

Jury at work on bus trial verdict

Wednesday decision possible in UAlbany case

By Bethany Bump

Albany

A verdict could come Wednesday in the case against Ariel Agudio and Asha Burwell, two black women accused of fabricating a hate crime on a CDTA bus last year and assaulting white passengers.

The jury of 12 began deliberations Tuesday in the case, which has captured public fascination since the former University at Albany students first called police 15 months ago to report they had just been jumped by a group of white men and women because they were black. Public outrage and sympathy soon turned to anger, though, when video surveillance from the bus was released and appeared to show the opposite: the alleged victims attacking white passengers on the bus.

In closing arguments delivered Tuesday morning, defense attorneys Frederick Brewington and Mark Mishler argued the footage shows his clients acting out of self defense and implored the jury not to ignore the role that issues of racial bias and per-

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ception played that night.

Both women testified that a white passenger on the bus called them “ratchet bitches” while another told Burwell she’s “(expletive) ignorant” and to “get a job.” Burwell said she also heard the N-word used at least twice as the fight broke out.

“Ask about the feelings, assumptions, perceptions, fears and stereotypes that we all have but are not always remotely fully aware of,” Mishler told the jury. “And ask yourself how do these implicit biases impact what happened on the bus and the different perceptions of what happened on the bus?”

Assistant District Attorney David Rossi, meanwhile, used his closing argument Tuesday to shine one last light on what he called “indisputable, objective evidence” — the video.

“Let’s take a ride on the drunk bus,” he told the jury, as officers dimmed the lights in a courtroom packed with spectators.

In slow motion, complete with narration, Rossi played the CDTA footage from that night, along with cellphone videos captured by passengers to the jury and asked them to answer whether the charges his office is pursuing fit the crime.

“A guilty verdict in this case is not some denial of the existence of racial bias in our society,” he said. “It’s the acknowledgement that there is truth in the world. And the truth of what actually happened in this case is that they’re guilty of these crimes.”

Agudio and Burwell are charged with third-degree assault, third-degree harassment, and multiple counts of falsely reporting an incident. Agudio faces an additional charge of third-degree attempted assault and Burwell faces an additional count of false reporting.

How could it be false reporting, defense attorneys asked, when their clients genuinely and sincerely believed they were under



John Carl D’Annibale / Times Union

Defense attorney Frederick Brewington, center, argued the video footage shows his clients acting in self defense.

attack because of the color of their skin?

Key witnesses for the prosecution admitted a conversation about race and differential treatment was had on the bus that night, and both Agudio and Burwell said they heard racial slurs and language. But that argument, Rossi said, is like a fencer calling police to report a guy swinging at him with a sword — it doesn’t tell the whole story.

“They left out, ‘Well, we were calling them white bitches,’” he said. “They left out Asha leaped over the seat and threw the first punch. They left out Ariel basically beat the pulp out of three girls. They left out Ariel basically beat the pulp out of a boy. They left out Asha leaping out of the seat to help Ariel.”

Also not the whole truth, Rossi argued, was the claim that a white passenger called Burwell “(expletive) ignorant” — a phrase the defense referred to often as an example of racial bias. But Burwell didn’t tell police that she called the passenger “ignorant” first, information that would have put the statement in context, he said.

“But they didn’t want it to be in perspective because the truth was they weren’t the victims of anything,” he said. “They were the perpetrators.”

The trial, which began April 17, has featured more than three dozen witnesses, including 18 passengers on the bus that night.

Many witnesses said

they couldn’t see who threw the first punch. One witness, Gabrielle Camacho, testified that she couldn’t be 100 percent sure but believed she was struck first by Agudio and Burwell. Some witnesses testified that just before the fight broke out, they saw Burwell and Agudio stand up out of their seats and “walk forcefully” toward the back of the bus.

Defense attorneys attempted Monday to get the charges thrown out, arguing the prosecution had not established enough evidence that their clients had committed the crimes of which they are accused. The judge denied the motion, and that question now falls to nine white jurors and three black jurors to decide.

Alexis Briggs, a friend of the defendants who also reported a hate crime that night, accepted a plea deal last summer in exchange for community service and a public apology. With tears in her eyes, she told a judge she “should have done more to correct the narrative and truthfully explain what happened on the bus.”

► bbump@timesunion.com = 454-5387 @ [bethanybump](https://www.facebook.com/bethanybump)