

STATE OF RHODE ISLAND

PROVIDENCE, SC.

DISTRICT COURT

STATE OF RHODE ISLAND

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vs.

61-2020-04072

JOSEPH HANLEY

STATE’S PRE-TRIAL MEMORANDUM

I. FACTS

On or about April 19th, 2020, at approximately 7:55PM, members of the Providence Police Department were dispatched to 77 Knight Street for a domestic disturbance. Upon arrival, police responded to the 2nd floor residence where they made contact with the calling party and a male subject, later determined to be one Markese Davis. Markese Davis was ultimately placed under arrest for domestic disorderly conduct, and escorted from the second-floor landing of 77 Knight Street, downstairs, and outside to a police vehicle. Once outside, Markese Davis refused to get into the police vehicle and police ultimately utilized OC spray to gain compliance from Davis and get him into the vehicle. At approximately 8:06:28 PM, Officer Pacheco departed the area of 77 Knight Street in her police vehicle with Markese Davis in custody.

Approximately two minutes and forty-nine seconds later, at 8:09:17 PM, the defendant, along with Patrolman Lugo and Patrolman Lopez, are observed on body-worn camera walking up Tell Street, away from the intersection of Knight Street. After traveling approximately 151 feet, Defendant arrives at the vehicle (a black BMW) where Rishod Gore is seated in the front passenger seat, and Sarah Zaroogian is seated in the driver’s

seat. Defendant immediately opens the front passenger door where Mr. Gore is sitting and reaches in and grabs Mr. Gore in an attempt to pull him out of the vehicle. A struggle ensues, Mr. Gore resists being pulled out of the vehicle, and can be heard asking “why are you pulling me?”

Approximately fifty-one seconds later, at 8:10:35 PM, Mr. Gore is finally removed from the vehicle and is prone on the sidewalk face down. As officers struggle to get Gore’s hands behind his back, Gores asks, “what am I doing?” Defendant then replies, “You’re a cunt.” Gore then asks, “what?” Defendant then replies, “you wanted this, you got it.” The Defendant is then observed on body-worn camera holding Mr. Gore’s left hand behind his back, as Patrolman Lugo finishes placing Mr. Gore in handcuffs at 8:11:15 PM. Approximately five seconds later, at 8:11:20, Defendant kicks Gore in the left side with his right foot. Approximately six seconds after that, at 8:11:26PM, Defendant delivers a right-handed punch to Gore’s left side, while kneeling on his head. In response to the strikes Mr. Gore asks, “are you serious?” Defendant then replies, “yeah I’m serious you big fucking tough guy, you got what you wanted, right.” Defendant is then observed bouncing up and down with his left knee into Gore’s head/neck area. Defendant states to Mr. Gore, “you act like an animal, I’m going to handle it.” Defendant then stands up and backs away, while Patrolman Lugo maintains control over Mr. Gore, who continues to ask, “what did I do.” Then, at approximately 8:12:08 PM, Defendant states, “you wanted this big guy” and delivers a kick with his left foot to the head area of Mr. Gore. Mr. Gore states, “oh shit, are you kidding me?” Defendant then states, “you wanted that, right?” and is observed walking away and steps on the back of both of Mr. Gore’s legs. Once out of frame, Defendant states to Mr. Gore, “you want to act like a savage, that’s what you get” and states “don’t call the

cops out from a block away tough guy.” There is body-worn camera footage of the incident, as well as cell phone video taken by a civilian witness.

II. WITNESSES

The State may call the following witnesses at trial.

Sgt. Paul Zienowicz (Providence Police): Sgt. Zienowicz is a member of the Providence Police Department and is a member of the Department’s Office of Professional Responsibility. He is the lead investigator on this case, and is expected to testify regarding the scope of his investigation, the people and places involved, evidence obtained, and the Providence Police Department’s use of force policy.

Patrolman Abraham Lugo (Providence Police): Patrolman Lugo is a member of the Providence Police Department and responded to the initial call for service at 77 Knight Street on April 19th, 2020. Subsequent to that, Patrolman Lugo proceeded onto Tell Street and was present for and participated in the arrest of Rishod Gore. Patrolman Lugo’s body-worn camera captures the interaction with Defendant and Gore. He is expected to testify regarding his actions that evening, as well as his observations, including but not limited to observations of Defendant and Mr. Gore.

Patrolman Mark Hubbard (Providence Police): Patrolman Hubbard is a member of the Providence Police Department and participated in the arrest of Sarah Zaroogian and Rishod Gore on April 19, 2020. He is expected to testify regarding his actions that evening as well as his observations, including but not limited to observations of Defendant and Mr. Gore.

Patrolman Vincent Lopez (Providence Police): Patrolman Lopez is a member of the Providence Police Department and also responded to the initial call for service at 77 Knight

Street on April 19th, 2020. Subsequent to that, Patrolman Lopez also proceeded onto Tell Street and was present for and participated in the arrest of Rishod Gore and Sarah Zaroogian. He is expected to testify as to his actions that evening, as well as his observations, including but not limited to observations of Defendant and Mr. Gore.

Rishod Gore (Civilian/Victim): Rishod Gore is a civilian witness and victim. He is expected to testify consistent with the body worn camera footage from police and the cell phone video of the incident. He is expected to testify as to the various strikes Defendant levied upon him after being placed under arrest. He is further expected to testify that he was never inside 77 Knight Street, that he did not yell profanities at police, and that he did not know why he was being placed under arrest, and that the charges against him were dismissed by the City of Providence.

Michaela Perry Gagne (Civilian): Ms. Perry Gagne is a civilian witness who observed the assault of Rishod Gore and took a cell-phone video of the incident while it was occurring. She is expected to testify regarding her observations of incident.

Sarah Zaroogian (Civilian): Ms. Zaroogian was sitting in the car with Mr. Gore when Defendant opened the passenger side door and began to pull Mr. Gore out of the car. She is expected to testify as to her observations of the incident.

The State reserves the right to call any other witnesses listed in State's Discovery Responses, and in accordance with the District Court Rules of Criminal Procedure, the Rhode Island General Laws, the Rhode Island Rules of Evidence, and the common laws of the State of Rhode Island.

III. POTENTIAL LEGAL ISSUES

The State avers that the only legal issue present in the case at bar is whether Defendant committed a simple assault or battery upon Rishod Gore. Defendant is currently charged with simple assault or battery (under RIGL 11-5-3). That statute provides, in pertinent part, that “every person who shall make an assault or battery or both shall be imprisoned not exceeding one year or fined not exceeding one thousand dollars (\$1,000) or both.” Further, simple assault has been defined as “an unlawful attempt or offer, with force or violence, to do a corporal hurt to another, whether from malice or wantonness.” *State v. Lomba*, 37 A.3d 615, 620 (R.I. 2012) (quoting *State v. Pope*, 414 A.2d 781, 788 (R.I. 1980)). A battery is “an act that was intended to cause, and does cause, an offensive contact with or unconsented touching of or trauma upon the body of another, thereby generally resulting in the consummation of the assault.” *State v. Albanese*, 970 A.2d 1215, 1221 (R.I. 2009) (quoting *State v. Messa*, 594 A.2d 882, 884 (R.I. 1991)).

In the present case, the State has filed a Bill of Particulars stating the specific means by which Defendant assaulted and battered Rishod Gore. In the Bill of Particulars the State provided five stand-alone means by which it can prove this case under RIGL 11-5-3. Proof beyond a reasonable doubt on any of these five alleged acts, or all of them collectively, constitutes guilt of a single count of simple assault. Importantly, all means by which the State alleges Defendant committed the offense occurred after Rishod Gore was already placed under arrest, handcuffed behind his back, lying prone on the ground. RIGL 12-7-8 makes clear that “no greater restraint than is necessary shall be used for the detention of any person, and no unnecessary or unreasonable force shall be used in making an arrest.” Put simply, “it is elementary that a police officer may use only such force as is necessary

