

IN THE SUPREME COURT OF OHIO

DISCIPLINARY COUNSEL,

Relator,

-vs-

ANGELA ROCHELLE STOKES,

Respondent.

: CASE NO.: 14-1905
:
: Matter Related to the Practice of
: Law Authorized by S. Ct. Prac. R.
: Section 13
:
:
:
:
:

RESPONDENT'S MOTION FOR DISSOLUTION OR MODIFICATION OF ORDER OF
SUSPENSION UNDER GOV. BAR. R. V(5a)(C)(1) Exhibit K through Exhibit L

SCOTT J. DREXEL
(0091467)
Disciplinary Counsel
250 Civic Center Drive, Suite 325
Columbus, Ohio 43215
614.461.0256
614.461.7205 (Facsimile)
scott.drexel@sc.ohio.gov
Relator

HON. ANGELA ROCHELLE STOKES
(0025650)
Cleveland Municipal Court
1200 Ontario Street
Cleveland, Ohio 44113
Respondent

LARRY W. ZUKERMAN (0029498)
PAUL B. DAIKER (0062268)
S. MICHAEL LEAR (0041544)
Zukerman, Daiker & Lear Co., L.P.A.
3912 Prospect Avenue, East
Cleveland, Ohio 44115
216.696.0900
216.696.8800 (Facsimile)
lwz@zukerman-law.com
pbd@zukerman-law.com
sml@zukerman-law.com
Counsel for Respondent

Disciplinary Counsel
THE SUPREME COURT OF OHIO

250 CIVIC CENTER DRIVE, SUITE 325
COLUMBUS, OHIO 43215-7411
(614) 461-0256
FAX (614) 461-7205
1-800-589-5256

ASSISTANT DISCIPLINARY COUNSEL
STACY SOLOCHEK BECKMAN
CAROL A. COSTA
HEATHER L. HISSOM
PHILIP A. KING
KAREN H. OSMOND
AMY C. STONE

DISCIPLINARY COUNSEL
JONATHAN E. COUGHLAN
CHIEF ASSISTANT DISCIPLINARY COUNSEL
LORI J. BROWN
SENIOR ASSISTANT DISCIPLINARY COUNSEL
ROBERT R. BERGER
JOSEPH M. CALIGIURI

April 7, 2011

PERSONAL AND CONFIDENTIAL

Michael D. Winston, Esq.
P.O. Box 27112
Columbus, OH 43227-0112

Re: Hon. Angela Rochelle Stokes
Our File No. B0-2588J

Dear Mr. Winston:

After investigation and careful consideration of your complaint against Judge Angela R. Stokes, we have determined that further disciplinary action is not warranted. As we are certain you are aware, the authority of this office is limited to investigating alleged violations of the Code of Professional Responsibility, the Ohio Rules of Professional Conduct and the Code of Judicial Conduct. In order to pursue a matter beyond the investigative stage, we must find probable cause (defined as substantial, credible evidence) of misconduct by an attorney or judge. After review of the materials submitted to our office, including the transcript of the August 19, 2010 hearing that gave rise to your grievance, we did not find substantial, credible evidence of misconduct by Judge Stokes.

Your grievance arose out of what you believed was unprofessional and unwarranted conduct by Judge Stokes in the case *City of Cleveland v. Keynan Williams*. You indicated that in response to your advocacy on Mr. Williams' behalf, Judge Stokes became visibly upset with you, berated and embarrassed you and acted in a retaliatory manner towards Mr. Williams. In her response to the allegations, Judge Stokes explained the circumstances surrounding Mr. Williams' case, including his prior history and the concerns that she had with, what she believed to be, Mr. Williams' drug abuse problem. She explained that she became upset with you during the hearing when you objected to the exact sentence that you had negotiated and agreed to on Mr. Williams' behalf. Judge Stokes further acknowledged and regretted raising her voice in response to your actions. She denied acting in retaliation towards Mr. Williams, or you, and indicated that she called Mr. Williams back into the courtroom not to change his sentence, but to confirm that your actions were what

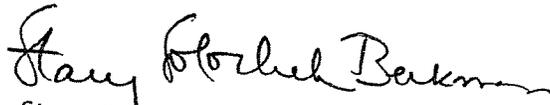


Michael D. Winston, Esq.
April 7, 2011
Page 2

your client desired. The transcript of the proceeding supports Judge Stokes' recollection. We do not believe that substantial, credible evidence exists to suggest that Judge Stokes acted in a manner contrary to the Ohio Rules of Professional Conduct of the Code of Judicial Conduct in her handling of Mr. Williams' case.

As previously set forth, in accordance with our authority, the disposition of your complaint is limited solely to the question of whether Judge Stokes committed a violation of the Ohio Rules of Professional Conduct or the Code of Judicial Conduct. Accordingly, because our investigation did not reveal substantial, credible evidence of misconduct by Judge Stokes, we are dismissing your complaint and closing our file on this matter.

Sincerely,



Stacy Sotochek Beckman *FS*
Assistant Disciplinary Counsel

SSB/mlr

cc: George D. Jonson, Esq.
Kimberly V. Riley, Esq.

JAMES J. MONTGOMERY¹
DOUGLAS W. RENNIE¹
GEORGE D. JONSON¹
KELLY CARBETTA SCANDY¹
LINDA L. WOEBER²
ELIZABETH P. SHERWOOD¹
JANET A. SELF
RALPH E. BURNHAM³
G. TODD HOFFPAUIR¹
MATTHEW E. STUBBS⁵
KIMBERLY VANOVER RILEY¹
JASON A. GOLDEN⁴
TIMOTHY C. AMMER⁵
STEPHEN J. BREWER¹
TRUDIE E. MCADAMS¹
CHAD M. SIZEMORE⁶
LISA M. ZARING
SARAH C. ALFORD¹
BRIAN M. SPIESS¹
J. KELLY RATLIFF⁷

MONTGOMERY, RENNIE & JONSON
A LEGAL PROFESSIONAL ASSOCIATION

SUITE 2100
36 EAST SEVENTH STREET
CINCINNATI, OHIO 45202-4452

TELEPHONE: 513-241-4722

FAX: 513-241-8775

Direct Dial: (440) 779-7978
Direct Facsimile: (513) 768-9205
Email: kriley@mrjlaw.com

¹ ALSO ADMITTED IN KENTUCKY
² ALSO ADMITTED IN KENTUCKY
& PENNSYLVANIA
³ ALSO ADMITTED IN KENTUCKY
& TEXAS
⁴ ALSO ADMITTED IN FLORIDA
& NEW YORK
⁵ ALSO ADMITTED IN KENTUCKY &
INDIANA
⁶ ALSO ADMITTED IN KENTUCKY
& WASHINGTON D.C.
⁷ ADMITTED IN KENTUCKY ONLY

DENNIS VAN HOUTEN
(1950-2008)

January 19, 2011

Via Electronic Mail Only

Stacy Solochek Beckman
Office of Disciplinary Counsel
250 Civil Center Drive
Suite 325
Columbus, Ohio 43215-7411

Re: *The Honorable Judge Angela Stokes*
ODC Case No.: BO-2588J
MR&J Ref: 711-622
XL Ref: 3008687

Dear Stacy:

Judge Stokes forwarded us your letter of December 6, 2010. We are responding on her behalf, and we ask that her response not be shared with the grievant.¹ For your reference, and as you requested, I am attaching a copy of the

¹ As you may be aware, the grievant, Mr. Winston, has had interaction with your office before. He was a witness in one of the four counts against Judge Carole Squire involving the matter of *Fleming v. Fleming*. There were a number of witnesses in that case who testified that the Judge displayed an inappropriate judicial temperament; however, Mr. Winston was not wholeheartedly part of this group. While he and/or his co-counsel had initially been adverse witnesses against Judge Squire in that matter, Mr. Winston later conceded that *he* had acted inappropriately with the Court, and disrespectfully towards Judge Squire in particular.

Specifically, Mr. Winston had asked Judge Squire for a continuance of a trial date that was conditioned upon his specific availability and promise to proceed without further continuances. However, when that continued trial commenced, Mr. Winston did not attend; he instead sent an attorney whom he had attempted to substitute as new counsel. The Court insisted upon Mr. Winston's appearance because the Court's local rules did not permit a substitution of counsel without leave of court.



Court's transcript of August 23, 2010, and Judge Stokes' three relevant judgment entries (one from August 19, 2010, in 2007 TRD 00559592, and two from August 23, 2010, in 2010 TRD 038170 and 2010 CRB 021617). I'm also attaching a transcript from August 19, 2010, which we cite as well.

Background Facts

Keynan Williams is a regular defendant in the Cleveland Municipal Court and Cuyahoga County Court of Common Pleas. While we do not have access to the same LEADS information that is available to the courts, a search of the Cuyahoga County and Cleveland Municipal Clerks' websites yields evidence of a serious and consistent criminal past—in addition to being a perpetual misdemeanor, Mr. Williams repeatedly failed to show up for Court, and had multiple felony offenses. (See Appendix.)

The cases at hand: 2007 TRD 00559592 (Drug Abuse); 2010 TRD 038170 (Driving Under Suspension/Revocation; Driver Seat Required), and 2010 CRB 021617 (Drug Abuse; Open Container)

It is against this backdrop that we must evaluate Judge Stokes' review of this matter. Mr. Williams appeared before Judge Stokes in 2010 on a 2007 drug abuse case, and two companion cases from 2010 where he had been charged with driving under suspension/revocation, driving without a seat belt, drug abuse, and driving with an open container of alcohol. The timeline of the case is as follows:

May 10, 2007

Williams was issued a citation for drug abuse/marijuana possession (MM); he was ordered to appear on May 24, 2007. When he failed to appear, a *capias* was issued; later, a Warrant Block followed.

June 7, 2010

Williams was issued three additional citations--one for driving with a suspended license (M1) and failure to wear a seat belt (MM), one for drug

Mr. Winston conceded in the *Squire* matter that the atmosphere he and his co-counsel created made it difficult for the Court to maintain order and address the issues before it. He conceded exhibiting an aggressive demeanor toward the Court, including raising his voice when speaking to the Judge. At a point in the underlying *Fleming* proceedings, Mr. Winston contacted his mentor for advice, and received guidance that he was behaving too aggressively, and that he should temper his words and tone down his demeanor. After consulting with his mentor, he felt compelled to apologize to Judge Squire—more than once. He later conceded that his demeanor toward the Court was improper.

We raise this issue to illustrate that Mr. Winston has—at least once before—conceded exhibiting disrespectful behavior with a judge that is relevant to the discussion of this matter.

abuse/marijuana possession (MM), and another for violating the open container law in his vehicle (M4). He was ordered to appear on June 21, 2010.

June 21, 2010

When Williams appeared for arraignment on the two 2010 cases, the capias alert from the 2007 case was cancelled. He entered a plea of not guilty on all five charges; he was advised of his right to counsel. By random lottery, his case was assigned to Judge Stokes.

July 7, 2010

Williams appeared before Judge Stokes for the first time in these matters, appearing for a criminal pretrial. When he had not yet obtained counsel, she advised him of his right to counsel, which was the second time he had been advised (the first time being by the magistrate presiding over his arraignment). She then asked if he needed additional time to retain an attorney. At his request, the Court continued the matter to July 20, 2010, for him to obtain counsel.

July 20, 2010

Attorney Michael Winston entered an appearance and moved to stay the matters while he sought to have them transferred to Judge Ronald B. Adrine because Judge Adrine had previously adjudicated other cases Williams had in this court.² Judge Stokes deferred the decision on this motion to Judge Adrine in his capacity as the presiding and administrative judge; he has authority in these capacities to rule on all motions to transfer. She indicated that she would not order a continuance date unless and until Judge Adrine denied the motion. She indicated that either he would transfer the cases to his docket, or, if the motion was denied, Central Scheduling would reset the matters on her docket.

July 22, 2010

Judge Adrine denied Williams' Motion to Transfer because he had no active cases involving Williams. The Court's Central Scheduling Office issued a summons for Williams' appearance before Judge Stokes. A summons was issued for Williams' appearance, setting the matter for pre-trial on August 11, 2010. In addition, a call was placed to Attorney Winston's office, apprising him of the next hearing date.

August 11, 2010

² According to the court's local rules, Williams' current cases, including the 2007 drug abuse charge, would remain on the assigned judge's docket (i.e., Judge Stokes' docket) unless he had pending cases before Judge Adrine.

The matter was continued to August 19, 2010, at Attorney Winston's request so that Williams might begin a payment plan with the Bureau of Motor Vehicles to obtain limited driving privileges; he hoped to obtain these privileges before facing these charges. The Court granted the continuance until August 19, 2010, for this purpose—had Mr. Williams taken some efforts to obtain partial driving privileges and get on a plan to obtain complete reinstatement, it would reflect favorably on his possible sentence.

Ultimately, those privileges were not granted during the timeframe of this case; on October 1, 2010, Williams obtained some form of driving privileges, the details of which are unknown. *See* 2010 CRH 030830. This matter remains open, and Mr. Williams' privileges are presumably conditioned upon maintaining compliance with a payment schedule and possibly other conditions.

August 19, 2010 (see attached transcript)

At sidebar, the parties discussed various proposals. Judge Stokes recalls that the prosecutor had suggested a plea to the open container charge (an M4 that would have been a probationable offense that would have included drug and alcohol testing), but Attorney Winston did not want his client to plead to that charge. Instead, the parties proposed a plea to Judge Stokes whereby Williams would instead plead no contest to the driving under suspension charge, consenting to a finding of guilty, as well as plead no contest and accept a finding of guilt in the 2010 drug abuse case. In return, the prosecutor would agree to nolle the 2007 drug abuse charge, and the 2010 open container and seat belt charges.

The parties' proposed plea included a specific list of jointly recommended sentence conditions:

Drug Abuse

- \$50 fine
- No additional court costs; the court costs were to be satisfied by those paid in the companion case for driving under suspension (below)

Driving Under Suspension

- A \$1,000 fine, \$800 of which would be suspended, plus court costs
- 180 days in jail, 177 of which would be suspended
- Three days in the Cleveland House of Corrections
- Proof of compliance with Ohio's Financial Responsibility Law
- One year of active probation
- Prohibition on driving until obtaining a valid license and insurance
- Substance abuse assessment for both alcohol and chemical dependencies, and
- Substance abuse treatment, as warranted.

The parties discussed these conditions at length during multiple sidebar conferences, and possibly one in chambers, before going on the record. These conversations spanned several different meeting days.

Judge Stokes considered the parties' proposal; it was extremely noteworthy to her that the defendant appeared to have a persistently untreated drug problem that manifested itself in new driving under suspension violations and other crimes. However, the parties suggested a plea proposal that included an agreement for the defendant to obtain a substance abuse assessment and treatment, if warranted. Based upon this proposal, Judge Stokes indicated to the parties at sidebar that she would be willing to accept the plea, and she indicated that she would impose this sentence when they went on the record. In addition, Judge Stokes would have typically imposed more jail time because of the defendant's multiple prior offenses; however, she only agreed to accept the plea with a smaller jail sentence because she believed the defendant would resolve most of his issues on probation.

The parties agreed to this proposal, and they went on the record to permit Williams to enter his plea of no contest to the 2010 driving under suspension and drug abuse/marijuana charges. (See page 2, lines 16-19, of the August 19, 2010, transcript in which Judge Stokes asks, "Do you want to proceed with the plea today?" and Attorney Winston notes, "Yes, and then we'll do what we talked about.")

As she does with all defendants, Judge Stokes asked Mr. Williams a number of questions to ensure he understood the effect of his plea, as well as that it was being entered with a full understanding, and without duress. Among other things, she reminded him of the maximum sentence she could impose; she ensured he understood that this waived his right to a trial or jury; that he was waiving his right to remain silent or call witnesses or confront his accusers. She ensured he was not entering the plea under any threats or promises to change his plea; she ensured he was satisfied with his attorney's representation; and she ensured he had no further questions.

The Court accepted Williams' plea, entering a finding of guilt in the 2010 drug abuse and driving under suspension charges, and dismissing the remaining three counts. Of these three pending case numbers before Judge Stokes, the only one that was disposed of this day was the 2007 drug abuse charge (2007 CRB 014927) because the rest were continued to August 23 for sentencing. (See judgment entries.)

Notwithstanding the fact the parties had just worked out the entire specifics of his plea, including the sentence, Mr. Winston had asked the Court before going on the record to permit him a continuance before entering its sentence—his explanation was that he wanted the driving privileges hearing to proceed first. While this struck Judge Stokes and Prosecutor Hopp as odd and

unnecessary since the parties had agreed to the proposed sentence, Judge Stokes granted another continuance (in addition to the August 11 continuance she had already granted for the same reason) and set the sentencing for the following week on August 23, 2010.

August 23, 2010 (see attached transcript, as cited below)

On this date, Williams reappeared for sentencing—something both Judge Stokes and Prosecutor Hopp believed to be a nominal formality because the parties had already jointly proposed both the plea and sentence to the Judge in previous sidebars, and in yet another sidebar at the beginning of this sentencing date (*see* transcript, p. 2, lines 12-13). While Judge Stokes was not bound by the parties' proposed sentence, she had already expressed her inclination to accept the parties' proposal and had been prepared to go on the record on August 19 to formalize it. However, because Attorney Winston had asked for additional time to potentially obtain his client's reinstatement privileges first, she had granted it.

Judge Stokes offers every attorney and defendant the option of making a statement on the record before she enters a sentence. Therefore, it would not be at all unusual for Attorney Winston to make such a statement on his client's behalf; however, in a move that *was* unusual, he made a statement on the record that asked her to enter a different sentence. Rather than adhering to the proposed sentence the parties had agreed to as part of the plea, he argued to the Court that it should not enter *any* jail time. This request was directly contrary to the joint proposal of three days of jail that the parties had made to the Court before Mr. Williams entered his plea in the previous hearing. That notwithstanding, Judge Stokes kept an open mind and listened to his argument:

In summary, Attorney Winston made a lengthy argument for the Court to "temper justice with mercy," and suspend the entire 180 jail sentence so that Williams would not have to spend any time in jail. Judge Stokes then asked the defendant if he wished to add anything, which he responded by apologizing for being there and indicating he hadn't known he could seek a license reinstatement, but he shouldn't have been driving, anyway. While he did not specifically discuss the drug abuse charge to which he had been found guilty, he closed with the fact he was sorry for having to be there, and indicated it would not happen again. Judge Stokes responded by asking the defendant, "You'll deal with your marijuana problem on probation?", and he responded, "Absolutely." (Page 7, lines 13-15.)

By the time these four recent counts arose, in addition to the 2007 count, Mr. Williams had been before the Cleveland Municipal Court on *eight* previous occasions for licensure-related problems (six prior convictions for driving under suspension), and he still did not currently hold a valid license. In addition, he had been before other area courts for driving under suspension on at

least three other occasions. Further, he had been before the Cleveland Municipal Court on six previous occasions for drug abuse charges, and two previous occasions for driving a vehicle with an open container of alcohol, not including the multiple other offenses that are typically related to the sort of impaired judgment that accompanies drug abuse (e.g., public indecency). Finally, he had been found guilty of multiple felony offenses in the Cuyahoga County Court of Common Pleas.³

All these things made Judge Stokes feel strongly that Mr. Williams needed a radical change in his behavior to stop a 20-year pattern of crime. Given Mr. Williams' perpetual citations for drug- and alcohol-related abuses, she felt that his judgment was likely to remain impaired and he was likely to continue offending unless he was evaluated for chemical dependency issues, and if he received whatever treatment an evaluation deemed necessary. Therefore, when faced with five counts that included two more drug charges, she knew that any sentence—whether part of a plea or sentence—would include a drug and alcohol assessment and treatment, as warranted by the assessment. This was a critical part of her decision to accept the parties' proposed plea the week before.

Therefore, the Judge entered her sentence. As the parties had proposed the week before, she entered judgment on the 2010 drug abuse charge with a fine of \$50, with no added court costs—those were to be resolved with Williams' payment of court costs in the companion driving under suspension charge. (Transcript, p. 8, lines 15-17.) She entered a more lenient sentence on the driving under suspension charge than what the parties had proposed during the previous week: Instead of imposing all the conditions identified above, she reduced his jail time to be served from three days to two, and even noted it was likely he would serve the equivalent of only one, indicating on the record that "They will consider this [the sentencing day] as one day, so you will probably be released tomorrow, sir, as long as they can get you on the bus to the Workhouse. . . . This is being most gracious, sir, with the two days." Defendant responded, "I understand. I respect your decision." (Page 10, lines 1-2.) Judge Stokes adopted all the other conditions of the parties' proposed sentence in her Judgment Entries, as proposed. (Transcript, p. 7, lines 16-20; 21-23; p.8, lines 1-13; see also attached Judgment Entries.)

After Judge Stokes confirmed that neither the defendant nor his counsel had any further questions or comments (p. 10, lines 3-4), she was about to proceed to the next case. However, after Mr. Williams had already left the courtroom and was being escorted to a holding cell before being taken to the jail, Attorney Winston made an objection on the record to the Judge's ability to impose a year of active probation, which would include drug tests, because the

³ Presently, Judge Stokes does not recall if she was aware of his common pleas convictions at the time of sentencing from sidebar conversations. If she was aware, it would have been through sidebar disclosures from the prosecuting attorney.

drug charge was only a minor misdemeanor. Judge Stokes did not understand his objection for several reasons:

- This case was not a sentencing following trial, in which attorneys typically raise objections to the sentence. Rather, the sentence here had been *previously negotiated and suggested to the Court by the parties with no indication that Attorney Winston believed it to be improper*. It is not unusual for parties to negotiate a no contest plea for the express purpose of permitting a defendant to appeal a certain part of the conviction or sentence. But it is incredibly unorthodox for a party to propose a complete resolution (including the sentence) to the Court for the purpose of obtaining a favorable resolution; fail to ever raise any objection to the proposed sentence during the negotiation, proposal, or sentencing; then later raise an issue with that sentence after the court agreed to accept the parties' precise sentence proposal (or, more appropriate to this case, when the judge imposed an even more lenient sentence than what the parties had jointly proposed). If this approach is not inappropriate, it at least lacks a certain amount of candor to the Court.
- Attorney Winston's objection lacked any legal merit. As a regular criminal defense attorney, he likely knew this. Williams' history in this court included both drug- and alcohol-related convictions. Further, because the Driving Under Suspension charge had a maximum penalty of six months in jail, and a fine of \$1,000, Judge Stokes was entitled to order active probation for up to five years. R.C. 2929.25. Finally, because of his two drug abuse charges—even though one was dismissed and the other had a maximum penalty of a fine—the law makes absolutely clear that Judge Stokes was permitted to order drug testing as part of the probation conditions on the driving under suspension case.⁴

⁴ When determining whether a condition of probation is related to the "interests of doing justice, rehabilitating the offender, and insuring his good behavior," courts should consider whether the condition (1) is reasonably related to rehabilitating the offender, (2) has some relationship to the crime of which the offender was convicted, and (3) relates to conduct which is criminal or reasonably related to future criminality." *State v. Jones* (1990), 49 Ohio St.3d 51, 53, 550 N.E.2d 469. Accordingly, the Supreme Court of Ohio has determined that this standard "stands for the proposition that probation conditions must be reasonably related to the statutory ends * * * and must not be overbroad." *State v. Talty*, 103 Ohio St.3d 177, 2004 Ohio 4888, ¶ 16, 814 N.E.2d 1201.

The courts have been given wide berth in this regard. Trial courts have "broad discretion in imposing conditions of community control." *Lakewood v. Hartman* (1999), 86 Ohio St.3d 275, 277, 1999-Ohio 101, 714 N.E.2d 902. The imposition of these conditions is reviewed under an abuse of discretion standard, meaning that mere errors in judgment will stand, and only those decisions that are unreasonable, arbitrary, or unconscionable will be overturned on appeal. *Talty*, at ¶10.

Further, the courts have made clear that imposing a condition of drug and alcohol evaluation/testing in probation is proper, even when the conviction is not for an alcohol or drug-related offense—the only condition precedent to such a requirement is that the defendant have

- The most disconcerting portion of Attorney Winston's objection was the patent disingenuousness of it. It smacked of a deliberate effort to mislead the Court into accepting a plea, doing so with the knowledge that the Court would be influenced to do so with the promise of active probation, and then attempting to excise that part of the deal on appeal after the plea had already been entered the week before. Judge Stokes would never have accepted the pleas the week before had she been aware that Attorney Winston would challenge the very sentence he had proposed and agreed to. (Page 11, lines 5-6.) Attorney Winston noted in his letter that he had planned to appeal the sentence, suggesting that his entire interaction with the court—including his active participation in coming to an agreed sentence—was calculated to create an appealable issue. (See Follow Up on last page regarding Attorney Winston's failure to ultimately initiate such an appeal.)

I spoke at length with Prosecutor Bridget Hopp who prosecuted this matter. Notwithstanding her very active caseload, she distinctly recalled this matter when we spoke, indicating she did not approve of Mr. Winston's tactics in this matter. She indicated that they had been in court "so many times on this matter," and they had discussed what the precise sentence would be so many times off the record beforehand that it was both odd and unfounded for him to wait until after his client was being taken to the jail to enter an objection.

She indicated to me that, if Attorney Winston had an objection to the drug testing portion of the sentence, he had a variety of options: he could have asked for another pretrial before agreeing to the plea; he could have asked for the matter to be set for trial; and, most importantly, he could have raised the objection in their "multiple" conversations about what the sentence was going to be. (While she could not recall the exact number,

some past or current demonstration of a problem with drugs or alcohol. In *State v. Chavers*, 2008-Ohio-3199, at ¶¶5-11, the defendant challenged the condition of alcohol abstention and testing that were part of his probation for a cocaine possession and drug use conviction. However, because the court had information regarding the defendant's past track record with alcohol-related offenses (specifically, two prior DUIs), it was proper for inclusion on probation in this new crime that was unrelated to alcohol. By contrast, in *State v. Robinson*, 2004 Ohio 5984, at ¶¶ 3-15, the Court reversed a probation order that imposed a curfew and drug/alcohol testing for a defendant whose only conviction was for violating a protection order, and whose criminal history showed no evidence of alcohol or drug abuses. The Court held that drug and alcohol testing could not be part of a "standard, non-case specific" set of probation conditions without any connection to the *Jones* test that they bear some relationship to rehabilitation.

As Williams has a vast history with drug- and alcohol-related offenses, a drug assessment was an absolutely proper condition of his probation for the driving under suspension charge, especially as he was currently faced with two counts of drug abuse and a count of open container within this and the companion case. In addition, he had multiple drug- and alcohol-related prior convictions in this court.

she believes they had at least two or three off-the-record conversations with the Court about the plea in this matter, all of which included the condition of active probation and drug testing.)

When explaining to me why his objection was so surprising, she reiterated that “he *knew* what the condition was going to be before his client entered the plea,” explaining that she never proposed plea agreements involving drug charges to Judge Stokes without including active probation because she knew Judge Stokes always required this.

I specifically asked about the legal propriety of Judge Stokes ordering a drug evaluation as part of the probation. She indicated that this was absolutely proper, noting that probation can require “just about anything,” and obtaining drug assessment and treatment would be very rationally related to the drug abuse charges here, especially because of the drug abuse in the companion case to which the defendant was found guilty. She saw no problem with the sentence—which is probably obvious since she would not have otherwise proposed it to the Court.

When I asked about Attorney Winston’s demeanor with the Court during the relevant period, she described his demeanor as “loud,” and noted that he “continued interrupting the Judge after she had instructed him to stop.” While she indicated that Judge Stokes was obviously upset, too, she added that Attorney Winston’s demeanor with the Court was “not a way I’d ever address a judge.”⁵

⁵ Judge Stokes had ample authority to warn Attorney Winston of the possibility of being incarcerated for his continued interruptions. Under R.C. 2705.01, Direct Contempt, any misbehavior occurring in the presence of a judge may be acted upon immediately without a subsequent hearing. That misconduct includes “conduct which brings the administration of justice into disrespect, or which tends to embarrass, impede or obstruct a court in the performance of its functions.” *Denovchek v. Trumbull Cty. Bd. of Commrs.* (1988), 36 Ohio St. 3d 14, 16, 520 N.E.2d 1362, quoting *Windham Bank v. Tomaszczyk* (1971), 27 Ohio St. 2d 55, 56, 271 N.E.2d 815; *In re Contempt of Kafantaris*, Columbiana App. No. 07-CO-28, 2009 Ohio 4814, at ¶¶ 14-18. Interrupting or talking over a judge—especially after being told to stop—meets that criteria. *Highland v. Veneziano*, Cuyahoga App. No. 78634 2001 Ohio App. LEXIS 5197, at 6-7 (“Here, the trial court repeatedly asked the attorney to sit. Also, the record showed the attorney continued to interrupt the trial judge. This conduct was otherwise disruptive to the court proceedings, and under *Coniff*, that is the standard we use [to measure direct contempt].”

R.C. 2705.01 provides that, unlike a scenario involving indirect contempt, a judge who observes a direct contempt “may summarily punish a person guilty of misbehavior in the presence of or so near the court or judge as to obstruct the administration of justice.” This summary punishment may occur without the typical due process afforded an indirect contempt. In *State v. Local Union 5760, United Steelworkers* (1961), 172 Ohio St. 75, 79, 173 N.E.2d 331, overruled on other grounds (1980), 64 Ohio St. 2d 250, 416 N.E.2d 610, the Supreme Court stated:

When the charge is direct contempt, that is, an act committed in the “presence of the court,” the contemnor may be proceeded against summarily by the court without the necessity of a written charge or a hearing as is required in cases arising under the indirect contempt statute.

Once Attorney Winston raised this objection, Judge Stokes asked for Williams to be returned to the Courtroom; Williams had presumably been informed of every previous sidebar conference about the plea, and she believed that he not only understood and consented to the requirement of drug testing as part of his plea, but she had no basis to believe his attorney was even speaking on his behalf or conveying his wishes. It was only after Williams was in the holding cell that Attorney Winston raised this objection; therefore, Judge Stokes asked for Williams to be brought back in.

Attorney Winston accused Judge Stokes of doing this out of retaliation, but this was not the case—she wanted to ensure the attorney was even seeking something the client wanted, and Williams had the right to be present for every stage of the proceedings. Williams had told the Judge himself that he “absolutely” would seek treatment for his marijuana problem within the previous three minutes; the Judge ordered that he be brought back in so she could determine if Attorney Winston’s objection was even made with his client’s consent. (Transcript, p. 13, 6-8.) At that time, Williams said he would not have a problem dealing with his alcohol / drug abuse treatment while on probation, and conceded that he would test positive for marijuana if tested that day. (Transcript, p. 13, lines 20-22; Transcript p. 14, lines 1, 6-9.)

Contrary to Attorney Winston’s claim in his grievance, Judge Stokes’ Judgment Entries were completely consistent with what she noted she would impose on the record *before* he raised his objection. She did not increase his fine, as he alleged, or otherwise change the sentence. (Compare Transcript, pp. 7-8, with Judgment Entries.) In addition, while Judge Stokes respectfully acknowledges—and regrets—that she raised her voice in response to Attorney Winston’s repeated interruptions and failure to follow her instructions to stop

Direct contempt has no statutorily-defined penalty or maximum sentence; rather, the court may impose whatever it believes is “reasonably commensurate with the gravity of the offense.” *State v. Kilbane* (1980), 61 Ohio St. 2d 201, 400 N.E.2d 386, syll. ¶ 1. Thirty days in jail for disrespectful language in a court proceeding has been held reasonable. *See, e.g., In re Kemper*, 1994 Ohio App. LEXIS 619 (Ohio Ct. App., Washington County Jan. 31, 1994)(The victim’s husband made a statement to the trial court, during which defendant interjected a question that asked him “what the hell” he knew. The trial court immediately stopped the hearing, found defendant in contempt, sentenced him to 30 days in jail, and ordered the bailiff to remove him from the courtroom. The appellate court affirmed the judgment, holding that the trial court did not abuse its discretion by finding defendant in contempt of court because he made his statement during an official court proceeding and the outburst stopped the victim’s husband from his statement and caused the judge to halt the proceedings to order the bailiff to remove defendant.) Therefore, Judge Stokes’ admonition to Attorney Winston that she would put him in a holding cell for contempt was inherently reasonable and within her power.

talking over her, she could not be “heard throughout the entire 15th floor corridor,” as Attorney Winston claims.

Judge Stokes was concerned with Attorney Winston’s methods in this case. In hindsight, after having an opportunity to review the transcript of this matter, she regrets how she responded to Attorney Winston’s conduct. She believed then, and still believes today, that Attorney Winston had deliberately attempted to “hoodwink” the Court by raising a bad faith objection after his efforts to obtain a reduced sentence failed. She would never be angry at an attorney’s preservation of an objection for the record, even if she believed it lacked merit; that is every attorney’s right, even when she disagrees with the basis for the objection. Her displeasure here was not with the objection—it was with the notion that she had been subjected to a bait-and-switch scheme by an attorney who was perpetrating a trick on the Court and the Prosecutor, impugning the integrity of the entire plea negotiation process. That said, this is only an explanation for her reaction; it is not an excuse, and it does not change the fact that she wishes she would have handled it differently.

Follow-up

Ultimately, Attorney Winston must have reached the same conclusion as Prosecutor Hopp and the Court—that Judge Stokes was absolutely permitted by law to impose drug testing as a condition of probation on a driving under suspension charge that had multiple drug abuse companion cases, as well as a long track record of similar offenses. He did not appeal her sentence.

Since the time of Williams’ sentencing, he has demonstrated continuing problems with substance abuse: He tested positive for marijuana on November 29, 2010. Further, on two separate occasions since being released from jail, he had been required to attend a substance abuse assessment with the TASC (Treatment Alternatives to Street Crime) group, but failed to do so. Finally, on December 29, 2010, he failed to report for a mandatory meeting with his Probation Officer. Following this failure to report on December 29, 2010, his Probation Officer issued a Probation Violation Charge against him, and there is currently a capias outstanding for his arrest.

Conclusion

Judge Stokes recalls attending a Judicial College function in which the speaker recommended lowering one’s voice to a whisper when an attorney’s actions would otherwise encourage the judge to speak louder. Rather than continuing to try and talk over Attorney Winston when he continued to interrupt her, and when he baselessly accused her of retaliation, she wishes she had recalled that advice and employed it to bring the proceedings to order while cautioning him. In the future, she will remain mindful of this advice and intends

Stacy Solochek Beckman, Esq.
January 19, 2011
Page 13

to use it to address the next situation where, like here, she is caught off-guard by an attorney's questionable and disrespectful conduct.

We hope this provides a complete explanation to your letter. However, should you require any additional information, please don't hesitate to contact me.

Sincerely,
MONTGOMERY, RENNIE & JONSON

Kim

KIMBERLY V. RILEY

Appendix – Keynan Williams’ Prior Criminal History

(These records are likely incomplete. They were taken from what appears only on the Cuyahoga County Court of Common Pleas and Cleveland Municipal Court’s websites. Because references to cases in the Stow and Garfield Heights Municipal Courts were also referenced within those cases, those jurisdictions were searched as well. However, if any charges were sealed or raised in other jurisdictions—which is likely, given the number of municipal courts in the Cleveland area—they would not be included here, nor would any juvenile offenses.)

Case Number and Caption	Details
1992 CRB 017695 <i>State / City of Cleveland v. Keynan Williams</i>	Charged with public indecency . After failing to appear, a capias is issued and he enters a plea of not guilty. He is later found guilty and sentenced on September 28, 1992.
1992 TRD 002104 <i>State / City of Cleveland v. Keynan Williams</i>	Charged with turning at an intersection and license required to operate . After failing to appear and multiple capiases issued, he is found guilty and sentenced on September 28, 1992. The license charge is nolle.
CR-93-298733-B <i>State v. Keynan Williams</i>	Charged with aggravated robbery; carrying concealed weapons; receiving stolen property; and aggravated robbery with specifications . Entered a plea on October 28, 1993, and was sentenced thereafter.
1994 TRD 011885 <i>State / City of Cleveland v. Keynan Williams</i>	Charged with Driving Under Suspension/Revocation and failure to display a license plate/sticker . He is found not guilty of driving under suspension/revocation, but the prosecutor moved to nolle the remaining charge.
TRD9406703A <i>State/City of Garfield Heights v. Keynan Williams</i>	Charged with Driving Under Suspension on October 12, 1994. He is found guilty after pleading no contest on November 6, 2002.
TRD9406703B <i>State/City of Garfield Heights v. Keynan Williams</i>	Charged with failure to display plates on October 12, 1994. The matter was set for trial, but no entry exists on the online docket to reveal the case’s outcome—it appears that a plea was arranged in which he paid costs.
1995 TRD 014675 <i>State / City of Cleveland v. Keynan Williams</i>	Charged with driving with using a temporary permit without a license . On May 3, 1995, found not guilty after a plea of no contest.
1995 TRD 022689 <i>State / City of Cleveland v. Keynan Williams</i>	Charged with operating a vehicle in disregard of safety . On May 15, 1995, found guilty after a plea of no contest.
1996 TRD 087822 <i>State / City of</i>	Charged with failure to obey a traffic control device and violating seat belt law . When he fails to appear in court, a warrant is issued and his driver’s license is forfeited. He later appears to pay a personal bond, but then

<i>Cleveland v. Keynan Williams</i>	fails to appear for his court date and a capias is issued. His license is again forfeited. He later posts bond again, and is ultimately found guilty of violating the seat belt law; the failure to obey a traffic control device charge is nolle. When Mr. Williams fails to appear a third time, another capias is issued.
1997 TRD 080889 <i>State / City of Cleveland v. Keynan Williams</i>	Charged with noise in motor vehicle and seat belt required . After failure to appear, a warrant is issued and his driver's license is forfeited. Found guilty and sentenced on September 30, 1997.
1997 CRA 021911 CR-97-34401-ZA <i>State v. Keynan Williams</i>	Charged with drug possession; drug trafficking; and possessing criminal tools . Case is bound over to common pleas. Entered a plea on January 20, 1998, and was sentenced thereafter.
2000 TRD 123002 <i>State / City of Cleveland v. Keynan Williams</i>	Charged with maximum speed/assured clear distance; sunscreen/reflect materials; driver seat required . A warrant is issued after his failure to appear. The charges were ultimately nolle on August 8, 2002, following Mr. Williams' need for medical care on August 6, 2002. There is nothing in the record to demonstrate what happened, but we often see courts grant early release to prisoners or permit cases to plead when treating a defendant's medical problem would be an undue expense to the jail. While we don't know that is what happened here, the prosecutor's request to nolle the charges in this and a number of other outstanding cases, all on the same day, suggest that is what happened here.
2001 TRD 17136 <i>City of Stow v. Keynan Williams</i>	In the Stow Municipal Court, found guilty by waiver of hazardous or no passing zones on October 12, 2001. As a result of matter remaining outstanding, Williams' license was indefinitely suspended on November 28, 2001, and it was sent to collections in 2007.
License Forfeiture in Stow Municipal Court Case 1D17136 from 11/28/01 – indefinite.	
2001 CRB 026868 <i>State / City of Cleveland v. Keynan Williams</i>	Charged with noise in motor vehicles ; a capias was issued after he failed to appear. Ultimately nolle on August 8, 2002, following Mr. Williams' need for medical care (see 2000 TRD 123002).
2001 TRD 060592 <i>State / City of Cleveland v. Keynan Williams</i>	Charged with traffic control signal and "driver seat required" (a violation of Cleveland Municipal Code 437.27(B)(1)—failure to wear a seat belt when operating a vehicle); a capias was issued after he failed to appear. Ultimately nolle on August 8, 2002, following Mr. Williams' need for medical care (see 2000 TRD 123002).
2002 CRB 032874 <i>State / City of Cleveland v. Keynan Williams</i>	Charged with use of a vehicle to solicit , which was later amended to drug abuse . He was found guilty on August 8, 2002, but was later issued a capias for failure to pay. A Warrant Block was issued in this matter.
2002 TRD 076004 <i>State / City of Cleveland v. Keynan Williams</i>	Charged with driver seat required; tail light; sunscreen/reflect materials . He is found guilty, but given credit for time served on August 8, 2002, following Mr. Williams' need for medical care (see 2000 TRD 123002).
2002 CRB 033002 <i>State / City of Cleveland v.</i>	Charged with open container . After failing to appear, a capias is issued; when he later fails to appear, notice of a Warrant Block is sent to the Ohio Bureau of Motor Vehicles on November 18, 2002.

<p><i>Keynan Williams</i></p>	<p>ACS assumed collection of his debt on June 13, 2005. A third notice was sent to defendant on July 11, 2005, advising him of the effect on his credit rating.</p> <p>Two years later, he was arrested on other matters on April 9, 2007; charged on April 10, 2007; and returned to the Court on April 11, 2007 on subsequently listed cases. At that time, the matter proceeded to trial, and the prosecutor nolleed the charge on June 26, 2007, presumably related to his more serious charges pending in the Common Pleas Court in CR-06-484459-A, which were pled on June 11, 2007.</p>
<p>2002 CRB 035069 <i>State / City of Cleveland v. Keynan Williams</i></p>	<p>Charged with drug abuse. After failing to appear, a capias is issue; when he later fails to appear, notice of a Warrant Block is sent to the Ohio Bureau of Motor Vehicles on November 18, 2002.</p> <p>ACS assumed collection of his debt on June 13, 2005. A third notice was sent to defendant on July 11, 2005, advising him of the effect on his credit rating.</p> <p>Two years later, he was arrested on other matters on April 9, 2007; charged on April 10, 2007; and returned to the Court on April 11, 2007 on subsequently listed cases. At that time, the matter proceeded to trial, and the prosecutor nolleed the charge on June 26, 2007, presumably related to his more serious charges pending in the Common Pleas Court in CR-06-484459-A, which were pled on June 11, 2007.</p>
<p>2002 CRB 033327 <i>State / City of Cleveland v. Keynan Williams</i></p>	<p>Charge with drug abuse and open container. After failing to appear, a capias is issue; when he later fails to appear, notice of a Warrant Block is sent to the Ohio Bureau of Motor Vehicles on November 18, 2002.</p> <p>ACS assumed collection of his debt on June 13, 2005. A third notice was sent to defendant on July 11, 2005, advising him of the effect on his credit rating.</p> <p>Two years later, he was arrested on other matters on April 9, 2007; charged on April 10, 2007; and returned to the Court on April 11, 2007 on subsequently listed cases. At that time, the matter proceeded to trial, and the prosecutor nolleed the charge on June 26, 2007, presumably related to his more serious charges pending in the Common Pleas Court in CR-06-484459-A, which were pled on June 11, 2007.</p>
<p>TRD0205803A <i>State/City of Garfield Heights v. Keynan Williams</i></p>	<p>Charged on August 22, 2002, with Driving Under Suspension. He is found guilty on November 5, 2002, after pleading no contest.</p>
<p>TRD0205803B <i>State/City of Garfield Heights v. Keynan Williams</i></p>	<p>Charged on August 22, 2002, with Tinted Windows. He is found guilty on November 5, 2002, after pleading no contest.</p>
<p>TRD0205803C <i>State/City of Garfield Heights v. Keynan Williams</i></p>	<p>Charged on August 22, 2002, with No Driver's Seatbelt. He is found guilty on November 5, 2002, after pleading no contest.</p>
<p>2002 TRD 082321 <i>State / City of Cleveland v. Keynan Williams</i></p>	<p>Charged on August 23, 2002, with license required to operate; weaving; and display of lights. After failing to appear, a capias was issued, and a new notice of Warrant Block was subsequently added on February 15, 2007.</p>

	When he was later brought in following a subsequent arrest on April 11, 2007, two counts were nolleed on June 26, 2007, and the remaining count was passed for sentence until July 12, 2007. When he failed to appear, a new capias was ordered, and he was ultimately back in court on October 29, 2007. At that time, he was found guilty of license required to operate.
	FRA (needs a SR22 Insurance Bond) from 1/3/03 – 1/3/08
	Non-Compliance Suspension from 1/3/03 – 1/3/04 from Garfield Heights Municipal Court from Case 2D050803
	12 Point Suspension from 2/11/03 – 8/10/03 for failure to reinstate
CR-04-451410-B <i>State v. Keynan Williams</i>	Charged with burglary; forgery; and possessing criminal tools. Entered a plea on August 12, 2004, and was sentenced thereafter.
BO-0478588N <i>State v. Keynan Williams</i>	No information available.
CR-06-484459-A <i>State v. Keynan Williams</i>	Charged with four counts of tampering with records; four counts of forgery; one count of identity fraud; and two counts of falsification. Entered a plea on June 11, 2007, and was sentenced thereafter.
2007 TRD 021101 <i>State / City of Cleveland v. Keynan Williams</i>	Charged with driving under suspension/revocation; traffic control signal; failure to comply with lawful order; failure to display plates; and driver seat required. He was arrested on April 9, 2007; charged on April 10, 2007; and returned to the Court on April 11, 2007. The prosecutor nolleed these five charges on June 26, 2007, presumably related to his more serious charges pending in the Common Pleas Court in CR-06-484459-A, which were pled on June 11, 2007.
2007 TRD 027705 <i>State v. City of Cleveland v. Keynan Williams</i>	Charged with driving under suspension/revocation; drive on the right side of the road; driver seat required. All charges were nolleed on June 26, 2007, presumably related to his more serious charges pending in the Common Pleas Court in CR-06-484459-A, which were pled on June 11, 2007.
2007 TRD 030101 <i>State v. City of Cleveland v. Keynan Williams</i>	Charged with driving under suspension/revocation; driver seat required; and unsafe vehicle on May 14, 2007. An entry on May 18, 2007, noted that "other active criminal cases involving this same defendant have been found," so the matters were all assigned to the personal docket of Judge Adrine. The prosecutor nolleed all but the driving under suspension charge on June 26, 2007, presumably related to the more serious charges pending in the Common Pleas Court in CR-06-484459-A, which were pled on June 11, 2007. When he failed to appear for sentencing, a capias was issued and a Warrant Block was sent to the Ohio BMV.
2007 CRB 010438 <i>State v. City of Cleveland v. Keynan Williams</i>	Charged with drug abuse on April 10, 2007. The charge was nolleed on June 26, 2007, presumably related to his more serious charges pending in the Common Pleas Court in CR-06-484459-A, which were pled on June 11, 2007.
2007 CRB 014187 <i>State / City of Cleveland v. Keynan Williams</i>	Charged with drug abuse on May 14, 2007. An entry on May 18, 2007, noted that "other active criminal cases involving this same defendant have been found," so the matters were all assigned to the personal docket of Judge Adrine. The prosecutor nolleed this charge on June 26, 2007, presumably related to the more serious charges pending in the Common Pleas Court in CR-06-484459-A, which were pled on June 11, 2007.
2007 CRB 014927 <i>State / City of</i>	Charged with drug abuse on May 18, 2007. After he failed to appear, a capias was issued. When he again failed to appear, a new notice of Warrant

Stacy Solochek Beckman, Esq.
January 19, 2011
Page 18

<i>Cleveland v. Keynan Williams</i>	Block was sent to the Ohio BMV. When Mr. Williams was later picked up in 2010 on another drug abuse matter (as well as driving under suspension, driver seat, and open container), this case was combined with those.
---	---

CLEVELAND MUNICIPAL COURT - JOURNAL ENTRY

No. 43

Case Number: 2010 TRD 038170
 STATE OF OHIO / CITY OF CLEVELAND
 VS.
 WILLIAMS, KEYNAN L

DOB: 02/18/1972
 SSN: XXX-XX-9233
 SCR Status: OPEN

Event Date: 08/23/2010 11:00 am
 Event: SENTENCING HEARING
 Event Location: 15TH FLOOR COURTROOM C
 Event Judge: STOKES, ANGELA R.

AKA:

Charge	Short Description	PNG	NGW	NC	PG	Prosecutor Amends Charge	FG	FNG	NOL	DWP	Fine	Days	Suspended	TTP
1	MV - 435.07 DRIVING UNDER SUSP/REVO										1000	180		800
2	MM - 437.27B1 DRIVER SEAT REQUIRED													

Bond Set \$ _____
 Original Bond Reinstated
 Capias / Bond Forfeiture Capias
 Capias Recalled
 Time to Pay Capias
 Defendant Advised of Right to an Attorney

Personal Bond
 Bond Forfeiture Vacated
 Warrant to Issue
 Warrant Block Release
 Warrant Fee Waived

Found Indigent Costs Suspended
 Sentence Satisfied as to Co-Suspended \$ _____
 Credit for Time Served _____
 Sentence Suspended
 Sentence Ordered Executed

Cont. To: _____ at _____ am / pm _____
 At: COPR CODR COCR Final RSW JDA
 For: Pretrial Trial Jury Trial SIP
 PFS PFS/PSI Motion
 Trial Had Trial in Progress Jury Sworn Jury Waived / Form Signed
 Interpreter Requested Language _____
 Public Defender Atty: Richard D. Winston

Ohio Driver's License Suspended from Date of Arrest _____ or
 From _____ to _____
 Immobilization _____ Days Vehicle Forfeited
 FRRL FRNS PRDNA ODPG ALS Appeal ALS Term

Refer to Probation: PSI SIP Screen SIP Eligible/Rec. SIP Ineligible/Not Rec.
 Probation Duration: MO _____ YRS _____
 Probation Conditions: DV [A][C] MADD # _____
 ATJ DV [A][C] MADD # _____
 CWS In lieu of Fine _____
 Motive To/Fo: Granted Denied Pay \$ _____ day for stay

Probation Violation Hearing: Had Waived
 Prob. Cont Until _____
 Defendant Found Not Found In Violation of Probation SRS

JUDGE Angela R. Stokes DUI# _____
 Within 6 Years

CLEVELAND MUNICIPAL COURT - JOURNAL ENTRY

Case Number: 2010 CRB 021617 PD No. 42

Event Date: 08/23/2010 11:00 am
 Event: SENTENCING HEARING
 Event Location: 15TH FLOOR COURTROOM C
 Event Judge: STOKES, ANGELA R.

DOB: 02/18/1972
 SSN: XXX-XX-9233
 SCR Status: OPEN

STATE OF OHIO / CITY OF CLEVELAND
 VS
 WILLIAMS, KEYNAN L
 AKA:

Charge	Short Description	ENG	NCW	NC	PG	Prosecutor Amends Charge	FC	RNG	NOL	DWP	Fine	Days	Suspended Fine	Suspended Days	TTP
1 MM - 607.03 DRUG ABUSE		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	50				<input checked="" type="checkbox"/> Time to Pay
2 M4 - 617.07 OPEN CONTAINER PROHIBITED		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>					915-2010

Found Indigent Costs Suspended
 Sentence Satisfied as to Costs
 Credit for Time Served
 Sentence Suspended
 Sentence Ordered Executed
 Sentence Stayed Until

City Cost Suspended
JUDGMENT ENTRY RECEIVED FOR JOURNALIZATION
 AUG 23 2010
EARLE B. TURNER, Clerk

Cont. To: _____ at _____ am/pm. SPW
 At: COPR CODR COGR Trial PSW JDA
 For: Pretrial Trial Jury Trial SIP
 PFS PFS/PSI Motion
 Trial Had Trial in Progress Jury Sworn Jury Waived/Form Signed
 Interpreter Requested Language Altty. **Michael D. Winston**
 Public Defender MANDID # _____ SA [A][C] SA [A][C] A A x per wk
 Probation Duration: _____ MO _____ YRS Active Inactive
 Probation Conditions: _____
 Motion To/For: _____ Denied Granted Recusal Reason: _____
 Case Note or Docketed Note

Ohio Driver's License Suspended from Date of Arrest _____ of _____
 From _____ to _____
 Probation Violation Hearing Had Waived
 Prob. Cont. Until _____ Days Vehicle Forfeited
 Defendant: Found Not Found Violation of Probation SRS
 JUDGE: **Angela R. Stokes** DQT # _____
 Within 6 Years

The TTP fee shall be waived because defendant was prepared to pay fine but was taken to the courtroom

1 STATE OF OHIO,)
2 COUNTY OF CUYAHOGA,) SS STOKES, A.R., J.
3 CITY OF CLEVELAND.)

4 IN THE MUNICIPAL COURT

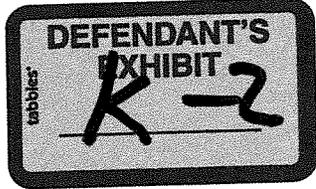
5 - - -
6 CITY OF CLEVELAND,)
7 Plaintiff,)
8 vs.) 2007CRB014927
9 KEYNAN WILLIAMS,) 2010TRD038170
10 Defendant.) 2010CRB021617
11 - - -

12
13 Transcript of proceedings had before the Honorable
14 Judge Angela R. Stokes on Thursday, August 19, 2010
15 in Courtroom 15-C.

16 - - -
17 APPEARANCES:

18 On behalf of the plaintiff:
19 Victor R. Perez, Chief Police Prosecutor.
20 By: Bridgette Hopp, Assistant Police
Prosecutor.
21 On behalf of the defendant:
22 Michael D. Winston, Esq.

23
24
25 Tanya E. Gibson



P R O C E E D I N G S

1
2 THE COURT: Keynan Lee Williams'
3 case.
4 MR. WINSTON: Good morning, your
5 Honor, or afternoon.
6 THE COURT: This would be docket
7 62, 63, and 64.
8 MR. WINSTON: May we approach on
9 these cases, your Honor.
10 THE COURT: Certainly.
11 Is he going to change his plea to the
12 file that is missing?
13 MS. HOPP: No, that was going to
14 be nolled.
15 THE COURT: What do you want to do?
16 MS. HOPP: Do you want to proceed
17 with the plea today.
18 MR. WINSTON: Yes, and then we'll do
19 what we talked about.
20 MS. HOPP: Judge, he's going to
21 enter a no contest plea and consent to a
22 finding of guilt to count 1 in docket 63,
23 the Drug Abuse charge, the case ending in
24 617 as well as, a no contest plea, count 4,
25 the Driving Under Suspension charge, and the

1 balance we would move to nolle.
2 THE COURT: Okay. Thank you.
3 Counselor, is that correctly stated?
4 MR. WINSTON: It is, your Honor.
5 THE COURT: All right.
6 Mr. Williams, on docket 64, count 1, Driving
7 Under Suspension is a first degree
8 misdemeanor and does carry a maximum fine of
9 \$1,000 and up to six months in jail; do you
10 understand that?
11 THE DEFENDANT: Yes, I do.
12 THE COURT: This citation is from
13 June 7th, 2010, operating a 1977 Pontiac at
14 East 93rd Street and Harvard, in the City of
15 Cleveland, Ohio; do you recall and
16 understand this charge?
17 THE DEFENDANT: Yes, I do.
18 THE COURT: Is it your desire to
19 withdraw your not guilty plea, enter a plea
20 of no contest and consent to a finding of
21 guilty to the Driving Under Suspension
22 charge?
23 THE DEFENDANT: Yes, your Honor.
24 THE COURT: And on docket 63, count
25 1, the Drug Abuse Marijuana charge, it is a

1 minor misdemeanor, it carries a maximum fine
2 of up to \$150 and court costs; do you
3 understand?
4 THE DEFENDANT: Yes, your Honor.
5 THE COURT: This citation is from
6 June 7th, 2010, at East 93rd and Harvard in
7 the City of Cleveland, Ohio, it says that
8 you had one plastic bag, containing
9 suspected marijuana in a motor vehicle, a
10 red 1997 Pontiac; do you recall and
11 understand that charge?
12 THE DEFENDANT: Yes, your Honor.
13 THE COURT: To that charge, would
14 you also like to withdraw your not guilty
15 plea, enter a plea of no contest and consent
16 to a finding of guilty?
17 THE DEFENDANT: Yes, your Honor.
18 THE COURT: By changing your pleas
19 to both charges, you are now waiving or
20 giving up your right to have either a bench
21 trial, tried to the Judge or jury trial
22 tried to eight jurors; do you understand?
23 THE DEFENDANT: Yes, your Honor.
24 THE COURT: You are presumed or
25 considered to be innocent until the City of

1 Cleveland proves your guilt beyond a
2 reasonable doubt, if your guilt is to be
3 proven at a trial; do you understand?
4 THE DEFENDANT: Yes, your Honor.
5 THE COURT: And if you had a trial,
6 you have the right to remain silent, no one
7 could force you to testify or to say
8 anything at a trial; do you understand?
9 THE DEFENDANT: Yes, your Honor.
10 THE COURT: You are also giving up
11 your right to up subpoena witnesses who
12 could testify at a trial, if you were to
13 have one, do you understand?
14 THE DEFENDANT: Yes, your Honor.
15 THE COURT: And you are giving up
16 your right to confront your accusers at
17 trial; do you understand?
18 THE DEFENDANT: Yes, your Honor.
19 THE COURT: Have there been any
20 threats or promises made to force you to
21 change your pleas to these two charges?
22 THE DEFENDANT: No, your Honor.
23 THE COURT: Are you satisfied with
24 your attorney's representation?
25 THE DEFENDANT: Yes, your Honor.

1 THE COURT: Do you have any
2 questions about the rights that you are
3 giving up?
4 THE DEFENDANT: No, your Honor.
5 THE COURT: Any questions about the
6 penalties that can be imposed by the Court?
7 THE DEFENDANT: No, your Honor.
8 THE COURT: Are you a citizen of
9 the United States?
10 THE DEFENDANT: Yes, your Honor.
11 THE COURT: Do you have any
12 questions?
13 THE DEFENDANT: No.
14 THE COURT: I will accept your
15 change of plea to the Drug Abuse Marijuana
16 charge, number 63, count 1, count 2, the
17 Opened Container Prohibited charge would now
18 be nolleed or dismissed. On docket 64, I
19 would accept your change of plea to the
20 Driving Under Suspension charge, the
21 Seatbelt charge would be nolleed or
22 dismissed; do you understand?
23 THE DEFENDANT: Yes, your Honor.
24 THE COURT: On docket 64, where the
25 file is missing, the Drug Abuse Marijuana

1 charge would be nolled, I don't have the
2 date for that offense since I don't have the
3 file.

4 MS. HOPP: I think I would have
5 the date, Judge. I believe that I have it,
6 it would be May 10th, 2007.

7 THE COURT: Okay. That count would
8 be nolled or dismissed; do you understand?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: Do you understand?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Okay. What is your
13 client doing tomorrow, counselor?

14 MR. WINSTON: We're having a hearing
15 on the 12th floor regarding his
16 reinstatement privileges.

17 THE COURT: And you would like for
18 the Court to pass for sentencing, at least
19 until Monday at 11:00.

20 MR. WINSTON: Yes, your Honor, thank
21 you.

22 THE COURT: All right. On the Drug
23 Abuse charge, I'll continue it at the
24 defendant's request, the Court would pass
25 for sentencing until August 23rd, 2010, that

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

would be at 11:00 am and on docket 64, that
would be continued at defendant's request,
also, the Court would pass for sentencing
August 23rd, 2010 at 11:00 am.

MR. WINSTON: Thank you, Judge.

THE COURT: The bailiff would just
give you a reminder slip, we'll see you
Monday at 11:00 am.

MR. WINSTON: Excellent. Thank you,
Judge.

THE COURT: You're welcome.

THE DEFENDANT: Thank your, Honor.

C E R T I F I C A T E

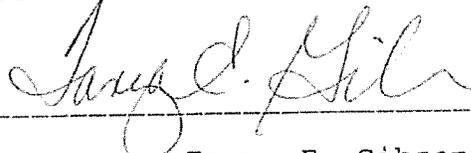
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

State of Ohio,)
County of Cuyahoga,) SS:
City of Cleveland.)

City of Cleveland,)
vs.)
Keynan Williams.)

I, Tanya E. Gibson, court reporter, do hereby certify that as a reporter employed by the Cleveland Municipal Court, I took down in stenotype all of the proceedings had in said Cleveland Municipal Court in the above-entitled case on the date set forth; that I have transcribed my said stenotype notes into typewritten form as appears in the foregoing transcript of the proceedings; that said transcript is a complete record of the proceedings had in the hearing of said case and constitutes a true and correct transcript of the proceedings had therein.

Dated this 28th day of December, 2010.



Tanya E. Gibson

OFFICIAL COURT REPORTER
CLEVELAND MUNICIPAL COURT
Cleveland, Ohio 44113

1 STATE OF OHIO,)
2 COUNTY OF CUYAHOGA,) SS: STOKES, A. R., J.
3 CITY OF CLEVELAND,)

4
5 IN THE MUNICIPAL COURT

6 CITY OF CLEVELAND,)
7 Plaintiff,)
8 V.) Case Nos. 2010TRD038170,
9) 2010CRB021617, 2007CRB014927
10 KEYNAN WILLIAMS.)
11 Defendant.)

12 Transcript of proceedings had before the Honorable
13 Judge Angela R. Stokes, on Monday, the 23rd day of
14 August, 2010, in Courtroom 15C.

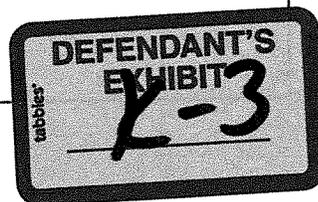
15
16 APPEARANCES:

17
18 On behalf of the plaintiff:
19 Victor Perez, Chief Assistant Prosecutor
20 By: Bridget Hopp, Assistant Police
Prosecutor

21 On behalf of the defendant:
22 By: Michael David Winston, Esq.
23
24

25 Cindy L. LaRosa, RPR

OFFICIAL COURT REPORTER
CLEVELAND MUNICIPAL COURT
Cleveland, Ohio 44113



P-R-O-C-E-E-D-I-N-G-S

1
2 THE COURT: Anyone else? Everyone
3 else is represented.

4 Counsel, what is your client's name.

5 MR. WINSTON: Keynan Williams.

6 THE COURT: Keynan Williams? Thank
7 you.

8 Is Keynan Williams present? This will
9 be docket numbers 42 and 43.

10 Are the prisoners up here yet?

11 THE BAILIFF: I don't believe so.

12 - - -

13 (A discussion was had off the record.)

14 - - -

15 THE COURT: Counsel, state your
16 name for the record.

17 MR. WINSTON: Michael David Winston,
18 0075294.

19 THE COURT: I believe on today's
20 date Mr. Williams is present for sentencing
21 for a Drug Abuse Marijuana charge, and also
22 a Driving Under Suspension charge.

23 Would you like to say anything on his
24 behalf, counselor?

25 MR. WINSTON: Thank you. Yes, your

1 Honor, I would like to thank the Court for
2 allowing me to represent Mr. Williams and
3 speaking on his behalf.

4 Judge, Keynan is a full time student over at
5 Tri-C. He's scheduled to restart classes
6 again on the 26th of this month, which is
7 Thursday. His major is in recording, and he
8 should be graduating in May. He also has a
9 minor in real estate. He's taking real
10 estate classes to help with his investment
11 ideas. He's got three kids. He takes care
12 of his children. He has no child support
13 orders out there because he tells me he sees
14 his kids everyday. Nine years old, seven
15 years old, and four years old. He brings
16 his kids to school, brings his children to
17 school every day.

18 And I say that, Judge, to say partly
19 that -- well, I understand that the Court
20 maybe considering a day or two jail time as
21 a result of Mr. Williams' past infractions
22 with regard to the Driving Under Suspension.

23 Your Honor, he appeared before Judge
24 Adrine in 2007, where he dealt with all of
25 those cases, received jail time. But, all

1 of those cases were dealt with concurrently
2 in 2007. And I say that to say or to
3 suggest to this Court that we're not dealing
4 with someone who has committed offense after
5 offense, unfettered, without ever being held
6 responsible. His problem is that since
7 2002, he has not had a valid driver's
8 license. And he has not been able to pay
9 the fee in order to regain his valid
10 driver's license.

11 4510.10 only was passed in 2004, and
12 that allowed people to get on the program to
13 pay their reinstatement fees, and payments
14 while you have driving privileges. Most
15 courts didn't use that, even at that time,
16 until 2008 because of the ambiguity with the
17 law. It was changed in 2008, and that's
18 when most courts, including this one, really
19 picked it up and created forms for that kind
20 of thing for your average person and the
21 general public.

22 So as far as we're concerned, this is
23 his first real chance to obtain a driver's
24 license, or to obtain the ability to drive
25 while he's paying off this hefty

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

reinstatement fee.

Your Honor, he has insurance. We could prove it to you today. And I'm suggesting, your Honor, given all of the things -- I had a chance to talk -- can I approach?

THE COURT: Sure.

MR. WINSTON: I've had a chance to talk with Mr. Williams. I had to give him a ride, since he doesn't have a driver's license, I had to give him a ride to his car to obtain insurance. And, we got into a discussion about what he's done, and where is he going with all of these different situations that the Judge sees before, and I don't have to repeat it individually. But, what I gathered from him, your Honor, is that he made some mistakes in his past, and that he's matured beyond those things. He's matured to the point where he wants to work on the books -- like I said -- he's looking forward to graduating. And this is what motivated him to begin to deal with his problem of not having a license is his impending graduation.

He started to think about what is he

1 going to do after that, and where is he
2 going to apply for work. He knows that his
3 kids start school this week. He just
4 brought them to school today. And the idea
5 that it may be a problem with him getting to
6 school tomorrow hurts him.

7 And those are some of the things that
8 are motivating his current behavior, and the
9 behavior that he plans to exhibit from here
10 on out.

11 I say all of these things, not to
12 diminish the flavor of what he's done, but
13 to try to explain to the Court how
14 Mr. Williams is thinking, to explain that he
15 intends to be responsible, he desires to be
16 responsible. The problem to this Court is
17 that he's never going to drive again without
18 a license, and I ask this Court to temper
19 justice with mercy in deciding what to do
20 with him.

21 THE COURT: All right. Thank you.
22 Mr. Williams, do you want to say anything in
23 addition to what your attorney has stated?

24 THE DEFENDANT: Yeah, of course. First
25 of all, I want to apologize for being here.

1 It's my fault for being here. Like he was
2 saying, before I didn't even know I was
3 eligible to get a driver's license. Not
4 that I should have been driving anyways, but
5 if I would have known, I would have been
6 able to take care of it, or I could have
7 gotten a driver's license the right way.
8 But, I didn't know, and whenever I got
9 pulled over, that's when I found out I was
10 eligible to even get my license back.

11 But I'm basically sorry for having to be
12 here, and it won't happen again.

13 THE COURT: You'll deal with your
14 marijuana problem on probation?

15 THE DEFENDANT: Absolutely.

16 THE COURT: All right. The Driving
17 Under Suspension charge is a maximum fine of
18 \$1,000 -- this is on docket number 43 -- and
19 up to 180 days in jail. I don't think that
20 he served any time in jail on these cases,
21 correct?

22 THE DEFENDANT: No, but my previous --

23 THE COURT: Not on this case, you
24 haven't?

25 THE DEFENDANT: I haven't.

1 THE COURT: The sentence ordered
2 into execution will be two days. And 178
3 days will be suspended. I'll impose a fine
4 of \$200. \$800 of the fine will be
5 suspended. Compliance with the Financial
6 Responsibility law. It is one year of
7 active probation. Not to drive until you
8 have a legal right to do so, and of course,
9 have insurance.

10 You'll be referred for a formal alcohol
11 drug abuse assessment treatment and
12 counseling as warranted, and there will be
13 random Breathalyzer and urinalysis testing.
14 On docket number 42, the Drug Abuse charge,
15 I'll impose a fine of \$50. The sentence
16 will be satisfied as to costs because this
17 is a companion case.

18 Will you need a time to pay date on both
19 of these cases?

20 THE DEFENDANT: How much?

21 THE COURT: \$50 fine on Drug Abuse
22 charge, and a \$200 fine and court costs on
23 the Driving Under Suspension case.

24 THE DEFENDANT: The \$200 fine I'll have
25 it today.

1 THE COURT: The bailiffs are going
2 to take you into custody, so you will need
3 time to pay date. But I'll waive the time
4 to pay fee since you were willing to pay it
5 today.

6 THE DEFENDANT: Okay.

7 THE COURT: Do you want a time to
8 pay date? Do you want like September 15th
9 or --

10 THE DEFENDANT: That would be fine.

11 THE COURT: -- are you sure? Time
12 to pay until September 15, 2010. The time
13 to pay fee will be waived.

14 And on docket number 42, time to pay to
15 September 15, 2010.

16 They will consider this as one day, so
17 you will probably be released tomorrow, sir,
18 as long as they get you on the bus to the
19 Workhouse.

20 Is the bus still here?

21 Counsel, can you approach to give
22 Mr. Williams his insurance information.

23 MR. WINSTON: Thank you, Judge.

24 THE COURT: This is being most
25 gracious, sir, with the two days.

1 THE DEFENDANT: I understand. I
2 respect your decision.

3 THE COURT: Anything else?

4 MR. WINSTON: No.

5 *****

6 MR. WINSTON: Your Honor, I need to
7 address -- just make an objection for the
8 record. I wanted to note, just for the
9 record, that I object to the imposition of
10 the one-year active probation required,
11 which requires the random drug tests on the
12 grounds --

13 THE COURT: Why? The companion
14 case is Drug Abuse marijuana. He admits he
15 has a problem with marijuana. This is a
16 companion case from the same date.

17 MR. WINSTON: That was a minor
18 misdemeanor, though. The maximum sentence
19 on that --

20 THE COURT: That's right, but it's
21 a companion case. See? I'm not sending him
22 to jail on the minor misdemeanor, I'm
23 sending him to jail on the Driving Under
24 Suspension, and ordering treatment so he
25 could use better judgment, since his

1 judgment is obviously clouded by marijuana.
2 I don't think that he objects to getting the
3 treatment, Counsel?

4 MR. WINSTON: No.

5 THE COURT: If that's the case, I
6 would have never have accepted the plea --

7 MR. WINSTON: -- his objection is
8 to the --

9 THE COURT: -- do you want him to
10 vacate this and let him plea on the M4?

11 MR. WINSTON: No, no, no, your
12 Honor --

13 THE COURT: You know what? This
14 makes absolutely no sense, Counsel. Your
15 client has a drug problem that he admits,
16 it's a companion case --

17 MR. WINSTON: -- this Court only has
18 a certain amount of authority --

19 THE COURT: Sir --

20 MR. WINSTON: -- this Court doesn't
21 have unfettered authority --

22 THE COURT: You know what? I could
23 order 180 days. Do you want me -- bring him
24 back out.

25 MR. WINSTON: Well, wait a minute --

1 THE COURT: Bring him back out.
2 MR. WINSTON: Your Honor, this
3 is retaliation --
4 THE COURT: I am tired of this
5 nonsense. You are out of order --
6 MR. WINSTON: Your Honor, listen, can
7 I --
8 THE COURT: You are out of order.
9 You are out of order, Counsel. I gave your
10 client a break by only ordering two days of
11 this sentence into execution, and I think I
12 actually said three days --
13 MR. WINSTON: Your Honor, my
14 objection --
15 THE COURT: Is for him to get drug
16 treatment first and --
17 MR. WINSTON: Listen, wait a minute,
18 wait a minute --
19 THE COURT: Bring him back into the
20 courtroom. Bring him back.
21 MR. WINSTON: You've already
22 sentenced him. This is now retaliation for
23 my objection --
24 THE COURT: Sir --
25 MR. WINSTON: -- to the sentence.

1 THE COURT: Sir, the Court -- but
2 if you have anything to say --

3 MR. WINSTON: Your Honor --

4 THE COURT: Shut your mouth or I am
5 going to -- you're going to be in that
6 holding cell with him. He has a right to be
7 in here to hear what you are saying, that's
8 why I want him in this courtroom.

9 Sir, this is outrageous. I have
10 sentenced him to one year active probation
11 to deal with his drug abuse problem which he
12 freely admits to, and I've ordered two days
13 of the sentence into execution which is less
14 than what I told you and the Prosecutor that
15 the Court would order into execution. Your
16 objection is noted for the record. It has
17 absolutely no merit.

18 And sir, you are on one year of active
19 probation to deal with your drug problem.

20 Do you have a problem dealing with your
21 alcohol drug abuse treatment while you are
22 on probation for Driving Under Suspension?
23 I believe this is your seventh conviction?

24 MR. WINSTON: He never said he had a
25 problem with any of that stuff.

1 THE DEFENDANT: No.

2 THE COURT: Do you? Do you want to
3 get the help or do you not want to get the
4 help on the drug abuse charge?

5 THE DEFENDANT: I don't think that I
6 have a problem, Judge.

7 THE COURT: Well, tell me this:
8 Would you test positive today if I sent you
9 down for a urinalysis test?

10 THE DEFENDANT: Of course.

11 THE COURT: Well, why do you
12 think --

13 MR. WINSTON: Because the Court
14 doesn't have authority to just do whatever
15 it wants --

16 THE COURT: The Court is putting
17 him on -- let me tell you, if interrupt me
18 one more time --

19 MR. WINSTON: -- I was going to make
20 my objection -- I asked your permission --

21 THE COURT: You better shut your
22 mouth and not interrupt this Court, or you
23 will be in that holding cell serving in
24 Contempt. The Court does have jurisdiction
25 to order him into treatment when he has a

1 companion case for marijuana. And the only
2 reason the Court allowed this is because you
3 all wanted the Open Container, the M4,
4 nollied. And I allowed that because he pled
5 to the M1.

6 But it is a companion case, it is not
7 that this case is unrelated to his drug
8 problem. And he wouldn't drive if he would
9 use better judgment. That's it. The
10 sentence stands. Your objection is noted
11 for the record. Take him into custody. The
12 Court's had enough.

13 MR. WINSTON: Thank you, your
14 Honor.

15
16
17 - - -
18
19
20
21
22
23
24
25

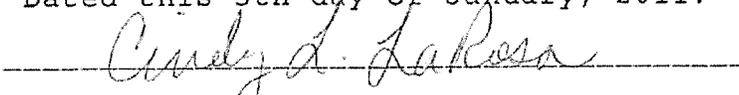
C E R T I F I C A T E

1
2
3 State of Ohio,)
County of Cuyahoga,) SS:
4 City of Cleveland.)

5
6 City of Cleveland,)
7 V.)
8 Keynan Williams.)

9
10 I, Cindy L. LaRosa, Registered Professional
11 Reporter, do hereby certify that as a reporter
12 employed by the Cleveland Municipal Court, I took
13 down in stenotype all of the proceedings had in said
14 Cleveland Municipal Court in the above-entitled case
15 on the date set forth; that I have transcribed my
16 said stenotype notes into typewritten form as appears
17 in the foregoing transcript of the proceedings; that
18 said transcript is a complete record of the
19 proceedings had in the hearing of said case and
20 constitutes a true and correct transcript of the
21 proceedings had therein.

22
23 Dated this 5th day of January, 2011.

24 
25 Cindy L. LaRosa, RPR

OFFICIAL COURT REPORTER
CLEVELAND MUNICIPAL COURT
Cleveland, Ohio 44113

1 STATE OF OHIO,.)
2 COUNTY OF CUYAHOGA,) SS STOKES, A. R., J
3 CITY OF CLEVELAND.)

4 IN THE MUNICIPAL COURT

5 - - -
6 CITY OF CLEVELAND,)
7 Plaintiff,)
8 vs.) 2010 CRB 044063
9 DAVID L. BROWN,)
10 Defendant.)

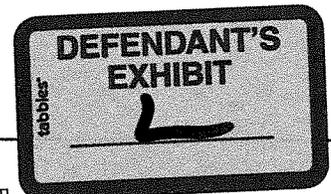
11 - - -
12
13 Transcript of proceedings had before the Honorable
14 Judge Angela R. Stokes on Thursday, June 16, 2011, in
15 Courtroom 15-C.

16
17 - - -
18 APPEARANCES:

19 On behalf of the plaintiff:
20 Victor R. Perez, Chief Police Prosecutor
21 By: Aqueelah A. Jordan, Ass't Police
Prosecutor.

22 On behalf of the defendant:
23 Scott M. Malbasa, Esq.

24
25 LAURA WILLIAMS



P R O C E E D I N G S

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE COURT: This is Mr. David L. Brown's case, 2010 CRB 044063. It is set for a bench trial.

Okay, can you swear in the witnesses for us, please?

SECURITY BAILIFF: All the witnesses come up here. Is that what you would like me to do?

THE COURT: Yes.

SECURITY BAILIFF: Please, raise your right hand everyone who is going to testify, please.

THE COURT: Okay. Are there any other witnesses? Okay.

SECURITY BAILIFF: Everyone, please, raise your right hand.

Do you solemnly swear or affirm that the testimony you are about to give in this case here now shall be the truth, the whole truth and nothing but the truth so shall you answer unto God, please, say I do?

POLICE OFFICER: I do.

THE DEFENDANT: I do.

THE WITNESS: I do.

1 THE WITNESS: I do.

2 SECURITY BAILIFF: Witnesses have been
3 sworn, 11:34.

4 THE COURT: Thank you.

5 Attorney Malbasa, I, obviously, see that
6 Mr. Brown is on crutches. Do you want him
7 to remain seated at the trial table?

8 MR. MALBASA: Yes, please, your
9 Honor.

10 THE COURT: Is that okay?

11 MR. MALBASA: Yes.

12 THE COURT: Is there a motion
13 regarding separation of witnesses?

14 MS. JORDAN: Yes, your Honor.

15 MR. MALBASA: Yes, your Honor,
16 separation.

17 THE COURT: The motion is granted.
18 And Attorney Malbasa, should these two
19 individuals wait outside of the courtroom?
20 You have to wait outside of the courtroom
21 until the bailiff tells you to come into the
22 courtroom for the trial, okay. So just wait
23 outside of the courtroom, until a bailiff
24 tells you to come back into the courtroom.

25 THE WITNESS: Okay, thank you.

1 THE COURT: Thank you. All right.
2 Is the City making an opening statement or
3 waive opening statement?

4 MS. JORDAN: We'll waive opening
5 statements, your Honor.

6 THE COURT: Thank you.
7 Attorney Malbasa, would you like to make an
8 opening statement?

9 MR. MALBASA: A brief opening
10 statement, your Honor.

11 THE COURT: Okay.

12 MR. MALBASA: Unlawful verses upset.
13 He was upset, but his actions were not
14 unlawful. He may have made statements.
15 He's confused. He was asking officers what
16 was going on in front of his house. There
17 was a commotion. There was many police
18 officers. He was upset, but his actions
19 were not unlawful.

20 As a citizen of the United States, he
21 has a right to speak his mind. He has a
22 right to ask questions. He has a right to
23 be at his own residence.

24 He was upset, but his actions were not
25 unlawful. Thank you.

1 THE COURT: All right. Thank you.
2 Prosecutor Jordan, are you ready to proceed?

3 MS. JORDAN: Yes, your Honor.

4 ERIC NEWTON, being
5 first duly sworn, was examined and testified
6 as follows:

7 DIRECT EXAMINATION

8 BY MS. JORDAN:

9 Q Officer, please, state your name and badge number
10 for the record.

11 A Officer Eric Newton, badge No. 6351. My last
12 name is spelled, N-E-W-T-O-N.

13 THE COURT: Does he want to sit at
14 the witness stand or is he fine standing?

15 POLICE OFFICER: I'm fine standing, your
16 Honor.

17 THE COURT: Okay. I'm sorry.

18 BY MS. JORDAN:

19 Q And officer, are you employed?

20 A Yes, ma'am, I am.

21 Q By whom?

22 A City of Cleveland Division of Police.

23 Q And in what capacity, sir?

24 A Patrol officer.

25 Q For how long have you been employed as a City of

1 Cleveland police officer?

2 A Four years, eight months.

3 Q And do you have any previously law enforcement
4 experience, sir?

5 A Yes, ma'am, I do.

6 Q And what's that experience?

7 A City of Cleveland. I worked in the City Jail as
8 an institutional guard for five years.

9 Q Thank you, sir. And were you employed on
10 November 10, 2011 -- 2010?

11 A Yes, ma'am, I was.

12 Q And what time did you go on duty that day?

13 A I went on duty that day 15:30 or 3:30 P.M.

14 Q And were you in uniform?

15 A Yes, ma'am, I was.

16 Q Were you in a marked police vehicle?

17 A Yes, ma'am, I was.

18 Q Did you have a partner on that day?

19 A Yes, ma'am, I did.

20 Q Thank you. Did you have occasion to complete a
21 traffic stop on that day, officer?

22 A Yes, I did.

23 Q Okay. And in response to that traffic stop,
24 officer, did you have to complete an inventory of
25 the vehicle?

1 A Yes, I did.

2 Q And where was that vehicle inventory completed
3 at, officer?

4 A Near the address of 11808 Continental Street.

5 Q Thank you, officer. And while you completing,
6 attempting to complete the inventory of that
7 vehicle, pursuant to a lawful arrest, officer,
8 was there any disturbance to your actions?

9 MR. MALBASA: Objection. Leading.

10 MS. JORDAN: I can rephrase, your
11 Honor.

12 THE COURT: Yes. Sustained.

13 BY MS. JORDAN:

14 Q Let me rephrase. What occurred while you were
15 completing the inventory of that vehicle,
16 officer?

17 A We were approached by a male. He came from the
18 north side of the street, into the street, and he
19 was asking questions in a profane matter.

20 Q And by "profane" what do you mean, officer?

21 A He said, "What the fuck is going on?"

22 Q Thank you. And do you see that person in court
23 today?

24 A Yes, I do.

25 Q Can you, please, describe him and identify him

1 for the Court.

2 A He's sitting at the table, wearing blue jeans,
3 black buttoned down shirt, and he also has a cast
4 on his left foot and he has crutches on.

5 MS. JORDAN: Your Honor, may the
6 record reflect the witness identified the
7 defendant?

8 THE COURT: Yes. The record shall
9 so reflect.

10 BY MS. JORDAN:

11 Q And, officer, what occurred after the defendant
12 used that profane utterance towards you?

13 A We told him to get out of the street and to go
14 back to the yard. He said, "That's my cousin."
15 I said, again, "You have to go back." It wasn't
16 just me, three other officers were on the scene,
17 who stated numerous times to get out of the
18 street.

19 Q And, officer, why were you telling him to get out
20 of the street?

21 A Because he was interfering with our
22 investigation.

23 Q And how was he interfering, officer?

24 A We were unable to complete the tow, an inventory
25 tow of the vehicle or, excuse me, inventory of

1 the vehicle, prior to tow, because we had
2 somebody in the street, and he was loud, profane,
3 and we explained to him that this was an
4 investigation. He said, "Fuck that. This isn't
5 no investigation. That's my Cousin." And at one
6 point in time, he said, "Fuck you, thirsty Mother
7 Fuckers."

8 Q And did you continue to give the defendant
9 warnings to cease and desist, officer?

10 A Yes.

11 MR. MALBASA: Objection. Leading.

12 MS. JORDAN: I apologize. Let me
13 rephrase that.

14 THE COURT: Sustained.

15 BY MS. JORDAN:

16 Q Officer, did you say anything to the defendant?

17 A Yes.

18 Q What did you say, officer?

19 A I told him to get out of the street. Go back to
20 the sidewalk.

21 Q And how many times did you have to say that,
22 officer?

23 A Me personally, a half dozen. The other officers
24 on the scene. They also said it. I could not
25 honestly tell you the number. I just know it was

1 double digits.

2 Q And did the defendant comply with your order,
3 officer?

4 A No, he did not.

5 Q And how did his actions interfere with your
6 investigation?

7 A Well, numerous of ways. For one, there's still
8 traffic proceeding through Continental, and he's
9 standing in the middle of the street. So our
10 number one concern, is that he doesn't get run
11 over. This is 11:30 at night, give or take a few
12 minutes. It's pitch black outside. There are
13 vehicles going by. We have flashing lights.
14 He's in a very dangerous spot.

15 So part of the -- part of giving the order,
16 is to get back out of the street for his own
17 safety reasons, but officers' safety which is
18 also paramount. I can't turn my back to somebody
19 inventorying a vehicle. When I have an
20 individual standing in the street, and then
21 there's the hostility of the whole matter. I
22 mean, he's not approaching me saying, excuse me,
23 sir, can you tell me what's going on?

24 He's using foul language. He's yelling very
25 loudly, and he's refusing to follow commands when

1 we tell him to go back to the sidewalk, so it's
2 a -- it's a whole bunch of problems lying
3 directly on top of one another.

4 Q And did his actions create any sort of
5 disturbance, officer?

6 A Yes.

7 Q Thank you. And did it delay the performance of
8 your duties, officer?

9 A Yes. In fact, it stopped it completely until we
10 were able to get him out of the street.

11 Q Approximately, how long did it take you to get
12 him out of the street, officer?

13 A We dealt with the situation for, I estimate, for
14 about fifteen minutes.

15 Q And you weren't able to complete the inventory
16 during the fifteen minutes?

17 A We we're able to do anything until we were --
18 until we dealt with that situation.

19 MS. JORDAN: Nothing further at this
20 time, your Honor.

21 THE COURT: All right. Cross
22 examination.

23 MR. MALBASA: Yes.
24
25

CROSS-EXAMINATION

1
2 BY MR. MALBASA:

3 Q Officer Newton, you said you been with the police
4 department for five years; is that right?

5 A No. I didn't. I said I was with the police
6 department for four years eight months.

7 Q I'm sorry. Four years, eight months, almost five
8 years.

9 A Yes.

10 Q I'm sorry. The court reporter -- you have to say
11 yes or no, okay?

12 A Yes.

13 Q Okay. And in that time, people have used foul
14 language with you, right?

15 A Sure.

16 Q People often don't like police officers for
17 better or worse, that's the way it is; is that
18 right?

19 A I can't answer -- I can't answer to society as a
20 whole, yes. I have heard foul language directed
21 at me.

22 Q You agree some people don't like police officers
23 for whatever reason?

24 A I had foul language directed at me in the past.

25 Q People have told you to 'Fuck off' before?

- 1 A Among other things, yes.
- 2 Q Okay. They've used many swear words directed to
3 you; is that right?
- 4 A Yes, sir.
- 5 Q In that four years and eight months on the force,
6 you had that experience?
- 7 A Yes.
- 8 Q Okay. And in this case, you said that Mr. Brown
9 came up to you and said, "What's the Fuck going
10 on;" is that right?
- 11 A Yes.
- 12 Q And there were three other officers there?
- 13 A Yes.
- 14 Q There were four of you total?
- 15 A Yes.
- 16 Q Okay. But no one took him aside and addressed
17 this -- and addressed the issue; is that right?
- 18 A Addressed what issue, sir?
- 19 Q Now when he said, "What's the fuck going on," no
20 one walked over to him and talked to him?
- 21 A We had an investigation that we were conducting.
- 22 Q You were inventorying a car?
- 23 A We were inventorying a car.
- 24 Q You needed all four officers to inventory that
25 car?

- 1 A Yes. We were also directing eastbound and
2 westbound traffic on Continental. And we were
3 also talking to the supervisor who was also on
4 scene.
- 5 Q So of the four of you, there wasn't one of you,
6 who could go talk to him?
- 7 A No, it was not.
- 8 Q But all of you were able to yell multiple times
9 for him to get out of the street?
- 10 A Yes.
- 11 Q Dozen of times, as you said?
- 12 A Yes.
- 13 Q Okay, but not one of you could just walk over and
14 talk to him?
- 15 A No.
- 16 Q And you were saying that he was in the street?
- 17 A Yes.
- 18 Q Not on the curb?
- 19 A Not on the curb.
- 20 Q Okay. When you were at the police academy, you
21 went to the police academy; is that right?
- 22 A Yes.
- 23 Q When you were at the police academy, they trained
24 you in evidence collection; is that right?
- 25 A Yes, sir.

1 Q What's the best way to record a statement?

2 MS. JORDAN: Objection, your Honor.

3 Relevance.

4 MR. MALBASA: I mean, it's relevant

5 to the evidence that's available to us

6 today.

7 THE COURT: Well, overruled. You

8 can answer the question.

9 BY MR. MALBASA:

10 Q What's the best way to record a statement?

11 A To record a statement somebody made?

12 Q Yes. Somebody makes a statement at a scene of a

13 crime?

14 A An audio recording would be the idea way.

15 Q An audio would be great?

16 A Audio or video recording.

17 Q Video recording would be great?

18 A Sure.

19 Q Either of the -- there were two squads cars there

20 or three squad cars there?

21 A There were two.

22 Q Two squad cars there, either of those cars have

23 cameras on them?

24 A I can't account what the other car has. I know

25 our car did not.

- 1 Q Your car doesn't have audio equipment?
- 2 A No, sir.
- 3 Q Because none of that is available today, is it?
- 4 A Correct. It's not.
- 5 Q Okay. After you inventoried the car, did you
- 6 talk to any other witnesses that were in the area
- 7 that night?
- 8 A I talked to David Brown.
- 9 Q Aside from David Brown?
- 10 A Not that I recall, no.
- 11 Q This is a residential area, right?
- 12 A Yes.
- 13 Q Okay. Neighbors around?
- 14 A There's -- there's houses.
- 15 Q Houses. Potential people live in those houses?
- 16 A Yes.
- 17 Q Did you knock on any doors to ask if anybody saw
- 18 what was going on?
- 19 A I already knew what was going on, sir.
- 20 Q Did you ask if anybody else heard you yelling
- 21 these things?
- 22 A I didn't need to, sir.
- 23 Q Okay. So all we have is you and the officer over
- 24 there testimony that he said those things?
- 25 A My observations, that's correct, sir.

- 1 Q Just your observations, okay. Now you said that
2 he also said "Fuck you thirsty, Mother Fuckers;"
3 is that right?
- 4 A Yes.
- 5 Q Okay. And did he direct that at anybody in
6 particular?
- 7 A You have to ask him.
- 8 Q So he didn't direct it at you?
- 9 A I don't know that.
- 10 Q You don't know?
- 11 A Okay.
- 12 Q When he said that, did he give a fighting stance?
13 It's okay if you don't remember.
- 14 A I don't remember if he -- if he waited for a
15 fight. I know he was very loud, and he was
16 shouting obscenities.
- 17 Q Did you feel as though you needed to fight him?
- 18 A No.
- 19 Q Did you need to pull a gun on him?
- 20 A No.
- 21 Q Did you need to pull a taser on him?
- 22 A I didn't pull my taser.
- 23 Q You didn't pull it?
- 24 A No.
- 25 Q Did you have to take him down? Did you have to

1 use any takedown technicals to put him on the
2 ground?

3 A I don't recall if he went to the ground. I
4 believe, he went right to our -- to our police,
5 to our police car.

6 Q So you just arrested him and put him in the
7 police car?

8 A The Officer Kinas and Officer Ludroski affected
9 the arrest and placed him in handcuffs and placed
10 him in the back seat of the police car.

11 Q Okay. He's not charged with Resisting Arrest
12 today? He did not resist that arrest?

13 A No.

14 Q You said that -- that this all happened on
15 Continental Avenue; is that right?

16 A That's right.

17 Q Okay. Does Continental Avenue run north and
18 south or east and west?

19 A Runs east to west.

20 Q East to west, okay. So the tow truck was parked
21 on the north side of the street or south side of
22 the street?

23 A I can't recall that.

24 Q So you don't know which side of the street the
25 tow truck was parked on?

1 A No. The tow truck wasn't there at the time of
2 the inventory.

3 Q Okay. How about where the car was parked when
4 you did the inventory?

5 A The car was parked facing east on Continental in
6 the middle of the street.

7 Q Okay. Now earlier you said that when Mr. Brown
8 approached, one of the things that he comes to
9 you in the street is being in the way of towing
10 the car; isn't that right?

11 A No, I did not. He's in the way of traffic which
12 is still travelling --

13 Q In addition, to that you said --

14 THE COURT: Attorney Malbasa, you
15 have to let him answer the question. You
16 have done this repeatedly. Ask the question
17 and let him answer and then ask the next
18 question.

19 MR. MALBASA: Yes, your Honor.

20 THE COURT: Just one second,
21 please.

22 - - -
23 (Thereupon, a discussion was had
24 between Court and security bailiff and
25 off the record.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

- - -

THE COURT: All right. You may
proceed.

BY MR. MALBASA:

Q Officer, you stated earlier one of the reasons
one of problems of him being in the street, was
that he was getting in the way of towing the car;
is that right?

A No, I did not.

Q You didn't state that on direct-examination?

A I stated that on direct-examination that he was
interfering with us being able to inventory the
car in connection with the tow of the vehicle.

Q When you were inventorying the car, was the car
on the north side of the street or the south side
of the street?

A It was in the middle of traffic. It was in the
middle of the street. There was several feet
between the vehicle and the south curb. There
was some distance between the vehicle, and the
north curb, and the distance was enough to
prevent traffic to travel around the vehicle,
going east and west.

However, it was reduced to one lane, so
vehicles going east on Continental with vehicles

1 going west would not be able to proceed at the
2 same time, at the same which is why we needed the
3 officers --

4 Q So if the lane of traffic --

5 A -- to direct that traffic from both sides, from
6 the east side and the west side, sir.

7 Q The lane of traffic that went around this car was
8 that on the north side of the vehicle or the
9 south side of the vehicle?

10 A It was on the north side of the vehicle, sir.

11 Q Okay. And where did Mr. Brown come from? Did he
12 come from the north side of the street or the
13 south side of the street?

14 A As I stated earlier, he came from the north side
15 of the street.

16 Q Okay. So the vehicle was on the south side of
17 the street or shaded to the south side of the
18 street. The way the traffic was going around
19 this --

20 A It was closer to the south side than it was to
21 the north side, but it still was several feet.

22 Q And he approached the north side?

23 A That's correct.

24 Q Okay. And it was when he was standing in the
25 street on the north side of the street that he

1 was in the way of you inventorying the vehicle?

2 A When he came out into the street, he interfered
3 with the inventory of the vehicle, as well as
4 presented a safety issue for himself with the
5 oncoming traffic.

6 It's pitch black outside, and there was also
7 flashing lights from two police cars, which
8 created a bunch of hazards, both for the police
9 officers and for the citizens.

10 Q Okay. Now, you mentioned that there were
11 officers directing traffic?

12 A There were officers on scene to make sure that
13 traffic was going smooth; that is correct.

14 Q Okay. How many officers were directing traffic;
15 do you remember?

16 A We had four officers total on the scene.

17 Q Do you remember if one of them was directing
18 traffic? Two of them that were directing
19 traffic?

20 A That I don't recall.

21 Q Okay. And at not one point did one officer walk
22 over and talk to Mr. Brown?

23 MS. JORDAN: Objection. Asked and
24 answered.

25 THE COURT: Sustained.

1 BY MR. MALBASA:

2 Q Officer, you were never personally threatened by
3 anything that he said, were you?

4 A No.

5 MR. MALBASA: Nothing further.

6 THE COURT: Re-direct?

7 MS. JORDAN: Yes, just briefly, your
8 Honor.

9 REDIRECT EXAMINATION

10 BY MS. JORDAN:

11 Q Officer, does the Cleveland Police Department
12 issued dash-cams for each vehicle?

13 A No. They do not.

14 Q Do they issue audio recording devices for each
15 vehicle?

16 A No, they do not.

17 Q When those devices are present in the officer's
18 car, who has the authority to purchase those?

19 A The officer.

20 Q So it's not department issued equipment. It's
21 not mandatory for each vehicle, officer?

22 A No, ma'am.

23 Q Okay. And why did you not knock on the
24 neighbors' doors, officer?

25 A All the information we needed was based off of

1 our observations at the time of the arrest.

2 Q Thank you, officer. And who else was around when

3 the defendant said, "F" you thirsty "M" F'ers?

4 A My partner, Officer Bauhof.

5 Q Okay. Anybody else around?

6 A The arrested male that we arrested initially that

7 caused all this to begin with.

8 Q Any civilians around?

9 A There were -- there were people on the -- on the

10 sidewalks in the surrounding area.

11 Q So more likely than not that comment was directed

12 to the officers at the scene, correct?

13 A Yes.

14 Q Thank you. And officer, what steps must be

15 completed before a tow can occur in connection an

16 arrest?

17 A We inventory the vehicle in its entirety.

18 Q Thank you, officer. And to the best of your

19 knowledge, did these events happen in the city of

20 Cleveland?

21 A Yes, they did.

22 MS. JORDAN: No further questions,

23 your Honor.

24 THE COURT: Re-cross, Attorney

25 Malbasa?

1 MR. MALBASA: Nothing further, your
2 Honor.

3 THE COURT: All right. Thank you.

4 MS. JORDAN: And, your Honor, at
5 this time, the City calls Officer Bauhof.

6 THE COURT: Excuse me, for just a
7 minute.

8 - - -
9 (Thereupon, a discussion was had
10 between Court and journalizer and
11 off the record.)

12 - - -
13 THE COURT: All right. You may
14 proceed.

15
16
17
18
19
20
21
22
23
24
25

1 A Yes, I was.

2 Q Were in a marked police vehicle?

3 A Yes, I was.

4 Q Did you have a partner on that day?

5 A Yes, I did.

6 Q And did you have an occasion to complete a
7 traffic stop?

8 A Yes.

9 Q On that day?

10 A Yes.

11 Q Did you have to complete an inventory of the
12 vehicle after that traffic stop, officer?

13 A Yes, I did.

14 Q And did anything unusual happen while you were
15 completing the vehicle inventory, officer?

16 A Yes. We had a male entered, pertaining to
17 evidence. We collected the evidence, or I
18 collected evidence from the vehicle. I was doing
19 the vehicle inventory search. At that time, a
20 small group gathering around us, due to incident
21 of the arrest.

22 At that time, other officers were there.
23 Other officers were advising people to step away
24 from the vehicle.

25 Due to the arrest of a male that continued

1 to run his mouth and not listen to the police.

2 Q And do you see that male that continued to run
3 his mouth and not listen to the police in the
4 courtroom today?

5 A Yes, I do.

6 Q Can you please identify him and describe him for
7 the Court?

8 A Male seating over there wearing black crutches, a
9 medical boot on his left foot.

10 MS. JORDAN: Your Honor, may the
11 record reflect that the witness has
12 identified the defendant?

13 THE COURT: Yes. The record shall
14 so reflect.

15 BY MS. JORDAN:

16 Q And what exactly were the actions of the
17 defendant, officer?

18 A At that time, I was conducting an inventory
19 search of the vehicle. I heard some commotion,
20 yelling, and when I turned around at that point,
21 Hill, Kinas, Hill, Ludroski assisted us with
22 placing the male in cuffs and advising him and
23 other people from the crowd to step back.

24 At that time, I went over there to see if
25 they needed any assistance. At that time, they

1 didn't, and I conduct my business of the original
2 arrest.

3 Q And approximately, how long were the other
4 officers dealing with the defendant?

5 A Well, it -- it appeared like it was several
6 minutes that we observe the crowd forming, and
7 they were asking the crowd to step back.

8 Q So the officers had to ask the crowd that was
9 forming to step back?

10 A Yes.

11 Q And why were they asking them to step back?

12 A It appeared that the man that we had under arrest
13 had family and friends on that street, and they
14 kept trying to approach the zone car. The male
15 was secured in our zone car. Officers told them
16 to step back while we conclude our investigation.

17 Q And what was the issue with them approaching the
18 zone car?

19 A You know, it's just for officer safety, we don't
20 allow people to walk up to our police officer.
21 We had an arrested male there. We have weapons
22 inside the zone car. We also have an arrested
23 male. We don't need one to open the door and
24 escape. It's just -- everyone should know not to
25 come back to the police car, especially, when

1 police ask you.

2 Q To the best of your knowledge, did this incident
3 happen in the city of Cleveland?

4 A Yes, it did.

5 MS. JORDAN: No further questions at
6 this time, your Honor?

7 THE COURT: All right. Cross
8 examination.

9 CROSS-EXAMINATION

10 BY MR. MALBASA:

11 Q Officer, you stated that people in the crowd were
12 trying to approach the zone car; is that right?

13 A Yes.

14 Q Okay. Did you see Mr. Brown try to approach the
15 zone car?

16 A When I see him placed in cuffs, he was by the
17 zone car. He was being escorted away from our
18 zone car and secured.

19 Q So he was already secured when you saw,
20 Mr. Brown?

21 A No. They were securing him when I turned around
22 and heard the yelling.

23 Q Okay. You didn't hear what he said, though?

24 A No. I did not.

25 Q You didn't see him before -- before there was

1 securing him?

2 A There was multiple people around him at that
3 time. I was centered on my investigation.

4 MR. MALBASA: Nothing further.

5 THE COURT: Re-direct?

6 REDIRECT EXAMINATION

7 BY MS JORDAN:

8 Q Officer, you said that he was by your zone car
9 when he was arrested?

10 A Yes.

11 Q And that he was escorted to another zone car?

12 A Yes.

13 MS. JORDAN: No further questions,
14 your Honor.

15 THE COURT: Re-cross?

16 MR. MALBASA: Nothing further, your
17 Honor.

18 THE COURT: All right. Thank you.

19 MS. JORDAN: At this time, the City
20 rest, your Honor.

21 THE COURT: All right.

22 MR. MALBASA: Your Honor, pursuant to
23 Rule 29, we would move for this case to be
24 dismissed.

25 Aggravated Disorderly Conduct requires

1 that the City show the defendant acted
2 recklessly, that he caused an inconvenience,
3 or annoyance, or alarm to another by
4 engaging in fighting, threatening to harm
5 person or property or engaging in turbulent
6 behavior.

7 They have failed to show that he had done
8 any of these things. Even when viewing the
9 light most favorably to the prosecution, you
10 heard evidence that he stated that, at
11 worse, "F" you thirsty "M" F'ers.

12 The first amendment of the constitution
13 protects an individual's right to Freedom of
14 Speech. And Freedom of Speech is not
15 absolute. I understand that, your Honor.
16 There are exceptions. One of those
17 exceptions is fighting words.

18 State of Ohio has addressed this issue
19 of people referring to calling officers
20 names or referring to saying other things to
21 civilians, and for something to be fighting
22 words, first it must be words spoken that
23 are used in a personal matter, okay. That's
24 the first part.

25 And the second part, is that the words

1 must be of the type that would cause harm to
2 a person. And I cite to the court three
3 cases State v. Sheistwall(Phoen.) It's a
4 1982 case. June 3, 1982. State v.
5 Richardson. 43rd Ohio App. 3d 144 from July
6 5, 1988.

7 And finally, City of Garfield Heights v.
8 Yaro.(Phoen.) It's only reported on
9 Westlaw. It's not reported 1999. Westlaw
10 1084255, which I like to give that to Court.
11 I proffer to the Court. I have a copy for
12 you also Ms. Jordan.

13 It's not enough that he just used
14 obscenities. It's not enough he was upset.
15 The officers had to actually feel threatened
16 by this. One officer never even saw this,
17 and the other officer told the Court that he
18 was not personally threatened by this, your
19 Honor. This case should be dismissed. He
20 did nothing that amounts to the charge of
21 Aggravated Disorderly Conduct.

22 Additionally, for the charge of
23 Obstruction of Official Business, it
24 requires a purpose to prevent. With a
25 purpose to prevent obstruct, delay, the

1 performance of public official act or any
2 authorized act. They failed to show that he
3 purposely prevented any act. He stood in
4 the street, if he did that, he stood in the
5 street, and he blocked traffic, but did he
6 not in any way get in the way of the officer
7 activities. At any time, one of them could
8 have taken him aside and answered his
9 questions.

10 We ask that this case be dismissed, your
11 Honor.

12 THE COURT: Thank you.

13 MS. JORDAN: Your Honor, the City
14 would object to the defendant's motion Rule
15 29 Motion. On several grounds, first and
16 foremost, your Honor. For it to be
17 Aggravated Disorderly Conduct, the City is
18 not saying that he it was his words alone
19 that caused that disturbance to the officer.
20 What it was, was his words in conjunction
21 with his actions, your Honor.

22 The officers even testified that the
23 threats of safety was not just to the
24 officers, but to the defendant himself.

25 Even though the officers were eventually

1 arresting him, the officer still have a duty
2 even to protect him, and he remain in the
3 street, failed to comply with their orders.
4 What it actually causes, your Honor.
5 "No person shall recklessly cause
6 inconvenience, annoyance, or alarm by doing
7 any of the following, and it's also engaging
8 in violent or turbulent behavior. This is
9 included under Aggravated Disorderly Conduct
10 the City would argue that the defendant's
11 actions are exactly that, turbulent
12 behavior. He prevented the officers from
13 doing their job.
14 You heard Officer Newton testified that
15 they stopped for fifteen minutes. They
16 couldn't complete the inventory and perhaps
17 the reason Officer Bauhof what able to see
18 anything, was because he was trying to
19 continue to do his job.
20 It was not the officer's job to pull a
21 aside a person and say sit down, please.
22 Stay calm while we investigate this crime
23 scene. They were actually doing their job
24 in attempting to investigate the crime
25 scene.

1 And we are asking them to put their
2 safety at risk, to put the safety of the
3 crowd gathering at risk, so that they can
4 calmly explain to the defendant. Please, go
5 sit down so we may do our jobs. Now when
6 the Cleveland police officers don't do their
7 job, we are all down their throats; and in
8 this instance, they were actually trying to
9 do their job, and the defendant hindered
10 that, and that is where the Obstruction of
11 Justice charge stems from, your Honor.

12 The City believes it has met its burden,
13 and we ask that you deny the defendant's
14 motion.

15 THE COURT: All right. The
16 defendant's Rule 29 Motion is hereby denied.

17 How do you want to proceed
18 Attorney Malbasa?

19 MR. MALBASA: We will call our first
20 witness, your Honor.

21 THE COURT: Who is that?

22 MR. MALBASA: Thelma Brown.

23 THE COURT: Would you ask
24 Ms. Thelma Brown to come into the courtroom.

25 Attorney Malbasa, do you want her at the

1 witness stand or just stand by you, sir?

2 MR. MALBASA: Are you okay standing
3 here?

4 THE WITNESS: Yes, I'm okay.

5 THE COURT: Okay.

6 THE WITNESS: You have to speak up,
7 so cause I have -- I have problems with my
8 ears.

9 MR. MALBASA: Okay.

10 THELMA J. BROWN, being
11 first duly sworn, was examined and testified
12 as follows:

13 DIRECT EXAMINATION

14 BY MR. MALBASA:

15 Q Ms. Brown, please state your full name for the
16 record and spell your last name for the record?

17 A My name is Thelma J. Brown, B-R-O-W-N.

18 Q And Ms. Brown, you are here today because you
19 were there on November 10, 2010, and you saw
20 David Brown get arrested?

21 A Yes, I did.

22 THE COURT: Mr. Malbasa, just one
23 one second. Michael. I'm sorry. I know.
24 I know. It's just --

25

1 (Thereupon, a discussion was had
2 between Court and Michael Harvey and
3 off the record.)

4 - - -

5 THE COURT: I'm sorry, Attorney
6 Malbasa. You may proceed.

7 BY MR. MALBASA:

8 Q Ms. Brown, tell me where you were when you first
9 realized there were police outside the home?

10 A I was upstairs in my bedroom in my bed, and one
11 of my neighbors across the street, her two
12 daughters came over there, and they told me that
13 police had my nephew which is Walter Gray out
14 there in the truck. They said they were beating
15 him. I didn't see the police doing anything to
16 him, but that's what my neighbor had told me.

17 Q Okay. What did you do when you heard that?

18 A I got up. I -- I took off my night clothes, put
19 on regular clothes and went out there to see what
20 was going on, but I did not ask nobody, you know,
21 none of the officers no questions at all, you
22 know. But I was asking my neighbor what was
23 going on, you know, and they were saying that the
24 police was beating on him. Like I said, I didn't
25 see it.

- 1 Q Ms. Brown, are you related to Mr. Brown?
- 2 A Yes.
- 3 Q What's the relation?
- 4 A I am his mother.
- 5 Q Okay. When did you first see him that night?
- 6 A That night, okay, I say maybe five or ten minutes
7 later. David got up out of his house, which is
8 over there next door to me 11719 Continental
9 Avenue, and he ran outside. I thought somebody
10 told him, but did nobody tell him, and David came
11 outside. And he -- he was walking towards the
12 police. What's up? What's up? That's the only
13 thing I remember my son saying to them. "What's
14 up?" "What's up?"
- 15 Q Where was he standing when he said that?
- 16 A He was -- he was on the ground, not on the
17 ground, they were on the grass in front of his,
18 and he was walking towards them, asking what was
19 going on.
- 20 Q Did he leave the grass in front of his house?
- 21 A If I could remember -- I -- I if I could
22 remember, I think he did. I'm not for sure. I
23 think he did. I don't know. Cause like I said,
24 I'm an older woman I do forgets.
- 25 Q Was he standing in the street? Do you remember

1 if he was in the street?

2 A He was not in the street. He was over there by
3 the sidewalk. Because I remember the grass and
4 he was over there, because the police car was in
5 front of the house.

6 Q Was he holding up traffic?

7 A No, he was not holding up traffic.

8 Q Did he -- do you remember him using any
9 obscenities?

10 A No. Because David knows I don't play that. He
11 don't use it in front of me.

12 Q How did it make you feel when they arrested
13 Mr. Brown?

14 A As a mother, it makes you feel bad, you know, as
15 a mother. I know officers have to do what they
16 got to do, and all like that, but as a mother,
17 you're going to feel for your children.

18 Q Were you are upset?

19 A Well, what I did I begin to pray.

20 MR. MALBASA: Thank you. Nothing
21 further at this time.

22 THE COURT: All right. Thank you.
23 Cross-examination.

24 MS. JORDAN: Yes, your Honor.

25

CROSS-EXAMINATION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BY MS. JORDAN:

Q Ms. Brown, you said that you saw your son walking towards the police?

A Yes. He was on the grass, walking toward police asking them what happened? "What's going on?" "What's going on?"

Q Okay. And when you got out to the seen, you arrived before your son, correct?

A Yes, I did.

Q Did you begin to question police?

A No, I didn't.

Q Why not, ma'am?

A I figure like this here. Why should I want to get inside the police business. They may do something to me. I don't know. My mama always told me like this. You respect people who is in authority over you.

Q Did you tell that to your son, as well, ma'am?

A Yes, I did. I raised him like that.

Q Okay. And how often did he ask the police questions that you heard?

A Pardon me?

Q You said you saw him walking towards the police and ask them questions?

1 A He was like this walking, "What's going on?"

2 "What's going on?"

3 Q Okay. And did he continue to ask questions at
4 that point?

5 A Yes. He did ask questions and they igged him.

6 Q They what?

7 A They igged him.

8 Q "They igged him." What do you mean by "They
9 igged him"?

10 A They weren't paying him no attention.

11 Q Oh.

12 A Is what I'm saying, you know. Like I said, I'm
13 going to be honest with you. I'm an elderly
14 woman, and I do forget. I telling you the truth.

15 Q I appreciate you. So it's possible that you
16 don't remember all of the details of that night.

17 A But I do remember that night he asked them,
18 "What's going on?"

19 Q Right. But you don't remember it's possible that
20 you don't remember everything else that occurred,
21 correct, ma'am?

22 A I remember what they said to him.

23 Q And what did they say to him?

24 A They -- they told him that he was under arrest.

25 Q Okay. And is it possible you forgot things that

1 happened --

2 A Like, okay like what?

3 Q Like him asking "What's going on?"

4 A Pardon me?

5 Q Is it possible that you forget things that
6 occurred from the time your son was arrested, and
7 the time your son first started questioning the
8 officers?

9 A Only thing I'm going to be honest with you
10 that -- that's when I began to pray.

11 Q Okay.

12 A After I -- I -- I okay, back up. I told David
13 this, to be quiet. I remember that. I told my
14 son to be quiet. Because when he asked the
15 officer, "What's going on?" I told David just be
16 quiet. Be quiet, you know, and then after that I
17 began to pray.

18 Q And do you know what happened while you were
19 praying, ma'am?

20 A I wasn't -- I wasn't paying any attention. I was
21 praying.

22 MS. JORDAN: Thank you, Your Honor.

23 Not further question at this time.

24 THE COURT: Okay. Re-direct.

25

REDIRECT EXAMINATION

1
2 BY MR. MALBASA:

3 Q Ms. Brown, do you remember your son ever using
4 any obscenities towards the officers?

5 A No. No, no. Like I said, my son they don't
6 curse in front of me, because I don't go for
7 that. I didn't raise them like that.

8 Q Did he make any obscene gestures towards the
9 officers?

10 A No.

11 Q Did he approach the officers in a menacing way?

12 A No, uh-uh, no.

13 MR. MALBASA: Nothing further.

14 THE COURT: Re-cross?

RE-CROSS-EXAMINATION

15
16 BY MS. JORDAN:

17 Q Ma'am, but you said that you do not know what
18 happened while you were praying?

19 A But I say that. I say that.

20 MR. MALBASA: Objection. She stated
21 that she didn't know what happened after he
22 was arrested.

23 MS. JORDAN: No, no. What she said
24 was that while she was praying, she wasn't
25 paying him any attention.

1 THE WITNESS: I was --

2 THE COURT: One moment. One
3 moment. There's no question before you.
4 Just a moment.

5 THE WITNESS: Okay.

6 THE COURT: You may ask the
7 question, again. Your objection is
8 overruled.

9 BY MS. JORDAN:

10 Q Is it possible that while you were praying,
11 ma'am, there was things that your son did that
12 you didn't see?

13 A I didn't see my son do anything. I know I'm a
14 mother, and I know sometimes people think that
15 people cover for their kids. I don't cover for
16 my kids. Like I said, as a mother, you are going
17 to be concerned about your kids no matter how old
18 they are.

19 Q I understand that. But that wasn't my question
20 to you, with all due respect. My question was
21 earlier you said while you were praying, you
22 weren't paying him any attention, so you do not
23 know what your son did while you were praying,
24 correct?

25 MR. MALBASA: Objection, your Honor.

1 Earlier -- earlier Ms. Jordan asked if she
2 started praying after her son was arrested.
3 We're talking about the events before her
4 son was arrested.

5 THE WITNESS: Before.

6 THE COURT: The objection is
7 overruled. If she understands the question
8 she can answer the question. Do you
9 understand the question?

10 THE WITNESS: I think I does. I
11 don't know. I -- I think I does.

12 THE COURT: Prosecutor Jordan, just
13 ask her the question, again?

14 BY MS. JORDAN:

15 Q Yes, ma'am. You say that you weren't paying
16 attention while you were praying, correct?

17 A I was praying. Like I said, I was praying, and I
18 do remember when the police did put the handcuffs
19 on him. I do remember that.

20 Q So you don't know what happened at the time you
21 started praying, and when the handcuffs went on
22 your son, correct?

23 A Like I said, I was praying, and I seen when they
24 put the handcuffs on him.

25 Q Right. But you weren't paying attention when you

1 were praying is what you say earlier, correct?

2 A Yes.

3 MS. JORDAN: Thank you. No further
4 questions, your Honor.

5 THE COURT: Anything further,
6 Attorney Malbasa?

7 MR. MALBASA: Nothing further, your
8 Honor.

9 THE COURT: All right. Do you have
10 another witness?

11 MR. MALBASA: Yes. Walter Gray.

12 THE COURT: Ask Walter Gray to come
13 into the courtroom.

14 - - -

15 (Thereupon, a discussion was had
16 between Court and Mike Negray and
17 off the record.)

18 - - -

19 (Thereupon, a discussion was had
20 between Court and counsel and on the
21 record).

22 - - -

23 THE COURT: I'm sorry, Attorney
24 Malbasa.

25 MR. MALBASA: It's okay.

1 THE COURT: Go ahead, please.
2 WALTER GRAY, being
3 first duly sworn, was examined and testified
4 as follows:

5 DIRECT EXAMINATION

6 BY MR. MALBASA:

7 Q Mr. Gray, please, state and spell your last name
8 last for the record.

9 A Walter Gray, G-R-A-Y.

10 Q Mr. Gray, you're here you were actually arrested
11 on November 10, 2010; is that right?

12 A That's right.

13 Q And so you saw Mr. Brown interactions with the
14 officers that night?

15 A Yes.

16 Q Where were you when you first saw Mr. Brown?

17 A I was apprehended in the back seat of the police
18 car.

19 Q Okay. So you could see him in the police car?

20 A Yes. I could see him. It actually happened in
21 front of his residence.

22 Q Where was he standing?

23 A On the sidewalk.

24 Q Did he ever leave the sidewalk?

25 A No.

1 Q Did you hear him say anything while you were
2 inside the police car?

3 A Yeah. He was trying to see what was going on, on
4 my behalf. As he was doing that, things got a
5 little irate. Because it was already a lot of
6 people outside. A lot of commotion, so it seemed
7 that he was starting something, but he was seeing
8 what was going on, on my behalf. He was coming
9 to see what was going on, on my behalf. Officers
10 just grabbed him and took him.

11 Q What did you hear him say?

12 A What was -- what was the problem, officer. And
13 they kept telling him to be quiet. All he was
14 asking what was the problem.

15 Q Did he approach the car?

16 A No.

17 Q Did he approach the other squad car?

18 A No.

19 Q Did he approach your car?

20 A No.

21 Q Was he ever standing in the street?

22 A Not at all. Too many police cars were blocking
23 the street for one.

24 Q Mr. Gray, what were you arrested for that night?

25 A Driving up under Expired License, Drug Abuse, and

1 driving a car with a cracked windshield.

2 Q What is your relation to Mr. Brown?

3 A That's my cousin.

4 Q And how long have you known him?

5 A All my life, 33 years.

6 Q In that time, have you ever know him to do
7 something like that?

8 A Not at all. Something happened before this. He
9 got a case before, but nothing pertaining to
10 this.

11 Q How long ago was that; do you remember?

12 A Maybe about ten years ago.

13 Q Okay.

14 MR. MALBASA: Nothing further at this
15 time, your Honor.

16 THE COURT: Okay.

17 Cross-examination?

18 MS. JORDAN: Yes, your Honor.

19

20

21

22

23

24

25

CROSS-EXAMINATION

1
2 BY MS. JORDAN:

3 Q Sir, you said that you were arrested on
4 November 10, 2010?

5 A Yes, ma'am.

6 Q And you were in back of a police car by the time
7 your cousin came out?

8 A Yes.

9 Q So you weren't able to see everything that was
10 going on in the street, were you?

11 A Yes, I was.

12 Q So you could see the entire street from the back
13 of the police car?

14 A Yes, ma'am. The way the car was set -- was
15 sitting I could actually see to my left and see
16 the whole visual area. I actually could see
17 Mr. Brown come out of his house.

18 Q You could see what was behind you?

19 A Yes, I could see behind me.

20 Q You could see what was in front of you?

21 A Yes, ma'am.

22 Q You could see what's to the left of you?

23 A Yes.

24 Q And to the right of you?

25 A Of course.

1 Q While you were handcuffed to the back of the
2 police car?

3 A Yeah. I could move my neck back and forth.

4 Q Good. And you stated that things got irate what
5 do you mean by that?

6 A Because as me and the officers, I was pulled
7 over, and me and the officer got into it. So
8 that being said, it was a little scuffle, so
9 things got a little irate on my behalf. I accept
10 my faults. I was wrong.

11 So with my faults being at wrong, put him --
12 my cousin in jeopardy coming to see what was
13 going on, on my behalf. So things were a little
14 stirred up already, so it wasn't nothing we could
15 kind of cool off. As my cousin approached to see
16 what was going on, he was snatched up.

17 Q And sir, it is possible that the weed you
18 swallowed that night may have distorted your
19 memory of this event?

20 A Of course, not.

21 Q You weren't a little --

22 MR. MALBASA: Objection.

23 MS. JORDAN: What?

24 THE COURT: I'm sorry what was the
25 bases for the objection, Attorney Malbasa?

1 MR. MALBASA: Your Honor, it's
2 irrelevant whether he --
3 MS. JORDAN: If the weed he
4 swallowed and digested distorted his view if
5 he was high on weed, your Honor, I think
6 that it's absolutely relevant.
7 THE COURT: Overruled. He can
8 answer the question.
9 MR. MALBASA: Objection. He doesn't
10 have to --
11 THE COURT: And the Court has
12 ruled, and I said he can answer. Your
13 objection is noted for the record. That's
14 it.
15 MR. MALBASA: Thank you.
16 THE COURT: My gracious. You need
17 to accept the Court's ruling. If you
18 disagree, so be it, but when I rule, that's
19 it, Attorney Malbasa.
20 MR. MALBASA: Your Honor, I object
21 for the record.
22 THE COURT: And you've done that.
23 MR. MALBASA: Thank you.
24 THE COURT: And that's it. And he
25 may answer the question. It's overruled.

1 MR. MALBASA: Thank you.

2 BY MS. JORDAN:

3 Q Sir, did the weed that you swallowed that night,
4 distort your perception of these events?

5 A Of course not, ma'am.

6 Q How much weed did you swallow?

7 A A half a gram.

8 Q And that didn't get you a little high, sir?

9 A Of course not, ma'am.

10 Q Okay. Um, you stated that your cousin had got a
11 case two years prior?

12 A Not two years, maybe like ten years.

13 Q And what was that for?

14 A Um, it was dealing with police officers inciting
15 a riot, I believe. I can't remember the details.

16 Q So he does have a history of not completely
17 cooperating with the police, sir, correct?

18 A No, ma'am.

19 Q Okay. I'm confused. Explain this to me. You
20 said he caught a case with the police causing an
21 issue in inciting a riot, correct, yes or no?

22 A Yes.

23 Q But you said that he does not have a negative
24 history with the police; yes or no?

25 A No. What I was saying that it wasn't his fault,

1 just because it was done, doesn't mean it was
2 his fault. He was coming on somebody else's
3 behalf again.

4 Q So he does have a history of interfering with
5 police for somebody else?

6 A No, ma'am.

7 Q Yes or no?

8 A No.

9 Q But just said that he was -- ten years ago his
10 arrest then was for him coming on someone's
11 else's behalf with the police; yes or no?

12 A Yes.

13 Q So he does have a history of interfering with the
14 police on other people's behalf; yes or no?

15 A I wouldn't call it history, yes.

16 Q Has he done it before; yes or no?

17 A This is totally different, though.

18 Q Has he done it before; yes or no, sir?

19 A No. It's totally different.

20 Q How is this totally different?

21 A It's different cases. He wasn't even arrested on
22 the same thing, so you can't say this is the same
23 issue. It's totally different.

24 Q Has he been in trouble with the police before?

25 A Yes.

1 MR. MALBASA: Objection.

2 THE COURT: Excuse me. Excuse me.

3 First of all, Mr. Gray, you can not over

4 talk the prosecutor. You are not -- now,

5 excuse me. You are not going to be rude in

6 this courtroom.

7 THE WITNESS: Yes, ma'am.

8 THE COURT: And she's going to let

9 you speak also and not interrupt you. And

10 you cannot interrupt the prosecutor; do you

11 understand the Court --

12 THE WITNESS: I understand.

13 THE COURT: -- yes or no?

14 THE WITNESS: Yes.

15 THE COURT: You know it might be

16 better if these individuals sit at the

17 witness stand. He's out of control in this

18 courtroom. I'm not going to permit it.

19 MR. MALBASA: Your Honor.

20 THE COURT: Excuse me.

21 MR. MALBASA: Objection.

22 THE COURT: He is not going to --

23 MR. MALBASA: Objection.

24 THE COURT: Excuse me. You are not

25 going to interrupt this Court either.

1 MR. MALBASA: Objection.
2 THE COURT: Excuse me.
3 MR. MALBASA: I have a right to
4 interrupt this Court.
5 THE COURT: You do not a right to
6 interrupt this Court and be rude when I'm
7 speaking.
8 MR. MALBASA: I have a right to
9 object and I'm going to object.
10 THE COURT: You can make your
11 objection when the Court is finish speaking.
12 You are not going to interrupt this Court.
13 You will both be in that holding cell. If
14 you --
15 MR. MALBASA: I have --
16 THE COURT: Excuse me. Side bar on
17 the record. Just keep your mouth closed
18 until this is on the record. I have had it.
19 MR. MALBASA: I have a right to
20 object.
21 THE COURT: You --
22 MR. MALBASA: I have a right to
23 object.
24 THE COURT: Shut your mouth.
25 You're going to --

1 MR. MALBASA: Your Honor, I have a
2 right to object.
3 THE COURT: Shut your mouth.
4 MR. MALBASA: I object. I object. I
5 object.
6 THE COURT: You know what, come out
7 here.
8 MR. MALBASA: I object.
9 THE COURT: Come out here.
10 MR. MALBASA: What are you going to
11 do if I object?
12 - - -
13 (Thereupon, a discussion was had.
14 Between Court and counsel and
15 On the record).
16 - - -
17 THE COURT: I'm asking you to wait
18 to put it on the record. That's why I asked
19 you to wait. You cannot act this way to the
20 Court.
21 MR. MALBASA: I have the right to
22 object and have my objection ruled on.
23 THE COURT: You know what and the
24 -- excuse me. Excuse me, Mr. Malbasa, you
25 are out of order. I do not have any

1 problems with any attorneys making their
2 record, but when I'm speaking, this is what
3 I am saying. When I'm speaking, let the
4 Court finish and then make your objection.

5 I don't have a problem with that, but
6 you are not going to interrupt me. Excuse
7 me, when you interrupt the witnesses, I told
8 you not to do that. When you, Mr. Malbasa,
9 interrupted the Prosecutor. I would say
10 that to anybody that, that's rude behavior.
11 I want the testimony to come forward. I
12 want you to make your objection. When the
13 prosecutor wants to object, she doesn't
14 interrupt the Court. She let me finish
15 speaking. I'm not going to interrupt you at
16 all, too.

17 When I'm speaking, and you won't let me
18 finish speaking, then I not going to allow
19 that to happen. I'm never going to stop
20 anyone from making a record. I am not going
21 to allow you to be rude to the Court.

22 MR. MALBASA: Judge.

23 THE COURT: That's my only problem.
24 I will not allow you to interrupt when I'm
25 speaking, but I will always let you make

1 your record. When you do that, I'm going to
2 tell you, and I am not going to allow it.

3 MR. MALBASA: Judge, I've always
4 allowed you to finish what you are saying
5 and never object to what you're saying. You
6 are objecting to my objection.

7 THE COURT: No. I don't think --

8 MR. MALBASA: Then you told me to
9 shut my mouth.

10 THE COURT: You are not to be
11 talking -- stop talking when the Court
12 talks. You just -- I never not allowed you
13 to make your objection. I never said that.
14 I told you that you cannot interrupt when I
15 was speaking. I never said you and the
16 prosecutor -- I never said you could not
17 make your objection. You just cannot
18 interrupt the Court when the Court is
19 speaking, and that's all I'm asking. You
20 have to be polite in this courtroom.

21 I am not never going to stop anyone from
22 making an objection, but you are not going
23 to be rude.

24 MR. MALBASA: Judge, I have not been
25 rude. I have not interrupted you.

1 THE COURT: You did.

2 MR. MALBASA: I did interrupt an
3 officer earlier. You're right, and you
4 properly corrected me, okay. I followed
5 procedures after that, but to tell me to
6 shut up.

7 THE COURT: What I was going to
8 say, but you continue to interrupt this
9 Court, and the prosecutor can verify on the
10 record, verify -- excuse me, just like
11 you're doing right now when I'm speaking.
12 You would not let the Court finish speaking.
13 And that is all I am asking of you have is
14 to conduct yourself in a professional manner
15 in the courtroom.

16 I have never told you not to make an
17 objection. I just -- you cannot interrupt
18 when I'm speaking. I do not want you to
19 interrupt anyone. I just want you to be
20 professional in the courtroom that's all the
21 Court is asking.

22 MR. MALBASA: That's all I'm asking
23 for, Judge. But then when you admonish my
24 witness, that he's out of order.

25 THE COURT: He was out of order.

1 MR. MALBASA: The prosecutor was
2 asking the same --
3 MS. JORDAN: He would not answer the
4 question.
5 MR. MALBASA: He gave you his answer.
6 MS. JORDAN: He kept changing the
7 answer.
8 MR. MALBASA: Am I allowed to finish
9 my statement?
10 THE COURT: I don't want anybody to
11 interrupt when the other person is speaking.
12 And with respect to Mr. Gray's comment, he
13 was speaking. When he was speaking and
14 that's why there's a problem in this --
15 excuse me. So that's what I was telling you,
16 Mr. Malbasa, that it is out of order.
17 I tried to caution him. He continued to
18 do the same thing, and that's why I was
19 saying he was out of order. If he can just
20 let her finish the question, he can answer
21 the question. That's all.
22 I have no problem with what he wanted to
23 testify to, but in the manner that he can't
24 be rude in the courtroom. Maybe he'll do
25 better to sit in the witness stand. He's

1 not getting it, you know, but --

2 MR. MALBASA: Judge, if I object,
3 I'm interrupting someone. I interrupt the
4 Court. I interrupt you.

5 THE COURT: No. Mr. Malbasa.

6 MR. MALBASA: It's the truth. If you
7 admonished my witness and say he's
8 interrupting the Court, I have to object to
9 that. I want to make a record of that.

10 THE COURT: I don't think
11 Mr. Malbasa, I don't think that you are
12 getting this. I don't have any problem with
13 you making your objections on the record.
14 That's no problem. The issue is when you
15 interrupt the Court, and I can't finish
16 speaking. That is what I'm talking about.
17 I don't have any problem with anyone making
18 their objections on the record. I never
19 had.

20 You have to let the Court finish
21 speaking and just make your record. I am
22 not going to stop you from making a record,
23 but I --

24 MR. MALBASA: Judge, I feel exactly
25 that.

1 THE COURT: Well, that's the
2 problem why you can't get a grip and
3 understand you are not --
4 MR. MALBASA: I now have to get a
5 grip?
6 THE COURT: Yes.
7 MR. MALBASA: You're using -- you're
8 using this language with me. You're not --
9 THE COURT: You just asked right
10 now, the exact same thing. I cannot even --
11 Look, I'm trying to answer the question, and
12 you keep interrupting me. I tell you one
13 more time. I'll say it, again. When I'm
14 speaking, you are not going to interrupt
15 this Court. And when you speak, I'm not
16 going to interrupt you either. That's what
17 I'm saying.

18 That's why this kind of conduct I'm
19 addressing, and your client was out of
20 order. And that's why I stopped you from
21 when you were talking over that police
22 officer and when Mr. Gray was over talking
23 this Prosecutor. I am going to address it.

24 If Prosecutor Jordan did the same thing,
25 I would do the exact same thing, because

1 it's a manner of professionalism in the
2 courtroom, okay. I have no problem with
3 that. My problem is when you are rude to
4 the Court. Sometimes just in the excitement
5 of the trial. I don't think that you -- I
6 don't know. I hope that you are not
7 necessarily being intentionally rude to the
8 Court, just in the heat of a trial, but I'm
9 just asking to just be cautious about that.
10 That's all I'm asking. That's all I'm
11 asking, just don't interrupt when I'm
12 speaking. I will not interrupt you, and I
13 want you to make your record. I don't have
14 a problem with that. I'm just saying the
15 way you do that -- all I'm asking the manner
16 in which it's being done.

17 MR. MALBASA: I'll ask -- I ask for
18 the same respect, too.

19 THE COURT: I will not interrupt
20 you. I have not done that one time in this
21 courtroom, but I'm going to make certain I'm
22 not disrespected by you or anybody else.

23 MR. MALBASA: You have been
24 disrespectful with me out here. You told me
25 to shut up. You made --

1 THE COURT: I was asking to wait
2 until this process --

3 MR. MALBASA: You just interrupted
4 me.

5 THE COURT: I apologize. I wanted
6 to wait until the court reporter can put all
7 of this on the record, and when you're
8 yelling at me, being rude to me, I'm going
9 to say close your mouth and stop. There's
10 no need for that. I'm done.

11 MR. MALBASA: All I'm asking is to
12 object. Can I address --

13 MS. JORDAN: I would add a couple of
14 things on the record, and I apologize. Just
15 from my perspective, my concern is that when
16 I'm asked to stop and wait that objection
17 will not be decided when the court reporter
18 is coming outside to make the record.

19 Furthermore, the reason I was asking
20 multiple questions because the witness
21 wasn't giving the same answer.

22 I was seeking clarification. It's not
23 that I'm attempting to be repetitive. His
24 answers changed. I needed to make sure what
25 he was saying is clear to the Court, because

1 I don't want there be any mistakes in this
2 trial. Just so I'm perfectly clear on my
3 intent.

4 Now you want to object, I have no
5 problem whatsoever with that, counselor. I
6 just want you to be clear on the fact he was
7 changing his answer. That's why I asked the
8 question again.

9 MR. MALBASA: What's the difference
10 between answering a question that you don't
11 like, and you getting a answer you don't
12 like? He proceeds to answer the same
13 question. That's why I objected.

14 THE COURT: I think it's important
15 to say "objection" and put your reason on
16 the record. You can't object, object,
17 object, object when I'm saying --

18 MR. MALBASA: Judge, you're
19 interrupting.

20 THE COURT: You're interrupting me,
21 again.

22 MR. MALBASA: Yes. You're mistaking
23 what happened --

24 THE COURT: Sir, see. This is what
25 I'm talking about.

1 MR. MALBASA: I have to object.

2 THE COURT: You can't even let me
3 finish speaking, and I'm not going to allow
4 this. I have told you about 20 times, just
5 now you're trying to express yourself. You
6 think for some reason this rude behavior is
7 acceptable. It's not acceptable. How can
8 anyone get anything out when you won't let
9 them speak. I am not going to tolerate it.
10 And you need a supervisor over her to come
11 help with this trial, maybe that's a better
12 thing to do. I am not going to allow it.

13 You have to make your objection, put
14 your reason on the record for the objection.
15 Because when you say "objection," I have to
16 have an idea why you're objecting, but I
17 don't know. And for purposes of the record,
18 you got to put it on the record the reason
19 for the objection. That's all I'm asking to
20 put your reason on the record. Let
21 everybody speak. Don't over talk anybody.
22 There's no reason to do that. There's no
23 reason to do that.

24 MR. MALBASA: When given an
25 opportunity seems so, but you don't.

1 THE COURT: We need to proceed. We
2 just have to understand the guidelines which
3 any Judge would expect. That you have to
4 just be professional about how you do this,
5 and just take a moment. I don't know how
6 much more, you have. I have a huge docket.
7 I don't want to rush through this trial, but
8 how many more witnesses do you have?

9 MR. MALBASA: Just Mr. Brown.

10 THE COURT: The defendant, okay.
11 And Mr. Brown, has to understand. I think
12 that when on cross-examination, with
13 Ms. Jordan, it gets heated. I know it gets
14 heated and, um, he has to understand that he
15 has to wait until the prosecutor finish
16 speaking, before he speaks.

17 It's just a matter of courtesy, nothing
18 more than that, and if you want to say that
19 to him, Attorney Malbasa, that's fine. I
20 caution you, just so he understands.

21 I am not trying to change what his
22 testimony is. And then after a certain
23 point, Prosecutor Jordan, it just gets
24 heated. You have to kind of know to move on
25 to the next question. It is not like it's

1 being tried to a jury. It's to me. And,
2 um --

3 MR. MALBASA: I will inform him,
4 Judge.

5 THE COURT: I can determine the
6 truthfulness of his answer or whatever. You
7 all are okay to get started?

8 MS. JORDAN: We are, your Honor.

9 THE COURT: Okay. Um, you all need
10 a few moments before we go back,
11 Mr. Malbasa? He's still standing at the
12 podium I told him he could have a seat. Do
13 you want to caution him?

14 MR. MALBASA: Yes. I'll caution him.

15 THE COURT: I understand. I was
16 not --

17 MR. MALBASA: Yes.

18 THE COURT: -- I was not upset with
19 his answer. I just wanted him to be
20 respectful in the courtroom. I am not
21 intentionally being disrespectful. I just
22 think the questions are going so fast.
23 Sometime maybe you have to slow the pace
24 down a little bit.

25 MS. JORDAN: Yes, your Honor.

1 MR. MALBASA: Understood, Judge.

2 THE COURT: I know that Attorney
3 Malbasa, you're trying to protect the
4 record. I understand. I'm not stopping
5 anyone from protecting the record ever. Are
6 we okay to go back?

7 MR. MALBASA: Yes, your Honor, I like
8 to apology to anything I said that was
9 disrespectful to the Judge or to the Court.

10 THE COURT: Me, too, okay.

11 - - -

12 (Thereupon, a discussion was had between
13 Court and counsel in open court).

14 - - -

15 THE COURT: This is recalling
16 Mr. David Brown's case. Will the bailiffs
17 ask Mr. Gray to come into the courtroom.
18 Just one moment. Let's see we are on
19 cross-examination, correct?

20 MS. JORDAN: Yes, your Honor.

21 THE COURT: Okay. You may proceed.

22 BY MS. JORDAN:

23 Q Mr. Gray, you had testified on direct that your
24 cousin just doesn't do things like that, correct?

25 A Correct.

1 Q And that your cousin is just a good guy, correct?

2 A Correct.

3 Q Are you with your cousin 24/7?

4 A No.

5 Q So you don't know what he does when your not
6 present, correct?

7 A No, no.

8 MS. JORDAN: No further questions at
9 this time, your Honor.

10 THE COURT: All right. Re-direct?

11 MR. MALBASA: Nothing further, your
12 Honor.

13 THE COURT: Mr. Gray, you may step
14 down, sir.

15 THE WITNESS: Thank you.

16 THE COURT: Do you have any other
17 witnesses, Attorney Malbasa?

18 MR. MALBASA: Yes, your Honor,
19 defense calls Mr. David Brown.

20 THE COURT: Mr. David Brown.
21
22
23
24
25

1 DAVID L. BROWN, being
2 first duly sworn, was examined and testified
3 as follows:

4 DIRECT EXAMINATION

5 BY MR. MALBASA:

6 Q Mr. Brown, please state your full name and spell
7 your last name for the record.

8 A David Brown, B-R-O-W-N.

9 Q Mr. Brown, let's talk about what happened on
10 November 10, 2010 --

11 A November.

12 Q -- when you first were aware that the police were
13 in the area?

14 A Pardon me?

15 Q When did you first become aware the police were
16 in the area?

17 A Um, I was sleep, and my phone was going off, and
18 I'm hearing doors slamming outside.

19 Q Okay. So you were in your home?

20 A Yes.

21 Q Where do you live? What's your address?

22 A 11719 Continental Avenue.

23 Q Okay. So you awoke, and you heard doors slamming
24 outside your home?

25 A Uh-huh.

1 Q What did you do?

2 A I looked out the window, and I saw my cousin's
3 truck in the middle of the street, facing east.
4 Doors wide open, so I came outside to see what
5 was going on. I didn't see my cousin.

6 I seen officers outside. I walked down the
7 driveway, onto the sidewalk, asked a couple of
8 officers what was going on. I -- I identified
9 myself as Walter Gray's cousin. I asked
10 politely. Um, I was concerned, so, you know, I
11 probably was a little loud, because I was
12 nervous. I didn't see him. I didn't know what
13 was going on.

14 So I asked the officers, I'm his cousin.
15 This is his truck right here. This is my
16 cousin's truck. Could you, please, tell me
17 what's going on, and they did ask me, sir, would
18 you please move to the side.

19 So my mother stays next door to me. She was
20 outside of my neighbor's, and I proceeded to walk
21 toward where my mother was at, that's when I was
22 talking to my mom and my neighbor. That's when
23 neighbor was telling me what they saw prior of me
24 coming outside.

25 Q Okay. Your mother is next door, the same side of

1 the street as you?

2 A Yes, sir.

3 Q Mr. Gray, did you at any time walk out into a
4 street?

5 A Never. Never touched the street.

6 Q Did you yell any obscenities to the officers?

7 A Never. Never yelled no -- any type of
8 obscenities.

9 Q Were you upset, though?

10 A I was aggravated. I was concerned, but once
11 again, I didn't know what was going on. I didn't
12 see me cousin, so I -- I was worried.

13 Q Okay. How many officers were there; do you
14 remember?

15 A Maybe about four or five. It was -- it was about
16 four, maybe five.

17 Q How many patrol cars?

18 A About two or three; if I could remember.

19 Q Okay. How did the officers react when you were
20 asking them questions?

21 A Um, one of the officer did tell me to step to the
22 side, so when I stepped to the side, I was
23 talking to my mother and my neighbors. My
24 neighbors was telling me what was happening prior
25 before I came out. My mother asked me what did

- 1 the officer tell me. I asked, "What's going on?"
2 And I told her, like mom, they ain't telling me
3 nothing. I don't know what's going on. I don't
4 know why nobody can tell me anything. One of the
5 officers told me to Shut the "F" up.
- 6 Q Okay. What happened after that?
- 7 A I told him don't talk to me like that. I'm a
8 grown man.
- 9 Q What happened after you say that?
- 10 A They placed me under arrest.
- 11 Q Okay. Did they arrest you on the sidewalk?
- 12 A On the sidewalk. It was a patrol car in front of
13 my house. They had me laying face down on the
14 hood, on the trunk of the car.
- 15 Q Now Mr. Brown, during other examinations it came
16 up you had a past Aggravated Riot charge?
- 17 A Yes, I did.
- 18 Q When was that?
- 19 A Back in 1988, June, July.
- 20 Q So it's almost 13 years?
- 21 A Thirteen years, and I did plea. They tried to
22 charge me with a felony, and the plea was, drop
23 it down to a misdemeanor, and I'll drop the
24 lawsuit against the police officer.
- 25 Q And in that time since, have you been charged --

1 A Never.

2 Q -- again?

3 A I'm a full-time worker. I'm a manager of a
4 company. I got a family of five. Never been in
5 trouble since.

6 Q Where do you work?

7 A I'm a manager at Rent-A-Center.

8 MR. MALBASA: Nothing further at this
9 time.

10 THE COURT: Cross-examination?

11 MS. JORDAN: Yes, your Honor.

12 CROSS-EXAMINATION

13 BY MS. JORDAN:

14 Q Sir, you said you live at 11719 Continental?

15 A Yes, ma'am.

16 Q And about how far from your house was your
17 cousin's car?

18 A Um, across the street. Um, diagonally right
19 across the street, diagonally across the street.

20 Q So was it immediately across or was it a couple
21 of houses down across the street.

22 A I say maybe a house across like diagonally, you
23 know, what I'm saying. It's not right in front
24 of the house, but right diagonally.

25 Q And you said you did not see your cousin in his

1 car, correct?

2 A I couldn't -- I couldn't. It was dark. I
3 couldn't -- I didn't see my cousin.

4 Q You didn't see your cousin at all that night?

5 A Afterwards, after they apprehended me and
6 arrested me, I seen him in the police car in the
7 back seat?

8 Q So, are there street lights on your street, sir?

9 A Um, it's street lights. The street light right
10 next to my house was out.

11 Q And where was the police car in the vicinity to
12 your house?

13 A Um, my cousin's truck was in the middle of the
14 street.

15 Q Right.

16 A Okay. Um, I know the police car was right in
17 front of my house by the driveway, and there was
18 a police car right down a couple of houses down,
19 like a house or two down, a house and a half.

20 Q And which police car was your cousin in, the one
21 closest to house or two houses down?

22 A The one that was two houses down facing east.

23 Q And so when you came out, you couldn't see your
24 cousin?

25 A Well, it was dark, like I said. When I came out,

1 it was dark. I couldn't see him. My eyesight is
2 not the best, so you know. Um, I couldn't see.
3 You know, and then so my cousin is dark already,
4 so it's hard for me to see.

5 Q Yes. And you said that you initially asked the
6 officers what was going on?

7 A Yes, yes.

8 Q They asked you to step back?

9 A Yes.

10 Q And then where did you go?

11 A I went to towards my mother and my neighbor.

12 Q And how far was your mother from the police
13 officers?

14 A Um, she was in her driveway in her yard, in her
15 driveway. She stays next door to me, so going,
16 going east. She's west -- west.

17 Q Okay. And so you said while you were talking,
18 you were standing next to your mother's and
19 that's when the police officers arrested you?

20 A Yes. I was talking to my mother and my
21 neighbors, you know. And my mother was asking me
22 questions about, you know, what they said to me
23 when I, you know, asked them what was going on,
24 and I told my mother, like mom, they ain't
25 telling me nothing. I don't know what's going

1 on. This is messed up. They ain't telling me
2 anything, and one of officers told me to shut the
3 "F" up.

4 Q While you were standing next to your mother?

5 A Yes.

6 Q And what did you say in response?

7 A I told him not to talk to me like that. I'm a
8 grown man.

9 Q And you were standing next to your mother when
10 they said that?

11 A Yes, yes. And my mother told me to be quiet.

12 Q What happened next?

13 A They had me -- they -- they walked up to me. I
14 did not approach the patrol car, and they had me
15 face down on the back of the car, the trunk of
16 the car, and they put me under arrest.

17 Q And they put you in handcuffs at that point?

18 A Yes.

19 Q So would it surprise you that your mother said in
20 her testimony that you were walking toward the
21 police, sir?

22 A Well, like I said, when she saw me walking down
23 the driveway, and when I was walking down the
24 driveway, they were in front of my house. I was
25 walking toward the police officer asking

1 questions about -- I told them I identified
2 myself. I told who I was, and I was asking them
3 questions about the truck. I was letting them
4 know it was my cousin's truck. When he told me,
5 sir, can you please get out the way. I moved
6 toward where my mother and them was at.

7 I never obstructed no, nothing. I never
8 resisted anything, nothing.

9 Q Okay. Sir, but that wasn't my question.

10 A Okay. What was the question?

11 Q It is any question witness stand would I SPRI you
12 that are mother's testimony that you walked
13 toward the police?

14 A It would not surprise me.

15 Q Why not, sir?

16 A Because, initially, when I came out the house, I
17 walked toward the police to see what was going
18 on.

19 Q You said that in connection with your previous
20 conviction you were suing the police at that
21 time?

22 A Yes. See, what had happened was --

23 Q Oh, no. That's a yes or no answer?

24 A Yes, I was.

25 Q Thank you, sir. And so you don't have the best

1 relationship with police officers, do you?

2 A Yes, I do. I have a couple of officers that work
3 in the Four District, Sixth District that I'm
4 cool with, yes. It's just certain ones do their
5 job extreme and some of them do their jobs, not
6 so extreme.

7 Q But you did -- did you plea no contest or guilty
8 in that other charge?

9 A I pled no contest.

10 Q Okay. So you were convicted, correct?

11 A They -- they charged me with Aggravated Riot.

12 Q Were you convicted?

13 A Yes.

14 Q Have you ever met these police officers before?

15 A Those two?

16 Q Yes, sir?

17 A No, ma'am.

18 Q So you previously had no interactions with them?

19 A No, ma'am, never.

20 Q So out of the blue, they walked up to you and put
21 the handcuffs on you, sir?

22 A Yes. I mean --

23 MS. JORDAN: Okay. No further
24 questions.

25 THE COURT: Re-direct, Attorney

1 Malbasa.

2 MR. MALBASA: Just briefly, your
3 Honor.

4 REDIRECT EXAMINATION

5 BY MR. MALBASA:

6 Q You said you approached the officer. When you
7 said you approached the officers, did you ever
8 leave the sidewalk?

9 A No. Never left the sidewalk. Never stepped in
10 the street.

11 MR. MALBASA: Nothing further, your
12 Honor.

13 THE COURT: All right. Thank you.

14 MS. JORDAN: Nothing further, your
15 Honor.

16 THE COURT: All right. Mr. Brown,
17 you may step down, sir.

18 THE DEFENDANT: Thank you.

19 THE COURT: Any other witnesses,
20 Attorney Malbasa?

21 MR. MALBASA: The defense rests, your
22 Honor.

23 THE COURT: All right.
24 Attorney Malbasa?

25 MR. MALBASA: Yes, your Honor. We

1 would renew our Rule 29 Motion that was made
2 after the prosecutor rest, your Honor.

3 MS. JORDAN: The City would renew
4 its objection, your Honor.

5 THE COURT: All right. With
6 respect to count one, I'm going to grant the
7 motion on the Aggravated Disorderly Conduct
8 charge, and the City can proceed regarding
9 the Obstruction of Official Business charge.

10 Would the City like to make an opening,
11 closing argument?

12 MS. JORDAN: Just briefly, your
13 Honor, as the code section says all is
14 required is that the defendant do any act
15 which hampers or impedes police officers in
16 their official duties.

17 The police testified that, indeed, they
18 were delayed at least fifteen minutes in
19 dealing with the defendant's outburst and
20 use of language and all they were trying to
21 do is inventory a vehicle in connection with
22 an arrest.

23 The cousin himself testified apparently,
24 11 o'clock he saw everything, even though
25 the defendant couldn't see him, and he was

1 two cars down.

2 The City believes it met its burden.
3 And would ask that you find the defendant
4 guilty, your Honor.

5 THE COURT: Thank you. Your
6 closing argument, Attorney Malbasa?

7 MR. MALBASA: Yes, your Honor. In
8 the beginning of this case, I told you that
9 Mr. Brown was upset, but that his actions
10 were not unlawful. Mr. Brown was definitely
11 upset. He told the Court that he was upset,
12 and the people, the other witness testified
13 today that they said they imagined that he
14 was upset. He was confused about what was
15 going on outside of his house. He came out
16 to find out what was going on.

17 Your Honor, did he not, however,
18 obstruct official business in this case. We
19 had one officer that testified that he saw
20 Mr. Brown in the street holding up traffic.
21 The other officer that testified he didn't
22 even see that. We have three people,
23 Mr. Brown himself, his mother, and his
24 cousin; however, they all said that
25 Mr. Brown never left, the sidewalk.

1 In taking that into consideration, the
2 City has not met their burden. They have
3 not proven this case beyond a reasonable
4 doubt. I would ask the Court to find
5 Mr. Brown not guilty with respect to the
6 charge of Obstructing of Official Business.

7 THE COURT: All right. Thank you.
8 City like to make a final closing argument?

9 MS. JORDAN: Yes, your Honor. The
10 City has not -- takes no issue with the
11 defendant being upset. I think any relative
12 might have a couple of questions and cause
13 for concern when they see or believe that a
14 relative is being arrested, your Honor.

15 The problem herein lies with the fact
16 that the defendant took actions in impeding
17 the officers ability to perform their job.

18 I believe that Ms. Brown testified that
19 she was praying. She's not quite sure what
20 happened during that time when she was
21 praying, so the City believes that while her
22 testimony in some instance is credible, she
23 herself, said that she has memory issues and
24 cannot exactly remember everything.

25 Mr. Gray testified, your Honor, that at

1 11 o'clock at night, while he was in the
2 back of the police car, he could see every
3 possible side of him.

4 And the defendant testified himself that
5 he couldn't even see his cousin in the car,
6 because the street light was out, your
7 Honor, around where this incident occurred.

8 Mr. Gray further testified that his
9 cousin has been in trouble with the police
10 before for coming to someone else's aid,
11 your Honor. Thus establishing a pattern of
12 behavior.

13 Furthermore, Mr. Gray testified that
14 he's not with his cousin 24/7, so he doesn't
15 truly know what his cousin character is.
16 And then we have the defendant himself, who
17 testified, your Honor, who said he was
18 merely just standing there, and the police
19 officer walked up to him while next to his
20 mom and placed the handcuffs on him, your
21 Honor.

22 The City believes it has met its burden
23 that Mr. Brown did, indeed, hamper these
24 officers' ability to perform their job.
25 Maybe the reason when the officer couldn't

1 see everything that was going on, was
2 because he was trying to do his job, and he
3 shouldn't be penalized for attempting to do
4 his job while the defendant was interfering,
5 your Honor. Instead, the defendant should
6 have to take responsibility for his actions.
7 The City believes that it met its burden,
8 and we would ask that you find the defendant
9 guilty.

10 MR. MALBASA: I have to object to the
11 statement that we would be penalizing the
12 officer with a finding of guilty against the
13 defendant. It's a burden shifting issue,
14 your Honor.

15 THE COURT: Your objection, is so
16 noted for the record. The record will
17 reflect that on the count of Obstruction
18 Official Business, the Court makes a finding
19 of guilty with respect to that count.

20 The Aggravated Disorderly Conduct charge
21 has been dismissed, and I think the record
22 clearly reflects that Mr. Brown did hamper
23 and impede the officers' duties to inventory
24 the vehicle for about a fifteen minute
25 period. So there's a finding of guilty with

1 respect to that charge.

2 Would you like for me to proceed with
3 sentencing on the --

4 MR. MALBASA: I think.

5 THE COURT: -- on the Aggravated
6 Disorderly Conduct? I'm sorry. On the
7 Obstruction Official Business charge?

8 MR. MALBASA: I think we can proceed,
9 your Honor.

10 THE COURT: All right. Do you
11 want Mr. Brown to remain seated? He may
12 remain seated if he needs to be because of
13 his --

14 MR. MALBASA: Thank you, your Honor.
15 I appreciate that.

16 THE COURT: That's fine. Anything
17 you would like to say on his behalf?

18 MR. MALBASA: Your Honor, just that
19 he is working. He has five children. I
20 think that as the testimony showed, he was
21 upset. There's questions as to what exactly
22 happened that night. I think that Mr. Brown
23 knows in the future he won't even approach
24 police officers in a situation like this.

25 I would ask that the Court to take that

1 into consideration. Please, be as lenient
2 as possible on any sentence you should
3 impose upon him.

4 THE COURT: Thank you. Mr. Brown,
5 is there anything you will like to say, sir?

6 THE DEFENDANT: Yes, um, first of all,
7 your Honor, um, I understand what had
8 happened that night. Um, it did not really
9 go as the police say, but I like to make one
10 statement, thou concerning about what
11 happened to me 13 years ago, I know it
12 doesn't have anything to do with the court,
13 but yes, you know, something did happen
14 though.

15 And the reason why I took it to trial,
16 because I learned if you didn't do anything,
17 you fight for what you didn't do, because
18 what I learned because when I plea in this
19 case right here, it went back. You know,
20 what I'm saying. It didn't -- it didn't do
21 me any good.

22 In the future, I realize if you didn't
23 do anything, you always got to fight no
24 matter what the verdict is though.

25 THE COURT: All right. Thank you,

1 sir. Do the officers want to address the
2 Court at all?
3 MS. JORDAN: No.
4 THE COURT: No?
5 MS. JORDAN: Not at this time, your
6 Honor.
7 THE COURT: All right. The maximum
8 fine is \$750, and up to 90 days in jail.
9 Mr. Brown spent some time in custody; is
10 that correct, Attorney Malbasa?
11 MR. MALBASA: I believe so, your
12 Honor.
13 THE COURT: How much time did he
14 served?
15 THE DEFENDANT: Couple of days.
16 THE COURT: Two days?
17 THE DEFENDANT: Yes, ma'am.
18 THE COURT: Credit for time served,
19 will be two days; and 88 days will be
20 suspended. I'll impose a fine of \$100; \$650
21 of the fine will be suspended, and he has
22 court costs. I think what would be
23 important would be a short probationary
24 period, just to attend the Community
25 Orientation Program, which is called the COP

1 program.

2 Which is just a program, sir, that is
3 taught at Tri-C. It's only one evening. I
4 think about two hours, about how a person
5 should interact with law enforcement. It's
6 a very good class. It costs \$25, I believe.
7 I think the next class is August 3. I'm
8 going to say that the fine is satisfied
9 based upon the two days served that leaves
10 the court costs.

11 I think I can do a short probationary
12 period. If that's acceptable to everyone
13 since that class is in August. I think I'm
14 pretty sure it's August the 3rd; is that on
15 a Tuesday? It's usually on a Tuesday.

16 MR. MALBASA: I believe it's August
17 3.

18 THE COURT: I forgot to bring my
19 calendar up. I think it's August, oh --

20 MR. MALBASA: Maybe the 2nd. Let's
21 have a probation check.

22 THE COURT: Probation will let us
23 know, so let's say, it's either the 2nd or
24 the 9th. You want me to say 90 days, three
25 months of active probation?

1 MR. MALBASA: Yes, Judge.

2 THE COURT: Once you attend the
3 Community Orientation Program or the COP
4 Program, sir, I think that we can definitely
5 terminate probation if that's acceptable to
6 the City?

7 MS. JORDAN: Yes, your Honor.

8 THE COURT: I'm almost afraid to
9 ask this question. Mr. Brown, if you were
10 to have an urinalysis test, when you go
11 downstairs to probation, will it be negative
12 for any substances if you smoked --

13 MR. MALBASA: Just be honest.

14 THE COURT: -- marijuana in the
15 past?

16 THE DEFENDANT: It won't. It won't be
17 negative.

18 THE COURT: It won't be negative?

19 MR. MALBASA: Is it just marijuana?
20 He'll test positive for marijuana, your
21 Honor.

22 THE COURT: Well, that may mean
23 probation will have to be a little bit
24 longer, unless he can get this in order in
25 90 days?

1 THE DEFENDANT: Yeah. I can do it in
2 90 days.

3 THE COURT: Today's urinalysis test
4 will be positive, and you're telling me by
5 the time, in 90 days, you'll be negative?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: So probation can end on
8 this case?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: Do you need to be a in
11 substance abuse --

12 THE DEFENDANT: No, ma'am.

13 THE COURT: -- program?

14 THE DEFENDANT: No, ma'am.

15 THE COURT: You're sure you can do
16 this on your own?

17 THE DEFENDANT: Yes, ma'am. I did
18 three years probation for the last case.

19 THE COURT: And negative the whole
20 time?

21 THE DEFENDANT: Negative.

22 THE COURT: Is that okay with
23 Attorney Malbasa and --

24 MR. MALBASA: Absolutely, your Honor.

25 THE COURT: I'm going to

1 say -- normally, you know I would never say
2 90 days, but --

3 MR. MALBASA: I know.

4 THE COURT: I will give you an
5 opportunity, sir. I will say attend
6 Alcohol/ Substance Abuse Education class.
7 I'm not going to even order the formal
8 assessment, but if you come back positive,
9 then you're going to -- we have to extend
10 probation.

11 THE DEFENDANT: Okay.

12 THE COURT: And then you have to
13 have a formal assessment and treatment will
14 be at least six months. So I can even do
15 the six months now and shorten it, or 90
16 days if you think you can accomplish this in
17 90 days?

18 THE DEFENDANT: I can do it in 90 days.

19 THE COURT: Okay. What you have
20 remaining on this case, sir, would be the
21 court costs. The Clerk's Office does expect
22 a payment. It doesn't have to be a full
23 payment, but a partial payment either today
24 or within 24 hours.

25 THE DEFENDANT: Okay.

1 THE COURT: Is he able to make a
2 partial payment within 24 hours or today,
3 Attorney Malbasa?

4 THE DEFENDANT: How much it is?

5 THE COURT: Well, the journalizer
6 she's went to lunch, but she should be back
7 any minute. Yes, I think she left about
8 five minutes to 12. So she should be back
9 in any minute. She can give you your total,
10 and then you can let Attorney Malbasa -- if
11 you cannot, more than likely the Clerk's
12 Office will expect at least a 50 dollar
13 payment today or within 24 hours.

14 If you are not able to make a \$50
15 payment, you need to advise the Court. Tell
16 me what you will pay within 24 hours. I
17 will note that the journal entry, and the
18 Clerk will give you time to pay the rest.

19 THE DEFENDANT: Yeah, I can pay more
20 than \$50, at least \$50 today.

21 MR. MALBASA: Well, he can make pay
22 \$50 today, if it could be more, great.

23 THE COURT: I'll note that on the
24 journal entry, so you dont have to be
25 concerned with that. And then I'll ask for

1 a probation report to be prepared, so
2 there's an official record. I won't even
3 have this come back maybe until well, maybe,
4 like the end of July? I'm trying to give
5 him enough time to -- he needs --

6 MR. MALBASA: Can I ask --

7 THE COURT: -- at least 45 days.

8 At least 45 days from today to hopefully
9 have a negative urinalysis test. So that
10 would be a -- if you want me go into August?

11 MR. MALBASA: August first, end of
12 July. I think 45 days he should -- he
13 should be fine.

14 THE COURT: Okay. Maybe I'll make
15 this mid-August, because that gives him time
16 to take the COP program, too.

17 MR. MALBASA: Oh, that would be
18 great. If he has already completed the
19 program.

20 THE COURT: So why don't we just
21 have this on the docket, maybe I have no
22 idea what August is going to be like. How
23 about August 16? Do you think by that date
24 -- that's just for review of the post
25 sentencing report?

1 MR. MALBASA: Yes.

2 THE COURT: August 16, 2011. That
3 will be at 9 a.m. just for the Court, and
4 whoever the public defender is at that time,
5 just review the probation report. Hopefully
6 you will have a negative test, but probation
7 will continue on this case like until
8 September 16; is that right?

9 MR. MALBASA: Yes.

10 THE COURT: So you should all be
11 finished by September 16.

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: Okay. As soon as the
14 journalizer comes, she will journalize your
15 file, and then you can go down to probation.
16 If you -- you have family members here? If
17 you want to go have lunch and come back, and
18 then go to probation. You can do that, or
19 you can wait for the journalizer; it's up to
20 you?

21 THE DEFENDANT: How long will it take
22 for the journalizer?

23 THE COURT: Well, she should be
24 back in a few minutes. When she comes back,
25 she's pretty fast. She will journalize this

1 file in less than five minutes, and then
2 you'll go to probation, and then you would
3 be done.

4 THE DEFENDANT: Yeah, I can do it like
5 that.

6 THE COURT: I'm sure she left five
7 minutes to 12, okay. You can just wait in
8 the courtroom until the journalizer comes,
9 okay.

10 MR. MALBASA: Thank you, Judge.

11 THE COURT: You're welcome.

12 - - -

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

State of Ohio,)
County of Cuyahoga,) SS:
City of Cleveland.)

City of Cleveland,)
vs.)
David L. Brown.)

I, LAURA WILLIAMS, court reporter, do hereby certify that as a reporter employed by the Cleveland Municipal Court, I took down in stenotype all of the proceedings had in said Cleveland Municipal Court in the above-entitled case on the date set forth; that I have transcribed my said stenotype notes into typewritten form as appears in the foregoing transcript of the proceedings; that said transcript is a complete record of the proceedings had in the hearing of said case and constitutes a true and correct transcript of the proceedings had therein.

Dated this 29th day of January 2014.

LAURA WILLIAMS

CERTIFICATE OF SERVICE

A copy of the foregoing RESPONDENT'S MOTION FOR DISSOLUTION OR MODIFICATION OF ORDER OF SUSPENSION UNDER GOV. BAR R. V(5a)(C)(1), Exhibit K through Exhibit L has been filed via e-filing with the Supreme Court of Ohio and a service copy emailed this 20th day of January, 2015 to the following:

SCOTT J. DREXEL
Disciplinary Counsel
250 Civic Center Drive, Suite 325
Columbus, Ohio 43215
Scott.drexel@sc.ohio.gov
Relator

JOSEPH M. CALIGIURI
Chief Assistant Disciplinary Counsel
250 Civic Center Drive, Suite 325
Columbus, Ohio 43215
J.Caligiuri@sc.ohio.gov

KAREN OSMOND
Assistant Disciplinary Counsel
250 Civic Center Drive, Suite 325
Columbus, Ohio 43215
Karen.Osmond@sc.ohio.gov

AUDREY VARWIG
Assistant Disciplinary Counsel
250 Civic Center Drive, Suite 325
Columbus, Ohio 43215
Audrey.Varwig@sc.ohio.gov

MICHAEL E. MURMAN
14701 Detroit Avenue, Suite 555
Lakewood, Ohio 44107
Murmanlaw@aol.com



LARRY W. ZUKERMAN, Esq.
PAUL B. DAIKER, Esq.
S. MICHAEL LEAR, Esq.