

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

**TELIAH C. PERKINS, INDIVIDUALLY
AND AS PARENT AND NATURAL
GUARDIAN OF D.J., A MINOR**
Plaintiff

VERSUS

KYLE HART, AND RYAN MORING
Defendants

* **CIVIL ACTION NO. 21-879**
*
*
* **JUDGE VITTER**
*
*
* **MAG. JUDGE CURRAULT**
*
*
* **JURY DEMAND**
*

**MOTION FOR LEAVE TO FILE REPLY MEMORANDUM
IN SUPPORT OF DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT**

NOW COME Defendants, Kyle Hart and Ryan Moring, who respectfully request that this Honorable Court grant them leave to file a reply memorandum in further support of their Motion for Summary Judgment (R. Doc. 34). Defendants have attached their proposed reply memorandum as Exhibit "1" along with proposed attachments to this motion. The attached reply memorandum is responsive to the arguments raised by Plaintiff in her opposition and will assist the Court in its determination of the issues.

Respectfully submitted,

MILLING BENSON WOODWARD L.L.P.

s/ Chadwick W. Collings

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CERTIFICATE OF SERVICE

I hereby certify that the above and foregoing was electronically filed with the Clerk of Court of the United States District Court for the Eastern District of Louisiana on March 8, 2022, by using the CM/ECF system, which system will send a notice of electronic filing to appearing parties in accordance with the procedures established.

s/ Chadwick W. Collings

Chadwick W. Collings

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ORDER

CONSIDERING Defendants' *Motion for Leave to File Reply Memorandum in Support of Defendants' Motion for Summary Judgment*;

IT IS HEREBY ORDERED that Defendants' *Motion for Leave to File Reply Memorandum in Support of Defendants' Motion for Summary Judgment* is **GRANTED**.

IT IS FURTHER ORDERED that the exhibit submitted to the Clerk of Court by Defendants, consisting of Exhibit "1" to Defendants' *Motion for Leave to File Reply Memorandum in Support of Defendants' Motion for Summary Judgment* along with the attached proposed exhibits be filed into the record in this matter.

New Orleans, Louisiana, this ____ day of March, 2022.

U.S. DISTRICT COURT JUDGE

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

TELIAH C. PERKINS, INDIVIDUALLY
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Plaintiff

VERSUS

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* CIVIL ACTION NO. 21-879

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JUDGE VITTER

MAG. JUDGE CURRAULT

JURY DEMAND

REPLY MEMORANDUM IN SUPPORT OF DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT

NOW COME Defendants, St. Tammany Parish Sheriff's Deputies Kyle Hart and Ryan Moring, who respectfully submit this Reply Memorandum in Support of Defendants' Motion for Summary Judgment¹ and in response to Plaintiff's *Memorandum in Opposition to Motion for Summary Judgment*.² For the reasons set forth in Defendants' Memorandum in Support of their Motion for Summary Judgment and in this Reply, Defendants respectfully submit that there are no genuine issues of **material** fact for trial and that Defendants are entitled to Summary Judgment as a matter of law.

INTRODUCTION

The Defendants refer this Court to their original Memorandum in Support of Motion for Summary Judgment for the relevant facts and case law that support the granting of Summary

¹ R. Doc. 34-3.

² R. Doc. 44.

Judgment in Defendants' favor.³ Through her *Memorandum in Opposition*, Plaintiff concedes that her Section 1983 claim for false arrest and parallel state law claims for false arrest, false imprisonment, and malicious prosecution are barred by U.S. Supreme Court precedent.⁴ Accordingly, Defendants respectfully ask this Honorable Court to grant their Motion for Summary Judgment on these uncontested issues (a Proposed Judgment is attached to this Reply Memorandum).

This case is unusual because, unlike most cases of this nature, nearly the entire relevant encounter between Plaintiff and Defendants giving rise to this action was recorded and it is in the record and available for this court's own observation. Therefore, regarding Plaintiff's remaining claims, Defendants respectfully suggest that there is no need to rehash all of the events from that day as many of them are irrelevant at this point regarding the plaintiff's remaining claim of excessive force.⁵ Defendants, however, would respectfully add the following:

Plaintiff argues a lack of specific record citations in Defendants' Statement of Undisputed Material Fact.⁶ This is a nonsensical argument, as neither Local Rule 56.1 nor Federal Rule of Civil Procedure 56(c)(1)(A) specify that the movant must provide a specific reference for every sentence asserted. All that is required is that the moving party cite and include all relevant supporting material in the record. In an abundance of caution, however, Defendants respectfully submit the attached *revised* Statement of Undisputed Material Fact which only contain additional specific references to the record.⁷ No new facts are included in this *revised* Statement of

³ Fed. R. Civ. P. 56(a); *See also*, *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23, 106 S. Ct. 2548, 91 L.Ed.2d 265 (1986); *Poole v City of Shreveport*, 691 F.3d 624, 627 (5th Cir. 2012).

⁴ R. Doc. 44, n. 2.

⁵ Defendants would note that of the two videos of the encounter produced by Plaintiff, one of the videos is obviously edited to omit certain content. Plaintiff attempts to make light of this tampering, suggesting that the video merely "fast-forwards through certain parts," and Plaintiff conveniently claims that the original video has been "inadvertently deleted." Notwithstanding this dubious claim of an "inadvertent" deletion, Defendants suggest the video gives the Court all the information required to dismiss the matter with prejudice.

⁶ R. Doc. 44 at pp. 8-9.

⁷ *See* Defendants' *Revised* Statement of Undisputed Material Fact, attached as **Exhibit J**.

Undisputed Material Fact. Moreover, both the original and revised Statements are nearly identical to the sworn and previously filed affidavits of the Defendants.

Prior to the recorded video footage, Defendants patrolled down Jay Street toward the intersection at Pheasant Street in response to a complaint about an individual recklessly operating a dirt bike in the street. Once at the intersection, Deputy Moring contacted central dispatch to confirm the address of the complaint, which dispatch confirmed as 2018 Jay Street.⁸ Defendants turned around and observed Plaintiff operating her motorcycle in the roadway without a helmet. As Defendants approached, Plaintiff began to back her motorcycle into the driveway with the motor still running.⁹ Defendants then dismounted their patrol motorcycles and engaged Plaintiff who was also dismounting her motorcycle, with the intention of issuing her a citation.¹⁰ Before Defendants could explain the reason for their presence at her residence, Plaintiff immediately became hostile, agitated, and began yelling, “Y’all, just here cause, my neighbors are racists and they always be calling y’all on me.” Deputy Hart explained to Plaintiff that the deputies were there in response to a complaint of a female operating a motorcycle in a reckless manner.¹¹ Plaintiff immediately began calling people on her phone and summoning them to her house because the police were there again.¹² Defendants meanwhile requested her driver’s license, proof of insurance,

⁸ See Affidavit of Kyle Hart at ¶ 6, attached to the Defendant’s Memorandum in Support of Motion for Summary Judgment as **Exhibit C**; see also Affidavit of Ryan Moring at ¶ 6; see also Moring Dep. at pp. 36-37, attached as **Exhibit K**.

⁹ See Affidavit of Kyle Hart at ¶ 6; see also Affidavit of Ryan Moring at ¶ 6; see also Hart Dep. at pp. 74-76, attached as **Exhibit L**; see also Moring Dep. at pp. 41:12-42-7, p. 230, attached as **Exhibit M**.

¹⁰ See Affidavit of Kyle Hart at ¶ 7; see also Affidavit of Ryan Moring at ¶ 7; see also Hart Dep. at p. 78:22-24, attached as **Exhibit N**; see also Moring Dep. at pp. 48:14-17, 54:17-21, attached as **Exhibit O**.

¹¹ See Affidavit of Kyle Hart at ¶ 8; see also Affidavit of Ryan Moring at ¶ 8; see also Hart Dep. at pp. 87-88, attached as **Exhibit P**; see also Moring Dep. at p. 230, attached as **Exhibit M**.

¹² See Affidavit of Kyle Hart at ¶ 9; see also Affidavit of Ryan Moring at ¶ 9; see also Hart Dep. at pp. 112:16-113:4, attached as **Exhibit Q**.

and registration for the motorcycle for the lawful “stop” of operating a motorcycle without a helmet.¹³

Plaintiff apparently takes issue with Defendants’ use of the word “motorcycle,” alleging instead that the reported police complaint referred to a “dirt bike.” Defendants would suggest, for these purposes, that the two words pose a distinction without a difference – both referring to a two-wheeled motor vehicle with front handlebars and possessing far more similarities than differences. In addition, it is highly logical to believe that the individual who called in the complaint could have mischaracterized the motorcycle for a dirt bike, or vice versa, so Defendants’ response in investigating was objectively reasonable under the circumstances.¹⁴ Regardless, whether it was a “dirt bike” or motorcycle, Defendants observed Ms. Perkins on a two-wheeled vehicle in the street without a helmet, which is what caused Defendants to initiate their traffic stop.¹⁵

Plaintiff also leans heavily on facts and issues that are immaterial, arguing that Defendants can establish a successful claim for Summary Judgment “only by omitting and misstating material evidence, including their own deposition testimony and all of Ms. Perkins’ deposition testimony, which Defendants completely ignore.”¹⁶ This is untrue, and much of the context that Plaintiff claims to provide in her *Opposition* is immaterial, offered only to bolster Plaintiff’s false narrative. Defendants’, on the other hand, have relied solely on material evidence in establishing their defense, and the only independent eyewitness to the encounter, Ms. Erin Wright, has provided sworn testimony corroborating the Defendants’ description of the encounter. For example, Ms. Wright’s testimony corroborates the fact that the encounter in question began with one of the

¹³ See Affidavit of Kyle Hart at ¶ 9; see also Affidavit of Ryan Moring at ¶ 9; see also Moring Dep. at p. 230:12-16, attached as **Exhibit M**.

¹⁴ See Hart Dep., pp. 63-64, attached as **Exhibit R**; see also Moring Dep., pp. 33:9-19, 50:9-17 attached as **Exhibit S**.

¹⁵ See Affidavit of Kyle Hart at ¶ 6; see also Affidavit of Ryan Moring at ¶ 6; see also Hart Dep. at pp. 74-76, attached as **Exhibit L**; see also Moring Dep. at pp. 41:12-42-7, p. 230, attached as **Exhibit M**.

¹⁶ R. Doc. 44 at p. 3.

Defendants attempting to write Plaintiff a traffic citation, eventually leading Plaintiff to yell, “fuck y’all, I’m leaving” at Defendants, at which point Defendants initiated her arrest.¹⁷

Therefore, because Defendants have relied solely on material facts, and because under these facts no rational trier of fact could rule in Plaintiff’s favor, Defendants are entitled to Summary Judgment as a matter of law.

LAW AND ARGUMENT

I. Standard for Granting Summary Judgment and Qualified Immunity

Under Federal Rule of Civil Procedure 56, only disputed facts that might affect the outcome of the lawsuit under governing law will preclude Summary Judgment.¹⁸ The mere existence of some alleged factual dispute will not defeat an otherwise properly supported motion.

Defendants respectfully aver that they have demonstrated that every material fact supports the dismissal of all of Plaintiff’s claims. Plaintiff takes issue with the fact that Defendants’ Summary Judgment affidavits are almost identical, calling it “dubious” that Defendants have “identical recollections of the events of May 5, 2020.”¹⁹ Defendants contend, however, that this is not dubious at all and that it is odd for Plaintiff to suggest otherwise.

Plaintiff also attempts to discredit Defendants’ affidavits and deposition testimony by pointing out that Deputy Moring’s affidavit states that Ms. Perkins kicked Deputy Hart, though Deputy Moring stated in his deposition that he was facing away from Ms. Perkins while Deputy Hart was handcuffing her.²⁰ This attempt to discredit Defendants fails to acknowledge the truth that Deputy Moring can “have personal knowledge of”²¹ the fact that Ms. Perkins kicked Deputy Hart using senses other than vision. As demonstrated by Plaintiff’s own video evidence, Deputy

¹⁷ See Erin Wright Dep. at pp. 21:18-22:4, 39:8-40:7, attached hereto as **Exhibit T**.

¹⁸ *Conditt v. R.D. Werner Company, Inc.*, 2003 WL 21977167, *1 (E.D. La. 2003).

¹⁹ R. Doc. 44 at p. 9.

²⁰ R. Doc. 44 at p. 10.

²¹ Moring Affidavit at p. 1 ¶ 3, (“As such, I have personal knowledge of the following facts”).

Moring was standing mere feet from Plaintiff and Deputy Hart and was well able to hear and perceive the skirmish taking place just behind him. “Personal knowledge” of something that one hears or perceives is admissible testimony under the Federal Rules of Evidence and is therefore acceptable affidavit testimony.²² Plaintiffs, therefore, have failed to satisfy the heavy burden of establishing “significant” or “probative” evidence to rebut Defendants’ properly supported MSJ under *Whitt*.²³

In addition, the Qualified Immunity Doctrine is driven by the desire to quickly resolve claims against government officials, and the U.S. Supreme Court has stressed the significance of “resolving immunity questions at the earliest possible stage in litigation.”²⁴ Defendants reassert that their use of force was justified, reasonable, and constitutional because Plaintiff was attempting to leave – no matter how “briefly” – the scene of the stop, and because Plaintiff then resisted arrest – no matter how Plaintiff tries to undermine this resistance. Defendants’ rightful actions under such pretenses guarantee them qualified immunity protection.

Plaintiff argues that Defendants’ actions were improper under STPSO procedures and training on de-escalation techniques, which is incorrect. These procedures and trainings are in place to help facilitate safe and effective officer-civilian encounters, recognizing that such practices are not universally applicable. The “reasonableness” of the use of force administered by an officer must be judged from the perspective of a reasonable officer who is present on the scene,²⁵ and “the calculus of reasonableness” must consider the fact that police officers are often forced to make split-second judgments about the amount of force that is necessary in a particular

²² USCS Fed Rules Civ Proc R 56(c)(4).

²³ *Whitt v. Stephens County*, 529 F.3d 278, 283 n. 8 (5th Cir. 2008).

²⁴ *Pearson v. Callahan*, 555 U.S. 223, 231 S. Ct. 808 (2009).

²⁵ *Darden v. City of Fort Worth*, 880 F.3d 722, 727 (5th Cir. 2018) (quoting *Graham*, 490 U.S. at 396).

situation.”²⁶ Further, qualified immunity protects “all but the plainly incompetent or those who knowingly violate the law.”²⁷

The Defendants here acted with caution in a situation which, as Plaintiff repeatedly states, quickly graduated from a mere traffic citation to a hostile and aggravated arrest. Defendants utilized sufficient force necessary to apprehend Plaintiff and to maintain control of the situation, and accordingly, Defendants are entitled to qualified immunity protections for all claims filed by Plaintiff and to Summary Judgment in their favor. Moreover, Plaintiff’s claims are barred by *Heck v. Humphrey*, so Defendants are further entitled to Summary Judgment in their favor.

II. Defendants’ Motion Should Be Granted Because There Are No Disputed Material Facts

Many of the “facts” argued by Plaintiff are wholly immaterial. First, the fact that the encounter began as a drive by inspection in response to an anonymous tip concerning a traffic violation is immaterial. Once on the scene, Defendants had every right to question Plaintiff in relation to the police complaint, especially since she was presently operating a motorcycle that adequately fit the description which gave rise to the complaint and both Defendants observed her operating the motorcycle without a helmet in violation of state law. The events that followed, including the level of force used by Defendants, were not in response to (what should have been) a routine traffic stop but were instead in response to Plaintiff’s hostile and illegal behavior toward the Defendants in the execution of their duties when she decided to absent herself from the traffic stop before she had been issued a citation.²⁸

²⁶ *Id.* (quoting *Graham*, 490 U.S. at 396-97).

²⁷ *Whitney v. Hanna*, 726 F.3d 631, 638 (5th Cir. 2013) (citations omitted).

²⁸ *Buehler v. Dear*, 2022 U.S. App. LEXIS 5707, *26 (U.S. Fifth Circuit, 3/3/2022) (officers did not violate the Fourth Amendment and did not use “excessive force” in taking down and continuing to hold down an individual who attempted to walk away from the arresting officers).

Additional issues raised by Plaintiff, such as (1) whether she was sitting on her porch eating lunch or standing in her driveway when Defendants first passed by her home; (2) whether Plaintiff or the Defendants first appeared angry; and (3) whose language was more profane, are all immaterial to establishing any of Plaintiff's remaining claims. Summary Judgment should therefore be granted in Defendants' favor.

III. Defendants' Motion Should Be Granted Regarding Plaintiff's Excessive Force Claims

a. Ms. Perkins' Excessive Force Claim

i. Ms. Perkins' Excessive Force Claim is Barred by *Heck*, and Alternatively Fails under Both the *Graham* and *Brugman* Tests

Contrary to Plaintiff's assertion, her excessive force claim is squarely barred by *Heck v. Humphrey*, 512 U.S. 477 (1994), because Plaintiff's claim for damages inherently challenges the legality of her conviction. In opposition, Plaintiff states that, "Ms. Perkins' excessive force claim does not require Ms. Perkins to deny that she resisted a legal arrest, and so is not barred by *Heck*."²⁹ This is a misinterpretation of the legal standard under *Heck*. The Supreme Court in *Heck* stated, "when a [plaintiff] seeks damages in a § 1983 suit, the district court must consider whether a judgment in favor of the plaintiff would necessarily imply the invalidity of [her] conviction or sentence; if it would, the complaint must be dismissed."³⁰

In the present matter, the force used by Defendants to apprehend Plaintiff was proportionate and in direct response to her resistance to the officers' lawful commands. Although the Fifth Circuit has noted that *Heck* does not bar all excessive force claims when a plaintiff has been convicted of resisting arrest,³¹ to characterize the Defendants' actions here as "excessive" *would necessarily imply* that Plaintiff was not aggressively resisting arrest which would further

²⁹ R. Doc. 44 at p. 14.

³⁰ *Heck v. Humphrey*, 512 U.S. 477, 478.

³¹ *Arnold v. Town of Slaughter*, 100 Fed. Appx. 321, 322.

imply the invalidity of her LSA – R.S. 14:108 conviction for resisting arrest. Though there is a clear distinction between a claim for excessive force and a conviction for resisting arrest under *Champagne v. Martin*,³² Plaintiff has failed to demonstrate – even in light of video evidence – that her “level of resistance” did not justify the level of force used by Defendants.³³

Assuming for the sake of argument that Plaintiff’s excessive force claim is not barred by *Heck*, which Defendants deny, the facts and evidence in this case nevertheless clearly show a lack of excessive force under **both** the *Graham*³⁴ and *Brugman*³⁵ tests, so Plaintiff’s excessive force claim should still be dismissed with prejudice. Under both *Graham* and *Brugman*,³⁶ there was abundant justification for the level of force utilized by the Defendants – both during the initial “takedown” and after Plaintiff was handcuffed. Each of Plaintiff’s arguments will be taken in turn:

1. *First*, despite Plaintiff’s reiteration that the encounter began as a minor infraction giving rise to misdemeanor charges, Plaintiff herself quickly escalated the situation by shouting, cursing, blatantly instructing her son and nephew to disobey police officers’ (Defendants’) orders, attempting to walk away from the lawful traffic stop, and then mocking Defendants and violently resisting arrest as they attempted to place her in handcuffs. Therefore, despite Plaintiff’s contention, she was not placed on the ground and restrained due to a “traffic infraction,” but in response to her own illegal conduct, and the force used by Defendants to restrain Plaintiff, a flailing adult woman, was not excessive.

³² *Champagne v. Martin*, 2019 U.S. Dist. LEXIS 126345, *11.

³³ R. Doc. 44 at p. 14.

³⁴ *Graham v. Connor*, 490 U.S. 386, 109 S. Ct. 1865, 104 L. Ed. 2d 443 (1989).

³⁵ *United States v. Brugman*, 364 F.3d 613, 616 (5th Cir. 2004) (citing *Bazan v. Hidalgo County*, 246 F.3d 481, 487 (5th Cir.2001)).

³⁶ Both the *Graham* and *Brugman* tests are cited in Defendants’ Memorandum in Support of Summary Judgment (R. Doc. 34-3 at p. 15) and in Plaintiff’s Memo in Opposition (R. Doc. 44 at p. 11).

2. *Second*, Plaintiff's argument that she did not pose "any" threat to Defendants is wholly without merit and irrelevant.³⁷ Plaintiff attempts to support this assertion with a list of colorful yet immaterial factors, such as the fact that the incident occurred "in broad daylight," the fact that "there were no outstanding warrants for Ms. Perkins' arrest," and the facts that Plaintiff had not yet threatened Defendants with force, nor had she displayed a weapon.³⁸ None of these allegations is relevant to the Defendants' understandable fear for their safety based on the numerous facts and circumstances already demonstrated. Further, the fact that Defendants feared for their safety as Plaintiff attempted to illegally leave the scene and reenter her home is not disingenuous (as Plaintiff suggests) but is objectively reasonable considering the severe escalation of the situation from the time Plaintiff first reentered her home to the moment of her arrest. The force used by Defendants to restrain a potentially threatening citizen who was (i) leaving the scene (ii) in the direction of her dwelling which might contain a weapon, was not excessive.
3. *Third*, Plaintiff is incorrect in stating that her "pulling away, turning away" did not justify the level of force used by Defendants.³⁹ The video of the encounter clearly demonstrates that Defendants' actions grew stronger *only* as Plaintiff's resistance grew more aggressive and more threatening. Most importantly, Defendants would note that **Plaintiff was only on the ground at all because Defendants slowly sat her down after she refused to put her hands behind her back**, as shown in **Exhibit H** (the ostensibly unedited video).⁴⁰ She was **not** "tackled to the concrete/pavement" as Plaintiff

³⁷ R. Doc. 44 at p. 11.

³⁸ R. Doc. 44 at pp. 11-12.

³⁹ R. Doc. 44 at p. 12.

⁴⁰ See **Exhibit H** (video); see also Hart Dep. at p. 160, attached hereto as **Exhibit U**.

repeatedly alleges, and she was calmly instructed numerous times to stop resisting. Moreover, by this point, Defendants' use of force was in response to Plaintiff's violent resistance and was no longer in response to the initial traffic stop. Plaintiff is also incorrect in claiming that her resistance was "limited," as her resistance was physical, it was constant, and under the *Graham* factors, Defendants were likewise entitled to respond to such resistance with physical force. Again, any potential injury to Plaintiff stemming from this encounter, including potential injury to her head, was caused by Plaintiff's own incessant resistance and not by Defendants' conduct. Subsequently, Plaintiff being "pinned to the ground" by Defendants using their knees and elbows was consistent with generally accepted policies, practices, and training of officers for application in field operations,⁴¹ especially since Defendant Hart was being needlessly kicked while effectuating Plaintiff's arrest.⁴² Police officers are under no obligation to endure such treatment in the discharge of their duties, and therefore Defendants' actions in overcoming Plaintiff's resistance were objectively reasonable.

4. *Fourth*, the force used by Deputy Hart after initially handcuffing and subduing Plaintiff, including continuing to kneel on her legs while she remained face-down, was objectively reasonable in light of Plaintiff's continued efforts to kick Deputy Hart and to free herself from his grasp. Again, police officers are under no obligation to endure such treatment, and, moreover, Deputy Hart's prolonged conduct was actually his attempt to properly double lock Plaintiff's handcuffs for her own safety.⁴³ Plaintiff further states that "*Heck* does not bar Ms. Perkins' claim based on the force used by

⁴¹ R. Doc. 34-10 at ¶ 85, a copy of John Ryan's report, attached to Defendants' Memorandum in Support of Summary Judgment as **Exhibit G**.

⁴² R. Doc. 44 at p. 13.

⁴³ See Affidavit of Kyle Hart at ¶ 26.

Deputy Hart after she stopped resisting,” however, there is no evidence at any point that Plaintiff ceased to resist. And finally, Plaintiff criticizes Deputy Hart for “pushing down on Ms. Perkins’ throat using his hand and arm for several seconds,” falsely accusing Deputy Hart of “choking” her. The video evidence, however, clearly shows that Deputy Hart only touched Plaintiff’s throat after losing his balance and attempting to free himself from Plaintiff’s kicks, and the entire alleged “choking” episode lasted *less than two (2) full seconds*.⁴⁴ Deputy Hart’s removal then reapplication of his hand to Plaintiff’s neck and chest area was clearly his attempt to regain his balance and get onto his feet without stepping on Plaintiff or allowing her to roll herself back onto her stomach. This also explains Deputy Hart’s “failure” to report the “choking” in his arrest report,⁴⁵ as Plaintiff alleges, because it was not “choking” but was unintentional and caused by Plaintiff’s own floundering.⁴⁶

ii. Ms. Perkins’ Excessive Force Claim Should be Dismissed as Defendants Are Entitled to Qualified Immunity

Plaintiff incorrectly claims that Defendants should be denied qualified immunity, quoting Fifth Circuit jurisprudence which states that, “officers’ use of force was objectively unreasonable where...[an] appellant’s pulling his arms away from the officers...did not justify the officers’

⁴⁴ See video recording, attached to Defendants’ Memorandum in Support of Summary Judgment as **Exhibit H**; see also R. Doc. 34-10 at ¶ 84, a copy of John Ryan’s report, attached to Defendants’ Memorandum in Support of Summary Judgment as **Exhibit G** (“I would note that a choke hold is a respiratory restraint that is intended to cut off oxygen to the body. I found no evidence on the objective video of a respiratory restraint hold and as captured in the multiple screenshots, there was only a split-second where Hart’s hand was in the vicinity of Perkins’s neck as he moved his hands in trying to pin her shoulders and move her back toward the ground as she reared her head up.”)

⁴⁵ R. Doc. 44 at p. 13.

⁴⁶ Plaintiff’s *Opposition* (R. Doc. 44 at p. 14) states that, “Deputy Hart acknowledged that this level of force is potentially fatal,” allegedly citing to Deputy Hart’s deposition transcript. However, the actual transcript testimony (Hart Dep. at pp. 183-184) is as follows: “Q. You are trained not to put your hand on somebody’s throat, correct? A. Correct. Q. And you understand that that can cause serious injury if you do? A. I would assume. I’m not, again, I’m not a doctor. But depending on the pressure, I mean, it could cause problems. Q. Is that something you received training on? ... A. Yes.”) At no point does Defendant Hart concede that he placed his hand on Plaintiff’s throat or that any conduct rendered against Plaintiff was “potentially fatal,” as Plaintiff suggests.

decision to tackle appellant to the ground.⁴⁷ These facts and therefore this holding are completely inapplicable to the present matter, in which Defendants can be seen on camera slowly lowering Plaintiff's stiff and reluctant body to the ground in a standard sitting position after she attempted to illegally walk away from the traffic stop.⁴⁸ This same case cited by Plaintiff goes on to explain that "the law clearly established that it was objectively unreasonable for several officers to tackle an individual who was not fleeing, not violent, and not aggressive."⁴⁹ This further solidifies *Trammell*'s inapplicability to the present matter, in which Ms. Perkins was not tackled, much less by several officers, she was in fact fleeing, and she did become violent and aggressive.⁵⁰

Furthermore, the fact that Deputy Hart continued to hold Plaintiff down after she was initially handcuffed does not represent a violation of Plaintiff's constitutional rights, nor does it deprive Deputy Hart of his right to qualified immunity, because Plaintiff was still resisting arrest at this point. Video evidence clearly shows Plaintiff kicking and pulling away from the Defendant throughout the entire recording. Cuffing her hands did not restrain the rest of her body. In addition, the cases cited by Plaintiff in support of this claim involve one officer slamming a plaintiff's head into a car after plaintiff was handcuffed,⁵¹ which did not occur here, and another officer striking an arrestee,⁵² which also did not occur here. Thus, the court's denial of qualified immunity to the officers in those cases has no bearing on the present matter.

⁴⁷ *Trammell v. Fruge*, 868 F.3d 332, 336.

⁴⁸ *Buehler*, 2022 U.S. App. LEXIS 5707, *26 (U.S. Fifth Circuit, 3/3/2022); see *Kelsay v. Ernest*, 933 F.3d 975 (8th Cir. 2019) (en banc) (officer entitled to qualified immunity for a bear-hug takedown when an agitated suspect walked away from the officer for a second time); *Hedgpeth v. Rahim*, 893 F.3d 802 (D.C. Cir. 2018) (same for an arm takedown and knee to the leg of a suspect who pulled his hands away as the officer attempted to handcuff him).

⁴⁹ *Trammell*, 868 F.3d 332, 336.

⁵⁰ See Moring Dep. at p. 232:1-2, attached hereto as **Exhibit V**.

⁵¹ *Bush v. Strain*, 513 F.3d 492 (5th Cir. 2008).

⁵² *Bagley v. Kolb*, 2021 WL 3376730, at *8 (W.D. La. Aug 3, 2021).

For all of the reasons stated above, in addition to those included in Defendants' Memorandum in Support of Summary Judgment, Ms. Perkins' excessive force claim under § 1983 is wholly without merit and should be dismissed with prejudice.

b. D.J.'s Excessive Force Claim

Though D.J. was not convicted of any crime and thus his action for excessive force is not barred by *Heck*, D.J. still cannot prevail in his excessive force claim, in which the plaintiff must show: (1) injury, (2) which resulted directly and only from a use of force that was clearly excessive, and (3) the excessiveness of which was clearly unreasonable.⁵³ Defendants' Memorandum in Support of Summary Judgment provides overwhelming jurisprudence in favor of finding that D.J.'s excessive force claim is baseless and should be dismissed with prejudice.⁵⁴ In addition, to break down an excessive force claim to the most basic level, the Supreme Court rule is as follows:

“In addressing an excessive force claim brought under § 1983, analysis begins by identifying the specific constitutional right allegedly infringed by the challenged application of force...The validity of the claim must then be judged by reference to the specific constitutional standard which governs that right, rather than to some generalized "excessive force" standard...Where, as here, the excessive force claim arises in the context of an arrest or investigatory stop [], it is most properly characterized as one invoking the protections of the Fourth Amendment, which guarantees citizens the right "to be secure in their persons...against unreasonable...seizures" of the person...Today, we make explicit [] that **all claims that law enforcement officers have used excessive force -- deadly or not -- in the course of an arrest, investigatory stop, or other "seizure" [] should be analyzed under the Fourth Amendment and its "reasonableness" standard.**”⁵⁵

Stated plainly, D.J.'s Fourth Amendment rights were not violated – he was neither seized nor searched.⁵⁶ In the course of an active arrest, merely pointing a NON-lethal weapon at an individual does not constitute a Fourth Amendment violation,⁵⁷ threatening to use a NON-lethal

⁵³ *Darden v. City of Fort Worth*, 880 F.3d 722, 727 (5th Cir. 2018) (quoting *Cooper v. Brown*, 844 F.3d 517, 522 (5th Cir. 2016)).

⁵⁴ R. Doc. 34-3 at pp. 15-18.

⁵⁵ *Graham*, 490 U.S. 386, 394, citing *Tennessee v. Garner*, 471 U.S. 1 (1985).

⁵⁶ USCS Const. Amend. 4.

⁵⁷ *Bellotte v. Edwards*, 629 F.3d 415, 424 (4th Cir. 2011); *Taft v. Vines*, 83 F.3d 681 (4th Cir. 1996); *Courson v. McMillian*, 939 F.2d 1479, 1494-95 (11th Cir. 1991).

weapon does not constitute a Fourth Amendment violation, and Deputy Morings' decision to "shove" D.J. away from the altercation was objectively reasonable under the Fourth Amendment *both* to regain control of the situation and for D.J.'s own personal safety. On this point, Plaintiff's *Opposition* cites to a case in which the Western District of Louisiana held that "it is objectively unreasonable for a police officer to forcefully brandish a deadly weapon" at non-threatening citizens,⁵⁸ which is inconsequential here, where the weapon brandished was not deadly and the citizen against whom it was brandished was attempting to interfere with an active arrest, posing a threat to officer safety.

Plaintiff also asserts that Defendant Moring's actions violated D.J.'s Fourteenth Amendment right to be free of arbitrary deprivation of life, liberty, or property by the state.⁵⁹ D.J., however, was not deprived of life or property, and *if* his liberty was at all deprived, it was not deprived arbitrarily and was objectively reasonable in containing the effects of an arrest in which the arrestee was violently resisting.

In an attempt to overcome the *Graham* factors, which Plaintiff cannot satisfy, Plaintiff reminds the court that D.J. was a "child" at the time of this incident, noting that he was a "14-year-old standing in his own driveway."⁶⁰ It is worth noting, however, and video evidence confirms, that 14-year-old D.J. was roughly the same size and stature as Deputy Moring, who was trying to assist Deputy Hart in Ms. Perkins' arrest and to maintain control of the increasingly uncertain situation involving numerous individuals.⁶¹ Defendants suggest that D.J.'s size and his mother's

⁵⁸ R. Doc. 44 at p. 19; citing *Flores v. Rivas*, 2020 WL 563799, at *7 (W.D. Tex. 2020).

⁵⁹ USCS Const. Amend. 14.

⁶⁰ R. Doc. 44 at p. 18.

⁶¹ See Moring Dep. at pp. 62:3-63:15, attached hereto as **Exhibit W**.

continued aggression are significant details in establishing the reasonableness of Deputy Moring's actions.⁶²

Furthermore, Plaintiff incorrectly claims that Defendant Moring should be denied qualified immunity, citing to numerous cases which simply do not apply to the present matter. Though D.J. was not under arrest, he was advancing toward an active arrest of a resisting individual despite police orders to stay back. Plaintiff argues that "at least seven circuits have denied qualified immunity to police officers alleged to have brandished a firearm at compliant suspects or innocent bystanders."⁶³ First, this attempt by Plaintiff to equate a "firearm" with a non-lethal taser is, in Plaintiff's own word, *dubious*, as tasers are not considered "firearms." Second, although D.J. was a bystander, he was not compliant, and Defendant Moring acted reasonably and within his discretion to ensure that D.J. *remained* uninvolved in the altercation.

Despite Plaintiff's *Opposition*, Defendants do not deny that aiming a taser and threatening to use it constitutes a use of force, but that doing so did not violate any clearly established right under the circumstances.⁶⁴ Plaintiff's claim should therefore be dismissed with prejudice.

IV. Defendants' Motion Should Be Granted Regarding D.J.'s First Amendment Claim

Plaintiff's First Amendment claim is baseless and should be dismissed as Plaintiff fails on not one, but all three elements of a First Amendment retaliation claim.⁶⁵ According to the newly decided U.S. Fifth Circuit Court of Appeals case of *Buehler v. Dear*, "there is a line between

⁶² John Ryan noted in his expert report (R. Doc. 34-10 at ¶ 86) that "there are no special privileges that accrue to a fourteen-year-old with respect to what is or is not a proper use of force by officers."

⁶³ R. Doc. 44 at p. 19.

⁶⁴ *Graham*, 490 U.S. 386, 396 ("[T]he right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it.")

⁶⁵ USCS Const. Amend. 1, see also *Keenan v. Tejeda*, 290 F.3d 252, 258 (5th Cir. 2002), (elements include (i) plaintiff was engaged in some constitutionally protected activity, (ii) the defendant's actions caused the plaintiff to suffer injury which would chill a person of ordinary firmness from continuing to engage in the activity, and (iii) the defendant's actions were substantially motivated against the plaintiff's exercise of that activity.)

filming the police, which is legal, and hindering the police, which is not.”⁶⁶ This distinction accounts for situations in which “filming veers from documenting to interfering.”⁶⁷

Though D.J. had a constitutionally protected right to record the interaction, he *did not* have a constitutionally protected right to interfere with Plaintiff’s arrest, and his blatant interference is what was inhibited by Defendant Moring’s conduct. The fact that D.J.’s video footage was temporarily blocked was a secondary effect of Defendant Moring’s attempt to stop D.J. from interfering with the active arrest, which is in no way dispositive of the reasonableness of Defendant Moring’s actions. Next, a claim for retaliation is proper only if and when the defendant is “chilled from continuing to engage in the activity,”⁶⁸ which Plaintiff cannot rationally contend here since D.J. was never ordered to stop filming, and he did not actually stop filming thus was clearly not “chilled” from doing so.

Finally, Plaintiff’s First Amendment claim fails because Deputy Moring’s actions were not substantially motivated against Plaintiff’s exercise of protected activity (recording) but were instead motivated against Plaintiff’s attempts to interfere in an active arrest in which the arrestee was violently resisting. Plaintiff frivolously attempts to reference D.J.’s alleged subsequent mental health issues to validate his claim for First Amendment retaliation, but such an alleged condition is wholly irrelevant to establishing this claim for damages. In addition to the failure of Plaintiff’s First Amendment retaliation claim on its face, Defendants are nonetheless entitled to qualified immunity for their actions in taking reasonable steps to effectuate and secure the scene of an active arrest. Defendants thus should be granted Summary Judgment in their favor.

⁶⁶ *Buehler*, 2022 U.S. App. LEXIS 5707, *1 (U.S. Fifth Circuit, 3/3/2022).

⁶⁷ *Id* at *2.

⁶⁸ *Keenan*, 290 F.3d 252, 258.

V. Defendants' Motion Should Be Granted Regarding Ms. Perkins' Unlawful Seizure Claim

Plaintiff's unlawful seizure claim must be denied under Louisiana insurance and motorist laws. Louisiana law is abundantly clear that all registered owners of motor vehicles must carry liability insurance, and there are penalties for lack of proof of insurance, which includes an officer's right to impound the motor vehicle upon the owner or operator's failure to produce documents demonstrating compliance with this statute.⁶⁹ Notwithstanding Defendants' repeated requests, Ms. Perkins was unable to produce any of the documents permitted under R.S. 32:861 as evidencing that her motorcycle was in compliance with this statute.⁷⁰ Therefore, Defendants acted within their discretion to have the motorcycle impounded following Ms. Perkins' arrest, and Plaintiff's claim should therefore be dismissed with prejudice.

VI. Defendants' Motion Should Be Granted Regarding Dismissal of Plaintiff's Remaining State Law Claims

Plaintiff incorrectly asserts that Defendants have waived any factual arguments and, in any event, Defendants have subsequently attached a revised Statement of Undisputed Material Fact, so this argument is moot.⁷¹ Further, because Plaintiff's remaining claims (excessive force, unlawful seizure, and First Amendment retaliation) cannot survive Defendant's Motion for Summary Judgment, in the event that this Court dismisses Plaintiff's § 1983 claims and none or some, but not all, of Plaintiff's state law claims, Defendants respectfully request that this Court decline to exercise supplemental jurisdiction over any of the remaining state law claims. Defendants' request is based on 28 U.S.C. § 1367(c), which permits a court, in its discretion, to

⁶⁹ LSA – R.S. 32:863.1, *Evidence of Compulsory Motor Vehicle Liability Security*, see (B)(1) and (C)(1)(a): “When a law enforcement officer stops a vehicle for any [] reason, the law enforcement officer shall determine if the owner or lessee of [the] vehicle is in compliance with the provisions of this Section which require evidence of liability insurance or other security...If the operator of a motor vehicle is unable to show compliance with the provisions of this Part by displaying the required document when requested to do so, the motor vehicle shall be **impounded**, and the operator shall be issued a notice of noncompliance.”

⁷⁰ See Moring Dep. at p. 230, attached hereto as **Exhibit M**.

⁷¹ R. Doc. 44 at p. 22.

decline to exercise supplemental jurisdiction over a claim when the court has dismissed all claims over which it has original jurisdiction. Should the Court opt to consider Plaintiff's state law claims, Defendants assert that these claims are meritless and should be dismissed with prejudice.

a. Ms. Perkins' State Law Claims

Excessive Force and Battery – To quote Plaintiff, “under Louisiana law, the same standard is used in analyzing a state law claim of excessive force as a constitutional claim, namely reasonableness under the circumstances.”⁷² Thus, Ms. Perkins' state law claim for excessive force must be dismissed with prejudice for the same reasons as her § 1983 claim. In addition, Defendants are entitled to qualified immunity against Ms. Perkins' battery claim because Defendants did not exert excessive force in making her arrest, nor did Defendants violate any clearly established right.⁷³

Intentional & Negligent Infliction of Emotional Distress (IIED & NIED) – Louisiana courts, like courts in other states, have set a very high threshold on conduct sufficient to sustain an IIED claim, and the Louisiana Supreme Court and lower courts require conduct to be *truly outrageous* to sustain such a claim.⁷⁴ The conduct must be so outrageous in character and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as *atrocious and utterly intolerable* in a civilized community.⁷⁵ Most importantly, the actor's conduct must be *intended* or calculated to cause severe emotional distress.⁷⁶ In the present matter, as demonstrated by all evidence, Defendants' conduct was both standard and reasonable under the circumstances, and no sound mind could conclude that Defendants' actions were in any way “outrageous,” nor

⁷² *Kennedy v. City of Shreveport*, 2008 WL 2437043, at *6 (W.D. La. June 13, 2008).

⁷³ *Moresi v. State*, 567 So. 2d 1081, 1093 (La. September 6, 1990) (“The same factors that compelled the United States Supreme Court to recognize a qualified good faith immunity for state officers under § 1983 require [Louisiana courts] to recognize a similar immunity for them under any action arising from the state constitution.”)

⁷⁴ *Perrone v. Rogers*, 234 So. 3d 153, 157, citing *Nicholas v. Allstate Ins. Co.*, 99-2522 (La. 8/31/00), 765 So.2d 1017, 1024-25; *Sullivan v. Malta Park*, 14-0478 (La.App. 4 Cir. 12/10/14), 156 So.3d 751, 757.

⁷⁵ *Perrone v. Rogers*, 234 So. 3d 153, 158 (La.App. 1 Cir. December 18, 2017).

⁷⁶ *White*, 585 So.2d at 1210.

were they “atrocious and utterly intolerable.” Further, there is no evidence whatsoever that Defendants intended or calculated to cause Ms. Perkins severe emotional distress, so they cannot be held liable for IIED.

Second, the purpose of Louisiana’s NIED liability (La. Civ. Code Ann. art. 2315.6) is to compensate individuals for the immediate shock of witnessing a traumatic event which caused the direct victim harm that is severe and apparent, but not to compensate for the anguish and distress that normally accompany an injury to a loved one under all circumstances.⁷⁷ Louisiana is one of few jurisdictions to even allow recovery for such damages, and even within Louisiana, NIED damages are exceptionally limited to truly shocking and egregious circumstances. There is simply no evidence in the present matter to support such a claim, and therefore both of Ms. Perkins’ emotional distress claims should be dismissed with prejudice.

b. D.J.’s State Law Claims Against Defendant Moring

Excessive Force and Battery – Like Ms. Perkins, D.J.’s state law claim for excessive force must be dismissed with prejudice for the same reasons as his § 1983 claim. In addition, Defendant Moring is entitled to qualified immunity against D.J.’s battery claim, because Defendant Moring did not exert excessive force, nor did he violate any clearly established right.⁷⁸

Assault – Defendant Moring is entitled to qualified immunity against D.J.’s assault claim because the evidence clearly demonstrates that the level of force used by Defendant Moring against D.J. was not excessive, nor did it violate any clearly established right.⁷⁹ Assault (and battery) are two of the most basic and inherent claims against which qualified immunity is meant to shield reasonable and diligent law enforcement officers. D.J.’s assault claim, thus, must be dismissed with prejudice.

⁷⁷ *Veroline v. Priority One EMS*, 18 So. 3d 1273, 1274.

⁷⁸ *Moresi*, 567 So. 2d 1081, 1093.

⁷⁹ *Id.*

IIED & NIED – D.J.’s emotional distress claims must be dismissed for the same reasons and under the same standards as those of Ms. Perkins. In addition, the Supreme Court of Louisiana has held that mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities are not enough to trigger liability; rather, persons must necessarily be expected to be hardened to a certain amount of rough language, and to occasional acts that are definitely inconsiderate and unkind.⁸⁰ Despite Plaintiff’s contention, Defendants do not argue that D.J.’s professionally diagnosed mental health disorder and real-world struggles are not “severe, debilitating, and foreseeable,” but that the distress suffered is not of the nature intended to be covered under the IIED and NIED statutes, and that it was not caused by the reasonable actions of Defendant Moring.

CONCLUSION

For the foregoing reasons, Defendants respectfully suggest that the instant motion for Summary Judgment should be granted and that all claims advanced by Plaintiff be dismissed with prejudice.

Respectfully submitted,

MILLING BENSON WOODWARD L.L.P.

s/ Chadwick W. Collings

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⁸⁰ *White*, 585 So.2d at 1209.

CERTIFICATE OF SERVICE

I hereby certify that the above and foregoing was electronically filed with the Clerk of Court of the United States District Court for the Eastern District of Louisiana on March 8, 2022, by using the CM/ECF system, which system will send a notice of electronic filing to appearing parties in accordance with the procedures established.

s/ Chadwick W. Collings
Chadwick W. Collings

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

TELIAH C. PERKINS, INDIVIDUALLY
AND AS PARENT AND NATURAL
GUARDIAN OF D.J., A MINOR
Plaintiff

VERSUS

KYLE HART, AND RYAN MORING
Defendants

* CIVIL ACTION NO. 21-879

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JUDGE VITTER

MAG. JUDGE CURRAULT

JURY DEMAND

JUDGMENT

Considering the *Motion for Summary Judgment* filed by Defendants, St. Tammany Parish Sheriff's Deputies Kyle Hart and Ryan Moring on February 6, 2022 (R. Doc. 34), and Plaintiff's admission in her Opposition Memorandum that the following claims should be dismissed: (i) 42 USCA § 1983 claim for false arrest; (ii) state law claim of false arrest; (iii) state law claim of false imprisonment; and (iv) state law claim of malicious prosecution¹:

After reviewing the record, the Court rendered judgment as follows:

IT IS ORDERED that Defendants' *Motion for Summary Judgment* is hereby **GRANTED** with respect to the Plaintiff's following claims: (i) 42 USCA § 1983 claim for false arrest; (ii) state law claim of false arrest; (iii) state law claim of false imprisonment; and (iv) state law claim of malicious prosecution. Accordingly, these claims against Defendants, Kyle Hart and Ryan Moring, are **HEREBY DISMISSED WITH PREJUDICE**.

New Orleans, Louisiana this ____ day of March, 2022.

HONORABLE WENDY B. VITTER
UNITED STATES DISTRICT JUDGE

¹ R. Doc. 44, n. 2.

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

**TELIAH C. PERKINS, INDIVIDUALLY
AND AS PARENT AND NATURAL
GUARDIAN OF D.J., A MINOR**
Plaintiff

VERSUS

KYLE HART, AND RYAN MORING
Defendants

* **CIVIL ACTION NO. 21-879**
*
*
* **JUDGE VITTER**
*
*
* **MAG. JUDGE CURRAULT**
*
*
* **JURY DEMAND**

STATEMENT OF UNDISPUTED MATERIAL FACT

NOW COME, Defendants, St. Tammany Parish Sheriff's Deputies Kyle Hart and Ryan Moring, who respectfully submit this Statement of Undisputed Material Facts in support of their Motion for Summary Judgment, and aver as follows:

1. On Tuesday May 5, 2020, at approximately 3:10 p.m., Deputies Ryan Moring and Kyle Hart ("Defendants") were conducting a routine motorcycle patrol in Slidell, Louisiana, when Deputy Moring received a dispatch to Jay Street in Slidell, in reference to a female recklessly operating a motorcycle in the vicinity.¹
2. As Defendants turned west on Jay Street from Thompson Road, they began to patrol the area looking for a female on a motorcycle. While passing the residence located at 2018 Jay Street, Defendants observed a female standing next to a motorcycle in front of the residence.²

¹ The actual dispatch to Deputies Hart and Moring is memorialized in the St. Tammany Parish Sheriff's Office Event History Details Report, a copy of which is attached to the Defendant's Memorandum in Support of Motion for Summary Judgment as **Exhibit A**. Defendants would note to this Honorable Court that their dispatch referred only to a female "speeding" and "running stop signs" who lives at 2018 Jay Street. There was no mention of the individual's race.

² See Affidavit of Ryan Moring at ¶ 5, attached to the Defendant's Memorandum in Support of Motion for Summary Judgment as **Exhibit B**.

3. The female that Defendants observed was later identified as Teliah Perkins (Plaintiff). After passing Plaintiff, Defendants continued west to Pheasant Street.³
4. Once at the intersection of Pheasant Street and Jay Street, Deputy Moring contacted central dispatch to confirm the address of the complaint, which dispatch confirmed as 2018 Jay Street.⁴
5. After turning around, Defendants observed Plaintiff operating the motorcycle in the roadway without a helmet. As Defendants approached, Plaintiff began to back her motorcycle into the driveway with the motor still running.⁵
6. Defendants then dismounted their patrol motorcycles and engaged Plaintiff who was also dismounting her motorcycle. The encounter with Plaintiff began as a custodial stop commenced by Deputy Moring with the intention of issuing a simple citation. Deputy Hart was assisting.⁶
7. Before Defendants could explain the reason for their presence at her residence, Plaintiff immediately became hostile, agitated, and began yelling, “Y’all, just here cause, my neighbors are racists and they always be calling y’all on me.” Deputy Hart explained to Plaintiff that the deputies were there in response to a complaint of a female operating a motorcycle in a reckless manner.⁷

³ See Hart Dep. at pp. 63-64, attached to Defendants’ Reply Memorandum as **Exhibit R**; see also Moring Dep. at pp. 33:9-19, 50:9-17 attached to Defendants’ Reply Memorandum as **Exhibit S**.

⁴ See Affidavit of Kyle Hart at ¶ 6, attached to the Defendant’s Memorandum in Support of Motion for Summary Judgment as **Exhibit C**; see also Affidavit of Ryan Moring at ¶ 6; see also Moring Dep. at pp. 36-37, attached to Defendants’ Reply Memorandum as **Exhibit K**.

⁵ See Affidavit of Kyle Hart at ¶ 6; see also Affidavit of Ryan Moring at ¶ 6; see also Hart Dep. at pp. 74-76, attached to Defendants’ Reply Memorandum as **Exhibit L**; see also Moring Dep. at pp. 41:12-42-7, p. 230, attached to Defendants’ Reply Memorandum as **Exhibit M**.

⁶ See Affidavit of Kyle Hart at ¶ 7; see also Affidavit of Ryan Moring at ¶ 7; see also Hart Dep. at p. 78:22-24, attached to Defendants’ Reply Memorandum as **Exhibit N**; see also Moring Dep. at pp. 48:14-17, 54:17-21, attached to Defendants’ Reply Memorandum as **Exhibit O**.

⁷ See Affidavit of Kyle Hart at ¶ 8; see also Affidavit of Ryan Moring at ¶ 8; see also Hart Dep. at pp. 87-88, attached to Defendants’ Reply Memorandum as **Exhibit P**; see also Moring Dep. at p. 230, attached to Defendants’ Reply Memorandum as **Exhibit M**.

8. While Defendants tried to have a conversation with Plaintiff, she ignored them and began calling people on her cell phone, telling those whom she called to come to her residence because the police were there again.⁸ During this time, Defendants requested her driver's license, proof of insurance, and registration for the motorcycle for the lawful "stop" of operating a motorcycle without a helmet.⁹
9. After handing her driver's license and a piece of paper to Deputy Moring, Plaintiff turned, walked away, and went inside the residence. Defendants could hear Plaintiff yelling at someone inside the house to come outside and video the interaction. Shortly after Plaintiff returned outside, two males exited the residence and began to apparently record the interaction between Plaintiff and the Defendants.¹⁰
10. Plaintiff then approached Deputy Moring who once again requested the proper paperwork for the motorcycle and explained to her that she could not operate a motorcycle on the roadway without a helmet. Plaintiff replied, "I'm waiting on my insurance company to e-mail me a copy to my phone and my helmet is in the house." At that time, she yelled to one of the males to bring her helmet to her, which he did, and set it on the ground next to the motorcycle.¹¹
11. Instead of contacting her insurance company, Plaintiff began to call various other individuals, telling them to come to her assistance because the police were present. During this time, Plaintiff became more irate, continuously verbally attacking Deputy Hart. Deputy Hart tried to deescalate the situation, but Plaintiff only became more verbally abusive.¹²

⁸ See Affidavit of Kyle Hart at ¶ 9; see also Affidavit of Ryan Moring at ¶ 9; see also Hart Dep. at pp. 112:16-113:4, attached to Defendants' Reply Memorandum as **Exhibit Q**.

⁹ See Affidavit of Kyle Hart at ¶ 9; see also Affidavit of Ryan Moring at ¶ 9; see also Moring Dep. at p. 230:12-16, attached to Defendants' Reply Memorandum as **Exhibit M**.

¹⁰ See Affidavit of Kyle Hart at ¶ 10; see also Affidavit of Ryan Moring at ¶ 10.

¹¹ See Affidavit of Kyle Hart at ¶¶ 11-12; see also Affidavit of Ryan Moring at ¶¶ 11-12.

¹² See Affidavit of Kyle Hart at ¶ 13; see also Affidavit of Ryan Moring at ¶ 13.

12. While Deputy Hart was trying to speak with Plaintiff, an unidentified female approached the scene and stood between Deputy Moring and the Plaintiff. Deputy Moring advised the female not to approach, but she ignored his commands. Deputy Moring then advised this individual that she was interfering with a police investigation and if she did not move away, she would be arrested. Deputy Moring had to repeat this command several times until, finally, the female backed away from the scene.¹³
13. While backing up, the female produced a cell phone and she appeared to be recording the interaction between the Plaintiff and Defendants. While Deputy Moring was speaking with that female, another female came outside from the residence next door to observe the interaction from her front yard.¹⁴
14. After the first female moved away from the Defendants, Deputy Moring again asked Plaintiff to produce proof of insurance for the motorcycle. After several minutes, Plaintiff was still unable to produce proof of insurance. Deputy Moring then requested central dispatch to contact the next wrecker off the wrecker rotation log, which was A-1 Wrecker, in order to have the motorcycle impounded pursuant to LSA – R.S. 32:863.1.¹⁵
15. Deputy Hart returned to his motorcycle to retrieve his clipboard which contained a wrecker sheet and citation forms. After retrieving the forms and clipboard, he relocated to the rear of Deputy Moring's motorcycle to begin filling out the citation. As he began to fill out the citation, he noticed that two males were beginning to approach the Defendants. Deputy Hart then requested that the males stay on the porch if they wished to record the interaction. At that time, both Defendants observed Plaintiff walking towards the front door of her

¹³ See Affidavit of Kyle Hart at ¶¶ 14-15; see also Affidavit of Ryan Moring at ¶¶ 14-15; see also Moring Dep. at pp. 62:3-63:15, attached to Defendants' Reply Memorandum as **Exhibit W**.

¹⁴ See Affidavit of Kyle Hart at ¶¶ 16-17; see also Affidavit of Ryan Moring at ¶¶ 16-17.

¹⁵ See Affidavit of Kyle Hart at ¶ 18; see also Affidavit of Ryan Moring at ¶ 18.

residence, at which point she said something to the effect of “fuck y’all, I’m going inside.”¹⁶

16. At this point, the Plaintiff was still subject to a custodial stop and thus she was not free to leave. For officer safety reasons, Defendants requested that Plaintiff remain on scene and not enter her residence. This request was made due to Plaintiff’s highly agitated state and the unknown variable of Plaintiff potentially entering the residence to retrieve a weapon.¹⁷

17. At no time did Plaintiff explain that her intent to enter the residence was to produce information on the motorcycle. Plaintiff was given verbal commands by both Defendants to remain on scene. Plaintiff ignored these lawful commands and began to walk away from the scene while Deputy Hart was in the process of issuing her citations.¹⁸

18. As Plaintiff was now attempting to flee a lawful custodial stop, Deputy Hart informed Plaintiff that she was under arrest and moved towards her in order to place her in handcuffs.¹⁹

19. While attempting to place the Plaintiff’s hands behind her back, Plaintiff pulled away from Deputy Hart, and he again tried to place her in handcuffs while she was still resisting. At that time, Deputy Moring approached and tried to assist in placing her in custody. As Plaintiff was continuing to resist this lawful arrest, and continued to ignore the deputies’ commands to stop resisting, Deputy Hart decided to place Plaintiff on the ground in order to overcome her resistance and to place her in handcuffs.²⁰

¹⁶ See Affidavit of Kyle Hart at ¶¶ 19-20; see also Affidavit of Ryan Moring at ¶¶ 19-20.

¹⁷ See Affidavit of Kyle Hart at ¶ 21; see also Affidavit of Ryan Moring at ¶ 21.

¹⁸ See Affidavit of Kyle Hart at ¶ 22; see also Affidavit of Ryan Moring at ¶ 22; see also Moring Dep. at p. 232:1-2, attached to Defendants’ Reply Memorandum as **Exhibit V**.

¹⁹ See Affidavit of Kyle Hart at ¶ 23; see also Affidavit of Ryan Moring at ¶ 23.

²⁰ See Affidavit of Kyle Hart at ¶ 24; see also Affidavit of Ryan Moring at ¶ 24; see also Hart Dep. at p. 160, attached to Defendants’ Reply Memorandum as **Exhibit U**.

20. While on the ground, Plaintiff continued to resist arrest by thrashing her body from side to side. The deputies continued to struggle with Plaintiff, attempting to place her on her stomach so that they could get her hands behind her back and then place her in handcuffs.²¹
21. After getting Plaintiff on her stomach, Deputy Hart was finally able to place handcuffs on her. After Plaintiff was placed in handcuffs, Deputy Hart doubled locked the handcuffs for the Plaintiff's own safety so they would not close any further and restrict her circulation. While doing this, the two males approached again, at which point Deputy Moring stood up and ordered the men to back up and to not interfere with this lawful arrest of the Plaintiff.²²
22. Deputy Hart then tried to stand up, but as he did so, Plaintiff flipped over onto her back and kicked Deputy Hart in the legs, causing him to lose his balance and fall on top of her. Plaintiff continued to thrash back and forth while Deputy Hart tried to stand. After regaining his balance, he was able to stand and help Plaintiff to her feet. Unsure of the intentions of the two males, Deputy Hart placed Plaintiff in a handcuffed escort position and moved her away from the males and towards the street.²³
23. While Plaintiff was waiting (handcuffed) near the street, Deputy Moring noticed the two males beginning to approach them again. Deputy Moring then raised his open hand in a "stop" motion and informed the two males, for the second time, that they needed to film from the porch of the residence. At that point, one of the males slapped Deputy Moring's hand away and continued to walk towards the scene of the arrest.²⁴
24. After refusing to comply with Deputy Moring's verbal commands and slapping his hand away, Deputy Moring drew his service taser, as a display of force, to prevent the two males

²¹ See Affidavit of Kyle Hart at ¶ 25; see also Affidavit of Ryan Moring at ¶ 25.

²² See Affidavit of Kyle Hart at ¶ 26; see also Affidavit of Ryan Moring at ¶ 26.

²³ See Affidavit of Kyle Hart at ¶ 27; see also Affidavit of Ryan Moring at ¶ 27.

²⁴ See Affidavit of Ryan Moring at ¶ 28.

from approaching any further. The two males eventually complied and returned to the porch of the residence and continued to apparently film the arrest of the Plaintiff.²⁵

25. After a brief time, Deputy Benjamin Rushing arrived, and Plaintiff was placed in the rear seat of Deputy Rushing's patrol unit. Once Ms. Perkins was placed in the patrol unit, Deputy Hart advised Plaintiff of her Miranda rights, which she verbally stated she understood but did not sign due to being placed in handcuffs.²⁶

26. While Deputy Hart was trying to complete paperwork relative to the incident, Plaintiff continued with her abrasive language and displayed a violent nature. She was heard screaming and observed kicking the doors of Deputy Rushing's unit. At that time, Plaintiff was warned not to damage the unit and she was then transported to the St. Tammany Parish Jail for booking.²⁷

27. Plaintiff was arrested for the following: L.R.S. 14:108.2 (Resisting a police officer with force or violence); L.R.S. 14:34.2 (Battery of a police officer); L.R.S. 32:863.1 (No proof of insurance); and L.R.S. 32:190 (No safety helmet).²⁸

28. On July 26, 2021, the District Attorney's Office for the 22nd Judicial District Court for the Parish of St. Tammany amended Ms. Perkins' bill of information to "R.S. 14:108 Resisting an Officer."²⁹ Following the amendment to the bill of information, the trial of Teliah Perkins for violation of LSA – R.S. 14:108 proceeded before the Honorable Vincent Lobello. After the conclusion of the evidence, Ms. Perkins was found guilty as charged.³⁰

²⁵ See Affidavit of Ryan Moring at ¶ 29.

²⁶ See Affidavit of Kyle Hart at ¶ 28; see also Affidavit of Ryan Moring at ¶ 30.

²⁷ See Affidavit of Kyle Hart at ¶ 29; see also Affidavit of Ryan Moring at ¶ 31.

²⁸ See Affidavit of Kyle Hart at ¶ 30; see also Affidavit of Ryan Moring at ¶ 32.

²⁹ See a certified and true copy of the bill of information is attached to Defendant's Memorandum in Support of Motion for Summary Judgment as **Exhibit D**.

³⁰ See a certified and true copy of the minutes from this July 26, 2021, trial attached to Defendant's Memorandum in Support of Motion for Summary Judgment as **Exhibit E**.

29. Relevant to this motion, Plaintiff alleges that she was “violently arrested in her own driveway” by the Defendants. Plaintiff also alleges that her “arrest arose from two alleged traffic offenses that Ms. Perkins did not commit and, in any event, could have resolved through the mere issuance of a citation.”³¹
30. Plaintiff also alleges that “Ms. Perkins had not broken any laws when Defendants targeted her. Nor did Ms. Perkins present any threat to the officers or try to flee at any point.” Plaintiff suggests the Defendants drove by her home and decided to target her because of her race. Plaintiff also claims, on behalf of her minor son, that by displaying his taser and ordering the minor to stay back, Deputy Moring violated the minor’s civil rights. Plaintiff also alleges various state law claims against both deputies arising out of the same events, e.g., false arrest, battery, false imprisonment, malicious prosecution, intentional infliction of emotional distress and negligent infliction of emotional distress.³²

Respectfully submitted,

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³¹ R. Doc. 1.

³² *Id.*

CERTIFICATE OF SERVICE

I hereby certify that the above and foregoing was electronically filed with the Clerk of Court of the United States District Court for the Eastern District of Louisiana on February 6, 2022, by using the CM/ECF system, which system will send a notice of electronic filing to appearing parties in accordance with the procedures established.

s/ Chadwick W. Collings
Chadwick W. Collings

1 Q. And then, as you arrived at the
2 intersection with Pheasant Street, you called
3 dispatch?

4 A. Prior to that, but, yes.

5 Q. Prior to arriving at the intersection, you
6 called dispatch?

7 A. So between 2018 Jay Street and the
8 intersection of Pheasant, yes.

9 Q. Okay. So looking at Exhibit 2, the map of
10 Jay Street, you'll see 2018 is the house that's
11 marked about halfway down the block.

12 Do you see that?

13 A. Yes.

14 Q. So it's your testimony that after you
15 passed 2018 and before you arrived about six
16 blocks down at Pheasant Street, you called
17 dispatch?

18 A. Yes.

19 Q. And then at some point you reached the
20 intersection with Pheasant Street?

21 A. Yes.

22 Q. And at Pheasant Street, you decided to
23 make a U-turn?

24 A. Yes.

25 Q. Because dispatch had reminded you that the

1 original call referenced 2018 specifically?

2 A. Yes.

3 Q. But you knew going in that the call had
4 referenced 2018, right?

5 A. No.

6 Q. The original dispatch notes didn't direct
7 you to 2018 Jay Street?

8 A. So I operate a police motorcycle that does
9 not have a computer or a CAD function. I have to
10 go completely off of memory, and there's nothing
11 on our dashboard of our motorcycle that tells us
12 specifically an address. So typically you go off
13 of intersections and we knew we had Jay Street,
14 and so that's where we arrived to look for a blue
15 motorcycle -- or a blue dirt bike.

16 Q. And then you passed a blue street bike
17 during -- on the first block of Jay Street, but
18 you didn't think to stop and speak to the person
19 standing next to the bike?

20 A. No, but that's why we called dispatch.

21 Q. You called dispatch because you observed a
22 bike?

23 A. To ask for the address of where the
24 complaint was.

25 Q. Because you had seen a bike at 2018?

1 A. Sure.

2 Q. And it's your recollection that when you
3 turned around, you saw Ms. Perkins on her
4 motorcycle, correct?

5 A. That is correct.

6 Q. And she had moved the motorcycle to the
7 middle of Jay Street at that point, correct?

8 A. Correct.

9 Q. And, according to you, she was facing the
10 house across the street from her, right?

11 A. Correct.

12 Q. So she was -- according to you, she was
13 facing south or -- she was -- she was facing
14 southbound across the street?

15 A. It's possible. I mean, the exact
16 direction, I don't know exact direction. But it
17 was in that direction towards south, that's
18 correct.

19 Q. Okay. Perpendicular to the direction of
20 traffic?

21 A. Correct.

22 Q. Okay. And could you tell that she
23 had -- you could tell that she had started her
24 engine?

25 A. You could hear her engine.

1 Q. You could hear her engine, okay.

2 So from 350 feet away you could hear her
3 engine. What sound was it making?

4 A. Like a revving of the motor. She was
5 giving it gas and letting off, giving it gas,
6 letting off, giving it gas.

7 Q. Okay. Was that -- do you know if she was
8 in gear?

9 A. If you're revving the motor like that and
10 you're going a short distance, then I would say it
11 was probably either -- I'm sure it was in gear,
12 but she probably had her clutch held in.

13 Q. Okay. Could have been --

14 A. I mean, could have been either way.

15 Q. Could it have been in neutral?

16 A. It's possible.

17 Q. Okay. So when you turn around and see
18 her, she's sitting on her bike in the middle of
19 the east/west road -- sorry. Scratch that.

20 So when you turn around, she's sitting on
21 her bike perpendicular to the roadway revving her
22 engine and facing her neighbor's house; is that
23 right?

24 A. Across the street house, yes.

25 Q. While you and Deputy Moring are on her

1 block?

2 A. On Jay Street, correct.

3 Q. Okay. And so is she -- is she moving
4 forwards towards anything?

5 A. As we turn around, she was backpedaling,
6 like with her feet.

7 Q. Okay. And so at that point, she was not
8 revving her engine?

9 A. No, she was revving her motor at that
10 time --

11 Q. Okay. So she's revving --

12 A. -- and revving up.

13 Q. She was revving her engine while she was
14 backpedaling her motorcycle?

15 A. Correct.

16 Q. Okay. And so the -- from the time it took
17 you to get from 2018 Jay Street to the end of the
18 block to turn around, it's your testimony that
19 Ms. Perkins had mounted her motorcycle, correct?

20 A. Correct.

21 Q. Put the key in the ignition, correct?

22 A. I don't know if she had a key already in
23 the ignition or not. I'm not going to speculate.

24 Q. Okay. So the -- is it your testimony now
25 that the motorcycle was running when you passed it

1 there was a motorcycle in the roadway; is that
2 what your testimony is?

3 A. Yes.

4 Q. And could you tell from your position at
5 Pheasant Street that the rider wasn't wearing a
6 helmet?

7 A. Yes.

8 Q. You could see from that far away that the
9 rider was helmetless?

10 A. It was as we were riding back towards the
11 residence, yes.

12 Q. I see. So you did -- you performed the
13 U-turn, saw there was a motorcycle, started riding
14 back towards the residence, and that's when you
15 first observed that the rider was not wearing a
16 helmet?

17 A. Yes.

18 Q. What was the rider doing on the motorcycle
19 when you first observed it after performing the
20 U-turn?

21 A. She was in the street.

22 Q. She was in the street.

23 Was the motorcycle moving?

24 A. To a degree, yes.

25 Q. What does that mean?

1 A. She was backpedaling with her feet while
2 revving the engine.

3 Q. So when you first turned around and did
4 the U-turn at Pheasant Road, you saw a motorcycle
5 in the middle of the road with a rider revving the
6 engine and backpedaling?

7 A. Yes, with her feet.

8 Q. So was she facing west, towards you?

9 A. She was facing the street, like basically
10 the residence across the street from her house.

11 Q. So she was -- Jay Street runs east/west;
12 is that right?

13 A. Correct. And she --

14 Q. And so it's your testimony that --

15 A. She would have been facing south.

16 Q. That's not what you testified during your
17 trial; is that right?

18 A. She was -- she was in the street.

19 Q. Were you asked this question during the
20 criminal trial, did you give this answer:

21 "Question: So when you all turn around,
22 you saw her, she was facing west. So she was
23 facing your direction, correct?

24 "Answer: Yes."

25 Were you asked that question and did you

1 it.

2 A. So from there, we pulled up to the
3 residence. She was on the bike. She was actively
4 revving the bike and backed it into the driveway,
5 eventually dismounted.

6 Before we were able to dismount from our
7 motorcycles, she immediately started yelling at
8 us, telling us that -- that we were racist and it
9 was the third time that we had been out there that
10 week. She was very, very upset just at the fact
11 that we were even there.

12 From that, we asked her to produce the
13 documentation, of which she was able to produce
14 her driver's license and a temporary registration
15 paper, which did not match the license plate that
16 was on the rear of the motorcycle.

17 She had said that she had insurance but
18 was ultimately unable to produce it. And at one
19 point, she had said she had it inside -- I believe
20 it was inside of a filing cabinet or something
21 like that, and that's why we initially allowed her
22 to go inside the residence.

23 Upon coming out, she had already called
24 somebody from -- I believe it was Walmart or
25 somewhere down the street. She had made one phone

1 driveway?

2 A. Correct.

3 Q. Okay. By the time you -- you didn't
4 approach Ms. Perkins, correct?

5 A. We approached her with the motorcycles,
6 yes.

7 Q. And she was already on her property at
8 that point, right?

9 A. She had already backed back into her
10 driveway.

11 Q. Okay. Do you have any idea what she was
12 doing?

13 I mean, it seems strange for somebody to
14 get on a motorcycle, rev it across the street, and
15 then backpedal back into their driveway.

16 Did that strike you as odd?

17 A. Nothing really strikes me as odd anymore,
18 but I -- I can't answer why she did that, no.

19 Q. When you saw her out on the street, did
20 you ever consider saying, "Ma'am, you forgot your
21 helmet"?

22 A. At the time we approached the scene and
23 dismounted our motorcycle, Deputy Moring was in
24 charge of the call.

25 Q. But I'm asking you for your take.

1 don't remember where the rider was?

2 A. She was -- she had been backing up, but by
3 the time we got to the house, I don't remember if
4 she had already dismounted or if she was still on
5 the bike or not.

6 Q. Was the engine still running?

7 A. If she was on it, then I would say yes.
8 If she was not, then I would say no.

9 Q. But you don't know, sitting here today?

10 A. I said I don't recall.

11 Q. And on that day, May 5, 2020, you didn't
12 check to see whether the engine was hot, did you?

13 A. No.

14 Q. And so when you arrived at 2018 Jay
15 Street, you initiated a traffic stop; is that
16 right?

17 A. Yes.

18 Q. Now, when you initiate a traffic stop,
19 your number-one goal is to go home, right?

20 A. Yes.

21 Q. Meaning that your goal is to initiate the
22 stop, write the citation, and move on, correct?

23 A. Typically, yes.

24 Q. To go deal with other matters or more
25 important crimes, correct?

1 A. We did not tell her to go get her helmet.

2 Q. When she moved towards the house to
3 retrieve the helmet, did you stop her?

4 A. No.

5 Q. You allowed her to retrieve her helmet,
6 correct?

7 A. Yes.

8 Q. And, now, at one point Ms. Perkins called
9 9-1-1, right?

10 A. Yes.

11 Q. She requested a supervisor be sent out,
12 correct?

13 A. Yes.

14 Q. And she spoke calmly to the dispatcher,
15 right?

16 A. Yes.

17 Q. Now, I believe your testimony was when you
18 first arrived at 2018 Jay Street and dismounted
19 your bike to initiate the traffic stop, only
20 Ms. Perkins was outside; is that right?

21 A. Yes.

22 Q. At some point during your interaction with
23 Ms. Perkins, did others exit the house?

24 A. Yes.

25 Q. Two male teenagers; is that right?

1 Q. Okay. But, again, you did not receive a
2 call for somebody standing -- being in the middle
3 of the street on a motorcycle without a helmet,
4 correct?

5 A. That was not the call, no.

6 Q. Okay. When you pulled up to the
7 residence, how did the interaction start?

8 A. There wasn't much interaction at all. As
9 soon as we pulled up, Ms. Perkins started verbally
10 attacking us, yelling at us.

11 Q. And what did she say?

12 A. I mean, I'd have to refer to my report for
13 that. I don't know the exact verbiage. I mean,
14 just along the lines of, "Y'all are out here
15 because my neighbor's a racist. They keep calling
16 on me," or something to that effect.

17 Q. And you consider that statement to be an
18 attack on you?

19 A. It wasn't an attack on us, no. She
20 just -- her level of yelling at us.

21 Q. It was a complaint about what she said
22 were racist neighbors, correct?

23 A. According to her.

24 Q. According to her.

25 And did you have any reason to doubt her?

1 A. I had no reason to question at the time.

2 Q. And when she started saying that, had you
3 already told her why you were approaching her?

4 A. Again, I'd have to refer to my report --
5 excuse me -- to see exact time. I don't recall.

6 Q. Because it would seem sort of odd to start
7 an interaction by saying you were called to arrest
8 her -- sorry -- you were called by racist
9 neighbors before you told her that you were
10 stopping her, right?

11 A. Exact timing, again, I don't recall
12 without looking at my report.

13 Q. Okay. And after she said that -- made the
14 complaints about racist neighbors repeatedly
15 calling her in, how did you respond?

16 A. I believe Deputy Moring was talking to her
17 at the time.

18 Q. Okay. So you didn't say anything?

19 A. If I did, I'd have to refer to my report.
20 If I did say anything, it was along the lines of,
21 "No, we're here because of a call or something."
22 I don't recall the exact words.

23 Q. Okay. I'm going to try to see if I can do
24 this screen share. This is a clip from a
25 statement you made to Major Ripoll, I believe.

1 A. From here, yes. From now knowing that she
2 called 9-1-1. At the time, I didn't know that she
3 called 9-1-1.

4 Q. Okay. So while you were at Ms. Perkins'
5 residence, you were not aware that she called
6 9-1-1 to request a supervisor. Is that your
7 testimony?

8 A. That is correct.

9 Q. Okay. And when did you learn that she
10 called 9-1-1 to request a supervisor?

11 A. I don't remember if it was that day after
12 the incident or if it was later. I don't recall
13 the exact day when I found out.

14 Q. Was she out of your sight when she called
15 9-1-1?

16 A. Again, I don't remember her calling 9-1-1,
17 but now looking at the dispatch notes, I don't
18 recall exactly when she called 9-1-1. I know she
19 made several phone calls. I don't know which one
20 was to 9-1-1, no.

21 Q. Can you hear her phone calls?

22 A. If she was yelling, yes.

23 Q. Okay. So on calls where she wasn't
24 yelling, you couldn't hear her phone calls -- her
25 conversations?

1 A. Probably not.

2 Q. And was this -- was she standing far away
3 from you? How far away from you was she?

4 A. Like I said, she made several phone calls.
5 I don't remember exactly where she was on each one
6 of those phone calls.

7 Q. So on some calls she was yelling, and on
8 some calls she was calm; is that fair?

9 A. Possibly, yes.

10 Q. But were you surprised -- did the
11 supervisor eventually come to the scene?

12 A. Yes, my sergeant did.

13 Q. And was that based on her request, or was
14 it based on your or Deputy Moring's request?

15 A. Again, at that time -- at that time, we
16 didn't request anybody -- supervisor at that time,
17 because he was -- I just recall hearing him on his
18 radio saying he's en route to us. I don't recall
19 when he got that call.

20 Q. Okay. Was it not until backup arrived
21 that you learned of her call to 9-1-1?

22 A. Again, I don't recall that day even
23 knowing she called 9-1-1.

24 Q. Okay. You don't remember the sergeant
25 telling you afterwards that she had called to

1 shows 2018 Jay Street, correct?

2 A. Yes.

3 Q. And it shows that general area, that block
4 of Jay Street that you were called to; is that
5 right?

6 A. Yes.

7 Q. And so when you first got to Jay Street,
8 you were heading westbound toward Pheasant Street;
9 is that correct?

10 A. According to this map, looking at this
11 map, it's northwest.

12 Q. Okay. Northwest towards --

13 A. Yes.

14 Q. So you're going left on this map, right?
15 Is that correct?

16 A. Correct, yes.

17 Q. And while you were first driving down Jay
18 Street, you actually observed a woman standing
19 next to a motorcycle, correct?

20 A. Yes.

21 Q. And you didn't know it at that moment, but
22 that woman was Ms. Perkins, correct?

23 A. Correct.

24 Q. And you didn't pay attention at that
25 moment, but you soon realized that address was

1 2018 Jay Street; is that correct?

2 A. Deputy Moring realized it once he switched
3 over and called dispatch and they gave him the
4 exact address.

5 Q. Okay. Did you realize it at the time,
6 that that was 2018 Jay Street where the woman was
7 standing?

8 A. At the time we both looked at each other
9 and said, "I think we passed it. We must have
10 passed it."

11 Q. Okay. And you actually waved to the
12 woman, correct?

13 A. I did, uh-huh.

14 Q. And you kept going to the stop sign,
15 correct?

16 A. I don't think we made it all the way quite
17 to the stop sign, but towards that direction.

18 Q. Okay. Did she see you?

19 A. I don't remember if she waved back. I
20 don't know. I don't remember if she saw us or
21 not. I don't remember if she waved or not. I
22 know I held up my hand like saying hi, you know,
23 as we passed by.

24 Q. Did you see her looking in your direction
25 as that happened?

1 A. Yes.

2 Q. And are you friends with Deputy Hart
3 outside of work?

4 A. No.

5 Q. You don't socialize together?

6 A. No.

7 Q. Do you attend the same church?

8 A. No.

9 Q. Now, when you arrived on Jay Street -- and
10 you can look at Exhibit 2 in front of you -- you
11 drove westward from Thompson Road; is that right?

12 A. Yes.

13 Q. And so you entered Jay Street from
14 Thompson Road heading west toward Pheasant Street?

15 A. Yes.

16 Q. And while driving west on Jay Street, you
17 passed a blue street bike that was parked on the
18 side of the road; is that right?

19 A. It was in the driveway.

20 Q. While driving west on Jay Street, you
21 passed a blue street bike that was parked in the
22 driveway, correct?

23 A. Yes.

24 Q. Did you notice the address of the house as
25 you passed by?

1 serious offense, correct?

2 A. I knew -- I knew it was a violation of
3 state law.

4 Q. Now, who initiate -- withdrawn.

5 You testified, I think, a moment ago that
6 you don't recall where the rider was when you
7 arrived at the house; is that right?

8 A. Correct.

9 Q. Okay. At some point did you or Deputy
10 Hart ask her to identify herself?

11 A. Yes.

12 Q. And did she identify herself?

13 A. Yes. I believe we got her driver's
14 license.

15 Q. Okay. And what did you come to learn her
16 name was?

17 A. Teliah Perkins.

18 Q. Did she resist sharing her name or
19 driver's license with you?

20 A. No.

21 Q. She provided it to you when you asked,
22 right?

23 A. Yes.

24 Q. And she confirmed that she resided at 2018
25 Jay Street, correct?

1 And it was just me and my daughter, like
2 she would walk out to my car, you know, where I
3 could see her, obviously. And we had one of our
4 dogs out front there, and it was just my gut
5 feeling told me it was time to get inside, so I
6 went inside.

7 Q. Okay. So at the time -- at the beginning
8 of the incident, you were inside your home, yes?

9 A. Yes, yes.

10 Q. Okay. So you did not observe the entire
11 interaction between Ms. Perkins and the police,
12 correct?

13 A. No, sir, I did not.

14 Q. Okay. And you could not hear everything
15 that was being said, yes?

16 A. I couldn't hear everything, but I could
17 hear some things, yes.

18 Q. Okay. What kind of things could you hear?

19 A. There was a lot of cursing. So what made
20 me get up, I was sitting at my table -- at the
21 dining room -- or the kitchen table, and I heard a
22 female kind of yell. And I'm like, What the heck?
23 You know, I just thought it was a neighbor, and I
24 ignored it.

25 And then I heard it go again, and that's

1 what got me to go up and look out the window, and
2 there was -- she was yelling at the deputies.
3 Deputies were trying to get her to calm down. So,
4 yeah, there was a lot of curse words in there.

5 Q. So did you observe the interaction from
6 that point on?

7 A. In and out. I was trying to keep, you
8 know, my daughter entertained, dogs, you know,
9 because it was kind of like they could know
10 something was going on, so I was trying to curtail
11 two dogs and a toddler; so it was, I mean,
12 chaotic.

13 But I witnessed, if not most of it -- I
14 mean, if not all of it, the majority of it, I
15 would say, most of it, I guess.

16 Q. Okay. So you were working from home that
17 day and watching your two-year-old?

18 A. Yeah.

19 Q. Okay.

20 A. Uh-huh.

21 Q. And were your other children home?

22 A. No -- well, one of -- my oldest was. The
23 middle one was with his dad, visiting his dad. It
24 was during the pandemic, so there really
25 wasn't -- no school going on, no daycare, no

1 Q. So the only thing you observed was from --

2 A. Was from inside the home, yes.

3 Q. You were looking out the window?

4 A. Yes, sir, I had -- I was looking out the
5 living room window, which was right there, and
6 then I went back into -- to our bedroom window
7 because I was closest to the bedroom.

8 Q. Do you recall at some point seeing the
9 deputies trying to start writing citations to her?

10 A. Yes, I do remember that they were writing
11 stuff. One of them was. I don't know who,
12 obviously, but, yes, I do.

13 Q. And at some point in time, did you -- do
14 you recall Ms. Perkins basically saying something
15 to the effect, Fuck y'all, I'm leaving?

16 A. There was definitely a fuck -- am I
17 allowed to cuss on this?

18 Q. Yes.

19 A. There definitely was --

20 Q. If you're quoting someone else, yes, to
21 the best of your knowledge.

22 A. To the best of my knowledge, there was
23 definitely a fuck y'all, I'm leaving, or I'm out
24 of here. It was loud and very clear. You could
25 hear definitely a curse word in there. It was

1 somewhere on the lines of fuck y'all, I'm leaving,
2 or fuck y'all, I'm out of here, one of the two.
3 She kept saying that.

4 Q. Did that immediate -- did that -- hearing
5 that, and the next thing you saw was her being
6 arrested by the deputies?

7 A. Yeah. It was -- she was, yes. Yes, yes.

8 Q. All right. And is your having members in
9 your family having previously served in a law
10 enforcement capacity, the fact that you previously
11 worked for a D.A.'s office, does that impact your
12 ability to tell the truth today?

13 A. No, sir, it doesn't. Right is right, and
14 wrong is wrong.

15 MR. COLLINGS:

16 That's all I have. Thank you.

17 Madam Court Reporter, I'll send you
18 this IA report that we'll attach as
19 Exhibit 1.

20 THE COURT REPORTER:

21 Got it. Do you have any other
22 questions, Mr. Johnson?

23 (Exhibit Defense 1, remotely introduced
24 and provided electronically to the
25 reporter.)

1 Q. Okay. And during this interaction that we
2 just watched, you and Deputy Moring are able to
3 get Ms. Perkins on the ground, correct?

4 A. She chose to go to the ground.

5 Q. Okay. Was she -- was that not your
6 intent, to get her on the ground?

7 A. Once she started resisting, it was, to put
8 her in a handcuffing position, yes.

9 Q. Okay. And that's why -- what do you mean
10 by "resisting" there?

11 A. By resisting being put in handcuffs.

12 Q. Okay. And so how -- do you mean by
13 pulling her arms or something else?

14 A. Pulling away, turning away, yes,
15 resisting.

16 Q. So when she started pulling her arms, you
17 decided to put her on the ground.

18 Is that a correct summary?

19 A. Possibly, yes.

20 Q. And you, in fact, got her on the ground,
21 correct?

22 A. Yes.

23 Q. And as you do this, you and Deputy Moring
24 are attempting to pull Ms. Perkins' arms behind
25 her back, correct?

1 she -- she just kept amping the situation up, and
2 eventually she had said that she was going inside.
3 And I'm sure that's probably when Deputy Hart
4 said, in his mind, that, unfortunately, we were
5 going to have to take her to jail.

6 Q. Okay. So when -- when a citizen is pulled
7 over or stopped for a traffic offense, is a
8 citizen free to go whenever they feel like they
9 don't want to be there anymore?

10 A. No.

11 Q. So that person is now in custody, correct?

12 A. Yes.

13 Q. Custodial stop?

14 A. Yes.

15 MR. GOLDSTEIN:

16 Objection; leading.

17 Hold on. Objection to the leading.

18 BY MR. COLLINGS:

19 Q. Is that person free to go?

20 A. No.

21 Q. All right. So at that point in time, when
22 she said, "I'm going back inside," or whatever she
23 said to you, she was essentially trying to flee
24 from a custodial stop; is that correct?

25 A. Yes.

1 Q. Did she appear to be over 50 years old?

2 A. I don't know.

3 Q. But she came walking down 2018 Jay Street
4 from the Thompson Road intersection, correct?

5 A. Yes.

6 Q. Was she a threat?

7 A. Not walking down the street, no.

8 Q. You had no reason to believe that she was
9 in any way a threat to you or anyone else,
10 correct?

11 A. At that point, no.

12 Q. And she approached you and Deputy Hart and
13 began speaking to you, right?

14 A. She was yelling at us as she was walking
15 down the street.

16 Q. She was yelling at you?

17 A. Yeah, in our direction.

18 Q. So she was raising her voice, too?

19 A. Yes. I believe she was interacting with
20 Ms. Perkins, if I remember correctly.

21 Q. But she was also interacting with you and
22 Deputy Hart, correct?

23 A. Yes, coming down the street.

24 Q. And at some point you specifically began
25 interacting with this woman, correct?

1 A. Yes.

2 Q. And you advised her not to approach any
3 closer to you?

4 A. Correct.

5 Q. And you advised her that she was
6 interfering with your investigation?

7 A. I told -- yes, because now I'm not -- I'm
8 not paying attention to what I'm supposed to be
9 paying attention to. I'm paying attention to
10 somebody walking down the street.

11 Q. Yeah, the public street, correct?

12 A. Yes.

13 Q. And you told her that if she did not move
14 away, she could be arrested, correct?

15 A. Yes.

16 Q. And you used profanities during your
17 interaction with her, didn't you?

18 A. No.

19 Q. You did not say to her, quote, "Get the
20 fuck out of my face"?

21 A. No.

22 Q. You did not say to her, quote, "Do you
23 want to get fucking arrested?"

24 A. No.

25 Q. Is it your testimony, Deputy Moring, that