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SC Court of Appeals

The State of South Carolina In the Court of Appeals

APPEAL FROM SUMTER COUNTY

Honorable R. Kirk Griffin, Circuit Court Judge
Appellate Case No. 2022-001444

The State.....Respondent

v.

Brittany Martin Appellant

RECORD ON APPEAL – VOLUME I

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TABLE OF CONTENTS

SECTION I: ORDERS	3
1. Trial court's Order denying Defendant's Motion for Reconsideration of Sentence dated October 5, 2022	4
2. Trial court's Order denying Defendant's Emergency Motion for Appeal Bond dated November 9, 2022	7
SECTION II: PLEADINGS	9
1. Defendant's Motion to Dismiss dated May 16, 2022	10
2. Defendant's Proposed Jury Instructions	16
3. Defendant's Motion for Reconsideration of Sentence dated May 25, 2022	34
4. Defendant's Memorandum in Support of Motion for Reconsideration of Sentence dated May 25, 2022	35
5. State's Memorandum to Contest the Motion for Reconsideration of Sentence dated September 5, 2022	52
6. Defendant's Emergency Motion for Appeal Bond Dated October 20, 2022	57
SECTION III: TRANSCRIPT	61
1. Complete Trial Transcript: May 9-16, 2022	62
SECTION V: EXHIBITS	655
1. State's Exhibit 1 (Disc containing videos)	656
2. State's Exhibit 2 (Flash drive containing videos)	657
3. State's Exhibit 5 (El Cheapo gas station video)	658
SECTION VI: OTHER MATERIALS OR DOCUMENTS	659
1. Sentencing Sheets	660
2. Verdict Forms	662
3. 2021 Indictment	664
4. 2022 Indictment	665
SECTION VII: CERTIFICATE OF APPELLANT	666

ORDERS

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER) **RECORDED** THE COURT OF GENERAL SESSIONS

2022 OCT 25 A 11: 27

THE STATE,

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

-vs-

ORDER

BRITTANY MARTIN,

Case Number: 2021-GS-43-0091

Defendant.

This matter came before the court pursuant to Defendant's Motion to Reconsider Sentence filed on May 26, 2022. Defendant was convicted by a jury of one count of Breach of Peace of a High and Aggravated Nature on May 16, 2022. The Defendant was sentenced to four years in the South Carolina Department of Corrections. The Court was served with notice of the motion by trial counsel via e-mail on July 18, 2022. The Court directed trial counsel that a hearing on the matter could be scheduled during the week of September 12, 2022, and to coordinate with the Solicitor's Office for an exact date and time, as the Solicitor's Office distributes the docket for General Sessions Non-Jury Matters.

A hearing was scheduled for September 16, 2022 at 3:00PM. Defense counsel never received notice of the hearing and the hearing was postponed. Subsequently, defense counsel requested a ruling on the motion, or in the alternative, an expedited hearing. Rule 29(a) of the South Carolina Rules of Criminal Procedure grants the trial judge discretion to decide post trial motions upon briefs filed by the parties without oral argument. Pursuant to Rule 29 (a) SCRCrim.P, and the request of defense counsel, this Court determines that the motion to alter or amend will be decided on briefs filed by the parties and without oral argument.

Upon review of the briefs submitted by the parties, the Court respectfully denies the Defendant's Motion for Reconsideration of Sentence. The Court's reasons for imposing a four-year sentence were stated in open court, on the record, prior to the Defendant's sentencing on May 16, 2022. The paragraphs which follow outline the primary considerations of the Court in determining the Defendant's sentence.

In deciding the Defendant's sentence, the Court first considered the nature of the offense for which the Defendant was convicted. Breach of Peace of a High and Aggravated nature is a common law misdemeanor, and carries a sentence of up to ten (10) years in prison. Individuals convicted of misdemeanors in South Carolina are eligible for early release on parole. These factors were considered by the Court before sentencing the Defendant.

The Court further considered the Defendant's criminal history. The following prior criminal convictions were presented to the Court:

1. Retail Theft – Illinois – 2008
2. Public Disorderly Conduct – Wisconsin – 2011
3. Possession of Short Barreled Shotgun – Wisconsin – 2011
4. Shoplifting – Georgia – 2014
5. Shoplifting Enhanced – South Carolina – 2015
6. Public Disorderly Conduct – South Carolina – 2015
7. Shoplifting – South Carolina – 2015
8. Leaving the Scene of an Injury or Accident and Willfully Causing Bodily Harm – Iowa - 2019

The Court considered these prior criminal convictions and the Defendant's history of recidivism in sentencing the defendant. Defendant has been on probation many times. Defendant was serving a probationary sentence on June 4, 2020 when the events which led to her conviction began. She was on probation on the date of her conviction. Probation has not been a deterrent to further criminal activities for the Defendant. An active prison sentence was appropriate in this instance.

The Court also considered the seriousness of the offense for which the Defendant was convicted. As the trier of fact, the jury made the determination that the Defendant was guilty of Breach of Peace High and Aggravated. The jury was presented the lesser included offense of

Breach of Peace. The jury found the Defendant guilty of the more serious offense. Based upon the evidence presented at trial, the jury's findings, and the conduct of the Defendant, the Court's sentence was appropriate.

The Court further considered the federal sentences given for convictions resulting from crimes committed at the United States Capitol on January 6, 2021. While these sentences were considered, it is difficult to make a direct comparison these federal convictions and the specifics of this case. The sentence in this case was based on the crime committed, the nature and classification of the offense, the Defendant's prior criminal history/recidivism, and the seriousness of the crime. Based upon the foregoing, the Defendant's Motion for Reconsideration of Sentence is denied.

October 5, 2022
Sumter, SC



R. Kirk Griffin
Circuit Court Judge

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)
THE STATE,)
-vs-) ORDER
BRITTANY MARTIN,) Case Number: 2021-GS-43-0091
Defendant.)
_____)

RECORDED
2022 NOV -9 PM 3:05
JAMES O. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

This matter came before the court pursuant to Defendant's Motion for an Appeal Bond. Defendant was convicted by a jury of one count of Breach of Peace of a High and Aggravated Nature on May 16, 2022. The Defendant was sentenced to four years in the South Carolina Department of Corrections. The Defendant subsequently moved for a Reconsideration of Sentence, which was denied on October 5, 2019. The Court was served with notice of the motion for an Appeal Bond by trial counsel via e-mail on October 19, 2022. In the motion, defense counsel requested an expedited hearing, or in the alternative, an expedited ruling on the motion without a hearing. Rule 29(a) of the South Carolina Rules of Criminal Procedure grants the trial judge discretion to decide post trial motions upon briefs filed by the parties without oral argument. Pursuant to Rule 29 (a) SCRCrim.P, and the request of defense counsel, this Court determines that the motion for appeal bond will be decided without oral argument.

Upon review of the motion, the Court respectfully denies the Defendant's Motion for Appeal Bond. The factors to be considered in admitting a person to bail pending appeal include the probability of reversal, the nature of the crime, the possibility of escape, and the character and circumstances of the appellant. *In re Michael H.*, 360 S.C. 540, 602 S.E,2d. 729 (2004)., *Nichols v. Patterson*, 202 S.C. 352, 25 S.E.2d 155 (1943).

Here, the Court believes the likelihood of reversal is low. The Defendant was found guilty of Breach of Peace High and Aggravated. The jury was presented the lesser included offense of Breach of Peace. The jury found the Defendant guilty of the more serious offense. The Court must consider the nature of the offense for which the Defendant was convicted. Breach of Peace of a High and Aggravated nature is a common law misdemeanor, and carries a sentence of up to ten (10) years in prison. The Court finds that escape is unlikely. In considering the character and the circumstances of the appellant, the Court has considered the Defendant's lengthy prior criminal record, her ties to other states, and the fact that the defendant has committed crimes while on probation. The Court also has considered the fact that the Defendant is currently pregnant. While pregnancy is a less than ideal circumstance for an incarcerated defendant, pregnancy alone is not a sufficient ground for an appeal bond. Balancing these factors, the Court concludes that an appeal bond is not appropriate in this case. Based upon the foregoing, the Defendant's Motion for an Appeal Bond is denied.

November 9, 2022
Sumter, SC



R. Kirk Griffin
Circuit Court Judge

PLEADINGS

THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL
	)	SESSIONS
COUNTY OF SUMTER	)	THIRD JUDICIAL CIRCUIT
	)	
The State,	)	Warrant/Indictment Nos.:
	)	2021-GS-43-0091;
	)	8102P0723158;2020A4310200429;
	)	2020A431020429;
v.	)	2020A4310200430;2020A43102001;
	)	2020A4310200432;
	)	2020A4310200433;
	)	2020A4310200434
BRITTTNY VALENCIA MARTIN,	)	
DEFENDANT.	)	MOTION TO DISMISS LACK
	)	of SUBJECT MATTER
	)	JURISDICTION

**DEFENDANT’S MOTION TO DISMISS FOR LACK OF SUBJECT MATTER
JURISDICTION**

COMES NOW, the Defendant Brittany Martin, by and through undersigned counsel, pursuant to Federal Rule of Civil Procedure 12(b)(1) and respectfully moves this Honorable Court to dismiss the Prosecutors indictment for Breach of Peace of a High and Aggravated nature and for other and further relief as the Court deems just and proper. In support, the Respondents submit a memorandum of law dated May 16, 2022, which is incorporated into this motion.

FACTS AND PROCEDURAL HISTORY

1. The Defendant was charged with five counts of Threatening the life of a public official and one count of aiding or participating in a riot in June of 2020.

2. In April of 2021, through direct presentment of charges to the grand jury the prosecutor added the charges of breach of peace of a high and aggravated nature to the charges against Ms. Martin.
3. “A breach of the peace is a common law offense.” *State v. Simms*, [774 S.E.2d 445, 447](#) (S.C. 2015). “The term ‘breach of the peace’ is a generic one embracing a great variety of conduct destroying or menacing public order and tranquility.” *State v. Peer*, [466 S.E.2d 375, 379](#) (S.C. Ct. App. 1996). “In general terms, it is a violation of public order, a disturbance of the public tranquility, by any act or conduct inciting to violence.” *Id.* “Although it includes acts likely to produce violence in others, actual violence is not an element of breach of peace.” *Id.* “Whether conduct constitutes a breach of the peace depends on the time, place, and nearness of other persons.” *Id. Martin v. Montgomery*, Civil Action 20-01400-MGL, at *1 (D.S.C. Mar. 1, 2022).
4. “*When the offense is of a high and aggravated nature, they may be committed or bound over for trial before the court of general sessions.* S.C.Code Ann. § 22–5–150 (Supp.2013) (emphasis added); *cf. id.* § 22–5–110(A)(3) (Supp. 2013) (requiring a magistrate to “commit or bind over for trial those who appear to be guilty of crimes or offenses not within their jurisdiction”). *State v. Simms*, 774 S.E.2d 445, 447-48 (S.C. 2015).
5. Additionally, “section 22–5–150 directs that some breach the peace offenses should be tried in the Magistrate's Court and others should be

tried in circuit court *due to their high and aggravated nature.*” *State v. Simms*, 774 S.E.2d 445, 448 n.3 (S.C. 2015).

6. The undisputed facts in the trial record indicate that the prosecutors have presented no testimony concerning actions that could be classified as high and aggravated nature associated with the initial charges of threatening the life of a public official or instigating a riot.
7. Without presenting evidence of this being a case that involves a high and aggravated nature, this case should not have been elevated to the court of general sessions.

Legal Argument: Subject Matter Jurisdiction Standard of Law

8. First, in South Carolina “there is no criminal offense denominated “high and aggravated breach of the peace” (BPHAN) cognizable in circuit court.” *State v. Simms*, 774 S.E.2d 445, 450 (S.C. 2015).
9. As there is no criminal offense in the South Carolina Code denominated high and aggravated breach of peace, the defendant should not be forced to defend a prosecutorial fabricated charge.
10. The concept of high and aggravated nature has been defined by the Court in other criminal codes, and it has been defined as “the use of “physical force or physical violence of a high and aggravated nature to overcome the victim.” [S.C. Code Ann. § 16-3-651 \(c\)](#) (1985). Aggravated force also includes the threat of the use of a deadly weapon. *Id.*” *State v. Green*, 327 S.C. 581, 584-85 (S.C. Ct. App. 1997).

11. The Prosecution has presented no evidence or testimony that the defendant used physical force or violence of a high and aggravated nature to overcome the victims.
12. The Prosecution has not presented any evidence that the Defendant threatened to use a deadly weapon.
13. A motion to dismiss filed pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure “allow[s] a party to challenge the subject matter jurisdiction of the district court to hear a case.” *Ramming v. United States*, 281 F.3d 158, 161 (5th Cir. 2001). Such a motion may be decided by the court on one of three bases: (1) the complaint alone; (2) the complaint and the undisputed facts in the record; or (3) the complaint, the undisputed facts in the record, and the court’s own resolution of disputed facts. *Ynclan v. Dep’t of the Air Force*, 943 F.2d 1388, 1390 (5th Cir. 1991) (citing *Williamson v. Tucker*, 645 F.2d 404, 413 (5th Cir. 1981)).
14. Additionally, under the Federal Rules of Civil Procedure, a motion to dismiss for lack of subject-matter jurisdiction is considered a favored defense and may be raised at any point in the litigation process, even if the parties had previously argued that subject-matter jurisdiction existed. In fact, the court may dismiss a case *sua sponte* (on its own) for lack of subject-matter jurisdiction. *See, e.g., Fed. R. Civ. Proc. 12(b)(1).*

Subject Matter Jurisdiction May not be waived by the parties

15. However, the Courts have consistently ruled that a court *must* have subject matter jurisdiction to hear the case (see [*Capron v. Van Noorden*, 6 U.S. 126, 127 \(1804\)](#)).
16. These rulings have also included clear instructions that indicate, a court is *required* to dismiss a case on its own if it determines at any time that it lacks subject matter jurisdiction (emphasis added, [*FRCP 12\(h\)\(3\)*](#); see also [*Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 583-84 \(1999\)](#); [*Hampton v. R.J. Corman R.R. Switching Co.*, 683 F.3d 708, 711 \(6th Cir. 2012\)](#)).
17. The courts have also held that “if the factual basis for jurisdiction is challenged, the plaintiff has the burden of proving subject matter jurisdiction.” *Richmond, Fredericksburg Potomac R.R. Co. v. United States*, [*945 F.2d 765, 768*](#) (4th Cir. 1991).” *Haley v. Nicholas*, Civil Action No. 2:06CV361, 3 (E.D. Va. Oct. 3, 2006).
18. Finally, the courts have held that “for a court to pronounce upon [the merits] when it has no jurisdiction to do so,” *Steel Co.* declared, “is ... for a court to act ultra vires.” [*523 U.S., at 101–102, 118 S.Ct. 1003*](#). *U.S. v. Hartwell*, 448 F.3d 707 (4th Cir. 2006).

WHEREFORE, having set forth its concerns about the Prosecutions charges, the Defendants pray that this Court dismisses the charge of breach of peace of a high and aggravated nature against the Defendant Brittany Martin.

Respectfully submitted,

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May 16, 2022

Counsel to the DEFENDANT BRITTANY
MARTIN

THE STATE OF SOUTH CAORLINA	)	IN THE COURT OF GENERAL
	)	SESSIONS
COUNTY OF SUMTER	)	THIRD JUDICIAL CIRCUIT
	)	
THE STATE OF SOUTH CAROLINA	)	Warrant/Indictment Nos.:
	)	2021-GS-43-0091;
	)	8102P0723158;2020A4310200429;
	)	2020A431020429;
v.	)	2020A4310200430;2020A4310200431;
	)	2020A4310200432; 2020A4310200433;
	)	2020A4310200434
BRITTTNY VALENCIA MARTIN,	)	
DEFENDANT	)	PROPOSED JURY INSTRUCTIONS

INTRODUCTION

(1). Members of the jury, now it is time for me to instruct you about the law you must follow in deciding this case.

(2) I will start by explaining your duties and the general rules that apply in every criminal case.

(3) Then I will explain the elements of the crimes that the defendant is accused of committing.

You may think of the "elements" of the crimes as the essential ingredients, or important parts, of the proof of the crimes.

(4) Then I will explain some rules that you must use in evaluating particular testimony and evidence.

(5) And last, I will explain the rules that you must follow during your deliberations in the jury room, and the possible verdicts that you may return.

(6) Please listen very carefully to everything I say.

JURORS' DUTIES

You have two main duties as jurors.

1. The first one is to decide what the facts are from the evidence that you saw and heard here in court. Deciding what the facts are is your job, not mine, and nothing I have said or done during this trial was meant to influence your decision about the facts in any way.

2. Your second job is to take the law that I give you, apply it to the facts, and decide if the government has proved the defendant guilty beyond a reasonable doubt. It is my job to instruct you about the law, and you are bound by the oath you took at the beginning of the trial to follow the instructions that I give you, even if you personally disagree with one or more of them. This includes the instructions that I gave you during the trial, and these instructions. All the instructions are important, and you should consider them together as a whole.
3. The lawyers may talk about the law during the trial. But if what they say is different from what I tell you, you must follow what I say. What the judge says about the law controls.
4. Do your jobs fairly. Do not let any bias, sympathy or prejudice that you may feel for or against either side influence your decision in any way.

PRESUMPTION OF INNOCENCE -- BURDEN OF PROOF -- REASONABLE DOUBT

(1) As you know, the defendant has pleaded not guilty to the crimes charged in the indictment. The indictment is not any evidence at all of guilt. It is just the formal way that the government tells the defendant what crimes he is accused of committing. It does not even raise any suspicion of guilt.

(2) Instead, the defendant starts the trial with a clean slate, with no evidence at all against him, and the law presumes that he is innocent. This presumption of innocence stays with the defendant unless the government presents evidence here in court that overcomes the presumption, and convinces you beyond a reasonable doubt that the defendant is guilty.

(3) This means that no defendant has any obligation to present any evidence at all, or to prove to you in any way that he is innocent. It is up to the government to prove that she is guilty, and this burden stays on the government from start to finish. You must find the defendant not guilty unless the evidence convinces you beyond a reasonable doubt that she is guilty.

(4) The government must prove *each and every element* of the crimes they have charged the defendant with, that is, -- every important part -- of the crimes charged must be proven “beyond a reasonable doubt.”

(5) A “reasonable” doubt is a fair, honest doubt growing out of the evidence or lack of evidence, and based on reason and common sense. Ultimately, a “reasonable doubt” would simply be a doubt that you find to be reasonable after you have carefully and thoughtfully examined and discussed the facts and circumstances present in this case.

(6) Proof “beyond a reasonable doubt” does not mean proof that amounts to absolute certainty, or beyond all possible doubt. It does not mean proof “beyond a shadow of doubt,” nor does it mean that the government must prove any fact or any crime with mathematical precision. Doubts that are merely imaginary, or that arise from nothing more than speculative possibilities, or that are based only on sympathy, prejudice or guessing are not “reasonable” doubts.

(7) In addition, the law does not require that every particular fact mentioned in the case be proved beyond a reasonable doubt. Rather, the law requires that enough facts be proved to convince you, beyond a reasonable doubt, that each element of the crime was committed therefore indicating that the defendant is guilty.

(8) If you are convinced that the government, through the evidence, has proved the defendant guilty beyond a reasonable doubt, then the proper verdict is “guilty.” If you are not convinced, a “not guilty” verdict must be returned.

EVIDENCE DEFINED

(1) You must make your decision based only on the evidence that you saw and heard here in court. Do not let rumors, suspicions, or anything else that you may have seen or heard outside of court influence your decision in any way.

(2) The evidence in this case includes only what the witnesses said while they were testifying under oath; the exhibits that I allowed into evidence; the stipulations that the lawyers agreed to; and any facts that I have told you to simply assume had been proven.

(3) Nothing else is evidence. The lawyers' statements and arguments are not evidence. Their questions and objections are not evidence. The indictment is not evidence. My legal rulings are not evidence. And my comments and questions are not evidence. Do not speculate about what some witness might have said or what some exhibit might have shown. Such things not in evidence are not evidence, and you are bound by your oath not to let them influence your decision in any way.

(4) Make your decision based only on the evidence, as I have defined it here, and nothing else.

CONSIDERATION OF EVIDENCE

You should use your common sense in weighing the evidence. Consider it in light of your everyday experience with people and events, and give it whatever weight you believe it deserves. If your experience tells you that certain evidence reasonably leads to a conclusion, you are free to reach that conclusion.

DIRECT AND CIRCUMSTANTIAL EVIDENCE

(1) Direct evidence is evidence like the testimony of any eyewitness which, if you believe it, directly proves a fact. If a witness testified that he saw someone walking across a field and you believed him, that would be direct evidence that such a thing had happened.

(2) Circumstantial evidence is simply a collection of circumstances that indirectly proves a fact.

If a witness said that he saw fresh footprints in newly fallen snow, that would be circumstantial evidence from which you could conclude that someone had recently been walking there.

(3) Legally, there is no difference between direct and circumstantial evidence. The law does not say that one is necessarily any better evidence than the other. You should consider all the evidence, both direct and circumstantial, and give it whatever weight you believe it deserves.

CREDIBILITY OF WITNESSES

Part of your job as jurors is to decide how believable each witness was. This is your job, not mine.

1). It is up to you to decide if a witness' testimony was believable, and how much weight you think it deserves. You are free to believe everything that a witness said, or only part of it, or you can believe none of it at all (even if the witness has not been contradicted). But you should, of course, act reasonably and carefully in making these decisions.

2). Let me suggest some things for you to consider in evaluating each witness' testimony.

(A) Ask yourself if the witness was able to clearly see or hear the events. Sometimes even an honest witness may not have been able to clearly see or hear what was happening, and may make a mistake.

(B) Ask yourself how good the witness' memory seemed to be. Did the witness seem able to accurately remember what happened?

(C) Ask yourself if there was anything else that may have interfered with the witnesses' ability to perceive or remember the events.

(D) Ask yourself how the witness looked and acted while testifying. Did the witness seem honestly to be trying to tell you what happened? Or did the witness seem to be evasive, confused or even lying?

(E) Ask yourself if the witness had any relationship to either side of the case, or anything to gain or lose that might influence the witness' testimony. Ask yourself if the witness had any bias, or prejudice, or reason for testifying that might cause the witness to lie or to slant testimony in favor of one side or the other.

(F) Ask yourself if the witness testified inconsistently while on the witness stand, or if the witness said or did anything off the stand that is not consistent with what the witness said while testifying. If you think that the witness was inconsistent, ask yourself if this makes the witness' testimony less believable. Sometimes it may; other times it may not. For example, you might consider whether the inconsistency was understandable or explainable. You might also ask yourself if it seemed like an insignificant or common mistake, or if it seemed to indicate a deliberate attempt to mislead.

(G) Finally, ask yourself how believable the witness' testimony was in light of all the other evidence. Was the witness' testimony supported or was it contradicted by other evidence that you found believable? If you think that a witness' testimony was contradicted by other evidence, keep in mind that people sometimes do forget things, and that even two honest people who witness the same event may not describe it exactly the same way.

3. These are only some of the things that you may consider in deciding how believable or reliable each witness was. You may also consider other things that you think shed light on the witness'

believability. Use your common sense and your everyday experience in dealing with other people. And then decide what testimony you believe, and how much weight -- how much significance -- you think it deserves.

NUMBER OF WITNESSES

One more point about the witnesses.

- 1). Sometimes jurors wonder if the number of witnesses who testified on a particular point, or on one side or the other, makes any difference. It does not. Do not make any decisions based only on the number of witnesses who testified.
- 2). What is more important is how believable the witnesses were, and how much weight you think their testimony deserves. Concentrate on that, not the numbers.

LAWYERS' OBJECTIONS

- 1). There is one more general subject that I want to talk to you about before I begin explaining the elements of the crimes charged.
- 2). The lawyers for both sides objected to some of the things that were said or done during the trial. Do not hold that against either side. The lawyers have a duty to object whenever they think that something is not permitted by the rules of evidence. Those rules are designed to make sure that both sides receive a fair trial.
- 3). And do not interpret my rulings on their objections as any indication of how I think the case should be decided. My rulings were based on the rules of evidence, not on how I feel about the case. Remember that your decision must be based only on the evidence that you saw and heard here in court.

PRESIDING JUROR

Before you begin your deliberations, elect one member of the jury as your presiding juror.

1). The presiding juror will preside over the deliberations and serve as the spokesperson for the jury in court. You shall diligently strive to reach agreement with all of the other jurors if you can do so.

2). Your verdict must be unanimous. Each of you must decide the case for yourself, but you should do so only after you have considered all of the evidence, discussed it fully with the other jurors, and listened to their views. It is important that you attempt to reach a unanimous verdict but, of course, only if each of you can do so after having made your own conscientious decision.

3). Do not be unwilling to change your opinion if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right, or change an honest belief about the weight and effect of the evidence simply to reach a verdict.

INTRODUCTION

(1) That concludes the part of my instructions explaining your duties and the general rules that apply in every criminal case. In a moment, I will explain the significant elements of the crimes that the defendant is accused of committing.

(2) But before I do that, I want to emphasize that the defendant is only on trial for the particular crimes charged in the indictment. Your job is limited to deciding whether the government has proved each crime charged. Also keep in mind that whether anyone else should be prosecuted and convicted for this crime is not a proper matter for you to consider. Your job is to decide if the government has proved the defendant guilty.

THE ELEMENTS OF THE CRIME IN THIS CASE

Count one (1) of this indictment charges the defendant with the crime of:

RIOT/Instigating, aiding, or participating in riot, defendant direct others to violence

Universal Citation: [SC Code § 16-5-130 \(2016\)](#)

That the accused did riot, or did participate by instigating, promoting or aiding the same, whether personally present or not. A person who is convicted of riot, or of participating in a riot, either by being personally present, or by **instigating, promoting, or aiding** the same... **This section must not be construed to prevent the peaceable assembling of persons for lawful purposes of protest or petition.**

The Elements of a RIOT are:

- 1). A tumultuous disturbance of the peace by,**
- 2). Three or more person assembled together of their own authority,**
- 3). With the intent mutually to assist each other against anyone who shall oppose them,**
- 4). And putting their design into execution in a terrific and violent manner, whether the object was lawful or not.**

State v. Connolly, 3 Rich. 337; State v. Brazil, Rice 257; State v. Cole, 2 McCord 117; State v. Johnson, 43 S.C. 123, 20 S.E. 988; and State v. Greene, 255 S.C. 548, 180 S.E.2d 179.

The state is required to prove every element of the crime for which an accused is charged. Jackson v. Virginia 443 U.S. 307, 316, 99 S.Ct. 2781, 2787, 61 L.Ed.3d 560 (1979). Mere suspicion alone is insufficient to send the case to the jury. There must be substantial evidence which reasonably tends to prove the guilt of the accused. State v. Edwards, 298 S.C. 272, 275,

379 S.E.2d 888, 889 (1989), cert. denied, 493 U.S. 895, 110 S. Ct. 246, 107 L.Ed2d 196; State v. Littlejohn, 228 S.C. 324, 329, 89 S.E. 2d 924, 936 (1955). In riot cases, the state must show evidence of a common intent to do an unlawful act. Dixon v. State, 105 Ga. 787, 31 S.EE. 750, 753 (1898). In all cases of riot, assault and battery, and larceny, a rout differs from a riot in that defendants meet and “do not actually execute their purpose, but only make some motion towards its execution.” State v. Sumner, 29 S.C.L. (2 Speers) 599 (1844). A “rout” is the movement of unlawful assemblies on the way to carry out their common design; an attempt to commit an act which would be a “riot” if actually committed.

Note : This section does not seek to prevent the peaceable assembling of persons for lawful purposes of protest or petition.

If you find that the State has proven each element of this offense beyond a reasonable doubt, then you must find the defendant guilty. If, however, you find that the State has failed to prove any element of the offense beyond a reasonable doubt, then you must find the defendant not guilty.

Count two 2 of this indictment

charges the defendant with the crime of § 16-3-1040. Threatening life, person or family of public official or public employee; punishment. X5. Specifically, the state says that:

(A) It is unlawful for a person

- 1). knowingly and willfully,
- 2). to deliver or convey to a public official or to a teacher or principal of an elementary or secondary school,

- 3). any letter or paper, writing, print, missive, document, or electronic communication or verbal or electronic communication,
- 4). which contains a threat to take the life of or to inflict bodily harm upon the public official, teacher, or principal, or members of his immediate family if the threat is directly related to the public official's, teacher's, or principal's professional responsibilities.

(B) It is unlawful for a person

- 1). knowingly and willfully to
- 2). deliver or convey to a public employee a letter or paper, writing, print, missive, document, or electronic communication or verbal or electronic communication
- 3). which contains a threat to take the life of or to inflict bodily harm upon the public employee or members of his immediate family if the threat is directly related to the public employee's official responsibilities.

The important terms in this charge are defined as follows:

Willful and Knowing

A person acts knowingly with respect to the nature of her conduct or the attendant circumstances if she is aware that her conduct is of that nature or that such circumstances exist or if she is aware of a high probability of their existence. A person acts knowingly with respect to the result of her conduct if she is aware that it is practically certain that her conduct will cause such a result. "Knowing," "with knowledge," or equivalent terms have the same meaning.

The State must also present evidence of the requisite mental state for the charge of threatening the life of a public official, which the statute provides is "**knowingly**." See 21 Am.Jur.2d *Criminal Law* § 131 (2008) (stating the term knowingly, as used in criminal statutes, "imports that an accused person knew what he or she was doing") *State v. Lewis*, 403 S.C. 345,

356 (S.C. Ct. App. 2014). A person acts knowing and willfully with respect to the nature of her conduct or a result thereof if it is her conscious object to engage in conduct of that nature or to cause such a result. A person acts purposely with respect to attendant circumstances if she hopes that they exist. A person acts purposely if she acts with design, with a specific intent, with a particular object or purpose, or if she means to do what she does. Like purpose, knowledge is a condition of the mind that cannot be seen and that can be determined only by inferences from conduct, words or acts. A state of mind is rarely susceptible of direct proof but must ordinarily be inferred from the facts. It is within your power to find that such proof has or has not been furnished beyond a reasonable doubt by inference, which may arise from the nature of defendant's acts and conduct, from all that she said and did at the particular time and place, and from all surrounding circumstances. "**A willful act** is defined as one which is done voluntarily and intentionally with the specific intent to do something the law forbids, or with specific intent to fail to do something the law requires to be done. *Id.*" *Ex Parte Jackson*, 381 S.C. 253, 258 (S.C. Ct. App. 2009).

In order to prove this element beyond a reasonable doubt the Prosecution that the defendant knew or was aware of the high probability that she would cause the Officers lives to feel threatened and that she intended this result.

Threat to take the life of or inflict bodily harm

When reviewing a threat to take the life of or inflict bodily harm upon the public employee; There must be such a demonstration of an **immediate intention to execute the threat**, as to induce a **reasonable belief that the party threatened** will lose his life, or suffer serious bodily injury unless he immediately defends himself against the attack of his adversary. The philosophy of the law on this point is sufficiently plain. *State v. Heyward*, 197 S.C. 371, 377 (S.C. 1941). The first element that the State must prove beyond a reasonable doubt is that the defendant **knowingly and willfully delivered** or conveyed to a public employee verbal communication which **contains a threat to take the life of or to inflict bodily harm upon the public employee** or members of his immediate family. The philosophy of the law on this point is sufficiently plain. *State v. Heyward*, 197 S.C. 371, 377 (S.C. 1941).

Heightened Fighting Words Required When Police Officers are Threatened

In order to prove the element of “threats to take life or inflict bodily harm, against police officers,” the Prosecution must prove that the Defendant used more than mere fighting words or abusive phrases. The words used must by their very utterance inflict injury or tend to incite an immediate breach of the peace, they must be directed at a specific person, and they must be inherently likely to cause the officer to react with violence and finally the words must have no role in the expression of ideas. Because a properly trained officer may reasonably be expected to exercise a higher degree of restraint than the average citizen.

In law, “fighting words” are abusive words or phrases

(1) directed at the person of the addressee, and

(2) inherently likely under the circumstances to cause an average person to react with violence, and

(3) playing no role in the expression of ideas.

Moreover, “the first amendment protects a significant amount of verbal criticism and challenge directed at police officers.” *City of Houston v. Hill*, 482 U.S. 451, 461, 107 S.Ct. 2502, 96 L.Ed2d 398, 412 (1987). The state may not punish a person for voicing an objection to a police officer where no “fighting words” are used. *Norwell v. Cincinnati*, 414 U.S., 94 S. Ct. 187, 38 L. Ed. 2d 170 (1973). To punish only spoken words addressed to a police officer, a statute must be limited in scope to fighting words that “by their very utterance inflict injury or tend to incite an immediate breach of the peace.” *Hill*, [482 U.S. at 461-62](#), [107 S.Ct. at 2509-10](#), [96 L.Ed.2d at 412](#) (quoting *Lewis v. City of New Orleans*, [415 U.S. 130](#), [94 S.Ct. 970](#), [39 L.Ed.2d 214](#) (1974)). As further noted by the United States Supreme Court, the “fighting words” exception may require narrow application in cases involving words addressed to a police officer “because a properly trained officer may reasonably be expected to exercise a higher degree of restraint than the average citizen.” *Hill*, [482 U.S. at 462](#), [107 S.Ct. at 2510](#), [96 L.Ed.2d at 412](#). As further noted by the United States Supreme Court, the “fighting words” exception may require narrow application in cases involving words addressed to a police officer “because a properly trained officer may reasonably be expected to exercise a higher degree of restraint than the average citizen.” *Hill*, [482 U.S. at 462](#), [107 S.Ct. at 2510](#), [96 L.Ed.2d at 412](#).

As stated by the high court: The freedom of individuals verbally to oppose or challenge police action without thereby risking arrest is one of the principal characteristics by which we distinguish a free nation from a police state. *Id.* at 462-63, [107 S.Ct. at 2510](#), [96 L.Ed.2d at 412-13](#). *State v. Bailey*, 368 S.C. 39, 46 (S.C. Ct. App. 2006). In the face of verbal challenges to police

action, officers and municipalities must respond with restraint. We are mindful that the preservation of liberty depends in part upon the maintenance of social order. . . . But the First Amendment recognizes, wisely we think, that a certain amount of expressive disorder not only is inevitable in a society committed to individual freedom, but must itself be protected if that freedom would survive. *Id.* at 471-71, 107 S.Ct. 2502. Finally, in the case *City of Landrum, v. Sarratt*, “the court explained that fighting words must be directed at someone in particular.” *City of Landrum, v. Sarratt*, 352 S.C. 139, 144 (S.C. Ct. App. 2002).

If you find that the State has proven each element of this offense beyond a reasonable doubt, then you must find the defendant guilty. If, however, you find that the State has failed to prove any element of the offense beyond a reasonable doubt, then you must find the defendant not guilty.

3rd charge Breach of Peace High and Aggravated Nature

The third charge, brought in April 2021, was Breach of Peace of a High and Aggravated Nature. “In general terms, it is a violation of public order, a disturbance of the public tranquility, by any act or conduct inciting to violence. *Id.* at 297, [157 S.E.2d at 571](#); see also *State v. Randolph*, [239 S.C. 79](#), [121 S.E.2d 349](#) (1961).” *State v. Peer*, 320 S.C. 546, 552 (S.C. Ct. App. 1996)

The offense of breach of the peace is defined as "a violation of public order, a disturbance of the public tranquility, by any act or conduct inciting to violence, which includes any violation of any law enacted to preserve peace and good order." *State v. Poinsett*, [250 S.C. 293, 297](#), [157 S.E.2d 570, 571, 572](#) (1967). However, the crux of the offense, and "[w]hether [the] conduct constitutes a breach of the peace depends on the time, place, and nearness of other persons." *State v. Peer*, [320 S.C. 546, 552, 466 S.E.2d 375, 378](#) (Ct.App. 1996). While it is not necessary that the peace actually be broken in order to sustain a conviction for the offense of breach of the peace, there must be at least, "commission of an unlawful and unjustifiable act, tending with sufficient directness to breach the peace." *Id.*

In the Interest of Jeremiah W, 353 S.C. 90, 94 (S.C. Ct. App. 2003).

So, in order to prove this crime, in light of the First Amendment to the Constitution of the United States, the state must demonstrate that Ms. Martin has committed a:

- 1). A violation of public order,
- 2). A disturbance of the public tranquility, while it is not necessary that the peace actually be broken in order to sustain a conviction for the offense of breach of the peace, there must be at least, "commission of an unlawful and unjustifiable act, tending with sufficient directness to breach the peace.
- 3). By an any act or conduct inciting immediate violence, it is not enough that the words merely arouse anger or resentment.
- 4). Any violation of any law enacted to preserve peace.

However, “there is no criminal offense denominated “high and aggravated breach of the peace” (BPHAN) cognizable in circuit court.” *State v. Simms*, 774 S.E.2d 445, 450 (S.C. 2015). Without having this charge in the South Carolina Statutes, the defendant can only be charged with committing a breach of the peace. However, in order for mere words to rise to the level of fighting words we turn to the first amendment. The First Amendment prohibits laws that abridge the freedom of speech. U.S. Const. amend. I; S.C. Const. art. I, 2. There are, however, certain classes of speech that are not afforded the protection of the First Amendment. Chaplinsky v. New Hampshire, 315 U.S. 568, 571-72 (1942). One such class of speech, fighting words, is defined as words that by their very utterance inflict injury or tend to incite an immediate breach of the peace. Id. at 572. Fighting words must be inherently likely to induce the ordinary person to react violently. Cohen v. California, 403 U.S. 15, 20 (1971). The fact that words are vulgar or offensive

is not alone sufficient to classify them as fighting words, thereby removing them from the protection provided by the First Amendment. See Gooding v. Wilson, 405 U.S. 518, 527 (1972) (striking Georgia statute that, as construed, prohibited the use of words that disgraced or insulted the listener, but did not constitute fighting words); In re Louise C., 3 P.3d 1004, 1005-07 (Ariz. Ct. App. 1999) (holding juveniles use of f word in argument with principal and another student over whether student had cheated her out of money, although offensive and unacceptable, did not constitute fighting words); Ware v. City & County of Denver, 511 P.2d 475, 475-76 (Colo. 1973) (stating one mans vulgarity is anothers lyric and holding defendants statement f--- you during political speech at university not fighting words); Downs v. State, 366 A.2d 41, 42-46 (Md. 1976) (stating the defendants use of profanity and racial epithets in crowded, noisy restaurant in loud voice to fellow diners not fighting words as not directed to anyone in particular; finding the use of the f word not punishable absent compelling reasons); City of Bismarck v. Schoppert, 469 N.W.2d 808, 811 (N.D. 1991) (in finding f--- you not fighting words the court stated: It is . . . not a crime in this country to be a boor, absent resort to fighting words.).

Before one may be punished for spoken words, there must be evidence that the abusive utterance itself tended to incite an immediate breach of the peace. See Downs, 278 Md. at 618, 366 A.2d at 46 (And, even if someone were offended by [the abusive statement], there was no evidence that any person was so aroused as to respond in a violent manner.). The State may not assume that provocative expressions will incite such violence. Rather, the State must carefully consider the surrounding circumstances to determine whether the expression is directed to inciting or producing imminent lawless action and is likely to incite or produce such action. Texas v. Johnson, 491 U.S. 397, 409, 109 S.Ct. 2533, 2542 (1989) (refusing to accept the States argument that it need only demonstrate a potential for breach of the peace). Certainly,

words may convey anger and frustration and yet not rise to a level such as to provoke a violent reaction from the listener. Lewis v. City of New Orleans, 415 U.S. 130, 135, 94 S.Ct. 970, 973 (1974) (Powell, J., concurring). It is not enough that the words merely arouse anger or resentment. See Skelton v. City of Birmingham, 342 So.2d 933, 937 (Ala. Crim. App. 1976). “See, e.g., *State v. Sutton*, [340 S.C. 393](#), [532 S.E.2d 283](#) (2000) (“conviction” of an offense not recognized in South Carolina is void for lack of subject matter jurisdiction).” *State v. Simms*, 774 S.E.2d 445, 450 (S.C. 2015). The circuit court found that profane language alone cannot constitute a violation of the public disorderly conduct statute in light of the First Amendment to the Constitution of the United States. Rather, the circuit court found that profane language must be accompanied by fighting words or other behavior such as gross intoxication.

If you find that the State has proven each element of this offense beyond a reasonable doubt, then you must find the defendant guilty. If, however, you find that the State has failed to prove any element of the offense beyond a reasonable doubt, then you must find the defendant not guilty.

RECORDED

THE STATE OF SOUTH CAROLINA MAY 26 AM 11:58 THE COURT OF GENERAL
SESSIONS

COUNTY OF SUMTER JAMES C. CAMPBELL THIRD JUDICIAL CIRCUIT
CLERK OF COURT

The State,

SUMTER COUNTY, S.C.

Warrant/Indictment Nos.:

2021-GS-43-0091;

8102P0723158;2020A4310200429;

2020A431020429;

v. 2020A4310200430;2020A43102001;

2020A4310200432;

2020A4310200433;

2020A4310200434

BRITTANY VALENCIA MARTIN,
DEFENDANT.

CERTIFIED TRUE COPY
OF ORIGINAL FILED

James C. Campbell
CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

DEFENDANT'S MOTION FOR RECONSIDERATION OF SENTENCE

Pursuant to Rule 29 (a) of the South Carolina Rules of Criminal Procedure, Defendant, Brittany Martin, moves this Court to reconsider the sentence imposed for Breach of Peace of a High and Aggravated nature.

The Defendant prays that this Court reduces the sentence from four years' imprisonment to 30 days imprisonment or a \$500 fine for her conviction of breach of peace of a high and aggravated nature.

Respectfully submitted May 25, 2022,

STROM LAW FIRM, LLC



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RECORDED

2022 AUG 25 1 A 10: 24

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

August 25, 2022

Sumter County Judicial Center
Attention: Clerk of Court
215 N. Harvin Street
Sumter, South Carolina 29150

Re: State v. Brittany Valencia Martin
Warrant/Indictment Nos.: 2021-GS-43-0091; 8102P0723158;
2020A431020429 – 0434

Dear Sir/Madam:

Please find enclosed the original and two (2) copies of the Defendant's Memorandum in Support of Motion to Reconsider Sentence. Should you have any questions or concerns regarding this matter please feel free to contact our office at (803) 252-4800.

Thank you in advance for your attention and cooperation in this matter

Sincerely,


Erica M. Preston
Paralegal to Bakari T. Sellers

EMP/

Enclosure

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

IN THE COURT OF GENERAL SESSIONS
FOR THE THIRD JUDICIAL CIRCUIT

State of South Carolina,

v. JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

Case No.: 2021-GS-43-0091

Brittany Martin,

Defendant.

**DEFENDANT'S MEMORANDUM
IN SUPPORT OF MOTION TO
RECONSIDER SENTENCE**

Defendant Brittany Martin, by and through her undersigned Counsel hereby submits this memorandum in support of her Motion to Reconsider Sentence, which was filed with this court on May 26, 2022.¹

INTRODUCTION

Ms. Martin's four-year sentence is greater than necessary to achieve the purposes of sentencing and grossly disproportionate to other sentences for the same offense in the Third Circuit. Ms. Martin's four-year sentence should be reconsidered, vacated and reduced. When the court considers the need to avoid unwarranted sentencing disparities, the nature and circumstances of Ms. Martin's offense, and the exigent circumstances of Ms. Martin's high-risk pregnancy, it will find that a reconsideration of the original sentence and a reduced sentence of 90 days or time served is appropriate.

FACTUAL AND PROCEDURAL HISTORY

On or about June 4, 2020, Ms. Martin was arrested and charged with five counts of Threatening the Life of a Public Official and one count of Instigating, Aiding or Participating in

¹ The Motion to Reconsider is neither a challenge to Ms. Martin's conviction nor a challenge to the jury's verdict in this case and should not be construed as such.

a Riot following a verbal encounter with sheriff's deputies at a four-day protest in Sumter. Ms. Martin was later indicted for one additional charge of Breach of Peace, High and Aggravated. The case was tried to a jury in May of 2022. The jury found Ms. Martin not guilty of Instigating, Aiding or Participating in a Riot, but convicted her of BOPHAN,² an offense with a sentencing range of 0-10 years. Ms. Martin was sentenced to four years in the South Carolina Department of Corrections.

ARGUMENT

A. The History and Purpose of Punishment

Every society throughout history has promulgated rules and regulations providing for punishment for those who violate societal norms. The history of criminal justice in the modern world is replete with societies that implement incarceration as a form of punishment. Among such societies, there have been varying degrees of success in using punishment as a deterrent to crime or as retribution for criminal activity. The criminal justice system in the United States is one such example.

The purposes of punishment may be divided into the deontological (retribution) and the teleological (deterrence, incapacitation and rehabilitation). When the United States penitentiary system was first established in the late eighteenth century, its goal was mostly teleological or utilitarian—to rehabilitate prisoners. Rehabilitation continued to be the primary goal of the American prison system for nearly two hundred years (with the exception of Southern prisons in the post-Civil War era, which effectively functioned as extensions of exploitative servitude for

² Ms. Martin maintains that the jury instructions on BOPHAN were defective in that the jury was instructed only as to Breach of Peace and not as to what circumstances elevate a simple Breach of Peace to the common law misdemeanor of Breach of Peace, High and Aggravated. We neither address nor argue this issue here, as it is not relevant to the issue of reconsideration.

many years). In the 1960s, the tides began to change and prison objectives shifted away from rehabilitation and towards retribution or incapacitation. It was this shift—fueled in large part by the idea that because a rehabilitation-based model of incarceration is deterministic, explaining away all criminal behavior without regard for the will of the individual criminal actor, that it threatened to undermine notions of moral accountability that sat at the heart of our nation’s criminal laws—that brought on our ever-ballooning prison population.

Continuing to impose lengthy prison sentences for relatively minor or non-violent offenses has had little direct impact on crime rates, but has done tangible damage to families and communities, especially communities of color, who are more impacted by the devastation of mass incarceration. Alternative forms of punishment can be and often are effective means of accomplishing the goals of sentencing, without the negative collateral impact. One such example of a negative collateral effect of choosing incarceration as the chosen method of punishment is its impact on individuals’ ability to function in society, specifically the workplace, upon release. The unemployment rate for formerly incarcerated people is nearly five times higher than the unemployment rate for the general population. This disparity is especially dramatic for formerly incarcerated women and people of color. Among formerly incarcerated black women like Ms. Martin, the unemployment rate jumps to a staggering 43.6%—compared to just 5.8% in the general public.³ A lengthy active sentence not only does little to address or accomplish the goals of sentencing, it actually increases the likelihood of conditions known to reduce recidivism and decrease productivity in society—it directly and significantly impacts Ms. Martin’s employability upon release.

³ See Couloute, L. and Kopf, D. *Out of Prisons, Out of Work*, Prison Policy Initiative (2018) <https://www.prisonpolicy.org/reports/outofwork.html>

B. Factors for Consideration

In federal cases, judges consider several statutory factors when imposing sentences. Pursuant to 18 USC §3553(a), a federal sentencing judge shall impose a sentence that is “sufficient, but not greater than necessary to comply with the purposes [of sentencing].” In all cases, judges shall consider: (1) the nature and circumstances of the offense; (2) the history and characteristics of the defendant; (3) the need for the sentence imposed to reflect the seriousness of the offense; (4) the need for just punishment; (5) the need to deter future criminal conduct and protect the public from future crimes of the defendant; (6) the need to provide a defendant with any needed educational or vocational training or other correctional treatment; and (7) the need to avoid unwarranted sentencing disparities.

While there is no state-level equivalent of 18 USC 3553(a), this Court may consider these factors when making its decision about the reconsideration of its original sentence in Ms. Martin’s case.

(1) Nature and Circumstances of the Offense

In the summer of 2020, with the country still reeling in the wake of the murders of George Floyd, Breonna Taylor and Ahmaud Arbery, community organizers and activists in cities across America organized peaceful protests against police violence. Brittany Martin was one such organizer. Ms. Martin took part in a four-day protest in Sumter County at the end of May 2020. The demonstrators gathered outside of the Sumter police department headquarters to show support for the black community and protest police violence against communities of color. During this protest, Ms. Martin was arrested. She was later indicted for Breach of Peace, High

and Aggravated for a verbal encounter with one of the responding deputies. Ms. Martin was not physically violent or threatening during this encounter.

(2) History and Characteristics of the Defendant

Brittany Martin was born in Peoria, Illinois in 1988 to the marital union of Elbert Martin and Darlene Robinson Martin. She was raised by both parents with her siblings in a healthy and happy home.

Ms. Martin attended college at Saint Leo University and majored in Business. She later attended LeCordon Bleu where she obtained her culinary credentials. She has worked as an executive chef and in the food industry for years, most recently at Tyson Foods. She is the founder of a non-profit organization that provides food to people experiencing homelessness and works to create unification opportunities and liberation in the black community. She is the mother of six children, two of whom she lost under unimaginably tragic circumstances. Ms. Martin lost her 4-month-old son Donnell to SIDS in 2007. Her eighteen-year-old son Courtney, who was attending college with aspirations of becoming a lawyer, was murdered this past January. Ms. Martin is pregnant with her seventh child, a daughter, due to arrive in November of this year.

(3) The need for the sentence imposed to reflect the seriousness of the offense

Breach of Peace of a High and Aggravated Nature is a common law misdemeanor. Ms. Martin's behavior was not physically violent or threatening. While Ms. Martin is passionate about the causes to which she dedicates her life, her passion should not be mischaracterized as violence. Ms. Martin has respect for the law and the men and women who enforce the law in our community. Her passion for equal justice under the law is largely what drives her activism and

community work through partnerships with her nonprofit. A sentence of thirty days, probation or time served would have been consistent with sentencing patterns for the same offense in the Third Circuit and it would have been sufficient but not greater than necessary to reflect the seriousness of the offense.

(4) The need for just punishment

As discussed above, punishment has long served purposes beyond mere retribution for wrongful actions. Punishment must also contemplate deterrence, rehabilitation and incapacitation. While incapacitation is sometimes necessary to protect the public, Ms. Martin's case is not one such instance. A noncustodial, probationary or time-served sentence would have been sufficient to achieve the other purposes of sentencing (punishment, deterrence, rehabilitation) while avoiding many of the negative collateral consequences that accompany lengthy prison sentences.

A sentence of thirty days, probation or time served would have been consistent with sentencing patterns for the same offense in the Third Circuit and it would have been sufficient but not greater than necessary to provide just punishment for Brittany's conduct of breaching the peace.

(5) The need to deter future criminal conduct and protect the public from future crimes of the defendant.

Incarceration cannot be justified by arguing that it better serves deterrence than other punishments. After all, any unpleasant experience promotes deterrence, because both the offending party and the public will want to avoid that unpleasantness in the future. For a woman

in her first trimester of pregnancy, any length of time in prison is surely a horrifying experience, but a probationary sentence or a shorter sentence in the county jail would have been just as effective of a deterrent. Ms. Martin is not a dangerous or violent person, so the public is not in need of any heightened protection from her. A short period of supervision or time in the county jail that was aligned with the sentencing patterns for BOPHAN in the Third Circuit would have been sufficient, but not greater than necessary to deter future criminal conduct and adequately protect the public.

(6) Providing a defendant with any needed educational or vocational training, medical treatment or other correctional treatment.

Prior to her incarceration, Ms. Martin was a homeschooling mother of four, and the director of a busy non-profit organization. She is college educated and has worked her entire life. She has no educational deficits that could be remedied in the Department of Corrections. Active incarceration will provide no needed treatment or vocational training.

Ms. Martin was three months pregnant at the time of her conviction. The majority of Ms. Martin's prenatal care has taken place in the South Carolina Department of Corrections and has been woefully inadequate. Ms. Martin has experienced significant complications throughout her pregnancy since her arrival at SCDC, including bleeding and preterm labor. When Ms. Martin requests medical attention, it routinely takes 7 hours or longer to be seen or receive a response.

The United States of America has the highest incarceration rate of women in the world; but as an institution that has historically been male-focused, correctional institutes are ill-equipped to handle the needs of incarcerated women, especially pregnant women. Given an incarcerated mother's status as an "offender," pregnancy and birth are frequently handled in a manner that

would be considered unacceptable in any other context. While South Carolina recently passed a law outlawing the long-used practice of shackling incarcerated women during childbirth⁴, women who give birth while incarcerated in South Carolina are separated from their newborns within hours of delivery. Their infants are then placed in foster care and the mother returned to prison.

If Ms. Martin is incarcerated at the time she delivers her child, she will be forced to undergo an induction at thirty-nine weeks gestation in accordance with SCDC policy. Because the guards at the South Carolina Department of Corrections are not trained to recognize the signs of labor, all pregnant women are induced at thirty-nine weeks, regardless of their own wishes. This taking of a woman's own body autonomy in the most personal of circumstances is only the beginning of the horrific treatment of pregnant woman who are incarcerated. Ms. Martin's newborn daughter will be taken from her within hours of delivery and Ms. Martin will be returned to prison with no rights to visitation with her. She will be without any accommodations for breastfeeding, pumping breastmilk for her newborn or bonding with her newborn daughter.

Inductions are proven to increase the likelihood of complications during delivery, as well as the likelihood of birth by emergency Cesarean section. With the complications Ms. Martin is already experiencing, coupled with the prospect of being induced before her due date, it is reasonably foreseeable that the newborn may require care in the Neonatal Intensive Care Unit (NICU). Incarcerated mothers have no rights to visitation with their infants in the NICU, nor is there even a policy or procedure in place to allow the mother to receive updates about the hospitalized infant's progress.

⁴ S.C. Code Ann. §23-13-35

All women, regardless of incarceration status, deserve to have a safe, healthy and dignified birth experience. If Ms. Martin's pregnancy and prenatal care while incarcerated are any indicators of what her labor and delivery experience will be, she can expect for it to be plagued with avoidable danger and anything but dignified.

Ms. Martin needs no additional services and has no deficits that would be remedied by a lengthy sentence within the Department of Corrections. In fact, the services and medical care that she *does* desperately need are available to her only *outside* of SCDC. Continued incarceration of Ms. Martin places both her and her unborn daughter at risk.

(7) The Need to Avoid Unwarranted Sentencing Disparities

Federal judges are commanded by statute to consider the need to avoid sentencing disparities when crafting sentences. This includes not only disparity among codefendants in a particular case, but also disparity among similarly-situated defendants convicted of similar offenses. The philosophy behind the implementation of preventive measures to guard against disparity is rooted in notions of fundamental fairness, predictability and justice. Consistency in sentencing also serves a deterrent function in that it sets expectations about outcomes on which other offenders or potential offenders can rely. Without consistency in sentencing and without guarding against unwarranted sentencing disparity, the justice system—and the criminal courts specifically—open themselves up to scrutiny and criticism involving overt racial, gender-based or socioeconomic biases. The Congressional mandate to avoid unwarranted sentencing disparity in federal cases reflects a pervasive concern over individual judges imposing their own idiosyncratic normative views at sentencing. While our state code contains no such mandate constraining state court judges, notions of justice favor a balanced approach to sentencing,

including careful consideration of sentencing norms within and across jurisdictions, as well as among similarly-situated defendants.

Ms. Martin's sentence of four years of active time for her conviction for BOPHAN is more than four times as long as even the lengthiest sentences for same offense in the Third Circuit. The overwhelming majority of individuals convicted of BOPHAN received time served or sentences of thirty days or less. (*See Exhibit 1 – BOPHAN Convictions and Respective Sentences in the Third Judicial Circuit*) Of those convicted of BOPHAN that did not receive time served or short sentences, NONE received any additional active time beyond time already served. In fact, even in cases where the defendant was originally charged with a more serious offense and was instead convicted of BOPHAN, these defendants were still sentenced to significantly less time than Ms. Martin. For example:

2017A1410100261 – Defendant was originally charged with Pointing and Presenting a Firearm, but was convicted of BOPHAN. This defendant received a suspended sentence (5 years suspended to 72 days of time served with 2 years of probation).

2017A4310100228 – Defendant was originally charged with Voyeurism, but was convicted of BOPHAN. This defendant received a suspended sentence (2 years suspended to 2 years of probation).

2018A4320100531 – Defendant was originally charged with Voyeurism, but was convicted of BOPHAN. This defendant received a suspended sentence (3 years suspended to 5 years of probation).

2018A4320108279 - Defendant was originally charged with Burglary 1st degree, but was convicted of BOPHAN. This defendant received a suspended sentence (5 years suspended to 2 years of probation).

2021A4310200634 –Defendant was originally charged with Armed Robbery, but was convicted of BOPHAN. This defendant received a suspended sentence (2 years suspended to 73 days of time served).

89807HB - Defendant was originally charged with Domestic Violence in the 2nd Degree, but was convicted of BOPHAN. This defendant received a sentence of time served.

It is clear that Ms. Martin’s four-year sentence was disproportionately high compared to other sentences for the same offense in the Third Circuit. In addition to that disparity, it is worth noting that numerous individuals convicted of federal crimes for violently assaulting police officers while storming the United States Capitol on January 6, 2021 received lower sentences than Ms. Martin received for the common law misdemeanor of Breach of Peace, High and Aggravated.

Devlyn Thompson received a sentence of 46 months for beating police officers with a metal baton.

Nicholas Languerand received a sentence of 44 months for assaulting officers with weapons.

Scott Fairlamb received a sentence of 41 months for assault on a police officer.

Lonnie Leroy Coffman, described by his sentencing judge as the “most heavily armed” of the Capitol rioters, was sentenced to 46 months in prison.

Jacobe Chansley, the “shaman” and most recognizable face of the Capitol riots, was sentenced to 41 months.

Cleveland Meredith received a sentence of 28 months for threatening to kill United States House Speaker Nancy Pelosi.

Numerous other of the violent rioters received probationary sentences for their roles in organizing and participating in the riot, destroying property, and assaulting Capitol police officers on January 6, 2021.

CONCLUSION

Taking into consideration all of the factors above, we respectfully ask the court to reconsider its sentence in this case. Reducing Ms. Martin's sentence to time served will allow her to seek and receive the prenatal care she needs to sustain what has been a high-risk pregnancy, plagued by complications. The medical care within the South Carolina Department of Corrections is insufficient to address the needs of Ms. Martin's fragile pregnancy, and each day Ms. Martin remains in custody poses a substantial risk to her unborn child.

A reduced sentence consistent with other sentences for BOPHAN within the Third Circuit will adequately reflect the serious nature of what Brittany has done, it will provide just punishment, and it will deter future criminal conduct and adequately protect the public. A sentence of time served would be sufficient, but not greater than necessary to achieve the purposes of sentencing.

In light of all of the factors discussed above, we respectfully submit that reconsideration of Ms. Martin's original sentence is appropriate in this case.

SIGNATURE PAGE TO FOLLOW

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'B. Sellers', with a long horizontal flourish extending to the right.

Bakari T. Sellers

A handwritten signature in black ink, appearing to read 'A. Benevento', with a large, stylized initial 'A' and a long horizontal flourish extending to the right.

Alexandra Benevento

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Attorneys for Brittany Martin

24 August 2022
Columbia, South Carolina

EXHIBIT 1

Case Number	County	Original Charge	Charge of the Conviction	Sentence	Sex	Age at Arrest	Race
83675	Sumter	BOPHAN	BOPHAN	Credit Time Served	F	43	Black
54525EV	Sumter	BOPHAN	BOPHAN	30 Days	M	33	Black
54986GG	Sumter	BOPHAN	BOPHAN	Fine (Amount not listed)/ 30 days	M	39	White
13599EB	Sumter	BOPHAN	BOPHAN	Fine (Amount not listed)/ 30 days	M	27	Black
2018A4320100531	Sumter	Sex/ Voyeurism	BOPHAN	3 Yrs Susp., 5 Yrs Prob.	M	39	Black
87319	Sumter	BOPHAN	BOPHAN	Credit Time Served	M	48	Black
88404	Sumter	BOPHAN	BOPHAN	Jail (Days not listed)	F	36	Black
94352	Sumter	BOPHAN	BOPHAN	Fine/ Jail time (Days not listed)	M	29	White
91017	Sumter	BOPHAN	BOPHAN	Credit Time Served	F	36	Black
83651FW	Sumter	BOPHAN	BOPHAN	Fine/ 30 days	M	24	Black
54435DR	Sumter	BOPHAN	BOPHAN	Credit Time Served	F	48	Black
81044	Sumter	BOPHAN	BOPHAN	Fine/ Jail time (Days not listed)	M	33	Black
66786FO	Sumter	BOPHAN	BOPHAN	Credit Time Served	F	50	Black
103968	Sumter	BOPHAN	BOPHAN	Fine Suspended	M	Not Listed	Black
87188	Sumter	BOPHAN	BOPHAN	Fine/ Jail time (Days not listed)	M	34	Black
86699	Sumter	Disorderly Conduct	BOPHAN	30 days	M	48	Black
87314	Sumter	BOPHAN	BOPHAN	Credit Time Served	M	31	Black
2017A4310100228	Sumter	Sex/ Voyeurism	BOPHAN	2 Yrs Prob., 2 Yrs. Susp.	M	21	White
2021GS4300091A	Sumter	BOPHAN	BOPHAN	SCDC Snt 4yrs, CTS 21 Days	F	32	Black
68168FO	Sumter	BOPHAN	BOPHAN	Credit Time Served	M	45	Black
103968	Sumter	BOPHAN	BOPHAN	Fine Suspended	M	Not Listed	Black
84578FW	Sumter	BOPHAN	BOPHAN	Not Listed	M	34	White
2021A4310200634	Sumter	Robbery/ Attempted Robbery	BOPHAN	SCDS 2 Yrs; CTS 73 days	M	43	Black
52250GG	Sumter	BOPHAN	BOPHAN	30 Days	M	48	White
13740EB	Sumter	BOPHAN	BOPHAN	Credit Time Served	M	40	Black
97811	Sumter	BOPHAN	BOPHAN	Credit Time Served	F	56	Black
100338	Sumter	BOPHAN	BOPHAN	Credit Time Served	M	28	Black
78088FW	Sumter	BOPHAN	BOPHAN	Fine/ Jail time - 30 days	M	20	Black
88241	Sumter	BOPHAN	BOPHAN	Credit Time Served	F	23	Black
94017	Sumter	BOPHAN	BOPHAN	Fine Suspended	F	19	Black
86311	Sumter	BOPHAN	BOPHAN	Fine/ Jail Time (Days not listed)	M	17	Black
2021A4310200294	Sumter	BOPHAN	BOPHAN	SCDC Snt 381 Days	M	39	White
86373	Sumter	BOPHAN	BOPHAN	Fine/ Jail Time (Days not listed)	M	20	Black
92725	Sumter	BOPHAN	BOPHAN	Fine Suspended	M	29	Black
80896FW	Sumter	BOPHAN	BOPHAN	Fine/ Jail time - 30 days	F	47	White
2018A4320100279	Sumter	Burglary (First Degree)	BOPHAN	5 Yrs. Susp., 2 Yrs. Prob.	M	20	Black
89378	Sumter	BOPHAN	BOPHAN	Credit Time Served	M	50	Black
2020DIR310002	Lee	BOPHAN	BOPHAN	Credit Time Served - 1 day	M	29	Black
K391460	Lee	BOPHAN	BOPHAN	Dismissed	M	17	Black
89807HB	Clarendon	Domestic Violence (Second Degree)	BOPHAN	Credit Time Served	M	58	Not Listed
2017GS0245	Clarendon	BOPHAN	BOPHAN	8 Yrs. Susp., 3 Yrs. Prob	M	26	Black
53656FY	Clarendon	BOPHAN	BOPHAN	Credit Time Served - 1 day	M	50	Black
43820FO	Clarendon	BOPHAN	BOPHAN	Credit Time Served - 1 day	M	42	Black
12820DW	Clarendon	BOPHAN	BOPHAN	Credit Time Served - 1 day	F	42	Black
2017GS0246	Clarendon	BOPHAN	BOPHAN	4 Yrs. Susp.; 1 Yr. Prob.	M	60	Black

Brittany Martin

48230GA	Clarendon	BOPHAN	BOPHAN	Credit Time Served - 1 day	M	48 White
20531DZ	Clarendon	BOPHAN	BOPHAN	1 Day	M	17 White
63223GN	Clarendon	BOPHAN	BOPHAN	Credit Time Served	M	27 Black
52810FY	Clarendon	BOPHAN	BOPHAN	Credit Time Served - 1 day	F	54 White
53663FY	Clarendon	BOPHAN	BOPHAN	Credit Time Served	F	30 Not Listed
84709FI	Clarendon	BOPHAN	BOPHAN	Credit Time Served	F	20 Black
41712FO	Clarendon	BOPHAN	BOPHAN	Credit Time Served - 1 day	Not Listed	30 Not Listed
50102GA	Clarendon	BOPHAN	BOPHAN	Credit Time Served - 1 day	M	25 White
48931GA	Clarendon	BOPHAN	BOPHAN	Credit Time Served - 1 day	F	41 Black
24835ET	Clarendon	BOPHAN	BOPHAN	Fine/ Jail Time - 30 days	M	55 Black
2018A1410100450	Clarendon	BOPHAN	BOPHAN	Credit Time Served - 30 days	M	61 Black
37930EX	Clarendon	BOPHAN	BOPHAN	Credit Time Served - 2 days	M	22 Black
88508FI	Clarendon	BOPHAN	BOPHAN	Fine (Amount not listed)	F	20 Black
40829FO	Clarendon	BOPHAN	BOPHAN	Credit Time Served - 1 day	M	19 Black
2017A1410100261	Clarendon	Weapons/ Pointing Firearms at a Person	BOPHAN	5 Yrs. Susp.; 72 days time served; 2 Yrs. Prob.	M	64 White
53655FY	Clarendon	BOPHAN	BOPHAN	Credit Time Served - 1 day	M	36 Black
62854GN	Clarendon	BOPHAN	BOPHAN	Credit Time Served - 1 day	M	47 Black
69642FR	Clarendon	BOPHAN	BOPHAN	Credit Time Served - 1 day	M	22 Black
43573FO	Clarendon	BOPHAN	BOPHAN	Credit Time Served - 1 day	M	58 White
14092DW	Clarendon	BOPHAN	BOPHAN	Time Served - 1 day	M	35 White
63121GN	Clarendon	BOPHAN	BOPHAN	Credit Time Served - 1 day	F	55 Not Listed
65211AT	Clarendon	BOPHAN	BOPHAN	Time Served - 1 day	M	26 White
43355FO	Clarendon	BOPHAN	BOPHAN	Credit Time Served - 1 day	M	42 White
84456EJ	Clarendon	BOPHAN	BOPHAN	Time Served - 1 day	M	18 Black

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	RECORDED
COUNTY OF SUMTER	)	2022 SEP 19 PM 4:23
	)	INDICTMENT NO. 2021-GS-43-0091
The State of South Carolina,	)	IES C. CAMPBELL
	)	CLERK OF COURT
v.	)	SUMTER COUNTY, S.C.
	)	
BRITTANY VALENCIA MARTIN,	)	STATE'S MEMORANDUM
	)	TO CONTEST THE MOTION TO
	)	RECONSIDER SENTENCE
	)	
Defendant(s)	)	

The State of South Carolina hereby submits this memorandum to contest Defense counsel's Motion to Reconsider Sentence, filed May 26, 2022. Defendant Martin's sentence should be affirmed or, in the alternative, more time given. The defendant was sentenced to four (4) years in the South Carolina Department of Corrections, less than half the available penalty for Breach of Peace, high and aggravated, based upon the verdict of the jury, the Defendant's criminal history, and the Defendant's actions in committing the crime.

FACTUAL AND PROCEDURAL HISTORY

The State concurs with the presentation of the facts laid out by defense counsel, with one exception. The jury did not come to a unanimous verdict on the five (5) charges of Threatening the Life of a Public Official; those charges are still pending, along with a separate Failure to Stop for a Blue Light.

RESPONSES TO DEFENSE ARGUMENT

A. The History and Purpose of Punishment

Punishment for a crime can be teleological, focusing on preventing recidivism, all while including active time in the South Carolina Department of Corrections. The legislature provided a ten (10) year possible sentence for the offense Breach of Peace, high and aggravated, but it is a

misdemeanor, thereby requiring a smaller percentage of time that would be served. The Court sentenced this Defendant to four years, less than half of the possible sentence, and in light of her criminal history.

While convictions may affect her employability, the State contends that her prior, more serious convictions would be a bigger reason for concern in her future employment, not a misdemeanor conviction. Furthermore, a sentence for active time is appropriate when *multiple* other chances have been afforded to the Defendant to serve on probation and receive the benefit of tools that prevent recidivism. It appears the defendant has been put on probation on at least six (6) occasions in at least five (5) different states- South Carolina, Iowa, Georgia, Illinois and Wisconsin. One cannot continue to commit crimes, benefit him/herself from punishments that don't carry incarceration, and continue to commit crimes, expecting never to serve a day in jail. Multiple opportunities have been afforded the Defendant in the past, but the Defendant has not stopped committing crimes.

B. Factors for Consideration

1) Nature and circumstances of the Offense

The evidence presented at trial showed *multiple* encounters over *multiple* days of the Defendant aggressively pursuing conflict with police officers, sheriff's deputies, and even peaceful protestors with her physically threatening conduct, paired with threatening words. The State disagrees with any notion that her conviction is based upon "a verbal encounter with one of the responding deputies," as claimed by defense counsel. ("Defendant's Memorandum in Support of Motion to Reconsider Sentence, paragraph (B)(1)). Instead, the Defendant's actions continued daily from May 31, 2020 through June 3, 2020, throughout the city, leading to a city-wide curfew to be put into effect. Her actions shut down traffic on at least two occasions, a local

business was forced to close early and lose profit, and at least three (3) law enforcement agencies had to assist in responding to Ms. Martin's actions over these four (4) dates.

2) History and Characteristics of the Defendant

The defendant has a lengthy criminal history, a factor the Court took into consideration at sentencing. Furthermore, the defendant demonstrated very disruptive and rude behavior during the entirety of the trial, despite constant reprimands from the Court, a characteristic that was remarkable to all who witnessed the trial.

The criminal history presented during sentencing is as follows:

- Retail Theft (Illinois- May 2008- probationary sentence)
- Public Disorderly conduct (Wisconsin- August 2011- probationary sentence)
- Possession of Short Barreled Shotgun (Wisconsin – August 2011- probationary sentence)
- Shoplifting (Georgia- December 2014- probationary sentence)
- Shoplifting enhancement (South Carolina- January 2015- probationary sentence),
- Public Disorderly Conduct (South Carolina- August 2015- time served sentence),
- Shoplifting (South Carolina- December 2015- probationary sentence)
- Leaving the Scene of an Injury or Accident and Willfully Causing Bodily Harm (Iowa- August 2019- probationary sentence)

The Court correctly took this criminal history into account when sentencing the Defendant for her actions.

3) The need for the sentence imposed to reflect the seriousness of the offense.

The State disagrees with the defense counsel's claim that "Ms. Martin's behavior was not physically violent or threatening....Ms. Martin has respect for the law and the men and women who enforce the law in our community." (*Id* at Paragraph (B)(3)) Instead, the Defendant showed an utter disregard for the peacefulness of the community, the need for other members of the community to conduct peaceful protests, and the need for law enforcement to assist in keeping the community and its citizens safe. Ms. Martin ran off peaceful protestors, calling them

profane names. Ms. Martin's behavior led to a city-wide curfew to be imposed. A local business had to shut down, based upon her actions. At least three law enforcement agencies were

4) The need for just punishment

Just punishment must take into consideration the Defendant's actions and prior criminal history. Having been on probation on at least six (6) other occasions in five (5) different states would tend to show that probation does nothing to deter or rehabilitate this Defendant.

5) The need to deter future criminal conduct and protect the public from future crimes of the defendant

See same response set out in Paragraph 4 above.

6) Providing defendant with any needed educational or vocational training, medical treatment or other correctional treatment

Pregnancy cannot be used as a shield to justice. The Defendant was aware of this pending criminal charge and still engaged in behaviors that could likely lead to pregnancy. She cannot now use that behavior as a shield to prevent her from being held accountable for her criminal actions. The Court was aware of her pregnancy at the time of sentencing.

7) The Need to Avoid Unwarranted Sentencing Disparities

The charges and list from defense Exhibit 1 is primarily from the Summary Court/Magistrate Court system where the maximum sentence is thirty (30) days. The charges at hand are from Circuit Court, where jurisdiction exists over thirty (30) days.

As to references to the January 6th riot at the Capitol, the Court referenced those events when handing down the Court's sentence. The terms of active time given in these cases are served under federal regulations, meaning the federal defendants will serve a much higher percentage of the jail time compared to Ms. Martin. Furthermore, these federal defendants did not have

lengthy previous criminal histories with multiple previous probationary cases. Additionally, in recent weeks, other sentences have been handed down for these January 6th insurrectionists with more stiff penalties:

- Guy Reffitt- seven (7) years
- Thomas Webster – ten (10) years
- Thomas Robertson – eighty-seven (87) months
- Robert Palmer – sixty-three (63) months

Meanwhile, defendant Martin was sentenced to four (4) years, with a lengthy criminal record, multiple attempts at probation, and very inflammatory behavior. The sentence is warranted and not in disparity with other similar crimes.

CONCLUSION

After a trial on the facts, a fair and impartial jury found the Defendant guilty of Breach of Peace, high and aggravated. The Court heard the facts of the case, saw the Defendant's demeanor during the trial, heard from defense counsel in mitigation, processed the social and cultural backdrop of the facts of the case, took into consideration the Defendant's lengthy criminal history, accounted for the fact that the defendant was currently on probation in Iowa, and issued a sentence of four (4) years, less than half of the possible penalty. The Court clearly stated that the Defendant was being sentenced based upon her actions, not her words. The Court was correct in its sentence and should affirm its ruling.

Respectfully Submitted,



Bronwyn K. McElveen, Dep. Solicitor

THE STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

The State,

RECORDED

2022 OCT 20 PM 4:42

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

IN THE COURT OF GENERAL
SESSIONS

THIRD JUDICIAL CIRCUIT

Warrant/Indictment Nos.:

) 2021-GS-43-0091;

v.)

) The Honorable R. Kirk Griffin, Presiding

BRITTANY VALENCIA MARTIN,

DEFENDANT/Appellant.

) EMERGENCY MOTION FOR APPEAL BOND

EMERGENCY MOTION FOR APPEAL BOND

NOW COMES, Brittany Martin, Defendant-Appellant, by and through her undersigned counsel, and motions this Honorable Court for an appeal bond pending the outcome of her formal appeal in this matter. The memorandum supporting this motion is incorporated herein.

Ms. Brittany Martin has submitted a notice of appeal for her conviction and sentence in the above-mentioned case.

1. In support of this motion, Ms. Martin states that on May 16th she was found guilty of the offense of Breach of the Peace of a High and Aggravated Nature. (BOPAN), and sentenced to a prison term of four (4) years. Ms. Martin has filed a timely appeal from her conviction.
2. Ms. Martin plans to raise several arguments, which she believes will be with merit based on the South Carolina Supreme Court decision of State v. Simms, 774 S.E. 2d 445 (S.C. 2015).
3. Ms. Martin is not a flight risk and has substantial ties to the community. Ms. Martin has five children in South Carolina.
4. The sentence was imposed by the Honorable R. Kirk Griffin on May 16, 2022.

Pursuant to Rule 29 (a) of the South Carolina Rules of Criminal Procedure the Defendant filed a Post-Trial motion for reconsideration of the sentence on May 25, 2022.

5. This appeal is taken from the order of the Honorable R. Kirk Griffin, dated October 5, 2022, which denied appellant's motion for reconsideration of the sentence.
6. Appellant received written notice of entry of this order on October 13, 2022.
7. Ms. Martin filed a motion for Appeal on October 14, 2022.
8. Ms. Martin is currently incarcerated in Camile Graham Women's correctional facility, and she has been held there since May 16, 2022.
9. Ms. Martin is currently pregnant and has been battling preterm labor since she was incarcerated.
10. The facility is unable to provide her with proper medical care and the life of her unborn child is in danger.
11. Ms. Martin has been to the hospital numerous times; however, the correctional facility has determined that the medication and devices needed to maintain her pregnancy and allow her to make it to full term status are a security risk.
12. If Ms. Martin delivers while incarcerated her child will be forced into the foster care system.
13. Ms. Martin's child was not convicted of any wrongdoing and should not be penalized by the Court.
14. Ms. Martin's crimes do not involve violence, despite the name of her conviction, and she is not a flight risk.
15. Ms. Martin is not a threat to the community, she has five children in South Carolina she has strong ties to the community, and she simply wants to be out of jail to preserve the life of her unborn child.
16. Ms. Martin does not have a passport.

17. Ms. Martin would respectfully request that the Judge grant an in person hearing for her emergency bond appeal request if he is unable to grant the bond without additional information.

WHEREFORE, Ms. Martin would like to respectfully request that the Court grant her motion for an appeal bond pending the outcome of her formal appeal with the state of South Carolina Court of Appeals. Further, Ms. Martin respectfully asks the Court immediately rule on this motion to prevent her child from being born prematurely in the correctional facility by issuing her an emergency appeal bond expeditiously, or in the alternative, make a ruling expeditiously so that she may apply for an appeal bond with the Court of Appeals, if necessary.

October 20, 2022

Respectfully submitted,

By: /s Dr. Sybil Rosado

Dr. Sybil Rosado

Bar Number: 104422

Federal Bar No: 13505

sybil@rosado.law

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Attorney for the Appellant

Other Counsel of Record:

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Attorney for the State

THE STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

The State,

BRITTANY VALENCIA MARTIN,
DEFENDANT.

RECORDED IN THE COURT OF GENERAL
SESSIONS
2022 OCT 20 PM 4:42
THIRD JUDICIAL CIRCUIT

JAMES G. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

Warrant/Indictment Nos.:

) 2021-GS-43-0091; v.

) The Honorable R. Kirk Griffin, Presiding

) PROOF OF SERVICE

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the Respondent by delivering it to the office in person addressed to Bronwyn K. McElveen at 215 North Harvin Street Sumter, South Carolina 29150, and transmitting a copy of it to the other Counsel of Record indicated below via email at bmceelveen@sumpttercountysc.gov, on October 20, 2022.

October 20, 2022

Respectfully submitted,

By: /s/ Dr. Sybil Rosado

Dr. Sybil Rosado

Bar Number: 104422

Federal Bar No: 13505

sybil@rosado.law

Dr. Sybil Rosado, Esq.

Other Counsel of Record:
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Office: (803) 436-2185
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Attorney for State

TRANSCRIPT

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER } COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA)
STATE,)

v.)

TRANSCRIPT OF RECORD
21-GS-43-0091

BRITTANY VALENCIA MARTIN,)
DEFENDANT.)

May 9, 11-13, 2022
Sumter, South Carolina

B E F O R E :

THE HONORABLE R. KIRK GRIFFIN, JUDGE;
AND JURY

A P P E A R A N C E S:

ERNEST A. FINNEY, III, ESQ.
Solicitor of the Third Circuit
BRONWYN K. MCELVEEN, ESQ.
Attorney for the State

SYBIL D. ROSADO, ESQ.
Attorney for Defendant

FRANCES B. RAY, RPR
Circuit Court Reporter

INDEX

	Page
Qualifying of jury panel	4
Striking of jury	15
Preliminary remarks by the Court	35
Opening remarks by Ms. McElveen	44
Opening remarks by Ms. Rosado	48
Jeffery Jackson:	
Direct examination by Ms. McElveen	54/176
Cross-examination by Ms. Rosado	72/180
Redirect examination by Ms. McElveen	78
Recross-examination by Ms. Rosado	79
James Sinkler:	
Direct examination by Ms. McElveen	80/191
Cross-examination by Ms. Rosado	83/194
Redirect examination by Ms. McElveen	87
Recross-examination by Ms. Rosado	87
Tyshica Gayle:	
Direct examination by Ms. McElveen	89/185
Cross-examination by Ms. Rosado	95
Robert Singleton:	
Direct examination by Ms. McElveen	101/195
Cross-examination by Ms. Rosado	107/198
Redirect examination by Ms. McElveen	110
Recross-examination by Ms. Rosado	111
Angela Rabon:	
Direct examination by Ms. McElveen	118/213
Cross-examination by Ms. Rosado	134/221
Redirect examination by Ms. McElveen	151
Recross-examination by Ms. Rosado	153
Further direct by Ms. McElveen	155
Billy Lyons:	
Direct examination by Ms. McElveen	161
Cross-examination by Ms. Rosado	170
Cleveland Pinkney:	
Direct examination by Ms. McElveen	201
Cross-examination by Ms. Rosado	208
Redirect examination by Ms. McElveen	210
Recross-examination by Ms. Rosado	211
Russell Roark:	
Direct examination by Ms. McElveen	224
Cross-examination by Ms. Rosado	241
Redirect examination by Ms. McElveen	251
Recross-examination by Ms. Rosado	254
Further direct by Ms. McElveen	269
Further cross by Ms. Rosado	270
Directed verdict motion	274

Proffer examination of Russell Roark	295
Russell Roark:	
Direct examination by Ms. Rosado	307
Cross-examination by Ms. McElveen	306
Curtis Hilton:	
Direct examination by Ms. Rosado	307
Cross-examination by Ms. McElveen	325
Redirect examination by Ms. Rosado	340
Brittany Martin:	
Direct examination by Ms. Rosado	350
Cross-examination by Ms. McElveen	403
Redirect examination by Ms. Rosado	446
Recross-examination by Ms. McElveen	460
Terrence Colclough:	
Direct examination by Ms. Rosado	465
Cross-examination by Ms. McElveen	466
Redirect examination by Ms. Rosado	467
Directed verdict motion	468

E X H I B I T S

STATE'S:

No.	Description	I.D./EVD.
1	Disk containing videos	61/62
2	Flash drive containing videos	128/128
3	Sumter Item article	234/235
4	Annual report	238/239
5	El Cheapo gas station video	404/423
6	Order	415/450

DEFENDANT:

1	Mass.dot.com	254
2	Article (forced retirement)	254
3	Online article	254

1 THE COURT: Ms. McElveen.

2 MS. MCELVEEN: Yes, Your Honor. The State
3 would call the State of South Carolina v. Brittany
4 Valencia Martin, indictment 2021-GS-43-0091. If it
5 pleases the Court, I'd like to hand up the
6 indictment, the State's witness list, and proposed
7 voir dire. I'm sorry, Your Honor, Mr. Sinkler has
8 not retired. He retired from the highway patrol,
9 not from the police department.

10 THE COURT: Right.

11 Ladies and gentlemen of the jury, now
12 we're about to begin the process for selecting a
13 jury in the state -- case of the State of South
14 Carolina v. Brittany Valencia Martin. I have
15 numerous questions to ask you before we get to the
16 jury selection process. I will remind you, ladies
17 and gentlemen, that you are still under oath.
18 Ladies and gentlemen, in this indictment Ms. Martin
19 is charged -- and, again, the indictment is not
20 evidence; it is simply the formal document which
21 brings this court -- this case before the Court's
22 jurisdiction. Under count one of this indictment
23 Ms. Martin is charged with breach of peace high --
24 high and aggravated, and the State alleges that
25 Brittany Valencia Martin did in Sumter County

1 between May 31st, 2020, and June 3rd, 2020,
2 knowingly, willfully, and intentionally disturb
3 public order and/or public tranquility through her
4 conduct accompanied by circumstances of aggravation,
5 such acts constituting the offense of breach of
6 peace in violation of the common law of South
7 Carolina.

8 Count two, the State alleges that in
9 Sumter County on or about -- or between May 31st and
10 June 3rd, 2020, the defendant Brittany Valencia
11 Martin knowingly and willfully did instigate and
12 promote the commission of a riot while present in
13 front of the Sumter Police Department located at 335
14 North Lafayette Drive here in Sumter, South
15 Carolina, in violation of Section 16-5-130 of the
16 South Carolina Code of Laws. Count two is a charge
17 of instigating a riot.

18 Ladies and gentlemen, counts three through
19 seven are for threatening the life of a public
20 official. That charge alleges that in Sumter County
21 on or -- on or about June 3rd, 2020, the defendant
22 Brittany Valencia Martin knowingly and willfully
23 did deliver or convey to a public official, teacher,
24 or principal of an elementary -- elementary or
25 secondary school by way of writing electronic or

1 verbal communication, a threat, to take the life of
2 or to inflict bodily harm on such public official or
3 his or her immediate family and such threat was
4 directly -- directly related to him or her, his or
5 her professional responsibilities; specifically, the
6 defendant did verbally threaten to take the life of
7 and/or inflict bodily harm upon the following
8 officers: Jeffrey Jackson, James Sinkler, Angela
9 Rabon, Cleveland Pinkney, and Robert Singleton, in
10 violation of Section 16-3-1040 of the South Carolina
11 Code of Laws. Again, ladies and gentlemen, those
12 charges in the indictment are mere allegations at
13 this point, and the State has the burden of proof in
14 each of these counts.

15 Ladies and gentlemen of the jury panel, is
16 any member related by blood or marriage to the
17 defendant Brittany Martin?

18 Ms. Martin, if you would please stand,
19 ma'am.

20 THE DEFENDANT: Yes, sir.

21 THE COURT: You can have a seat, ma'am.

22 THE DEFENDANT: Okay.

23 (There was no response.)

24 THE COURT: Does any member of the jury
25 panel have a close, personal, or social relationship

1 with Ms. Martin? If so, please stand.

2 (There was no response.)

3 THE COURT: Does any member of the jury
4 panel have a close, personal, business, or familial
5 relationship with Eric Kennedy? If so, please
6 stand.

7 (There was no response.)

8 THE COURT: The following is a list of
9 potential witnesses in this case. Again, if you're
10 related by blood or marriage or have a close,
11 personal, or social relationship with any of these
12 individuals, please stand. Captain Angie Rabon of
13 the Sumter Police Department; Lieutenant Billy
14 Lyons, Sumter Police Department; Sergeant James
15 Sinkler, Sumter Police Department; Detective Willie
16 McFaddin, Sumter Police Department. I'm gonna read,
17 read the whole list, and then we'll -- we'll deal
18 with each, each member individually. Colonel
19 Jeffrey Jackson. Is that right, Colonel?

20 COLONEL JACKSON: Yes, sir.

21 THE COURT: Yes, sir. Colonel Jeffrey
22 Jackson, Sumter Police Department; Captain Robert
23 Singleton, Sumter Police Department; First Sergeant
24 Tyshica Gayle, Sumter Police Department; Sergeant
25 Tom Moore, Sumter Police Department; Captain B.K.

1 Floyd, Sumter Police Department; Sergeant Cleveland
2 Pinkney, retired Sumter Police Department;
3 Lieutenant Jeremy Van Allen, Sumter Police
4 Department; Lieutenant Joe Lane, Sumter Police
5 Department; Lead Corporal Robert Beckford, Sumter
6 Police Department; Staff Sergeant John Melton,
7 Sumter Police Department.

8 All right, ma'am, in the jeans jacket.
9 What's your number please?

10 PROSPECTIVE JUROR: 159.

11 THE COURT: I think I know the answer to
12 this question based on your last name, Ms. Sinkler.
13 Who is your connection with?

14 PROSPECTIVE JUROR: James Sinkler.

15 THE COURT: All right. And what is that
16 relationship?

17 PROSPECTIVE JUROR: He's on my dad's side,
18 my cousin.

19 THE COURT: Okay.

20 PROSPECTIVE JUROR: Although we do not
21 have a close relationship, I don't really know him
22 like that.

23 THE COURT: Okay. Would the fact that you
24 are related, ma'am, would that impair your ability
25 to be both fair and impartial to the State and the

1 Defense in the trial of this case?

2 PROSPECTIVE JUROR: No, it does not.

3 THE COURT: You can set that relationship
4 aside and base your verdict solely upon the evidence
5 and testimony you heard in the courtroom?

6 PROSPECTIVE JUROR: I can.

7 THE COURT: All right. Thank you, ma'am.
8 You can have a seat.

9 Ma'am?

10 PROSPECTIVE JUROR: I work at the utility
11 billing department and the city police office has a
12 station here in our building and so I work with Mr.
13 -- Officer Sinkler, and then I also work with
14 Cleveland Pinkney.

15 THE COURT: All right.

16 PROSPECTIVE JUROR: Or -- they're in the
17 same building, like, I just see them, sir.

18 THE COURT: What's your number, ma'am?

19 PROSPECTIVE JUROR: 178. And so I work
20 closely with them though. We call them if anything
21 happens at work though.

22 THE COURT: All right, Ms. Welch, Danielle
23 Welch, would the fact that you had -- have
24 interactions with these individuals through your
25 employment, would that impact your ability to be

1 both fair and impartial ---

2 PROSPECTIVE JUROR: No, sir.

3 THE COURT: ---to the State and the
4 Defense in this case?

5 PROSPECTIVE JUROR: No, sir.

6 THE COURT: You can set those things aside
7 and base your evidence solely upon the evidence and
8 testimony you heard from the courtroom?

9 PROSPECTIVE JUROR: I think so, yes, sir.

10 THE COURT: All right. Thank you, ma'am.
11 You can have a seat.

12 Ladies and gentlemen of the jury, the
13 attorneys in this case who'll be appearing and
14 representing their client's interest are Bronwyn
15 McElveen for the State.

16 Ms. McElveen, if you'd stand up, please.

17 And Sybil Rosado representing Ms. Martin.

18 Does any member of the jury panel have a
19 close, personal, social, or familial relationship
20 with either of these attorneys?

21 PROSPECTIVE JUROR: I'm Mary White and
22 it's 134, and I've known Bronwyn McElveen for quite
23 a while. I think we're the same age. For quite a
24 while.

25 THE COURT: Okay. So you would classify

1 that as a social relationship?

2 PROSPECTIVE JUROR: Yes, sir.

3 THE COURT: All right. Ms. White, would
4 the fact you have a social relationship with
5 Ms. McElveen, would that impact your ability to be
6 fair and impartial to both the State and the Defense
7 in the trial of this case?

8 PROSPECTIVE JUROR: I don't believe so.

9 THE COURT: You can set that relationship
10 aside and base your evidence solely upon -- base
11 your verdict solely upon the evidence you heard in
12 the courtroom?

13 PROSPECTIVE JUROR: Yes, sir.

14 THE COURT: All right. Thank you, ma'am.
15 You can have a seat.

16 Has any member of the jury panel ever been
17 represented by either of these lawyers? If so,
18 please stand. What's your name? What's your ---

19 PROSPECTIVE JUROR: 152.

20 THE COURT: All right. Mr. Rovinsky.

21 PROSPECTIVE JUROR: Yes, sir.

22 THE COURT: Without -- without saying the
23 nature of representation, which lawyer represented
24 you?

25 PROSPECTIVE JUROR: Dr. Rosado is

1 currently on another matter with me and my wife.

2 THE COURT: And so she is currently your
3 lawyer?

4 PROSPECTIVE JUROR: Yes, sir. Yes, sir.

5 THE COURT: All right.

6 MS. MCELVEEN: Your Honor, may we ask that
7 he be removed from trying this case, although in the
8 panel for future cases.

9 THE COURT: Ms. Rosado, any objection to
10 him being removed since he is a current -- current
11 client?

12 MS. ROSADO: None whatsoever, Your Honor.

13 THE COURT: All right. Mr. Rovinsky,
14 Juror No. 152, will be set aside for the -- for this
15 particular trial based upon the nature of his
16 relationship with Ms. Rosado. Thank you, sir.

17 Has any member of the jury panel formed or
18 expressed an opinion about any issue or matter
19 involved in this case? If so, please stand.

20 (There was no response.)

21 THE COURT: Is any member of the jury
22 panel aware of any bias or prejudice towards either
23 the State or the Defendant in this case?

24 (There was no response.)

25 THE COURT: Is there any member of the

1 jury panel who is a member of or contributor to any
2 group which has its primary concern the promotion of
3 law enforcement or victim's rights? These groups
4 would include but certainly not be limited to:
5 Mothers Against Drunk Driving, Students Against
6 Drunk Driving, Citizens Against Violent Crime, or
7 any other organization which has its primary focus
8 the promotion of law enforcement or victim's rights.
9 If that applies to any member of the jury panel,
10 please stand.

11 (There was no response.)

12 THE COURT: Is there any member of the
13 jury panel who because of moral or religious beliefs
14 feels that they cannot sit in judgment of another
15 person? If so, please stand.

16 (There was no response.)

17 THE COURT: Does any member of the jury
18 panel know of any reason whatsoever why he or she
19 should not serve as a juror in this case, with
20 particular emphasis being placed on your ability to
21 be fair and impartial to both the State and the
22 Defense? If so, please stand.

23 (There was no response.)

24 THE COURT: Does any member of the jury
25 panel have such strong opinions on racial equality

1 and/or social injustice that you cannot be fair or
2 impartial in the trial of this particular case? If
3 so, please stand.

4 (There was no response.)

5 THE COURT: Does any member of the jury
6 panel have any family members who have such strong
7 opinions on racial equality and/or social injustice
8 that you believe based upon your family members'
9 beliefs that you could not be fair or impartial in
10 the trial of this case?

11 (There was no response.)

12 THE COURT: Any further voir dire from the
13 State, Ms. McElveen?

14 MS. MCELVEEN: Nothing from the State,
15 Your Honor.

16 THE COURT: Ms. Rosado?

17 MS. ROSADO: No, Your Honor.

18 THE COURT: All right. Strikes will be
19 five and five?

20 MS. MCELVEEN: Yes, sir, Your Honor.

21 THE COURT: All right. We'll follow the
22 same procedure, ladies and gentlemen. The Clerk's
23 office will prepare a random list and your Clerk,
24 Mr. Campbell, will call the list when your name is
25 called. Please come up the center aisle to the

1 podium, turn around and face the back wall. Bring
2 your personal belongings with you if your name is
3 called.

4 THE CLERK: Please come forward. Please
5 bring your personal belongings and face the back
6 wall. Juror No. 19 [sic], Rayshari Muldrow (black
7 female). What says the State?

8 MR. FINNEY: What number, Mr. Clerk?

9 THE CLERK: I'm sorry, 119.

10 MS. MCELVEEN: Beg the Court's indulgence.
11 Please present the juror.

12 THE CLERK: What says the Defendant?

13 MS. ROSADO: Please present the juror.

14 THE CLERK: Thank you, ma'am. Have a seat
15 in the jury box, ma'am.

16 Juror No. 117, Steve Morris (white male).
17 What says the State?

18 MS. MCELVEEN: Please present the juror.

19 THE CLERK: What says the Defendant?

20 MS. ROSADO: Please present the juror.

21 THE CLERK: Please have a seat in the jury
22 box, sir.

23 THE DEFENDANT: Excuse me, I didn't want
24 him.

25 THE COURT: Only one?

1 THE DEFENDANT: Yeah.

2 THE COURT: Let me see the lawyers up here
3 please.

4 (WHEREUPON, counsel approached the
5 bench for an off-the-record discussion.)

6 THE CLERK: Ms. Rosado, has that last
7 strike been reconsidered, ma'am?

8 MS. ROSADO: Yes, sir. We'd like to
9 strike this juror please.

10 THE COURT: All right. Mr. Morris, I'm
11 sorry, if you could please return to the jury panel
12 please. You have been excused from this case.

13 THE DEFENDANT: No offense, my bad. No
14 offense.

15 THE CLERK: Juror No. 35, Christian Cribb
16 (white male). What says the State?

17 MS. MCELVEEN: Please present Mr. Cribb.

18 THE CLERK: What says the Defendant?

19 MS. ROSADO: Please present Mr. Cribb.

20 THE CLERK: Please have a seat in the jury
21 box, sir.

22 Juror No. 38, Zachary Davis (white male).
23 What says the State?

24 MS. MCELVEEN: Please present Mr. Davis.

25 THE CLERK: What says the Defendant?

1 MS. ROSADO: Please present Mr. Davis.

2 THE CLERK: Have a seat in the jury box
3 please, sir.

4 Juror No. 48, Darlene Fulton (black
5 female). What says the State?

6 MS. MCELVEEN: Please present Ms. Fulton.

7 THE CLERK: What says the Defendant?

8 MS. ROSADO: Please present Ms. Fulton.

9 THE CLERK: Please have a seat in the jury
10 box, ma'am.

11 Juror No. 6, Mary White (white female).

12 MS. MCELVEEN: 134?

13 THE CLERK: I'm sorry, 134, I apologize.

14 MS. MCELVEEN: Oh, okay.

15 (Clerk of Court, Mr. Campbell, approaches the Bench
16 for an off-the-record discussion.)

17 THE COURT: Let me see the attorneys up
18 front.

19 (WHEREUPON, counsel approached the
20 bench for an off-the-record discussion.)

21 THE COURT: Ms. White, I'm gonna set you
22 aside on this case for cause, so you can return to
23 the jury panel.

24 PROSPECTIVE JUROR: Okay.

25 THE DEFENDANT: Thank you, Judge.

1 THE CLERK: Juror No. 146, Alton Ritter
2 (black male). What says the State?

3 MS. MCELVEEN: Please excuse the juror
4 from the trial of this case.

5 THE CLERK: Please return to your seat,
6 sir. You've been excused from this case.

7 Juror No. 86, Blake Junious (black male).
8 What says the State?

9 MS. MCELVEEN: Please present the juror.

10 THE CLERK: What says Defendant?

11 MS. ROSADO: Please present Mr. Junious.

12 THE CLERK: Please have a seat in the jury
13 box.

14 Juror No. 149, Thuy Roberts (Asian
15 female). What says the State?

16 MS. MCELVEEN: Please present Ms. Roberts.

17 THE CLERK: What says the Defendant?

18 MS. ROSADO: Please excuse this juror for
19 cause. However, Your Honor, when she -- her husband
20 works for the Department of Corrections.

21 THE COURT: That's not a reason for cause,
22 ma'am.

23 MS. MCELVEEN: Your Honor, we -- she --
24 the defendant would -- wishes to use a strike, Your
25 Honor, we don't see why that would be a reason for

1 cause. I believe that the juror stated she could be
2 fair and impartial even though her spouse is in the
3 corrections.

4 THE COURT: And we went over the -- we
5 went over the exemption questions and Ms. Roberts
6 and I had a conversation about whether that applied
7 to her or just her husband so, Ms. Rosado, I don't
8 believe that her situation with the husband who's
9 retired from the Department of Corrections, I don't
10 think that meets a cause qualification so.

11 MS. ROSADO: So we'll use our strike then,
12 Your Honor.

13 THE COURT: Yes, ma'am.

14 THE CLERK: Please return to your seat.
15 You've been excused from this trial.

16 Juror No. 161, Triz Smith (white male).
17 What says the State?

18 MS. MCELVEEN: Beg the Court's indulgence.
19 And may we approach?

20 THE COURT: Yes.

21 (WHEREUPON, counsel approached the
22 bench for an off-the-record discussion.)

23 THE COURT: Dr. Smith, based upon the
24 bench conference we just had, I'm gonna set you
25 aside on this case for cause.

1 THE CLERK: Juror No. 76, Charles Howard
2 (black male). What says the State?

3 MS. MCELVEEN: Please present Mr. Howard.

4 THE CLERK: What says the Defendant?

5 MS. ROSADO: Please present Mr. Howard.

6 THE CLERK: Please have a seat in the jury
7 box, sir.

8 Juror No. 79, Henry Jackson (black male).
9 What says State?

10 MS. MCELVEEN: Please present Mr. Jackson.

11 THE CLERK: What says the Defendant?

12 MS. ROSADO: Please present Mr. Jackson.

13 THE CLERK: Please have a seat in the jury
14 box.

15 Juror No. 52, Kimberly Galloway (white
16 female). What says the State?

17 MS. MCELVEEN: Please present
18 Ms. Galloway.

19 THE CLERK: What says the Defendant?

20 MS. ROSADO: Please excuse Ms. Galloway.

21 THE CLERK: Please return to your seat.
22 You've been excused from this trial, ma'am.

23 Juror No. 157, Kendra Simmons (black
24 female). What says the State?

25 MS. MCELVEEN: Please present Ms. Simmons.

1 THE CLERK: What says the Defendant?

2 MS. ROSADO: Please present Ms. Simmons.

3 THE CLERK: Please have a seat in the jury
4 box please, ma'am.

5 Juror No. 178, Danielle Welch (white
6 female). What says the State?

7 MS. MCELVEEN: Please present Ms. Welch.

8 THE CLERK: What says the Defendant?

9 MS. ROSADO: Please present her.

10 THE CLERK: Have a seat in the jury box,
11 ma'am.

12 Juror No. 184, Michael Winefeldt (white
13 male). What says the State?

14 MS. MCELVEEN: Please present the juror.

15 THE CLERK: What says the Defendant?

16 MS. ROSADO: I'm sorry, could you tell me
17 his number again?

18 THE CLERK: Yes, ma'am, 184.

19 MS. ROSADO: 184. Please present the
20 juror.

21 THE CLERK: Have a seat in the jury box
22 please, sir.

23 Juror No. 182, John Wills (white male).
24 What says the State?

25 MS. MCELVEEN: Please present Mr. Wills.

1 THE CLERK: What says the Defendant?

2 MS. ROSADO: Please present him.

3 THE CLERK: Please have a seat in the jury
4 box.

5 Juror No. 159, Jarlisa Sinkler (black
6 female). What says the State?

7 MS. MCELVEEN: Please present Ms. Sinkler.

8 THE CLERK: What says the Defendant?

9 MS. ROSADO: Please present her.

10 THE CLERK: Please have a seat in the jury
11 box, ma'am.

12 First alternate, Juror No. 115, Robin
13 Mixon (white female).

14 MR. FINNEY: What number is that?

15 THE CLERK: I'm sorry, 115.

16 MR. FINNEY: Thank you.

17 THE CLERK: Yes, sir.

18 THE COURT: Strikes will be one and two
19 for the alternate -- for each alternate.

20 THE CLERK: What says the State?

21 MS. MCELVEEN: Beg the Court's indulgence.
22 Please present Ms. Mixon.

23 THE CLERK: What says the Defendant?

24 MS. ROSADO: Please excuse Ms. Mixon.

25 THE CLERK: Please return to your seat,

1 ma'am.

2 Juror No. 14, William Boswell (white
3 male). What says the State?

4 MS. MCELVEEN: Please present the juror.

5 THE CLERK: What says the Defendant?

6 MS. ROSADO: Please excuse him, sir.

7 THE CLERK: Please return to your seat,
8 sir.

9 Juror No. 8, Binnah Barno (black female).
10 What says the State?

11 MS. MCELVEEN: Please present Ms. Barno.

12 THE CLERK: What says the Defendant?

13 MS. ROSADO: Please present Ms. Barno.

14 THE CLERK: Please have a seat in the jury
15 box.

16 Juror No. 97, Shirleeia Lewis (black
17 female). What says the State?

18 MS. MCELVEEN: Your Honor, please excuse
19 the juror from the trial of this case.

20 THE CLERK: Please return to your seat,
21 ma'am.

22 MS. MCELVEEN: Thank you.

23 THE CLERK: Juror No. 135, Curtis Plum,
24 Jr. (white male). What says the State?

25 MS. MCELVEEN: No reason for cause from

1 the State.

2 THE COURT: What says the Defendant?

3 MS. ROSADO: Please present him.

4 THE CLERK: Please have a seat in the jury
5 box.

6 MS. MCELVEEN: Your Honor, are we having
7 one alternate?

8 THE CLERK: Two.

9 THE COURT: Okay. Ms. McElveen,
10 Ms. Rosado, if y'all'd step up here please real
11 quick.

12 (WHEREUPON, counsel approached the
13 bench for an off-the-record discussion.)

14 THE COURT: Ladies and gentlemen who have
15 been selected as jurors in this case, I've got a few
16 more names to read to you and ask. The question is
17 the same as to each of these individuals. Do you --
18 are you related by blood or marriage or do you have
19 a close, personal, or social relationship with any
20 of these individuals: Crystal Bryan, Brandon Upson,
21 Curtis Hilton, Antonio Martin, Sabrina Belcher,
22 Demetrius Boyd, Mizell Whittaker, Stephanie Hodges,
23 Patrick Simon, Whitney Foreman, Kathy Small, Tye
24 Wolf, Tamara Deas, and Jazz Johnson.

25 All right, sir, what's your number?

1 PROSPECTIVE JUROR: 135.

2 THE COURT: You're Mr. ---

3 THE CLERK: Plum.

4 THE COURT: Plum, correct?

5 PROSPECTIVE JUROR: Yes, sir.

6 THE COURT: Mr. Plum, which witness do you
7 know?

8 PROSPECTIVE JUROR: Stephanie Hodge.

9 THE COURT: Okay. And what's -- Stephanie
10 Hodges.

11 PROSPECTIVE JUROR: Hodges.

12 THE COURT: Hodges.

13 PROSPECTIVE JUROR: Hodges, Hodge.

14 THE COURT: Okay. Thank you. All right,
15 anybody else?

16 (There was no response.)

17 THE COURT: All right. If you'd hand this
18 back to Ms. Rosado.

19 Ladies and gentlemen, those of you who are
20 selected on this case, the procedure is gonna be a
21 little bit out of the ordinary as I told you before
22 because we've got this mandatory state holiday
23 that's in the middle of the week. What I'm gonna
24 ask you to do, ladies and gentlemen, is you were
25 given a number in your packet of materials which is

1 directly to the Clerk of Court's office. There will
2 be a message on the recording that you get when you
3 call that number. I'm gonna ask that you call that
4 number between 11 and 12 a.m., 11 a.m. and 12 noon
5 on Wednesday. There's a case -- as y'all saw,
6 there's a case that was picked ahead of you so we
7 will be able -- be in a position to further instruct
8 you as to what we're gonna need you to do at that
9 time. Now, it's just a recording. It will give you
10 instructions. You can argue with it if you want to,
11 but it won't say anything, okay.

12 So you are free to go. Please call that
13 number after 11 on Wednesday for further
14 instructions, and it will be specific. It'll say
15 something to the effect if you were selected on the
16 case of the State v. Brittany Martin, then these are
17 your instructions. It'll either tell you another
18 time to call back or a time to report. So the
19 bailiffs will show you where we'll need you to come
20 if we need you on Wednesday; but like I said, the
21 recording will -- will give you further
22 instructions. So, folks, if you will follow the
23 bailiffs, they will show you where to report when we
24 need you to come back.

25 (WHEREUPON, the jury was removed from

1 the courtroom at 1:04 p.m.)

2 (WHEREUPON, counsel approached the
3 bench for an off-the-record discussion.)

4 THE COURT: All right, folks. Since this
5 case is the backup case, I'm not sure when we'll
6 reconvene. It obviously depends on the outcome of
7 the first case. Ms. Martin.

8 THE DEFENDANT: Yes, sir.

9 THE COURT: You understand that this case
10 is the backup case; and we're gonna give you as much
11 notice as we can, but it's your job to stay in touch
12 with Ms. Rosado to be informed of when the case will
13 resume. You understand that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: All right. And, Ms. Martin,
16 as we were going through the jury selection process
17 there were a couple of times that you thanked me,
18 you don't need to do that. I'm just doing my job.
19 If you want anything brought to the Court's
20 attention, especially once the trial starts, let
21 Ms. Rosado know. She'll let me know. I'm not mad
22 by any stretch of the imagination, but I just want
23 you to know that once the trial starts, court rules
24 require that things be done a certain way and
25 Ms. Rosado knows the way to get things properly

1 before the Court. She knows the way to address me
2 in a way that it will not disrupt the trial in any
3 fashion so. And, again, I want -- anything that
4 needs to be heard by me, I want to hear it, but it's
5 got to be done in a proper way. You understand
6 that?

7 THE DEFENDANT: Well, you know, one thing
8 about me, I will not dehumanize myself.

9 THE COURT: Well, Ms. ---

10 THE DEFENDANT: I do have manners, sir.
11 Whether or not I say thank you, excuse me, whatever,
12 to any one of y'all, I will do that, sir.

13 THE COURT: I appreciate that, ma'am, but
14 that's -- that's -- that's not required and, you
15 know, I don't think you've ever been in front of me
16 before so I just -- I like to have a set of rules
17 that everybody is gonna follow, and it applies to
18 each side.

19 THE DEFENDANT: Yes, sir.

20 THE COURT: And also to that end, there
21 have not been any requests submitted pursuant to the
22 South Carolina Appellate Court Rule 605. That
23 governs the use of media, the use of photographs,
24 things of that nature. Court will strictly comply
25 with the mandates of Rule 605 with regard to any

1 requests for any proceedings to be streamed,
2 televised, photographs being taken, anything of that
3 nature. Any unauthorized photographs, live streams,
4 any media whatsoever, will not be met favorably by
5 the Court. The rule, as I stated before, in South
6 Carolina Appellate Court Rule 605 that governs how
7 the proceedings in court are to be publicized, if at
8 all.

9 THE DEFENDANT: Okay.

10 THE COURT: And I just caution anyone from
11 the local news media, anyone from the prosecution or
12 the defense, that I'm gonna follow those mandates
13 strictly. They were -- they've been promulgated by
14 the Supreme Court, and any violations of those
15 mandates of Rule 605 could be met with contempt of
16 court. So those things being said, we will be in
17 recess with regard to this particular trial
18 indefinitely until we hear an outcome of the case of
19 the State v. McKenzie which was picked earlier
20 today.

21 THE DEFENDANT: Judge Griffin, can I make
22 sure I got it clear? So you're saying that -- I
23 know a couple of journalists, that they're not able
24 to be in the courtroom?

25 THE COURT: You got a couple -- a couple

1 of whats?

2 THE DEFENDANT: Journalists.

3 THE COURT: Journalists.

4 THE DEFENDANT: Yeah.

5 THE COURT: If they are -- if they are
6 journalists, they have to comply with that court
7 rule I mentioned. And it's in my discretion. I
8 have to give them permission to record, to take
9 photographs, things of that nature. There's a
10 procedure that has to be followed, but ---

11 THE DEFENDANT: I know for a fact there
12 gonna be some media coverage, like, my people, my
13 team. The South Carolina Black Women are ready, the
14 (indiscernible) are ready. The Black Voters Matter
15 team coming and by their wishes.

16 THE COURT: Well, ---

17 THE DEFENDANT: I just wanted to be clear
18 on that.

19 THE COURT: All, all I can tell you is if
20 they -- if they hold themselves out as media, they
21 should be familiar with Rule 605 of the Appellate
22 Court rules and they should submit the appropriate
23 paperwork to be allowed. I'm not gonna keep anybody
24 out of the courtroom. The courtroom is -- this --
25 this courtroom belongs to the people, but the

1 Supreme Court has set forth rules that everybody has
2 to follow with regard to media coverage so. I can't
3 predict the future. Anybody who believes they have
4 a right to cover this case as media has to comply
5 with the rule; and if they don't, then there'll be
6 consequences, but I can't perspective say who has
7 permission to do what because I haven't received any
8 requests to consider this matter by anyone as of yet
9 so we'll see what happens. If any requests are
10 made, we'll take those up in due course. All right.

11 MS. MCELVEEN: Thank you, Your Honor.

12 THE COURT: This matter is adjourned until
13 further notice.

14 (WHEREUPON, court was adjourned and resumed on May
15 11, 2022.)

16 MS. MCELVEEN: Your Honor, I wondered, can
17 me and Ms. Rosado approach quickly?

18 THE COURT: Okay.

19 (WHEREUPON, counsel approached the
20 bench for an off-the-record discussion.)

21 THE COURT: Good afternoon, ladies and
22 gentlemen. Before we get started this afternoon, I
23 want to go over a few things in terms of ground
24 rules or how court will be conducted as this case
25 goes forward. First, if there's any member of the

1 media in this courtroom or someone who holds
2 themselves out to be a member of the media -- we
3 talked about this when we were together on Monday --
4 that South Carolina Appellate Court Rule 605 governs
5 any media coverage or requests for media coverage.
6 As of this point in time I have not received any
7 request for media coverage so if I see any audience
8 member taking photographs, attempting to live stream
9 anything absent the required permission as mandated
10 by Rule 605, that person will be removed from the
11 courtroom if that occurs. The -- while our
12 courtrooms are open, there is a procedure that the
13 law has established that must be followed, and I
14 will follow the rules to the letter.

15 Number two, -- and this is just a general
16 statement -- if any juror is contacted by any party
17 to this case while this case is ongoing, I'll have
18 to question that juror about what contact has been
19 made and what effort, if any, has been made to
20 contact that juror. Any juror contact could result
21 in this case being mis-tried and essentially putting
22 this case back at square one. So, just a word of
23 caution to anybody who's involved in this case, any
24 juror contact by a party, a witness, an attorney, or
25 anybody associated with either side of this case,

1 could subject this case to be mis-tried so, proceed
2 at your own caution.

3 Ms. McElveen, anything from the State
4 before we bring the jury in?

5 MS. MCELVEEN: Nothing, Your Honor.

6 THE COURT: Ms. Rosado, anything from the
7 Defense?

8 MS. ROSADO: No, Your Honor. Thank you.

9 THE COURT: All right. And, Ms. Rosado,
10 before we bring the jury in, you're kind of soft
11 spoken. Make sure that you're close to the
12 microphone so Madam Court Reporter can hear you.
13 It's quite a distance from counsel table to Ms. --
14 to -- from counsel table to the court reporter's
15 area, so just make sure that the microphone is
16 picking up your voice. Before -- before I swear the
17 jury I'm gonna read these additional names that were
18 submitted to the witness list.

19 And, Ms. McElveen, you also wanted to
20 submit Chief Roark's name for the jury's
21 consideration as well?

22 MS. MCELVEEN: Yes, Your Honor, and he's
23 here present and will stand at the appropriate time.

24 THE COURT: All right. Bring us the jury.

25 THE CLERK: Yes, Your Honor.

1 (WHEREUPON, the jury was returned to the
2 courtroom at approximately 2:31 p.m., and the
3 following proceedings commenced in open court.)

4 THE COURT: Good afternoon, ladies and
5 gentlemen of the jury. Thank you for your prompt
6 return to the courthouse this afternoon. I always
7 worry a little bit when we give instructions that
8 are set -- for something that's set to take place in
9 the future, the wires might get crossed. But I'm
10 glad that you are all here with us this afternoon
11 and we are about to proceed with the trial of the
12 case of the State v. Brittany Martin. Before we
13 proceed any further, there are a few more names of
14 potential witnesses which were inadvertently left
15 off the witness list which was presented to me on
16 Monday morning. So, ladies and gentlemen, again,
17 I'm gonna read a list of names who -- people who
18 might testify in this case. If you are related by
19 blood or marriage or have a close personal or social
20 relationship with any of these individuals, please
21 stand up for me.

22 There's a list of nine names I'm gonna
23 read. Crystal Bryan, Eric Kennedy, Curtis Hilton,
24 Antonio Martin, Demetrius Boyd, Major Terrence
25 Colclough, Stacy Lynn, Karimah Gilley, and Chief

1 Russell Roark of the Sumter Police Department. If
2 any member of the jury panel is related by blood or
3 marriage or has a close personal or social
4 relationship with any of these potential witnesses,
5 please stand.

6 (There was no response.)

7 THE COURT: All right, thank you. No one
8 stood. Please swear the jury, Mr. Tomlin.

9 THE CLERK: May I please the Court, Your
10 Honor.

11 THE COURT: Yes, sir.

12 THE CLERK: Ladies and gentlemen on the
13 jury panel, would you please stand and raise your
14 right hand.

15 (WHEREUPON, the jury was sworn at 2:35 p.m.)

16 THE CLERK: You may be seated. Are there
17 anyone who did not took the oath?

18 (There was no response.)

19 THE CLERK: All jurors have been sworn,
20 Your Honor.

21 THE COURT: Thank you, Mr. Tomlin.

22 Ladies and gentlemen of the jury, the case
23 we're about to try is the case of the State of South
24 Carolina v. Brittany V. Martin. And before we begin
25 this trial, I want to tell you that this trial will

1 probably be different from what you might expect.
2 Many people do not have a chance to attend actual
3 court sessions as you are doing now and may think
4 from watching television or movies or reading books
5 that trials are always full of high drama, intense
6 action, and rivetting circumstances. While all of
7 these things may be true at times, this trial is not
8 for our entertainment. It is a fundamental part of
9 our democracy. Trials are often slow, deliberate,
10 and repetitive, the opposite of what you may have
11 seen on television or in movies or read in books.
12 This courtroom is a place of honor dedicated to the
13 protection and preservation of citizens' rights
14 through what many have called the greatest justice
15 system ever created. The attorneys appearing before
16 you are advocates for the parties they represent;
17 but first and foremost, they are officers of the
18 court sworn to uphold the integrity and fairness of
19 our judicial system. You should expect them to be
20 professional, competent, and ethical in the
21 representation of their client's interest. Remember
22 that you have taken an oath to try this case and
23 reach a verdict and you are also expected to be
24 professional, reasonable, and ethical. Thank you
25 for accepting the important responsibility of jury

1 service and for your contribution today to our
2 justice system.

3 Ladies and gentlemen, what I will say now
4 is intended to serve as an introduction to the trial
5 of this case. These remarks are not a charge on the
6 law in this case. I will instruct you on the law
7 applicable to this case at the end of the trial
8 before you retire to consider your verdict. This is
9 merely an explanation of the procedure that we'll
10 follow in the trial of this case so that you may
11 better understand what may be happening.

12 The defendant is charged by an indictment
13 filed in this court with the crimes of breach of
14 peace high and aggravated, instigating a riot, and
15 threatening the life of a public official, and there
16 are five counts of that threatening the life of
17 public official charge. The elements of all of
18 these offenses will be explained to you later. And
19 as I told you on Monday, the indictment is simply
20 the document by which the case is brought into court
21 and it is not in any sense evidence of any of the
22 allegations it contains. The defendant has pleaded
23 not guilty to the charges in this indictment. The
24 State, therefore, has the burden of proving each of
25 the elements of the charges on the indictment beyond

1 a reasonable doubt; and it will be your duty, ladies
2 and gentlemen, to decide whether the State has met
3 that burden.

4 Your purpose as jurors is to find and
5 determine the facts. You're the sole judges of the
6 facts. If at any time I make any comment regarding
7 the facts, you must disregard those comments. You
8 are to determine the facts from the testimony you
9 hear and the other evidence introduced in court. It
10 is up to you to determine the inferences which you
11 feel may properly be drawn from that evidence. It
12 is especially important that you perform your duty
13 of determining the facts diligently and
14 conscientiously because, ordinarily, there's no way
15 to correct an erroneous determination of facts by a
16 jury. On the other hand and with equal emphasis,
17 the same law that makes you the judges of the facts
18 makes me the judge of the law. The law as given by
19 the Court is the only law you may consider. You
20 must accept and follow it even though you may
21 disagree with it. I cannot tell you what the facts
22 are, and you cannot disagree with me about what the
23 law is or what it should be. Your job is to take
24 the law as I give it to you and apply it to the
25 facts as you find them from testimony of the

1 witnesses and any other evidence that is introduced.
2 After doing that, you'll render a verdict under the
3 solemn oath you just took as jurors.

4 Until I advise you to begin your
5 deliberations, you must not discuss this case with
6 anyone, including your fellow jurors, friends,
7 family members, and anyone involved in the case.
8 This includes discussions face to face and those by
9 telephone, email, text, blogs, or any other method
10 of communication, including social media. You may
11 not use a computer, cellular phone, or any other
12 electronic device with communication capabilities at
13 any time while in the courtroom or during your
14 deliberations. During your breaks from meals or
15 overnight, you may use these devices; however, you
16 may not at any time use these devices to get or send
17 information about the case. This includes
18 information about a party, a witness, an attorney,
19 or other court officer, news accounts about the
20 case, research on any topics raised, any topics you
21 may think would be helpful in deciding the case, or
22 any testimony presented by any witness.

23 During this trial do not read, listen to,
24 or watch any reports about this case. This includes
25 anything that may be in the newspapers or on the

1 internet, radio, or television. You must not
2 consider anything you may have read or heard about
3 the case outside the courtroom whether before or
4 during the trial.

5 After the case is submitted to you, you
6 must discuss it only in the jury room with your
7 fellow jurors. The attorneys and parties in this
8 case have been advised that they are not to talk to
9 you at all. So if you see anyone involved in the
10 case and they do not even say hello, they're not
11 being unfriendly, they were just following my
12 instructions. It is important that you keep an open
13 mind and not decide any issue in the case until all
14 of the evidence has been presented, the parties have
15 made their closing arguments, and I have instructed
16 you on the law in this case. It is your solemn
17 responsibility to determine the guilt or innocence
18 of the defendant, and your verdict must be based
19 solely on the evidence as it is presented to you
20 during this trial and on the law as I instruct you
21 during and at the close of the trial.

22 In just a moment the solicitor will make
23 what's called an opening statement in which the
24 solicitor will explain to you the issues in this
25 case, or at least what the solicitor thinks the

1 issues are in this case. The attorney for the
2 defendant may also make an opening statement,
3 although she is not required to do so. What the
4 attorneys tell you during their opening statements
5 is not evidence in this case; it is only their
6 contention as to what the issues are.

7 The evidence in this case will be
8 presented to you by the testimony of sworn witnesses
9 from the witness stand and/or by exhibits that may
10 be introduced into evidence. From time to time
11 during the trial you may hear one of the lawyers say
12 something like, Your Honor, I believe we have a
13 question of law or a matter of law to discuss with
14 you, or Your Honor, may we approach the bench. Or
15 sometimes I, myself, might find it necessary to
16 excuse you from the courtroom for a short while so
17 the attorneys and I can discuss a matter of law.
18 The reason for this is because you are the judges of
19 the facts in this case and sometimes when I'm
20 discussing matters of law with the attorneys, it may
21 be necessary for me to make some comment as to the
22 facts in connection with ruling whether or not a
23 particular law applies. I am not supposed to tell
24 you what I think the facts are, so I will excuse you
25 from the courtroom while these discussions take

1 place so that in no way you will be influenced by
2 anything I might say or do in connection with the
3 facts.

4 In determining what the facts are in this
5 case, you must decide whether or not the testimony
6 of the witnesses is believable. It will be my
7 responsibility to rule as a matter of law as to
8 whether certain testimony is admissible at all or
9 not; but once the testimony is admitted, whether or
10 not you believe is -- whether you are -- whether you
11 believe it or not is solely for you to determine.

12 In deciding whether to believe a witness,
13 you have the right to consider the interest of any
14 witnesses, the bias of any witness, the prejudice of
15 any witness, the opportunity for the witness to have
16 seen the matters and things about which the witness
17 may testify, and the way the witness acts on the
18 witness stand. You have a right to consider
19 anything that is in the record that will help you
20 evaluate the testimony of the witnesses. That means
21 that it's your duty to pay close attention to these
22 witnesses, to observe the witnesses, to listen to
23 the witnesses, and to pay close attention to the
24 attorneys and to the Court. Don't let your thoughts
25 wander but give strict attention to the testimony in

1 this case so that at the end of all the testimony,
2 after the arguments of counsel, and the charge on
3 the law by the Court, you will then be in a position
4 to determine what the facts are and apply the law to
5 those facts and, thus, render a verdict.

6 Ladies and gentlemen, that brings my
7 opening remarks to a close. In order to preserve
8 everyone's rights, I will give the parties an
9 opportunity to object to anything I've said.

10 Are there any exceptions to anything that
11 I've said to the jury from the State?

12 MS. MCELVEEN: Nothing from the State,
13 Your Honor.

14 THE COURT: Anything from the Defense?

15 MS. ROSADO: No, Your Honor.

16 THE COURT: All right, thank you very
17 much.

18 MS. MCELVEEN: Your Honor, will you -- I
19 just want to make sure before we start that you were
20 going to make that specific inquiry.

21 THE COURT: Yes, ma'am. Ladies and
22 gentlemen, before we get started in this case, you
23 may have seen what I've been described as a booth or
24 table set up outside the courtroom. Did any member
25 of the jury panel have any contact with the

1 individuals who are manning that booth or table by
2 any means whatsoever?

3 (There was no response.)

4 THE COURT: All right. Again, I've
5 instructed the parties in this case -- parties,
6 witnesses, attorneys -- that they are not to have
7 any contact with any jurors. If any contact is made
8 by anyone with any of you, you're certainly within
9 your rights to bring it to the Court's attention and
10 that will be dealt with accordingly.

11 All right, ladies and gentlemen, we're
12 gonna proceed to opening statements. I'm gonna
13 recognize Ms. McElveen on behalf of the State.

14 MS. MCELVEEN: Thank you, Your Honor.

15 Good afternoon. My name is Bronwyn
16 McElveen, and I'm a deputy solicitor here in Sumter
17 County. I work for, at the pleasure of, the
18 Honorable Ernest A. "Chip" Finney, our elected
19 solicitor. You guys are here today serving an
20 incredible duty. We have a fantastic judicial
21 system, I think the best in the world. There can
22 always be improvements, but we have the best system
23 in the world. Today you're gonna hear a case that
24 is not about a lot of things. I'm gonna tell you
25 what it's not about before I tell you what it is

1 about.

2 This case is not about race. Let me just
3 go ahead and say that. This case is not about
4 George Floyd, a nightmare for our country and a
5 nightmare to watch. That's what -- this is not
6 about that. This case is not about Black Lives
7 Matter. This case is not about politics. This case
8 is not about Blue Lives Matter. This case is not
9 about one side or the other. This case, this case,
10 is about right and wrong, legal versus illegal.

11 And, ladies and gentlemen, this case is
12 going to hear -- you're going to hear about facts
13 about how Ms. Martin breached the peace in a high
14 and aggravated nature from May 31st until June 3rd,
15 about how she instigated riots and by not peacefully
16 protesting. And you're gonna hear, ladies and
17 gentlemen, about how she threatened officers. All
18 of them are very serious charges. The victims, we
19 have the officers here, you'll hear from all of them
20 and more. And you'll hear from a lot of officers.
21 And I'm sorry if it's time consuming, but all of
22 these circumstances were time consuming for the
23 community and for this law enforcement agency
24 specifically.

25 There are certain unalienable rights. The

1 beautiful thing about being in America is that we
2 live in a country where we have certain unalienable
3 rights. We have the right to have free speech. We
4 have the right to peacefully protest. We have the
5 right to possess guns in a safe manner. We have the
6 right from illegal searches and seizures. We have
7 reasonable expectations of privacy. We have
8 wonderful rights that we have fought for and that
9 our country has provided from centuries of
10 governments. At some point, though, and I think
11 that this is evident in all of America, one person's
12 rights are not more important than another person's
13 rights. One person's rights can't overtake someone
14 else's rights.

15 You will hear testimony how Ms. Martin had
16 the right to protest, had a right to peacefully
17 protest and demonstrate and speak her mind and
18 exercise that First Amendment, and that was
19 wonderfully embraced and actually many olive
20 branches extended and many concessions given to
21 allow her to do that; but at a certain point, her
22 behavior went past her rights and started infringing
23 on the rights of others. Public safety was a
24 concern, and you'll hear all about this. And then
25 the right of officers to not be threatened with

1 physical harm and worse, I mean, worse than physical
2 harm, being killed. At a certain point one person's
3 rights don't overtake somebody else's. That's the
4 beauty of America. She was given the many
5 opportunities to exercise her rights. The police
6 department didn't try to quash that. If anything,
7 they tried to provide support in a way that was
8 reasonable and would keep her and the people who
9 were with her and the other people on the streets
10 safe in exercising those rights. You'll hear how
11 she plowed through those and how it became a very
12 dangerous situation, especially to our officers.

13 I know this will be time consuming. There
14 are a lot of videos. I know that we all get tired
15 and especially after lunch we get, you know, it gets
16 kind of warm. If you feel like you're tired, please
17 just make a point to let the Court know or at least
18 indicate that you need a break because every single
19 piece of evidence and every testimony that is given
20 is important to this cause. These officers were
21 affected for four days. They barely slept. They
22 were afraid, quite frankly, but they were standing
23 up for the public and they had to do what's right
24 for public safety.

25 Based on your duty as the best one here,

1 we couldn't do this system without you guys. We
2 couldn't have this wonderful system without you
3 guys. We appreciate your time and your effort. I
4 know that there are a million other things you'd
5 rather be doing than serving jury duty, but having
6 you here in these seats allows us to have a better
7 justice system and a more fair system. Thank you
8 for your time. I look forward to addressing you
9 again at the end, and I appreciate the attention
10 you'll give to our witnesses and the thoughts you'll
11 give to what is an issue and what is not an issue.
12 And the issue here comes down to right and wrong,
13 legal versus illegal, and keeping the public and
14 everybody's rights safe. Thank you.

15 THE COURT: Thank you, Ms. McElveen.

16 Ms. Rosado.

17 MS. ROSADO: Good afternoon. My name is
18 Dr. Sybil Rosado and I am a professor of cyber
19 security, civil rights, and, obviously, law at
20 Benedict College. One of the things that I decided
21 long ago was that I would use my law degree to help
22 people, I would be a defender. That's what I'm here
23 doing today. Previously in my earlier life I've
24 been a police officer, I've been a civil professor,
25 a lawyer, a cyber security expert. Ms. Martin is my

1 client.

2 The prosecution would have you believe
3 that this case is not about race, this case is not
4 about George Floyd, this case is not about the state
5 of unrest our country was going through in 2020.
6 Unfortunately, that's not the actual case. This
7 case is all about what was going on in 2020. This
8 case is about how the country was up in arms about
9 the George Floyd and the Breonna Taylor incident in
10 2020. This case is hinging on those events.

11 Ms. Martin is an activist. She wants to
12 be a defender. She has dedicated her life to being
13 a defender; and in being a defender, one of the
14 things that she does well is that she protests, she
15 protests injustice. This case is about injustice.
16 This case is about civil rights. This case is about
17 free speech. We live in a country that has been
18 grounded in the concept that I can say whatever I
19 need to say as long as it is not considered fighting
20 wars. I can stand up and say I don't like you. I
21 can stand up and say I don't like the police. I can
22 stand up and say I dislike what is going on in the
23 supreme court right now, because I actually do.
24 That is my right just like I have a right to carry a
25 concealed weapon and in the State of South Carolina

1 carry it open if I'd like to. Just like I have the
2 right to go hunting, just like I have the right to
3 drive because I have a license, these are the rights
4 that we're given. But free speech is one of the
5 fundamental rights that we all cherish. It's one of
6 the rights that I'm sure all of you heard about when
7 you were a child. My kids come to me all the time
8 and say, but mom, don't I have free speech. I say,
9 no, you're my kid, shut up because they don't have
10 free speech, but we do.

11 And in this case, this is about an
12 activist trying to stand up for what she saw as an
13 injustice. You cannot separate the George Floyd
14 incident. You cannot separate the Breonna Taylor
15 incident. She would not have been outside
16 protesting if those things had not occurred. So you
17 cannot pretend as if there wasn't an activation that
18 occurred to create the need to protest. You also
19 cannot pretend as if there's not a problem in our
20 community that needs to be protested against. This
21 is a recognizable problem that in 2020, along with
22 the pandemic, rose to a head with those two
23 incidents.

24 Ms. Martin, my client, stood for other
25 people. She stood outside of the courthouse here.

1 She stood outside of the police department. She
2 feeds the homeless. She's a single mother. She's
3 currently going to be a mother again right now. She
4 is a person who learned to nurture and stand up for
5 the people in her life, and those people also happen
6 to be people who are not necessarily related to her.
7 She's one of those people who stands up for others.
8 And in standing up, we've got to stand up for her
9 now and protect her right to say what she thinks
10 without being frightened or afraid that she'll be
11 convicted because she said what she thought or get
12 arrested because she spoke her mind. All of us here
13 have had something to say at some point. I'm sure
14 many of you have a social media presence and you
15 type really fast and said, I don't like that, or
16 your friend posted something and you didn't like it.
17 One of my friends constantly posting he's a Trump
18 supporter and he posts a lot of different
19 interesting things; and when I don't like what he
20 says, I say so. But when I like what he says, I say
21 that also. Why? Because I have the right to say
22 what I want to in this country. I do not live in
23 Russia, thank God. And in this country I can say
24 what I want. Now does that mean I can do something
25 to hurt you? No. But I can say what I want. Can I

1 hurt your feelings? Sometimes what I'd say might
2 hurt your feelings. But this is a case about an
3 activist who is exercising her right to free speech.
4 This is about someone yelling, black power. This is
5 about standing up in the Olympics and holding up
6 your fist. At the time it was seen as an
7 insurrection; wasn't it? But we all look back on it
8 now and realize, no, it was the beginning of a
9 movement. We all recognize it now as the nascent
10 moment of the civil rights movement. When I say
11 Angela Davis people think, oh, that one with the
12 hair style, the afro; or do they think black power,
13 do they think civil rights.

14 Ms. Martin is standing for her community.
15 She is an activist. She is an advocate. She
16 exercised her free speech. Black power. She is no
17 different than John Lewis. She is no different than
18 Martin Luther King, all of whom were arrested for
19 civil freedom. Ms. Martin said, power to the
20 people. Ms. Martin said, I'm ready to die for the
21 Black community, are you ready to die for the blue?
22 Ms. Martin is passionate about protecting people.
23 Her statements are free. Her statements are
24 grounded in a freedom I'm gonna ask you to protect
25 again. I'm asking you to allow people to speak.

1 We're living in a country where even -- and I'll be
2 honest with you, I'm not happy with the fact that
3 Trump has been censored off of Twitter and
4 everything else. I think you should let people
5 speak. Let them speak. Everyone has a right to
6 speak, even Trump, even Ms. Martin. It is her right
7 to say how she feels. It is her right to stand for
8 the people that she sees following around her, for
9 the black men and women she sees dying in her
10 community who don't fall on their own.

11 Each of us, each of us, cherishes these
12 rights as American. Today I'm going to ask you to
13 help me uphold those rights that we all have. And,
14 yes, this is about race. We all saw what happened
15 on January 6th. We all saw a real riot. That's not
16 what we see here. We see people peacefully
17 demonstrating. There's a difference. There were no
18 doors torn. There were no officers assaulted and
19 physically beat up. We see people protesting which
20 is another one of our fundamental rights. I'm gonna
21 ask you to help me protect her rights because in
22 protecting her rights, we are protecting everyone's
23 rights. These are the rights that we all cherish
24 and we need to protect. Someone has to do it, and
25 Ms. Martin has taken up that mantel. Please do not

SW - J. JACKSON - DIRECT

1 allow the prosecutors to punish her for attempting
2 to protect our rights. Thank you so much.

3 THE COURT: Ms. McElveen.

4 MS. MCELVEEN: Yes, Your Honor. The State
5 would call Colonel Jeffery Jackson to the stand.

6 THE CLERK: Place your left, raise your
7 right. State your name.

8 THE WITNESS: Jeffery Jackson.

9 THE CLERK: Do you solemnly -- excuse me.
10 You solemnly swear or affirm your testimony to the
11 Court shall be the truth, whole truth, nothing but
12 the truth, so help you God?

13 THE WITNESS: I will.

14 WHEREUPON,

15 **JEFFERY JACKSON,**
16 having been duly sworn by the clerk, testified
17 as follows:

18 THE CLERK: Thank you much, sir. Step
19 around. State your name for the record and spell
20 your last name please.

21 THE WITNESS: Jeffery Jackson,
22 J-A-C-K-S-O-N.

23 MS. MCELVEEN: Beg the Court's indulgence.

24 THE COURT: Yes, ma'am.

25 MS. MCELVEEN: I have to show some video

1 and get this queued up. Thank you, Your Honor,
2 sorry. Just need a second. Your Honor, if it's
3 okay to proceed with questioning while Investigator
4 Caufield sets up the ---

5 THE COURT: Sure.

6 MS. MCELVEEN: ---media.

7 **DIRECT EXAMINATION**

8 BY MS. MCELVEEN:

9 Q I think I gave it away when I called you
10 up, but can you tell me where you work and what your
11 rank is and what you do?

12 A Yes. I am employed by the City of Sumter
13 Police Department. My current rank is Colonel,
14 Lieutenant Colonel, and I'm the Assistant Chief of
15 Police for Sumter Police Department.

16 Q How long have you been with the police
17 department in law enforcement?

18 A I've been employed with the Sumter Police
19 Department for 34 years, all with the Sumter Police
20 Department.

21 Q Thank you for your service.

22 A Thank you.

23 Q Can you tell me a little about -- about
24 where you're from and how you were brought into the
25 fold with the police department and what your

SW - J. JACKSON - DIRECT

1 experience is and how you've worked your way up?

2 A Sure. I am from Sumter, South Carolina.
3 I grew up on North Main in James Village. I
4 attended public schools of Sumter. I graduated from
5 Sumter High in 1983. I then attended Morris College
6 where I graduated in 1987 at which time I was
7 commissioned as a Second Lieutenant in United States
8 Army. I took a reserve commission and then I
9 entered the law enforcement field in 1988 at which
10 time I attended the South Carolina Criminal Justice
11 Academy and graduated and then subsequently started
12 my employment with the Sumter Police Department
13 where I have been for the last 34 years.

14 Q Thank you. Can you tell us a little bit
15 about training you received and training that's
16 given to younger officers and what the -- kind of
17 the core components are of police department in
18 executing your duty?

19 A Yeah. We're all -- law enforcement
20 officers are at the Sumter Police Department receive
21 extensive training throughout our careers. One of
22 the training implemented in the agency is empathy
23 training. Back in 2014 we sent two of our
24 supervisors to a doling consulting agency where they
25 were taught empathy training. They in turn came

SW - J. JACKSON - DIRECT

1 back and trained everyone in the agency with the
2 empathy training as a whole, and we are constantly
3 building on our empathy training throughout the
4 agency. We continuously do refresher courses, and
5 we're continuously looking at current events where
6 we build our training around those events.

7 Q Did you build your training around the
8 George Floyd incident and your response as an agency
9 to that incident?

10 A We actually, prior to the George Floyd
11 event, we implemented the empathy training and we
12 train our officers. And part of our core existence
13 is that we provide the type of atmosphere where we
14 always want to provide our citizens to make sure
15 they are feel safe and that we empathize with their
16 plight.

17 Q Can you tell us a little bit about the
18 police department's protocols right after when the
19 country was in the state that it was, broken after
20 the George Floyd incident. What did you guys do and
21 put in place for around -- surrounding those
22 circumstances for our community?

23 A We -- and during the time of the civil
24 unrest we -- law enforcement agency, we employed our
25 agents, our officers, and we placed them throughout

SW - J. JACKSON - DIRECT

1 the neighborhoods and in the communities where they
2 had an opportunity to get out and speak with our
3 citizens and to kind of engage them, understanding
4 what had just taken place. We wanted to show that
5 we're compassionate, that we were not in agreement
6 with the incidence that occurred and that we were
7 also affected by those events.

8 Q Did you give people the ability to
9 exercise their First Amendment rights?

10 A Yes. We always allow folks to come
11 exercise their First Amendment right of free speech.

12 Q What did y'all do in that circumstance?
13 When did -- did you start seeing some protests
14 coming in or some people demonstrating?

15 A Yes. Around the 31st of, I believe it was
16 May, May 31st, we started to see individuals to --
17 came in front of the law enforcement center to
18 protest at which time I, myself, went and spoke with
19 the individual who was -- said that they were the
20 leader of the protest or the person that had put the
21 protest together, and I had an opportunity to pull
22 her aside and speak with her.

23 Q And who was that?

24 A That was Ms. Brittany Martin.

25 Q And she's present today in the courtroom?

SW - J. JACKSON - DIRECT

1 A Yes, she is.

2 Q Can you indicate -- can you identify her
3 verbally for the record please?

4 A Yes. Ms. Martin is sitting at the
5 defendant's table with the yellow dress with the
6 head garment.

7 Q Thank you very much. So what sort of
8 support -- what did you talk about with Ms. Martin
9 as far as support you could provide for the
10 demonstration?

11 A Ms. Martin had -- when I originally
12 approached her she wanted to provide or have the
13 demonstrators to do a march. I in turn instructed
14 her, advised her, that there were certain procedures
15 that had to take place prior to a march being able
16 to proceed; but I told her that I would take her
17 request back to our administration or the chief of
18 police and we would make a decision on an effort to
19 assist them in allowing them to march, which we did.

20 Q And what happened when you started that
21 conversation of allowing people to march, and did --
22 did that go well?

23 A At first when I first approached
24 Ms. Martin, she did go and see -- instructed and
25 spoke with her individuals that were with her. They

SW - J. JACKSON - DIRECT

1 all then at that time moved out of the roadway. I
2 instructed her that we will assist them in their
3 ability to conduct a march at which time she
4 organized the march, gave us the route. We provided
5 law enforcement officers to escort them during the
6 route which we instructed them that they needed to
7 stay on the sidewalk. As we proceeded with the
8 march, they moved into the street which we allowed
9 them to do, and we followed the route that was given
10 to us at that time.

11 Q But for a while they were in the roadway
12 in front of the police department, correct?

13 A That is correct.

14 Q And we would like to present some -- were
15 you wearing -- where there multiple officers on
16 scene?

17 A There were multiple officers that were on
18 scene at the time of the individuals that were in
19 the roadway.

20 Q And many wearing body-worn cameras?

21 A That is correct. There were body-worn
22 cameras by the officers on the scene.

23 MS. MCELVEEN: Your Honor, at this point
24 we would like to present to the jury a video ending
25 in the numbers 1817 that was provided to Ms. Rosado

SW - J. JACKSON - DIRECT

1 in discovery and present it to the jury. We would
2 provide a disk to madam court reporter with that
3 evidence with all these videos clearly marked with
4 the numbers as indicated on the record after using
5 it and at night after the culmination of the trial
6 in the evenings to mark.

7 THE COURT: So all of these videos which
8 are intended to be offered will be on one disk?

9 MS. MCELVEEN: Yes, Your Honor. In fact,
10 we have one disk already that's together, thanks
11 again to Investigator Caufield, that has all but one
12 of the videos on it and that other video could be
13 put on a disk separately.

14 THE COURT: Why don't we do it this way
15 just so we can keep it straight. Why don't we mark
16 the one you have; and if it needs to be
17 supplemented, we can -- we can do that later.

18 While she's marking that, Ms. Rosado, do
19 you have any objection to these videos being
20 published?

21 MS. ROSADO: No, Your Honor. I've seen
22 the videos. I have no objection. Thank you, Your
23 Honor.

24 (WHEREUPON, State Exhibit No. 1 was
25 marked for identification only.)

SW - J. JACKSON - DIRECT

1 MS. MCELVEEN: Your Honor, may we publish
2 the video ending in 1817 to the jury, and we might
3 have to play with sound and start it over depending
4 on the audio quality. But give us a moment to just
5 kind of play with it.

6 THE COURT: Yes, ma'am. We can -- say for
7 the record which, which video this is included ---

8 MS. MCELVEEN: This is a May ---

9 THE COURT: --- with the disk.

10 MS. MCELVEEN: I'm sorry, May 31st video
11 ending in 1817 from the disk.

12 THE COURT: All right. That video ending
13 in 1817 is admitted without objection.

14 MS. MCELVEEN: Thank you, Your Honor.

15 (WHEREUPON, State Exhibit No. 1 was
16 admitted into evidence.)

17 (Publishing of State's Exhibit No. 1.)

18 MS. MCELVEEN: Your Honor, if it please
19 the Court, we're gonna start if it suits the Court
20 just to save time, starting at 4 minutes in -- on
21 that video. And Ms. Rosado is welcome to play this
22 any time for the rest of the case. Just for the
23 sake of time, Your Honor, starting at 4 minutes.
24 And I think ending at 11 minutes, Your Honor.

25 THE COURT: Let's play with the volume a

SW - J. JACKSON - DIRECT

1 little bit. That seemed a little -- a little harsh
2 to my ears.

3 MS. MCELVEEN: Sorry.

4 THE COURT: Ladies and gentlemen of the
5 jury, if you have any trouble hearing as this video
6 is being played, raise your hand, kind of get my
7 attention.

8 Yes, sir.

9 JUROR: Your Honor, this monitor is not
10 working.

11 THE COURT: All right. I've been informed
12 by court staff that they are continuously having
13 trouble with that monitor. I think the best we can
14 do, sir, is offer you to look at one of the big
15 screen monitors or maybe piggyback off of one of
16 your neighbor's monitor. Apparently that is, at
17 least at this point, is incapable of being repaired.

18 MS. MCELVEEN: Your Honor, if I may, I
19 don't know if it would help, we can put a chair
20 maybe at the end. A screen is more visible right
21 there and let someone else see more clearly, okay.
22 Thank you.

23 (Pause.)

24 MS. MCELVEEN: We're going to play in
25 hopes the volume is okay. We switched to a

SW - J. JACKSON - DIRECT

1 alternate source of the video. That might help.

2 (Publishing of State's Exhibit No. 1.)

3 BY MS. MCELVEEN:

4 Q Colonel Jackson, is that the defendant ---

5 A That is correct. That is the defendant.

6 MS. MCELVEEN: Investigator Caufield, if
7 we can ---

8 THE COURT REPORTER: Hang on.

9 MS. MCELVEEN: --- put a pause on that.

10 THE COURT REPORTER: Ms. McElveen, yeah, I
11 was going to say I can't hear with the ---

12 MS. MCELVEEN: Yeah, sorry.

13 THE COURT REPORTER: Okay.

14 BY MS. MCELVEEN:

15 Q So, Colonel Jackson, that was the first
16 interaction y'all had had with Ms. Martin at that
17 time?

18 A That is correct.

19 Q And that was the first day where you
20 identified her as the leader of the group?

21 A That is correct.

22 Q Was she the only group there that day or
23 were there other people there protesting?

24 A There were two groups there out there that
25 day. There was Ms. Martin's group and then there

SW - J. JACKSON - DIRECT

1 was another group who were actually following the
2 directions of law enforcement, and they were the
3 peaceful protestors.

4 Q And they were staying on the sidewalk and
5 ---

6 A That is correct. They stayed on the
7 sidewalk. They did not enter the roadway.

8 MS. MCELVEEN: If we could please pull up
9 eventually video 1817-2. That's Tyshica Gayle's
10 video please.

11 BY MS. MCELVEEN:

12 Q And just to make sure, during the video we
13 did hear her say, If y'all use excessive force we're
14 gonna use our Second Amendment, correct?

15 A That is correct.

16 Q And what is the Second Amendment?

17 A The use of -- they have a right to bear
18 arms.

19 Q And the quote that was made about cutting
20 and bleeding and killing, correct?

21 A That is correct.

22 MS. MCELVEEN: I'm gonna play another
23 video, Your Honor, that ends 1817-2, same State's
24 Exhibit 1, as provided to Ms. Rosado. That would be
25 body-worn camera from another angle, and we would

1 ask that it start around the 12 minute 30 second
2 mark on that video.

3 (Publishing of video.)

4 BY MS. MCELVEEN:

5 Q So can you describe a little bit about
6 what's going on with traffic control at that point
7 and what sort of dangers that are being presented to
8 the community at that point?

9 A Yes. At that point, as you can see from
10 the video, they have disrupted the traffic flow on
11 La-- North Lafayette Drive, which is US 15, which is
12 our main throughfare through the city of Sumter. At
13 the time the officers were asking them to clear the
14 roadway. Because of the traffic flow, we did not
15 want anyone to get hurt or hit so we were asking
16 them to just back up out of the roadway so that they
17 can stand on the sidewalk and peacefully protest,
18 but they continued to block the throughfare.

19 Q And am I correct in seeing a horse trailer
20 pull up and an officer actually approach the car to
21 stop them from -- make sure everybody, the
22 protestors were safe and not hit by the car?

23 A That is correct. As you can tell from the
24 video there were several police cars that blocked
25 the roadway in an attempt to keep them safe while we

SW - J. JACKSON - DIRECT

1 made our attempt to remove them from the roadway and
2 have them return to the sidewalk where they can
3 peacefully protest.

4 Q Thank you.

5 MS. MCELVEEN: And I was gonna play one
6 more video from the State, 18-- 1826 please. Fifty
7 seconds into it would be good just to save time.

8 (Publishing of video.)

9 THE DEFENDANT: That's a piece of my son,
10 y'all. That's a piece of my son, y'all.

11 THE COURT: Ms. ---

12 THE DEFENDANT: You hear me?

13 THE COURT: Ms. Martin ---

14 THE DEFENDANT: That's a piece of my baby.

15 THE COURT: Ms. Martin.

16 THE DEFENDANT: I'm seeing -- my son just
17 died about four months ago.

18 THE COURT: Ms. Martin.

19 THE DEFENDANT: It just hit me seeing him.

20 THE COURT: Ms. Martin.

21 THE DEFENDANT: Let me just step out for a
22 minute. I can't watch this.

23 THE COURT: Ms. Martin, if you step out
24 the trial is going to proceed ---

25 THE DEFENDANT: Y'all ---

SW - J. JACKSON - DIRECT

1 THE COURT: ---in your absence.

2 THE DEFENDANT: --- march with me.

3 There's almost blood behind this. Yeah, this
4 serious to me, extremely serious. I bleed like you
5 bleed.

6 (Defendant leaves courtroom.)

7 MS. ROSADO: Your Honor, is it possible
8 for us to have a brief recess. Mrs. Martin's son
9 just died and so when she saw a video of him just
10 now and that was extremely upsetting for her. May I
11 go out and speak with her please.

12 THE COURT: I'll give her five minutes.

13 MS. ROSADO: Thank you, sir.

14 THE COURT: And, Ms. Rosado, remind her
15 that there's case law in the State of South Carolina
16 that if a -- if a defendant is disruptive during his
17 or her own trial, that if it reaches a certain level
18 of disruption, the defendant -- the trial will go on
19 regardless of whether the defendant is in the
20 courtroom or not.

21 MS. ROSADO: Yes, sir.

22 THE COURT: Remind her of that.

23 Ladies and gentlemen of the jury, we're
24 gonna take a five-minute recess. I'm gonna ask you
25 not to discuss the case amongst yourselves. Please

SW - J. JACKSON - DIRECT

1 do not begin your deliberations. Please do not seek
2 to do any research by any means. We're gonna take a
3 five-minute recess. We will be back at 3:35. Thank
4 you.

5 (WHEREUPON, the jury was removed from
6 the courtroom at 3:29 p.m.)

7 THE COURT: Colonel Jackson, just make
8 sure that you don't discuss your testimony with any
9 -- anybody at all.

10 THE WITNESS: Yes, sir.

11 THE COURT: And you will be under oath
12 when you resume the stand.

13 THE WITNESS: Yes, Your Honor.

14 (WHEREUPON, a recess was taken from the
15 proceedings.)

16 THE COURT: All right, folks. Before we
17 resume the trial, this is just a statement for
18 everyone's education. Jury trials are often
19 emotional. If there's any further emotional
20 outbursts, whether or not they're for valid reasons,
21 the trial will continue.

22 And so, Ms. Martin, I just want you to
23 know I understand why you got emotional and I'm not
24 gonna hold that against you. But I want you to
25 understand if you voluntarily leave the courtroom

SW - J. JACKSON - DIRECT

1 while your trial is going on, the trial is gonna
2 continue. You understand that, ma'am?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: All right, good enough. Thank
5 you. Please bring us the jury.

6 THE CLERK: Yes, Your Honor.

7 (WHEREUPON, the jury was returned to the
8 courtroom at approximately 3:43 p.m., and the
9 following proceedings commenced in open court.)

10 THE COURT: Thank you, ladies and
11 gentlemen. We will resume the trial.

12 Ms. McElveen.

13 MS. MCELVEEN: Yes, Your Honor. If we may
14 resume the footage. I believe this is the video
15 ending in 1826 for the sake of the record on State's
16 Exhibit 1 that we would like to make sure has been
17 moved into evidence at this time.

18 THE COURT: And, Ms. Rosado, you have no
19 objection to State's 1 being moved into evidence?

20 MS. ROSADO: No, sir, I do not.

21 THE COURT: All right. State's 1 is
22 admitted without objection.

23 (Publishing of video.)

24 MS. MCELVEEN: Mr. Caufield, we can hit
25 pause.

SW - J. JACKSON - DIRECT

1 BY MS. MCELVEEN:

2 Q So I think by the repeated statements, the
3 main goal was for officers to get them out of the
4 road?

5 A That is correct. Our goal was to remove
6 them from the road. And as you can view through the
7 video evidence, they maintain their professionalism
8 and they did not allow them to be baited into
9 overreacting.

10 Q And, again, your officers go through
11 empathy training for exactly situations like these?

12 A That is correct.

13 Q Have they ever seen situations like these
14 before?

15 A Naw. This is my -- out of my 34 years,
16 this is my first encounter with a civil unrest of
17 this magnitude.

18 Q And did this civil unrest continue past
19 this May 31st date?

20 A It did.

21 Q Thank you.

22 MS. MCELVEEN: And, Your Honor, I would
23 like to ask permission to be able to re-call Colonel
24 Jackson when we move on to other days.

25 THE COURT: Any objection to that,

1 Ms. Rosado?

2 MS. ROSADO: No, Your Honor.

3 THE COURT: All right.

4 MS. MCELVEEN: Thank you. Thank you
5 Colonel Jackson.

6 THE COURT: Hold on Mr. -- hold on Colonel
7 Jackson. You got to be cross-examined.

8 MS. MCELVEEN: Yeah, sorry.

9 THE WITNESS: Oh.

10 THE COURT: Ms. Rosado.

11 MS. ROSADO: Yes, sir.

12 **CROSS-EXAMINATION**

13 BY MS. ROSADO:

14 Q I'm not gonna play the video again because
15 I don't want to exacerbate the situation. The first
16 question that I wanted to ask -- thank you for your
17 service, first of all. Thank you for your service.
18 In your empathy training, was one of the tactics
19 that they told you to employ to get protestors to
20 comply to actually physically push them? Is that
21 one of the tactics?

22 A That is not one of the tactics that we're
23 employed in empathy training.

24 Q And you said that you have never seen
25 anything like this level of unrest before. Is

1 that -- was that your statement, sir?

2 A That is correct. In my 34 years I have
3 never seen anything of this magnitude.

4 Q So in 2020 were you watching television at
5 all?

6 A No, ma'am. I do not watch television that
7 much; and if I do, it's only Sports Center.

8 Q And in your -- I'm gonna guess your age --
9 35 years of life, have you ever seen any video
10 footage of the civil rights movement from the
11 sixties?

12 A Not that much civil rights movement
13 information that I've really viewed, just what I did
14 in college. I did not look at a lot of that video
15 footage.

16 Q So in college you never saw any video
17 footage of dogs being deployed on protestors?

18 A Occasionally in a movie or something.

19 Q Or hoses being deployed on protestors?

20 A Occasionally in a movie or nothing that I
21 have set down ---

22 MS. MCELVEEN: Your Honor, I'm -- just
23 want to make sure we're not -- relevance on 1960's
24 civil rights movement videos and methods used there
25 when the issue is a 2020 criminal trial involving

1 Ms. Martin over multiple days. I don't see the
2 relevance, Your Honor.

3 MS. ROSADO: Your Honor, he said he'd
4 never seen anything like it and I was trying to
5 understand how in this culture he's ---

6 THE COURT: I think he said he'd never
7 personally witnessed anything to that magnitude in
8 his 34 years so I'll give you a little more leeway
9 when -- my recollection assessment was that he never
10 personally witnessed that and so I'll give you a
11 little more leeway, but I think the point has been
12 made.

13 MS. ROSADO: Thank you, sir.

14 BY MS. ROSADO:

15 Q So in your 34 years, how many protests
16 have you attended?

17 A This just one.

18 Q Okay. So that then means that since
19 you've only attended one, that's why this one was so
20 moving for you?

21 A That is correct. That was the only one
22 that I've ever been involved in personally.

23 Q And is this the event that is a riot?

24 A Is this a riot?

25 Q Yes, sir.

1 A It had potential to be a riot. It was not
2 a riot at the time.

3 Q And did this -- during this event when
4 Ms. Martin was speaking to you, did she ask you for
5 anything?

6 A Yes. She did ask that we allow them to
7 march.

8 Q And what did she ask that you do to
9 facilitate that march?

10 A That we would give them an escort is what
11 she asked, and we did.

12 Q And you said there were two separate
13 groups out here. How did you figure out there were
14 two groups?

15 A There was during the protest the other
16 individuals did come up to us and say, hey, we're
17 not a part of that group, that we're here to
18 peacefully protest.

19 Q So did they have on different clothing or
20 just a whole group of people came up to you and told
21 you that?

22 A They were actually located on opposite
23 sides of the street. The individual group that was
24 on the side closest to the law enforcement center
25 were the group that actually came and said that they

1 were not a part of that group. Then there was a
2 group that was on the opposite side of Lafayette
3 which would be on the west side of Lafayette, that
4 stated that they were mostly from the group that was
5 with Ms. Martin.

6 Q Was the statement, "No justice no Peace,"
7 frightening to you?

8 A No, ma'am.

9 Q Was the crowd violent?

10 A The crowd became a little more agitated
11 throughout the process.

12 Q In the video when I was looking at it, did
13 it appear to you as if the majority of the people in
14 the road were the police?

15 A The police were only there to ask
16 individuals to remove themselves from the roadway.
17 There were a lot of police officers there trying to
18 facilitate the safe removal from the roadway.

19 Q How many people would you say were at this
20 protest?

21 A The numbers range from about 75 to 80 at
22 times.

23 Q And how many police officers?

24 A About that time maybe about 10 to 15.

25 Q Were you and the police chief the primary

1 individuals who decided how this protest march could
2 be conducted?

3 A We made the decision as a command staff.

4 Q In South Carolina, if a police officer
5 utilizes excessive force against a person, is it
6 their right to defend themselves?

7 A That is correct.

8 Q Did you state that you allowed them to
9 move into the street?

10 A When the protest started after they did
11 not follow the instructions that were originally
12 given, we just allowed them to go ahead and proceed
13 through the route in the roadway.

14 Q So you allowed them to move into the
15 street?

16 A For the march.

17 Q So when you allowed them to move into the
18 street and they marched, were they rioting?

19 A No.

20 MS. ROSADO: One moment, Your Honor.

21 THE COURT: Yes, ma'am.

22 MS. ROSADO: Thank you so much, sir.

23 That's all, Your Honor.

24 THE COURT: Any redirect, Ms. McElveen?

25 MS. MCELVEEN: Very quickly, Your Honor.

REDIRECT EXAMINATION

BY MS. MCELVEEN:

Q I think -- I just want to make sure we're clear. When they're in the street here, this is before you provide a police escort, correct?

A That is correct.

Q So after this you -- did you get the opportunity to speak with Ms. Martin that day?

A I did.

Q After this incident?

A Yes, I did.

Q And that's when you guys confirmed a route and a police escort was provided?

A That is correct.

Q Thank you. And you said this was your first witnessing to a civil unrest, personal witness to a civil unrest, correct?

A That is correct.

Q And that, I would assume then that June 1st would be the second day you witnessed a civil unrest, correct?

A That is correct.

Q And then -- I'm sorry, June 1st. Then June 2nd would be the third day you witnessed a civil unrest, correct?

1 A Correct.

2 Q And then June 3rd would be the fourth day
3 you witnessed a civil unrest, correct?

4 A Yes.

5 Q Thank you. No further questions at this
6 time.

7 THE COURT: Any recross, Ms. Rosado?

8 **RECROSS-EXAMINATION**

9 BY MS. ROSADO:

10 Q In the four days of civil unrest that
11 occurred here in Sumter, do you have any memory of
12 what kind of unrest was going on in the country?

13 A Yes. There was civil unrest throughout
14 the country that I had heard on the radio. Just
15 kind of everything's in reports on the radio.

16 Q Do you remember how long that civil unrest
17 lasted?

18 A Not a specific time frame, but it was
19 quite lengthy.

20 Q Thank you, sir.

21 MS. MCELVEEN: Your Honor, we would like
22 to re-call Colonel Jackson at a later date, other
23 time.

24 THE COURT: All right. Colonel Jackson,
25 you can step down.

SW - J. SINKLER - DIRECT

1 Since he is subjected -- Ms. McElveen,
2 since he's potentially going to be re-called,
3 Mr. Jackson, don't discuss your testimony with --
4 with any other witness.

5 THE WITNESS: Yes, sir.

6 THE COURT: Thank you.

7 MS. MCELVEEN: Thank you, Your Honor. At
8 this time we would call James Sinkler.

9 THE CLERK: State your name.

10 THE WITNESS: James Sinkler.

11 THE CLERK: You solemnly swear or affirm
12 your testimony to the Court shall be the truth,
13 whole truth, nothing but the truth, so help you God?

14 THE WITNESS: I do.

15 WHEREUPON,

16 **JAMES SINKLER,**

17 having been duly sworn by the clerk, testified
18 as follows:

19 THE CLERK: Thank you much. Step around,
20 sir. State your name for the record and spell your
21 last name please.

22 THE WITNESS: James Sinkler,
23 S-I-N-K-L-E-R.

24 **DIRECT EXAMINATION**

25 BY MS. MCELVEEN:

SW - J. SINKLER - DIRECT

1 Q Thank you, sir. Can you tell us a little
2 bit about yourself, where you work, what rank you
3 are, and kind of your professional history.

4 A I'm born and raised in Sumter, graduated
5 high school, went in the Marine Corp for four years.
6 After I got out the Marine Corp, I went to the South
7 Carolina Criminal Justice Academy where I became a
8 state trooper for 25 years. Then I retired from
9 there and I've been with the city for -- City Police
10 Department now for nine years, so 34 years. And my
11 rank with the Sumter Police Department is Sergeant
12 Major. I'm over with community services unit.

13 Q Thank you very much. Were you present on
14 May 31st for the civil unrest?

15 A Yes, ma'am.

16 Q Did you have the opportunity to come face
17 to face with the defendant Ms. Martin?

18 A Yes.

19 Q Is there anything specifically that you
20 remember her saying that made you feel uncomfortable
21 or as if you were threatened in a way?

22 A It just that, "We ready. You hear me like
23 I am, you bleed like I do. You cut my arm, I cut
24 your arm. You black my eye, I black my eye -- your
25 eye. You kill me, I kill you, and that's real."

SW - J. SINKLER - DIRECT

1 Q And that was something she said directly
2 to you, right?

3 A Yes, to all of us that was right there.

4 Q Did you construe that as a threat against
5 you?

6 A Yes.

7 Q A threat for physical harm, correct?

8 A Yes.

9 Q And the execution of your duty as an
10 officer, right?

11 A Yes.

12 Q You witnessed some of the physical
13 interactions out there. Did it make you feel like
14 other of your colleagues were threatened out there
15 that day?

16 A Yes, I do.

17 Q How were they threatened?

18 A Just by the verbal and the language and
19 kind of aggressiveness that come towards them while
20 we were out there.

21 Q And you continued to be present for these
22 events throughout the coming days, correct?

23 A I was there every day.

24 Q Every day. How many days?

25 A Six or seven. Even after it died down

1 we still was out there.

2 Q You were there every day?

3 A Every day, twelve hour day.

4 Q Twelve hour days?

5 A Yes.

6 Q Every day?

7 A Every day.

8 MS. MCELVEEN: Thank you, Your Honor, We'd
9 like to have permission to re-call Mr. Sinkler at a
10 later date, later time.

11 THE COURT: All right. Well, let's have
12 Ms. Rosado conduct her cross and we will see where
13 we are.

14 **CROSS-EXAMINATION**

15 BY MS. ROSADO:

16 Q I think I'm going to be saying thank you
17 for your service a lot today.

18 A Yes, ma'am.

19 Q What is a normal shift for your
20 department?

21 A Patrol officers work 12-hour shift.

22 Q So a 12-hour day is the normal day?

23 A Yeah. Not for me.

24 Q Not for you?

25 A Yeah. Yeah, I work a 8-hour.

1 Q Okay.

2 A Yes, ma'am.

3 Q So when Ms. Martin said, if you black my
4 eye I'm gonna black yours, did she say, James, if
5 you black my eye I'm gonna black yours?

6 A No, she didn't say James.

7 Q She say Officer Sinkler?

8 A No, ma'am.

9 Q Did she say, if you black my eye I'm gonna
10 black yours, if you cut me, I'm gonna bleed, I'm
11 gonna cut you. What did she say exactly?

12 A That's what she said.

13 Q If you cut me I'm gonna cut you?

14 A Yeah, she said that. "You cut my arm, I
15 cut your arm. You black my eye, I black your eye.
16 You kill me, I kill you, that's real."

17 Q And when she said this, did she have a
18 knife in her hand?

19 A No, ma'am.

20 Q Did she have a poster board in her hand?

21 A No, ma'am.

22 Q Was her fist balled up?

23 A No, ma'am, not that I can recall.

24 Q Did she run towards you?

25 A No, ma'am.

1 Q Was she chanting that statement over and
2 over again?

3 A No. She said it once, and I got the point
4 when she said it the first time.

5 THE DEFENDANT: Forgive me. Forgive me.

6 BY MS. ROSADO:

7 Q Now when we look at the video, was that
8 your first experience with civil unrest?

9 A No, ma'am.

10 Q What other experiences have you had with
11 civil unrest?

12 A I had a bunch of civil unrest: Protest at
13 the State House, and also down in Horry County in
14 Myrtle Beach, several.

15 Q And as a sheriff -- I'm sorry, highway
16 patrol officer, did you ever experience any civil
17 unrest events?

18 A Yes.

19 Q And what were those events like?

20 A Civil unrest where they chant and they
21 march and they chant and they march.

22 Q Have people ever walked in the road when
23 they were marching and chanting?

24 A Some did, and we got them back on the
25 sidewalk, yes, ma'am.

1 Q Do they chant things like black power?

2 A It all depends what you talking about
3 because, I mean, some of the ones I were at -- Klan
4 marching too, and they weren't yelling that, so.

5 Q I don't know where they march, what they
6 chant at Klan marches, but I'm -- I have to look on
7 the videos.

8 A Yes, ma'am.

9 Q Were those Klan marches you attended
10 frightening?

11 A Just a little bit.

12 Q So the 12-hour shift that you worked this
13 week, did you work that every day that week?

14 A Yes, ma'am.

15 Q But the normal shift is 12 ours for the
16 regular officer?

17 A Yes. The patrol officer, yes, ma'am.

18 Q Thank you so much, sir.

19 THE COURT: Any redirect?

20 MS. MCELVEEN: If I can quickly, and I
21 think I'll reiterate this after presenting all four
22 days.

23 **REDIRECT EXAMINATION**

24 BY MS. MCELVEEN:

25 Q You were present for more than just that

1 one day you said, right?

2 A Yes, I -- I was.

3 Q You said you were there for all four, all
4 four nights?

5 A Yes.

6 Q Looking at this event as a whole compared
7 to the other civil unrests you experienced,
8 including the unfortunate circumstance of being
9 involved in a KKK event, how did this event compare
10 on a scale compared to these other ones?

11 A This is one of the worst I've seen. Every
12 day it escalated more and more and got more
13 aggressive.

14 Q So this is just day one?

15 A Yes, this was just day one.

16 Q Thank you.

17 MS. MCELVEEN: Your Honor, we'd like
18 permission to re-call.

19 THE COURT: Any recross, Ms. Rosado?

20 MS. ROSADO: Yes, please, sir.

21 **RECROSS-EXAMINATION**

22 BY MS. ROSADO:

23 Q So, Officer Sinkler, how did this event
24 compare to the Klan march that you participated in?

25 A Like I said, this was the most aggressive,

1 most aggressive I've been with, I've seen, and it
2 was.

3 Q And the events that precipitated this
4 particular march, including Covid, were you aware of
5 those events?

6 A Yes, ma'am.

7 Q And would those events be the George Floyd
8 murder and the Breonna Taylor murder?

9 A Yes.

10 Q Is that why people were protesting?

11 A Yes, I believe so. Yes.

12 Q Would you consider those negative events
13 in our community?

14 A Yes.

15 Q Would you consider them extremely negative
16 events?

17 A Yes.

18 Q And thinking back to 2020, would you
19 consider the fact that Covid was also rampant at
20 that time ---

21 A Yes.

22 Q --- a part of why this seemed to be such a
23 big deal?

24 A Yes.

25 Q Thank you.

SW - T. GAYLE - DIRECT

1 MS. MCELVEEN: No further questions for
2 this witness at this time.

3 THE COURT: All right. You may step down.
4 You are subject to being re-called, Officer Sinkler,
5 so do not discuss your testimony with any other
6 witness.

7 THE WITNESS: Yes, sir.

8 MS. MCELVEEN: The State would call
9 Tyshica Gayle.

10 THE CLERK: State your name.

11 THE WITNESS: Tyshica Gayle.

12 THE CLERK: You solemnly swear or affirm
13 your testimony to the Court shall be the truth,
14 whole truth, nothing but the truth, so help you God?

15 THE WITNESS: I do.

16 WHEREUPON,

17 **TYSHICA GAYLE,**
18 having been duly sworn by the clerk, testified
19 as follows:

20 THE CLERK: Thank you much. Step around.

21 MS. MCELVEEN: Gentlemen, I think we'll
22 get started around the six-minute mark of that
23 video, 1817-2.

24 THE CLERK: State your name for the record
25 and spell your last name please.

SW - T. GAYLE - DIRECT

1 THE WITNESS: Tyshica Gayle, G-A-Y-L-E.

2 THE COURT REPORTER: Spell your first name
3 too, please.

4 THE WITNESS: T-Y-S-H-I-C-A.

5 THE COURT REPORTER: Thank you.

6 **DIRECT EXAMINATION**

7 BY MS. MCELVEEN:

8 Q First Sergeant Gayle, I'm giving it away
9 already but, tell us a little bit about yourself
10 professionally, where you're from, and where you
11 work

12 A I grew up in Wedgefield, South Carolina,
13 Sumter County, attended public schools, graduated
14 from Hillcrest High School in 1995. Went into the
15 United States Army Reserves and then I came to
16 Sumter Police Department in 2005, and I currently am
17 the recruiter at the Sumter Police Department in
18 recruiting division.

19 Q Thank you very much. Were you present on
20 May 31st for that incident?

21 A Yes, I was.

22 Q Were you present throughout these events

23 ---

24 A Yes, I was.

25 Q ---over the next few days?

SW - T. GAYLE - DIRECT

1 MS. MCELVEEN: Your Honor, if it please
2 the Court, I would like to please play from State's
3 Exhibit 1 the video from Ms. Gayle's -- or sorry,
4 Sergeant Gayle's body-worn camera.

5 And that's 1817-2, gentleman, around the
6 six-minute mark. Thank you for the technical
7 support.

8 THE COURT: You may publish that video to
9 the jury.

10 MS. MCELVEEN: Thank you, Your Honor.

11 (Publishing of video.)

12 BY MS. MCELVEEN:

13 Q Sergeant Gayle, this is your body-worn
14 camera, correct?

15 A Yes, it is.

16 Q So First Sergeant Gayle, you were out
17 there that day and you were the one that identified
18 the two groups, correct?

19 A Yes, ma'am.

20 Q And you were taught the same empathy
21 training?

22 A Yes.

23 Q You exercised those that day, it appears,
24 correct?

25 A Yes.

SW - T. GAYLE - DIRECT

1 Q You -- your approach -- let me ask, what
2 was your approach with the peaceful protestors? How
3 did that -- how were you able to approach the
4 peaceful protesters knowing that they were staying
5 on the sidewalk?

6 A Just, I understood why they were there,
7 just with all that had occurred and current events.
8 I just wanted them to be safe; and it's their right
9 to protest so, and I understood why they were there.

10 Q And you were very polite to them, correct?

11 A Yes.

12 Q Did -- what ended up happening after this
13 altercation of a civil unrest? Afterwards did you
14 end up providing a support to allow a march -- a
15 more organized march to occur?

16 A Yes. I was asked, told to, or asked about
17 giving them an escort, they want to do an escort. I
18 asked them for the route. They provided me with the
19 route, and I gave them an escort. Halfway in the
20 route some got angry 'cause they thought I was
21 taking them off the main roadway, but I explained to
22 them that I did not chose the route, they chose the
23 route. And once I explained to them, okay, if you
24 guys want to do this, then this is what we'll do.
25 And I took them back out and put them back on the

SW - T. GAYLE - DIRECT

1 main road where they wanted to be. We stopped a
2 couple of times because one of the protestors, she
3 appeared to be tired so we stopped just to make sure
4 one caught their breath, keeping everyone safe, and
5 continued on with the march.

6 Q So after speaking with -- after Colonel
7 Jackson spoke with Ms. Martin, y'all did provide
8 some support to exercise First Amendment rights?

9 A Yes. I remember doing at least two, two
10 marches, providing security to make -- make sure
11 that they were safe during that route.

12 Q And did you witness your -- did you
13 witness the shoving incident that you recorded and
14 kind of the physical nature that the unrest took in
15 the middle of the road? Did you see all that?

16 A Yes, I did. I saw it.

17 Q Did it make you feel like they were
18 threatening your fellow officers?

19 A I did; but I also felt like it was enough
20 that were, I won't say hands-on, but involved to
21 where it wouldn't escalate so I just stepped back.

22 Q And the main goal was empathy and
23 deescalate, correct?

24 A Yes.

25 Q But, again, this was night one?

SW - T. GAYLE - DIRECT

1 A That was actually day two for me. I had
2 spoken with a couple of them the day before so I was
3 kind of familiar with them.

4 Q So that was day two for you, ---

5 A Yes.

6 Q ---interactions?

7 A Yes.

8 Q And would you agree that it continued to
9 escalate after this?

10 A Yes, it did.

11 Q Thank you.

12 MS. MCELVEEN: And I was gonna start the
13 video, if you don't mind, around 4 minutes and 15
14 seconds on the video ending in 1856 which is in
15 State's Exhibit 1 for a quick video.

16 (Publishing of video.)

17 MS. MCELVEEN: That's good. Thank you.

18 BY MS. MCELVEEN:

19 Q So First Sergeant Gayle, you made clear
20 there that you were -- that was an olive branch of
21 sorts, correct?

22 A Yes. Yes, it was.

23 Q That allowed people the opportunity to
24 peacefully demonstrate?

25 A Yes.

1 Q And you even went so far as to give
2 somebody your own drink?

3 A Yes, it appeared that she was -- she was
4 thirsty and she was tired so I just wanted everyone
5 to be safe.

6 Q And you made it clear at that time that
7 they could walk in the road because they had a
8 police escort?

9 A Yes.

10 Q But after that, when asked about the
11 sidewalk, you said you can be on the sidewalk,
12 correct?

13 A Yes, that's correct.

14 Q Just not in the road?

15 A Yes, that's correct.

16 Q Thank you.

17 MS. MCELVEEN: And, Your Honor, we'll --
18 please answer any questions Defense may have.

19 Your Honor, I -- the State is going to be
20 asking to re-call Ms. Gayle, First Sergeant Gayle,
21 at a future time.

22 THE COURT: Cross-examination, Ms. Rosado.

23 **CROSS-EXAMINATION**

24 BY MS. ROSADO:

25 Q Again, thank you for your service.

1 A Thank you.

2 Q Now from the body-cam view -- this is your
3 body cam; is that correct?

4 A Yes, it is my body cam.

5 Q And did I hear you say "thank you for
6 being peaceful" to the group?

7 A Yes. At that time they were being
8 peaceful and they were compliant.

9 Q And were you aware that Colonel Jackson
10 had told them they could stay in the road?

11 A I'm sorry, can you repeat that question?

12 Q Were you aware that Colonel Jackson had
13 told them they could stay in the road?

14 A No, ma'am, I was not.

15 Q How did you decide there were two separate
16 groups of people protesting?

17 A If you look back on the body-worn camera,
18 one female came up to me and if you go back and
19 replay it you can hear her say it, don't let them
20 agitate you guys and, you know, take you out your
21 integrity. And you could see her telling other
22 people to stay on the sidewalk, we can march, but
23 just stay on the sidewalk.

24 Q And what was the indication that that was
25 a separate group to you?

1 A Because she wasn't in the roadway.

2 Q So that individual constituted a group?

3 A To me it did, yes.

4 Q Did you arrest anyone from the second
5 group?

6 A Not that I can recall.

7 Q I heard them asking you about getting a
8 permit. Do you know how long it takes to get a
9 permit for an impromptu protest march?

10 A I think if you listen you would have heard
11 me told her I did not know how long that process
12 was.

13 Q Are protest marches required to be quiet
14 and controlled in Sumter?

15 A I'm not sure. I can't answer that
16 question.

17 Q When you assisted them with, I guess
18 getting a route, is that what you -- did you assist
19 with them getting a route, or did you assist with
20 them actually walking the route?

21 A I assisted them with walking the route.
22 They gave me the route that they wanted to take.

23 Q And when they walked that route, was there
24 a riot?

25 A No, but if you play the body-worn camera

1 back before that where they started, you could tell
2 that some were agitated and thought that I had taken
3 them off of the roadway where they wanted to be
4 seen.

5 Q So did they begin to riot when you took
6 them off the roadway?

7 A What is your definition of a riot?

8 Q Well, that's a good question. What is
9 your definition of riot?

10 A I don't recall using that word.

11 Q So did you see what you would think would
12 be a riot at that time?

13 A Can you give me a definition of riot?

14 Q Hold on.

15 (Pause.)

16 MS. MCELVEEN: Your Honor, are there any
17 further questions for First Sergeant Gayle?

18 MS. ROSADO: Yes.

19 BY MS. ROSADO:

20 Q So First Sergeant Gayle, in your -- in
21 executing your duties, did you see anyone creating a
22 grave public risk of terror or alarm?

23 A Not at that time, no.

24 Q Did you see anybody throw any punches at
25 any officers?

1 A At which time?

2 Q At that time.

3 A No.

4 Q Did you see any weapons at that time?

5 A Not at that time.

6 Q Were you afraid of the protestors when you
7 gave them your Gatorade?

8 A No.

9 Q Were you aware that Colonel Jackson's
10 choice to allow them to stand in the street varied
11 from what they had been told previously? What you
12 had been told previously to stay on the sidewalk?

13 MS. MCELVEEN: Objection. I think there's
14 a misstatement of the facts un-- unintended. I
15 think Colonel Jackson never said that he allowed
16 them to stand in the street, but this was the march
17 afterwards with police escort that allowed them in
18 the street march. I think there's some confusion on
19 and a misstatement of the facts in stating that
20 Colonel Jackson allowed them to stand in the street.

21 THE COURT: Ms. Rosado, rephrase the
22 question pinpointing the timeframes please.

23 MS. ROSADO: Your Honor, it was my
24 understanding that Colonel Jackson said he let them
25 stand in the street and then he asked them to move

1 after he had allowed them to stand on the street.

2 MS. MCELVEEN: Your Honor, I think that
3 Colonel Jackson's testimony was that he allowed the
4 protected march in lane one of traffic after
5 speaking with Ms. Martin at the scene in front of
6 the police department, which is the more organized
7 police led effort here, not police led but police
8 escorted effort.

9 THE COURT: Officer Gayle has already
10 testified that she didn't -- she didn't know what
11 Lieutenant Colonel Jackson told them, so that's --
12 that is absolutely in the record. So, Ms. Rosado,
13 if you'll rephrase your question knowing she's
14 already answered she didn't know what Lieutenant --
15 or Lieutenant Colonel Jackson said.

16 MS. ROSADO: Thank you, Your Honor.

17 BY MS. ROSADO:

18 Q During the days that you observed the
19 protest marches, did you ever see Ms. Martin throw a
20 punch at any officer?

21 A No, I did not.

22 Q Did you ever see Ms. Martin with a weapon?

23 A No, I did not.

24 Q Thank you.

25 THE COURT: Any redirect?

1 MS. MCELVEEN: With permission to re-call
2 First Sergeant Gayle.

3 THE COURT: All right. First Sergeant,
4 you may step down. You are subject to being
5 re-called so please do not discuss your testimony
6 with any other witness.

7 MS. MCELVEEN: Captain Singleton. 1945.

8 THE CLERK: Place your left hand on the
9 Bible, raise your right. State your name.

10 THE WITNESS: Robert Singleton.

11 THE CLERK: You solemnly swear or affirm
12 your testimony to the Court shall be the truth,
13 whole truth, nothing but the truth, so help you God?

14 THE WITNESS: Yes, sir.

15 WHEREUPON,

16 **ROBERT SINGLETON,**
17 having been duly sworn by the clerk, testified
18 as follows:

19 THE CLERK: Thank you much. Step around.
20 State your name for the record and spell your last
21 name please.

22 THE WITNESS: Robert Singleton,
23 S-I-N-G-L-E-T-O-N.

24 **DIRECT EXAMINATION**

25 BY MS. MCELVEEN:

SW - R. SINGLETON - DIRECT

1 Q Can you please tell us a little bit about
2 yourself professionally, where you work please,
3 where you work.

4 A Yes. I'm Robert Singleton. I'm the
5 captain of the patrol division at the police
6 department. I moved to Sumter when I was about
7 three-years old. My family is from here. I moved
8 away for a bit and we all came back. So I've been
9 here for more than 30 years, back here more than 30
10 years. Attended public school system, graduated
11 high school in 2005. I guess in the game of life I
12 chose career instead of college. I immediately knew
13 I wanted to be a police officer from a younger age
14 and wanted to get my foot in the door so at 18 I
15 joined the police department in any capacity and
16 that happened to be as a dispatcher, a 9-1-1
17 dispatcher. I did that in the time it took for me
18 to turn 21-years old, three years, answering various
19 emergency calls and things of that nature working
20 right alongside working for the police department as
21 the communication center as a part of the police
22 department. When I turned 21 I went to the Criminal
23 Justice Academy. I graduated that in 2008, and I've
24 been a police officer ever since, was promoted to
25 sergeant and made the traffic division. Did a lot

SW - R. SINGLETON - DIRECT

1 of work in the traffic division and then eventually
2 continued as captain at the beginning of 2019.

3 Q Thank you. Congratulations.

4 A Thank you.

5 Q Can you tell us, were you present at the
6 police department around May 31st through June 3rd?

7 A Yes, ma'am.

8 Q Did you have -- were you working on
9 June 1st?

10 A Yes, ma'am, I was.

11 Q And so this would be day three of some
12 civil unrest in Sumter, correct?

13 A Yes, ma'am.

14 Q Day two is one we just saw?

15 A Yes, ma'am.

16 Q You were aware of that incident, correct?

17 A Yes, ma'am.

18 Q Did you have the opportunity to interact
19 with Ms. Martin on June 1st?

20 A I did, yes, ma'am.

21 Q Can you tell us a little bit about what
22 you witnessed that day around 7:45 p.m.

23 A Yes, ma'am. Myself and Captain Rabon were
24 assigned to be a, like, overwatch for operations
25 that were happening at the police department, and

SW - R. SINGLETON - DIRECT

1 she and I went out to the roadway. They expressed
2 an interest to march again. We were in the process
3 of trying to get that reorganized. It took some
4 time to put the people in place. And they became
5 what appeared to be impatient. They started to load
6 up on to the vehicles, and not just inside the
7 vehicles but atop the vehicle, the top most portion,
8 the hood; and they were gonna drive in their march
9 without an escort in that fashion. There were --
10 there were a lot of people on top of the car, like I
11 said. It was pretty dangerous. So Captain Rabon
12 and I who were more assigned to overwatch had to
13 step in, afraid somebody was going to fall off of
14 the car, get hit by a car. As I said before, I
15 worked in the traffic division so I've seen a lot of
16 bad collisions so Captain Rabon and I went out there
17 to try to convince Ms. Martin to just wait and the
18 drivers of those vehicles to just wait.

19 Q And you were going to provide a police
20 escort, try to do so in a way that would be a safer
21 way for them to peacefully protest, right?

22 A Yes, ma'am.

23 Q And the leader seemed to be on scene who?

24 A Brittany Martin

25 Q And that's the defendant, correct?

SW - R. SINGLETON - DIRECT

1 A Yes, ma'am.

2 Q What happened when you went over -- well,
3 when Captain Rabon and yourself went over there,
4 what happened?

5 A Captain Rabon made initial contact with
6 Ms. Martin. She became agitated that we were
7 interfering so she started to speak to the driver of
8 the first car telling them, please don't leave, just
9 wait. And actually, Ms. Martin stepped in front of
10 between the driver of the first vehicle and herself.
11 She, she stepped in front of her getting chest to
12 chest with Captain Rabon. Actually, Captain Rabon
13 had her hand on the car, if I remember right, trying
14 to, you know, tap the car trying to talk to him, the
15 driver of that car; and she removed Captain Rabon's
16 hand and they became chest to chest at that time.

17 MS. MCELVEEN: Your Honor, we'd like to
18 play the video 1945 that's in State's Exhibit 1.

19 (Publishing of video.)

20 THE WITNESS: That's my hand on the back
21 of Captain Rabon's ballistic vest. Those are the
22 police cars pulling up behind me now.

23 BY MS. MCELVEEN:

24 Q Thank you. So I think we hear you say
25 multiple times, police cars are coming, please wait,

SW - R. SINGLETON - DIRECT

1 trying to make sure you don't get hurt. Correct?

2 A Yeah. Yes, ma'am. I was trying to
3 convince them using empathy -- that's a word we use
4 a lot at the police department -- understanding
5 their cause and why they were there. We wanted to
6 make sure they were safe in doing what they were
7 doing. And the crowd that left on foot left in
8 advance of them. And my hand on the back of Captain
9 Rabon's vest, my intention was because she had -- I
10 saw her remove her hand and then get chest to chest
11 with her, if Captain Rabon were to become assaulted
12 I wanted to try to pull her back as quickly as I
13 could. I felt at that moment that it had the
14 potential to become an assault situation just
15 because of the way she was behaving and interjected
16 herself chest to chest with Captain Rabon. I saw
17 that child standing in back of the car, worried
18 about the child. Again, a life of traffic, you see
19 a lot of horrible things that happen in cars and I
20 wanted to just to try to convince them to say it was
21 Captain Rabon's intention was to convince them to
22 stay so that that situation wouldn't get bad.

23 Q And when she -- when Ms. Martin is on the
24 hood of that car and she's about to drive off, what
25 is it she says exactly to Captain Rabon or in

1 general to her group of people about Captain Rabon?

2 A She says if she wants trouble we're gonna
3 bring it I'm telling you, you're gonna fuck with it,
4 I'm the wrong once to fuck with.

5 Q Thank you very much. Captain Singleton,
6 please answer any questions Defense may have.

7 MS. MCELVEEN: Your Honor, we're also
8 gonna ask to re-call Captain Singleton at a future
9 date or future time.

10 THE WITNESS: Yes, ma'am.

11 **CROSS-EXAMINATION**

12 BY MS. ROSADO:

13 Q Captain Singleton, yes, congratulations,
14 again, on your promotion.

15 A Yes, ma'am. Thank you.

16 Q I always tell my students if you want to
17 be a police officer, just go get in it, do it right
18 now.

19 A Yes, ma'am.

20 Q Did you guys arrest anyone from going on
21 top of those cars?

22 A Not at that time. What we -- Captain
23 Rabon relayed to that first, the first driver, was
24 that you may not be arrested now but you will be
25 arrested later, you could be charged later.

1 Q Do y'all have parades and festivals in
2 Sumter?

3 A Yes, ma'am, often.

4 Q Do people ever ride on top of the cars in
5 the parades?

6 A Typically those are more maybe a
7 convertible and they're, you know, most of the
8 bodies inside the vehicle but may be sticking up
9 outside of the -- where the center of gravity would
10 be for the car.

11 Q So if Ms. Martin had a princess crown on
12 and a Rose Festival outfit, it would have been
13 alright for her to be on top of the car?

14 A No, ma'am.

15 Q In the video there I see -- I wasn't sure
16 which officer it was, but they had their hand on
17 Ms. Martin's shoulder. Did you notice that?

18 A That was Captain Rabon. And I think it
19 was a hug.

20 Q And the crowd seemed to be chanting, hands
21 up, don't shoot. Was that a threat to the officers?

22 A No.

23 Q Were there children at this march?

24 A Yes, ma'am.

25 Q Did you hear Ms. Martin say she wanted to

1 protest peacefully?

2 A I don't remember that.

3 Q You pointed out that you were there to try
4 to help them with their cause. Isn't justice a
5 police cause also? Seeking justice?

6 A Sure.

7 Q So after Officer Rabon gave Ms. Martin a
8 hug, was it then that they became chest to chest
9 after that?

10 A No. It was when Captain Rabon had her
11 hand on the car and Ms. Martin moved her hand,
12 grabbed her hand, pushed it forward, got in between
13 her; and then Captain Rabon, to try to deescalate it
14 or -- I don't know what her intention was, she --
15 she hugged Brittany.

16 Q What's the definition of assault in South
17 Carolina?

18 A Assault, to -- I'll use layman's terms.
19 To physically harm somebody or attempt to physically
20 harm somebody with the present ability to do so.

21 Q How about battery?

22 A Battery would be, I would define as the
23 actual assault. So you can have a assault third
24 degree that -- that doesn't include a battery. If
25 it's an assault with a present ability to do so.

1 Q Now Captain Rabon is a captain, right?
2 Captain Rabon, right?

3 A Yes, ma'am.

4 Q Wouldn't she know if she was in danger;
5 don't you think?

6 A Uh-huh.

7 Q Did you feel as if you were in danger?

8 A When Ms. Martin said what she said at the
9 end when she was on the hood of the car, that she's
10 not one to F with, I felt like she was -- had a
11 violent side if she would have relayed herself like
12 that, that she's not one to F with, if you want
13 trouble, I'll bring it.

14 Q But as a 14-year police officer, did you
15 feel as if you were in danger?

16 A Yes.

17 Q So when you feel in danger, when officers
18 feel in danger do they usually hug people?

19 A Do they usually what?

20 Q Hug people?

21 A I think that that was -- Captain Rabon is
22 a little -- I'll let her tell you how she is.
23 Hopefully she'll be called as a witness and she can
24 explain how she polices and her philosophy. It'll
25 make better sense.

1 Q Okay.

2 **REDIRECT EXAMINATION**

3 BY MS. MCELVEEN:

4 Q Captain Singleton, if I may just quickly.

5 A Yes, ma'am.

6 Q This was day two of what ended up being
7 pretty much five if you include First Sergeant
8 Gayle's first interaction -- I'm sorry, this was day
9 three.

10 A Yes, ma'am.

11 Q This is June 1st so day three, correct?

12 A Yes, ma'am.

13 Q And you were present for subsequent days
14 and times as well?

15 A I was present the entire time, yes, ma'am.

16 Q Thank you very much.

17 MS. MCELVEEN: Your Honor, I at this point
18 I think we're done with this witness, Your Honor,
19 with permission to re-call.

20 THE COURT: Any recross, Ms. Rosado?

21 **RECROSS-EXAMINATION**

22 BY MS. ROSADO:

23 Q Officer Singleton, in your opinion, is a
24 hug an indication that you're afraid of someone?

25 A I think a hug could be interpreted as an

1 awkward reaction to try to deescalate a situation.
2 I don't want to interpret what she's doing -- she'll
3 tell you why she did it -- but that's what I view it
4 as.

5 Q Thank you.

6 MS. MCELVEEN: Thank you, Your Honor.

7 THE COURT: All right. Officer, you can
8 step down. You are subject to being re-called in
9 this case so don't discuss your testimony with any
10 other witness.

11 THE WITNESS: Yes, Your Honor.

12 MS. MCELVEEN: Your Honor, if Ms. Rosado,
13 and I may approach at this point.

14 THE COURT: Yes.

15 MS. MCELVEEN: Thank you.

16 (WHEREUPON, counsel approached the
17 bench for an off-the-record discussion.)

18 THE COURT: All right, ladies and
19 gentlemen, as you can see by looking at the clock
20 directly in front of you, it is almost 5:00. I've
21 been informed by the attorneys that the next
22 witness -- the next witness' testimony will take us
23 well beyond a normal time for adjourning for the day
24 so we're gonna call it quits now. And I'm gonna
25 tell you the same thing over and over every time I

1 send you out of this jury room so please don't take
2 any offense to that. I'm not trying to insult your
3 intelligence; it's just required by me as the trial
4 judge. Please do not discuss this case with
5 anybody, friends, family, significant others. Don't
6 begin your deliberations. You have not heard all
7 the evidence and testimony that you will hear in
8 this case. And please don't do any research about
9 any issue which has been raised in this case by any
10 means whatsoever, including internet, social media,
11 anything of that nature. And, like I said, you'll
12 hear that multiple times as we go through this
13 process.

14 We're gonna start tomorrow morning at
15 9:00, and I would like you to be here at 8:45. And
16 I'm having you get here early because I need you to
17 do something for me and for this case. In South
18 Carolina either the judge or the jury can select a
19 foreperson of the jury, and the foreperson has no
20 greater weight or no bigger role in the jury
21 deliberation process other than to preside over the
22 deliberations and be the jury's spokesperson. I
23 have chosen in this matter to allow you as a jury to
24 select the foreperson who will be the jury
25 spokesperson in this case. My only instruction is

1 that it has to be one of the 12 primary jurors. So,
2 unfortunately, the two alternate jurors are
3 ineligible to be selected as a foreperson so, if you
4 would, make that selection in the morning. You can
5 do it by voice vote; you can do it by paper vote.
6 If you need paper, the bailiffs will get that to
7 you, but I'm gonna allow you to select who will be
8 the foreperson in this case. With those
9 instructions, I'm gonna excuse you for the balance
10 of the day and we will see you tomorrow morning at
11 8:45. Thank you very much.

12 (WHEREUPON, the jury was removed from the courtroom
13 at 4:55 p.m.)

14 THE COURT: All right, folks, before we
15 adjourn we need to address the issue of the
16 defendant's bond. I assume she's been on bond
17 throughout the pendency of this action,
18 Ms. McElveen?

19 MS. MCELVEEN: Yes, Your Honor.

20 THE COURT: Okay. And what is that bond?

21 MS. MCELVEEN: Your Honor, may it please
22 the Court, let me grab the file. Ms. Martin's got a
23 \$60,000 surety bond. She cannot go to the city of
24 Sumter Police Department, nor the Sumter County
25 Sheriff's Office. She could go to Iowa for

1 sentencing in 2020; but that has passed, Your Honor.

2 THE COURT: All right. Ms. Martin, stand
3 up for me, ma'am, please. Ordinarily, the terms and
4 conditions of a bond are extinguished when the trial
5 date is met.

6 Ms. McElveen, she hasn't had -- caused any
7 problems with regard to this bond while she's been
8 out or any -- any issues that would lead to a bond
9 revocation motion being filed?

10 MS. MCELVEEN: No issues with this bond,
11 Your Honor.

12 THE COURT: Understood. All right.
13 Ms. Martin, you understand I'm gonna -- I'm gonna --
14 since you haven't caused any problems on your bond
15 with regard to the restrictions that were placed
16 upon you, I'm gonna allow you to remain on that bond
17 while this case is -- is going forward. Ordinarily,
18 and if certain circumstances were to be met, a
19 defendant would be taken into custody; but I'm gonna
20 allow you to go home tonight with the following
21 instruction. If you fail to report back to the
22 courthouse tomorrow morning, trial will go on in
23 your absence. You understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: All right. And the same

1 restrictions apply. Continue to do what you've been
2 doing with regard to complying with your bond while
3 you've been on bond, and we will see you tomorrow
4 morning at 9:00. All right?

5 THE DEFENDANT: Yes, sir.

6 MS. ROSADO: Thank you, Your Honor.

7 MS. MCELVEEN: Thank you, Your Honor.

8 THE COURT: Okay. We'll be in recess
9 until 9 a.m. And, folks, I want to start promptly
10 at 9 a.m. That means everybody in place ready to
11 bring the jury in as soon as they are here and ready
12 to go.

13 (WHEREUPON, the proceedings were concluded
14 for the day at 4:58 p.m. to be reconvened May 12,
15 2022.)

16 THE COURT: Are we ready for the jury?

17 MS. MCELVEEN: Yes, sir, Your Honor, the
18 State is.

19 MS. ROSADO: Yes, sir.

20 THE COURT: All right. Folks, it's been
21 brought to my attention by the bailiff that the jury
22 has elected a foreperson. The foreperson will be
23 Juror No. 184, Michael Winefeldt. Bring us the jury
24 please.

25 (WHEREUPON, the jury was returned to the

SW - A. RABON - DIRECT

1 courtroom at approximately 9:21 a.m., and the
2 following proceedings commenced in open court.)

3 THE COURT: Ladies and gentlemen of the
4 jury, thank you for your prompt return and being
5 ready to go this morning at 9:00. That was
6 certainly my intention, but we had some technical
7 issues with the computer system in the courtroom so
8 we had to spend some time to get those ironed out;
9 but we're ready to proceed now and the State will
10 call its next witness.

11 MS. MCELVEEN: Yes, sir. The State would
12 call Captain Rabon to the stand.

13 THE CLERK: Place your left hand on the
14 Bible, raise your right. State your name.

15 THE WITNESS: Angela Rabon.

16 THE CLERK: You solemnly swear or affirm
17 your testimony to the Court shall be the truth,
18 whole truth, nothing but the truth, so help you God?

19 THE WITNESS: Yes.

20 WHEREUPON,

21 **ANGELA RABON,**
22 having been duly sworn by the clerk, testified
23 as follows:

24 THE CLERK: Thank you much, ma'am. Step
25 around please. State your name for the record and

SW - A. RABON - DIRECT

1 spell your last name please.

2 THE WITNESS: Angela Rabon, R-A-B-O-N.

3 **DIRECT EXAMINATION**

4 BY MS. MCELVEEN:

5 Q Good morning, Captain Rabon.

6 A Good morning.

7 Q Can you tell us a little bit about
8 yourself and your professional career and your
9 history with the police department?

10 A Yes. I'm currently the captain in
11 investigations at the Sumter Police Department.
12 I've been with the city of Sumter, I guess, about
13 20-- close to 25 years now. Prior to that I worked
14 for Charleston Police Department. I grew up in Rock
15 Hill, South Carolina, went to college in Baptist
16 College turned Charleston Southern University. So
17 graduated from there and stayed in Charleston at
18 Charleston PD so.

19 Q Excellent, thank you. And you were
20 present as we've already seen from the videos on the
21 dates of May 31st pretty much through June 3rd?

22 A That's right.

23 Q And the last video we saw last night
24 showed you having an interaction with Ms. Martin at
25 a car?

SW - A. RABON - DIRECT

1 A That's correct.

2 Q Correct?

3 A Yes.

4 Q Can you tell us a little bit about your
5 takeaways from that interaction and why you were
6 trying to get them to wait for police escort and
7 what her response was?

8 A Okay. On that particular day, I don't
9 know if you want to show that footage again, but I
10 approached the vehicle. Several people were on top
11 of the vehicle. There were teenagers, kids, around
12 the vehicle, so that was not a safe manner to drive.
13 In fact, it was a violation of the law for that
14 driver to drive away with people on that vehicle.
15 So I went over to speak with Mr. Benson and I told
16 him do not drive away, this is not safe, just wait,
17 we're gonna have an escort to do the furtherance of
18 the protest march. So as I'm doing that, I'm
19 speaking with him, that's when Brittany and Eric,
20 her -- she says her husband; I'm assuming that's her
21 husband -- came and tried to intervene and stop me
22 from, I guess, enforcing that law so.

23 Q And what sort of impression did you get
24 about the leader of the group at that point?

25 A At that time it was evident that certain

SW - A. RABON - DIRECT

1 people were reacting to the behavior of Brittany
2 Martin and so I felt that that certain group was, in
3 fact, being led by Brittany Martin. And I say
4 group, not meaning like a group, but like three or
5 more people basically. That's what I mean as a
6 group.

7 Q And everybody in the car was kind of
8 responding to her verbal commands?

9 A That's correct.

10 Q And did she end up telling you
11 something -- did she make sort of a threat to you
12 that day when she got on the car?

13 A Yes. After she impeded that enforcement
14 of that traffic law, she -- and I attempted to
15 deescalate that, she then got on the hood of the car
16 and at that time basically said if I want trouble
17 she's gonna bring it, that I'm the -- she's the
18 wrong one for me to F with. Basically that's the
19 gist of it.

20 MS. MCELVEEN: And, Your Honor, at this
21 time we would like to play quickly that clip again
22 just to since we went overnight of the video ending
23 in 1945 from June 1st, Robert Singleton's body-worn
24 camera. It's in evidence, State's Exhibit 1.

25 THE COURT: Yes, ma'am. You may publish

SW - A. RABON - DIRECT

1 it to the jury.

2 MS. MCELVEEN: Thank you, Your Honor. I
3 hope we're waking up the system nicely today.

4 (Publishing of video.)

5 BY MS. MCELVEEN:

6 Q And that's where she made the threat,
7 Captain Rabon?

8 A Yes.

9 MS. MCELVEEN: We can pause. Thank you,
10 Mr. Caufield.

11 BY MS. MCELVEEN:

12 Q And after, later on that day, did you have
13 more of an opportunity to speak with Ms. Martin
14 later that day as well?

15 A Yeah. And you can see, like, she refers
16 to my name several times. I felt that we had had a
17 rapport. Like, I spoke with her about several,
18 several things prior to this incident. So when I'm
19 up there telling them, you know, you're not gonna be
20 charged now, but you will be charged, do not drive.
21 She and Eric, I mean, it was, I mean, I could see in
22 their eyes it -- I didn't know what was gonna
23 happen. I did feel it could have escalated easily;
24 but I was trusting and trying to, you know, that
25 rapport that I thought I had, trying to bring that

SW - A. RABON - DIRECT

1 back and calm it down and I felt I did that at first
2 but then she snapped back and made that threat so.

3 Q So that's why you hugged her ---

4 A Yes.

5 Q --- or put your arm around her to try to
6 deescalate?

7 A That's right.

8 Q Did you talk to her? Did you have the
9 opportunity to see her? Did she come back to the
10 police department on June 1st?

11 A Yeah, we -- so I was there pretty much
12 through the whole time, actually from the 30th on
13 so. But, yeah, later that evening in front of the
14 police department, I was in contact with her again
15 at that time.

16 Q Thank you.

17 MS. MCELVEEN: And could we please play
18 video ending in 2034, B.K. Floyd's video, please.
19 And I think we need -- can we turn up the volume a
20 little bit, Your Honor, just a smidge instead. I
21 know it was loud yesterday but.

22 THE COURT: Yes, ma'am.

23 MS. MCELVEEN: If we can turn it up just a
24 little bit. And, Your Honor, this is on State's
25 Exhibit 1 again.

SW - A. RABON - DIRECT

1 BY MS. MCELVEEN:

2 Q While he's pulling that up, can you tell
3 us a little bit about the scene that day at the
4 police department before Ms. Martin showed up? Were
5 there other people there and ---

6 A Yes. There were, like, Sergeant Gayle and
7 I spoke with several people that were there
8 protesting based on the incident that occurred on
9 the 25th, the George Floyd. So we -- we were
10 speaking -- so we had spoken with several people
11 that were out there protesting and -- I mean, it was
12 evident there was -- people were there for the right
13 reason. And then, as you'll see this night, like,
14 it escalated in the street that day and it was one
15 group trying to get them out of the street. And
16 when I say "them out of the street," it was Brittany
17 and her group, her family, her friends that came
18 with her. And then you'll see this particular day
19 just how the conflict was going on with the two
20 different -- I say groups, but it's not really
21 groups. It's like people here for this reason and
22 then people here to cause discontent and confusion
23 and -- and so that's what you see. And you actually
24 see the two groups going against each other which
25 was -- had a major impact on me personally and I

SW - A. RABON - DIRECT

1 think everyone else, and you'll see that on the
2 video.

3 Q So you'll see peaceful protestors ---

4 A Uh-huh.

5 Q ---peaceful protestors were there for a
6 legitimate purpose, correct?

7 A That's right. That's right.

8 Q Thank you.

9 MS. MCELVEEN: If we could hit play,
10 Investigator Caufield. Thank you so much.

11 (Publishing of video.)
12 (During publishing of video unidentified person from
13 gallery clapped.)

14 THE COURT: Mr. Caufield, stop it for a
15 second. There won't be any response to anything
16 that's being played. If you can't conduct yourself
17 in a manner that maintains courtroom decorum, you
18 won't be allowed to stay. There won't be anymore
19 outbursts, anymore clapping, anymore statements made
20 by anything that's presented in this video. This
21 isn't the place for any protest; and if I hear
22 anymore, you'll be removed. That's gonna be the
23 last warning that will be made. Go ahead.

24 MS. MCELVEEN: Thank you, Your Honor.

25 (Publishing of video continues.)

SW - A. RABON - DIRECT

1 BY MS. MCELVEEN:

2 Q So there's a lot going on in that video.
3 Can you kind of break it down for us a little bit on
4 what you observed that night and what concerns you
5 had and what you saw happening with the peaceful
6 protestors versus Ms. Martin and her group please.

7 A Yes. So, I mean, you see the -- the two
8 different beliefs there. You see once this one
9 gentleman started talking about the true issues
10 about officers being responsible and speaking up
11 when other officers do wrong. I mean, true issues
12 that he was bringing up and trying to make things
13 better by awareness, you see him doing all that.
14 And then you see he mentions hugging and the
15 community that we live in and that I've -- I know,
16 like, we, we do a lot in the community. I've worked
17 crimes against victims, crimes against children for
18 a long time. And I might not understand all the
19 issues that people are facing during this hardship,
20 but I see people hurting, and I saw people hurting
21 that night; and those that were hurting were there
22 for a reason and they were trying to express that
23 reason like they have a right to do. And as they're
24 doing that, they're hugging us because they know our
25 intentions and they are being ridiculed, called

SW - A. RABON - DIRECT

1 names: Weak ass, soft ass. And that is just wrong
2 to me. So I don't, I don't see that there was any
3 part on Brittany and her group to be an activist at
4 this moment. I even see one person talking to
5 Brittany that I know that I feel I know his
6 intention, but it was just not -- it was something
7 to see. It was something to see the community
8 standing up for us and then them confronting this
9 group of people that was causing controversy, you
10 know, that night. It was -- it was just something
11 to see and I'm glad I was there and got to see that.

12 There were a couple of moments when they
13 were going at each other, I really felt there was
14 about to be a fight, altercation. And you can just
15 see the -- how the atmosphere changed after that.
16 The people that were there for the right reason felt
17 defeated. I mean, you could just see it.

18 Q Did they eventually get in their cars and
19 leave?

20 A Some -- a lot of them left. A lot of them
21 came up to us afterwards and were expressing they're
22 their own person, they're there for the right
23 reason, they're not with that. And if you kept
24 watching that footage you would see people walking
25 up to us saying, I'm not about that, you know. And

SW - A. RABON - DIRECT

1 then, like, the officers -- black officers, what
2 they went through, how they were attacked by
3 Brittany and her group, just verbally and awful
4 things said to them. It was -- it was just not
5 good. But seeing the community stand up for us
6 which is who I work for, it meant the world to me.

7 Q Did I hear correctly that she was
8 discussing police department salaries, starting
9 salaries, compared to her own salary and ridiculing
10 you for how much you make to serve the public?

11 A That's right.

12 MS. MCELVEEN: At this time, Your Honor,
13 we'd like to play a body-worn camera footage 2034-2.
14 It's a simultaneous instant from State's Exhibit 1.
15 I'm sorry, this one should be State's Exhibit 2.
16 This will be provided on a supplemental State's
17 Exhibit 2. We'd like to admit it into evidence as
18 the same body-worn camera footage.

19 THE COURT: Ms. Rosado, do you have any
20 objection?

21 MS. ROSADO: I don't have any objection,
22 Your Honor.

23 THE COURT: All right. State's No. 2 will
24 be admitted into evidence, and you can publish it to
25 the jury.

SW - A. RABON - DIRECT

1 MS. MCELVEEN: Thank you.

2 (WHEREUPON, State Exhibit No. 2 was marked
3 for identification and admitted into evidence.)

4 (Publishing of video.)

5 BY MS. MCELVEEN:

6 Q Were you able to identify the young man
7 who keeps coming in the screen and just said the
8 horrible things to y'all?

9 A Yes.

10 Q Who ---

11 THE DEFENDANT: Y'all will not disrespect
12 me in this courtroom today. I am on trial and I
13 will ---

14 THE COURT: Ma'am ---

15 THE DEFENDANT: --- do what I'm supposed
16 to do ---

17 THE COURT: Ma'am.

18 THE DEFENDANT: ---but y'all not gonna
19 disrespect my dead son.

20 THE COURT: Ma'am.

21 THE DEFENDANT: You gonna let him ---

22 THE COURT: Ma'am.

23 THE DEFENDANT: ---rest in peace.

24 THE COURT: Ma'am, be quiet.

25 THE DEFENDANT: My son gonna rest in

SW - A. RABON - DIRECT

1 peace.

2 THE COURT: Be quiet.

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Be quiet.

5 THE DEFENDANT: She will not point to
6 that.

7 THE COURT: Not -- no more.

8 THE DEFENDANT: Yes, sir.

9 THE COURT: No more. No more. Your
10 attorney will have a chance to cross-examine the
11 witnesses.

12 THE DEFENDANT: Yes, sir.

13 THE COURT: You will have a chance to
14 testify if you so choose, but no more outbursts.
15 This trial will proceed without you. No more.

16 BY MS. MCELVEEN:

17 Q Were you able to identify the young man
18 who kept approaching you and yelling things?

19 A Yes.

20 Q Was he with Ms. Martin?

21 A Yes.

22 Q Is he related to Ms. Martin?

23 A Yes, that's her son, Courtney Harris.

24 Q Thank you.

25 MS. MCELVEEN: Sorry, you can keep playing

SW - A. RABON - DIRECT

1 the video. Thank you.

2 (Publishing of video.)

3 UNIDENTIFIED PERSON: Excuse me.

4 (Three unidentified persons in gallery leave
5 courtroom.)

6 MS. MCELVEEN: Hit pause for me please.

7 BY MS. MCELVEEN:

8 Q Captain Rabon, this is another view of
9 what we saw but from a different angle, correct?

10 A That's right.

11 Q And at different points this is -- can you
12 see Brittany Martin try to push out the more
13 peaceful protestors ---

14 A Yeah.

15 Q ---and shame them in a way?

16 A That's right. Just -- even the elderly
17 lady that had the small child, she -- was in her
18 face. And then just calling the others that were
19 hugging us, and you -- I mean, one lady was sobbing
20 as she hugged us and she's calling her soft ass,
21 weak ass. It's -- it was just evident she was
22 trying to cause -- not -- she was not doing a
23 peaceful protest. She was trying to cause people
24 to, like, act against us.

25 Q And this video, she's charged with

1 inciting a riot?

2 A Yes.

3 Q Is this a good example of not causing a
4 riot but inciting one, trying to get someone to act
5 to do a riot?

6 A She tried. She kept saying, "this is my
7 protest, you go home, this is my protest." Not even
8 talking about the topics at hand like the other
9 people were doing. And, in fact, the one guy kind
10 of, like, started calling her out, like, like, where
11 are you from, you know, we live in this community,
12 where are you from. And I think it was her son or
13 somebody said they were from Illinois. And so at
14 that point I was like, you know, maybe they're just
15 coming here, they don't know our community, they
16 don't know how strong we are, and they're trying to
17 cause this. She tried to cause this; it just, it
18 wasn't working.

19 Q Did you hear peaceful protestor at any
20 point say we are being too peaceful for them?

21 A Yes. Yes.

22 Q Did this -- the peaceful protest you
23 testified, some left. After this Ms. Martin stayed
24 around for a while; didn't she?

25 A That's right.

SW - A. RABON - DIRECT

1 Q And could we please skip to the online
2 video at 9:05 p.m. And, Your Honor, this will be
3 placed on State's Exhibit 2 as well. We'd like to
4 admit it into evidence at this time and put it all
5 on one disk for...

6 THE COURT: And you have no objection,
7 Ms. Rosado?

8 MS. ROSADO: No, Your Honor.

9 THE COURT: All right. You may publish
10 this video to the jury.

11 MS. MCELVEEN: And I believe -- I believe
12 we start kind of at the -- maybe like 10-minute mark
13 there, or the 11-minute mark.

14 (Publishing of video.)

15 MS. MCELVEEN: Now, can you hit pause for
16 a second on that?

17 BY MS. MCELVEEN:

18 Q Were you guys ever able to identify the
19 gentleman in the black shirt that just said that
20 with a CWP is allowed to ---

21 A Yes.

22 Q ---shoot at people if you feel threatened
23 by?

24 A That's ---

25 Q Who was that?

SW - A. RABON - DIRECT

1 A --- Eric Kennedy which is Brittany's --
2 that's her husband.

3 Q Thank you.

4 (Publishing of video.)

5 BY MS. MCELVEEN:

6 Q So Ms. Martin mentions Sharkhead. "Who
7 out here has a got a beef with Sharkhead, who is
8 hanging out with Sharkhead." Who is Sharkhead?

9 A I believe that's -- that's a deputy with
10 the county.

11 Q And so you're with the city police
12 department, right?

13 A That's right.

14 Q And she's threatening a county deputy out
15 there, correct?

16 A It sounded like that to me.

17 Q And this was night number 30th, 31st?
18 This is night number three, correct?

19 A This was the night of the 1st so.

20 Q 30th, 31st, 1st.

21 A Right.

22 Q This is night number three, right? And it
23 kept on.

24 A That's right.

25 Q Please answer any questions Defense may

1 have.

2 MS. MCELVEEN: Your Honor, we'd like
3 permission to re-call Captain Rabon at the
4 appropriate time.

5 THE COURT: Ms. Rosado.

6 **CROSS-EXAMINATION**

7 BY MS. ROSADO:

8 Q Good morning.

9 A Good morning.

10 Q It's Rabon, right?

11 A Rabon.

12 Q At the beginning of the video we first
13 saw, you said Mr. Benson had those people on top of
14 his car; is that correct?

15 A That's correct.

16 Q And then he drove away?

17 A That's right.

18 Q Was he arrested for driving those people
19 on the car?

20 A Not at that moment, but he was later.

21 Q Okay. And Ms. Martin was speaking to you
22 about the people on the car in the march, and her
23 speaking to you about the march and the people in
24 the car, that impeded your ability to enforce the
25 traffic law?

SW - A. RABON - CROSS

1 A I think if you see, I'm speaking with Mr.
2 Benson about the law. Like, you cannot drive like
3 that, if you do drive like that you won't be charged
4 right now, but you will be charged, you cannot do
5 that, it's dangerous. And as I'm doing that she
6 begins to focus on me 'cause I'm touching -- she
7 said her property; I don't think that was her
8 vehicle. But she just, you know, was like, you get
9 away, you're not -- and she's telling them to drive
10 off. She's or-- like, ordering them to go. And I
11 think Eric happened to be in the way. Thankfully,
12 they didn't go; he would have got hit. But she and
13 then Eric approached me in a manner -- I think you
14 can look at their eyes on the video and see they
15 were not happy so that's what I felt.

16 Q At one point one of the people says --
17 well, Ms. Martin says, "I'm not the one, I'm the
18 wrong one to F with." And you said that you felt
19 threatened by that. Can you tell me how that
20 threatened you?

21 A The media -- the first threat was when
22 they both came toward me and then in an attempt to
23 de-escalate that, that's when I hugged her, like, to
24 remem-- like, for her to remember I was just talking
25 with you, you know, like the day before, that

SW - A. RABON - CROSS

1 morning, like, what's up, like. And then, so to
2 deescalate that anger, hatred like toward me, I
3 hugged her. Then, thinking that that worked because
4 she told Eric to back up, I think you even hear me
5 say you're my friend, you know. Then she went to
6 the vehicle and then flipped again and that's when
7 she made another threat.

8 Q And what did she ---

9 A The first threat was her actions. The
10 verbal threat was when was she was on the car.

11 Q And what did she say?

12 A So I don't misquote, "she want trouble,
13 we're gonna bring it, I'm telling you, you want to
14 fuck with, I'm the wrong one to fuck with."

15 Q And that threatened what?

16 A She's letting me know that don't fuck with
17 her, she's gonna bring it. Bring it, what does that
18 mean? To me, it was violence.

19 Q Okay. Did you also hear her say, "let's
20 keep this peaceful"?

21 A At the end 'cause I'm, like, saying y'all
22 will be charged. She was like, we are peaceful.
23 And I think you hear me say, this is not how you be
24 peaceful. You have kids there. I even say that. I
25 mean, they had our ears. They had -- we were

1 listening to them the day before that day. We -- it
2 was just amazing to me just how she just turned on
3 us and tried to get the community to turn on us.
4 That's just...

5 Q So is being loud and passionate and using
6 cuss words against the law in Sumter?

7 A Certain profanity, public disorderly,
8 which we did not enforce that at that time. Even
9 walking in the roadway, we didn't enforce that. You
10 know, it's -- it was emotional time. That was why
11 there was leniency, and that was why we were showing
12 empathy.

13 Q So you hugged her because you were afraid
14 of her?

15 A I hugged her as a last ditch effort to
16 calm it back down. Remember me from yesterday?
17 That's -- I'm hugging you, you know. I was not
18 against her.

19 Q Does being loud and boisterous and using
20 cuss words delegitimize a protest march?

21 A Say that again.

22 Q Does being loud and boisterous
23 delegitimize a protest march in Sumter?

24 A No.

25 Q Did the riot start during that hug

1 session?

2 A No, I -- I feel she was trying to cause
3 that at that moment telling people to violate the
4 law, that I'm trying to enforce the law; she's
5 impeding that. Me trying to instruct justice like,
6 stop, you know, you can't do this. She's letting
7 them know, no, you're gonna do this, go. And then
8 she and Eric coming toward me. It could have -- it
9 could have gotten violent. I mean, she was chest
10 bumping me, you know. It was -- you see I'm at the
11 car. When she finishes, I'm away from the car. So
12 it, it could have went differently. That's why I
13 hugged her.

14 Q Was there ever any physical violence
15 conducted by Ms. Martin?

16 A You mean there at that moment?

17 Q During these days of protest?

18 A Physical, like, the accomplished battery?
19 Chest bumping is kind of a battery. I felt that it
20 was an aggression toward me. In fact, she called
21 off Kennedy, Eric. She called him, like, you stop.
22 So when she did that I'm like, okay, she's
23 remembering we had a rapport; but he was coming, and
24 I mean ---

25 Q So she's crossing the line?

SW - A. RABON - CROSS

1 A If you watch the video ---

2 Q Is that what you're saying?

3 A If you watch the video again, you see both
4 of them, their anger toward me.

5 Q But she stopped him from crossing the
6 line, that's what you just ---

7 A Yes. When I -- that's when I hugged her,
8 and I'm like, you're my friend, remember me. So, but
9 before that, they were both at me; she chest bumped
10 me.

11 Q Was that before or after ---

12 A But I'm trying to get her to remember, you
13 know, calm down, this is ---

14 Q Was that ---

15 A --- we're together.

16 Q --- before or after you hugged her,
17 Officer?

18 A We can play it to make sure. I don't want
19 to misspeak. But to me, it was kind of like all
20 together.

21 Q I don't want to play it again. I want to
22 be mindful of our time. Now do you think the people
23 were protesting because they were happy?

24 A Of course not. Nobody was happy, even
25 officers. It was not a happy time.

1 Q It was not a happy time. Do you think the
2 statement that we're human, we're human, that kept
3 being made by Ms. Martin and other people in the
4 crowd, what do you think that meant?

5 MS. MCELVEEN: Objection, calls for
6 speculation what somebody else says what they meant.

7 THE COURT: Sustained.

8 BY MS. ROSADO:

9 Q How about the statement, our children
10 associate the blue with killing blacks, I mean, stop
11 this?

12 MS. MCELVEEN: Objection.

13 BY MS. ROSADO:

14 Q Did you hear that statement?

15 MS. ROSADO: I just asked what she heard.

16 THE WITNESS: I didn't hear that
17 statement.

18 BY MS. ROSADO:

19 Q Did you hear that statement? Okay. And
20 how far away were the police officers from
21 Ms. Martin when she was talking? Was that 10-feet,
22 8-feet?

23 A Half the distance from me to you.

24 Q One of the other protestors said, don't
25 talk to these -- and I'm gonna abbreviate -- pig,

1 A-S-S, and let's say itches. Did that person get
2 arrested?

3 A No.

4 Q Is talking loud to the police considered a
5 riot in Sumter?

6 A Of course not.

7 Q There was a black male on the video that
8 said, I love my people, I will die for my people.
9 Did he get arrested for threatening your lives?

10 A No, he did not threaten us.

11 Q And the statement about you guys making
12 \$45,000 and risking your life for the devil and not
13 being worth it, is it against the law to find out
14 how much a public servant makes in South Carolina?

15 A No. She wasn't charged with that.

16 Q Is it your belief that protest marches
17 should -- all protest-- I'm sorry. Is it your
18 belief that all protest marches should have the same
19 beliefs, ---

20 A Of course not.

21 Q ---you're in one accord?

22 A Of course not. But the incident that
23 happened in the country, I mean, they're saying, you
24 know, the same things and wanting the same results
25 for the officers that committed that horrible crime.

1 To me it should have been the same cause, but I
2 could tell what some people were there for. And
3 then the reason Brittany and the group around her,
4 it seemed they were there just to cause us issues
5 and...

6 Q So you identify the gentleman who
7 supported you all and discussed how his house was
8 being broken into. Do you remember him saying that?

9 A Yes.

10 Q And you said earlier that he was part of
11 the good group, right?

12 A He -- I don't even know how long he had
13 been there. I just remember him from that night. I
14 don't even know if I saw him anymore after that.

15 Q Do you remember him also saying just
16 because I'm saying, keep the peace, doesn't mean I'm
17 pro-police?

18 A Of course.

19 Q Do you consider the statement "No Justice
20 No Peace" a threat?

21 A No.

22 Q Do you think that people who feel as if
23 they've been victimized and murdered and threatened
24 by an agency should protest peacefully?

25 A Yes. That's your right to express.

1 Q You mentioned that you didn't feel as if
2 Brittany was a protestor because she was angry and
3 loud. Does being angry and loud stop you from being
4 a valid protestor?

5 A That's not what I said. She was -- she
6 was protesting, but it was evident when people are
7 expressing the reason they are there protesting.
8 You know, it's making a difference; you're there for
9 a reason. Her method of protesting was, it was just
10 to say awful things and try to get reactions from
11 the officers who were, like, feel the same way.
12 It's like it's -- that situation hurt all of us, not
13 just the community. It hurt officers as well. I
14 just don't see that she was trying to make a
15 difference. She was trying to harm our community.

16 Q You said that you felt there was going to
17 be a fight or an altercation. Was there ever a
18 fight or an altercation?

19 A I think you can see at one point in the
20 footage a couple of officers stepped toward the
21 crowd. I think that's when somebody snatched the
22 megaphone from the guy that was talking. It seemed
23 that there was about to be a fight.

24 Q But was there ever a fight ---

25 A Even told the officers, you know, if there

SW - A. RABON - CROSS

1 is a fight, just, you know, we got to stand our
2 ground here because we just didn't know what would
3 happen. It was -- it was not a good time.

4 Q But was there ever a fight or an
5 altercation?

6 A There was definitely an altercation. Now
7 did it come to blows? No. I didn't see any blows.
8 Someone did snatch the megaphone from the guy and
9 so, "that's not your shit, that's our shit." You
10 know, it's -- it was that ---

11 Q Everything was verbal?

12 A It was that potential to be.

13 Q So everything was verbal; is that correct?

14 A Except for the snatching.

15 Q Did Ms. Martin snatch the megaphone?

16 A I'm not sure who snatched. Someone
17 wearing black is all I know.

18 Q Is a verbal attack against the law in
19 Sumter?

20 A If a person feels that an assault is about
21 to happen and there's present ability, then yeah, it
22 can be.

23 Q Is ridiculing the police against the law
24 in Sumter?

25 A No.

1 Q Did you cry when we all watched the video
2 of George Floyd pleading for his life and dying at
3 the hands of the police officer?

4 MS. MCELVEEN: Objection, relevance, Your
5 Honor. Why does it matter if ---

6 MS. ROSADO: She's crying on the stand
7 now.

8 MS. MCELVEEN: --- Captain Rabon cries ---

9 THE COURT: Sustained.

10 MS. MCELVEEN: --- when she watched ---

11 THE COURT: Sustained.

12 MS. MCELVEEN: --- the video.

13 THE COURT: Sustained.

14 MS. ROSADO: Thank you.

15 BY MS. ROSADO:

16 Q Did your agency need to use teargas to
17 quell this riot?

18 A No.

19 Q Did they use riot techniques?

20 A No.

21 Q When Ms. Martin said, "We're thirsty for
22 love," was that her attempt at creating a riot in
23 your opinion?

24 A I'm not sure. When was that?

25 MS. MCELVEEN: Your Honor, I ---

1 THE WITNESS: I just might not have heard
2 her say it.

3 BY MS. ROSADO:

4 Q Okay. How about saying someone is weak
5 and -- they said, actually, a weak ass. Is that
6 against the law?

7 A It's not against the law, but -- they were
8 expressing themselves too. They were being
9 ridiculed.

10 Q How about the statement "Show me a good
11 cop who's doing the right thing." Is that
12 instigating a riot, or is that public commentary?
13 Which one would you think?

14 A I mean, at that moment it was people
15 hugging and then she's trying to get it back to
16 against us. You know, it -- it depends on how you
17 look at that. That's one of the statements that she
18 used to attempt to get to the point where it was
19 getting back agitated. That statement in itself,
20 no, it's not -- does not cause that but, a series of
21 actions with that statement can.

22 Q Now we identified Courtney on the video.
23 Was he charged with anything?

24 A I'm not sure. I don't think so. He just
25 made several crude remarks to a lot of officers that

1 were -- it was bad.

2 Q But he was never charged for any of those
3 remarks, am I correct?

4 A I don't believe so. I'm not sure of his
5 age. 17, he may have been. I'm not sure.

6 Q Would you say that by saying "this is my
7 protest," that was an attempt to instigate a riot?

8 A No, but it does show that she had no
9 intention of coming together as a group for a common
10 cause to make things better. It was her protest to
11 cause discontent. That's what she was doing.

12 Q Did she say, "I'm here to cause
13 discontent?"

14 A You see that from her actions and the
15 people that were with her actions. You know, and
16 some of the people that truly want to make a
17 difference were trying to talk to her in the crowd;
18 I saw that.

19 Q Now when she makes the statement about
20 we're being peaceful for them, was that when she was
21 trying to incite a riot?

22 A Say that again.

23 Q When she made the statement. "We're
24 being peaceful for them."

25 A When was that?

1 Q She was implying to children that were
2 standing there. Was that when she was trying to
3 incite a riot?

4 A Are you talking about on the vehicle?

5 Q No, afterwards.

6 A I'm not sure about that statement.

7 Q When someone in the crowd makes the
8 statement that passing a civil servants exam means
9 you can take our lives, did they get arrested for
10 threatening anybody?

11 A No, that wasn't a threat.

12 Q When Ms. Martin mentions Waltki Williams
13 who was killed here in 2016, was that an attempt to
14 incite a riot?

15 A No.

16 Q Was Ms. Martin arrested because the crowd
17 she was in was loud and boisterous and didn't say
18 popular things?

19 A No. She was arrested for what she did.

20 Q At one point the crowd breaks out and
21 starts to sing. Is that when the riot started?

22 A No.

23 Q Was any property destroyed by the group?

24 A We had property destroyed, but I can't say
25 they did that.

SW - A. RABON - CROSS

1 Q Is it against the law for black people to
2 discuss possession of a CWP in Sumter?

3 A No.

4 Q Do you consider it a threat by telling you
5 I have a CWP?

6 A No.

7 Q Okay. Thank you.

8 A It lets me know that possibly ---

9 Q Thank you.

10 A --- you're armed.

11 THE COURT: She can explain her answer.

12 MS. ROSADO: Okay.

13 THE WITNESS: It lets me know that you're
14 possibly armed and so when you do make a threat to
15 shoot or kill us, somebody could have a weapon, you
16 know.

17 BY MS. ROSADO:

18 Q Did someone make a threat or kill anybody?

19 A Later.

20 Q Was Ms. Martin the person that made a
21 threat to shoot or kill anybody?

22 A She threatened to kill us, have all of her
23 hitters come, but that was another day. I mean, we
24 can get into that.

25 Q Was asking for an Aspirin when the riot

SW - A. RABON - CROSS

1 started, when the gentleman asked for some aspirin?

2 A No. She -- she attempted to incite.
3 There was no riot. The community stood up for us.
4 There was no riot.

5 Q So the gentleman that said, "Just like you
6 ain't gonna hurt my family, I'm not gonna let you
7 hurt" -- "just like you ain't gonna let me hurt your
8 family, I ain't gonna let nobody hurt mine." Was he
9 arrested for threatening the lives of a police
10 officer?

11 A No.

12 Q Do you consider that a threat?

13 A No, ma'am.

14 Q Do you consider calling for the removal of
15 Sharkhead from his position a threat?

16 A I think some of the words were, "We're
17 coming after him." I don't know what that means.
18 You know, that's why I'm hesitant today to even say
19 his name, you know. I -- I don't want anyone going
20 after him.

21 Q So if I say President Biden should be
22 removed from his position, am I threatening him?

23 A No, but if you say to a secret service
24 agent, I'm coming after him, you know, I'm -- and
25 there's already been, like, aggression, I think

1 they would kind of wonder if you're gonna hurt him.

2 Q Thank you. One moment.

3 MS. ROSADO: Your Honor, may we approach a
4 moment.

5 THE COURT: Yes.

6 (WHEREUPON, counsel approached the
7 bench for an off-the-record discussion.)

8 THE COURT: Redirect, Ms. McElveen?

9 MS. MCELVEEN: Yes, Your Honor.

10 **REDIRECT EXAMINATION**

11 BY MS. MCELVEEN:

12 Q Captain Rabon, was Ms. Martin arrested
13 that night after those incidents?

14 A No, she was not.

15 Q So this behavior is not what led, the
16 bigger part of it, this wasn't the ultimate night
17 that led -- the ultimate threat that led to her
18 arrest, correct?

19 A That's correct.

20 Q This is night three?

21 A That's right.

22 Q She kept claiming it as "my protest,"
23 correct?

24 A That's right.

25 Q And tried to run other more peaceful

1 protestors off, ---

2 A Right.

3 Q ---right?

4 A That's correct.

5 Q The protest centered around her in her
6 opinion?

7 A That's correct.

8 Q And did she want to kind of control the
9 narrative and the direction that protest was going?

10 MS. ROSADO: I'm sorry, Your Honor, I have
11 an objection. Leading the witness.

12 THE COURT: Sustained.

13 BY MS. MCELVEEN:

14 Q So who was in charge of that protest that
15 night in Brittany Martin's eyes? Who seemed to want
16 to take control of the protest?

17 MS. ROSADO: I'm sorry, I'm gonna have to
18 object. She can't say what Brittany Martin thought.

19 THE COURT: Sustained.

20 BY MS. MCELVEEN:

21 Q So who was taking control of that protest
22 on scene?

23 A What I witnessed was Brittany was in
24 control. She even said she was the queen; and it
25 was evident, people that did not agree with her, it

1 was not good for them.

2 Q Who was trying to instigate a reaction
3 from officers that night and other days?

4 A Brittany and the small circle group around
5 her.

6 Q Was she arrest-- what date was she
7 arrested?

8 A That would have been -- it was either
9 later the 3rd or the 4th. I think it was the
10 evening of the 3rd.

11 Q So it was much later than this?

12 A Right.

13 Q Thank you.

14 THE COURT: Recross.

15 **RECROSS-EXAMINATION**

16 BY MS. ROSADO:

17 Q You stated that Ms. Martin tried to get
18 rid of people who didn't agree with her. How did
19 she try to get rid of those people? Did she ---

20 A Not get rid of, it was just -- I mean,
21 like you saw on the video, just ---

22 Q She engaged them in discussions?

23 A Just talking against them like they're
24 weak and, you know, it's -- just defeated them and
25 their purpose for being there. They were there

1 because of what happened and how the nation was
2 feeling and, but that wasn't good enough. She
3 wanted them to participate in causing a controversy
4 and that was evident to me.

5 Q And you said she tried to instigate
6 reactions from the officers. And what did she do to
7 instigate reaction?

8 A It was just the verbal, the verbal -- even
9 when she, like, came up to me while I'm speaking
10 with someone about violation of the law and she's
11 pushing me back with her chest, you know. To me
12 that's -- I could have reacted, you know, but my
13 reaction was trying to calm her down because there
14 were heated emotions on surrounding that event, you
15 know, so it just didn't need to go there so that's
16 why I tried to hug her. And I think if you even
17 look on the footage, when they're hugging all the
18 officers, they even try to hug her again because
19 she's talking bad again and I'm, like, let's come
20 together, you know. No, she wasn't having it.

21 Q Is talking bad against the law in Sumter?

22 A She wasn't charged for that. Just, she
23 wasn't there with pure intentions, I -- what I
24 witnessed, my opinion.

25 Q And in your opinion did she have a right

SW - A. RABON - FURTHER DIRECT

1 to be upset when she watched someone die that ---

2 MS. MCELVEEN: Objection, calls for
3 speculation on what Ms. Martin should be feeling or
4 thinking.

5 THE COURT: Sustained.

6 BY MS. ROSADO:

7 Q And you said Ms. Martin wasn't arrested
8 for any of these actions; is that correct?

9 A When I first -- no, she was not.

10 Q So ---

11 A The inciting of the riot charge, that was
12 kind of like a culmination of.

13 Q Okay, thank you.

14 MS. MCELVEEN: Your Honor, just quickly.

15 **FURTHER DIRECT EXAMINATION**

16 BY MS. MCELVEEN:

17 Q The inciting of riot happened over
18 multiple days, correct?

19 A That's correct.

20 Q Thank you.

21 THE COURT: Anything else, Ms. Rosado?

22 MS. ROSADO: No, sir, thank you.

23 THE COURT: Captain Rabon, you may step
24 down.

25 MS. MCELVEEN: Your Honor, permission to

1 re-call.

2 THE COURT: Since you're subject to
3 re-call, please do not discuss your testimony with
4 any other witness.

5 Folks, this is probably a good time for us
6 to take a brief recess, give everyone an opportunity
7 to stretch your legs and get some refreshments in
8 the jury room so, ladies and gentlemen, I'm gonna
9 send you back to your jury room. Please do not
10 begin your deliberations. Please do not seek to do
11 any research about any mat-- any issue raised in
12 this case by any means whatsoever while you're
13 outside of the courtroom, and we will be back at
14 11:00.

15 (WHEREUPON, the jury was removed from
16 the courtroom at 10:51 a.m.)

17 THE COURT: All right. We'll be in recess
18 till 11:00.

19 (WHEREUPON, a recess was taken from the
20 proceedings.)

21 THE COURT: Are we ready for the jury?

22 MS. MCELVEEN: Yes, Your Honor. One
23 matter to take up and I think that Dr. Rosado is on
24 it, but I want to make sure the Court's aware that
25 we are asking that the defendant refrain from

1 addressing witnesses, me as the prosecutor, and
2 other people who are sitting on our side. We'd ask
3 that she refrain from addressing us directly in the
4 hallways and as people are coming and going out.

5 THE DEFENDANT: Your Honor, I never did
6 directly address them. They heard me cussing and
7 fussing to my people. Whatever y'all heard, that's
8 on them. They can't control -- that's her problem.
9 She thinks she can control my mouth.

10 THE COURT: Ms. Martin.

11 THE DEFENDANT: It doesn't work like that.

12 THE COURT: Ms. Martin, hold on one
13 second. Let's everybody take a breath. As I'm sure
14 Ms. Rosado has -- has told you, it's improper for a
15 party to a case to address other parties, witnesses,
16 anything of that nature. Now if they overhear you
17 speaking, I don't have any control over that; but,
18 if you refer to any of these people directly, engage
19 with them directly, and I find what they say
20 happened credible, then there could be repercussions
21 in terms of contempt of court, things of that
22 nature. One thing that I'm trying to do -- and I
23 understand that this is your trial and you've been
24 charged with some rather serious things and I'm
25 cognizant of that, I'm aware of that.

1 THE DEFENDANT: She lies, Your Honor.

2 THE COURT: I un-- I'm aware of the
3 emotion that's involved in this. But one thing I've
4 got to do as the trial judge is maintain order in
5 this room. I have to keep control in this room,
6 maintain order, maintain decorum; and there are --
7 there are rules that apply in, within these four
8 walls that don't necessarily apply outside, but the
9 rules are heightened in this room, okay.

10 THE DEFENDANT: Yes, sir.

11 THE COURT: We just can't have outbursts
12 or anything that is outside the scope of what's
13 normally done. As I told you a couple of days ago,
14 anything needs to be brought to my attention,
15 Ms. Rosado went to school for a long time and has
16 been practicing law for a long time. She knows how
17 to bring those things to my attention. If you want
18 something heard, it's got to come out of her mouth,
19 okay.

20 THE DEFENDANT: Can I say one more thing,
21 Your Honor?

22 THE COURT: This is a good chance to do a
23 test run. Tell Ms. Rosado what you want me to hear
24 and then she will decide whether it's -- whether it
25 should be brought to my attention.

1 (Ms. Rosado confers with defendant.)

2 MS. ROSADO: Thank you, Your Honor.

3 THE COURT: Yes, ma'am.

4 MS. ROSADO: Most likely when we call
5 additional witnesses, we'll focus more on instances
6 in the videos where Ms. Martin is saying peaceful
7 statements.

8 THE COURT: All right. Ms. Martin,
9 your -- your lawyer either through cross-examination
10 or through calling witnesses to testify on your
11 behalf, I am certain that she will highlight the
12 portions of the video that could be seen as
13 positive. So you have to trust that she knows what
14 she's doing in that she will be able to present the
15 evidence that you feel is positive with regard to
16 your case in the appropriate way. So I understand
17 you may feel like, well, those things haven't been
18 pointed out. You'll have the opportunity to do that
19 either through cross-examination of the State's
20 witnesses or by calling witnesses to testify for you
21 if you choose to do that. So, just like you did a
22 few moments ago, if there's anything that you feel
23 like has not been brought to the Court's attention
24 or you want me to hear, it's got to come through
25 Ms. Rosado. That's what you hired her to do. You

1 hired her to speak for you. And at least in this
2 courtroom, she's -- she's got to be your mouthpiece.
3 Outside of this courtroom, you know, obviously you
4 don't need anyone to speak for you, okay. But in
5 here, unless you're on that witness stand -- and
6 we'll go over your right to testify at the
7 appropriate time. Unless you're sitting on that
8 stand, everything has to come through Ms. Rosado,
9 okay.

10 THE DEFENDANT: Yes, sir, I understand.

11 THE COURT: Okay. All right. And, you
12 know, I'm, like I said, my ultimate goal is to
13 maintain order within this room and to make sure
14 that both sides in this case receive a fair trial.
15 That's -- those are my roles and also to make any
16 decisions about the law. But other than that, you
17 know, that's really it as far as what the trial
18 judge does so. I trust that we're not gonna have
19 anymore interruptions, outbursts, any things of that
20 nature. Like I said, before Ms. Rosado has got to
21 do the talking until it's time for you to talk and
22 we will discuss that, pros and cons, the -- your
23 right under the Fifth Amendment to remain silent or
24 whether you choose to testify. That will happen at
25 a later point in time after the State has presented

1 its case so.

2 Anything else before we bring the jury in?

3 THE DEFENDANT: No, sir.

4 THE COURT: All right. Bring us the jury
5 please.

6 (WHEREUPON, the jury was returned to the
7 courtroom at approximately 11:16 a.m., and the
8 following proceedings commenced in open court.)

9 THE COURT: Ms. McElveen, you may call
10 your next witness.

11 MS. MCELVEEN: The State will call Billy
12 Lyons.

13 THE CLERK: Place your left hand on the
14 Bible, raise your right hand. State your name.

15 THE WITNESS: William Lyons.

16 THE CLERK: You solemnly swear or affirm
17 your testimony to the Court shall be the truth,
18 whole truth, nothing but the truth, so help you God?

19 THE WITNESS: I do.

20 WHEREUPON,

21 **WILLIAM LYONS,**
22 having been duly sworn by the clerk, testified
23 as follows:

24 THE CLERK: Thank you much. Step around,
25 sir. State your name for the record and spell your

SW - W. LYONS - DIRECT

1 last name please.

2 THE WITNESS: William Lyons, L-Y-O-N-S.

3 **DIRECT EXAMINATION**

4 BY MS. MCELVEEN:

5 Q Lieutenant Lyons, can you please tell us a
6 little bit about yourself, where you're from, your
7 professional career, and where you are now working?

8 A Yes, ma'am. My name is William Lyons,
9 currently employed here at the City of Sumter Police
10 Department. I've been with the agency since 2004.
11 Born and raised in Sumter, South Carolina, attended
12 the University of South Carolina in Aiken, received
13 a Bachelor's degree in business administration.
14 Began with the Department back in 2004. I've worked
15 through in various sections within the agency to
16 include the criminal investigations division,
17 special investigations. And I'm currently assigned
18 as a watch commander in the uniformed services
19 division.

20 Q Thank you for your service. Were you
21 around the police department during the dates of May
22 31st to June 3rd?

23 A I was.

24 Q Were you aware of civil unrest that was
25 happening within the community in general?

SW - W. LYONS - DIRECT

1 A Yes, ma'am.

2 Q And at the police department specifically?

3 A Yes.

4 Q Did you have the opportunity to respond on
5 June 2nd and, if so, this would be the fourth night,
6 correct?

7 A That would be correct.

8 Q Can you tell us a little bit about what
9 happened June 2nd, night number four. Kind of lay
10 the scene of what you responded to and why.

11 A On the night of June 2nd we had received a
12 call at the Sunoco gas station on Broad Street which
13 is at 1083 Broad Street in the city of Sumter. We
14 had learned that Ms. Martin and her crowd had left
15 the Sumter Police Department just moments before
16 caravanning down Broad Street and had arrived at a
17 public open gas station on Broad Street about --
18 shortly before 11 p.m. that night. Several car
19 loads of people had pulled in there. And shortly
20 after the crowd arrived, arrived there, there was a
21 call into our 9-1-1 center about multiple people
22 inside the store causing a disturbance, shoplifting,
23 and just being generally unruly inside a public
24 business on Broad Street.

25 Q And someone -- another party called you

SW - W. LYONS - DIRECT

1 guys to come?

2 A That's right. I believe it was the clerk
3 that called.

4 Q And what -- and shoplifting I guess most
5 people know, but I just want to make sure we know,
6 what is shoplifting?

7 A You know, to permanently deprive a
8 business of a item or product or good or service.

9 Q Taking from a store?

10 A Taking, taking it from the store.

11 Q And you responded along with who else?

12 A It was myself. I had three others riding
13 with me. At that time it was lead detective, now
14 Lead Corporal Beckford. We had Detective Buford
15 Wilson and Detective April Verday. Captain Michael
16 Evans was there, and then there were some agents --
17 there was a -- another agency, the South Carolina
18 Law Enforcement Division was also assisting us.
19 They had agents that responded as well

20 Q Why was South Carolina Law Enforcement
21 Division there?

22 A They were called in to request -- provide
23 additional manpower as the days continued in the
24 unrest and the, you know, what had been going on at
25 the law enforcement center. We had got some

SW - W. LYONS - DIRECT

1 additional personnel to come in to provide
2 additional resources, and they were also assigned
3 with different divisions throughout the couple of
4 days that they were here.

5 Q What's a nickname for the South Carolina
6 Law Enforcement Division?

7 A That would be SLED.

8 Q SLED. So SLED was on scene that night at
9 Sunoco as well?

10 A They were.

11 Q What did you find when you arrived, and
12 what did you do -- who did you make contact with and
13 what did you observe?

14 A Got on scene, myself, Captain Evans, and
15 Lead Corporal Beckford. We went into the store,
16 made contact with the clerk that was inside of the
17 store gathering the information as to what had taken
18 place trying to determine, you know, what had been
19 stolen and what actually happened inside the store.
20 While I was in the store, I made conversation with
21 Mr. Eric Kennedy who was Brittany's other half,
22 significant other/husband at the time, and held a
23 conversation with him. You know, they had left the
24 Sumter Police Department and now they were at a open
25 business on Broad Street in our city. And I had a

SW - W. LYONS - DIRECT

1 conversation with Mr. Kennedy in an attempt to try
2 to get him to thwart or calm down, to get the folks
3 that were outside to get back in their vehicles and
4 leave. This is a -- this is a business that's
5 trying to be run and just try to implore his help
6 and maybe asking Ms. Martin and them to leave and
7 just, just to calm the situation down.

8 Q Were you lucky at doing that? Were you --
9 what did y'all ---

10 A He spoke with me and I'm not gonna
11 misspeak now. I don't know the direct quote. It's
12 on -- it's on the video, but I, I believe it was
13 something to the effect he did not control her.

14 MS. ROSADO: I'm sorry, I'm going to have
15 to object to that; that's hearsay.

16 THE WITNESS: I, I -- I heard him say it.
17 BY MS. MCELVEEN:

18 Q Well, but you were with -- it was
19 worse ---

20 THE COURT: Hold on a second.

21 MS. MCELVEEN: Sorry.

22 THE COURT: Give me a chance to ---

23 MS. MCELVEEN: Your Honor, I don't know
24 what statement was made, what someone else -- I
25 don't know what the hearsay is.

SW - W. LYONS - DIRECT

1 THE COURT: I guess Ms. Rosado is alleging
2 that the statement "I don't control her," is the
3 hearsay statement.

4 MS. MCELVEEN: I think he said he wasn't
5 able to control her, right? Or no?

6 THE WITNESS: The conversation was
7 directly between me and Mr. Kennedy, and he made --
8 play the video. You can hear the exact words he
9 uses, but it's something to the effect, I don't
10 control her, I -- I'm not controlling her.

11 THE COURT: I'm gonna sustain that
12 objection at least at this point.

13 MS. MCELVEEN: Yes, sir.

14 THE COURT: Ladies and gentlemen of the
15 jury, you'll disregard that statement which was to
16 the effect of, I don't control her. That will be
17 stricken from the record.

18 MS. MCELVEEN: Your Honor, we'd like to
19 play from State's Exhibit 1 the video ending in 2305
20 at this time starting at the 4-minute mark or so
21 from the beginning. Thank you.

22 THE COURT: This is on State's 1?

23 MS. MCELVEEN: Yes, sir.

24 THE COURT: Which has been admitted in
25 evidence?

SW - W. LYONS - DIRECT

1 MS. MCELVEEN: Yes, sir.

2 THE COURT: All right. You may publish it
3 to the jury.

4 MS. MCELVEEN: Can we start at the
5 4-minute mark. No, I'm sorry, back it up. I'm
6 sorry, you're right, I'm wrong. Can you hit pause
7 for a second.

8 (Publishing of video.)

9 BY MS. MCELVEEN:

10 Q Can you identify which one is Ms. Martin
11 in this video?

12 A She will be standing directly in front of
13 the State Law Enforcement Division agent there in
14 the multicolored blue and the yellowish colored
15 dress.

16 Q Thank you.

17 MS. MCELVEEN: Sorry, you can hit play
18 again, Investigator. Thank you.

19 (Publishing of video.)

20 MS. MCELVEEN: Thank you, Investigator.

21 BY MS. MCELVEEN:

22 Q That night did you guys end up leaving the
23 scene?

24 A Yes, ma'am, we did.

25 Q But someone else -- who called you in,

SW - W. LYONS - DIRECT

1 again, to come respond here?

2 A We were called to the scene by the clerk
3 of the store.

4 Q And were you standing close by when
5 Ms. Martin was speaking with the SLED agent?

6 A I was.

7 Q Did you hear her -- would you -- did you
8 construe what she said to that SLED agent as a form
9 of a threat when saying it's attack time in word
10 and?

11 A Yes, I would perceive that as a threat.

12 Q And what night is this again?

13 A This was the June 2nd?

14 Q And this was how many nights in a row was
15 this?

16 A Sorry, yes, June 2nd. This is the fourth
17 night. It started on the 30th, 31st, 1st and now
18 we're -- now we're at June 2nd.

19 Q And without going into any factual
20 details, were you made aware of any reports that
21 were made in other areas of the county that night?

22 A Other areas of the county that night?

23 Q Uh-huh. Anything else happen around the
24 county that night that y'all were aware of?

25 A I know that there was a fire that had

1 occurred at one of the Sumter County Sheriff's
2 Office annexes.

3 Q That night?

4 A That night.

5 Q And Ms. Martin was not linked to that --
6 ever linked to that or charged with that or?

7 A No, ma'am. We just had that.

8 Q That was ---

9 A Then we had two other fires in the city.

10 Q Thank you. Please answer any questions
11 that Defense may have.

12 A Yes, ma'am.

13 THE COURT: Ms. Rosado.

14 **CROSS-EXAMINATION**

15 BY MS. ROSADO:

16 Q Is it Officer Lynns?

17 A Lyons, L-Y-O-N-S.

18 Q Lyons. Thank you, Officer. So you
19 received a 9-1-1 call about people shoplifting; is
20 that correct?

21 A That is correct.

22 Q Was Ms. Martin accused of shoplifting?

23 A She was not charged with shoplifting, no,
24 ma'am. She was -- we had a -- we were -- the crowd
25 that responded from the police department -- not

SW - W. LYONS - CROSS

1 responded, that left the police department, then
2 went to the Sunoco with the crown that Ms. Martin
3 was with and Ms. Martin was not accused or charged
4 with shoplifting as far as I know.

5 Q And so you said that SLED and
6 approximately ten officers responded to the call
7 about shoplifting and the crowd at the Sunoco?

8 A I don't know if it was ten. It might have
9 been a little less, might have been a little more.
10 But they -- the SLED was with us when we responded.

11 Q Would Ms. Martin be responsible for the
12 other participants in that evening's actions at the
13 Sunoco?

14 A Responsible how?

15 Q For them shoplifting perhaps or being
16 accused of shoplifting?

17 A I wouldn't say that she is responsible for
18 them shoplifting, but her taking the crowd from the
19 police department to the business certainly didn't
20 help matters any.

21 Q Is it against the law to stop and get gas
22 at 11 p.m. in crowds in Sumter County?

23 A No, ma'am.

24 Q Now earlier you said that you spoke with
25 Ms. Martin's husband. He said he can't control her.

1 I didn't hear that on the video.

2 A That's right. I believe I said I don't
3 know what -- exactly what he said.

4 Q And when Ms. Martin is speaking to the
5 SLED officer, she says, "It's attack time." Does
6 that constitute a threat?

7 A I would perceive it as a threat. If
8 someone told me it was attack time, I believed they
9 were directing it towards me and other officers, I
10 would perceive that as a threat.

11 Q Were you aware that Ms. Martin had a prior
12 relationship with that officer?

13 A At the time of the incident, no, I
14 weren't. Afterwards, but not -- not when the
15 incident was occurring.

16 Q So chanting and saying very loudly, "I'm
17 black and I'm proud, say it loud, I'm black and I'm
18 proud," was that what you all responded to that
19 evening?

20 A No, ma'am. We responded to a call for
21 service for shoplifting and a large crowd that had
22 gathered at that gas station.

23 Q Is it against the law to gather as a crowd
24 at gas stations to get gas and to shop?

25 A Oh, no, ma'am.

SW - W. LYONS - CROSS

1 Q The statements they made about "We're just
2 talking to you, we ain't doing nothing," did that
3 create a threatening atmosphere to you all?

4 A "We're just talking," no, ma'am. That's
5 not threatening.

6 Q And when you identified Ms. Martin, what
7 was she doing when you identified her when you were
8 asking which one was Ms. Martin? What was she
9 doing?

10 A That's when she was in the confrontation
11 with the SLED agent. Not confrontation, that's when
12 the -- she was addressing the SLED agent.

13 Q And what'd she have in her hand when she
14 was addressing the SLED agent?

15 A You have to play it back. I don't recall
16 seeing it on the video.

17 Q In the interest of time, do you remember
18 seeing her with her cellphone screaming?

19 A I do not.

20 Q So the clapping and the loudness that they
21 were participating in, would that be the problem you
22 all saw that needed to respond to at the Sunoco?

23 A Again, we responded to a call for service
24 that came from the business about people, large
25 crowd there, multiple people stealing, creating a

SW - W. LYONS - CROSS

1 disturbance. It is a -- it is their business and we
2 have the right to respond if they request us to
3 respond to their business, and we responded to a
4 service for call from a business in our community.

5 Q But how was any of that Ms. Martin's
6 doing?

7 A Again, Ms. Martin took the crowd from the
8 PD, they caravanned down Broad Street, went to that
9 particular business.

10 Q I'm afraid we're going to have to play the
11 video again because I need to queue it up.

12 (Attorneys confer.)

13 MS. MCELVEEN: Your Honor, this is State's
14 Exhibit 1.

15 (Publishing of video.)

16 BY MS. ROSADO:

17 Q Were you aware that the statement
18 Ms. Martin is making there referring to her crossing
19 the street was an incident where this officer had
20 called her ---

21 MS. MCELVEEN: Objection, asks for
22 speculation. He wasn't present at whatever scene
23 ---

24 THE COURT: Let her finish -- let her
25 finish her question first.

1 BY MS. ROSADO:

2 Q Previously I asked you, you're aware they
3 have a relationship and so I'm actually asking were
4 you aware that that relationship included this
5 officer calling her a racial epithet previously and
6 that was why she was so agitated at the moment?

7 A I have no idea what you're talking about.

8 Q Was anyone ever arrested for shoplifting
9 that evening?

10 A Yes, ma'am, three. Three people were
11 charged, one of which was a juvenile.

12 Q And was that Ms. Martin's juvenile?

13 A I don't know the relation. I know that
14 three people were charged. I don't know the
15 relation to the three. I do know that the three
16 were with that crowd that were there.

17 Q And were you aware that Ms. Martin
18 followed the crowd there? She did not lead the
19 crowd; she followed them.

20 A She was with the crowd. She...

21 Q Previously said she led the crowd. That's
22 why I mention ---

23 A She is the professed leader of the crowd.
24 She had said before it was her protest.

25 Q Thank you.

SW - J. JACKSON - DIRECT

1 MS. MCELVEEN: Your Honor, I have no
2 further questions for this witness.

3 THE COURT: All right. You may step down.

4 THE WITNESS: Thank you, Your Honor.

5 MS. MCELVEEN: Your Honor, at this time we
6 call Colonel Jackson.

7 THE COURT: Colonel Jackson, you are still
8 under oath.

9 THE WITNESS: Yes, sir.

10 **DIRECT EXAMINATION**

11 BY MS. MCELVEEN:

12 Q Colonel Jackson, good mid day again. You
13 testified previously about the May 31st incident
14 that you witnessed?

15 A That is correct.

16 Q Were you present for the other days of
17 this demonstration or civil unrest?

18 A Yes, I was.

19 Q What days were you present? Were you
20 present on June 1st?

21 A Yes, I was.

22 Q Were you present on June 2nd?

23 A Yes, I was.

24 Q Were you present on night five, June 3rd?

25 A Yes, I was.

SW - J. JACKSON - DIRECT

1 MS. MCELVEEN: Your Honor, at this time --
2 well, let me ask you some questions.

3 Investigator Caufield, the video ending in
4 1704, eventually in a second.

5 BY MS. MCELVEEN:

6 Q After these events in June 2nd, how did
7 the police department respond after Sunoco and other
8 things that had happened in the county? How did the
9 police department respond -- what were you guys
10 observing, what was your plan after those incidents?

11 A As we observed as the command staff, that
12 the behavior of the individuals in the group that
13 was associated with Ms. Martin started to become
14 very agitated and more animated, we decided to
15 utilize some laws that we had at our advantage where
16 we established a point where the protestors could
17 protest on the property of the law enforcement
18 center. So we put up barricades in a area where
19 they were allowed to protest and then the city
20 government enacted a curfew.

21 Q And a curfew from 6 p.m. to 6 a.m. I
22 believe?

23 A That is correct.

24 Q So after this June 2nd night and the
25 nights leading up to it, a curfew was put into

SW - J. JACKSON - DIRECT

1 effect?

2 A Yes, it was.

3 Q Who was the primary or what group was the
4 primary concern in enacting the curfew?

5 A It was the group that was associated with
6 Ms. Martin during the timeframe. Like I previously
7 stated, they had become more agitated, animated,
8 then started to make threats of bodily harm.

9 Q Were there any other groups that you guys
10 thought had risen to the need of enacting a curfew
11 or putting up barricades?

12 A No.

13 Q If we could -- were you present on the
14 police department steps on June 3rd?

15 A Yes, I was.

16 MS. MCELVEEN: Your Honor, if we could
17 please publish to the jury the video ending in 1704,
18 State's Exhibit 1.

19 THE COURT: You may publish it to the
20 jury.

21 MS. MCELVEEN: Thank you.

22 (Publishing of video.)

23 BY MS. MCELVEEN:

24 Q Colonel Jackson, why does she refer to you
25 as chief?

SW - J. JACKSON - DIRECT

1 A That is -- I am the assistant chief of
2 police for the Sumter Police Department.

3 Q Did you know Ms. Martin as the days went
4 on or?

5 A I did have an occasion to speak with
6 Ms. Martin on a couple of days prior to this date,
7 and she and I did have dialogue and I did speak with
8 her and I introduced myself as Assistant Chief
9 Jackson of the Sumter Police Department.

10 Q As assistant chief, you're very well aware
11 of their training, officers' training, right?

12 A That is correct.

13 Q What are some core components, again, that
14 you guys train your officers for?

15 A We train our officers to be empathetic.
16 We train our officers to not be engaged or be lured
17 into reacting or overreacting to situations so we
18 implement stages in our training. And then we also
19 have our other command officers who are overwatch,
20 so if someone is beginning to become agitated or to
21 the point where we see that they may be losing it
22 themselves, we remove them from the situation.

23 Q Are you proud of your officers and the way
24 they responded those days and that day?

25 A Yes, I am. We did not allow them to bait

SW - J. JACKSON - CROSS

1 us into acting in a mannerism that would allow them
2 to achieve their objective, which was to get us to
3 overreact or cause some type of disturbance. We
4 were very, very lenient in our enforcement of the
5 laws because we did not want to agitate the
6 situation any worse than what it was.

7 Q That -- over the course of the days but
8 specially that last threat that was made, did you --
9 or that last statement made -- did you feel like
10 that was a threat at you and your fellow officers?

11 A Yes, I did feel as it was a threat toward
12 me and the officers that were presently on that
13 stage, or on that porch that day, because it was
14 directed directly at us. And what she stated was
15 that she was willing to die for her cause which
16 means that she had no regard for my life.

17 Q Thank you. Please answer any questions
18 Defense may have.

19 THE COURT: Ms. Rosado.

20 **CROSS-EXAMINATION**

21 BY MS. ROSADO:

22 Q Good almost afternoon. So the statement
23 "I'm willing to die for the Black, are you willing
24 to die for the blue," that's the statement that you
25 felt was a threat, sir?

SW - J. JACKSON - CROSS

1 A Well, the statement that she made that
2 stated that she was going to call her hitters and
3 she was willing to die for the Black and die for the
4 blue, yes, that was a threat.

5 Q When she said "You all will not keep
6 killing us, you all will not keep hurting us, I'm
7 just mad at y'all, I'm just disappointed in y'all,"
8 was that a part of that threat too?

9 A Yes, it was a part of the threat. And her
10 statement was "y'all". I've never killed anyone.

11 Q So when she was speaking she wasn't
12 speaking directly to you?

13 A Yes, she was speaking directly to me.

14 Q So she said Colonel Jackson?

15 A She said Chief.

16 Q Chief?

17 A Yes.

18 Q And when she said Chief, did she say,
19 Chief, I'm going to kill you?

20 A No, she did not state, Chief, I'm going to
21 kill you.

22 Q Now when she said "Black folks coming
23 together, now we're a threat," was that the
24 threatening statement to you?

25 A No. When she said "Black folks come

1 together," I'm black.

2 Q When she said "Peaceful protest
3 peacefully," was that threatening to you?

4 A No.

5 Q You talk about your training and being
6 trained not to overreact and the training that you
7 all had concerning deescalating situations. Do you
8 feel as if your training has also taught you that
9 sometimes police have to have thicker skin than
10 other people?

11 A Yes. In this profession you do have to
12 have thick skin from time to time. When that
13 verbalization transition from peaceful to threats,
14 then, yes, we take it very seriously.

15 Q So the training that you had that taught
16 you to have a thicker skin, what kind of training
17 would that be?

18 A It's not an actual training. It's just
19 something that you go through life and through our
20 conversation with our younger officers. We tell
21 them that you must be able to take conversation as
22 long as it doesn't get to the point of physical
23 altercation or threats to your life.

24 Q So when you train these younger officers
25 and you tell them that they shouldn't react unless

SW - J. JACKSON - CROSS

1 there's a direct threat to their lives, is that part
2 of a class that you all take?

3 A Is it a part of a class? That is what we
4 call on-the-job training. We prepare our officers
5 for all situations. These officers attended South
6 Carolina Criminal Justice Academy which provide them
7 with the basis of what they need to do as law
8 enforcement officers so that training transition and
9 you learn to become a little more tolerant of
10 situations as you proceed through your career.

11 Q Have people yelled at you before during
12 your career?

13 A Of course.

14 Q Have you encountered situations where
15 people were loud and yelling and unruly?

16 A At times, yes.

17 Q I know we spoke yesterday about you never
18 have experienced a protest before, but have you
19 responded to domestic violence incidents where
20 people were yelling at each other and yelling at the
21 police?

22 A Yes, I have.

23 Q So would you say it's commonplace for you
24 to deal with agitated people?

25 A I would not say common, but there are

1 occasions where I do have to deal with agitated
2 people.

3 Q Thank you, sir.

4 A You're welcome.

5 MS. MCELVEEN: No further questions, Your
6 Honor.

7 THE COURT: Thank you. You may step down.

8 THE WITNESS: Thank you.

9 MS. MCELVEEN: If it please the Court, I
10 think I can get up one more witness before lunch if
11 the jury is comfortable and only if the jury is
12 comfortable and Your Honor and Defense.

13 THE COURT: We're going to keep going.
14 Call your next witness.

15 MS. MCELVEEN: Okay. Yes, sir. The State
16 would call First Sergeant Gayle, re-call.

17 THE WITNESS: Thank you.

18 **DIRECT EXAMINATION**

19 BY MS. MCELVEEN:

20 Q First Sergeant Gayle, welcome back.

21 A Thank you.

22 MS. MCELVEEN: And Investigator Caufield,
23 if you can go ahead and get 1705-2 from June 3rd
24 ready to play in a second please.

25 BY MS. MCELVEEN:

SW - T. GAYLE - DIRECT

1 Q First Sergeant Gayle, we heard you testify
2 about May 31st and May 30th and what you did in
3 leading a escort, police escort. Can you -- were
4 you present June 1st for what happened on the steps
5 at the police department?

6 A I was present.

7 Q For the hugging?

8 A Yes, I was present.

9 Q Were you present for June 2nd at the
10 police department steps before the Sunoco incident?

11 A Yes, I was present every day.

12 Q Were you present on June 3rd? You just
13 answered that but...

14 A Yeah.

15 Q What made June 3rd different than June 2nd
16 and 1st and then May 31st? What made this one
17 exceptional in your eyes?

18 A On that particular day that's when the
19 threat was made and I was in fear for my life.

20 Q Can you please -- you were wearing
21 body-worn camera footage that night too, right?

22 A Yes, I was.

23 MS. MCELVEEN: Investigator Caufield, and
24 we won't put it up for long, but if you can please
25 put up First Sergeant Gayle's video from that

1 June 3rd day.

2 Your Honor, this is State's Exhibit 1
3 that's in evidence.

4 THE COURT: You may publish it to the
5 jury.

6 (Publishing of video.)

7 BY MS. MCELVEEN:

8 Q Can you tell us what direct threats she
9 made against you and fellow officers? Can you tell
10 me what the quote was?

11 A She said "The vest ain't gonna save you.
12 Some of us gonna be hurt. Some of y'all gonna be
13 hurt. We're ready to die for this. We're tired of
14 it. You better be ready to die for the blue. I'm
15 ready to die for the Black. I'm dying for the
16 Black. You better be ready to die for the blue."

17 Q How did that affect you?

18 A It -- it hit home. And I know in this
19 profession we leave for work, we're not supposed to
20 plan a return, return home. But when somebody is
21 making those threats and saying that they're gonna
22 call their hitters, it -- it really hits home to the
23 point where I had to actually move my family because
24 I was afraid because I had to be at work and my
25 family was at home.

1 Q First Sergeant Gayle, thank you so much
2 for your testimony today. Thank you for serving our
3 community.

4 THE COURT: Ms. Rosado.

5 **CROSS-EXAMINATION**

6 BY MS. ROSADO:

7 Q Now Sergeant Gayle, when you say you were
8 in fear for your life because Ms. Martin said that
9 she was ready to die for the Black; and I asked you
10 whether or not, or asked generally, whether or not
11 people were ready to die for the blue. Did you feel
12 as if she made that statement directly to you?

13 A When she said "The vest ain't gon' save
14 you, go call our hitters, they strapped," I did.

15 Q And is this your body cam that's being
16 recorded?

17 A Yes, it is.

18 Q So the statement she made about "black
19 cops, I don't have no problem with y'all, I ain't
20 got no problem with y'all," did you not hear that
21 part?

22 A I did hear that part.

23 Q Do you not consider yourself a black cop?

24 A I'm definitely a black cop.

25 Q So that statement was made

1 contemporaneously, wouldn't -- if you were afraid
2 when that statement make you aware that you were not
3 a target if there was a threat being made?

4 A Last time I checked a bullet didn't have a
5 name. And as far as I concerned, she was calling
6 her hitters. Her hitters didn't know who I was.

7 Q So if you felt that threatened, why didn't
8 you arrest her right then?

9 A I was always taught there's a time and
10 place for everything and that just was not the time.

11 Q So her statement that "You all will not
12 keep killing us, you will not keep hurting us, I'm
13 ready to die for the Black, are you ready to die for
14 the blue," that, to you, seemed to be a direct
15 threat to you?

16 A As a law enforcement officer, once you put
17 this uniform on, no one sees no gender or race.

18 Q So when people chant black power or play
19 the song that 2 Live Crew was so very famous for, F
20 the Police, do you feel threatened then also?

21 A Not at the time, no.

22 Q When Ms. Martin said she was tired of
23 this, we're tired of this, was she speaking of
24 herself personally or of the community being tired
25 even?