

NEWS

Lawyer for ex-UAlbany student in bus case says her conduct was free speech



Robert Gavin

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Asha Burwell confers with her attorney Frederick Brewington, left during her sentencing Friday June 16, 2017 in front of Judge Roger McDonough at the Albany County Judicial Center in Albany, N.Y. (Skip Dickstein/Times Union)

SKIP DICKSTEIN

Frederick Brewington, a Hempstead, Long Island-based attorney for Asha Burwell, told the mid-level court it was a slippery slope to punish his client for her tweets given the wide range of people -- "from the top to the bottom" -- who use Twitter. He noted that Twitter was not around when the statute was written and highlighted President Donald J. Trump's fondness to use the social media forum.

"If, indeed, we put this standard in place, someone would have to arrest our president immediately," Brewington told the Times Union following the arguments.

In 2017, an Albany County jury found Burwell and co-defendant Ariel Agudio, both now 24, guilty of two counts of falsely reporting an incident in the third-degree, misdemeanor offenses. Acting Supreme Court Justice Roger McDonough sentenced them to three years' probation, 200 hours of community service and a \$1,000 fine.

They were convicted, in one count, of falsely reporting an incident in a 911 call and, in a second count, of falsely reporting an incident and creating a public alarm on social media with the tweets. They were acquitted on four other counts, including allegations of assault and harassment.

Burwell had tweeted: "I just got jumped on a bus while people hit us and called us

the 'n' word and NO ONE helped us," as well as "I can't believe I just experienced what it's like to be beaten because of the color of my skin," court papers show.

Brewington said his client's tweets were not criminal. His client, he later noted, graduated with honors from Howard University in Washington D.C. and is studying to become an attorney.

"We believe that the application in this situation, one, is dangerous and places the statute -- as it is interpreted in this particular case - on the razor's edge," he told the Appellate Division of state Supreme Court's Third Department in Albany.

Presiding Justice Elizabeth Garry and Justices Stanley Pritzker, Christine Clark, Eugene "Gus" Devine and John Colangelo listened as he made his case.

On Wednesday, justices asked Assistant District Attorney Vincent Stark, who argued the case for District Attorney David Soares' office, about Burwell's false report causing a public alarm. Stark told the judges that while opinions are always protected under the First Amendment, Burwell falsified facts.

Stark noted that in the days after the incident, Burwell appeared before hundreds of people at a rally where she claimed she and her friends experienced something that no one should have to experience in their life" and, "We will remain unbroken."

In a brief, Stark said: "There was only one problem. None of it was true." And he told the judges Wednesday that Burwell doubled down on her falsehoods at the rally -- without ever getting into the details. He said that displayed a calculated method.

"I think she wanted to bathe in glory, if you could call it that, of this sort of victimhood," Stark told the justices. "I don't quite get it but it seemed like that's what they wanted."

Brewington told appellate justices his client was not guilty of the first count because Burwell believed what she reported to the 911 operator -- that she was the victim of racial slurs and an assault. Even if what she reported was untrue, the lawyer said, that does not make the call criminal given the circumstances.

Burwell told the 911 operator, according to court papers, "'Hi, I'd like to report the

fact that me and my friends were just jumped on a bus for being black.”

Brewington told justices: “She’s in tears. She’s very upset and she believes exactly what she has experienced as being true,”

“There was a dispute and a fight that took place on this bus,” Brewington said, noting his client suffered bruises.

“So with regard to the claim of falsity in the reporting of it, that’s the key to this. What appears to be is that (prosecutors) have a real concern with the fact that the language that was used raised issues that struck a tender note, that dealt with the issues of race. I think when we try to escape that in this discussion, we then fool ourselves both from a legal standpoint but also a societal standpoint.”

At the outset of his remarks, Stark immediately told the panel that seven videos, 18 witnesses and “pure logic” established that it was Burwell and her friends who instigated the incident, threw the first punches and that Burwell was not the victim of any assault -- racial or otherwise.

“It follows that her reports otherwise were false,” Stark told the justices. “Facts are stubborn things. And whatever may be our wishes, our inclinations or the dictates of our passion, they cannot alter the state of facts (in the incident).”

Burwell, Agudio and a third student, Alexis Briggs, all of whom are black, left a CDTA bus in the predawn hours of Jan. 30, 2016. The students had boarded the bus at Quail Street and Western Avenue in Albany. Agudio and Burwell called police after they left the bus to report they were jumped by a group of white men and women because of their skin color. They alleged the bus driver did nothing and passenger just watched or recorded the attack on their phones.

It led to the on-campus rally and national attention. Then-Democratic presidential candidate Hillary Clinton expressed sympathy in a tweet.

Footage from the bus was later released, which appeared to show the students were the attackers.

Agudio and Burwell were both expelled. Briggs was suspended.