used incentive. I don't make any arrests based  
12 on I'm going to get paid for them.

13 Q. That wasn't my question. That's why I used the word  
14 incentive. You would have had a financial  
15 motivation, whether you took it or not, whether you  
16 use that motivation or not, you would have had a  
17 financial motivation to make arrests; correct?

18 MR. LEE: Objection.

19 THE WITNESS: No, I wouldn't. It doesn't  
20 motivate me to get the court shot, we'll call it, for  
21 money, but at the same time every arrest that we  
22 make, especially because we didn't know it was gonna  
23 go to this point -- a discon, sometimes we don't get  
24 called for everything. So, when I made the arrest it  
25 was not a guarantee that I would get court money for

1           it.

2           BY MR. ALBERT:

3   Q.    But you did, in fact, get a court --

4   A.    I believe I did. I believe.

5   Q.    Therefore, it doesn't matter whether the case is  
6           thrown out, as you know this one was; right?

7   A.    Okay.

8   Q.    You still get paid even if --

9   A.    Whatever the ruling is I'll get paid for going to  
10           court.

11   Q.    Whether the judge rules the charges to be unlawful,  
12           as he did in this case, you still get paid; correct?

13   A.    Correct.

14   Q.    How much is it that you get paid per court shot?

15   A.    I'm not positive of that.

16   Q.    You don't know?

17   A.    Honestly, I couldn't give you a dollar amount. I  
18           know a ballpark figure but I don't know the amount.

19   Q.    Could we get a ballpark figure, I guess?

20   A.    Maybe \$100.

21   Q.    Maybe more, right?

22                   MR. LEE: Object to the form.

23                   THE WITNESS: Like I said, it's a  
24           ballpark figure so not much more.

25

1 BY MR. ALBERT:

2 Q. And you're only there -- when you talk about the  
3 court shot you go in -- especially for right after an  
4 arrest, you go in, you talk to the DA, you tell them  
5 a little bit about what happened, and then you leave;  
6 correct?

7 A. Sometimes that's how it goes down.

8 Q. Especially if it goes to trial obviously you might be  
9 here like you're here now, right?

10 A. Right.

11 Q. Are you getting paid for your time right now sitting  
12 here?

13 A. Yes.

14 Q. Even if you end up getting sued civilly you still get  
15 paid for showing up and answering questions?

16 A. Yes.

17 Q. So, from that standpoint the more you're in court the  
18 more you get paid, you can't deny that; right?

19 A. Yeah, true.

20 Q. So, maybe you don't take it but some people --  
21 there's a financial motivation to make a lot of  
22 arrests because each time they do, whether they're  
23 good arrests, bad arrests, convictions, acquittals,  
24 they still get paid; right?

25 MR. LEE: Objection.

1                   THE WITNESS: It could motivate certain  
2 people but not that I know of and certainly not  
3 myself.

4 BY MR. ALBERT:

5 Q. Yet, as you put it, you did get paid on this case  
6 multiple times; fair to say?

7 A. Yeah. I believe multiple times. I don't remember  
8 exactly how the courts went during that, that's why I  
9 can't speak to it, but if I went to court once  
10 before, yeah, multiple times.

11 Q. Even though this case ended up getting tossed out of  
12 criminal court and now you're getting sued civilly  
13 you're still getting paid; fair to say?

14 A. True.

15 MR. ALBERT: No further questions.

16 (\*\*\*11:46 a.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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