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S.C. SUPREME COURT

BEFORE THE SUPREME COURT OF SOUTH CAROLINA
Appellate Case No. 2015-000941

APPEAL from RICHLAND COUNTY Court of Common Pleas
Alison Renée Lee, Circuit Court Judge
Circuit Court Case No. 2013-CP-40-03522

City of Columbia, South Carolina, ***Respondent,***
v.
Marie-Thérèse Assa'ad-Faltas, MD, MPH, ***Appellant.***

SECOND Supplement to **Appellant's** ***First Contingent*** **Motion to Appoint Counsel for the purpose of rehearing OR to allow her to file her own Petition for Rehearing In case the decision is adverse to her but current counsel does not wish to seek rehearing AND to toll the rehearing time until this motion is decided,**
WITH REQUEST FOR ORAL ARGUMENT *ON THIS MOTION.*

This Court's rules give it discretion to order oral arguments on a motion in the rare case that needs it for the ends of justice. Appellant submits that this is such rare case because, frankly, without oral arguments, the motion will be decided by staff counsel "with only tangential attention" of elected and sworn justices. Please see, *e.g.*, what Judge Wilkinson wrote in *Nasim v. Warden*, 64 F.3d 951 (4th Cir. 1995):

> [T]he great number of prisoner petitions has forced federal courts to resort to **adjudicative systems in which *decisions are handed down with only the tangential involvement of Article III judges***. The use of staff counsel and other alternative modes of judicial decision-making has been increased for the specific purpose of handling these claims. Doumar, *supra*, at 27-29. **Whenever claims are disposed of without the closest attention of the judges, *the legitimacy of the federal courts is at risk*.**

Chief Justice Beatty had, ten years ago, heard Appellant on oral arguments in another case where Respondent herein, City of Columbia, had used false evidence to convict Appellant. The story repeated itself because, although Appellant, thank God, was ultimately exonerated in that case, the City was never punished in any way for having polluted the courts with a forged photograph. Now, former Columbia Assistant City Attorney ("CACA") Bruce Henry Greenburg, Jr. wrote false material facts to this Court and evaded the consequences by joining the McAngus, Goudelock and Courie law firm which, in a civil action, represented Appellant's false accusers of the charge underlying this appeal and of several others of which Appellant has been fully exonerated. Appellant had transcribed the proceedings of the 24 April 2013 morning session in Columbia's Municipal Court ("CMC") from audio provided by CMC. Appellant also provided that transcript to her current counsel; but he responded that he needs the official transcript. Appellant replied by asking him to secure the official transcript. He took no effective steps for that in over two months now. The highlighted part of that transcript (attached hereto) leaves no doubt that Appellant had moved to proceed *pro se* in CMC and CMC's then-judge Carl L. Solomon understood the motion and denied it. It is now clear to Appellant that her current counsel is intent on losing the case lost on a factually-false non-preservation basis. Thus, oral arguments are necessary for this Court to determine, *inter alia*, why its own officers collude to lose a case.

WHEREFORE, this Court should hear the instant motion on oral arguments and allow Appellant to make for herself, or appoint additional counsel for her to make, the necessary arguments her current counsel did not and would not make. Alternatively, this Court should accept the attached transcript as a supplement to the record and hold that the denial-of-self-representation issue is preserved.

Submitted on 13 March 2017 and served by personal delivery of a copy hereof to the City Attorney for the City of Columbia, Attorney for Respondent, at her office located at 1401 Main Street, Columbia, South Carolina, 29201, and on Mr. Dudek at his office at 1331 Lady Street, Columbia, SC 29201, all God-so-willing.

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00:00:00 - 00:00:14 ***CACA Fernandez:*** *hmm, relevant in the case in chief. I think she can make it relevant depending on what she says. But that's not something I anticipate moving into evidence in the, in the, in my part of the case,*

00:00:15 - 00:00:16 **Attorney T. N. Lupton:** in terms of, hmm?

00:00:18 - 00:00:30 ***CACA Fernandez:*** *proving that she shouldn't have been there or whatever. Depending on what she testifies to, I think she can make it relevant; and then I may move to have it included; hmm, but I'm not willing to try to do that on my case.*

00:00:31 - 00:00:32 **CMC's Carl L. Solomon:** How are you doing? 00:00:33 **Unidentified Male:** Good, Judge?

00:00:34 - 00:00:40 ***CACA Fernandez:*** *But it does relate to, like you, like you talked about, I know you've mentioned it before that it relates to the bond, not the trespass; but it does have language in there about her not, you know, it does have ---*

00:00:47 - 00:00:41 **Attorney T. N. Lupton:** Wait a second.

00:00:48 - 00:00:52 ***CACA Fernandez:*** *--- she not be there just in a general sense rather than a specific sense.*

00:00:53 - 00:01:11 **Attorney T. N. Lupton:** Oh, but it's clearly, I mean, she can argue if it ever became relevant, she can certainly argue all day long the law as to whether not that court order, various court orders were valid ---

00:01:11 **CMC's Carl L. Solomon:** Thank you, ma'am.

00:01:12 ***CACA Fernandez:*** *Right.*

00:00:53 - 00:01:11 **Attorney T. N. Lupton:** court action but it's clearly not trespass.

00:01:12 ***CACA Fernandez:*** *Right, right.*

00:00:47 - 00:00:41 **Attorney T. N. Lupton:** And so --- 00:01:12 - 00:01:16 [background conversations by unidentified persons]

00:01:18 - 00:01:26 **CMC's Carl L. Solomon:** Any, any opportunity to see if Dr. Faltas is going to join us today?

00:01:12 - 00:01:31 ***CACA Fernandez:*** *I didn't see her car ---*

00:00:53 - 00:01:11 **Attorney T. N. Lupton:** Your Honor.

00:01:12 - 00:01:35 ***CACA Fernandez:*** *I drive by Gervais, so I drive by the Clarion. I didn't see her car where it normally is, if that meant anything.*

00:01:36 - 00:01:43 **CMC's Carl L. Solomon:** It means she's not there. It doesn't mean she's here.

00:01:43 - 00:01:46 **Attorney T. N. Lupton:** It's very likely that she, let's go off the record, Your Honor.

00:01:52 ***CACA Fernandez:*** *Well, we solved that.* 00:01:53 **(laughter)**

00:01:56 - 00:01:26 **CMC's Carl L. Solomon:** We're back on the record.

00:01:56 ***Attorney O.G. Briggs:*** *How are you doing?*

00:02:06 - 00:02:09 **CMC's Carl L. Solomon:** I am well, sir, and you?

00:02:10 - 00:02:29 ***Attorney O.G. Briggs:*** *I, I have a philosophy now that, hmm, the only person I ever found that really would listen to a complaint was my mother. And she's dead. And even mothers get tired of it after a while. Don't they?* 00:02:29 (laughter)

00:02:30 - 00:02:29 ***Attorney O.G. Briggs:*** *If you complain too much, they get tired of hearing it.*

00:02:32 - 00:02:32 **CMC's Carl L. Solomon:** Yes, sir.

00:02:30 - 00:02:29 ***Attorney O.G. Briggs:*** *Young lady, give him that. I don't know when we'll use them, but he will have them all at one time.*

00:02:32 - 00:02:39 **CMC's Carl L. Solomon:** Thank you.

00:02:34 - 00:02:39 **Attorney O.G. Briggs:** I'm gonna await my turn, Your Honor.

00:02:41 **CMC's Carl L. Solomon:** Fair enough.

00:02:42 - 00:03:52 **CMC's Carl L. Solomon:** We are on the record in the matters of City of Columbia versus Maria [sic] Faltas. I believe we have today two cases, one being the trespassing case and one being the disorderly conduct. Warrant, or ticket numbers, excuse me, **37025FK, 38803FK.** We had set a hearing this morning at 7:30 am in an attempt to accommodate the motions and other legal issues that were being raised by the defendant and counsel. At 7:30 am this morning we had Mr. Lupton, we had Mr. Fernandez, myself and the clerk. We did not have Dr. Faltas at that time. We, hmm, took a break and began a search. We have contacted Richland Memorial Hospital and Baptist Hospital and have determined that Dr. Faltas, hmm, is not in either hospital. I've been informed by counsel that there is an update and I am prepared to receive it.

00:03:53 - 00:04:49 **Attorney O.G. Briggs:** Your Honor, because it's not really these are not my cases, of course. As I indicated to the Court in an earlier memo, hmm, as far as I can tell, the only three persons Dr. Faltas is in communication with are quote the three lawyers she has; and I avoid as many of those contacts as I can and, hmm, hmm, my wife has sort of taken her under her wing of her own volition. And Dr. Faltas called my home at about quarter to nine last night and said she was exhausted, she was going to bed, and she was not going to show up this morning. Now, I got that through my wife but I can count on my wife transmitting the message, hmm, precisely, Your Honor. But I did not talk to Dr. Faltas.

00:04:50 - 00:05:25 **CMC's Carl L. Solomon:** Thank you for the update, Mr. Briggs. All right. I, we have received that information, accepted it as a hundred percent truthful. Now, I am prepared to receive any motions, any parties of the several that are before me and, hmm, depending on the decisions on the motion, hmm, if I rule so, we will go forward with the trials in this matter without Dr. Faltas subject to any rulings that may be made on any motions to continue, *et cetera.* Who would like to go first with motions?

00:05:26 - 00:07:20 **Attorney O.G. Briggs:** I guess, Judge, since I am making the motion, hmm, I may, hmm, you have a formal motion to continue this case, as a friend of the Court. Mr. Lupton has already expressed his opposition to that. Hmm, Your Honor, what I did, you, of course, have one letter from this Doctor Barrissi [sic]. Hmm, I contacted him mid-afternoon yesterday and explained the situation to him; and I read him the portion of your memo that says we need a little bit of more information about, hmm, particularly the material, the language in Number Two of your memo, Your Honor. And, and I actually read that to him and made sure he also noted prognosis and he told me he would write another letter and essentially attach his notes from the last interview with Dr. Faltas. And I was told by him that his office would probably not be open till eight. I was there at eight and he apparently had some kind of congested, I'm guessing now, some kind of emergency, that memo, that additional letter was not there. So, I would just ask, and, and again, I am being very careful, Your Honor, if the Court is gonna entertain the, the motion for a continuance, then I would request that, hmm, I have, say, till 1:30 to get that other letter from her treating physician to you. Hmm, but that's all I can do. Hmm, his office is over on Sunset Drive, just back of the hospital, Your Honor.

00:07:22 **CMC's Carl L. Solomon:** All right.

00:07:30 - 00:07:32 **Attorney O.G. Briggs:** Two or three ladies looked for it, Your Honor, and they said he was not coming in until one.

00:07:32 - 00:09:00 **CMC's Carl L. Solomon:** Thank you for that update and for the motion, Mr. Briggs. Two things regarding that: Number one: there was a reference to some things that have been e-mails, some regarding this matter, some, hmm, maybe not regarding anything that is specifically before this Court, but nonetheless copied to both this Court and to attorneys that are before this Court on this matter. Hmm, they were, one of which was referenced in Mr. Briggs's motion in terms of documentation of why I responded to his e-mail requesting the additional information. **I think that it is extremely important that all things are being considered, hmm, and/or referenced in this matter be contained in the record. Accordingly, I would like for either Mr. Briggs or Mr. Lupton, if I need to pick one, I will; but if you can decide among yourselves, I'd prefer that, to make a part of the record any of the e-mails that are regarding these issues or are otherwise deemed relevant. I just don't there to be things that we are discussing that have not been made part of the record, so that if somebody has to review this at some time in the future, they would know what we talked about. So, I think it's prudent to make those things part of the record. Hmm, which one of you would do that for us?**

00:09:01 - 00:09:07 **Attorney T. N. Lupton:** Your Honor, since I am the attorney on the case, I think it would be most appropriate for me to do that.

00:09:08 **CMC's Carl L. Solomon:** Thank you, sir.

00:09:10 - 00:09:18 **Attorney T. N. Lupton:** All right. I will, I will, hmm, once I get access to a printer, I will print out the e-mails and the attachments.

00:09:19 **CMC's Carl L. Solomon:** Thank you, sir.

00:09:19 - 00:09:43 **Attorney O.G. Briggs:** Your Honor, just so the Court knows, hmm, one of those e-mails was a note, I don't know if she sent it to the both of us or not, trying to supplement the medical records, that she can bring her own records. But I know as well as this Court knows that those kinds of things are self-serving and that is not the kind of information you requested from me.

00:09:44 **CMC's Carl L. Solomon:** Yes, sir.

00:09:45 - 00:09:53 **Attorney O.G. Briggs:** And so, I didn't even think about sending it to you, let alone prepare to send it to you.

00:09:54 - 00:10:15 **CMC's Carl L. Solomon:** Thank you very much for your candor, sir. And now in that regard, with regards to the same documents, Mr. Lupton if you will kind enough to seal any medical records that she provided and mark them medical records. We'll make them part of the record; but we'll make them sealed for her personal, to, to not compromise any personal information that she has provided. But nonetheless, we don't want the world to read them.

00:10:18 - 00:10:55 **Attorney T. N. Lupton:** Yes, Your Honor. With the Court's permission, if I may, what I'd like to do is, if it suits the Court, is just take the e-mails that were copied to the Court, print those out, along with the attachments, and if there are any other e-mails where she's asking us to present information to the Court, that are not, that are affected by attorney-client privilege, I will print those out as well. We'll seal those all in the same envelope with the Court's permission.

00:10:56 - 00:11:22 **CMC's Carl L. Solomon:** But what I would tell you is, and I do recognize that some of what's contained is probably protected by attorney-client privilege. Hmm, but once she transmitted it to the world, I think I need you to attach it because if it's something that I have seen, then I can't unsee it. However, if you wish, I will be happy to order that those also be contained in a separate envelope marked attorney-client-privileged so that they are not there for the world.

00:11:23 - 00:11:45 **Attorney T. N. Lupton:** And I don't think that, and I agree with the Court, I think that anything, and I've advised Dr. Faltas, on numerous occasions, anything that she copies to a lawyer that is not her attorney of record in that case, I think, or an attorney of record in some other case that's related, if there is some relevance to a representation issue. But anything that's copied to others would vitiate the attorney-client privilege.

00:11:45 - 00:11:52 **CMC's Carl L. Solomon:** Fair enough. But if you wish to try to protect that to the extent that you can ---

00:11:53 **Attorney T. N. Lupton:** Right ---s

00:11:54 - 00:11:57 **CMC's Carl L. Solomon:** --- please seal it so that issue can be addressed at any point by any other court.

00:11:58 - 00:12:48 **Attorney T. N. Lupton:** And, Your Honor, if you can, with regards to the motion to continue, while I certainly have no problem with Mr. Briggs' providing information to the Court, I do respectfully, hmm, object to the fact that he is not her attorney of record in the case that's set for trial today. And I do not believe it appropriate, hmm, for a lawyer not representing a client to make a motion in that case. I think it is the, the attorney's place to make any motions that are deemed appropriate based on the facts and the law. And, based on that, I would object to his motion.

00:12:49 - 00:12:50 **CMC's Carl L. Solomon:** Okay. Mr. Fernandez, do you have any position?

00:12:51 - 00:12:52 ***CACA Fernandez:*** *No, Your Honor, I don't.*

00:12:53 - 00:13:05 **Attorney O.G. Briggs:** Your Honor, on one other issue. And, soon as you feel like you're through with me, I am more than willing to leave. I have been thrown out of better places and so it won't even bother me if you kicked me out.

00:13:06 - 00:13:11 **CMC's Carl L. Solomon:** I won't throw you out. You will be free to leave of your own volition.

00:13:13 - 00:16:20 **Attorney O.G. Briggs:** Hmm, Your Honor, I have sent to the Court, and again, I don't say these things lightly, hmm. So, I'm going to reinterate [sic] this point because after, after three attempts at persuading Dr. Faltas that for future possibility offense, Your Honor, that, hmm, that the thing for her to do is get her a storage house and to put everything out there that is not naturally-grown into that storage house. I have been looking for one, Your Honor. I haven't found it. I haven't gone to the *Carolina Trader* yet; but I am confident that I can get, and I think we talked about ten by then, you know, a modest-size storage bin. And, hmm, I know the gentlemen in my Sunday school class will, will provide the manpower to go out there and, in two or three hours, haul all the stuff in the storage bin. And I said that and I say it again, Your Honor. I don't think that has anything to do with whether or not there was a violation of one or more of the three ordinances. But if it would prevent a future violation, let's say the City felt like if it stayed there for another two weeks, would be, it would warrant another violation. So, that's what I'm concerned about, Your Honor. Now, hmm, I did not. I have done some research myself. In fact, I even talked to my son-in-law and found out how much he had in his. And he suggested we put it on a cart for a little while and we borrowed that one. But I can get, I'll find her a, a storage bin. And I know the men in my Sunday school class would get the job done. The one thing I sort of obliquely mentioned, but I'll mention it again, Your Honor. My church is a very, hmm, out-reaching church. In fact we have that, hmm, hmm, discovery program, I'm sorry, recovery program, for people who not only are alcoholics, but have some emotional problems. And it's not a church program. But in some, it's a program like AA that seems to find a home in meeting in churches because there's no rent and the church provides the supper, *etcetera*. So, hmm, we also have that program and, and all that bit. So, I know I can get that done. It would think that it will take me like ten days to get that done, Your Honor. Again, I say that only if there is any reason to wait on the sentencing. If there isn't, then I'm preparing for the, avoiding a future citation, Your Honor.

00:16:20 **CMC's Carl L. Solomon:** I very much appreciate, the information is very much appreciated ---.

00:16:20 - 00:16:30 **Attorney O.G. Briggs:** And I would be glad to keep, I'll keep Mr., hmm, Fernandez informed on that, Your Honor.

00:16:20 - 00:17:42 **CMC's Carl L. Solomon:** Please leave. (phonetic) The information is very much appreciated. Anything regarding any sentence that has not yet been levied is beyond the scope; but I'm sure it does have an effect on the parties involved. So, I would encourage you all to the extent you can do anything to avoid future citations, you should do so. In terms of sentencing, we will still do that tomorrow afternoon. And to the extent any efforts would have been made at that point, I would definitely consider them in mitigation of the proposed sentence. Hmm, as to the motion for continuance, Mr. Lupton, I do understand your position. I do overrule your objection. And over your objection, I will consider the motion for continuance. Based on the information that has been provided to date, I do not grant the continuance. Hmm, at this time, the, I do have in receipt, in my possession and my ability to rule on April 13, 2013, a note signed by Dr. Barriski. I do not find that the information contained therein is sufficient to warrant a continuance at this time. Accordingly, accordingly the continuance is denied. Secondly, the notice of intent to appeal, hmm ---

00:17:43 **Attorney O.G. Briggs:** Is premature, Your Honor.

00:17:44 - 00:17:48 **CMC's Carl L. Solomon:** Yeah. We advised her we will do that tomorrow. So, we will keep it, or in fact, let me give it back to you.

00:17:49 **Attorney O.G. Briggs:** Okay.

00:17:44 - 00:17:58 **CMC's Carl L. Solomon:** I don't want to sentence her. I mean, if you want to me to sentence her now so you can do it now, I'll do it. But I'd like to wait till tomorrow.

00:17:59 **Attorney O.G. Briggs:** I'm available tomorrow morning, Your Honor.

00:18:00 - 00:18:48 **CMC's Carl L. Solomon:** In addition to that, I think the last thing that's before on a motion by Mr. Briggs is the minute memo on denial of due process. Ordinance too vague and gives enforcement too much discretion. I did, I invited Mr. Briggs to provide a more detailed memorandum. And I will attach it to the record so that this, hmm, can go up with any appeal, hmm, should that occur. Mr. Briggs, you were able to articulate the standard. You seemed very familiar with it at, at the time that you argued this for us. Is there anything that is different that I need to give my particular hands, my particular attention in that particular memorandum that was not argued the first time we heard from you.

00:18:49 **Attorney O.G. Briggs:** Only two things, Your Honor.

00:18:50 **CMC's Carl L. Solomon:** Yes, sir.

00:18:51 - 20:00:00 **Attorney O.G. Briggs:** In looking, in re-reading the South Carolina cases, you find that, hmm, hmm, at least three of them are zoning ordinances. And as you know, the zoning ordinances have a little bit higher compelling interest than some of these other things. And I cited that difference. And there is also a very interesting, hmm, hmm, I apologize for this, just

because I don't take these things lightly, and I don't judge people, but, there is criminal case. And the lady's name is Tyke. And it is a second offense case. And the question is whether or not she could be put on this, hmm, satellite surveillance, Your Honor. And that's all I'll say about it. It's a very interesting case, though. And they end up ruling in favor of due process in that case, which is a tough case. And then I also cited the, the Myrtle Beach case, I think it's the Myrtle Beach case.

00:20:02 - 00:20:03 CMC's Carl L. Solomon: The Due West Golf Club?

00:20:04 - 00:20:16 Attorney O.G. Briggs: The one, the one that has to with county is not allowed to have a stricter penalty than the state, Your Honor.

00:20:18 CMC's Carl L. Solomon: All right.

00:20:19 - 00:20:24 Attorney O.G. Briggs: I found the page, Your Honor. It's *Beachfront Entertainment versus Town of Sullivan's Island.* That's the only two differences.

00:20:24 - 00:24:27 CMC's Carl L. Solomon: I promise, if you'll give me a few moments, I will read this so I can determine if additional time is necessary or if I can, hmm, make a ruling on the supplemental brief that's been provided. I have read the memorandum quickly but in its entirety. It is pretty much in keeping with Mr. Briggs' prior arguments. I have paid closer attention to the issues that he indicated were at least supplemental to what he has previously argued. Now, having considered it in its full, the motion, hmm, to find that the ordinance is vague for voidness, void for vague, excuse me, void for vagueness, and therefore unconstitutional, hmm, is denied. And the order stands. The orders previously stand as they are. And then we, the jury's verdict stands as it is. Thank you very much, sir. We will address the issues before us today. We will be back tomorrow on the last case and for sentencing.

00:24:30 Attorney O.G. Briggs: Okay, Your Honor.

00:24:30 CMC's Carl L. Solomon: Thank you very much.

00:24:33 Attorney O.G. Briggs: At what time is court tomorrow morning?

00:24:33 - 00:24:45 CMC's Carl L. Solomon: The start of court tomorrow morning is at 9:00 am. However, we do have to get to some portion of the trial. And for the purpose .... Yes, sir.

00:24:46 **Attorney T. N. Lupton:** Your Honor, you had previously said 11:00 am.

00:24:47 - 00:25:05 CMC's Carl L. Solomon: I apologize. It is 11:00 am. For the purposes of the sentencing, we will not do that, whether we conclude the trial or not, before 3:00 pm so that everybody has plenty notice, so you need to come for the purpose of the sentencing at 3:00 pm. We may not be done. You may have to wait a little while. But I don't want you coming at 11:00 and then you'll have to wait all day.

00:25:06 - 00:25:26 Attorney O.G. Briggs: *Thank you, Your Honor. And I will get some evidence for what I've done about the clean-up matter, knowing full well that it really doesn't have any direct bearing on what happened on the given date of the offense.*

00:25:27 CMC's Carl L. Solomon: Understood; but I will consider it in mitigation.

00:25:28 - 00:25:36 Attorney O.G. Briggs: *My inclination, or certainly would be, it would certainly save my client from being arrested a second time, Your Honor.* ***After a period of time, it dawned on me.***

00:25:37 CMC's Carl L. Solomon: Thanks very much, Mr. Briggs.

00:25:38 - 00:25:36 Attorney O.G. Briggs: Thank you for your time.

00:25:37 - 00:28:43 CMC's Carl L. Solomon: Yes, sir. Hmm, one issue that remains, and I think it is appropriate that we address if before we start, **is the motion by Dr. Faltas that was opposed by Mr. Lupton for her to be able to proceed without counsel.** That is the motion of hybrid representation. **This motion has been previously argued and Dr. Faltas has been able to make her position known as well.** At that time, I requested proposed orders by Mr. Lupton so that I could enter a written order on this, so we would be clear on the ruling and what would be allowed and what would not be allowed by the Court. **Mr. Lupton provided three orders, one of which, I would be basically stopping him from his representation and allowing Dr. Faltas to proceed *pro se*.** One of which I would be enforcing as an absolute right, the right of representation by counsel and prohibiting Dr. Faltas from participating in making motions or providing, hmm, evidence or things that the attorney would typically do in a case although she would absolutely be allowed to participate in her defense as well as testify if she so chose, which is her decision. **The third order is one that is in between the two and is very akin to what was done in the last trial in which Mr. Lupton participated as well as what was done in the trial where Mr. Briggs represented Dr. Faltas. And that is: the attorney does the typical representation, making motions, putting in evidence, however the Court granted leniency to allow Dr. Faltas to mark any things that she believed to be appropriate for evidence and actually made rulings on those markings and then attached the ones that were found to be irrelevant or otherwise inadmissible to the record for identification purposes for any future court to review.** I find that it is in the discretion of the Court to determine how we will proceed. I find that it is the attorney's responsibility

and privilege to determine what the appropriate trial strategy is, make motions and enter evidence. **But I also find that the Court will allow Dr. Faltas, to the extent that she so chooses to participate, to mark evidence for the purposes of identification outside the presence of the jury as was previously done in the last two trials. And if the attorney and she agree upon it, to allow those to entered into evidence.** So, **I will sign the order that is consistent with this ruling. I have entered the words "not entered" on the other two options, although I will provide them to the court so they will be attached to the record and will also be available for any further review. So, understanding that that's how we will proceed,** hmm, let's now move to the disorderly conduct case.

00:28:43 - 00:29:17 **Attorney O.G. Briggs:** Your Honor, could I just add one thing on that subject. I, I have no way of knowing when the Fourth Circuit or the district court, federal district court, is gonna address that issue but we still have active litigation before both of those courts on that issue. And it may or may not, whatever they do, may or may not affect what we are here. But there is certainly no reason just to postpone what you're doing just to wait around to see if they are going to do anything, Your Honor.

00:29:18 - 00:29:46 **CMC's Carl L. Solomon:** Thanks very much, Mr. Briggs. Mr. Lupton, I believe that one of the things that was raised prior to court via e-mails was Ms., excuse me, Dr. Faltas' request to withdraw her, hmm, request for a jury trial and proceed in a bench trial on the issue of the disorderly conduct, hmm, charge solely. Is that correct?

00:29:47 - 00:29:54 **Attorney T. N. Lupton:** Yes, Your Honor. She wanted to sever that charge, have it tried by Your Honor as a bench trial.

00:29:54 - 00:30:06 **CMC's Carl L. Solomon:** Are you making that motion, sir? Or, or I guess a correct way to say it is: are you waiving on her behalf a jury trial and seeking to proceed on a bench trial?

00:30:07 - 00:30:41 **Attorney T. N. Lupton:** Yes, Your Honor. I have received, hmm, very explicit instructions on the matter of the public disorderly conduct. I've given her my legal advice as to trial by jury versus trial by court. Hmm. She has considered those. She has made a decision. And she has been very adamant, hmm, over a period of the last, probably two weeks, consistently wanting, hmm, to waive that. So, I believe that is her desire. And I believe that I am bound by that.

00:30:42 - 00:30:46 **CMC's Carl L. Solomon:** Fair enough. Mr. Fernandez, would you like to be heard on that, sir?

00:30:47 - 00:30:58 ***CACA Fernandez:*** *Hmm. I don't believe that is necessary. The City will move for trial in absentia. Ask the Court to establish jurisdiction, whereupon to proceed on the two charges by, hmm, what's typical in trial in absence which will be a bench trial.*

00:31:00 - 00:31:20 **CMC's Carl L. Solomon:** Let's deal with the disorderly first. Hmm. We will proceed with a bench trial on the disorderly. Hmm. We will proceed, hmm, in her absence assuming she doesn't show, hmm, momentarily. So, let me address one other issue that is not related to this; and then we will start with the disorderly conduct trial.

00:31:20 - 00:31:31 ***CACA Fernandez:*** *Yeah, yeah. And to that, Your Honor, the trespass and disorderly are very closely related. Hmm. Are we starting, are we doing two separate trials? I know it's ---*

00:31:31 **CMC's Carl L. Solomon:** We are.

00:31:31 ***CACA Fernandez:*** *Okay.*

00:31:32 - 00:31:46 **CMC's Carl L. Solomon:** She requested one by bench trial. To keep everything clean, we're going to address that one first. I assume by bench trial, especially if there are no witnesses for the defense, it should not take too long to address that. Then we will address the trespassing thereafter.

00:31:47 - 00:32:18 ***CACA Fernandez:*** *Well, to the ex, my concern would be if I have to try in front of a jury the trespass charge if counsel, if that is going to be requested. I would request that I be able to try both charges together because I think they're, they occurred at the same time.* ***She, she, she was picked up, the facts will come out that she was arrested for trespassing and then started doing what the officers considered disorderly and then arrested for that also.***

00:32:19 - 00:32:36 **CMC's Carl L. Solomon:** I do understand the judicial economy of that. I have not made a decision as to whether or not the second trial will be bench trial and/or by trespass [sic]. But, as the defendant has specifically requested that the first one be tried in this manner, we're going to that one separately even though I believe that's not the most economical way to do it.

00:32:36 -00:32:37 ***CACA Fernandez:*** *Understood. Thank you, Your Honor.*

00:32:38 - 00:33:04 **CMC's Carl L. Solomon:** There is a motion to reopen by a gentleman named Eric Artemis. Is there an Eric Artemis present? Mr. Artemis is not present. The officer is not present. We're gonna deny the motion to reopen. We're now ready to proceed with the disorderly conduct trial on Dr. Faltas. Is there anything that needs to be addressed before the trial begins?

00:33:07 - 00:33:41 **Attorney T. N. Lupton:** Your Honor. Hmm, hmm, I believe, since we're doing this by bench trial, that fairly well takes care of most of our motions. I would say that the, just for the record, you ruled on this, but I want to make it clear for the record that the, the statements from Officer Ashmore were provided after the discovery order expiration date, we object to that. The Court has heard that, has ruled that it's admissible. I just want to preserve that on the record. Other than that, I'm ready to begin.

00:33:44 - 00:33:46 **CMC's Carl L. Solomon:** Fair enough. Anything from you Mr. Fernandez?

00:33:47 - 00:35:58 ***CACA Fernandez:*** *Yes, Your Honor, I discussed that with, with hmm, Mr. Lupton prior to trial and off the record. Mr. Lupton previously moved for, hmm, for, in the other trial and in this trial to limit the scope of the testimony of the officers, hmm, specifically concerning the elements of the crime versus some background that may be appropriate for the jury. Hmm. I came to the conclusion and discussed this with Mr. Lupton that, that I would be willing to join in his motion and although it may, you know, for a bench trial it's less, less of an issue than what it would have been for a jury trial, but, hmm, I am, I indicated to Mr. Lupton that I would limit the testimony to the elements of the crime. So, to the extent that there is any allegations of, hmm, hmm, misconduct by the defendant, you know, whatever, however you want to phrase it, you know, since she was harassing people or whatever, drove Ms. Steele or Mr. Mason, to put her on notice, what I discussed would be to simply say that the state's case would be was she provided notice? Did she trespass after that notice? And then we all know the elements of disorderly conduct: Did her behavior constitute disorderly conduct? Hmm, I'm not going to go into, and Mr. Steele and Ms. Mason are here, Mr. Mason and Steele are here; so, I ask them to pay attention not going to go into the history between the parties, hmm, and I don't think you all were going to talk about that anyways. But between mostly remarks relating to those two individuals; and I think, I came here prepared for a jury trial. I think that would speed things along. I'm prepared to stick to that despite the fact that we're going forward with a bench trial; hmm; and I know Your Honor can sift through what's evidence and what's not, anyway; so, I'm probably saying this just to put it on the record; but, for my case, I don't anticipate; and I, I think, by consent, we will agree not to go into any of the background, so to speak.*

00:35:59 **CMC's Carl L. Solomon:** Okay.

00:36:01- 00:36:23 **Attorney T. N. Lupton:** And, I believe that the Court's order in the assault case that's scheduled for tomorrow, hmm, was that both sides were prohibited from going in into any of the background or context of any facts basically not related to what happened the day of the alleged offense; and I would certainly join with Mr. Fernandez and ask the Court to do that in this case as well.

00:36: 24 - 00:36:35 **CMC's Carl L. Solomon:** Well, if the parties have agreed to say that, I don't know that the Court has anything that it has to do. But to the extent that someone strays from that agreement, remind me of the agreement and we will address it at that time.

00:36:35 - 00:36:36 ***Attorney T. N. Lupton and CACA Fernandez:*** *Thank you, Your Honor.*

00:36:37 - 00:36:39 **Attorney T. N. Lupton:** And that would be for both the trespass and the public disorderly conduct.

00:36:40 **CMC's Carl L. Solomon:** Correct.

00:36:40 - 00:36:41 ***Attorney T. N. Lupton and CACA Fernandez:*** *Thank you, Your Honor.*

00:36:42 - 00:36:43 **CMC's Carl L. Solomon:** Thank you very much. Are we going to have openings?

00:36:44 - 00:36:45 ***CACA Fernandez:*** *No, I'll waive opening.*

00:36:45 - 00:35:59 **CMC's Carl L. Solomon:** Would you like to give opening, Mr. Lupton?

00:36:37 - 00:36:39 **Attorney T. N. Lupton:** I don't think we need it, Your Honor.

00:36:45 - 00:36:47 **CMC's Carl L. Solomon:** Fair enough. Call your first witness, Mr. Fernandez.

00:36:48 - 00:36:55 **CACA Fernandez:** Do you want to establish jurisdiction or we, is Your Honor satisfied that ---

00:36:55 - 00:36:59 **CMC's Carl L. Solomon:** I would like for you to place what you deem appropriate on the record and I will make any rulings necessitated thereby.

00:36:59 - 00:37:04 ***CACA Fernandez:*** *Okay. Well, I my, my motion would be to ask the Court to establish jurisdiction and then the City would move to try Marie Faltas in her absence*

00:37:08 - 00:37:10 **CMC's Carl L. Solomon:** All right. The Court, I'm sorry, Mr. Lupton, any response to that?

00:37:12- 00:37:46 **Attorney T. N. Lupton:** Your Honor, the statements that were made previously by her counsel in the other case, in the, in his motion which the Court heard for continuance, I believe that is part of the record in this case. I did not object or contend that she had notice, had a lack of notice, or that she was not aware to be here **or that there was any medical reason why she cannot be here.** I acknowledge all of that.

00:37:49 - 00:38:36 **CMC's Carl L. Solomon:** The Court finds that there is jurisdiction in this matter. The Court specifically finds that Dr. Faltas was present and personally advised as to what time to be here this day, that the court began 7:00 in the morning to explicitly address issues to be raised by Dr. Faltas so that we could, hmm, begin in a prompt manner. That is something that was an extreme measure by the Court to, hmm, accommodate the defendant. And so, the Court believes the defendant had proper notice, that jurisdiction is proper, that the defendant is put on notice that failure to show would result in a trial in absentia; and the Court grants, hmm, the City's motion to do so and finds that jurisdiction is, is, is established. Please begin calling City's witnesses.

00:38:38 - 00:38:37 ***CACA Fernandez:*** *Thank you, Your Honor, and this is the disorderly conduct, correct?*

00:38:39 - 00:39:10 **CMC's Carl L. Solomon:** Yes, sir. And I apologize, one last issue before we do that: the defendant also requested the ability to file her own briefs, hmm, which was something that was an issue in regards to the hybrid representation. Over the objection of her attorney, the Court granted the defendant the ability to file her own briefs. To date, none have been filed. The Court therefore finds that the defendant has waived that right by failing to act upon it; and we'll proceed although no briefs have been filed. Yes, sir, Mr. Fernandez.

00:39:11 - 00:39:14 ***CACA Fernandez:*** *Thank you, Your Honor. The City will call as its first witness, Julie Ashmore.*

00:39:16 - 00:39:23 **CMC's Carl L. Solomon:** Officer Ashmore, if you'll come upstairs. I know it's a bench trial; but we're still going to let you sit down for counsel to begin questioning after you're sworn.

00:39:24 - 00:39:34 ***CPD's Julie Ashmore:*** *Yes, Your Honor. Good morning.*

00:39:34 - 00:39:36 **CMC's Carl L. Solomon:** Good morning. Please raise your right hand. Do you swear or affirm to tell the truth, the whole truth and nothing but the truth?

00:39:36 - 00:39:40 ***CPD's Julie Ashmore:*** *Yes, Your Honor.*

00:39:40 - 00:39:41 **CMC's Carl L. Solomon:** Thank you very much. Please have a seat. They will ask you questions and you have to answer.

00:39:41 - 00:39:43 ***CACA Fernandez:*** *Officer Ashmore, your name for the record, please.*

00:39:43 - 00:39:44 **CPD's Julie Ashmore:** Julie A. Ann Ashmore.

00:39:47 - 00:39:48 ***CACA Fernandez:*** *And with whom are you employed?*

00:39:48 - 00:39:49 **CPD's Julie Ashmore:** City of Columbia, Department of Police.

00:39:50 - 00:39:52 ***CACA Fernandez:*** *How long have you been employed by the City?*

00:39:53 - 00:39:54 **CPD's Julie Ashmore:** Six and a half years.

00:39:55 - 00:40:01 ***CACA Fernandez:*** *I'm gonna jump right to it. I'm gonna direct your attention to July 8, 2010. Do you recall that date?*

00:40:02 - 00:40:03 **CPD's Julie Ashmore:** Hmm, yes, I do.

00:40:03 - 00:40:05 **CACA Fernandez:** Okay. Were you on duty that day?

00:40:05 **CPD's Julie Ashmore:** Yes.

00:40:05 - 00:40:12 ***CACA Fernandez:*** *Okay. Did you respond to an incident that was occurring at 304 Byron Road?*

00:40:13 **CPD's Julie Ashmore:** Yes.

00:40:13 - 00:40:24 ***CACA Fernandez:*** *Okay. And, for this trial, we are talking about the disorderly conduct charge. I know there were two charges stemming from the arrest. But we're only going to speak to the disorderly conduct charge.*

00:40:24 **CPD's Julie Ashmore:** Yes.

00:40:24 - 00:40:36 ***CACA Fernandez:*** *Hmm. Please tell the Court what your, what you recall being dispatched for and then, hmm, what you observed on arrival.*

00:40:37 - 00:40:50 **CPD's Julie Ashmore:** Hmm. I was, I received a call for service, I was dispatched on that location regarding a person who was on the property who was, who is on trespass.

00:40:52 - 00:40:53 ***CACA Fernandez:*** *Hmm. Okay. And 304 Byron Road, is that within the City limits of Columbia?*

00:40:54 **CPD's Julie Ashmore:** Yes, it is.

00:40:55 - 00:40:59 ***CACA Fernandez:*** *Okay. And who is the individual that you were, who is the subject of the dispatch? Who is the individual you responded to?*

00:41:00 **CPD's Julie Ashmore:** Hmm, Dr. Marie Faltas.

00:41:01 - 00:41:08 ***CACA Fernandez:*** *Okay. Are you familiar with her or were you familiar with her before this encounter?*

00:41:09 **CPD's Julie Ashmore:** Yes.

00:41:09 - 00:41:10 ***CACA Fernandez:*** *Okay. Do you know her by name and sight?*

00:41:11 **CPD's Julie Ashmore:** Yes.

00:41:12 - 00:41:15 ***CACA Fernandez:*** *Okay. And how did you identify her ultimately?*

00:41:16 - 00:41:17 **CPD's Julie Ashmore:** I'm very familiar with her.

00:41:17 - 00:41:21 ***CACA Fernandez:*** *Okay. And tell me what you saw on arrival at the scene at 304 Byron Road. And then what? What happened?*

00:41:25 - 00:41:45 **CPD's Julie Ashmore:** When I arrived, I saw, **I observed Dr. Faltas coming out of the building where she lives.** Hmm. At that point, hmm, we knew that she had been placed on trespass verbally, through shift leader (phonetic) passed down (phonetic).

00:41:46 - 00:41:57 ***CACA Fernandez:*** *Okay. And did anyone else relay any? We'll get to the trespass. So, after you determined that there was a tres, we'll get to the trespass later. But after you determined that there was potentially a trespass, what did you do?*

00:41:58 - 00:42:23 **CPD's Julie Ashmore:** I approached Dr. Faltas, hmm, asked her what was going on and I advised her at that point, hmm, **that I needed to place her under detention, which is I need her to, hmm, place her hands behind here back. And again, she's only being placed on detention while we figured this out and that she was not under arrest.**

00:42:24 - 00:42:25 ***CACA Fernandez:*** *Okay. And how did she respond to that?*

00:42:28 - 00:42:47 **CPD's Julie Ashmore:** Hmm. She became very agitated, very, hmm, **I started, hmm, I had started to attempt to place a cuff on one hand, one wrist.** At that point she stiffened up.

00:42:49 - 00:42:51 ***CACA Fernandez:*** *So, would you regard her behavior at that point as non-compliant? Would that be a good term?*

00:42:51 **CPD's Julie Ashmore:** Hmm, yes.

00:42:52 - 00:43:03 ***CACA Fernandez:*** *Okay. And when you said she started, hmm, becoming animated or how you described it, hmm, what level of volume was she expressing at this point?*

00:43:04 - 00:43:28 **CPD's Julie Ashmore:** Hmm. I was asking her to please calm down, please calm down. She ignored, ignored all those requests. She was, she has a, a voice that when, when she, when she starts elevating the volume of the, of her voice it (witness chuckles), she's being extremely disruptive by essentially screaming.

00:43:29 - 00:43:34 ***CACA Fernandez:*** *Okay. And what kind of things was she saying specifically at this point?*

00:43:35 - 00:44:25 CPD's Julie Ashmore: The things that she was saying was, hmm, I distinctly remember, hmm: "You're killing me, you're killing me." Hmm, which point I don't understand, now is: I was being exceedingly, exceedingly, hmm, careful as, as I am with any person I'm, I'm out with, hmm, when attempting to cuff her and frankly calm her. Hmm, and she talked about, hmm, talked about our crooked chief, hmm, that wasn't, wasn't Chief Tandy Carter at the time, hmm, how she's going to have our jobs just like the previous chief, hmm, just a lot of "you're killing me" ...

00:44:25 - 00:44:26 ***CACA Fernandez:*** *Did she accuse you of stealing anything from her?*

00:44:26 - 00:45:01 CPD's Julie Ashmore: Hmm, we, she asked at one point, she wanted, she had either three or four purses; and she wanted them all to go to, hmm, go, to be with her, be in her possession; and I explained that, that that probably would not be able to happen because of the jail's policies. Hmm, anything that we went near, that her vehicles had to be inventoried for one vehicle to be towed. She, she was saying that all of us were going to steal things.

00:45:02 ***CACA Fernandez:*** *Okay.*

00:45:02 - 00:45:05 CPD's Julie Ashmore: Just very irrational sounding ...

00:45:05 - 00:45:17 ***CACA Fernandez:*** *Okay. Now, you already testified that she was screaming. The, at this incident location, is this within the neighborhood or is it remote? Where, where? What kind of outline that, hmm, description of the area is this?*

00:45:18 - 00:45:25 CPD's Julie Ashmore: Where, where that particular address is, there is, there, there is, hmm, two-level buildings.

00:45:26 ***CACA Fernandez:*** *Okay.*

00:45:26 - 00:45:53 CPD's Julie Ashmore: And they are directly across the street and next to other split-level, hmm, residence communities. Hmm, a lot of people live in there, adults, children, and you got a dental, you got a dentist's office on the, on the side prior to, hmm, and other businesses around and across the way that, that the Dorn VA Hospital as well. It's, it's fairly congested.

00:45:53 - 00:46:01 ***CACA Fernandez:*** *Now, the level of, well, animation and, and ranting and raving that, that the defendant was doing, did you regard this as disorderly?*

00:46:02 - 00:46:49 CPD's Julie Ashmore: Yes, I did. I did from the perspective of, tesk, hmm, when we were attempting to, to, to detain her, and I was attempting to calm her down, mostly for our concern out of her own well being, hmm, but also from the fact that people were stopping what they were doing. We had people staring out of the dentist office windows because they've heard, you know, heard some, you know, her voice, and then, of course, you had three uniform cars out. That draws attention naturally, hmm, had peoples driving along that were slowing traffic. There, there were so many things going on it could have been very, very dangerous.

00:46:50 - 00:46:50 ***CACA Fernandez:*** *Okay. And do you have any concerns for yourself? When a subject is accusing you of killing them, that's a relatively serious accusation.*

00:46:52 CPD's Julie Ashmore: Yes, it is.

00:46:50 - 00:46:59 ***CACA Fernandez:*** *So, as an uniformed officer in an, in an unknown neighborhood, did that cause you any concerns?*

00:47:02 - 00:47:38 CPD's Julie Ashmore: It causes me concern that people can be easily, depending on situations, people can be easily, hmm, what's the word, swayed, hmm, gotten involved, hmm, you know, it's if, if a, and I, I refer to anyone as "young man, young lady." So, you know, so, a young woman yelling "you're killing me," you get a lot of people upset, wondering and wanting to help.

00:47:39 - 00:47:41 ***CACA Fernandez:*** *And there is a poss, and in your experience, how do you believe that there is a possibility of that potentially escalating?*

00:47:42 CPD's Julie Ashmore: Well, also ---

00:47:43 **Attorney T. N. Lupton:** Objection, Your Honor, speculation.

00:47:44 - 00:48:01 ***CACA Fernandez:*** *Your Honor, well, I think to address that, I think this ordinance requires a certain level of description about why it could lead, what's the natural conclusion to this kind of behavior. Or what's the feared conclusion, so to speak.*

00:48:01 - 00:48:06 CMC's Carl L. Solomon: Go forward. I will allow it.

00:48:06 - 00:48:21 ***CACA Fernandez:*** *So, Officer Ashmore, what's the concern that, that, why would you want to arrest someone for disorderly under these circumstances to prevent, what would you worry about preventing in here?*

00:48:23 - 00:48:53 CPD's Julie Ashmore: I'm wanting to prevent this from escalation any further, hmm, on her part and as well as, I have been there numerous times, myself and other co-workers, on different calls involving, hmm, hmm, neighbors, hmm, and similar complaints, there was a lot of harsh feeling out there, a lot of harsh feeling, and I was really more from, not more, really not myself at all, really out of more concern for Dr. Faltas ...

00:48:54 - 00:48:58 ***CACA Fernandez:*** *And anything else you recall from this incident relating to the disorderly conduct?*

00:49:00 - 00:50:19 CPD's Julie Ashmore: Hmm, once we got, hmm, when, when she was, I actually was not able to put the cuffs on her. I started to and she started to pull away and, and started to yell louder, hmm, hmm, Officer McSwain was on scene as well as Officer, another officer, Rusher, Officer McSwain is retired but he is in the courtroom now, hmm, they actually put the handcuffs on Dr. Faltas. I checked them, double-checked them, hmm, using standard two-finger as far as what's tight, what's not. Hmm, we also double-checked that they

were double-locked so they would not tighten or cinch. We do as I do any person that I detain and/or arrest, hmm, she kept saying that the cuffs were too tight and she was screaming, **still screaming things like "I can't breathe," hmm, still more of the "you're killing me," all of which I can, I still kept trying to, I'm extremely patient.** I'm very patient, hmm; but it's very challenging with Dr. Faltas.

00:50:21 - 00:50:27 ***CACA Fernandez:*** *Okay. And, as far as you're aware, there were no medical issues that occurred during this incident?*
00:50:27 CPD's Julie Ashmore: No.
00:50:28 - 00:50:30 ***CACA Fernandez:*** *Nothing required medical attention at least?*
00:50:30 CPD's Julie Ashmore: No.
00:50:31 - 00:50:35 ***CACA Fernandez:*** *And, when you transported her to the Alvin S. Glenn jail, they accepted her. Correct?*
00:50:36 CPD's Julie Ashmore: Yes, they did.
00:50:36 - 00:50:42 ***CACA Fernandez:*** *Okay. So, and there is a procedure that they do to review and you've observed that as well?*
00:50:42 CPD's Julie Ashmore: Yes.
00:50:45 - 00:50:50 ***CACA Fernandez:*** *Okay. So, how long was she in your custody before you determined that you were going to arrest her also for disorderly conduct?*
00:50:52 - 00:51:41 CPD's Julie Ashmore: Ohh, being as when I first observed and then approached her, we, she was under detention at that point only ---
00:50:36 - 00:50:42 ***CACA Fernandez:*** *Right.*
00:50:42 CPD's Julie Ashmore: **Hmm, hmm, and she started, hmm, Officer McSwain, I believe, made a phone call first, hmm, well, Corporal Thom (phonetic), now Sergeant, my supervisor about the, hmm, the trespass part of this. Hmm, and, at that point, hmm, she was, she was under arrest for that; and, and I went ahead and, and charged the disorderly.**
00:51:42 - 00:51:43 ***CACA Fernandez:*** *Okay. All right. Hmm. No further questions.*
00:51:44 - 00:51:45 CMC's Carl L. Solomon: Thank you. Please answer any questions Mr. Lupton may have.
00:51:45 - 00:51:54 **Attorney T. N. Lupton:** Thank you, Your Honor. May it please the Court.
00:51:55 CMC's Carl L. Solomon: Yes, sir.
00:51:58 - 00:52:01 **Attorney T. N. Lupton:** Hmm. You are a trained sworn police officer. Correct?
00:52:02 CPD's Julie Ashmore: Yes, sir, I am.
00:52:02 - 00:52:06 **Attorney T. N. Lupton:** Hmm. You go to the Academy, you've been to the Academy.
00:52:06 CPD's Julie Ashmore: Yes, sir.
00:52:07 - 00:52:12 **Attorney T. N. Lupton:** Hmm. Lengthy training course on how to conduct yourself as an officer. Correct?
00:52:14 CPD's Julie Ashmore: Yes, sir.
00:52:17 - 00:52:21 **Attorney T. N. Lupton:** Hmm. I assume that you received field training with the City in how to conduct yourself as an officer.
00:52:22 CPD's Julie Ashmore: Yes, sir.
00:52:23 - 00:52:33 **Attorney T. N. Lupton:** All right. And, as a police officer, you are held to a different standard in dealing with the public than other members of the public.
00:52:33 CPD's Julie Ashmore: Absolutely.
00:52:34 - 00:52:37 **Attorney T. N. Lupton:** You're expected to represent the City.
00:52:37 CPD's Julie Ashmore: Yes.
00:52:37 - 00:52:41 **Attorney T. N. Lupton:** You're expected to show patience and fairness. Is that correct?
00:52:42 CPD's Julie Ashmore: Absolutely, yes.
00:52:43 - 00:52:45 **Attorney T. N. Lupton:** To show discretion.
00:52:46 CPD's Julie Ashmore: Absolutely.
00:52:47 - 00:52:50 **Attorney T. N. Lupton:** Not to go out and beat people up when they make you angry.
00:52:50 CPD's Julie Ashmore: Absolutely not.
00:52:51 - 00:53:10 **Attorney T. N. Lupton:** In fact, I'm sure that frequently in the course of, of your working as a police officer six and a half years, you had quite a number of people that, for lack of a better term, act out when you're dealing with them.
00:53:10 CPD's Julie Ashmore: Yes.
00:53:11 - 00:53:16 **Attorney T. N. Lupton:** And you don't beat them up, do you?
00:53:16 CPD's Julie Ashmore: No.
00:53:16 - 00:53:20 **Attorney T. N. Lupton:** That's part of the requirements of being a police officer.
00:53:20 CPD's Julie Ashmore: Yes, sir.
00:53:21 - 00:53:33 **Attorney T. N. Lupton:** Is to respond to these kinds of petty insults without resorting to physical violence against the person.
00:53:33 CPD's Julie Ashmore: Yes.
00:53:34 - 00:54:04 **Attorney T. N. Lupton:** All right. **So, the comments that she made, hmm, you talked about she said words to the effect of "you're killing me," hmm, or, hmm, and that, and you also talked later about,**

I think you said that was related to her saying that she couldn't breathe. "You're killing me." Hmm. *Was it also she was complaining about the heat inside the car, being hot inside the car?*

00:54:04 - 00:54:12 CPD's Julie Ashmore: Hmm. She talked about it. I actually had the air-blowing windows down. I was extremely ---

00:54:14 - 00:54:32 **Attorney T. N. Lupton:** Well, I understand. I'm not saying whether or not it's a valid complaint. **But she was, the context of "You're killing me" was the, her belief of the heat and her belief of, *of how the handcuffs were too tight and her belief of how all of that caused her to have trouble breathing.***

00:54:34 - 00:54:38 CPD's Julie Ashmore: She was actually, she was not, she was talking about "you're killing me" prior to being in the car.

00:54:40 - 00:54:43 **Attorney T. N. Lupton:** But it was the handcuffs in the car, continued in the car.

00:54:44 CPD's Julie Ashmore: Yes.

00:54:45 - 00:54:46 **Attorney T. N. Lupton:** So, all of that is what she's talking about.

00:54:47 CPD's Julie Ashmore: Yes, sir.

00:54:48 - 00:55:18 **Attorney T. N. Lupton:** Hmm. Now, the Chief Carter, hmm, making comments about him being corrupt and crooked. Hmm. Those are, would it be fair to say that that and the "I'm gonna have your job" or "I'm gonna say words to this effect" "I'm gonna report you for this." Would that be, would it be fair to say that those are the kinds of things police officers, in your experience, you and other police officers hear fairly often?

00:55:21 CPD's Julie Ashmore: Absolutely.

00:55:24 - 00:55:28 **Attorney T. N. Lupton:** If you had a dollar for every time somebody said "I'm gonna have your job," you wouldn't have to work here anymore?

00:55:29 - 00:55:32 CPD's Julie Ashmore: Eee. I think that's pretty consistent.

00:55:32 - 00:55:54 **Attorney T. N. Lupton:** All right. And then the, she was talking about wanting her stuff to come with her because she was afraid that you all would steal it. That was the context of her talking about you, you all stealing her stuff. **And are you aware that she believes that some of her stuff had been stolen in the past?**

00:55:55 CPD's Julie Ashmore: Hmm, not really.

00:55:55 - 00:56:02 **Attorney T. N. Lupton:** Well, let me, let me rephrase. You are aware that there has been stuff seized from her and that she considers that to be theft?

00:56:05 CPD's Julie Ashmore: I wasn't aware of the seizure part.

00:56:05 - 00:56:16 **Attorney T. N. Lupton:** All right. Well, let me rephrase it further. All right. In towing the car, you all do seize it.

00:56:17 - 00:56:18 CPD's Julie Ashmore: Okay. I understand that.

00:56:19 - 00:56:26 **Attorney T. N. Lupton:** All right. Do you, you seize her property in the course of taking it into custody, towing it and inventorying it and all that?

00:56:27 CPD's Julie Ashmore: Yes.

00:56:27 - 00:57:01 **Attorney T. N. Lupton:** So, when you physically take it home with you, I'm not saying you, you're going through her CD collection and taking them home. But you did take her property as part of the seizure. It's returned to her as evidence through the appropriate procedures. But she considers that to be stealing.

00:57:01 CPD's Julie Ashmore: I guess.

00:57:02 - 00:57:03 **Attorney T. N. Lupton:** Hmm. So, any of that stuff, did that provoke you to want to have a physical fight with her?

00:57:03 - 00:57:05 CPD's Julie Ashmore: I've never been, I never felt provoked by her on any instance.

00:57:06 **Attorney T. N. Lupton:** So, none of that ---

00:57:07 - 00:57:10 CPD's Julie Ashmore: As far as physically fighting, no.

00:57:10 **Attorney T. N. Lupton:** None of that is ---

00:57:12 CPD's Julie Ashmore: frustration, really.

00:57:12 - 00:57:24 **Attorney T. N. Lupton:** Very frustrating. I understand that. But none of that gave you reasonable grounds to believe that she was trying to pick a fight with you, that she was trying to get a physical fist fight going with you.

00:57:24 CPD's Julie Ashmore: No.

00:57:25 - 00:57:32 **Attorney T. N. Lupton:** And you talked about the, hmm, stiffening up. She was not charged with resisting arrest. Correct?

00:57:33 CPD's Julie Ashmore: No.

00:57:35 - 00:57:52 **Attorney T. N. Lupton:** Hmm. You talked about the people gathering and, or people watching. Hmm. You also said that marked cars tend to draw attention. Any time somebody is arrest, arrested, people tend to look and watch. Correct?

00:57:53 CPD's Julie Ashmore: Yes.

00:57:54 - 00:58:00 **Attorney T. N. Lupton:** So, there is nothing unusual about that. People like to watch somebody getting put, put in jail.
00:58:01 - 00:58:04 CPD's Julie Ashmore: Oh, I, my concern is with her screaming
00:58:05 - 00:58:15 **Attorney T. N. Lupton:** All right. You weren't concerned that, that, that Mason or Steele would come rush to her aid and, and confront you and beat you up, were you?
00:58:16 CPD's Julie Ashmore: No.
00:58:05 - 00:58:15 **Attorney T. N. Lupton:** All right. In fact ---
00:58:16 - 00:58:20 CPD's Julie Ashmore: That wouldn't have happened, regardless.
00:58:25 - 00:58:31 **Attorney T. N. Lupton:** So, there wasn't any likelihood that these neighbors there, hmm, they weren't on her side. They were there as, as victims?
00:58:32 CPD's Julie Ashmore: Yes.
00:58:32 - 00:58:55 **Attorney T. N. Lupton:** Then, so, all these things were, all these things you're saying were in response to her belief that, I'm not saying it was right or wrong, but her belief that what you were doing as a police officer was wrong.
00:58:57 CPD's Julie Ashmore: Yes.
00:58:58 - 00:58:59 **Attorney T. N. Lupton:** So, she was protesting your police actions.
00:59:00 - 00:59:05 CPD's Julie Ashmore: Ah! Protesting but (chuckles).
00:59:05 **Attorney T. N. Lupton:** Very loudly.
00:59:05 - 00:59:15 CPD's Julie Ashmore: Very loudly, very lively, and creating a, a safety concern, a very serious safety concern with the residents and ---
00:59:15 - 00:59:22 **Attorney T. N. Lupton:** We talked about that they weren't going to jump in on her side and fight you, that she wasn't provoking a fight or a brawl.
00:59:23 - 00:59:29 CPD's Julie Ashmore: As far as people's rubber-necking, *i.e.,* what we call rubber-necking, driving, walking through this ---
00:59:20 - 00:59:35 **Attorney T. N. Lupton:** All right. But she was not provoking or promoting or inciting any kind of fight or brawl.
00:59:36 - 00:59:41 CPD's Julie Ashmore: She could have gotten people involved, yes.
00:59:41 - 00:59:42 **Attorney T. N. Lupton:** Those people were not on her side ---
00:59:43 - 00:59:45 CPD's Julie Ashmore: Probably no, they were not.
00:59:45 **Attorney T. N. Lupton:** All right.
00:59:46 - 00:59:50 CPD's Julie Ashmore: But if anyone was not familiar with her, she's a young lady in distress.
00:59:50 **Attorney T. N. Lupton:** She's in her fifties.
00:59:51 - 00:59:53 CPD's Julie Ashmore: And I, I call everyone "young lady, young man."
00:59:53 - 01:00:11 **Attorney T. N. Lupton:** Okay. But none of that was anything that was going on that day. There was no, nobody was rushing to her aid. She was protesting your actions, very loudly, but not trying to provoke a fight.
01:00:11 - 01:00:15 CPD's Julie Ashmore: She was disturbing the, the normal business of the residence.
01:00:15 - 01:00:22 **Attorney T. N. Lupton:** She was, she was very loud and boisterous in her protest; but she was not trying to provoke a fight with you.
01:00:23 - 01:00:25 CPD's Julie Ashmore: She was not trying to provoke a fight, I don't believe.
01:00:26 **Attorney T. N. Lupton:** Nothing further, Your Honor.
01:00:27 CMC's Carl L. Solomon: Thank you. Anything in follow up?
01:00:28 **CACA Fernandez:** No, Your Honor.
01:00:29 - 01:00:31 CMC's Carl L. Solomon: Thank you very much. You may be excused. Any additional witnesses?
01:00:33 - 01:00:36 ***CACA Fernandez:*** *Yes, Your Honor. City calls Charlie McSwain.*
01:00:39 - 01:00:46 CMC's Carl L. Solomon: Place your left hand on the Bible and raise your right. Do you swear or affirm to tell the truth, the whole truth and nothing but the truth, sir?
01:00:47 - 01:00:48 *CPD's Retired Charles McSwain:* Yes, sir.
01:00:39 - 01:00:46 CMC's Carl L. Solomon: [?] Have a seat
01:00:47 - 01:00:48 *CPD's Retired Charles McSwain:* Okay.
01:00:50 - 01:00:51 ***CACA Fernandez:*** *Officer McSawin, hmm, Former Officer McSwain, thank you. Your name for the record, please.*
01:00:51 - 01:00:52 *CPD's Retired Charles McSwain:* Charles McSwain.
01:00:53 - 01:00:56 ***CACA Fernandez:*** *And you are currently retired. Is that correct?*
01:00:57 *CPD's Retired Charles McSwain:* Yes, sir.
01:00:57 - 01:00:59 ***CACA Fernandez:*** *Hmm, when were you employed with the City of Columbia?*
01:01:01 - 01:01:11 *CPD's Retired Charles McSwain:* Hmm, from December 96 to, correct this, December 2006 to, hmm, to 2010.
01:01:12 - 01:01:15 ***CACA Fernandez:*** *Okay. And, as a police officer?*
01:01:15 *CPD's Retired Charles McSwain:* Yes, sir.

01:01:15 - 01:01:20 ***CACA Fernandez:*** *Okay. Directing your attention to July 8, 2010, were you a police officer at that time?*
01:01:20 ***CPD's Retired Charles McSwain:*** Yes, sir.
01:01:20 - 01:01:28 ***CACA Fernandez:*** *Okay. And I'm gonna hand you, hmm, a report that was, hmm, prepared for this incident in case you need to refresh your memory or anything.*
01:01:29 ***CPD's Retired Charles McSwain:*** Okay.
01:01:29 - 01:01:35 ***CACA Fernandez:*** *The, hmm, the incident location was 304 Byron Road. Do you recall this, this response?*
01:01:36 ***CPD's Retired Charles McSwain:*** Yes.
01:01:37 - 01:01:52 ***CACA Fernandez:*** *Okay.* ***And, you already heard officer Ashmore testify. So you're, you are, just by being present, somewhat familiar with what, why we're here: the disorderly conduct charge on Dr. Faltas. Hmm,*** *do you recall responding to this incident?*
01:01:53 ***CPD's Retired Charles McSwain:*** Yes, sir.
01:01:54 - 01:01:59 ***CACA Fernandez:*** *Okay. Would you tell us, and this location is within the City of Columbia. Is that correct?*
01:02:00 ***CPD's Retired Charles McSwain:*** Yes, it is.
01:02:00 - 01:02:05 ***CACA Fernandez:*** *Okay. And are you, did you know who Dr. Faltas was upon arrival?*
01:02:00 ***CPD's Retired Charles McSwain:*** Yes, sir.
01:02:00 - 01:02:05 ***CACA Fernandez:*** *Okay. Visually, you, you were able to identify her. You knew who she was.*
01:02:06 ***CPD's Retired Charles McSwain:*** Yes.
01:02:09 - 01:02:10 ***CACA Fernandez:*** *Okay. Tell us what you observed upon your arrival at the scene.*
01:02:10 - 01:05:45 ***CPD's Retired Charles McSwain:*** Upon arrival on the scene. Hmm, hmm, we were dispatched. Ms Faltas, hmm, she was on the scene. Officer Ashmore was on the scene. Hmm, having had prior, hmm, experience with Ms. Faltas, I kind of knew that she was on the property, she wasn't supposed to be on the property. But I had to get confirmation. So, what I did was I called Corporal Branham. He was not a sergeant at that time; and he confirmed that, yes, she is still under court order not to be on the property without police escort through Richland County and that we were able to place her under arrest at that time for trespassing. Hmm, during that time, hmm, I got out of the car. I went to Ms. Ashmore. Ms. Ashmore and what we discovered was Ms. Faltas would not allow us basically to talk to her. I mean, when you, when you're dealing with someone who's constantly yelling and telling you what to do, as police officers, we're trained t get control of the situation. I advised her that "Ma'am. You have to stop. You have to listen to what we're saying." She would not do that. She wanted to get in her car. She wanted to leave. And we explained to her: "Ma'am, you cannot leave the scene right now. You're being detained." Well, she would not let us detain her. She would not give us her keys. So, what the problem was that she was causing a scene. Hmm, we do. We've responded out there before. There is apartment complexes all around there. So, there are a lot of people out there I won't necessarily say like us; but we have arrests in the area. So, we're always concerned about our safety. So, what we wanted to do was just detain her, get her in the car, talk to the people that called us out, which is the owner of the apartment complex. But Ms. Faltas would not allow us to do that. Hmm, she says, well, no, no. She keeps yelling loud. So, at the time, hmm, once we got confirmation that we have to place her under arrest, we tried to put the hand cuffs, I mean we tried to grab her arms behind her back. "Ma'am, you've got to put your arms behind your back." She's defiant. She's, her stance is like: you're not gonna do anything. She had her keys in her hand. So, number one, keys are a weapon. She would not give up the keys. We asked her several times "Ma'am, you've got to give up the keys." "I would not give up the keys." We had to physically take her keys from her. And what I was fearing for is that, we didn't want to place her on the ground. At that point we were worried about our own lives, the safety of our own lives. So, so, we were able to kind of get. I know she's fifty-some-years old but she is very strong. And so, we finally got her arms around her, I mean behind her back to be able to get the handcuffs on her. At that time, we took the keys from her. We took her purse. We explained to her that "Ma'am, all this stuff will get back to you. Right now, you're being arrested for trespassing." Hmm, she continues, hmm, I mean I know let me back up on something because I'm going fast. But while we're trying to get her hands, I mean her arms behind her back, she's constantly yelling loud, she's screaming, she's calling names, she's in a defiant state, she's, she's trying to excite people to come over: "Oh! You're hurting me. You've got my arms. You're doing this." And it's like "Ma'am, we're barely applying pressure on you. Don't you know, if we really wanted to get your hands behind your back, we could have." So, we're just trying to get her to comply. She would not comply. She continued on. So, you know, you got a crowd that's coming out. We have people over there, we have people in this whole complex area that we're worried about that might come out and think we're actually hurting this lady. So, we were trying to the situation under control so that we won't, you know, no one else would get involved and, and this escalating to something else, someone else getting hurt, that's the purpose.

01:05:45 - 01:05:46 ***CACA Fernandez:*** *Now, you observed the neighbors. Did you also observe the dentist's office, people in the dentist's office.*

01:05:46 -01:05:57 ***CPD's Retired Charles McSwain:*** Yes, neighbors, dentist's office, cars slowing down to the point of where they almost stopped, I mean, you know, **and like I said, we've had problems in the area before. So, we were very worried.**

01:05:57 - 01:06:12 ***CACA Fernandez:*** *And, not that this was the case, but taking what she was essentially yelling as true, some sort of police brutality in process, in progress, certainly that would present a safety concern for you. Is that, would that be accurate?*

01:06:12 -01:06:13 ***CPD's Retired Charles McSwain:*** Yes, very much. Yes, very much.

01:06:14 - 01:06:15 ***CACA Fernandez:*** *If someone were to believe that?*

01:06:15 -01:06:45 ***CPD's Retired Charles McSwain:*** Right. And that's, that's the thing. When you see three officers, two officers, trying to get this, and it's because we're not really applying a lot of pressure, they might think we're really trying to really wrestle this lady but actually we're just trying to get her to comply. And so when people see that, you know, you know, we're in fear of our lives. So, we're trying to get control of the situation real fast. And at the time, she's resisting us the whole way. And, and she's causing a crowd, we were in fear for our lives, we fear for her, her safety. And a lot of times, in situations like that, we're trying to get her out of her and get everything under control, get her out of here, get everything resolved before other people getting hurt and getting it involved here.

01:06:45 - 01:06:49 ***CACA Fernandez:*** *No further questions. Thank you.*

01:06:49 - 01:06:51 **CMC's Carl L. Solomon:** Okay, Mr. Lupton.

01:06:51 - 01:06:54 **Attorney T. N. Lupton:** Thank you, Your Honor. Has she tried to kill you?

01:06:54 – 01:06:56 ***CPD's Retired Charles McSwain:*** Has she ever tried to kill me?

01:06:57 - 01:06:59 **Attorney T. N. Lupton:** Yeah. Has she ever come at you with a knife or a gun?

01:07:02 – 01:07:05 ***CPD's Retired Charles McSwain:*** No. But ---

01:07:06 - 01:07:09 **Attorney T. N. Lupton:** Has she ever tried to kill anyone that you're aware of? Has she ever come at any officer with a knife or a gun or any weapon?

01:07:10 – 01:07:13 ***CPD's Retired Charles McSwain:*** I can't say that, sir. I can't speak of every officer.

01:07:13 - 01:07:14 **Attorney T. N. Lupton:** That you're aware of?

01:07:16 – 01:07:17 ***CPD's Retired Charles McSwain:*** Not to my knowledge.

01:07:18 - 01:07:24 **Attorney T. N. Lupton:** All right. So, this talk about you're in fear from your life. She's over fifty. Correct?

01:07:25 – 01:07:26 ***CPD's Retired Charles McSwain:*** It doesn't matter, yes.

01:07:28 - 01:07:32 **Attorney T. N. Lupton:** She's shorter than me. She's very short. She's handicapped. Correct?

01:07:35 – 01:07:38 ***CPD's Retired Charles McSwain:*** Hmm, I don't know what you mean by handicapped. I wasn't aware of that.

01:07:38 - 01:07:43 **Attorney T. N. Lupton:** She has a handicapped sticker on her car. Does she not?

01:07:45 – 01:07:48 ***CPD's Retired Charles McSwain:*** I am not aware of that.

01:07:48 - 01:07:52 **Attorney T. N. Lupton:** So, when you inventoried her car, you did not notice the handicapped sticker?

01:07:55 – 01:07:58 ***CPD's Retired Charles McSwain:*** I can't recall that, sir. You asked me this question. I can't recall.

01:07:58 - 01:08:08 **Attorney T. N. Lupton:** All right. And she has difficulty getting around because of, hmm, physical problems. She does not move quickly. She hobbles, basically. Is that not correct?

01:08:09 – 01:08:28 ***CPD's Retired Charles McSwain:*** Sir, I have seen her on several occasions walking. The first time that I met Ms. Faltas was, hmm, tesk, she was escorted there by investigator to go into her property, and at that time to get some things out of her apartment and, and honestly, she walked, she looked like she walked okay to me. And I was not, and I don't recall the cane.

01:08:28 - 01:08:07 **Attorney T. N. Lupton:** Well. She didn't have the cane but she walked ---

01:08:09 – 01:08:25 ***CPD's Retired Charles McSwain:*** Let me tell you something.

01:07:58 - 01:08:07 **Attorney T. N. Lupton:** All right.

01:08:09 – 01:08:25 ***CPD's Retired Charles McSwain:*** I'm almost fifty years old, I mean, I don't, I mean ---

01:07:58 - 01:08:07 **Attorney T. N. Lupton:** All right.

01:08:09 – 01:08:25 ***CPD's Retired Charles McSwain:*** I have (?) problems, sir. I am forty-seven years old.

01:08:38 - 01:08:50 **Attorney T. N. Lupton:** Okay. When you talk bout inciting people, did she ever call people to do violence against you? Did she ever ask anyone to do violence against you?

01:08:52 – 01:08:53 ***CPD's Retired Charles McSwain:*** Sir, when someone ---

01:08:38 - 01:08:50 **Attorney T. N. Lupton:** Yes or no, please.

01:08:52 – 01:08:53 ***CPD's Retired Charles McSwain:*** Well, you asked me a question. I can't explain?

01:08:38 - 01:08:50 **Attorney T. N. Lupton:** You certainly can; but I would like a yes or no answer.

01:08:52 – 01:08:53 ***CPD's Retired Charles McSwain:*** Okay. Repeat the question again.

01:09:03 - 01:09:05 **Attorney T. N. Lupton:** Did she ever on that day ask anybody to do violence against you?

01:09:08 ***CPD's Retired Charles McSwain:*** (Witness chuckles.) No.

01:09:09 - 01:09:12 **Attorney T. N. Lupton:** All right. And I'm certainly, you certainly have a right to explain.

01:09:12 – 01:09:18 ***CPD's Retired Charles McSwain:*** Okay. When someone is trying to incite someone, sir, mm, when

you're yelling that someone is doing something to you and it's not happening to you, then you're trying to get someone to come to your rescue.

01:09:19 **Attorney T. N. Lupton:** All right.

01:09:20 - 01:09:30 ***CPD's Retired Charles McSwain:*** When your child needs help with something, she's trying to get your attention to come over to help out, by crying or, or, hmm, things of that nature.

01:09:30 **Attorney T. N. Lupton:** All right.

01:09:30 - 01:09:30 ***CPD's Retired Charles McSwain:*** *So that, I'm just saying* ***people in that area that we had made arrests, drug arrests and other things like that.*** So, you have to understand from the officers' standpoint, that whole area how we view it is that this woman, it's not, and, and ---

01:09:4 - 01:09:12 **Attorney T. N. Lupton:** She was protesting your actions, was she not?

01:09:32 - 01:09:38 ***CPD's Retired Charles McSwain:*** She was, wasn't, she protesting her own actions because she was, she was accusing us of something we didn't do

01:09:44 - 01:09:52 **Attorney T. N. Lupton:** You don't like her because she accused you of (?).

01:09:52 - 01:10:08 ***CPD's Retired Charles McSwain:*** It's not true. I have no problem with that lady. I barely even know her to, until I got involved with her. I didn't even know who she was. So, I don't, I don't know her. But my thing is, what I'm trying to explain to you is that, when an officer is looking at, we're trained to see things. Okay? We are here to try to protect. What if somebody else had gotten involved in that situation and gotten ---

01:10:09 - 01:10:10 **Attorney T. N. Lupton:** Did someone get involved?

01:10:11 - 01:10:12 **CMC's Carl L. Solomon:** Let him finish.

01:10:13 - 01:10:25 ***CPD's Retired Charles McSwain:*** Well, no. You're saying did it? No. But that's because we got the situation under control as best we could. So, that's the problem, **like I said, this is a bad, this area is not as clean as you think it is, sir.**

01:10:26 - 01:10:27 **Attorney T. N. Lupton:** Oh, I've been there. I know what it's like.

01:10:28 - 01:10:29 ***CPD's Retired Charles McSwain:*** Oh, you live, do you live nearby there?

01:10:29 - 01:10:30 **CMC's Carl L. Solomon:** Now, he gets to ask you the questions, sir.

01:10:31 - 01:10:38 **Attorney T. N. Lupton:** She accused you all of, of stealing in response to your actions of trying to take things from her. Correct?

01:10:40 ***CPD's Retired Charles McSwain:*** Yes.

01:10:41 - 01:10:43 **Attorney T. N. Lupton:** So, she was protesting your actions.

01:10:43 - 01:10:46 ***CPD's Retired Charles McSwain:*** You mean did she accuse us of stealing that day?

01:10:46 **Attorney T. N. Lupton:** Yes.

01:10:48 - 01:10:58 ***CPD's Retired Charles McSwain:*** She wanted her purse. She wanted her purse and her things to be with her. But we explained her: "You're under arrest, ma'am. You cannot get your purse" because of, once again, we're thinking if a weapon or something is in there that she can use to harm ---

01:11:59 **Attorney T. N. Lupton:** I understand.

01:11:00 - 01:11:10 ***CPD's Retired Charles McSwain:*** then, our safety comes first. Her purse was inventoried before her car was ever towed. Everything documented.

01:11:11 - 01:11:23 **Attorney T. N. Lupton:** With regards to her statement, her loud and boisterous statements as you described them, she talked about protesting that you did not have a right to arrest her. Correct?

01:11:24 - 01:11:25 ***CPD's Retired Charles McSwain:*** Amongst several other things.

01:11:26 - 01:11:47 **Attorney T. N. Lupton:** All right. So, she was protesting your right to arrest her, your action in arresting her. She was talking about, hmm, basically, the chief being crooked and, hmm, having your job and you're trying to kill me or that you're killing me with the actions you were taking. **She was protesting your actions. Correct?**

01:11:48 - 01:11:51 ***CPD's Retired Charles McSwain:*** Okay, when I ask you, can I ask you, when I ask [sic], can I explain?

01:11:51 - 01:11:53 **Attorney T. N. Lupton:** You certainly have that right.

01:11:54 - 01:11:55 ***CPD's Retired Charles McSwain:*** Okay. Hmm, she was doing more than protesting.

01:11:56 - 01:11:57 **Attorney T. N. Lupton:** Did she at any point ---

01:11:58 - 01:12:02 ***CPD's Retired Charles McSwain:*** There is a difference between protesting and being defiant.

01:12:03 - 01:12:07 **Attorney T. N. Lupton:** All right, she was defiant. Did you charge her with resisting you?

01:12:01 ***CPD's Retired Charles McSwain:*** NO.

01:12:03 - 01:12:07 **Attorney T. N. Lupton:** All right ---

01:12:07 - 01:12:09 ***CPD's Retired Charles McSwain:*** But that's part of it.

01:12:10 - 01:12:29 **Attorney T. N. Lupton:** All right. So, we're not here to try a resisting case. Are we? With regards to the public disorderly, with regards to disorderly conduct that she was charged with, the words that she said to you, did they cause you to want to beat her up? Yes or no.

01:12:30 - 01:12:31 ***CPD's Retired Charles McSwain:*** Did it cause us to want to beat her up?
01:12:31 - 01:12:34 **Attorney T. N. Lupton:** Yeah. Did you want to beat her up because of what she has said?
01:12:35 - 01:12:37 ***CPD's Retired Charles McSwain:*** If we thought we're in a fight, yes, we did. I mean
01:12:38 - 01:12:34 **Attorney T. N. Lupton:** You thought you were in a physical fight?
01:12:35 - 01:12:32 ***CPD's Retired Charles McSwain:*** This woman, this woman
01:12:48 - 01:12:46 **Attorney T. N. Lupton:** Did you want to beat this woman up for what she said?
01:12:35 - 01:13:12 ***CPD's Retired Charles McSwain:*** I am trying not to. I'm trying to control the site solely. So, my thing is: did I want to beat her up? No. We want to detain her. We wanted to, hmm, we wanted not, we didn't want to have a problem with anyone on the outside. We didn't want to have other people because, **once again, this is a drug area, when people see an officer, they don't like seeing officers over there.** Did I think she was trying to push the officer to cause her physical harm? Yes. Her own action was basically ---
01:13:13 - 01:13:24 **Attorney T. N. Lupton:** Do you believe her protesting your actions was designed to provoke you into beating her up?
01:13:25 - 01:13:29 ***CPD's Retired Charles McSwain:*** I think that she wanted to provoke us to do something
01:13:30 - 01:13:38 **Attorney T. N. Lupton:** Were you reasonably likely to respond to her protesting your actions by beating her up, by engaging in a physical fight with her?
01:13:39 - 01:13:42 ***CPD's Retired Charles McSwain:*** Do I believe? Say that one more time.
01:13:42 - 01:13:50 **Attorney T. N. Lupton:** Is it reasonable that you were going to be provoked into engaging in a physical fight with her based on her protesting your actions?
01:13:51 - 01:13:54 ***CPD's Retired Charles McSwain:*** Do I believe, I'm trying to understand what you're saying.
01:13:54 - 01:14:15 **Attorney T. N. Lupton:** Yes.
01:13:51 - 01:13:54 ***CPD's Retired Charles McSwain:*** Would you rephrase that?
01:13:54 - 01:14:15 **Attorney T. N. Lupton:** All right. Is it reasonable to believe that you were going to respond, as a trained police officer, to the words she said, by engaging in a physical fight with her, by beating her up, in response to what she said to you?
01:14:16 - 01:14:21 ***CPD's Retired Charles McSwain:*** But you asked me something that's in hindsight. I mean ---
01:14:21 **Attorney T. N. Lupton:** I'm asking you ---
01:14:21 - 01:14:21 ***CPD's Retired Charles McSwain:*** I mean, when I got, when I got dispatched, did I believe that because of her actions that I am going to try to do something to her? No, I'm not. Just, no.
01:14:22 - 01:14:31 **Attorney T. N. Lupton:** No, you aren't. You're a police officer, or were at the time. Correct?
01:14:32 ***CPD's Retired Charles McSwain:*** Correct.
01:14:22 - 01:14:44 **Attorney T. N. Lupton:** You are expected and trained to have citizens pro test your actions and not respond with physical violence. Correct?
01:14:45 ***CPD's Retired Charles McSwain:*** Yes.
01:14:47 - 01:14:44 **Attorney T. N. Lupton:** So, somebody saying "you're corrupt" or "I'm gonna have you fired" those are not the kinds of things reasonably likely to provoke you fight. Is it? That's just not going to make you fight.
01:15:00 - 01:15:01 ***CPD's Retired Charles McSwain:*** For me as a police officer to fight her?
01:15:02 **Attorney T. N. Lupton:** Right, as a trained officer.
01:15:03 - 01:15:06 ***CPD's Retired Charles McSwain:*** I mean, but here is what I am trying to explain to you, sir: as a trained officer, yes, I'm trained to not overreact to my, but people in the civilian world ---
01:15:02 **Attorney T. N. Lupton:** It's still about you. I'm talking about ---
01:15:00 - 01:15:00 ***CPD's Retired Charles McSwain:*** --- it's different.
01:15:16 **Attorney T. N. Lupton:** Are you trained or not?
01:15:17 - 01:15:18 ***CPD's Retired Charles McSwain:*** Yes, I'm trained. I'm trained.
01:15:19 - 01:15:25 **Attorney T. N. Lupton:** I mean, people in that apartment, you know that they are not friends with her. Don't you? You knew that at the time.
01:15:27 - 01:15:32 ***CPD's Retired Charles McSwain:*** Hmm, I knew she had issues with one, hmm, one apartment, that's all I knew. One, one of the apartments, that's all I knew.
01:15:33 - 01:15:39 **Attorney T. N. Lupton:** You didn't charge her with resisting. Correct?
01:15:40 - 01:15:42 ***CPD's Retired Charles McSwain:*** We charged her with disorderly ---
01:15:43 - 01:15:46 **Attorney T. N. Lupton:** Well, actually, you didn't charge her with anything. But she was not charged with resisting by anyone.
01:15:48 - 01:15:55 ***CPD's Retired Charles McSwain:*** We charged her with disorderly because we thought that was based upon what happened and also safety.

01:15:56 **Attorney T. N. Lupton:** Nothing further, Your Honor.
01:15:57 - 01:15:59 CMC's Carl L. Solomon: All right. Mr. Fernandez, anything in response?
00:16:00 - 00:16:01 ***CACA Fernandez:*** *No, Your Honor*
01:16:03 - 01:16:04 CMC's Carl L. Solomon: You may be excused, sir. Anything further from the City.
01:16:05 - 00:16:06 ***CACA Fernandez:*** *Yes, Your Honor, the City calls Larry Mason.*
01:16:18 - 01:16:20 CMC's Carl L. Solomon: Do you swear or affirm to tell the truth, the whole truth and nothing but the truth, sir?
00:16:20 - 00:16:21 ***Larry Wayne Mason:*** Yes, sir. I do.
01:16:21 - 01:16:24 CMC's Carl L. Solomon: Please state, I'm sorry. Please have a seat and answer any questions
01:16:25 - 00:16:26 ***CACA Fernandez:*** *Mr. Mason, your name for the record, please.*
00:16:26 ***Larry Wayne Mason:*** Larry Wayne Mason.
01:16:27 - 00:16:32 ***CACA Fernandez:*** *Mr. Mason, you are the property manager and co-owner of 300 and 304 Byron Road apartments. Is that correct?*
00:16:32 - 00:16:35 ***Larry Wayne Mason:*** That is correct.
01:16:27 - 00:16:32 ***CACA Fernandez:*** *Okay. And you were at the time, during July 8, 2010, you were also operating in that same capacity. Is that correct?*
00:16:32 - 00:16:35 ***Larry Wayne Mason:*** That is correct.
01:16:42 - 00:16:58 ***CACA Fernandez:*** *Okay. You heard before what we're here to discuss right now for this trial. You've heard the testimony of two police officers. I, hmm, were you present that day on July 8, 2010, at 304 Byron Road?*
00:16:58 - 00:17:00 ***Larry Wayne Mason:*** **I was present and I actually made the call to 911.**
01:17:01 - 00:17:13 ***CACA Fernandez:*** *Okay. And, hmm, I know the basis for the call, your call may relate to another charge. I'm specifically concerned with disorderly conduct. Were you present during the behavior of the defendant that you've heard today? Were you physically present?*
00:17:14 - 00:17:20 ***Larry Wayne Mason:*** I was present when my wife and I were standing on the sidewalk. We did not interfere. We just stood there and watched.
01:17:21 - 00:17:30 ***CACA Fernandez:*** *Okay. And you heard the officer say how the defendant was behaving. Hmm, do you concur with their assessment of what was going on?*
00:17:30 - 00:17:32 ***Larry Wayne Mason:*** **I think they were light on her.** Explanation but ---
01:17:32 - 00:17:34 ***CACA Fernandez:*** *Well, how would you describe it then?*
00:17:35 - 00:17:58 ***Larry Wayne Mason:*** I would describe her as being very resistant, very disorderly, and she was attempting to get away from them, specially the first officer when she was by herself. She was trying to get in her car and leave and would not give her keys. **And, at one point, I thought I might have to help her because she was by herself; but then the other two officers arrived.** So, I did not, I did not interfere.
01:17:59 - 00:18:07 ***CACA Fernandez:*** *And do you agree with the general substance of what the defendant was shouting? What you heard the officers relay, is that what you remember also?*
00:18:07 - 00:17:13 ***Larry Wayne Mason:*** She was shouting all kinds of things: calling them names, talking about them killing her and all kinds of stuff like that.
01:18:14 - 00:18:20 ***CACA Fernandez:*** *And did you notice other neighbors around the various apartment complexes, the dentist's office, hmm, stopping what they were doing and coming?*
00:18:21 - 00:18:24 ***Larry Wayne Mason:*** A lot of people were coming, looking and watching to see what was going on.
01:18:25 - 00:18:32 ***CACA Fernandez:*** *Okay. And did you regard this as a disturbance that was disturbing just the general area, businesses, and neighbors?*
00:18:33 - 00:18:34 ***Larry Wayne Mason:*** Yes.
01:18:35 - 00:18:36 ***CACA Fernandez:*** *Okay. Thank you. No further questions.*
01:18:37 - 01:18:40 CMC's Carl L. Solomon: All right. Mr. Lupton, any questions?
01:18:43 - 01:18:45 **Attorney T. N. Lupton:** She was protesting what the police was doing to her. Correct?
00:18:46 - 00:18:47 ***Larry Wayne Mason:*** She was more than just protesting.
01:18:48 - 01:19:00 **Attorney T. N. Lupton:** Well, she was responding and expressing, in a very loud and boisterous way in your statement, hmm, what the police were doing.
01:19:01 - 01:19:27 ***Larry Wayne Mason:*** Yes; but I want, I want to say if it was me that was doing that, I would have been on the ground and I would have had ten handcuffs. By the way, I am fourteen years older than she is and I have more medical problems than she does. But they would have put me on the ground and hand-cuffed me. They would have put my wife on the ground and handcuffed her.
01:19:28 **Attorney T. N. Lupton:** Objection, Your Honor.
01:19:29 CMC's Carl L. Solomon: Any further questions for him?
01:19:30 **Attorney T. N. Lupton:** Yes, Your Honor.
01:19:31 - 01:19:34 CMC's Carl L. Solomon: I'm not going to strike it. I can sort through it. Any further questions for him?
01:19:34 - 01:19:35 **Attorney T. N. Lupton:** Thank you, Your Honor. Hmm. The people that were around, you said you didn't, you didn't interfere. Correct?

01:19:36 - 00:19:37 ***Larry Wayne Mason:*** No; we stayed, we stayed on the sidewalk and did not say anything.
01:19:37 - 01:19:38 **Attorney T. N. Lupton:** Everybody stayed on the sidewalk and didn't say anything?
01:19:39 ***Larry Wayne Mason:*** That's correct.
01:19:40 **Attorney T. N. Lupton:** Nothing further, Your Honor.
01:19:41 - 01:19:42 **CMC's Carl L. Solomon:** I think I have the inherent right and I want to ask to see if there is any objection to it
01:19:43 ***CACA Fernandez:*** *No objection.*
01:19:43 - 01:19:44 **CMC's Carl L. Solomon:** Does anybody object to my asking questions?
01:19:44 -01:19:45 ***CACA Fernandez:*** *I know what you said. No, no objections.*
01:19:49 - 01:19:51 **Attorney T. N. Lupton:** Your Honor, I think the Court has the right.
01:19:52 - 01:20:00 **CMC's Carl L. Solomon:** Mr. Mason, you indicated that she was calling them names but did not articulate what she said. Can you please tell me what she said?
01:20:01 - 01:20:29 **Attorney T. N. Lupton:** Your Honor, we'll object because nothing was provided; and I specifically asked and the Court specifically ruled that any verbal statements that were intended to be used to prove the disorderly conduct had to be turned over, hmm, yeah, two separate orders, two separate dates. And nothing from him was turned over on either date. So, I would object to anything ---
01:20:30 - 01:20:31 **CMC's Carl L. Solomon:** Consider the objection noted. Please answer the question.
01:20:32 - 01:20:36 ***Larry Wayne Mason:*** Calling them crooked and stuff like that, and, hmm.
01:20:30 - 01:20:31 **CMC's Carl L. Solomon:** Anything else?
01:20:32 - 01:20:36 ***Larry Wayne Mason:*** Just cussing at them, telling them they could not do that to her.
01:20:37 - 01:20:41 **CMC's Carl L. Solomon:** In cussing, what did she say?
01:20:51 - 01:20:52 ***Larry Wayne Mason:*** Well, telling them the F-word.
01:20:52 - 01:20:53 **CMC's Carl L. Solomon:** I need to know what she said?
01:20:52 - 01:21:06 ***Larry Wayne Mason:*** You can't fuck arrest me. You can't do this. You people are all crooked, and you all are going to kill me, you all are trying to kill me. And, and she also directed stuff towards myself and my wife.
01:21:07 - 01:21:11 **CMC's Carl L. Solomon:** Okay. Thank you very much. Any further questions from either of you?
01:21:12 **Attorney T. N. Lupton:** No, Your Honor.
01:21:12 ***CACA Fernandez:*** *Your Honor, no.*
01:21:13 - 01:21:14 **CMC's Carl L. Solomon:** Thank you. You may step down.
01:21:15 ***Larry Wayne Mason:*** Thank you, Your Honor.
01:21:16 ***CACA Fernandez:*** *The City calls Dinah Steele.*
01:21:26 - 01:21:30 **CMC's Carl L. Solomon:** Do you swear or affirm to tell the truth, the whole truth and nothing but the truth?
01:21:28 - 01:21:30 **Dinah Gail Steele** Yes.
01:21:14 - 01:21:16 ***CACA Fernandez:*** *Ms. Steele, your name for the record please*
01:21:32 - 01:21:33 ***Dinah Gail Steele:*** Dinah Steele Mason.
01:21:34 - 01:21:39 ***CACA Fernandez:*** *And, hmm, when, you are the property owner for 300 and 304 Byron Road. Is that correct?*
01:21:40 **Dinah Gail Steele** Yes.
01:21:41 - 01:21:46 ***CACA Fernandez:*** *Okay. And, directing your attention to July 8, 2010, were you present that day, for the incident we're here for today?*
01:21:47 **Dinah Gail Steele** I was.
01:21:48 - 01:21:54 ***CACA Fernandez:*** *Okay. And you've heard the testimony of two officers and your husband. Hmm, were you present during the arrest of Dr. Faltas?*
01:21:55 **Dinah Gail Steele** Yes, I was.
01:21:55 - 01:21:56 ***CACA Fernandez:*** *And do you know who Dr. Faltas is?*
01:21:28 - 01:21:30 **Dinah Gail Steele** Yes, I do.
01:21:48 - 01:21:54 ***CACA Fernandez:*** *And was she the one under arrest at the time?*
01:21:55 **Dinah Gail Steele** She was.
01:22:00 - 01:22:13 ***CACA Fernandez:*** *Okay. And what did you observe, hmm, knowing that we're here for the disorderly conduct charge, right now at least, what did you observe by the, Dr. Faltas doing and the officers attempting to do at least?*
01:22:14 - 01:23:04 ***Dinah Gail Steele:*** Dr. Faltas was trying to, to leave the scene. Hmm, the female officer stepped in front of her vehicle on the driver's side door. And Dr. Faltas tried to get around her. She said I'm leaving, you know, you can't hold me here. And she said, she was, the officer was very polite, very professional. "Dr. Faltas, calm down." You know. "We're just here to see what's going on." "Just tell me what your side of the story is. Just calm down." **She kept saying "You can't stop me. I want to leave." She kept trying to maneuver her way around. Hmm, the next officer showed up. Hmm. He tried to calm her down. She was screaming "You can't detain me." You know "You can't stop me. You're crooked."** All this other stuff. It took a total of three officers to get handcuffs on this woman. Three officers ---

01:23:05 **Attorney T. N. Lupton:** Your Honor ---
01:23:06 - 01:23:07 ***Dinah Gail Steele:*** They were extremely gentle ---
01:23:08 - 01:23:09 **CMC's Carl L. Solomon:** You have an objection?
01:23:10 - 01:23:17 **Attorney T. N. Lupton:** For the record, I object to any of the statements that relate, same objection: wasn't turned over.
01:23:18 - 01:23:19 **CMC's Carl L. Solomon:** The objection is understood and overruled. Just continue
01:23:20 - 01:23:21 ***CACA Fernandez:*** *Okay. Keep going.*
01:23:24 - 01:23:54 ***Dinah Gail Steele:*** They were very gentle with her. They kept trying things to calm her down. She was just, she wasn't, she was screaming, screaming "You're killing me." You know, if they, they just, gently, grabbed hold of her hand. I mean, like I said, I told my husband, I said "You know, if that's been us, you know, we would have been thrown on the ground and hauled off in a split second." I mean, they went overboard trying to be gentle and polite and professional.
01:23:54 - 01:23:56 ***CACA Fernandez:*** *And did you notice, and you said she was screaming at ---*
01:23:57 - 01:23:59 ***Dinah Gail Steele:*** Yes, she was.
01:24:00 - 01:24:01 ***CACA Fernandez:*** *--- at them. Loud enough for the people in the vicinity to hear?*
01:24:02 - 01:24:04 ***Dinah Gail Steele:*** Absolutely. That's the whole thing, she, you know, she wanted an audience.
01:24:05 - 01:24:06 ***CACA Fernandez:*** *Okay. You, you believe that was part of the purpose?*
01:24:07 - 01:24:09 ***Dinah Gail Steele:*** Absolutely, absolutely.
01:24:10 - 01:24:16 ***CACA Fernandez:*** *Okay. And he kinds of things she was saying,* ***you've heard some of the testimony from all the other witnesses.*** *But do you concur with those kinds of statements ---*
01:24:17 ***Dinah Gail Steele:*** Yeah.
01:24:18 - 01:24:20 ***CACA Fernandez:*** *--- statement about trying to kill me and ---*
01:24:21 ***Dinah Gail Steele:*** Absolutely.
01:24:21 ***CACA Fernandez:*** *--- stealing my possessions?*
01:24:21 - 01:24:22 ***Dinah Gail Steele:*** Absolutely.
01:24:22 ***CACA Fernandez:*** *Okay.*
01:24:22 - 01:24:26 ***Dinah Gail Steele:*** Yes. She, **she was telling the chief [sic] that they could not, hmm, enter her vehicle, *she wouldn't give up her keys.***
01:24:27 ***CACA Fernandez:*** *Okay.*
01:24:28 ***Dinah Gail Steele:*** You know.
01:24:28 - 01:24:33 ***CACA Fernandez:*** *And the, did you notice neighbors from the surrounding apartments coming out?*
01:24:34 ***Dinah Gail Steele:*** Everywhere.
01:24:34 ***CACA Fernandez:*** *Okay.*
01:24:34 - 01:24:04 ***Dinah Gail Steele:*** Everywhere, everybody's coming out of the ---
01:24:34 ***CACA Fernandez:*** *and the businesses ---*
01:24:34 - 01:24:44 ***Dinah Gail Steele:*** --- out of the, they were looking out of the windows, coming out the doors, they were standing, they were stopping traffic.
01:24:44 - 01:24:45 ***CACA Fernandez:*** *Okay. No further questions. Thank you.*
01:24:45 - 01:24:46 **CMC's Carl L. Solomon:** It's your turn, Mr. Lupton.
01:24:47 - 01:24:49 **Attorney T. N. Lupton:** Nobody interfered. Correct?
01:24:50 - 01:24:51 ***Dinah Gail Steele:*** Absolutely not.
01:24:51 - 01:24:54 **Attorney T. N. Lupton:** And her actions were in response to her belief that ---
01:24:54 - 01:24:55 ***Dinah Gail Steele:*** I'm sorry. I didn't hear that, sir.
01:24:56 - 01:25:09 **Attorney T. N. Lupton:** Oh. I apologize. I'll move a little closer. Hmm, her, her protesting was in response to her, at least apparent, belief that the officers didn't have the right to do what they were doing. Is that correct?
01:25:10 ***Dinah Gail Steele:*** Yes.
01:25:11 **Attorney T. N. Lupton:** Nothing further.
01:25:12 **CMC's Carl L. Solomon:** Anything in reply?
01:25:12 ***CACA Fernandez:*** *No, Your Honor.*
01:25:12 - 01:25:13 **CMC's Carl L. Solomon:** Thanks very much.
01:25:14 ***Dinah Gail Steele:*** Thank you, sir.
01:25:15 - 01:25:16 **CMC's Carl L. Solomon:** Any further witnesses from the City?
01:25:17 - 01:25:18 ***CACA Fernandez:*** *No, Your Honor. The City rests.*
01:25:19 - 01:25:24 **CMC's Carl L. Solomon:** All right. Any witnesses for the defense?
01:25:24 - 01:25:30 **Attorney T. N. Lupton:** Your Honor, we'd make, we have no witnesses. We'd make a directed verdict motion at this time.
01:25:31 - 01:25:34 **CMC's Carl L. Solomon:** I'd like to, I'm happy to hear the motion.
01:25:34 - 01:28:54 **Attorney T. N. Lupton:** Your Honor, hmm, two-fold motion. Hmm. The first part is strictly on the stat-

ute itself, hmm. Disorderly conduct defined by section 14-91 of the Municipal Code says "It shall be unlawful for any person within the city limits to engage in the following knowing, or having reasonable ground to know, that it will tend to promote or provoke a fight, assault or brawl." Your Honor, there is no testimony that she was trying to provoke a fight or brawl with the police officers. She was protesting their actions. Whether or not they could have charged her with resisting is, is immaterial because they didn't. The City brings out lots of evidence about her being loud and boisterous, crowd gathering, and it disrupting things by the crowds and the traffic slowing and people walking out and watching. All that is irrelevant to the City ordinance. That many have some relevance to the state charge of public disorderly conduct and breach of peace. But within the city limits, it has to be conduct done knowing, or reasonably having ground to believe, that it will promote or provoke a fight, assault or brawl. And based on the fact that these are trained police officers, her protest was not in any way designed, or believably expected to promote a fight, assault, or brawl. They simply, it was loud and boisterous, which might have a different issue if it was charged under the state disorderly or public breach of the peace charges. But it doesn't fit that statute. The second element is *State v. Perkins,* hmm, found at 306 South Carolina 353. *State v. Perkins,* is a very brief opinion; but it is extremely on point. Hmm, in that opinion, hmm, it says "First Amendment protects a significant amount of verbal criticism and challenge directed at police officers. State may not punish a person for voicing objections to police officers where no fighting words are used. To punish only spoken words addressed at police officers, a statute must be limited to fighting words that by their very utterance inflict injury or tend to incite immediate breach of peace." Hmm, it further noted the United States Court, the United States Supreme Court fighting words exception may require narrow application in cases involving words addressed to a police officer because, quote "because a properly trained officer may reasonably be expected to exercise a higher degree of restraint than the average citizen." Hmm, it goes on to say that, hmm, "the freedom of individuals verbally to oppose or challenge police action without thereby risking arrest is one of the principal characteristics by which we distinguish a free nation from a police state."

01:28:58 - 01:28:59 **CMC's Carl L. Solomon:** Okay, I understand your motion.

01:28:59 - 01:29:34 **Attorney T. N. Lupton:** And based on that, her actions, clearly, by all indications, were in response to, hmm, her belief that their actions were not justified or appropriate. Hmm, whether she was loud or boisterous in voicing the objections is irrelevant. Hmm, and whether or not they could have charged her with resisting arrest is irrelevant. She did not engage in fighting words or a fighting stance. This is not a disorderly under the, hmm, City Code.

01:29:34 - 01:29:35 **CMC's Carl L. Solomon:** Mr. Fernandez, any response?

01:29:36 - 01:31:24 ***CACA Fernandez:*** *Yes, Your Honor. The ordinance covers behavior that is provided here. It says, and it's important to remember that the ordinance is, is taken, taken on an objective standard, not subjective. And, by that, it means that when it says "tend to," it means that could this have led to worse things, not did it lead to worse things, not, not, not, would it even be likely to lead; but could it lead to worse things. And, hmm, the officers both testified that, hmm, the tone. I think we can agree on certain things. I think the officers are trained to deal with difficult individuals. I agree. I agree entirely. She wasn't arrested because of what she was saying to the officers. She was arrested for the subsections of disorderly that relate to the lawful activity of others, disturbing the lawful, a per, a person's ability to go about their day without being unreasonably disturbed by conduct that would tend to cause a fight or brawl. And also some, I, I, I forget the number; but the crude and, and other physical animation. She was flailing and she was, hmm, yelling curse words. I think that certainly people in the public would take offense to, to the point they would either come to her rescue and that means serious trouble for police if someone were to do that, or take offense to the language she was using if there's children around or the behavior of screaming. Hmm, there was businesses that were disrupted. The dentist's office was unable to conduct his normal business because of what she was doing with everyone was looking out the window or going outside. Hmm, there were neighbors that were unable to watch TV or go about their daily business because of what she was doing. And that is exactly what this ordinance is for. So, it's conduct that would tend to promote a fight or brawl by and then the two subsections that we would proceed under. Hmm,*

01:31:25 - 01:31:26 **CMC's Carl L. Solomon:** To make sure I understand that, which two subsections?

01:31:26 - 01:31:26 ***CACA Fernandez:*** *The subsection relating to the lawful activity of others and then the crude or whatever behavior, hmm, I'm sorry, I don't have that ---*

01:31:25 - 01:31:26 **CMC's Carl L. Solomon:** The other, other obscene epithets ?

01:31:40 - 01:32:42 ***CACA Fernandez:*** *That's correct. And so, what I would say is that, hmm, by yelling "the police is killing me, they're stealing my stuff," that is not just expressing your, your. That goes beyond merely just expressing your displeasure or your protestations. That is a plea for, that is a Rodney King type of plea. You want an audience; and you want something done. And the only natural conclusion to that would be that she was saying "I want something done here. I am being victimized." Either, she said that she was going to be killed. And if someone took that seriously, then you have a major, major problem for law enforcement. As Mr. McSwain said, hmm, they are trained to deal with the contingencies. And in that case, if you were to believe her, that she really thought she was being killed and if someone was to believe that and said I'm gonna do something about this, then now the officers are in a fire fight. And that's what they are prepared, they are trained to prevent that. And that's what the ordinance is for. It's to cut off the worst case scenario. So, again, it's not what, whether it reasonably would happen, it's not whether it did happen, it's whether it could've happened. And that's what the ordinance is designed for.*

01:32:43 - 01:34:38 **Attorney T. N. Lupton:** Your Honor, I would, first of all, I would strongly dispute the, whether it reasonably could happen. It's having reasonable grounds is one of the words of the statute. Hmm, and as far as the stretching "tend to" to "it could possibly happen," I think, hmm, is unwarranted under the statute. "Could happen." Anything could happen. "Tend to happen" means a reasonable likelihood that it's going to happen, not just there is some theoretical possibility. With regards to subsection 1, "to utter," there is no lewd or obscene, hmm, anything. The F-word is protected under the First Amendment. It may not be polite or appropriate; but it's protected under the First Amendment. There is a U.S. Supreme Court case where a person had in public a T-shirt that said "F the draft." Hmm, the Supreme Court has held that word is protected under the First Amendment. Hmm, the "knowingly engage in overt conduct that interferes with the pursuit of lawful occupation." Your Honor, they didn't charge her with resisting. You can't backdoor another charge by trying to point to that. And that has to relate to it was going to cause a fight or brawl. And there's just no evidence of that. She has a First Amendment right to protest police actions. And I understand that they want their defendants to go quietly. But she has a right to protest. And she did that. The First Amendment doesn't say that, just because others might react poorly to your expression of your First Amendment rights, that your First Amendment rights, your, your protected speech is now criminalized.

01:34:30 - 01:34:54 **CMC's Carl L. Solomon:** I understand. All right. As to the standard in the considering of directed verdict, the directed verdict motion is denied. Closing arguments. I don't know that they'd be much different than what I've heard; but I'd be happy to hear what you have to say.

01:34:55 - 01:31:26 ***CACA Fernandez:*** *Yeah, Your Honor, I'm gonna rely on my directed verdict argument. And then, the only thing I would add is addressing counsel's latest arguments. Hmm, not talking when I referenced "could happen," we're talking about. We're all familiar personally with Dr. Faltas. So, a lot of counsel's questions on cross were related to "How could this lady pose a threat?" You know "Did she, did she actually really pose a threat? Did you really fear for your safety?" And to that, I'd say that's why it's irrelevant to, to the ordinance as applied here.* ***Officer McSwain testified they are trained to take the situation in a vacuum.*** *You don't, you don't consider, you don't just drop your guard because you have what appears to be a female or someone who may or may not have health conditions, although I'd dispute that. You,* ***you treat the subject the same as if you would treat the violent of felons.*** *You treat them the same because they're trained that that's, bad things happen when you drop your guard. And it's, it's, there is a lot of danger, inherent danger. Hmm, Mr., Officer McSwain also testified that she had keys that she didn't want to give up. Certainly, keys can be a danger. There's all sorts of reasons why they treated the doc, Dr. Faltas the way they did. And when that kind of animated behavior, to the extreme she took it, it goes far beyond merely protesting "I'm being arrested an, unlawfully." She took it to the level where she is making a plea to the outside world that she wanted something done, that she was gonna be killed, hmm, that is far, that is 180 degrees from just expressing her opinion. And for that, there a statute with a subsection about disturbing unlawful [sic] activity. And what she did certainly could have roused enough people around to take action either by herself or others.*

01:36:45 **CMC's Carl L. Solomon:** Yes, sir.

01:36:45 - 01:40:53 **Attorney T. N. Lupton:** Your Honor, addressing the, the closing argument, we are now past all of the evidence. And now, they have to prove their case beyond a reasonable doubt. Looking at the evidence in this case, the evidence, hmm, from the City's officers, shows that she became agitated as a result of police action. The, Officer Ashmore testified that she approached and tried to detain and that, after that, hmm, Dr. Faltas became agitated. She talked about, hmm, the words that were uttered. All of those words are protected by the First Amendment against, hmm, police action. It may not have been polite. It my have been loud. It may have drawn a crowd. But First-Amendment-protected speech is not illegal just because it draws a crowd. The First Amendment exists so that we can communicate to others. There is nothing in the testimony that shows that she was physically assaultive. They talked about her stiffening up and not wanting to give her keys, wanting to keep her stuff, hmm, that she didn't want to give up her keys, they had to physically take her keys from her. The City's witnesses talked about her stiffening up and not cooperating with the handcuffs. None of that, under the code section, is reasonably tending to provoke a fight or assault or brawl. It may or may not have been resisting. We're not here to argue that because that wasn't charged. But it did not reasonably tend to provoke a fight. She was simply saying "You don't have a right to do this." Now, she, whether she's right or wrong about the police officers having the right to take her in is beside the point. She believed that her actions, that her protests were legitimate; and she voiced them. Hmm, there was no evidence that there was any reason on anybody's part to go and assault the police, that there was any reasonable likelihood that that was going to happen. Simply saying that it theoretically could happen is not enough to meet the burden of proving, even, even past the First Amendment issues, of reasonably proving that the conduct, that the protest was done, knowingly or having reasonable grounds to know that it would promote a fight, assault or brawl. The testimony was that she was doing it because she was protesting police action. Each of the witnesses said she was doing that because she was protesting what they were doing. So, that was the purpose. And to turn that into criminal disorderly conduct, whether with some other charge or not, it wasn't a violation of this statute, regardless of how many people watch. But as I said, that is immaterial to 14-91, the, the number of people watching. All of her stuff, all of her statements were, hmm, protected under *Perkins* and the First Amendment;

and her conduct was not assaultive. It was just stiffening up, not wanting to give up her keys. There's nothing there to meet that statute. Thank you, Judge.

01:40:53 - 01:41:00 CMC's Carl L. Solomon: Anything else from the, from the State [sic]?

01:41:01 ***CACA Fernandez:*** *No, Your Honor.*

01:41:02 CMC's Carl L. Solomon: Anything?

01:41:02 **Attorney T. N. Lupton:** Unless the Court would like to see *Perkins,* none, Your Honor?

01:41:03 - 01:45:24 CMC's Carl L. Solomon: No, I'm familiar with it. All right. This is, hmm, this is probably one of the most difficult rulings I ever had to make. And it is because I believe that Dr. Faltas' sactions were inappropriate. I believe they were loud, boisterous and disorderly. And I also believe they were resisting arrest. Had Dr. Faltas been charged under 16-17-530, I think she's absolutely guilty. Had she been charged under resisting arrest, I think she's absolutely guilty. But neither of those are the questions that I have been asked to answer as the finder of fact in this matter. The question is: Did she violate 14-91, which indicates "it shall be unlawful for any person within the city limits to engage in the following conduct" and that can, and they must do so "knowing or having reasonable grounds to know that it will tend to promote or provoke," "provoke a fight, assault, or brawl."? We have five subsections of conduct that are prohibited if they occur and are done knowing or reasonably, hmm, having reasonable ground to know that it will provoke fight, assault, or brawl. Subsection 2 is "to use words threatening to another." I do not believe there was a charge based on that, nor do I find any evidence that that occurred. Number 4 is "without lawful permission to congregate with another or others in a public street or on a public way so as to impede the flow of vehicular or pedestrian traffic and refuse to clear such public way when ordered by the city police or other lawful authority." There is no contention or evidence that that occurred. Number 5: "in a public place or on a public way to accost or attempt to force his company upon any person against his will." Of course, that would be for both the masculine or plural in that sentence. There is no argument nor any evidence that that occurred. That leaves us the two subsections that have been argued by the City. "To utter while in the presence of others any lewd or obscene epithets or make any lewd or obscene gestures with his hands or body." And number 3: "to knowingly or willfully engage in any overt physical conduct that interferes with another's pursuit of a lawful or [sic] occupation or activity." This all of course has to be read and considered in light of *Perkins* and the important law in the State of South Carolina as well as the constitutional cases that have been for many, many years addressing what happens when people come into police and things related thereto. Having said all those prelims, adding one last thing: the police officers in this matter did not address the F-word to my recollection. The other witnesses did; and that was over the objection of counsel, hmm, that I allowed the testimony to be accepted. Having said all of that, will be that there is a reasonable doubt as to whether or not the actions taking place that day as described by the testimony today by Public Section 14-.91 I will say again for the record: I think they violate 16, that's the public disorderly conduct that's 16-17-530 and I also think they violate resisting arrest. But I have a reasonable doubt as to whether they violate 14-91. Therefore, she is found not guilty on this charge.

01:45:25 - 01:45:26 CMC's Carl L. Solomon: Any motions following the ruling?

01:45:26 ***CACA Fernandez:*** *No, Your Honor.*

01:45:27 **Attorney T. N. Lupton:** No.

01:45:33 - 01:45:34 CMC's Carl L. Solomon: We will now try the trespassing charge. First of all, do we have any jurors?

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