No.

IN THE

Supreme Court of the United States

BRITTANY VALENCIA MARTIN,

Petitioner,

v.

SOUTH CAROLINA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF SOUTH CAROLINA

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

It is a "rule of federal constitutional law" that in "cases raising First Amendment issues," appellate courts must "make an independent examination of the whole record in order to make sure that the judgment does not constitute a forbidden intrusion on the field of free expression." *Bose Corp. v. Consumers Union of U.S., Inc.*, 466 U.S. 485, 499 (1984); *see also, e.g.*, *Edwards v. South Carolina*, 372 U.S. 229, 239 (1963).

The question presented is:

May state appellate courts refuse to conduct independent First Amendment review based on state-specific appellate practices, as three states have held, or does the independent review obligation supersede such state rules, as other states have held?

PARTIES TO THE PROCEEDING

Petitioner (defendant and appellant below) is Brittany Valencia Martin.

Respondent (appellee below) is the State of South Carolina.

RELATED PROCEEDINGS

There are no other proceedings in state or federal trial or appellate courts, or in this Court, directly related to this case within the meaning of this Court's Rule 14.1(b)(iii).

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INTRODUCTION

This petition asks the Court to resolve a conflict among state appellate courts on their obligation to independently review the trial record to ensure that a jury has not returned a verdict in violation of the First Amendment, as required by this Court in, most recently, *Bose Corporation v. Consumers Union of United States, Inc.*, 466 U.S. 485, 499 (1984). Independent review guarantees meaningful appellate development of First Amendment doctrine and serves as a fail-safe against jury verdicts that are imbued with majoritarian preferences and inconsistent with the First Amendment. Yet a minority of state courts hold that state procedural rules can displace the federal constitutional requirement of independent review.

Petitioner Brittany Martin, a Black woman, was charged with three crimes arising from her participation in public demonstrations in the summer of 2020, where she grieved and protested the killing of George Floyd by police officers: (1) inciting a riot, (2) threatening the life of a public official, and (3) common-law breach of the peace of a high and aggravated nature. A jury acquitted Ms. Martin of incitement and deadlocked on the threat charge—the two offenses on which the trial court gave the First Amendment instruction her trial counsel had requested. On the charge of breach of the peace, however—the sole count on which the trial court did not give the requested First Amendment instruction—Ms. Martin was convicted and ultimately sentenced to four years' imprisonment.

At trial, the prosecution never specified how Ms. Martin's conduct constituted a breach of the peace. *See, e.g.*, Pet. App. 57a–58a. Rather, it alluded in vague terms to Ms. Martin's participation in the protests, then urged the jury to use its "common sense." *Id.* at 57a; *see also id.* (arguing "all we have to prove" is that the defendant "breach[ed] the peace of our community"). It was and remains undisputed that during the protest, Ms. Martin never acted violently, destroyed property, or caused any injury.

On appeal, Ms. Martin sought to have her conviction vacated on First Amendment grounds. But the South Carolina Court of Appeals declined to even reach the First Amendment issue, concluding that Ms. Martin waived the defense under state law—even though she had requested a First Amendment jury instruction and had introduced ample evidence supporting a First Amendment defense. Rather than following this Court's command to independently review the record, as Petitioner argued it must, the South Carolina Court of Appeals ruled that the state's extremely restrictive issue-preservation rules excused its duty to conduct an independent review in First Amendment cases.

In so holding, the court of appeals deepened a conflict among the states as to whether the federal Constitution requires appellate courts to independently examine the record in all First Amendment cases, or whether state appellate procedures can supplant the federal constitutional rule.

The South Carolina appeals court here, and other courts on that side of the split, are at odds with this

Court's precedents. *See, e.g.*, *Bose*, 466 U.S. at 499. Indeed, this Court required independent review 60 years ago in a case involving prosecutions under the *very same* South Carolina common-law offense here and arising out of a strikingly similar civil-rights protest. In that case, *Edwards v. South Carolina*, 372 U.S. 229, 235 (1963), this Court held that appeals courts owe a First Amendment-derived "duty" to independently examine the trial record. *Id.* That duty is especially critical where the jury convicts defendants who did "no more than" express opinions "opposed to the views of the majority." *Id.* at 237. Otherwise, the specter of criminal prosecution could effectively nullify the federal Constitution's protection of "the peaceful expression of unpopular views." *Id.*

It has been over four decades since this Court last provided guidance on how independent review of constitutional facts applies in First Amendment cases. The South Carolina Court of Appeals' opinion reflects a troubling divergence that has developed among state courts during that time. This Court should grant review to resolve the conflict among the states and provide much needed clarity on how this essential bulwark of First Amendment freedoms should operate.

OPINION BELOW

The opinion of the South Carolina Court of Appeals was unpublished. *State v. Martin*, Case No. 2022-001444, No. 2024-UP-274, 2024 WL 3519192, at *1 (S.C. Ct. App. July 24, 2024), available at Pet. App. 5a.

The order of the Supreme Court of South Carolina denying certiorari was unpublished and is available at Pet. App. 1a.

JURISDICTION

The Supreme Court of South Carolina denied discretionary review on February 12, 2025. This Court granted Petitioner an extension until July 12, 2025, to file this Petition. This Court has jurisdiction pursuant to 28 U.S.C. § 1257.

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

The First Amendment to the United States Constitution provides, in relevant part, that "Congress shall make no law . . . abridging the freedom of speech."

STATEMENT OF THE CASE

I. FACTUAL BACKGROUND

A. Petitioner's Protest Activities

In the summer of 2020, Petitioner Brittany Martin joined with hundreds of others in Sumter, South Carolina to protest. Over the course of five days, Ms. Martin—a Black woman, mother, chef, and activist—and many others exercised their First Amendment right to loudly and publicly express their grief, declare their outrage, and demand justice after the murder of George Floyd. Although Ms. Martin's expression at the Sumter protests included "chest bump[ing]" police officers, Pet. App. 36a, yelling, profanity, and allusions to violent confrontation between protestors and police, it is undisputed that she never acted violently, destroyed property, or caused any injury.

B. Petitioner's Criminal Conviction

Ms. Martin was ultimately charged with one count of instigating a riot ("incitement"), S.C. Code § 16-5-130(2); five counts of threatening the life of a public official, S.C. Code § 16-3-1040(A); and one count of breach of the peace of a high and aggravated nature, a common-law offense. Pet. App. 81a–84a.

At trial, the State called multiple witnesses to testify, and Ms. Martin testified in her own defense. *See, e.g.*, *id.* at 46a–47a. Throughout the trial, the State's officer-witnesses testified about their disapproval of, and even resentment toward, the content of Ms. Martin's speech and expressive conduct. One officer, for example, testified that Ms. Martin was "say[ing] awful things," *id.* at 37a, and

opined that she "wasn't there with pure intentions," *id*. at 38a, and "was [not] trying to make a difference," *id*. at 37a. Another accused her of "disparag[ing] those officers and try[ing] to tarnish that career and the noble profession[.]" *Id*. at 41a. The prosecutor further inflamed the jury against Ms. Martin and the content of her speech. For example, the prosecutor accused Ms. Martin of having narcissistic personality disorder, *id. at* 46a–47a, suggested that Ms. Martin "act[ed] . . . poorly" and "victimize[d] everyone else," *id.* at 65a–66a, and even proclaimed that Ms. Martin's behavior was "insulting to Dr. King," *id.* at 63a.

In closing arguments, the State failed to specify what conduct constituted criminal breach of the peace. Instead, the prosecutor broadly urged the jury to use its "common sense" to convict Ms. Martin, arguing that "all we have to prove" is that Ms. Martin "breach[ed] the peace of our community," and pointing to the fact that city officials "felt the need to put [a] curfew in place." *Id*. at 57a–58a.

Defense counsel argued that Ms. Martin's speech was protected by the First Amendment. *Id*. at 59a–61a, 62a. To that end, Ms. Martin's trial counsel requested that the jury be instructed about the First Amendment protections afforded to her on each charged offense. *Id*. at 11a–32a; *see also id*. at 48a.

The trial court first instructed the jury to consider "each charge separately on the evidence and law applicable to it uninfluenced by . . . any other charges[.]" *Id*. at 70a. Next, the trial court instructed the jury regarding breach of the peace of a high and aggravated nature—but, for this charge alone, did not give the requested instruction on the First

Amendment. *Id*. at 75a–76a. The trial court then charged the jury regarding the incitement and threat charge, and *did* give the requested First Amendment instruction as to those two charges. *Id*. at 75a–77a.

Ultimately, the jury acquitted Ms. Martin of incitement, deadlocked on the threat charge, and convicted Ms. Martin of breach of the peace of a high and aggravated nature—the only charge on which the jury was not instructed to consider the protections afforded by the First Amendment. *Id*. at 80a.

Ms. Martin, who was pregnant at the time, was sentenced to four years in prison. *See id*. at 9a–10a.

C. The Decision of the Court of Appeals

On appeal, Ms. Martin argued that because her case "rais[ed] First Amendment issues," the appellate court must "make an independent examination of the whole record in order to make sure that the judgment does not constitute a forbidden intrusion on the field of free expression," *Bose*, 466 U.S. at 499; *see* Pet. App. 7a. She argued that her protest was protected speech, "occup[ying] the highest rung of the hierarchy of First Amendment values," *Connick v. Myers*, 461 U.S. 138, 145 (1983); *see* Pet. App. 6a.

The Court of Appeals did not address Ms. Martin's First Amendment defense. Instead, it held, in one paragraph and over Ms. Martin's objection, that state issue-preservation rules precluded independent review because trial counsel did not request a directed verdict on the breach of the peace charge and did not raise the First Amendment in her motion to dismiss that count. Pet. App. 6a–7a. To reach that conclusion, the court relied on South Carolina's extreme outlier approach to issue preservation (an approach adopted

in just three jurisdictions nationwide), which rejects plain-error review in favor of an unyielding contemporaneous objection requirement. *Compare State v. Sheppard*, 706 S.E.2d 16, 19 (S.C. 2011) *with* Fed. R. Crim. P. 52(b) (appeals courts may reverse on issues "not brought to the court's attention" below where they identify "plain error" "affecting substantial rights").

The South Carolina Supreme Court denied review. Pet. App. 1a.[1]

II. LEGAL BACKGROUND

The independent review doctrine plays a key role in "ensur[ing] protected expression will not be inhibited." *Bose*, 466 U.S. at 505. The doctrine "is a rule of federal constitutional law" that requires appellate courts to "'make an independent examination of the whole record' in order to make sure that 'the judgment does not constitute a forbidden intrusion on the field of free expression.'" *Id.* at 499 (quoting *New York Times v. Sullivan*, 376 U.S. 254, 284–86 (1964)). It mitigates the "danger that decisions by triers of fact may inhibit the expression of protected ideas," *Bose*, 466 U.S. at 505, by requiring appellate judges to "independently decide whether the evidence in the record is sufficient to cross the constitutional threshold," *id.* at 511.

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[1] The appellate court's opinion suggests the trial court "attempted" to include a First Amendment instruction on the breach-of-peace charge, Pet. App. 8a, but in fact, the charge does not include any instruction on the First Amendment. The entire text of the jury instruction cited by the appellate court is available at Pet. App. 68a–79a.

The practice of independently reviewing the record in First Amendment cases can be traced back to the Court's decision in *Fiske v. Kansas*, 274 U.S. 380 (1927), issued only two years after the First Amendment was incorporated against the states. *See* Lee Levine, *Judge & Jury in the Law of Defamation: Putting the Horse Behind the Cart*, 35 Am. U. L. Rev. 3, 43–44 & n.194 (1985); *see also, e.g.*, *Edwards*, 372 U.S. at 235. Since *Fiske*, this Court has "repeatedly held" that "in cases raising First Amendment issues," courts must follow the doctrine of independent review. *Bose*, 466 U.S. at 499.

In practice, to "determin[e] whether the constitutional standard has been satisfied, the reviewing court must consider the factual record in full" and "must examine *for itself* the statements in issue and the circumstances under which they were made to see whether they are of a character which the principles of the First Amendment protect." *Harte-Hanks Commc'ns, Inc. v. Connaughton*, 491 U.S. 657, 688 (1989) (cleaned up) (emphasis added). That analysis is necessary to ensure the trier of fact did not impermissibly "intru[de] on the field of free expression." *Bose*, 466 U.S. at 499.

Independent appellate review protects the First Amendment rights of both parties and nonparties. Like overbroad laws, which may "deter or 'chill' constitutionally protected speech," *United States v. Hansen*, 599 U.S. 762, 769–70 (2023), convictions based on protected speech chill future nonparty speakers, and thereby deny "society's broader interest in hearing them speak," *id.*

This Court has applied the doctrine of independent review in a wide array of contexts, including: contempt of court against members of the press, *Pennekamp v. Florida*, 328 U.S. 331, 345–47 (1946); criminal breach of the peace, *Edwards*, 372 U.S. at 235; libel, *Sullivan*, 376 U.S. at 284–86; obscenity, *Jenkins v. Georgia*, 418 U.S. 153, 157, 160–61 (1974); civil liability arising from a boycott, *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 915 n.50 (1982); and defamation, *Bose*, 466 U.S. at 511.

In many of those cases, this Court overruled the decisions of state judges and juries. *See Bose*, 466 U.S. at 499 (application of independent review has occurred "most frequently in cases . . . [that] arose in state courts"); *see, e.g.*, *Edwards*, 372 U.S. at 235; *Jenkins*, 418 U.S. at 160–61. Notably, this Court has reversed several protest-related criminal convictions from South Carolina on First Amendment grounds. *See, e.g.*, *Barr v. City of Columbia*, 378 U.S. 146 (1964); *Henry v. City of Rock Hill*, 376 U.S. 776 (1964); *Fields v. South Carolina*, 375 U.S. 44 (1963) (reversing convictions affirmed by the Supreme Court of South Carolina first in *State v. Fields*, 126 S.E.2d 6 (S.C. 1962) and again in *State v. Fields*, 131 S.E.2d 91 (S.C. 1963)); *Edwards*, 372 U.S. 229.

REASONS FOR GRANTING THE PETITION

I. STATE COURTS ARE DIVIDED ON HOW INDEPENDENT APPELLATE REVIEW INTERACTS WITH STATE APPELLATE PRACTICES.

It has been more than forty years since this Court last addressed the doctrine of independent review in *Bose*, 466 U.S. at 487 (1984). In the intervening decades, state courts have fractured over whether and how to apply it. This case epitomizes the nationwide disarray.

Courts in at least three states hold that their own state appellate practices can displace this Court's constitutional rule that in "cases raising First Amendment issues," appellate courts must "make an independent examination of the whole record" to ensure the trial court's judgment "does not constitute a forbidden intrusion on the field of free expression," *id*. at 499 (quoting *Sullivan*, 376 U.S. at 284–86). By contrast, multiple other state courts recognize that First Amendment cases require independent review, full stop—a constitutional obligation that sometimes requires modifying or overlooking generally applicable state appellate practices.

That conflict is longstanding, unlikely to dissipate on its own, and has significant implications for the scope of First Amendment freedoms nationwide. This Court should resolve it.

In at least three jurisdictions, appellate courts have held that the federal constitutional rule of independent First Amendment review must yield to state-law issue-preservation rules. To begin with this case, the South Carolina Court of Appeals

subordinated the First Amendment's independent review doctrine to South Carolina's unusually harsh approach to issue preservation. Declining to consider Ms. Martin's First Amendment challenge, the court of appeals held that Petitioner's argument that her "conviction . . . must be vacated because it violates the First Amendment" was "not preserved" because trial counsel did not specifically move for dismissal and a directed verdict on First Amendment grounds. Pet. App. 6a–7a.

The state appellate court's ruling that forfeiture foreclosed independent review was particularly inapt here, where the appeals court had access to a trial record in which multiple red flags indicated the jury's verdict was contrary to the First Amendment. The State's witnesses repeatedly criticized Ms. Martin's protected speech and described her viewpoint as repugnant. *Id.* at 37a, 38a, 41a. The prosecution never specified how precisely Ms. Martin had committed common-law breach of the peace and instead made vague allusions to the general unrest caused by "Martin and her group." *See id.* at 58a. And, tellingly, the jury convicted only on the one count for which the trial court failed to give Ms. Martin's requested First Amendment instruction. On the other counts of incitement and threatening public officials, the trial court gave a First Amendment instruction and the jury duly acquitted and deadlocked, respectively.

Regardless, the state appeals court refused to assess the trial record for consistency with the First Amendment. In its telling, trial counsel's purported failure to strictly comply with South Carolina's wooden issue-preservation requirements foreclosed *any* appellate inquiry into Ms. Martin's federal

constitutional right to free speech, let alone the kind of searching independent review this Court has commanded.

As in South Carolina, courts in Pennsylvania have ruled that state appellate practices can displace the First Amendment requirement of independent review. Pennsylvania courts ostensibly recognize the need to "conduct an 'independent examination of the whole record'" to guarantee that "the judgment does not constitute a forbidden intrusion on the field of free expression." *Sprague v. Walter*, 656 A.2d 890, 903 (Pa. Super. Ct. 1995) (quoting *Bose*, 466 U.S. at 499). But that obligation takes a back seat to the Pennsylvania courts' rule against reviewing plain, but unpreserved, trial errors.

Thus, even while nominally applying independent review, Pennsylvania courts will decline to entertain First Amendment arguments when they were not preserved according to state law. *See id.* at 904 (applying Pennsylvania appellate practices, the First Amendment argument was "waived" on appeal, requiring the court to "defer" to the trial court's findings even though "we have conducted our own independent review of the record"). In other words, Pennsylvania—just like South Carolina here—subordinates meaningful independent review as required under the First Amendment to the demands of its own state appellate practices.

Iowa courts have refused *any* review—much less independent review—of unpreserved First Amendment arguments. *See, e.g.*, *State v. Van Wyk*, No. 01-1262, 2002 WL 1585831, at *4 (Iowa Ct. App. 2002) (refusing to address First Amendment

argument regarding conviction for speaking to a juror) ("We require error preservation, even on constitutional issues."); *see also Doss v. State*, 961 N.W.2d 701, 717, 722 (Iowa 2021) (refusing to address important, but inadequately preserved, First Amendment problems with restrictions on internet usage by parolees).

But, exemplifying the broader disarray among state courts, Iowa courts have held in other contexts that independent review is required even when it means setting aside other state-law appellate procedures. *See, e.g.*, *Carr v. Bankers Trust Co.*, 546 N.W.2d 901, 904–05 (Iowa 1996) (holding that *Bose*, 466 U.S. at 520, and *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 254–55 (1986), require Iowa courts to apply a higher summary judgment standard in defamation cases).

The Washington Supreme Court has flagged that there are "differences among courts" as to "how extensive the review of the record should be" under independent review. *State v. Kilburn*, 84 P.3d 1215, 1233 (Wash. 2004). In *Kilburn*, a juvenile defendant challenged his felony harassment conviction on sufficiency of the evidence grounds—an argument the court determined implicated "core First Amendment protection" because it turned on whether the defendant's speech constituted an unprotected true threat. *Id.* at 1222. Although the defendant did not request independent review on appeal, the Washington Supreme Court nonetheless conducted independent review, setting aside the ordinary, highly deferential standard of review for sufficiency of the evidence and explaining that "[i]t is not enough" to "engage in the usual process" when First Amendment

rights are at issue. *Id*. To safeguard this critical constitutional liberty, the court noted, "[t]he First Amendment demands more." *Id.* The court conducted a particularly searching inquiry "into the factual context" of the underlying criminal conviction. *Id.* at 1224. The court went on to closely evaluate the trial transcript to assess whether the defendant's statements amounted to a "true threat," and ultimately overruled the lower court's determination that they had. *Id.* at 1224–25.

The Indiana Supreme Court also treats the independent review doctrine as a superseding obligation that displaces generally applicable state rules governing appeals. In *Brewington v. State*, 7 N.E.3d 946, 955 (Ind. 2014), the court interpreted "Defendant's free-speech challenge to his convictions" to, "at bottom, question[] the sufficiency of the evidence." *Id*. Then, the court explained, "[o]rdinarily, we would review such an issue with great deference to the jury's verdict . . . [b]ut here . . . [i]t is our constitutional duty . . . to make an independent examination of the whole record, so as to assure ourselves that the conviction does not constitute a forbidden intrusion on the field of free expression." *Id*. (internal quotation and alteration omitted). Ultimately, the court "independently reviewed the record *de novo*" and upheld the conviction. *Id*.

Connecticut courts take much the same approach. In *State v. Inzitari*, 329 A.3d 215, 222 (Conn. 2025), a criminal defendant appealed on the ground that there was insufficient evidence to support his conviction for possessing child pornography, arguing the photographs that formed the basis for his conviction were not actually pornographic, and as such protected

by the First Amendment. The Connecticut Supreme Court explained that "ordinarily," sufficiency review is highly deferential as a matter of state practice. *Id.* at 222–23. But, citing *Bose*, the court went on to explain that "certain contexts, . . . including those . . . that implicate the [F]irst [A]mendment," require a different, "de novo standard of review" for constitutionally significant facts. *Id.* at 223. Consistent with this obligation, the Connecticut Supreme Court set its typical standard of review to the side and recognized a need to "examine the four corners of each image to determine" whether they constituted First Amendment-protected expression. *Id.*; *see also id.* at 228 (conducting this analysis).

As the Washington Supreme Court recognized in *Kilburn*, there are significant differences in how state courts understand their obligations under *Bose* and this Court's other independent review cases. The South Carolina court here, and courts in Pennsylvania and Iowa, have thrown aside the "federal constitutional rule" of independent review when they find it inconsistent with state-law issue preservation rules. In this case, the folly of that state-law supremacy is thrown into particularly stark relief because the First Amendment defense was the central issue in the trial record. This Court should grant review to straighten out this disarray among the state courts.

II. THE QUESTION PRESENTED IS IMPORTANT.

Consistent application of the First Amendment's independent review requirement is a matter of significant nationwide importance. It is a "prized

American privilege to speak one's mind," even if "not always with perfect good taste." *Sullivan*, 376 U.S. at 269 (internal quotation and citations omitted). The doctrine of independent appellate review plays a key role in safeguarding that privilege in two ways.

First, independent review is essential for the development of First Amendment doctrine and ensuring that appellate courts, not lay juries, decide important constitutional questions. Because the First Amendment right can often be "given meaning only through its application to the particular circumstances of a case," affording "the trier of fact's conclusions presumptive force," as with most findings of fact, would threaten to "strip a federal appellate court of its primary function as an expositor of law." *Miller v. Fenton*, 474 U.S. 104, 114 (1985) (citing *Bose*, 466 U.S. at 503). That is an outcome this Court has been "reluctant" to embrace. *Id.*

Second, the First Amendment protects the robust exchange of ideas by shielding *disfavored* views from government sanction. *See, e.g.*, *Terminiello v. City of Chicago*, 337 U.S. 1, 4 (1949). Even at the best of times, the First Amendment rarely makes for an emotionally sympathetic defense before juries or even judges." Jeff Hermes, *The Challenges for Free Speech Advocates in a Time of Turmoil*, 46 Litig. 49, 50 (2019). Thus, "to be meaningful, freedoms of speech and press must protect the trade in ideas even when it causes significant injury to other interests; we would not need the First Amendment if speech were harmless." *Id.*

Unsurprisingly, then, "[t]here is impressive evidence that juries frequently apply their own

versions of justice in defamation cases," in a manner "not necessarily consistent with the standards of the First Amendment or the common law." Rodney A. Smolla, *Directed Verdicts & J.N.O.V.'s—As Devices for Jury Control*, L. Defamation § 12.79 (2d ed. May 2025) (citing generally Rodney A. Smolla, *The Rejuvenation of the American Law of Libel*, 132 U. Pa. L. Rev. 1 (1983). What is true in defamation cases is true in other First Amendment cases, as well.

Independent review addresses these difficulties. It gives appeals courts an opportunity to meaningfully define the outer limits of this fact-dependent right, preserving their "primary function" as an expositor of the law, *Miller*, 474 U.S. at 114, by assigning them "a constitutional responsibility that cannot be delegated to the trier of fact," *Bose*, 466 U.S. at 501.

Independent review also gives disfavored speakers a chance to overcome this community bias against their speech by relaxing appellate courts' typical deference to factfinders. *See* Charles L. Babcock, *The Role of the Court & Jury in Libel Cases*, 47 S. Tex. L. Rev. 325, 327 (2005) ("concern" that "juries can just as easily reflect majority sentiment" led this Court to require independent appellate review in *Sullivan* and subsequent cases (citations omitted)). After all, if the scope of the free speech right were left entirely to juries, then it stands to reason the First Amendment would offer little protection to unpopular speech like: cross burning, *Virginia v. Black*, 538 U.S. 343 (2003); protesting outside of a fallen soldier's funeral, *Snyder v. Phelps*, 562 U.S. 443 (2011) (reversing jury verdict); or "hyperbol[ic]" allusions to political violence, *Watts v. United States*, 394 U.S. 705 (1969) (reversing jury conviction).

Together, these twin benefits of independent appellate review help avoid convictions secured solely on the basis of constitutionally protected expression—abating the chilling effect caused by erroneous results that contravene the First Amendment. Applied properly, independent review plays an indispensable role in the enforcement, definition, and preservation of the First Amendment right. And it protects from censorship not just individual criminal defendants, "but society as a whole." *Virginia v. Hicks*, 539 U.S. 113, 119 (2003).

The facts underlying Brittany Martin's case highlight the constitutional costs of permitting an appellate court to abdicate its independent review duty. The prosecution failed to specify what unprotected conduct by Ms. Martin gave rise to the breach of the peace offense and instead criticized her protected speech during the protest. For example, the prosecution's witnesses accused Ms. Martin of lacking "pure intentions," Pet. App. 38a, of "say[ing] awful things," *id.* at 37a, and, with respect to her remarks about police officers, "tr[ying] to tarnish that career and the noble profession," *id.* at 41a.

As a result, the conviction the prosecution obtained is infected with a grave First Amendment violation—or at minimum, the grave potential that one occurred. This is precisely the danger independent review is intended to guard against. The state appellate court's refusal to conduct that review violated Ms. Martin's First Amendment rights anew.

And the First Amendment harm from the state court's refusal to conduct an independent review is not limited to Brittany Martin alone. "[S]peech on public

issues occupies the highest rung of the hierarchy of First Amendment values, and is entitled to special protection." *Connick*, 461 U.S. at 145 (internal quotation omitted). That's true even when it includes "vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials." *Sullivan*, 376 U.S. at 270. Particularly in light of the significant media attention it received, Ms. Martin's four-year prison sentence for protected expression remains a cautionary tale to other South Carolina residents who may wish to protest the government in a manner that "invite[s] public dispute, or br[ings] about a condition of unrest." *Edwards*, 372 U.S. at 238.[2]

III. THIS CASE IS AN EXCELLENT VEHICLE FOR CLARIFYING HOW STATES SHOULD APPLY THE DOCTRINE OF INDEPENDENT APPELLATE REVIEW.

Multiple features of this case make it an ideal vehicle for addressing whether state appellate practices can supersede courts' independent review obligations.

First, the question presented is squarely teed up for this Court's review. Ms. Martin directly requested independent review on First Amendment grounds

[2] This case also attracted news coverage well outside of South Carolina. *See, e.g.*, Nicole Chavez & Virginia Langmaid, *A Verbal Encounter With Police at a Black Lives Matter Protest Led Pregnant Activist to 4-Year Prison Sentence*, CNN (Sept. 11, 2022), https://tinyurl.com/3a6yvb9y; Associated Press, *A Black Protester Voiced Anger at Police in South Carolina. She Got 4 Years in Prison*, Nat'l Pub. Radio (Sept. 6, 2022), https://tinyurl.com/mtvj3v7y.

before the court of appeals and, through a petition for certiorari, renewed that request to the Supreme Court of South Carolina. The court of appeals rejected the argument head-on, Pet. App. 3a, 6a–7a, and the Supreme Court of South Carolina elected not to review that decision, *id*. at 1a.

Second, the question is presented in an ideal posture. There is no dispute that this is a "case[] raising First Amendment issues," *Bose*, 466 U.S. at 499. *See* Pet. App. 7a. Although the state appellate court held that Ms. Martin's trial counsel failed to preserve the First Amendment defense under South Carolina's strict preservation rule, which it read to require motions for dismissal and directed verdict, trial counsel made the First Amendment defense a central issue at trial and requested a First Amendment jury instruction. *Id*. at 49a–50a, 59a. Thus, the case unquestionably triggered independent review and contained an ample trial record for the appellate court to review for First Amendment issues.[3]

Third, given that the jury did not convict Ms. Martin of the other charges where the trial judge gave

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[3] As a general matter, the requirement of independent review does not turn on whether or how fully any First Amendment issues were aired in the trial court. Appellate courts extend ordinary deference to all questions of historical fact bound up in the judgment, applying independent review only to resolve whether the historical facts supporting the judgment establish a First Amendment violation. *See, e.g.*, *Young v. Gannett Satellite Info. Network, Inc.*, 734 F.3d 544, 549 (6th Cir. 2013) (citing *United States v. Hanna*, 293 F.3d 1080, 1088 (9th Cir. 2002)). In other words, this Court's First Amendment precedents require appellate courts to review whatever record exists.

the requested First Amendment instruction, the question presented is highly likely to be outcome-determinative. If the appeals court had independently reviewed the trial record for consistency with the First Amendment, it stands to reason that the appellate court would have drawn the same conclusion with respect to Ms. Martin's convicted offense as the jury did on the counts on which they acquitted and deadlocked, which all stemmed from the same multi-day protest.

IV. THE OPINION BELOW IS WRONG.

A. Independent Appellate Review Is Not Conditioned on a Party's Compliance with State-Law Preservation Rules.

Certiorari is further warranted because the South Carolina Court of Appeals got it wrong. Common sense confirms what decades of this Court's First Amendment case law compels: If independent review is to serve as a meaningful safeguard against First Amendment violations, it cannot play second fiddle to state appellate practices, including South Carolina's extreme approach to issue preservation.

To begin, the entire purpose of *independent* review is that an appellate court must "consider the factual record in full" and "examine *for itself*" the "statements in issue and the circumstances under which they were made" in order to determine "whether they are of a character which the principles of the First Amendment protect." *Harte-Hanks*, 491 U.S. at 688 (cleaned up) (emphasis added). Independent appellate review is thus an exception to the general maxim that the Supreme Court and other appellate courts are "court[s] of review, not of first view." *See Cutter v.*

Wilkinson, 544 U.S. 709, 718 n.7 (2005). When applying independent review, appellate courts conduct a "first view"-like evaluation of the record.

Edwards v. South Carolina demonstrates that independent appellate review is not constrained by the arguments a party made, or failed to make, in prior proceedings. In that case, nearly two hundred Civil Rights Movement-era protesters had been convicted of breaching the peace. *Edwards*, 372 U.S. at 230. Before the South Carolina Supreme Court, "[t]he only question" was "whether or not the evidence presented to the trial Court was sufficient to sustain their conviction." *State v. Edwards*, 123 S.E.2d 247, 247 (1961) (emphasis added).

Although the defendants had previously argued their convictions violated the First Amendment, by the time their case reached the state supreme court, they had "conceded . . . that whether or not any constitutional right was denied to them is dependent upon their guilt or innocence of the crime charged under the facts presented to the trial Court." *Id.* In other words, according to the South Carolina Supreme Court, "[i]f their acts constituted a breach of the peace, the power of the State to punish is obvious"—meaning the appeal turned on whether the prosecution proved that the defendants' conduct met the elements of the state-law offense, not on the federal First Amendment questions. *Id.* The South Carolina Supreme Court ultimately concluded that "[t]he acts of the appellants . . . clearly constituted a breach of the peace," and affirmed. *Id.* at 250.

This Court granted certiorari and determined it "need not pass upon" the question addressed by the

South Carolina Supreme Court—namely, whether "there was a complete absence of any evidence of the commission of this offense." *Edwards*, 372 U.S. at 234–35. Instead, even "accept[ing]" as true that there was sufficient evidence to convict as a matter of state law, this Court held that it had a "duty in a case such as this to make an independent examination of the whole record" for a potential First Amendment problem—a duty that existed separate and apart from how the defendants had framed their argument during prior appeals. *Id.* at 235. In essence, the Court held it had a "duty" to examine the record in a breach-of-peace case for potential First Amendment violations, even where the defendants had not raised that argument during a prior round of appeals. *See id.* at 230, 235.

The necessary implication of *Edwards* is that where a criminal conviction may be predicated solely on First Amendment-protected expression, appeals courts must set aside any appellate standards or rules that would otherwise stand in the way of independent review. In *Edwards* itself, that principle cashed out through the interplay between the state sufficiency of the evidence standard and the independent review doctrine. But nothing about *Edwards*' reasoning is limited only to that particular aspect of appellate review.

The same analysis should have applied here. By allowing South Carolina's harsh approach to issue preservation to override independent review, the appeals court thwarted the entire purpose of independent review, which is to serve as a safety valve against judgments that encroach on First Amendment freedoms on behalf of both the defendant and the

public at-large. In holding that South Carolina's outlier approach to issue preservation supersedes independent review, the opinion here rubber-stamps even blatant First Amendment violations where the party whose protected speech was criminalized defaulted on a procedural issue—even where, as was the case in the trial court, the defense actually introduced ample evidence on the First Amendment issues at stake and requested a First Amendment jury instruction.

That reasoning not only allowed the appeals court to abdicate its obligation to Ms. Martin; it also allowed the decision of twelve lay jurors to circumscribe this Court's free-speech precedent more generally. *Compare* Pet. App. 58a (urging a guilty verdict because, *inter alia*, "[a] curfew had to be put in place . . . because of Brittany Martin and her group") *with Edwards*, 372 U.S. at 238 (overturning convictions for the same offense because the First Amendment protects speech that "invite[s] public dispute" or brings "about a condition of unrest" (cleaned up)).

B. Independent Appellate Review Does Not Undermine the Purpose of South Carolina's Issue-Preservation Rule.

Because independent appellate review in First Amendment cases is a federal rule that indispensably safeguards the Constitution's free speech right, it cannot be nullified by contrary state appellate practices—whatever their justifications may be. That said, this case makes clear that independent review does not undermine any of the purposes that

undergird South Carolina's preservation requirements.

Issue preservation requirements, also known as the "contemporaneous objection rule," are designed to serve the trial judge, the appellate court, and litigants themselves. For a trial judge, those requirements "ensure that [she] gets the first opportunity to make a given ruling, and to get it right if possible[.]" L. Steven Emmert, *Preserving Issues for Appeal*, 19 No. 5 Prac. Litigator 15, 15–16 (2008). For the appellate court, those requirements may "avoid[] the need for unnecessary appeals" at all, *id.* at 16, or at least "narrow what remains to be decided," *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 487 n.6 (2008) (internal quotation and citation omitted). For the parties, issue preservation requirements promote "fairness" by ensuring that each party is aware of and can respond to the other's arguments. Francis C. Amendola et al., *Presentation and Preservation in Lower Court of Grounds for Review*, 24 C.J.S. Crim. Proc. & Rts. of Accused § 2549 (May 2025).

Independent appellate review undermines none of those justifications, even when strict issue-preservation rules are not followed. First and foremost, the trial court is not disadvantaged by independent appellate review, even when a claim is not technically preserved. Unlike ordinary appellate claims, independent appellate review neither looks askance at any particular trial court ruling, nor depends on the development of discrete arguments below. Rather, it is the factfinder's overall assessment of the *record* that is being scrutinized, not any particular legal ruling. Thus, as this very case demonstrates, an appellate court might well

determine that "the judgment . . . constitute[s] a forbidden intrusion on the field of free expression," *Sullivan*, 376 U.S. at 284–86, without concluding that the trial court abused its discretion or even erred at all.

Second, because the appellate court must conduct its own independent examination of the record, a trial court's analysis does not and cannot lighten the load of appellate review, such as by winnowing the issues. *Cf. Bose*, 466 U.S. at 501 ("[T]he rule of independent review assigns to judges a constitutional responsibility that cannot be delegated to the trier of fact . . . .").

Finally, because independent review is triggered only in cases that actually "rais[e] First Amendment issues," *Bose*, 466 U.S. at 499, no litigant is surprised by First Amendment analysis conducted on appeal. This case is paradigmatic: Ms. Martin unquestionably put a free speech defense at issue by requesting a First Amendment jury instruction on all counts, *see, e.g.*, Pet. App. 49a–50a, and by arguing to the jury that her speech and expressive conduct was constitutionally protected, *id.* at 59a (closing argument) ("That's a person trying to exercise her First Amendment rights to free speech in our country.").

In other words, nothing is lost by insisting that South Carolina appeals courts comply with their independent review obligations notwithstanding the state's outlier issue-preservation regime. But much is gained—not just for Ms. Martin, whose free speech rights were violated by the conviction at issue here, but for anyone who thinks twice about exercising their

free speech rights because of the prospect of unconstitutional imprisonment.

C. At a Minimum, This Court Should Reverse and Remand.

At a minimum, this Court should summarily reverse the South Carolina appeals court's decision with instructions to independently review the record for consistency with the First Amendment on remand. There is no dispute that Ms. Martin's case raised First Amendment issues. Her alleged criminal conduct—publicly protesting police brutality in the wake of George Floyd's murder by Minneapolis police officers—"occupie[d] the highest rung of the hierarchy of First Amendment values," *Connick*, 461 U.S. at 145. Ms. Martin's defense was built on First Amendment principles, *see, e.g.*, Pet. App. 59a, and she sought to have the jury instructed about the First Amendment protections available to her on every count, *see id.* at 22a–23a, 27a–32a, 49a–50a. Where such instructions *were* provided, the jury did not convict. Put simply, the appellate court's prioritization of South Carolina's outlier issue-preservation rules over its federal obligation to conduct an independent examination of the trial court record leaves entirely unreviewed whether Ms. Martin's criminal conviction was based on protected expression. At the very least, this Court should summarily reverse that unjust result and remand with instructions to conduct an independent review of the trial record.

* * *

The states are in disarray over whether state appellate practices can supersede the federal

constitutional obligation to independently review the trial court's record in First Amendment cases. This Court's guidance is badly needed to resolve that conflict and, in doing so, elucidate the proper application of the independent review doctrine—a critical means of protecting a core constitutional freedom. At a minimum, this Court should summarily reverse the court of appeals' judgment and remand for an independent review of the trial record.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully Submitted,

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July 11, 2025

APPENDIX

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APPENDIX A

THE SUPREME COURT OF SOUTH CAROLINA

THE STATE,

RESPONDENT,

v.

BRITTANY VALENCIA MARTIN,

APPELLANT.

Appellate Case No. 2024-001575

ORDER

Based on the vote of the court, the Petition for a writ of certiorari is denied.

FOR THE COURT

BY s/ Patricia A. Howard
CLERK
Verdin, J., not participating

Columbia, South Carolina
February 12, 2025

cc:
Sybil D. Rosado
David Allen Chaney, Jr.

Meredith Dyer McPhail
Alan Wilson
Ernest A. Finney, III
John Benjamin Aplin
The Honorable Jenny Abbot Kitchings

APPENDIX B

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

v.

BRITTANY VALENCIA MARTIN,

APPELLANT.

Appellate Case No. 2022-001444

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

s/ Paula H. Thomas, J.
s/ Stephanie P. McDonald, J.
s/ Letitia H. Verdin, A.J.

Columbia, South Carolina

Filed August 19, 2024

cc:
Sybil Dione Rosado, Esquire
David Allen Chaney, Jr., Esquire
Meredith Dyer McPhail, Esquire
Mark Reynolds Farthing, Esquire
Ernest A. Finney, III, Esquire
The Honorable R. Kirk Griffin

APPENDIX C

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

v.

BRITTANY VALENCIA MARTIN,

APPELLANT.

Appellate Case No. 2022-001444

Appeal from Sumter County
R. Kirk Griffin, Circuit Court Judge

Unpublished Opinion No. 2024-UP-274
Submitted June 3, 2024 – Filed July 24, 2024

AFFIRMED

Sybil Dione Rosado, of The Law Office of Sybil D. Rosado, LLC, of Columbia; and David Allen Chaney, Jr. and Meredith Dyer McPhail, both of ACLU of South Carolina, of Columbia; all for Appellant.

Attorney General Alan McCrory Wilson and Senior Assistant Attorney General Mark Reynolds Farthing, of Columbia; and Solicitor Ernest Adolphus Finney, III, of Sumter, all for Respondent.

PER CURIAM: Brittany Martin (Appellant) appeals her conviction for Breach of Peace of a High and Aggravated Nature (BOPHAN) and sentence of four years' imprisonment. We affirm.

1. Appellant argues her conviction for BOPHAN must be vacated because it violates the First Amendment. This argument is not preserved. Appellant never requested a directed verdict on the BOPHAN charge. In addition, her motion to dismiss the BOPHAN charge did not include a First Amendment argument. *See In re Michael H.*, 360 S.C. 540, 546, 602 S.E.2d 729, 732 (2004) ("An issue may not be raised for the first time on appeal."); *id.*("In order to preserve an issue for appeal, it must be raised to and ruled upon by the trial court."); *State v. Bailey*, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989) ("A party cannot argue one ground for a directed verdict in trial and then an alternative ground on appeal."); *State v. Jordan*, 255 S.C. 86, 93, 177 S.E.2d 464, 468 (1970) (stating issues not raised to the trial court in support of the directed verdict motion are not preserved for

appellate review); *State v. Gault*, 375 S.C. 570, 573-74, 654 S.E.2d 98, 100 (Ct. App. 2007) (finding the defendant's argument that the magistrate improperly denied his directed verdict motion based on the First Amendment was not preserved for review because the defendant did not raise the specific argument to the magistrate at trial); *In re Care & Treatment of Corley*, 365 S.C. 252, 258, 616 S.E.2d 441, 444 (Ct. App. 2005) ("Constitutional issues, like most others, must be raised to and ruled upon by the trial court to be preserved for appeal."). Appellant asserts this court must conduct an independent review of the record to ensure her conviction was not in violation of the First Amendment. She relies on the United States Supreme Court's opinion in *Bose Corp. v. Consumers Union of U.S., Inc.*, in which the Court held, "[I]n cases raising First Amendment issues we have repeatedly held that an appellate court has an obligation to 'make an independent examination of the whole record' in order to make sure that 'the judgment does not constitute a forbidden intrusion on the field of free expression.'" 466 U.S. 485, 499 (1984) (quoting *New York Times Co. v. Sullivan*, 376 U.S. 254, 284–286 (1964)). The Supreme Court in *Bose* set forth the standard of review for an appellate court to consider a constitutional issue; it did not hold a constitutional issue is exempt from preservation requirements. *See U.S. S.E.C. v. Pirate Inv. LLC*, 580 F.3d 233, 242 (4th Cir. 2009) ("In *Bose*, the Supreme Court was concerned with determining the proper standard of review for courts of appeals to apply when confronted with a district court finding that a particular statement was made with the 'actual malice' required by *New York Times*.").

2. Appellant argues her BOPHAN conviction must

be reversed because the trial court failed to instruct the jury about her First Amendment defense. We hold this issue is not preserved because Appellant failed to object to the charge the trial court gave the jury. The trial court attempted to give the jury a charge that encompassed Appellant's request to charge. It was incumbent on Appellant to raise to the trial court the inadequacy of the charge as given. *See State v. Ford*, 334 S.C. 444, 454, 513 S.E.2d 385, 390 (Ct. App. 1999) ("When a charge is inadequate as given, a party must request further instructions or object on grounds of incompleteness to preserve the issue for review."); *State v. Avery*, 333 S.C. 284, 296, 509 S.E.2d 476, 483 (1998) (finding an objection to a jury instruction was unpreserved when the defendant "did not object to the trial [court's] initial or supplemental instructions").

3. Appellant argues her conviction must be reversed because the charge of BOPHAN is unconstitutionally vague. This issue was never raised to nor ruled upon by the trial court and is not preserved. *In re Michael H.*, 360 S.C. at 546, 602 S.E.2d at 732 ("An issue may not be raised for the first time on appeal. In order to preserve an issue for appeal, it must be raised to and ruled upon by the trial court."); *In re Care & Treatment of Corley*, 365 S.C. at 258, 616 S.E.2d at 444 ("Constitutional issues, like most others, must be raised to and ruled upon by the trial court to be preserved for appeal.").

4. Appellant argues her conviction for BOPHAN violates the Sixth Amendment because the trial court failed to ensure a unanimous verdict.[1] This issue was

[1] The trial court polled the jury, and the verdict was unanimous.

never raised to nor ruled upon by the trial court, and is therefore not preserved. *See In re Michael H.*, 360 S.C. at 546, 602 S.E.2d at 732 ("An issue may not be raised for the first time on appeal. In order to preserve an issue for appeal, it must be raised to and ruled upon by the trial court."); *In re Care of Treatment of Corley*, 365 S.C. at 258, 616 S.E.2d at 444 ("Constitutional issues, like most others, must be raised to and ruled upon by the trial court to be preserved for appeal.").

5. Appellant argues her four-year prison sentence for nonviolent and nondestructive conduct was grossly disproportionate and violates the Eighth Amendment. We disagree. *See State v. Harrison*, 402 S.C. 288, 299-300, 741 S.E.2d 727, 733 (2013) ("[I]n analyzing proportionality under the Eight Amendment outside the capital context, South Carolina courts shall first determine whether a comparison between the sentence and the crime committed gives rise to an inference of gross disproportionality. If no such inference is present, the analysis ends."); *id.*at 300, 741 S.E.2d at 733 ("In the rare instance that this threshold comparison gives rise to such an inference, intrajurisdictional and interjurisdictional analysis is appropriate."); *id.*("Courts may then look to whether more serious crimes carry the same penalty, or more serious penalties, and the sentences imposed for commission of the same crime in other jurisdictions."); *id.*("Courts should use this comparative analysis to confirm the gross disproportionality inference, and not to develop an inference when one did not initially exist."); *State v. Simms*, 412 S.C. 590, 598, 774 S.E.2d 445, 449 (2015) ("[B]ecause no sentence is specified for aggravated breach of the peace under our criminal law, section 17-25-30 of the South

Carolina Code controls."); S.C. Code Ann. § 17-25-30 (2014) ("In cases of legal conviction when no punishment is provided by statute the court shall award such sentence as is conformable to the common usage and practice in this State, according to the nature of the offense, and not repugnant to the Constitution."); *Simms*, 412 S.C. at 592-93, 774 S.E.2d at 446 (affirming appellant's conviction for aggravated breach of the peace and sentence of ten years' imprisonment suspended upon the service of three years' imprisonment, plus three years' probation). Although the trial court sentenced Appellant to four years' imprisonment, she was eligible for parole after serving one-fourth of the sentence pursuant to section 24-21-610 of the South Carolina Code (2007). Considering the crime for which the jury convicted Appellant, her prior criminal history, and the sentence given in *Simms*, we hold Appellant's sentence of four years' imprisonment with a possibility of parole in one year was not in violation of the Eighth Amendment.

AFFIRMED.[2]

THOMAS, MCDONALD, and VERDIN, JJ., concur.

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[2] We decide this case without oral argument pursuant to Rule 215, SCACR.

APPENDIX D

THE STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

THE STATE OF SOUTH CAROLINA,

v.

BRITTANY VALENCIA MARTIN,

DEFENDANT.

In the Court of General Sessions
Third Judicial Circuit

Warrant/Indictment Nos.: 2021-GS-43-0091;
8102P0723158; 2020A4310200429; 2020A431020429;
2020A4310200430;2020A4310200431;
2020A4310200432; 2020A4310200433;
2020A4310200434

PROPOSED JURY INSTRUCTIONS
May 9–16, 2022

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 be-

yond 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 *see*n 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 6insignificant 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 S*Peer*s) 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 ver-

bal 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 (173). 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.

APPENDIX E

THE STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

THE STATE OF SOUTH CAROLINA,

STATE,

v.

BRITTANY VALENCIA MARTIN,

DEFENDANT.

In the Court of General Sessions

Transcript of Record 21–GS–43–0091

TRIAL TRANSCRIPT EXCERPTS
May 9–16, 2022

Before: THE HONORABLE R. KIRK GRIFFIN, Judge; and Jury

Appearances: 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

Cross - Examination of Tyshica Gayle
Transcript pp. 99–100

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A: At which time?

Q: At that time.

A: No.

Q: Did you see any weapons at that time?

A: Not at that time.

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

A: No.

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

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

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

MS. ROSADO: Your Honor, it was my understanding that Colonel Jackson said he let them stand in the street and then he asked them to move after he had allowed them to stand on the street.

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

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

MS. ROSADO: Thank you, Your Honor.

BY MS. ROSADO:

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

A: No, I did not.

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

A: No, I did not.

Q: Thank you.

THE COURT: Any redirect?

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session?

A: No, I—I feel she was trying to cause that at that moment telling people to violate the law, that I'm trying to enforce the law; she's impeding that. Me trying to instruct justice like, stop, you know, you can't do this. She's letting them know, no, you're gonna do this, go. And then she and Eric coming toward me. It could have – it could have gotten violent. I mean, she was chest bumping me, you know. It was—you see I'm at the car. When she finishes, I'm away from the car. So it, it could have went differently. That's why I hugged her.

Q: Was there ever any physical violence conducted by Ms. Martin?

A: You mean there at that moment?

Q: During these days of protest?

A: Physical, like, the accomplished battery? Chest bumping is kind of a battery. I felt that it was an aggression toward me. In fact, she called off Kennedy, Eric. She called him, like, you stop. So when she did that I'm like, okay, she's remembering we had a rapport; but he was coming, and I mean—

Q: So she's crossing the line?

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Cross Examination of Angela Rabon
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Q: You mentioned that you didn't feel as if Brittany was a protestor because she was angry and loud. Does being angry and loud stop you from being a valid protestor?

A: That's not what I said. She was – she was protesting, but it was evident when people are expressing the reason they are there protesting. You know, it's making a difference; you're there for a reason. Her method of protesting was, it was just to say awful things and try to get reactions from the officers who were, like, feel the same way. It's like it's—that situation hurt all of us, not just the community. It hurt officers as well. I just don't see that she was trying to make a difference. She was trying to harm our community.

Q: You said that you felt there was going to be a fight or an altercation. Was there ever a fight or an altercation?

A: I think you can see at one point in the footage a couple of officers stepped toward the crowd. I think that's when somebody snatched the megaphone from the guy that was talking. It seemed that there was about to be a fight.

Q: But was there ever a fight—

A: Even told the officers, you know, if there

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Recross Examination of Angela Rabon
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because of what happened and how the nation was feeling and, but that wasn't good enough. She wanted them to participate in causing a controversy and that was evident to me.

Q: And you said she tried to instigate reactions from the officers. And what did she do to instigate reaction?

A: It was just the verbal, the verbal – even when she, like, came up to me while I'm speaking with someone about violation of the law and she's pushing me back with her chest, you know. To me that's—I could have reacted, you know, but my reaction was trying to calm her down because there were heated emotions on surrounding that event, you know, so it just didn't need to go there so that's why I tried to hug her. And I think if you even look on the footage, when they're hugging all the officers, they even try to hug her again because she's talking bad again and I'm, like, let's come together, you know. No, she wasn't having it.

Q: Is talking bad against the law in Sumter?

A: She wasn't charged for that. Just, she wasn't there with pure intentions, I—what I witnessed, my opinion.

Q: And in your opinion did she have a right

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Direct Examination of Jeffrey Jackson
Transcript pp. 177–78

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MS. MCELVEEN: Your Honor, at this time—well, let me ask you some questions. Investigator Caufield, the video ending in 1704, eventually in a second.

BY MS. MCELVEEN:

Q: After these events in June 2nd, how did the police department respond after Sunoco and other things that had happened in the county? How did the police department respond—what were you guys observing, what was your plan after those incidents?

A: As we observed as the command staff, that the behavior of the individuals in the group that was associated with Ms. Martin started to become very agitated and more animated, we decided to utilize some laws that we had at our advantage where we established a point where the protestors could protest on the property of the law enforcement center. So we put up barricades in a area where they were allowed to protest and then the city government enacted a curfew.

Q: And a curfew from 6 p.m. to 6 a.m. I believe?

A: That is correct.

Q: So after this June 2nd night and the nights leading up to it, a curfew was put into effect?

A: Yes, it was.

Q: Who was the primary or what group was the primary concern in enacting the curfew?

A: It was the group that was associated with Ms. Martin during the timeframe. Like I previously stated,

they had become more agitated, animated, then started to make threats of bodily harm.

Q: Were there any other groups that you guys thought had risen to the need of enacting a curfew or putting up barricades?

A: No.

Q: If we could—were you present on the police department steps on June 3rd?

A: Yes, I was.

MS. MCELVEEN: Your Honor, if we could please publish to the jury the video ending in 1704, State's Exhibit 1.

THE COURT: You may publish it to the jury.

MS. MCELVEEN: Thank you.

(Publishing of video.)

BY MS. MCELVEEN:

Q: Colonel Jackson, why does she refer to you as chief?

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Direct Examination of Robert Singleton
Transcript p. 196

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literally your lifeline in situations where in the typical industry your coworkers may not feel that. And so to be standing on the steps with family, as the Sumter Police Department is a family, and knowing everybody as closely as we know them and working alongside who we would consider historical figures in this profession like Cleveland Pinkney, like Jeffery Jackson, like James Sinkler, Chief Roark. To be an African-American male police officer at a time where it's not popular, tough, hard to be a police officer during that time, for them to put on the badge and say something about them and the upmost adoration or respect for that, and so it's difficult to hear young people or crowds that Brittany Martin brought to disparage those officers and try to tarnish that career and the noble profession that they chose when it was uncommon for African-American male and females to choose the profession to police when they policed. So it did affect me personally and it continues to affect me personally.

You heard Sinkler say that he had been shot and we have all seen that video; it's terrifying. And he stood on that front step brave with the threat of getting shot again. And during

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Direct Examination of Curtis Hilton
Transcript pp. 321–22

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lady here who is very agitated?

A: Yes.

(Publishing of video.)

BY MS. ROSADO:

Q: Is that Ms. Martin escorting that very agitated young lady away?

A: Yes. That's a young man behind.

(Publishing of video.)

BY MS. ROSADO:

Q: Is that Ms. Martin pushing those people back away from the police?

A: Yes.

Q: And put her body in between the two?

A: Yes.

(Publishing of video.)

BY MS. ROSADO:

Q: Are you the little fellow that needs to go to jail, sir?

A: No, ma'am.

Q: Okay. I was unsure. I'm gonna change now to 1826-2, State's Exhibit 1.

MS. MCELVEEN: Your Honor, I believe that one has already played, right? I think that was the first one that was played.

MS. ROSADO: 18:26.

MS. MCELVEEN: That was played during Chief Roark's testimony.

THE COURT: Hold on one second. Pause it for a second. Y'all come up.

MS. ROSADO: If it's a duplicate I can skip it, be glad to.

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

THE COURT: For the record, State's objection was sustained.

MS. MCELVEEN: Thank you, Your Honor.

MS. ROSADO: I'm gonna go to 1827-2 and scrub.

MS. MCELVEEN: 1827-2?

MS. ROSADO: 2. And scrub to 1:05.

(Publishing of video.)

BY MS. ROSADO:

Q: Did you hear Ms. Martin when you were there yelling and asking for a police escort?

A: Yes.

MS. ROSADO: And to be clear, this is – I scrubbed to 2:57.

(Publishing of video.)

MS. ROSADO: It's got to catch up.

(Publishing of video.)

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Direct Examination of Angela Rabon
Transcript pp. 217-18

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that's what's done.

Q: But they were still allowed to exercise their First Amendment right of free speech?

A: That's correct. That's right.

Q: Were you there on June 3rd?

A: I was.

Q: On the steps?

A: Yes.

Q: And what was the quote that was—where—in fact, where are you standing at the time that Ms. Martin gives this quote?

A: I guess if you're looking out to the parking lot from the doors, I'm kind of to the left in the front.

Q: All right. You're seen in the video, correct?

A: That's correct.

Q: What is it exactly that Ms. Martin says to you guys, to the group of officers?

A: To the group? It's kind of lengthy. I'd like to read it if I could. She says, "You can't tell—tell us how to fucking protest and where to F to protest. We are around this bitch. We aren't leaving this bitch. Y'all want war, y'all got it. Go call all our hitters now." That's when she turns to the people with her, and they start walking away. She's like, "Go call all our hitters now. You tell them to get ready. Everybody strapped, everybody." And then she

said "Y'all better be ready." Then she turns to us. "Them vests ain't gonna save you. Some of us gon' be hurt, some of y'all gon' be hurt, and we're ready to die for this. We're tired of it. You better be ready to die for the blue. I'm ready to die for the Black. I'm dying for the Black. You better be ready to die for the blue." And then she calls out to the Chief, like, "it's your call, you got your people, I got mine."

Q: Did you feel threatened that day?

A: Yes.

Q: Did you feel like your fellow officers were threatened that day?

A: Definitely.

Q: Did that statement affect you personally too?

A: It did.

Q: In what way?

A: I feel like her calling and telling others—which we've already seen throughout the week, that she was telling others and controlling others in their demeanor and their behavior—she's

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Direct Examination of Brittany Martin
Transcript pp. 409–10

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hadn't come to a resolution so it was not time for hugs. We had not gotten our meeting with the community leaders like we were standing for. We were tired. Me, personally, I'd been out there for four—we had been out there all them days. I was tired.

Q: "Me personally."

A: Yeah, me personally. That's who I can speak for, me.

Q: So, so why were—you can speak for you so why were you allowed to speak for those people protestors and say it's not time to hug, we hadn't gotten our meeting, there was no reconciliation. Why are you the person to decide that?

A: Because I'm the voice.

Q: You were the voice—

A: I'm the voice.

Q:—for all people?

A: I'm the voice. And guess what, it is mine, it is my blessing, it is my calling, and you can't have it, ma'am.

Q: Have you ever heard of a narcissistic personality disorder?

A: Call it what you want to call it, but I call it—I—I call it real.

Q: Have you heard of a narcissistic personality disorder?

A: They had—they come up with all type of stupid slogans, stupid stuff these days, yeah. I heard—

Q: So which—

A:—of a narcissistic. I know all about narcissist, whatever, however you say it.

Q: So would you see any link in your behavior to a personality disorder and a mental condition in which people have an inflated sense of their own importance,—

A: That's a good question.

Q:—a deep need of excessive attention and admiration, troubled relationships—

MS. ROSADO: Your Honor,—

BY MS. MCELVEEN:

Q:—and a lack of empathy for others?

A: Let me answer.

THE COURT: Hold on.

THE WITNESS: Please let me answer that.

THE COURT: Hold on a second. All right. What's your objection?

MS. ROSADO: She's not a doctor—

UNIDENTIED PERSON: You can't comment,

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within the sample charges that we've been provided. So, obviously, Ms. Rosado has cited the appropriate elements and there are some parts which frankly I feel like maybe my commenting on the evidence, I'm going to need a little bit of time as – while y'all are making your closing arguments to look at these charges and make sure that I strike through anything that I believe is objectionable. And really I'm looking at the, you know, the First Amendment components of the charges. To me this is kind of a blend of substantive criminal statutes verses general First Amendment law. It's a little bit out of the ordinary for what we do on a day in, day out basis, but while the closings are going forward, I should be able to come up with.

MS. MCELVEEN: Your Honor, if I may?

THE COURT: Yes, ma'am.

MS. MCELVEEN: Your Honor mentioned that you were going to use the definition of a riot from *State v. Albert* and we are requesting that that definition be used. That's what I'm opening the law on based upon the Court's direction. Also, we do object to the reference of a rout verses a riot. That is not really something that has been testified to or would be a part of a jury charge and elements of offense. Rout is not really something that is an element of instigating or promoting a riot.

Also, Your Honor, we are asking that to be made clear that a riot does not actually need to take place for someone to be charged and found guilty of

inciting a riot. Because that language is not included in this proposed charge.

THE COURT: And, Ms. McElveen, I agree with you. I said I was going to use that charge. I think what Ms. Rosado has cited are the cases which *State v. Albert* relied upon in determining the definition of riot. So I think—and I'll look at them again closely based on what my charge states. But I think just on a first glance they're the same because I remember seeing *State v. Connelly* as one of the cases that was cited in *Albert*. yeah, that's the same definition that Ms. Rosado has presented. She just cited the older cases and those are the cases that *Albert* relied upon in the decision. So I think that's clear.

And I agree with you on the issues verses rout verses riot, I don't think that evidence is before this jury.

As far as lesser included's, I think just standard breach of peace needs to be charged and I've included that on the sample verdict form for breach of peace high and aggravated. And it states—on that verdict form it states as to the charge of breach of peace high and aggravated nature, we the jury unanimously find the Defendant not guilty or guilty of breach of peace of a high and aggravate nature. If you unanimously find the Defendant not guilty of breach of peace of a high and aggravated nature, consider the following charge. We the jury unanimously find the Defendant not guilty or guilty of breach of peace.

I think based upon what I've heard there are certainly an argument over whether these high and aggravated nature or these high and aggravated

elements exists and so I think the magistrate's level of breach of peace is appropriate as a lesser included.

Is there any objection to that being charged to the jury from the State?

MS. MCELVEEN: None, Your Honor.

THE COURT: From the Defense?

MS. ROSADO: Your Honor, the statute actually also has in it the statement that this is not to be construed to abridge people's rights to free speech. If we add that then I would be fine with it.

MS. MCELVEEN: Your Honor, we're happy to remove the breach of peace lesser included from the consideration of the jury if she doesn't want it in there. We'd be happy just to have BOPHAN.

THE COURT: Ms. Rosado, what's your position on that?

MS. ROSADO: The concept of breach of peace, when you look at the statute, clearly says that there do not intend for this to cover protesting. I think that somewhere in the charge that should be noted.

MS. MCELVEEN: Your Honor, I'm not seeing anything in the statute about that. I'm trying to find the statute.

THE COURT: I am too. 22-3-560 includes the penalty for breach of peace.

MS. MCELVEEN: And if you also look at 22-5-150, arrest of persons threatening breach of peace, it does not mention protest either.

THE COURT: All right, folks. Based on what I've heard I'm gonna—we'll just send it under breach of peace high and aggravated and I

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(WHEREUPON, the jury entered the courtroom at 10:42 a.m.)

THE BAILIFF: The jurors are all seated, Your Honor. You may be seated.

THE COURT: All right. Ladies and gentlemen, thank you for your return here this morning. As we've reach the point in this trial where the attorneys will present their closing arguments to you. The procedure we'll follow is the State will go first followed by the Defense and then the State will have the opportunity to rebut any arguments which the Defense has made. Ladies and gentlemen, please provide or pay close attention to the lawyers as they make their closing arguments to you. These will be their arguments on what they believe the evidence shows. With that being said, I'll recognize the State, Ms. McElveen.

MS. MCELVEEN: Thank you, Your Honor.

CLOSING ARGUMENT

BY MS. MCELVEEN:

Ladies and gentlemen, thank you for coming back. After a long week last week, we certainly appreciate you being here this morning. As you can see from the testimony and what you saw last week, this case is very important. It's important to the police department. It's very important to the Sumter community. It's important to the State of South Carolina and it's important to Ms. Martin and you play the most important role. You are the finders of fact. I'm going to

open on the law and then I will address you again after the Defense has spoken. But Ms. Martin is charged with three different crimes. The first, inciting or promoting a riot. I copied the statute there on the screen. You can easily read, but a person who is convicted of riot or participating in a riot either by being personally present or by instigating, promoting or aiding the same is guilty. If the offender directs, advises, encourages or solicits other persons present or participating in a riot to acts of force or violence.

A riot is defined there from case law to be a tumultuous disturbance of the peace by three or more persons. No, it does not have to be thousands of people, just three or more. Assembled together of their own authority with the intent mutually to assist each other against anyone who shall oppose them and putting their design into execution in a terrific and violent manner whether the object was lawful or not.

Note that a riot does not have to actually happen. The person has to promote or aid it, direct, advise, encourage or solicit a riot. The riot doesn't have to actually happen. At the same time, looking at this definition of a riot, State's position is that a riot actually did occur. Albeit small ones, not the thousands of people riots that we hear about the burning in the streets and pillaging.

But if you look at these elements, three or more persons, Ms. Martin and her family and the people with her, assembled together with the mutual intent to assist each other against anyone who would oppose them. Police department, other citizens, peaceful protestors who were opposing them. Even those people. And in a terrific or violent manner. Blocking traffic,

threatening officers, chest bumping, vulgar slurs, shutting down businesses.

As you can see from the videos and her own testimony, the Defendant had the goal of creating these situations in which officers would react. Ms. Martin wanted a riot. She wanted that battle. Her own witness called it a battlefield and she testified that she wanted to fight, fight, fight, fight, fight. Ms. Martin was there to put officers in a situation with the hopes that they would react in a way that would justify her behavior and further her position.

And she claimed ownership of these riots. Every single day she claimed ownership. May 31st, she held herself out as the leader to Colonel Jackson. He pulls her aside and talks to her. Gives a police escort. June 1st, she gave commands people drive the car, drive the car. No, you're driving. She's leading it. Get your hands off of my property. We didn't put—she's speaking for the group. She ran off peaceful protestors in front of the police department. I think she said, this ain't y'all's protest. Leave my protest.

June 2nd she said, I'm the one holding the protest here. Not we. I'm the one holding the protest here.

June 3rd at the end of threatening the officers, she tells Colonel Jackson, I got my people. My people. You got your people. She owned these riots. These protests.

The testimony even indicates that she thought she was inciting a riot. On May 31st, she stated, now they worried about a riot, they ready. We are ready. Don't worry about that y'all. Y'all come on and get ready. She said it herself. You can hear it in the videos. She is inciting or encouraging, advising, directing a riot. No matter what happened or not. Legally, I

think elements are there. Even if you don't think there's a riot, she is trying to make a riot happen.

Her own witness even said the officers were there and putting on tear gas to stop a possible riot. They didn't use that gas, thank goodness. But even her own witness admitted that they were there to hopefully stop a possible riot.

She's also charged with five counts of threatening the life of a public official. Here's the legalese again. It's unlawful for a person knowingly and willfully to deliver or convey to a public official and a law enforcement officer, a police officer, is a public official or to a teacher, principal of an elementary or secondary school, any letter or caper, writing, print, missive, document or electronic communication or verbal or electronic communication which contains a threat to take the life of or to inflict bodily harm upon that public official if the threat is directly related to the public official's professional's responsibilities.

A police officer is a public official. And while executing their duties in a very tough time, very tough time for everyone, she is out there threatening to do bodily harm. And there are five counts. One for each officer, but, frankly, there are a lot more officers on those steps. But the officers whose threats were direct towards Captain Rabon, Colonel Jackson, Sergeant Pinckney, Captain Singleton and Sergeant Major Sinkler. You've heard from all of those officers that they felt threatened that day.

You're going to—throughout our testimony, she gave threats throughout multiple days. May 31st, we ready. You hear me like I am. You bleed like I do. You cut my arm, I cut your arm. You black my eye, I black

my eye—your eye. You kill me, I kill you and that's real.

May 31st, if we get met with any excessive force, we're going to use our Second Amendment. I'm telling you that y'all we about. I'm telling you right now that everybody's ready. Let 'em follow and if anybody gets touched, everybody knows what's up.

June 1st, sitting on the car talking to Captain Rabon. She want trouble, we gonna bring it. I'm telling you, you want to F with, I'm the wrong one to F with.

June 2nd, yelling in that SLED officer's face at the gas station. It's attack time N word, it's attack time N word.

Also on June 2nd in front of the officer, we built this MF'er for free. We that's why we gonna burn it down. And, finally, the culmination that finally was the straw that broke the camel's back due to the threats, we're a threat now, they'll be been a threat. You can't tell us how to F'ing protest and where the F to protest. We around the bitch. We aren't leaving this bitch. Y'all want war, y'all got it. Go call all our hitters now, you tell them to get ready, everybody's strapped, everybody. Y'all better be ready. Them vests ain't gonna save you. Some of us is going to be hurt and some of y'all are going to be hurt. We ready to die for this. We tired of it. You better be ready to die for the blue. I'm ready to die for the black. I'm dying for the black, you better be ready to die for the blue. Chief, it's your call. We got our people, you got your people.

Ladies and gentlemen, that's a direct threat. These officers are sitting ducks on the front steps of that police department. They're wearing vests and she knows where they are and she's threatening to get people to put out hits on them. She's calling hitters,

strapped, wear guns, come up here, shoot these officers that are sitting on these steps trying to calm this riot, trying to calm the peace. Ladies and gentlemen, that was the ultimate threat.

And finally, the breach of peace of a high and aggravated nature. This is a common law offense. It's kind of different. Common law we kind of equate with a common sense kind of offense. But a breach of peace is a violation of the public order or a disturbance of the public peace or any act or conduct inciting violence. It includes any violation of any law enacted to preserve peace in good order which is standing in roadways, not riding on top of cars, having a police escort, peace means the peace which is enjoyed by the citizens of the community whether certain conduct constitutes a breach of peace depends on the time, place and nearness of other persons. That's your common sense. That's when you as jurors use your common sense, did this breach the peace? Did this breach the peace of our community. And though breach of peace includes acts which are likely to produce violence, we are not required to prove that actual violence took place or that the peace was actually broken. If what was done was unjustifiable and unlawful tending with sufficient directness to break the peace, that's all we have to prove, ladies and gentlemen. No violence, no actual violence has to happen.

High and aggravated nature includes some additional elements or some suggestions on what makes it a high and aggravated nature. If an affrayer, rioter, there's that keyword there that rioter, disturber and breaker of the peace was dangerous and disorderly or when armed offensively to the terror of the public. It's an or situation. And so we don't—there are no points of any testimony that she was armed. There were

threats that she would get her people that were armed to come by and kill these officers. But she was dangerous and disorderly and she breached the peace of our community.

Ladies and gentlemen, you're going to hear from Defense and I'll be back to join you. But when considering a high and aggravated nature, you need to look at what the officers had to do in light of Ms. Martin. A curfew had to be put in place, ladies and gentle-men. The chief, the mayor and city counsel felt the need to put this curfew in place to protect the citizens of Sumter and to protect these officers. A whole city shut down because of Brittany Martin and her group. That, ladies and gentlemen, is breach of peace in a high and aggravated nature.

I look forward to addressing you again more specifically on this case after the Defense attorney speaks. Thank you.

THE COURT: Thank you, Ms. McElveen. Ms. Rosado?

CLOSING ARGUMENT

BY MS. ROSADO:

MS. ROSADO: "You may write me down in history With your bitter, twisted lies.

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people who were irritated.

Sumter didn't enact a curfew for Brittany Martin. Sumter enacted a curfew because in 2020 there were 4,000 marches across the world protesting George Floyd. Sumter didn't set up Brittany Martin. Sumter was afraid one of those 4,000 real marchers might come to Sumter, not Brittany Martin. They didn't face the kinds of things that we saw in other states, in other cities. They faced a few people complaining and marching and being very loud and sustaining that

march for a few days.

The marches went on far longer than four days, didn't they? Everybody remembers that. Every other day it seemed as if there was a new march, a new complaint, a new protest. And unfortunately, the media that we expose ourself, we get exposed to also showed us every day there was a new event. Every day in America we're faced with danger and Brittany Martin is trying to stop that. Brittany Martin said, let's get together and have a protest march. Let's stop this. Let's change. She reached out. She extended the olive branch. She asked for the consideration of please, block the street off for us. That doesn't sound like a person trying to at least start a riot. You don't say, hey, can you block off the street for me while I participate in this riot? No. That's a person trying to exercise her First Amendment rights to free speech in our country.

Each and every one of us has the right to say what we believe in our country. We do not live in Rus-

sia. There's nobody going to sensor what I'm doing and keep me from looking at certain things on the internet and stop me from participating in what is my actual civil duty. My civil duty is to stand up. Because if I don't stand up for people who can't stand up for themselves, who does? That's why you go to church and tithe. That's why you help out when you see the homeless people. These are all parts of our civic duty. We are here and those of us who can, those of us who are strong, do. Philanthropy, activism, whatever you can do, you do. Everybody has their niche for how they give back to the community. And if disrupting the social media is Ms. Martin's choice, we should not stop her from doing that because that is a part of her given right as an American to exercise her First Amendment right.

Now, when we look at things like, well, Ms. Martin -- Ms. Martin said, I'm going to use my Second Amendment if you all use excessive force against me. Ms. Martin didn't say, I'm going to shoot you. I'm going to get you. I'm going to kill y'all. She said, if you meet me with excessive force, I will defend myself. Wait, is that a threat or is that an understanding that, hey, if you beat me up, I am going to fight back. Doesn't everybody fight back if they are attacked? Isn't that fair to allow Ms. Martin to fight back and to say, I'm not afraid? Why is it that we require her to be afraid of the police?

Now, I'm afraid of them, but, hey, that's me. What she does and what I do are two different things and that's because we're Americans and I don't have to do the same thing she does. That's the other beautiful part of our culture and our country. I get to be me and she gets to be her over there. Okay. That is a right. She doesn't dictate what I do, I don't dictate what she

does. Now, if she needs to speak out then she can be controlled based on where she marches and that's what the police did. She can be controlled on when she marches and that's what the police did. But

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this person who is more agitated and we don't want anybody hurt.

Over and over and over again in the crowd you hear people say we just want to be peaceful. We're trying to be peaceful. We're being peaceful. But just because you're being peaceful doesn't mean you have to not use profanity and you have to do and say what the government says. The government doesn't control what we say in America, we do. This is not Russia. This is America.

I'm asking y'all today to think very carefully about this right that we all have to free speech. Ms. Martin exercised her right to free speech and that is all. She did not directly threaten anyone. She did not lay in wait for anyone. She did not cause anyone to be hurt or burned or destroyed. It was a sleepy little protest in Sumter and that's all.

Unfortunately, as you heard the police officers testify, this was their first real protest march in their memories. Because there were protest marches here in the '60's, but this was their first real protest march and so it was aggravating to them.

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disturbance. She led a protest march and that's all. So help me to help her continue to rise. Maya Angelou talks about how we all have to rise to the occasion. Ms. Martin rose to the occasion. Let's not punish her for it. Thank you.

CLOSING ARGUMENT

BY MS. MCELVEEN:

MS. MCELVEEN: Ladies and gentlemen, apples and oranges. Apples and oranges. The real are issues verses the non-issues. What's relevant verses irrelevant. What this case is about verses what it's not about. Ladies and gentlemen, the oranges, not an issue in this case. Black lives matter. Blue lives matter. George Floyd. Breonna Taylor. Dr. Martin Luther King. And if you'll remember from Dr. Rosado's opening statements, she compared the Defendant to Dr. Martin Luther King. How insulting to Dr. King is that? Dr. King encouraged love, empathy, inclusivity. If given olive branches, Dr. King took them. Brittany Martin didn't take olive branches. How insulting to Dr. King.

A Maya Angelou poem, not an issue. John Lewis, civil rights movement. Rodney King. January 6th, not an issue. Politics in general, not an issue. None of these are issues here. The only issue we have, ladies and gentlemen, is Brittany Martin, her actions, her behavior. What she said. What she did. How she behaved. That's the apple. That's the real issue here. Not the oranges, the apple.

We're talking about rights, ladies and gentlemen. The Second Amendment right to free speech. No one is trying to stop Brittany Martin from speaking. You saw officers, gave them places to peacefully protest. Gave Ms. Martin her group those places. Gave her police escorts. Asked for her to just wait for those escorts. Olive branch after olive branch. Sergeant Gayle, yes, she gave Gatorade. She helped her with her shoe. And Brittany Martin turned around the days afterwards and slaps Sergent Gayle in the face by threatening her on the steps and her fellow officers. Sergeant Gayle said, please, thank you, yes, I'd love to, I support your cause. Brittany Martin slapped her in the face the days after that.

Brittany Martin, ladies and gentlemen, is the issue here. I'm going to play a clip of the important parts of these videos. Don't worry, not all of them, together. While you're watching these, I wrote down some words that Dr. Rosado characterized these interactions as. While watching these videos, ask yourself if it truly is attempting to discuss with officers. Merely irritating or aggravating. Is it a statement about how things work in the community? Is it a critical dialogue? Is Ms. Martin working with police? Is it political commentary? Is it diverse ideas standing next to each other and thriving? When peaceful protestors are pushed away, is that everybody thriving? Is it—is it not a direct threat, she said she didn't directly threaten anyone. Watch the video especially on June 3rd of what was said. Was it a peaceful march? Ladies and gentlemen, I'm going to play this video.

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to say. But at a certain point those rights, if you exercise them, there are limits. I have a right to drive, but if I drive while intoxicated and I kill somebody, hit and kill them, I'm going to be held accountable for that even though I have the right to drive. I have a right to keep and bear arms. But if I go out and shoot someone for no reason, I'm going to be held accountable for that despite my rights.

At what point does Brittany Martin's right to free speech infringe on everybody else's rights? The right to be safe. A right to these officers not to be threatened while exercising their duties. A right for the Sumter community to not have traffic stopped, to not have a curfew.

Ladies and gentlemen, you heard from the chief that curfew was put in place for Brittany Martin. That curfew was not for COVID. That curfew was not for general riots. That curfew was put in place for Brittany Martin.

You can tell that Brittany Martin has to be told yes. And if not, it's a personal injustice to her. And she speaks even more loudly, but she acts even more poorly. She likes to exercise control and she never stops to think about her—how her behavior victimizes everyone else.

On the stand she was a victim of everyone. The police department, the mayor, the city, me, her sisters, the police in Iowa, Illinois, everybody victimized Brittany Martin. Brittany Martin never realized how she was victimizing others. Her father that she

brought her without his medical stuff, the police with these events, the community, the mayor's office when she's going to city counsel meetings by her own testimony, her sisters, making them file papers to get their dad back so he can get medical treatment. Peaceful protestors, she victimized them time and time again. She victimized her own son by running him over, hitting him. Ladies and gentlemen, and now she is victimizing the Sumter community on these dates and that curfew was put in place for her.

I think the best indication of her guilt is the question I asked her at the end. And I said, if these officers behaved towards you the way you behaved towards them, would that be acceptable? Would their behavior be okay if they were chest bumping her and yelling vulgar comments and threatening to kill her, would that be okay? Brittany Martin tried to say, yes, that would be okay. But it's not okay.

And it's time now to tell Ms. Martin that this is not okay. You have a right to free speech. You have a right to express yourself, but other people have rights too. It is not all about Brittany Martin. It is about everyone and everyone's rights. This is not okay. Thank you.

THE COURT: Ladies and gentlemen of the jury, we've been in the courtroom about an hour and a half, my charge on the law will likely take about 30 minutes. It's probably a good time for everybody to take a recess, so we're going to take a recess until 12:15. At that time, I will begin the charge on the law which is applicable to this case.

So please go to your jury rooms – your jury room, excuse me. Do not begin your deliberations, you have not heard the charge on the law. Please don't do any

research about any issue raised in this case. Please do not discuss the case amongst yourselves until you are told to do so. We'll be back at 12:15.

(WHEREUPON, the jury left the courtroom at 12:05 p.m.)

THE COURT: All right. We'll be in

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verbal challenges to police action officers in municipalities must respond with restraint out. I don't think that's particularly relevant in this situation, but the remainder of it I'm going to keep in. I'm trying to balance obviously the statutory requirements of the charges verses the First Amendment jurisprudence and I think the portions that I've chosen to charge in this case is an accurate representation of what the blending of these two different areas of law require in this case, so.

MS. ROSADO: Thank you, Your Honor.

THE COURT: Bring them in.

(WHEREUPON, the jury entered the courtroom at 12:24 p.m.)

THE BAILIFF: The jurors are all seated, Your Honor.

JURY CHARGE

BY THE COURT:

THE COURT: Thank you, sir. Members of the jury, please give me your attention as it is now my duty as the trial judge to instruct you on the law which is applicable to this case. And in that regard, it is your duty as jurors to accept and apply the law as I now state it to you. Furthermore, it is your exclusive duty to decide all the issues of fact in this case and determine the effect, value and weight of the evidence. The State and the Defense have the right to expect that you will carefully consider and evaluate the evidence and apply the law of this case to it, so that in the end, both

the State and the Defense have received a fair and impartial trial.

I remind you that, during this trial, you and I have certain duties to perform. As the trial judge, it is my responsibility to preside over the trial of this case, and I also have the duty to rule on the admissibility of the evidence offered during this trial. You are to consider only the competent evidence before you. If there was any testimony ordered stricken from the record in this case and during this trial, you must disregard that testimony. You are to consider only the testimony which has been presented from this witness stand, any exhibits which have been made a part of this record in this case, and any stipulation of counsel.

I have the additional duty to charge you the law applicable to this case. And as the presiding judge, I am the sole judge of the law of this case, and it is your duty as jurors to accept and apply the law as I now state it to you. If you already have any idea as to what the law is or what the law ought to be and it does not agree with what I now tell you the law is, you must abandon this idea because you are sworn to accept the law and apply the law exactly as I state it to you.

In every case tried in this court before a jury, the jury becomes the sole and exclusive judge of the facts in the case. A trial judge cannot intimate, state, comment on, or make any statement to a trial jury about the facts in the case. Since you, the jury, are the sole judge of the facts in this case, you are not to infer from what I've said during the trial in ruling upon the admissibility of evidence, or otherwise, or anything that I say now during the course of this instruction to you, that I have any opinion about the facts in this case. The law does not allow me to have an opinion about

the facts in this case. This is solely a matter for you, the jury, to determine. As jurors it is your duty to determine the effect, value, weight, and truth of the evidence presented during the trial.

The indictment charges the Defendant with breach of peace of a high and aggravated nature, instigating a riot, and threatening the life of a public official and there are five counts of that charge. I remind you the fact that the Defendant was arrested, charged and indicted in this case, is not evidence in this case and cannot be considered by you as evidence of guilt in this case, nor does it create any presumption or inference of guilt. This document is simply the formal, written instrument which contains the charges made against the Defendant. It is the formal document by which the case is brought into court.

The indictment in this case alleges several different offenses against the Defendant. As stated before, the charges are breach of peace of a high and aggravated nature, instigating a riot, and threatening the life of a public official and there are five of those charges. Each charge is a separate and distinct offense. You must decide each charge separately on the evidence and the law applicable to it uninfluenced by your decision as to any other charges the Defendant may be convicted or acquitted on, any or all of the—of any of all the offenses charged. You will be asked to write a separate verdict of guilty or not guilty for each charge.

The Defendant has pleaded not guilty to this indictment and that plea puts the burden on the State to prove the Defendant guilty. A person charged with committing a criminal offense in South Carolina is never required to prove herself innocent.

I charge you that it is an important rule of law that the Defendant in a criminal trial, no matter what the seriousness of the charge may be will always be presumed to be innocent of the crime for which the indictment was issued unless guilt has been proven by evidence satisfying you of that guilt beyond a reasonable doubt. This presumption of innocence does not end when you begin your deliberation, but it accompanies the Defendant throughout the trial until you reach a verdict of guilt based upon evidence satisfying you of that guilt beyond a reasonable doubt.

The presumption of innocence is like a robe of righteousness placed about the shoulders of the Defendant which remains with the Defendant until it has been stripped from the Defendant by evidence satisfying you of the Defendant's guilt beyond a reasonable doubt.

The presumption of innocence is not a mere legal theory. It is not just a legal phrase. It is a substantial right to which every Defendant is entitled unless you, the jury, are satisfied from the evidence of the Defendant's guilt beyond a reasonable doubt.

What is reasonable doubt in the law? A reasonable doubt is the kind of doubt that would cause a reasonable person to hesitate to act.

The State has the burden of proving the Defendant guilty beyond a reasonable doubt. Some of you may have served as jurors in civil cases where you were told that it is only necessary to prove that a fact is more likely true than not true such as by the greater weight or preponderance of the evidence. In criminal cases the State's proof must be more powerful than that. It must be proof beyond a reasonable doubt.

Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the Defendant's guilt. There are very few things in this world that we know with absolute certainty, and in criminal cases the law does not require proof that overcomes every possible doubt. If, based on your consideration of the evidence, you are firmly convinced that the Defendant is guilty of the crime charged, you must find the Defendant guilty. If on the other hand, you think there is a real possibility that the Defendant is not guilty, you must give the Defendant the benefit of the doubt and find her not guilty.

Ladies and gentlemen, there are two types of evidence which are generally presented during a trial, direct evidence and circumstantial evidence.

Direct evidence is the testimony of a person who claims to have actual knowledge of a fact such as an eyewitness.

Circumstantial evidence is proof of chain of facts and circumstances indicating the existence of a fact.

The law makes absolutely no distinction between the weight or value to be given to either direct or circumstantial evidence. Nor is a greater degree of certainty required of circumstantial evidence than a direct evidence. You should weigh all of the evidence in the case. After weighing all of the evidence, if you are not convinced of the guilt of the Defendant beyond a reasonable doubt, you must find the Defendant not guilty.

Direct evidence directly proves the existence of a fact and does not require deduction. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact.

Crimes may be proven by circumstantial evidence. The law makes no distinction between the weight or value to be given to either direct or circumstantial evidence. However, to the extent the State relies on circumstantial evidence, all of the circumstances must be consistent with each other and when taken together point conclusively to the guilt of the accused beyond a reasonable doubt. If these circumstances merely portray the Defendant's behavior as suspicious, the proof has failed.

The State has the burden of proving the Defendant guilty beyond a reasonable doubt and this burden rests with the State regardless of whether the State relies on direct evidence, circumstantial evidence or some combination of the two.

Necessarily, you must determine the credibility of witnesses who have testified in this case. Credibility simply means believability. It becomes your duty as jurors to analyze and evaluate the evidence and determine which evidence convinces you of its truth. In determining the believability of witnesses who have testified in this case, you may believe one witness over several witnesses or several witnesses over one witness. You may believe a part of the testimony of a witness and reject the remaining part of the testimony of that same witness. You may believe the testimony of a witness in its entirety or reject the testimony of a witness in its entirety. You may consider whether any witness has exhibited to you any interest, bias, prejudice or other motive in this case. You may also consider the appearance and manner of a witness while on the witness stand.

In order to establish criminal liability, criminal intent is required. For example, the mental state re-

quired to be proven by the State for a particular crime might be purpose, intent, knowledge, recklessness or criminal negligence. Criminal intent must be proven by the State beyond a reasonable doubt. Criminal intent is always a matter that must be determined by the jury from the circumstances surrounding the situation. There is no way to prove intent to a mathematical certainty. There's no way medical science can dissect a person's brain and determine what the person had in mind. So the law says that criminal intent may be inferred from the circumstances shown to have existed. This is how you make a determination of whether or not the element requiring intent was present. It is not necessary to establish intent by direct and positive evidence, but intent my be established by inference in the same way as any other fact by taking into consideration the acts of the parties and all the facts and circumstances of the case.

Criminal intent is a mental state. A conscious wrongdoing. It is up to you to determine what the Defendant intended to do based upon the circumstances shown to have existed.

Criminal intent can arise from action or a failure to act. It may arise from negligence, recklessness or an indifference to duty or consequences that is considered by the law to be the equivalent of criminal intent.

Ladies and gentlemen, there has been evidence presented that witnesses have made prior statements which are not consistent with the witness's present testimony. You may use this evidence to decide whether to believe the witness. You may also use the evidence of the earlier contradictory statements to determine the truth of those statements. It is up to you

to decide whether to believe the earlier statements or the testimony given at trial.

If a witness is shown to have knowingly testified untruthfully concerning any material matter, you may consider this in determining whether to trust the witness's testimony as to other matters. You may reject all testimony of that witness or give all or part of the testimony the weight you think it deserves.

Ladies and gentlemen, the Defendant is charged in the indictment with breach of peace of a high and aggravated nature. Breach of peace is the violation of the public order or the disturbance of the public peace or any act or conduct inciting violence. This includes any violation of any law enacted to preserve peace in good order.

Peace means the peace which is enjoyed by the citizens of the community, whether certain conduct constitutes a breach of peace depends on the time, place and nearness of other persons.

Although a breach of peace includes acts which are likely to produce violence, the State is not required to prove that actual violence took place or that the peace was actually broken. If what was done was unjustifiable and unlawful, tending with sufficient directness to break the peace, no more is required.

Breach of peace of a high and aggravated nature, a person of guilty—is guilty of that charge if the person was an affrayer, rioter, disturber and breaker of the peace or was dangerous and disorderly or when armed offensively to the terror of the public.

The Defendant is also charged in this indictment with instigating a riot. The Defendant is charged with that crime and that crime is defined as that the ac-

cused did riot or did participate by instigating or promoting or aiding in the same whether a person present or not, the person is convicted of riot or participating in a riot either by being personally present or by instigating, promoting or aiding the same.

And this code section must not be construed to prevent peaceable assembling of persons for lawful purposes or protest or petition. A riot is defined as an tumultuous disturbance of the peace by three or more persons assembled together by their own authority with the intent to mutually assist each other against anyone who shall oppose them in putting their design into execution in a terrific and violent manner whether the object was lawful or not.

Again, this section does not seek to prevent peaceable assembling of persons for lawful purposes of protest or petition and the State is not required to prove a riot actually occurred.

And, finally, ladies and gentlemen, the Defendant is charged with threatening the life or bodily harm to a public official or a family member of that public official. It is unlawful for a person to knowingly and willfully to deliver or convey to a public official any letter or paper, writing, print, missive document or electronic communication or verbal or electronic communication which contains a threat to take the life or inflict bodily harm upon the public official or members of his immediate family if the threat is directly related to the public official's professional responsibilities.

The State must prove beyond a reasonable doubt that the Defendant knowingly and willfully or conveyed to a public official verbal communication which contains a threat to take the life of or inflict bodily

harm upon the public official or members of his or her immediate family.

In order to prove the element of threats to take life or inflict bodily harm against police officers, the prosecution must prove the Defendant used more than mere fighting words or abusive phrases. The words must be by their very utterance—the words used must by their very utterance inflict jury or tend to incite an immediate breach of peace they must be directed 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.

In law, fighting words are abusive words or phrases directed at the person of the addressee and inherently likely under circumstances to cause an average person to react with violence and playing no role in the expression of ideas.

The First Amendment protects a significant amount of verbal criticism in challenge directed at police officers. The fighting words exception may require narrow application in cases involving words addressed to a police officer because a properly trained officer may be reasonable expected to exercise a higher degree of restraint than the average citizen. The freedom of individuals who verbally oppose or challenge police action without thereby risking a risk is one of the principal characteristics of a free nation.

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 the State has failed to prove any element of the offense beyond a reasonable doubt then you must find the Defendant not guilty.

Now, ladies and gentlemen, there are multiple verdicts which are possible in this case and that is due to the multiple number of charges which have been made in this indictment. And so there are a total of seven verdict forms, ladies and gentlemen, and they are each separate and distinct of each other. And, essentially, ladies and gentlemen, as to each verdict form there are two choices, guilty or not guilty. Now, you—don't take any—there's no reason beyond or reason why one is listed before the other, one just simply has to come first.

So as you deliberate, ladies and gentlemen, you are to review each of these separate and distinct verdict forms and make a decision of guilty or not guilty as to each of them. And, again, they each stand on their own.

Once you've reached a unanimous verdict on these verdict forms, the foreperson will fill out the verdict form, you'll sign the verdict form as the foreperson and let the bailiffs know that they have—that you have reached a unanimous verdict as to the charges. And I'm going to hand the verdict forms to the bailiff and he will hand them to the foreperson at this time.

Now, ladies and gentlemen, again, your verdict as to each of these charges must be unanimous. That means all twelve of you must agree. And, Mr. Foreperson, it is your job to preside in the jury room over these deliberations. I would ask that only deliberate when all of you are present in the room. If one of your members has to step out for any reason whatsoever whether it's to go to the restroom or for whatever – any reason, all twelve jurors must be in the jury room while you're deliberating. If one steps out, deliberations needs to cease.

If you have anything that needs to be brought to the Court's attention, you need to write that on a piece of paper, hand it to the bailiff after you've signed it and the bailiff will bring it to my attention.

Again, once you've reached a unanimous verdict on all of these verdict forms, notify the bailiff and we will bring you back into court to receive the verdict.

Ladies and gentlemen, at this time, I'm going to send you to your jury room as you have heard the charge on the law. Please do not begin your deliberations yet. Once you've received the items of evidence which have been admitted in this case that will be your signal to begin your deliberations. So at this time, please go to your jury room and wait for the signal to begin your deliberations. Again, that signal will be the items of evidence being brought in for your consideration. Thank you very much.

(WHEREUPON, the jury left the courtroom

at 12:45 p.m.)

THE COURT: All right. Any further objections other than what's been raised with

[END OF PAGE]

Verdict
Transcript p. 100

[START OF PAGE]

MR. FOREMAN: Yes, sir.

THE COURT: All right. Could you hand the verdict forms to the bailiff, please.

(WHEREUPON, the foreman complies.)

THE COURT: All right. Folks, what we're going to do is we're going to receive these two unanimous verdicts. And with regard to the charges that you can't reach a verdict on, I'm going to declare as I told you in the last instructions since you are deadlocked and you don't believe any further deliberations would be beneficial at this time, the Court is left with no alternative but to declare a mistrial on those charges alone.

All right. With regard to the two charges where a verdict has been reached. On Indictment number 2021-GS-43-0091, the State of South Carolina verses Brittany Martin. As to the charge of breach of peace of a high and aggravated nature, we the jury unanimously find the Defendant guilty of breach of peace of a high and aggravated nature.

As to the charge of instigating a riot. We the jury unanimously find the Defendant not guilty.

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APPENDIX F

COUNTY OF SUMTER

GRAND JURY OATH
May 5, 2022

Riot/ Instigating, aiding, or participating in riot, defendant direct others to violence Breach of Peace, High and Aggravated Threatening Life, person or family of public official
(5 counts)

At a Court of General Sessions, convened on May 5, 2022 the Grand Jurors of SUMTER County present upon their oath:

COUNT ONE
BREACH OF PEACE, HIGH AND AGGRAVATED NATURE

That Brittany Valencia Martin did in Sumter County on or about May 31, 2020 through June 3, 2020, knowingly, willfully and intentionally disturb public order and/or public tranquility through her conduct, accompanied by circumstances of aggravation, such acts constituting the offense of Breach of Peace in violation of the Common Law of South Carolina.

COUNT TWO
INSTIGATING A RIOT

That in Sumter County, South Carolina, on or about May 31, 2020 through June 3, 2020, the Defendant,

Brittany Valencia Martin, knowingly and willfully did instigate and promote the commission of a riot while present in front of the Sumter Police Department, located at 335 North Lafayette Drive, Sumter, South Carolina; in violation of Section 16-5-0130(2), of the Code of Laws of South Carolina (1976, as amended).

COUNT(S) THREE THRU SEVEN
THREATENING THE LIFE OF A PUBLIC OFFICAL (5 COUNTS)

That in Sumter County, South Carolina, on or about June 3, 2020, the Defendant, Brittany Valencia Martin, knowingly and willfully did deliver or convey to a public official, teacher or principal of an elementary or secondary school, by way of writing, electronic or verbal communication, a threat to take the life of or to inflict bodily harm upon such public official, teacher or principal or her immediate family and such threat was directly related to her professional responsibilities, to wit: the Defendant did verbally threaten to take the life of and/or inflict bodily harm upon the following officer(s): Col. Jeffrey Jackson, First Sgt. James Sinkler, Capt. Angela Rabon, Sgt. Cleveland Pinckney, and/or Capt. Robert Singleton; this is in violation of Section 16-3-1040(A), of the Code of Laws of South Carolina (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Solicitor

/s/ Ernest A. Finney, III

APPENDIX G

COUNTY OF SUMTER

GRAND JURY OATH
April 8, 2021

Riot/ Instigating, aiding, or participating in riot, defendant direct others to violence Breach of Peace, High and Aggravated Threatening Life, person or family of public official
(5 counts)

At a Court of General Sessions, convened on April 8, 2021 the Grand Jurors of SUMTER County present upon their oath:

COUNT ONE
BREACH OF PEACE, HIGH AND AGGRAVATED NATURE

That Brittany Valencia Martin did in Sumter County on or about June 3, 2020, knowingly, willfully and intentionally disturb public order and/or public tranquility through her conduct, accompanied by circumstances of aggravation, such acts constituting the offense of Breach of Peace in violation of the Common Law of South Carolina.

COUNT TWO
INSTIGATING A RIOT

That in Sumter County, South Carolina, on or about June 3, 2020, the Defendant, Brittany Valencia Mar-

tin, knowingly and willfully did instigate and promote the commission of a riot while present in front of the Sumter Police Department, located at 335 North Lafayette Drive, Sumter, South Carolina; in violation of Section 16-5-0130(2), of the Code of Laws of South Carolina (1976, as amended).

COUNT(S) THREE THRU SEVEN
THREATENING THE LIFE OF A PUBLIC OFFICAL (5 COUNTS)

That in Sumter County, South Carolina, on or about June 3, 2020, the Defendant, Brittany Valencia Martin, knowingly and willfully did deliver or convey to a public official, teacher or principal of an elementary or secondary school, by way of writing, electronic or verbal communication, a threat to take the life of or to inflict bodily harm upon such public official, teacher or principal or her immediate family and such threat was directly related to her professional responsibilities, to wit: the Defendant did verbally threaten to take the life of and/or inflict bodily harm upon the following officer(s): Col. Jeffrey Jackson, First Sgt. James Sinkler, Capt. Angela Rabon, Sgt. Cleveland Pinckney, and/or Capt. Robert Singleton; this is in violation of Section 16-3-1040(A), of the Code of Laws of South Carolina (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Solicitor

/s/ Ernest A. Finney, III