

Bus fight trial jury sees video

By Bethany Bump

Albany

It all started with a song — a drunken college student’s version of “99 Bottles of Beer on the Wall.”

That’s what Asha Burwell recalled about her now-infamous fight on a packed CDTA bus in a police interview captured on video several days after the incident last January.

The video of the former University

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at Albany student speaking to an Albany police investigator was played for a jury Wednesday on the third day of a trial in which the Albany County district attorney's office will attempt to prove that Burwell and her friends lied about being the victims of a hate crime when they themselves were the aggressors.

"She was like intoxicated like really screaming loud ... She just kept singing," Burwell told the investigator.

She offered the girl a sandwich if she would stop singing, Burwell said. She seemed interested at first, but when she turned away Burwell heard the girl call her a "ratchet bitch."

That's when Ariel Agudio, a co-defendant in the case who is friends with Burwell, stepped in and asked "What did you say?"

When Agudio, who is also black, kept asking the girl, who is white, what she said, people on the bus shouted at her to "shut up," Burwell, 21, recalled.

"That's when she got offended and we started

like having a conversation about how, 'Why is it that when I start getting loud people are making comments about this loud black girl but when this girl who was being obnoxious and loud the whole time, no one said anything?'"

Agudio and Burwell started talking to two white men who were seated opposite the singing white woman about this difference in racial experiences.

They seemed understanding at first, Burwell recalled, but then one of them said "Your friend's a whale bitch" and a white friend of the singing woman shouted at Agudio and Burwell, "Oh my effing god, you guys are so effing ignorant."

"I thought that she was the one who hit me first because, like, once she said that I don't know if I blacked out or if I just, like, because when I turned my head it happened very fast," Burwell said. "I looked back and then the next thing I know I was being hit."

Over the more than hourlong police interview, Burwell told investigators she heard a number of things that night to suggest the attack was racially motivated.

The first indication came when the woman called her "ratchet" — a term that's often interchangeable with "ghetto" and often applied to people of color, she and her lawyer have said. Earlier this week, one of the defense attorneys noted

that the term "whale" being used to describe Agudio, 21, invoked the idea of a large black animal, and something less than human.

In her interview, Burwell also said she heard the "N" word used at least twice by a male passenger on the bus as the fight broke out.

Several other witnesses were called Wednesday morning, including two former UAlbany students, Will Donovan and Penelope Sanchez-Vargas, who captured some of the fight on cellphone video and Snapchat. Donovan said he saw a "girl in a green peacoat" punch another woman, but that he couldn't see who threw the first punch.

Both said that as soon as they realized a fight had broken out, they reached for their phones and pulled up recording apps.

Donovan sounded gleeful on his recording and tweeted later that night "Just watched an A1 Albany bus fight. Girls too. It was pretty sweet."

"You thought that fight was really pretty cool didn't you?" Mark Mishler, an attorney for Agudio, asked Donovan.

"Yeah, at the time," he replied.

Burwell, in her statement to police, described what it was like to be under attack and watch those nearby pull out phones to record.

"They don't even see us as people," she said.

The feeling continued the rest of the night, she said — when dispatchers kept transferring her to

other jurisdictions, when ambulances took a long time to arrive, when an officer's first statement to her was that her dorm "smelled like marijuana," when the same officer told her friend the scratches on her face didn't "look serious" and when a hospital employee asked "so who won?"

After seeing Agudio's hair extensions get pulled out, Burwell told investigators she was dismayed to hear passengers yell "Get it all out, let's rip her hair out" like it was "a joke."

"I would never just record it and laugh," she said. "That's the main thing that really really upsets me. ... They, like, don't even care about us as people."

Agudio and Burwell are being tried on charges of assault, attempted assault and falsely reporting an incident. A third woman who was with them on the bus, Alexis Briggs, 21, pleaded guilty to disorderly conduct last year.

The trial continues Thursday, when it's expected more video will be played for the jury.

One of the 12 trial jurors — a white man — was dismissed Wednesday for a reason that remained unclear by the end of the day. One of the four alternate jurors — a black woman — was chosen to replace him. The jury makeup now includes eight white jurors, four black jurors, seven women and five men.

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