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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 PASTOR ADEN RUSFELDT,

4 Plaintiff,

5 v.

22 Civ. 594 (PKC)

6 CITY OF NEW YORK, *et al.*,

Trial

7 Defendants.

8 -----x

New York, N.Y.
June 18, 2025
9:00 a.m.

9
10
11 Before:

12 HON. P. KEVIN CASTEL,

District Judge
-and a Jury-

13
14
15 APPEARANCES

16 CENTER FOR AMERICAN LIBERTY
Attorneys for Plaintiff

17 BY: JOSHUA W. DIXON
-and-

18 COLEMAN LAW FIRM, P.C.
BY: RONALD D. COLEMAN

19 MURIEL GOODE-TRUFANT, Corporation Counsel
20 for the City of New York
Attorneys for Defendants

21 BY: HANNAH V. FADDIS
22 TOBIAS ELI ZIMMERMAN
RANDY NANDLALL

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1 (Trial resumed; jury not present)

2 THE COURT: Jury. So, good morning, ladies and
3 gentlemen.

4 MR. DIXON: If I may, your Honor, my client's here.
5 He's using the facilities.

6 THE COURT: We'll wait for him. In the meantime, I'm
7 just going to do the certain administrative acts as marking as
8 Court exhibit -- what's the next number?

9 We don't have any.

10 Court Exhibit 1 is the proposed verdict sheet.

11 You all right? You sure?

12 CLERK: Yeah. I'm fine, moving too fast.

13 THE COURT: Verdict sheet, and one to each
14 side, please. One to the court reporter and one for me.

15 Thank you.

16 That's Court Exhibit 1.

17 Court Exhibit 2 is the version of the jury
18 instructions that were emailed to counsel last night at
19 approximately about 8:08.

20 What was that? It was about 8:08?

21 CLERK: I would say 8:25.

22 THE COURT: One for me. That's Court Exhibit 2.

23 Court Exhibit 3 is a marked to show changes copy
24 between Court Exhibit 2 and what will become Court Exhibit 4 in
25 a moment.

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1 And Court exhibit 4 is the now operative draft of the
2 jury instructions.

3 We'll wait for Mr. Rusfeldt.

4 The first question that I'm going to ask is on Court
5 Exhibit 4. Are there any proposed changes or objections to the
6 language up through pages 15? So, that will be the first
7 question.

8 MR. DIXON: None from plaintiff, your Honor.

9 THE COURT: Do you want to wait for your client, or
10 are you prepared to proceed.

11 MR. DIXON: I think it would be best to wait for him.

12 THE COURT: Do you want to look in after his
13 whereabouts?

14 MR. DIXON: I do.

15 Thank you, your Honor.

16 (Pause)

17 MR. DIXON: Apologies, your Honor.

18 He's in the landing. I think we can proceed.

19 He's going to come in when he's ready if your Honor's
20 okay with doing that.

21 THE COURT: He's in the landing?

22 MR. DIXON: In the lobby, on this floor, just in the
23 facilities.

24 THE COURT: Well, I'm happy to wait.

25 Here he is.

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1 THE PLAINTIFF: Sorry.

2 THE COURT: That's all right.

3 Good morning, Mr. Rusfeldt.

4 THE PLAINTIFF: Good morning, sir.

5 THE COURT: So, the first question is if there are any
6 comments with regard to the Court's instructions marked as
7 Court Exhibit No. 4 through page 15.

8 I'll hear from the plaintiff first.

9 MR. DIXON: None for the plaintiff, your Honor.

10 THE COURT: Any for the defendant?

11 MS. FADDIS: No, your Honor.

12 THE COURT: Okay. So let's turn, now, to through the
13 end of -- or through the top of page 22, up to the beginning of
14 the First Amendment retaliation.

15 Any comments from the plaintiff?

16 MR. DIXON: Yes, your Honor.

17 I apologize.

18 THE COURT: Sure.

19 MR. DIXON: Let me just make sure I'm working off the
20 right document.

21 THE COURT: Okay. So it's Court Exhibit 4, which is
22 the version that was emailed this morning, the clean copy of
23 it. And if it helps you any, it is 33 pages in length.

24 MR. DIXON: Yes, your Honor.

25 And you're asking from page 15, which we've already

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1 discussed, through page 22.

2 THE COURT: Now 16 up through the top of page 22 where
3 we end the Fourth Amendment claim.

4 MR. DIXON: No, your Honor; no objection.

5 THE COURT: All right. Same question for the
6 defendants.

7 MS. FADDIS: Yes, your Honor.

8 On the Fourth Amendment unlawful arrest claim on
9 page 16 --

10 THE COURT: One second. One second.

11 MS. FADDIS: Yes, your Honor.

12 THE COURT: Yup. Go ahead.

13 MS. FADDIS: And actually, I apologize. Starting with
14 the paragraph at the top of the page on the substantive claims.

15 THE COURT: Yes.

16 MS. FADDIS: There's reference to the actions of Chief
17 Hughes or any other officer in this case, which I understood,
18 from the Court's pretrial rulings, the Court was allowing the
19 plaintiff to proceed on a theory that a non-party officer may
20 have committed the conduct that amounts to a constitutional
21 violation.

22 The trial record at this point, which is closed, is
23 that Chief Hughes directed the arrest and that the arrest was
24 undertaken completely at his direction. I don't think there
25 is, at this point in the record, a viable path for the jury to

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1 conclude that a constitutional violation occurred that he was
2 not responsible for. So, we would ask that any reference to
3 the actions of another officer be removed.

4 THE COURT: Let me hear from the plaintiff.

5 MR. DIXON: For the purposes of a Fourth Amendment
6 claim, no objection.

7 THE COURT: Okay. So, so I'll change it to:
8 First, the plaintiff Aden Rusfeldt claims he was deprived of
9 his right under the Fourth Amendment to be free from unlawful
10 arrest by defendant Hughes. So, that's the first change.

11 MS. FADDIS: And then, your Honor, the bottom of the
12 first paragraph: The City denies that any other officer
13 deprived plaintiff of such rights. I don't think that needs to
14 be there, either.

15 THE COURT: Well, then, what would you put in?

16 It's fine with me. I don't think the defendant will
17 object to taking that language out. I thought you might have
18 liked it.

19 MS. FADDIS: Well, I think the issue, your Honor, is
20 that it implicates the conduct of a non-party officer, which is
21 not at issue at this point.

22 THE COURT: Well, but it addresses both the First
23 Amendment and the Fourth Amendment.

24 All we have so far is that the plaintiff is not
25 objecting as to the Fourth Amendment claim and is objecting as

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1 to the First Amendment claim.

2 MS. FADDIS: I'm sorry. I didn't know that we had
3 gotten to the First Amendment language. I was reading the --

4 So, your Honor, I think the issue is that our request
5 pertains to both claims. I think the issue here is, the
6 actions that were taken towards the plaintiff were ultimately
7 taken at the direction of the individual defendant.

8 And because the First Amendment violation is
9 intertwined with the Fourth Amendment violation, in that if
10 there was probable cause there was no First Amendment
11 violation, there is no factual predicate on this trial record
12 for a First Amendment violation based on the conduct of a
13 non-party officer.

14 THE COURT: All right. We're going to take that up
15 when we get to the First Amendment, but for now, I'm going to
16 put: Any right under the Fourth and First Amendments as to
17 defendant Hughes, and the City denies that any other officer
18 deprived plaintiff of rights under the First Amendment.

19 So, let's deal with Fourth Amendment claim, because
20 there's a lot of work to be done here now, okay, in tailoring.
21 So, under Roman one, we're going to strike the words: or any
22 other officer of NYPD. We're going to change "they" to "he."

23 Under the paragraph which is described as
24 second, we're going to strike: or another officer of the NYPD;
25 under third, we're going to strike: or another officer; under

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1 page 17, under A, we're going to strike: or other officers who
2 interacted with plaintiff, and we're going to change "were" to
3 "was."

4 Okay. So, it will now read: As to the first
5 element, comma, when the defendant used: Was acting under
6 color of state law, I instruct you, because defendant Hughes
7 purported to be acting in his capacity as a member of the NYPD
8 at the time he interacted with Aden Rusfeldt and arrested him,
9 the defendant Hughes was acting under the color of state law.
10 Therefore, the first element of Aden Rusfeldt's claim is
11 satisfied, and you do not need to deliberate on it.

12 MR. DIXON: Your Honor.

13 THE COURT: Any objection?

14 MR. DIXON: Yes, your Honor.

15 On that last -- second to last sentence.

16 THE COURT: Yes.

17 MR. DIXON: I instruct you the -- excuse me, your
18 Honor -- the final clause after the comma reads: The
19 defendants were acting under color of state law.

20 While Chief Hughes is the actor here, the defendants
21 are still the defendants, and so I would like that "defendants"
22 to stay "defendants."

23 THE COURT: No. No.

24 You can't have it two ways. If you're consenting that
25 the jury is only going to deliberate on the Fourth Amendment

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1 claim as to whether defendant Hughes. He is the person who is
2 sued under 1983.

3 Now, there may come a time when you'll have a phase
4 two to this trial, in which we will decide whether the City is
5 liable for the damages, if any, that Officer Hughes is liable
6 for. But that's it.

7 MR. DIXON: If that's your Honor's ruling, then I'll
8 respectfully --

9 THE COURT: Okay.

10 MR. DIXON: I would respectfully object to this entire
11 change.

12 THE COURT: Okay. Thank you.

13 The second element -- well, then, you object to it on
14 what basis?

15 How can you now say -- you just said to me on the
16 record that the arrest was at the direction of Officer Hughes,
17 and therefore you have no objection to taking out: or other
18 officers operating under color of state law?

19 MR. DIXON: I don't have an objection to "or other
20 officers," but what I do have an objection to is the
21 implication now this claim is now being only asserted as to
22 defendant Hughes.

23 THE COURT: What do you just say to me before that we
24 were just talking about ten minutes ago? The City got up and
25 said, we object to including: other officers acting under color

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1 of state law because the arrest by anybody was at the direction
2 of Officer Hughes. You said, I agree.

3 MR. DIXON: And I do. I still do. My --

4 THE COURT: All right. So, then, I'm making the
5 change that flows from that.

6 MR. DIXON: Respectfully, I don't believe that change
7 flows from that, because now, we're giving the jury the
8 implication that this claim is against defendant Hughes only,
9 and it's not defendant Hughes only; it's also against the City,
10 still.

11 I'm not withdrawing that claim.

12 THE COURT: In this phase, you're not withdrawing
13 it, sir.

14 I understand you press your claim under *Monell*. This
15 jury does not get instructed on *Monell* or does not get told
16 there may be a second phase or a third phase or a ninth phase
17 or an appeal or post-verdict motions. That's not part of what
18 the jury does, and therefore, it's not something that you leave
19 hanging: or other defendants.

20 What other defendant? What? The verdict sheet now
21 only asks me to decide whether Hughes.

22 Are you consenting to the change in the verdict sheet?

23 I mean, please.

24 MR. DIXON: I'm sorry. Are you --

25 THE COURT: On the Fourth Amendment claim.

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1 I thought I was giving you what you wanted. That's
2 why I included: or other officers. And in both the verdict
3 sheet and in the charge. I now understood, from hearing
4 you, that you consented to what the counsel for defendants
5 wanted.

6 MR. DIXON: Your Honor, I apologize for not
7 appreciating the implications of me saying that I would consent
8 to that. I no longer consent to that.

9 I apologize.

10 THE COURT: Well, now you have to argue your point,
11 because I thought you said to me that you agreed that any
12 arrest was at the direction of Officer Hughes, and therefore,
13 it was appropriate for him to be the one.

14 MR. DIXON: I don't dispute the point that the
15 evidence shows that the arrest was at the direction of Officer
16 Hughes.

17 THE COURT: Okay.

18 And what flows from that?

19 Please help me out here, sir.

20 MR. DIXON: I'll cede the point, your Honor. I'll
21 cede the point.

22 THE COURT: What does that mean, now?

23 I'm confused. I read out a bunch of changes. Do you
24 object to those changes, or do you consent to those changes?

25 MR. DIXON: I consent to those changes.

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1 THE COURT: Okay. Great. That's fine. Thank you.

2 Now, we're through the first element, under color of
3 state law.

4 Second element, anything?

5 MS. FADDIS: Your Honor, I think that there's a
6 "defendants," plural, that needs to be changed to "defendant"
7 in subsection b.

8 THE COURT: Where?

9 MS. FADDIS: The second line. It says --

10 THE COURT: Okay. I got it now. Thank you.

11 Anything else?

12 MS. FADDIS: Not in that paragraph, your Honor.

13 And in the following paragraph, under intentional or
14 reckless actio, the language: or another officer.

15 THE COURT: That's stricken.

16 MS. FADDIS: And I apologize, your Honor. I'm trying
17 to read the revised version as quickly as I can.

18 Those words, "or another officer," I think, may appear
19 further.

20 THE COURT: Page 18, in the first full paragraph;
21 right?

22 MS. FADDIS: Yes, your Honor.

23 And in the --

24 THE COURT: And change "they" to "he."

25 MS. FADDIS: Yes, your Honor.

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1 And the same changes in the following paragraph.

2 THE COURT: And "their" to "his."

3 MS. FADDIS: Yes, your Honor.

4 THE COURT: Wait a minute.

5 And defendant, singular.

6 MS. FADDIS: Yes, your Honor.

7 THE COURT: And then in the paragraph that begins: To

8 prove, take out "or another official"?

9 MS. FADDIS: Yes, your Honor.

10 In the second --

11 THE COURT: In the line beginning: Aden Rusfeldt, take

12 out "or another officer."

13 MS. FADDIS: Yes, your Honor.

14 And in the second to last line, the same change.

15 THE COURT: I got it. Thank you.

16 MS. FADDIS: And then --

17 THE COURT: And then under deprivation, strike: or

18 another officer --

19 MS. FADDIS: Yes, your Honor.

20 THE COURT: -- of the NYPD.

21 MS. FADDIS: Yes.

22 THE COURT: Okay.

23 MS. FADDIS: And then on page 19.

24 THE COURT: Yes.

25 MS. FADDIS: Separate from the changes we've been

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1 making, under probable cause, the second full paragraph.

2 THE COURT: Yeah.

3 MS. FADDIS: It reads -- which is correct -- an
4 officer has probable cause to arrest a person if he has
5 knowledge or reasonably trustworthy information that the person
6 being arrested has committed or is committing a crime.

7 THE COURT: I will change that to "offense."

8 MS. FADDIS: Thank you.

9 THE COURT: Any objection?

10 MR. DIXON: No objection.

11 THE COURT: All right. Thank you.

12 And then there is -- the "defendants," plural appears
13 in the paragraph begin with the word "while." That would be
14 singular.

15 MS. FADDIS: Yes, your Honor.

16 THE COURT: And on top of 20, it will be changed to:
17 Defendant Hughes claims that he had probable cause to arrest
18 plaintiff for disorderly conduct failure to disperse. I will
19 now instruct you regarding the elements of this offense.

20 Any objection through the top of page 22?

21 MS. FADDIS: Your Honor, at the bottom of page 20 --

22 THE COURT: Yes.

23 MS. FADDIS: -- the Court defines the -- or provides
24 the standard for a lawful order. I believe the Court, in its
25 summary judgment order, already found the orders were lawful.

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1 And I'm looking at page 21 of the summary judgment
2 order at Docket ECF 17.

3 THE COURT: Well, that's what I said in the order.
4 It's an element of the crime, and I'm instructing the jury on
5 what the standard is.

6 The fact that it's in my summary judgment decision
7 denying the City's motion for summary judgment, it does not
8 bind me at this stage.

9 MS. FADDIS: Your Honor --

10 THE COURT: In fact, you know, I read the Second
11 Circuit's decision affirming me in the *Shaka Nelson* case, and
12 that's exactly where I got this concept that, certainly, Judge
13 Katzmann said he's not deciding it, but the strong
14 suggestion, in the Court's opinion, was that the order is
15 lawful if its purpose is to promote public order.

16 MS. FADDIS: Your Honor --

17 THE COURT: And not issue it in a purely arbitrary
18 manner.

19 MS. FADDIS: Just on this point, just to make our
20 record on this, our position would be that the Court's ruling
21 was very clear in the summary judgment order.

22 It reads: The purported orders to disperse were not
23 arbitrary and therefore were lawful under New York State Law.
24 We tried the case with that in mind. We did not litigate the
25 issue --

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1 THE COURT: But that's a decision denying summary
2 judgment.

3 MS. FADDIS: Well, your Honor, it's a decision
4 defining the scope of the issues for trial, and so we tried the
5 case based on what the issues as defined in --

6 THE COURT: Your objection is duly noted.

7 Go ahead. Next.

8 MS. FADDIS: Okay. Page 21, your Honor, there's a
9 reference to other officers.

10 THE COURT: All right. Let's just see now. Page 21,
11 under the 5*: If you find that defendant has proven probable
12 cause for an arrest for disorderly conduct failure to
13 disperse -- and I'm going to capitalize the terms, disorderly
14 conduct, failure to disperse -- you must find in favor of
15 defendant with respect to plaintiff's Fourth Amendment claim.

16 If, however, you find that Stephen Hughes -- striking
17 "or another officer" -- did not have probable cause to arrest
18 Aden Rusfeldt for this offense, then you must consider the next
19 element, whether plaintiff proved by a preponderance of the
20 evidence that defendants' acts were the proximate cause of his
21 injury.

22 MS. FADDIS: Yes, your Honor.

23 THE COURT: And then, in the next paragraph, I'll make
24 defendants, "S" apostrophe, I'll make that apostrophe "S."

25 And that brings us to the beginning of the First

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1 Amendment retaliation. Let me hear from the plaintiff on First
2 Amendment retaliation.

3 MR. DIXON: Yes, your Honor.

4 Excuse me.

5 Just to preserve the same objection I raised at the
6 pretrial, I object to the use of the term "retaliation" because
7 it implies that there's a retaliatory animus based on the
8 speaker's speech.

9 I would prefer to frame this as First Amendment
10 heckler's veto. I just say that for the record.

11 If not, my backup would be just, First Amendment.

12 THE COURT: All right. I have no substantive problem
13 with changing the heading to First Amendment rather than First
14 Amendment retaliation, to correspond with what I said in the
15 lead-in. I called it Fourth Amendment unlawful arrest. I can
16 strike the word "unlawful arrest" out of the Fourth Amendment
17 claim, so they will both read: Fourth Amendment and First
18 Amendment.

19 That's fine. That's on page 16.

20 And then, I will explain what has to be proven under
21 the Fourth Amendment claim and under the First Amendment claim.

22 Is that acceptable?

23 MR. DIXON: I preserve the objection, but that's my
24 backup. Yes, your Honor.

25 THE COURT: Any objection from the City?

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1 MS. FADDIS: No, your Honor.

2 THE COURT: So now, anything else on the First
3 Amendment claim?

4 MR. DIXON: I believe the word "retaliation" is used
5 again.

6 THE COURT: Well, it probably is, because that's how
7 the case law describes it. So, the retaliation is that it is a
8 response to the exercise of First Amendment rights. That's
9 what it is. That's why the law calls that retaliation, so I'm
10 not going to change it within the charge. That's what it is.

11 Go ahead.

12 MS. FADDIS: Your Honor, for the defendants.

13 THE COURT: Well, no.

14 I'm asking Mr. Dixon does he have anything else
15 through page 25.

16 MR. DIXON: Yes, your Honor.

17 I apologize.

18 I'm trying to triangulate notes from last night.

19 THE COURT: Sure.

20 MR. DIXON: Give me just a minute.

21 THE COURT: Yeah. Take a moment.

22 MR. DIXON: I'll just note this. This is not
23 substantial, but at least what I'm looking at the top of
24 page 24, the date identified there is June 17th, and it just
25 should be June 27.

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1 THE COURT: Oh. Thank you very much.

2 MR. DIXON: Yes, your Honor.

3 THE COURT: And I assume the defendants have no
4 objection to that change?

5 MS. FADDIS: No, your Honor.

6 THE COURT: Go ahead.

7 MR. DIXON: Your Honor, I'm not seeing exactly where
8 it is. Maybe I should find it before I start speaking.

9 Yes, your Honor.

10 On page 22, the second element of this claim reads:
11 Second, that defendant Hughes or another officer of the NYPD,
12 acting under the color of state law, intentionally or
13 recklessly arrested him.

14 So as I understand the claim, it is limited to,
15 solely, the arrest, and it is our position that the officers'
16 various interferences with his right to speak over that day,
17 the shutdown order, other orders to leave that did not
18 consummate an arrest constitute a violation of the First
19 Amendment.

20 In that respect, your Honor, I would cite, partly,
21 against *Willfert*, which is a District of D.C. opinion at 918 F.
22 Supp. 2nd 415 at pin cite 52 and 53, which holds that when an
23 officer -- in the fact situation where an officer says, I
24 command you to leave or you will be arrested, that "or you will
25 be arrested" is plainly sufficient to give rise to the

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1 interference needed to stake a retaliation claim.

2 That case also cites other case law for the
3 proposition that the shutdown order would also be sufficient,
4 to constitute sufficient interference for purposes of a
5 retaliation claim.

6 THE COURT: All right. Let me hear from defendants.

7 MS. FADDIS: Your Honor, our understand and our
8 reading of the Court's summary judgment order was that the
9 claim was limited to -- the First Amendment claim was cabined
10 to whether or not the arrest amounted to retaliation and,
11 therefore, was a violation of the plaintiff's First Amendment
12 rights.

13 So, that's how we've litigated the case. That's the
14 case we presented, so I think, arguing now, presenting to the
15 jury now the option --

16 THE COURT: Wait. You weren't here, so don't give me
17 arguing now. You filed a notice of appearance on October 9.
18 You weren't here on the final pretrial conference, were you?

19 MS. FADDIS: No; I wasn't, your Honor.

20 THE COURT: So when you say, arguing now, that implies
21 arguing for the first time now. That's what my ears hear.
22 Maybe you don't mean arguing for the first time now.

23 MS. FADDIS: I didn't mean arguing on defendant's
24 behalf, your Honor. What I meant was, my understanding --
25 and my cocounsel can correct me and the Court, obviously, can

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1 correct me if I'm mistaken -- my understanding was that the
2 First Amendment claim here was cabined to a retaliatory arrest
3 claim.

4 THE COURT: Well, that's because you didn't file a
5 notice of appearance in this case until June 9, after the final
6 pretrial conference, so how would you know what happened after
7 the summary judgment decision?

8 MS. FADDIS: I apologize your Honor, if I'm missing
9 something.

10 And I'll ask if Mr. Zimmerman wants to weigh in on
11 this if he has a different opinion on this but that was my
12 understanding of the --

13 THE COURT: The question I asked counsel is, what's
14 your response to the defendant's position.

15 MR. ZIMMERMAN: So, my response is that, all through
16 this case, including summary judgment, which we briefed at
17 length and extensively and plaintiff responded --

18 THE COURT: So maybe I should declare a mistrial.

19 If your reliance is on a dictum in a summary judgment
20 decision, then maybe I should declare a mistrial and we do this
21 all over again.

22 If you don't have a substantive position in response
23 to what Mr. Dixon argues, then tell me, and I'll consider
24 granting you a mistrial.

25 MR. ZIMMERMAN: So, let's just look at what he's

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1 claiming now, that the order to shut it down or the
2 statement, shut it down, was an abridgment of his free speech.

3 First of all, the only effect that we could see that
4 that had was Brother Phil stopped speaking through the
5 megaphone, but Brother Phil is not a plaintiff here.

6 Plaintiff continued to hold up his controversial sign.
7 He continued to interact with parade goers and people in the
8 crowd. Plaintiff's conduct did not change one whit after the
9 "shut it down," so what evidence does plaintiff have --
10 including his own testimony, what evidence does plaintiff have
11 that there was actually any chilling effect by Officer Pounds
12 or Officer Avlin saying, shut it down?

13 THE COURT: I'll give plaintiff the last word on this.

14 MR. DIXON: The standard for retaliation claims for
15 chilling is objective standard. The fact that my client has a
16 uniquely high tolerance for police interference with his right
17 to speak does not render the claim invalid. And Pastor Aden
18 testified, in addition, that he was chilled by the totality of
19 the circumstances on that day from coming back to New York
20 after Pride 2023.

21 THE COURT: All right. I adhere to my instructions
22 for the following reasons: the damage which plaintiff and the
23 injury which plaintiff alleges flows from the fact of the
24 arrest, first and foremost; secondly, it is an objective
25 standard, and an unreasonably firm individual or an

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1 unreasonably weak and tolerant individual are not the standard.
2 It's an objectively reasonable standard.

3 But looking at the surrounding circumstances and the
4 manner in which the police interacted in what appeared, to me,
5 to be a polite, courteous manner, the exhortations of the
6 police would not have dissuaded a person of reasonable firmness
7 in that situation.

8 Now, what we heard in the testimony from Mr. Hughes
9 was, the question was elicited whether there were other gay
10 marches and protests that were accompanied by anti-gay
11 advocates. And my recollection of the testimony was, yes, and
12 there were no arrests that he was aware of arising out of that.

13 While it's not dispositive of the issue, it is the
14 case that Reverend Rusfeldt returned to New York, without
15 incident, at further LGBTQ-plus events and did engage in his
16 brand of evangelical confrontation without incident.

17 So, on balance, I conclude that the charge as written
18 is appropriate.

19 Thank you.

20 Anything else until the end of page 25?

21 MR. ZIMMERMAN: I'm sorry, your Honor.

22 May I just make a very brief record?

23 THE COURT: Yes.

24 MR. ZIMMERMAN: So, I also want to point out to your
25 Honor that we specifically said in our summary judgment we were

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1 moving on each and every one of plaintiff's claims.

2 Plaintiff did not argue this in response. Your Honor
3 did not rule on it. Any claim not addressed in a response to
4 summary judgment is waived, so we would say that this claim was
5 waived.

6 THE COURT: All right. Thank you.

7 So, hearing no other objection through page 25 --

8 MS. FADDIS: Your Honor, I'm sorry.

9 I think I was waiting for the plaintiff to indicate
10 that he was completed.

11 THE COURT: Mr. Dixon, are you done through page 25?

12 MR. DIXON: Your Honor, on page 25, there is a
13 reference to the *Nieves* exception, and the exception is
14 characterized there as a narrow exception. I would just ask
15 that that characterization be stricken.

16 THE COURT: Why?

17 MR. DIXON: Because I think it sends the message to
18 the jury that this is a uniquely narrow exception when the jury
19 should just be evaluating the facts as to whether the
20 circumstances to the exception are met.

21 THE COURT: Any objection from the City?

22 MS. FADDIS: Yes, your Honor, and this actually goes
23 back to our first comment in this section, which is going to be
24 on page 22.

25 THE COURT: I didn't understand what you just said.

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1 MS. FADDIS: I'll repeat it, your Honor; I apologize.

2 We do object to the plaintiff's --

3 THE COURT: I heard it; I just don't understand it.

4 MS. FADDIS: Yes, your Honor.

5 So, we do have an objection on page 22.

6 THE COURT: I tell you what.

7 Let's start from the beginning.

8 What's your objection between pages 22 and 25, because
9 I obviously have missed your point.

10 Go ahead.

11 MS. FADDIS: No, your Honor.

12 I'm sorry.

13 The plaintiff was noting his objections, and I was
14 understanding that we were awaiting our turn to do so, so I
15 apologize.

16 THE COURT: Okay. What are your objections?

17 MS. FADDIS: We have an objection to charging the jury
18 on the Nieves exception in its entirety, because there is no
19 evidence in the trial record to support a finding that it would
20 apply. There's no testimony regarding the typical exercise of
21 discretion by other officers that would support a finding that
22 the defendant here arrested the plaintiff because of his
23 speech. In fact, the only evidence on this point came from
24 defendant Hughes who testified he had attended and worked at
25 many, many Pride events over the years, that he had seen

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1 exactly this type of protest or similar protest activity and
2 had never had to make another arrest of such individuals.
3 So, the fact that this arrest was based on the specific and
4 unique circumstances of what happened that day, I think, is
5 very clear.

6 The only argument I could conceive of plaintiff making
7 on the other side would have to do with the one individual in
8 the crowd who is briefly seen with a wooden pole. That was
9 discussed at length. Perhaps there's some argument they're
10 going to try to make that that one individual was not arrested.

11 There's been no evidence of that person's activities,
12 where that person ended up, and even if there were a single
13 instance of another person doing something -- which the Court
14 has already said was demonstrably different, because it did not
15 conclude the totality of the plaintiff's conduct that day --
16 would not allow the jury to find that the *Nieves* exception
17 applies in this case.

18 So, we think the charge should be limited to, on the
19 third element of the First Amendment claim, that the plaintiff
20 Rusfeldt was arrested by defendant Hughes without probable
21 cause and with a motive to retaliate against him because of his
22 protected speech, excising the "or" clause, which is subsection
23 B.

24 THE COURT: All right. Let me hear from the
25 plaintiff.

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1 MR. DIXON: Yes, your Honor.

2 It's our position this charge is acceptable. The
3 government argued yesterday that the *Gonzalez v. Trevino* case
4 -- I don't think that he said that name by reference -- the
5 Supreme Court case that came out in the past year or so, the
6 Supreme Court, precluded the *Nieves* exception because in that
7 case, there was objective evidence of a history of -- I don't
8 remember the exact phraseology, but -- categorization of a
9 number of arrests or something along those lines.

10 In that case, it is true that those were facts, but
11 the Supreme Court did not hold that that was necessary, only
12 that it was sufficient. I've cited, in prior submissions to
13 the Court, the *Ballentine* case out of the Ninth Circuit, which
14 holds that you can look to the events of a particular day in
15 order to get sufficient evidence to satisfy the *Nieves*
16 exception.

17 THE COURT: Was that before or after the Supreme
18 Court's ruling last summer?

19 MR. DIXON: If I remember correctly, I believe it was
20 before.

21 THE COURT: Okay. All right.

22 So, I'm going to instruct the jury as written, and
23 certainly, the City defendants have preserved their position on
24 this and, if necessary, it could be addressed in a post-verdict
25 motion, and I'll take a closer look at the type of evidence

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1 that is necessary. All right.

2 Go ahead.

3 Anything else through page 25?

4 MS. FADDIS: Your Honor, we would request the same
5 change to the "or another officer" language that was made in
6 the Fourth Amendment.

7 THE COURT: Well, I understand.

8 And what's the position of the plaintiff on that?

9 MR. DIXON: So as not to waive our position that this
10 applies to orders other than the arrest, I can't concede the
11 point.

12 THE COURT: Okay. All right.

13 I'm going to leave it as written, as to the First
14 Amendment claim. All right.

15 Anything on damages through page 28 from the
16 plaintiff?

17 MR. DIXON: Nothing from the plaintiff.

18 THE COURT: From the defendant?

19 MS. FADDIS: Your Honor, before we get there, I'm
20 sorry. I had, I think, one last comment on the First Amendment
21 charge.

22 THE COURT: Yes.

23 MS. FADDIS: Which was under first element, protected
24 speech, which appears in this first draft on page 23,
25 subsection A.

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1 THE COURT: Yeah.

2 MS. FADDIS: The Court wrote: The parties do not
3 dispute that Aden Rusfeldt was exercising a right protected by
4 the First Amendment.

5 I believe that we have argued, and the Court has
6 already ruled on this, but we had argued and we preserve the
7 argument that it was not protected. For the purposes of this
8 trial, we understand it is not in dispute, but just so it does
9 not ready to the jury that it is a point conceded by the
10 defendants, we would just propose more neutral language, which
11 is, it is not in dispute that Aden Rusfeldt was exercising a
12 right protected by the First Amendment.

13 THE COURT: Any objection to, it is not in dispute?

14 MR. DIXON: Yes, your Honor.

15 The defendants conceded a request to admit that Aden's
16 speech was protected by the First Amendment and in the summary
17 judgment order, your Honor noted that the defendants would not
18 be allowed to withdraw that admission, although they tried to
19 do so.

20 THE COURT: I don't see any harm in saying it is not
21 in dispute. It's the functional equivalent, as far as the jury
22 is concerned.

23 MR. DIXON: And just a grammatical point.

24 THE COURT: Yes.

25 MR. DIXON: That word "no" should be -- I guess your

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1 Honor is going to change the sentence, but --

2 THE COURT: Yes.

3 Thank you.

4 I see that. That's a good point, but it will read:

5 It is not in dispute, and then continue on.

6 Understood?

7 MR. DIXON: Yes, your Honor.

8 THE COURT: Any objection to that?

9 MR. DIXON: No, your Honor.

10 THE COURT: Okay. Go ahead. All right.

11 So, anything through 28 from the defendant?

12 MS. FADDIS: No, your Honor.

13 THE COURT: How about from the plaintiff in the
14 concluding charges through page 33?

15 MR. DIXON: None, your Honor.

16 THE COURT: The defendants?

17 MS. FADDIS: No, your Honor.

18 THE COURT: So, on the verdict sheet, what I'm going
19 to do is, I'm going to conform the questions to the deletion of
20 "or other officers" on Question 1 relating to the Fourth
21 Amendment and leave it as to the second question.

22 I reserve the right to make any other conforming
23 amendments with regard to the instruction. If I come upon one
24 and I'm alerted that there may be one under the Fourth
25 Amendment, proximate cause, so -- first line on page 21, third

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1 element it would be: was -- no. "Were" stays the same.

2 Oh, I see. There's a: "or another officer's" on the
3 last line of that, of page 21. Okay. So, that's what we have.

4 Flo, is our jury here?

5 MS. FADDIS: Your Honor, I'm sorry.

6 We have one more request on the verdict form.

7 THE COURT: Yes.

8 MS. FADDIS: Which is a question as to whether the
9 plaintiff has proven he is entitled to compensatory damages.
10 We inserted, and separate nominal damages line be included.

11 THE COURT: Why a separate line?

12 MR. DIXON: Your Honor, because -- so, it's the
13 plaintiff's burden of proof to prove that he is entitled --

14 THE COURT: I understand that. I understand that.

15 MS. FADDIS: So, as with the liability questions --

16 THE COURT: I'm charging the jury that they may award
17 nominal damages.

18 MS. FADDIS: Understood, your Honor.

19 Our request, simply, would be that the jury be asked
20 to answer the question if he has proven that he is entitled to
21 compensatory damages and that it simply flow, if yes, in what
22 amount; if no, enter a nominal damages amount of no more than
23 \$1.

24 THE COURT: All right. I've already said in the
25 opening to this, please respond to the following questions in

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1 accordance with the Court's instructions on the law.

2 So, in answering number three, it incorporates, in its
3 entirety, all of the Court's instructions on damages, which
4 includes the Court's instructions on nominal damages.

5 (The Court conferred with the law clerk)

6 THE COURT: On page 25, I think I dropped a word.

7 On the line that begins on page 25, first full
8 paragraph, he proves by objective evidence that he was arrested
9 when otherwise similarly-situated individuals not engaged in
10 the same sort of protected speech had not been.

11 So, I'm going to insert the words "similarly" in that
12 line on page 25.

13 Any objection? All right.

14 MR. DIXON: None from plaintiff, your Honor.

15 THE COURT: Thank you.

16 MR. DIXON: Your Honor, before we bring the jury in,
17 we've made a lot of changes just now. Would it be possible to
18 have 15 minutes just to ensure that what I'm going to say
19 conforms with these changes?

20 THE COURT: I'll meet you this far. We'll have a
21 ten-minute recess before we start.

22 MR. DIXON: Thank you, your Honor.

23 And the podium is in place, so that's good.

24 So, we're now in recess for ten minutes.

25 (Recess)

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1 (In open court; jury not present)

2 MR. DIXON: Before they're called, I want to make sure
3 my request vis-a-vis the word "narrow" doesn't get lost in the
4 hubbub.

5 THE COURT: No, you made the request and I denied it.

6 MR. DIXON: Thank you, your Honor.

7 THE COURT: An exception is an exception, and I've
8 explained what the exception is.

9 (Continued on next page)

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1 (In open court; jury present)

2 THE COURT: Please be seated.

3 Ladies and gentlemen, I want to thank you for getting
4 in here early. Things happened pretty much the way I said they
5 might happen, which is I was working with the lawyers on the
6 final instructions to the jury. Rest assured that I was
7 working with my law clerks on the instructions, which we got
8 out last night around 8:20, and got a new version I think about
9 8:20 this morning. And we met and we've been working on that,
10 which is all in the best interests of all concerned so that we
11 have a fair trial with fair instructions that properly reflect
12 the law, and that all expedites this proceeding.

13 So as I told you at the outset of the case, arguments
14 of lawyers are not evidence. They are the lawyers' view of
15 what they think the evidence shows. If any lawyer states a
16 fact which is different than your recollection of the evidence
17 in this trial, it's your recollection that controls. If any
18 lawyer states a principle of law that is at odds with the
19 principles of law that I have instructed you on and will
20 instruct you on at the conclusion of the arguments, it's my
21 instructions on the law that you must follow.

22 With that, I understand this is the way this is going
23 to work. So the plaintiff will deliver a closing argument of
24 30 minutes. The plaintiff is the party with the burden of
25 proof on nearly all issues in this case. There's one issue

1 I'll instruct you on where that's not the case.

2 So the plaintiff bears the burden of proof, so they
3 get to go first. Then the defendants will have a closing
4 argument of approximately 30 minutes, and I will allow the
5 plaintiff to deliver a rebuttal of ten minutes. So the
6 plaintiff gets to go first and last because the plaintiff bears
7 the burden of proof in this case.

8 With that, Mr. Dixon, you may proceed.

9 MR. DIXON: Thank you, your Honor.

10 Good morning, ladies and gentlemen. I think I'll be
11 less than 30 minutes, but we shall see.

12 Thanks for your time and attention to this important
13 trial. The question before you today is simple, but it's
14 fundamental to the freedoms we enjoy in this country. Can the
15 government silence a speaker not because of anything he did
16 that was illegal, but because of the way other people reacted
17 to his message? The answer is no, and the evidence in this
18 case shows unequivocally that that's exactly what happened
19 here.

20 Defendants, the City of New York and Chief Hughes,
21 enforced the heckler's veto against Pastor Aden. I want to be
22 clear about one thing upfront. Pastor Aden is not contending
23 that Officer Pounds, Captain Turner, Chief Hughes, or anyone
24 else in the NYPD had any personal vendetta against him because
25 of his speech, but to prevail Pastor Aden is not required to

1 show that officers personally disliked him or even that
2 officers personally disagreed with his speech. That's
3 irrelevant to Pastor Aden's claim.

4 Instead, the only question is whether defendants took
5 law enforcement action against Pastor Aden based on other's
6 reaction to his speech. The evidence you've seen leads to only
7 one conclusion - they did. First, you can tell just by
8 watching the video the people in the crowd of hecklers were
9 reacting to Pastor Aden's speech. They were shouting epithets.
10 They were engaged in pro-Pride chants. They cheered when
11 Pastor Aden lowered his sign and was arrested.

12 Officer Pounds candidly admitted that the crowd's
13 actions, including throwing bottles at Pastor Aden, was based
14 on his speech. Second, in the video just before Pastor Aden
15 was arrested, Chief Hughes told Pastor Aden he was being
16 arrested because he created a dangerous condition. That's what
17 one of the arrest summonses says, too, Defendant's Exhibit 6.

18 But that alleged dangerous condition, the bottles in
19 the air, the people in the road, etc., all was created by the
20 crowd of hecklers, not Pastor Aden. Because defendants
21 arrested Pastor Aden based on the actions of the crowd
22 consistent with Chief Hughes' guidelines. Defendants violated
23 his constitutional rights.

24 As Officer Pounds candidly admitted yesterday, the
25 crowd wanted Pastor Aden to get lost because his speech was

1 unpopular and offensive, and the NYPD gave the crowd exactly
2 what they wanted. Once their problem was solved, NYPD dropped
3 the dubious charges against Pastor Aden.

4 These really are all the facts you need to know to
5 decide this case in Pastor Aden's favor. All the talk about
6 officer safety, strategic response groups, ambulances going
7 woop-woop, they're all beside the point. They're all ways of
8 trying to justify allowing the government to suppress speech
9 because it's unpopular or offensive to other people. They're
10 all ways of letting the government take shortcuts at doing
11 their job, shortcuts that take out peaceful speech as an
12 expedient.

13 The lesson here is that the government can always come
14 up with a reason to shut down peaceful speech so long as the
15 crowd is hostile enough. According to defendants your right to
16 free speech only ever goes so far as the mob will allow.

17 Now, don't get me wrong. The police have a hard job.
18 I'm not trying to minimize that. But if police planning that
19 had literally hundreds of officers in the vicinity can't handle
20 the threat presented by a peaceful Christian on a street
21 corner, a street corner at a three-way intersection where one
22 street was already blocked off, something has gone terribly
23 wrong.

24 I'm not suggesting incompetence. I'm suggesting that
25 defendants prioritized public order over free expression. Cops

1 generally do their best, but that's not good enough to justify
2 putting people in handcuffs.

3 The judge informed you at the very outset of this case
4 that Pastor Aden asserts two claims, Fourth Amendment false
5 arrest and violation of the First Amendment. The judge is
6 going to charge you on the law, as he just said, and I want to
7 take this opportunity to argue why you should find for Pastor
8 Aden on both claims.

9 I'll start with the Fourth Amendment claim. To
10 prevail on his Fourth Amendment claim, Pastor Aden must prove
11 three elements by a preponderance of the evidence - Chief
12 Hughes acted under color of law, Chief Hughes intentionally or
13 recklessly deprived plaintiff of his rights, and, three,
14 proximate cause.

15 In the parties' arguments and my arguments so far
16 today, we've been mostly focused on Pastor Aden's First
17 Amendment claim. But Pastor Aden's Fourth Amendment claim is
18 actually easier for him to prove, in part because the Fourth
19 Amendment claim involves shifting burdens of proof, as I'll
20 explain in a second. And it will be in the judge's charge as
21 well.

22 The first element of Pastor Aden's Fourth Amendment
23 claim is color of law. All that means is that Chief Hughes is
24 a government actor. The judge will instruct you that element
25 is satisfied. The second element of Pastor Aden's Fourth

1 Amendment claim is that Chief Hughes engaged in intentional or
2 reckless deprivation of rights. Here, the facts show that
3 Chief Hughes intentionally arrested Pastor Aden. Accordingly,
4 the intentional reckless element is satisfied.

5 Now, this is where the burden shifts. The burden
6 shifts to the defendants to prove by a preponderance of the
7 evidence that the arrest was supported by probable cause. As
8 the judge will charge you, probable cause means knowledge or
9 reasonably trustworthy information that the person being
10 arrested has committed or is committing an offense.

11 Now, despite all the evidence defendants offered about
12 the so-called hazardous conditions in this case, the bottles,
13 the people in the street, the pole --

14 MR. ZIMMERMAN: Objection, your Honor. May we
15 approach?

16 THE COURT: No. One moment, please.

17 Ladies and gentlemen, as I indicated, you will get
18 your instructions from me on the term "probable cause."

19 And you may continue, Mr. Dixon.

20 MR. DIXON: Thank you, your Honor.

21 Despite all the evidence defendants offered about the
22 so-called hazardous conditions in this case -- the bottles in
23 the air, the people in the street, the pole that the NYPD never
24 asked Pastor Aden to relinquish -- the judge is not charging you
25 on any offense related to those things. Accordingly, none of

1 those things may satisfy defendants' burden of showing probable
2 cause. The only offense that can serve as the basis for
3 probable cause is the failure to disperse.

4 The elements of failure to disperse are plaintiff was
5 given a lawful order by the police to disperse, plaintiff
6 refused to comply with that order, and plaintiff acted with the
7 intent to cause public inconvenience, annoyance, or alarm or
8 was reckless to that risk. The facts show here that defendants
9 gave Pastor Aden four potential orders to disperse, two given
10 by Captain Hughes, and later two given by Officer Pounds and
11 Avelin at Chief Hughes' direction, the one on the street
12 corner, the original street corner and the one around the
13 corner.

14 None of those orders, or any other order for that
15 matter, but none of those orders were lawful because they were
16 all predicated on the action of the crowd of hecklers. Let me
17 step back. The first element of this claim, failure to
18 disperse, is that the failure to disperse must be in response
19 to a lawful order. The order must be lawful.

20 These orders were not lawful because they were all
21 predicated on the actions of the crowd of hecklers, not Pastor
22 Aden. The judge's charge specifically states - I'll quote -
23 "An order that is motivated by an intent to suppress or
24 discriminate against a particular viewpoint is not a lawful
25 order."

1 When the government takes action against a speaker
2 based on others' reaction to it, that establishes an intent to
3 discriminate on the basis of viewpoint. The evidence shows
4 that these orders were all based on the bottles being thrown,
5 the people in the street, the allegedly dangerous condition of
6 the pole. But all those things were either done by the crowd
7 of hecklers or only became a potentially dangerous condition
8 due to the crowd of hecklers' actions. Accordingly, the orders
9 to disperse were not lawful and they may not serve as the basis
10 for probable cause. Defendants cannot meet their burden on
11 this element.

12 The third element of Pastor Aden's Fourth Amendment
13 claim where the burden shifts back to Pastor Aden on this one
14 is proximate cause. Proximate cause basically just means
15 cause. The judge's instruction will tell you exactly what it
16 means, but it's what we think of when we think something causes
17 something. Because Chief Hughes' arrest of Pastor Aden caused
18 him to be detained and caused him damages in the form of
19 emotional distress, shock, and discomfort arising from that
20 detention, Pastor Aden has satisfied this element. You should
21 therefore find for Pastor Aden on his Fourth Amendment claim.

22 You should also find for Pastor Aden on his First
23 Amendment claim. There are a couple of overlapping elements.
24 And by overlapping I mean they're similar to the ones in the
25 first amendment. I'll just go through them all. Similar to

1 the ones in the Fourth Amendment, I'll go through them all just
2 to be thorough, but some of this language is a little bit
3 repetitive.

4 To prevail on his First Amendment claim, Pastor Aden
5 must demonstrate four elements by a preponderance of the
6 evidence. Element one, he was engaged in speech protected by
7 the First Amendment; two, defendants acting under color of law
8 intentionally or recklessly arrested him; element three, he was
9 arrested either without probable cause and with a motive to
10 retaliate against him because of his protected speech or under
11 circumstances where officers typically exercise their
12 discretion not to make an arrest even if they have probable
13 cause against people not engaged in the same type of speech;
14 and, element four, defendants proximately caused plaintiff's
15 damages.

16 Pastor Aden has satisfied his burden on the First
17 Amendment claim too. First, the first element is that Pastor
18 Aden was engaged in speech protected by the First Amendment.
19 The judge will instruct you that this element is satisfied. As
20 I mentioned in my opening, doesn't matter if you agree or
21 disagree with the speech. That speech is protected, and the
22 judge will so instruct you.

23 The second element of Pastor Aden's First Amendment
24 claim is that defendants acting under, again, color of law
25 intentionally or recklessly arrested him. This element is

1 satisfied for the same reason as under the Fourth Amendment
2 claim.

3 The third element of Pastor Aden's First Amendment
4 claim got a little confusing, but there are two ways to satisfy
5 this element. First, for the same reason I discussed in the
6 Fourth Amendment context, Pastor Aden's arrest is without
7 probable cause. In the First Amendment context, plaintiff
8 bears the burden of proving the absence of probable cause.
9 Whereas in the Fourth Amendment context, defendants bear the
10 burden of proving its presence. But it doesn't matter who has
11 the burden of proof. The point is there is no probable cause.

12 I should phrase that differently. Either way, whether
13 the burden is on plaintiff or the burden is on the defendant,
14 there is no probable cause. Moreover, for reasons already
15 discussed, the defendants retaliated against Pastor Aden
16 because of his protected speech by arresting him based on the
17 reactions of the hostile crowd. So because NYPD took action
18 against plaintiff based on the actions of the hostile crowd,
19 and because there is no probable cause that supports his
20 arrest, Pastor Aden has satisfied this third element.

21 Now, there's another way to satisfy this third
22 element, and Pastor Aden has met that too. Even if you found
23 that there is probable cause, Pastor Aden has proven he was
24 arrested under circumstances where officers typically exercise
25 their discretion not to make arrests even if they have probable

1 cause. And the concept here is that probable cause is a
2 defense to a First Amendment claim. However, if the crime is
3 something that people do all the time and the police let it
4 slide, then probable cause is not a valid defense. That's the
5 concept.

6 Specifically here, the defendants plainly had probable
7 cause to arrest the people in the crowd of hecklers including
8 the people who were actually blocking traffic, the individual
9 in the crowd who was holding that solid pole over officers'
10 heads. But the NYPD failed to take any action against those
11 people. Accordingly, the NYPD's actions were all a pretext to
12 silence Pastor Aden because the sign was unpopular and
13 offensive to the crowd.

14 The fourth element of Pastor Aden's First Amendment
15 claim is that the defendants proximately caused him damages.
16 As in the Fourth Amendment context, Pastor Aden satisfies this
17 element because defendants arrested him, thus causing him to
18 stop speaking when he was entitled to speak and again caused
19 him emotional distress from the arrest. In addition, Pastor
20 Aden has been deterred from returning to New York City to
21 preach because of the defendants' actions. He's entitled to
22 compensation for all of those damages.

23 I'll conclude by saying this. In this country we
24 don't allow the police to throw people in jail just because
25 they're speaking their minds peacefully. The founders put the

1 First Amendment first for a reason. Free speech is the bedrock
2 on which our entire system of government is built.

3 I mentioned this in my opening statement, but I'll
4 reiterate the point here. This case isn't just about what
5 happened to Pastor Aden. It's about what can happen to any of
6 us if we authorize the loudest hecklers among us to decide
7 whose speech is allowed and whose speech isn't. The
8 Constitution prohibits the government from suppressing speech
9 because it's unpopular or offensive to other people. I ask
10 that you find defendants violated Pastor Aden's rights and
11 return a verdict in your favor.

12 Thank you.

13 THE COURT: All right. Thank you very much,
14 Mr. Dixon.

15 And we're now going to hear from Mr. Zimmerman on
16 behalf of the defendants. Thank you very much.

17 MR. ZIMMERMAN: Good morning, ladies and gentlemen.

18 This is a very simple case. Plaintiff agrees. We
19 agree. Plaintiff Aden Rusfeldt was given multiple orders to
20 disperse. He refused to comply with those orders over and over
21 again. He admits that. And he was arrested.

22 He was not arrested because of anything he said. He
23 was not arrested because anyone on the police force disagreed
24 with what he said. He was arrested because he refused a lawful
25 order to disperse, and that's a violation of New York law.

1 That's it. That's the whole case.

2 This case is so simple you might be wondering what are
3 we missing? You're not missing anything. You have all the
4 information you need to decide this case fairly.

5 After the Court instructs you on the law, when you go
6 back to deliberate, you'll be given a verdict form that will
7 look something like this one, and it will have three questions
8 on it, only two of which you should answer. And if you
9 consider only the evidence in this case that you've heard and
10 the law as the Court instructs you on, the answer should be
11 very easy because, as I said, it's an easy case.

12 But let me be clear - simple, easy does not mean
13 unimportant. I fully agree with plaintiff that this is an
14 important case because it implicates important rights.
15 Plaintiff is making extraordinary claims under the First and
16 Fourth Amendment. And as the Court stated at the beginning of
17 the trial, those amendments set forth some of the most
18 important fundamental rights on which sets this nation apart.
19 Those claims deserve careful consideration.

20 So let's talk about what plaintiff is claiming, what
21 the evidence actually shows, and why we believe you will answer
22 the first two questions of the verdict sheet in favor of
23 Assistant Chief Stephen Hughes. Plaintiff says he has a First
24 Amendment right to state his opinions and beliefs including
25 those he came to New York to proclaim on June 27, 2021. No one

1 denies that. No one denied that then. No one denies that
2 today.

3 In fact you heard over and over again on the video
4 officers agreeing with plaintiff, saying we understand, we get
5 it. And you also heard both Officer Pounds and Chief Hughes
6 say multiple times that they respect everyone's First Amendment
7 rights. Moreover, both Officer Pounds and Chief Hughes got on
8 the witness stand and stated under oath that none of their
9 actions on June 27, 2021 were motivated by the content of
10 plaintiff's message. Plaintiff just told you that. He agrees.

11 The plaintiff was not arrested because the officers or
12 any officer disagreed with what he was saying. And when you
13 think about the evidence that you have heard and the arguments
14 by plaintiff's attorneys, you should realize that plaintiff
15 does not even dispute that the officers did not arrest him
16 because of any personal disagreement with his speech.

17 Plaintiff has not presented a single shred of evidence
18 that any police officer he interacted with that day was
19 motivated by anything other than public safety. Plaintiff's
20 theory is more subtle. As you just heard plaintiff's counsel,
21 their argument is this. The crowd did not like plaintiff's
22 speech, and the crowd reacted poorly to plaintiff's exercise of
23 his First Amendment rights. And because the crowd was hostile
24 to plaintiff, the First Amendment prohibited the NYPD from
25 taking any action that affected Mr. Rusfeldt, including the

1 simple expedience of asking and then ordering him to move some
2 distance away.

3 You've heard plaintiff say, by the way, that he wanted
4 to be within sight and sound. You will not hear those words
5 when the judge instructs you on the law. Again, plaintiff is
6 not claiming that he was arrested because of his speech.
7 That's not his claim. He is claiming that the police should
8 not have asked him to move because the crowd was heckling him.

9 There are quite a few problems with plaintiff's
10 argument. First - and you heard this term at the beginning of
11 the trial - there is no such thing as the heckler's veto. You
12 don't have to take my word for it because when the Court
13 instructs you on what the law actually says, it will not
14 include the word "heckler."

15 Second, let's unpack plaintiff's argument. Who is the
16 heckler? Is it the crowd of peaceful festivalgoers who are
17 enjoying a beautiful Sunday in New York after a difficult year
18 of pandemic and social upheaval or the hecklers Plaintiff Aden
19 Rusfeldt and his companions who traveled three hours to
20 New York for the purpose of haranguing people at an event that
21 plaintiff has said he would like to see banned in every city in
22 this country?

23 And what about plaintiff's companion, Brother Phil,
24 who interrupted a joyful celebration by bellowing through a
25 bullhorn that the people on the street were sick, sick, sick,

1 disgusting people? Ask yourselves again if there really is
2 such a thing as the heckler's veto. Who is heckling who?

3 But let's put aside the labels and the clever
4 catchphrases. When you step away from the sensitive issues of
5 religion and sexuality, when you try to apply plaintiff's
6 theory in a context a little less fraught, perhaps just as
7 emotional, it becomes apparent just how absurd this theory is.
8 Imagine for a moment instead of a Gay Pride event, we are at a
9 rally for a local sports team.

10 Let's say the Mets are playing the Phillies in the
11 playoffs. Now, I'm sure this will not be hard to picture. Let
12 us imagine that a person at the rally holds up a rude banner
13 and begins to loudly address the crowd and the crowd begins to
14 get riled up. The crowd is becoming rowdy. People are pushing
15 and shoving. They are shouting and screaming. In fact, some
16 of the people in and around the crowd begin to get nervous that
17 the whole thing is about to slip out of control. Imagine that
18 we are facing imminent disorder that will put everyone at risk.

19 If plaintiff's theory is accepted, then as long as the
20 instigator with the nasty banner is wearing a Mets jersey, the
21 NYPD should move in, quiet him down, order him to move along
22 for the sake of public safety, and even arrest him if he
23 doesn't comply. But according to plaintiff, if that obnoxious
24 fan is wearing a Phillies jersey, well, now, the First
25 Amendment to the Constitution prohibits the NYPD from taking

1 exactly the same action. Think about that.

2 A person committing exactly the same conduct and
3 causing exactly the same risk to public safety is immune simply
4 because he is wearing the other side's jersey. Ladies and
5 gentlemen, that is not the law. That is not the First
6 Amendment. That is not how we would expect the police to
7 operate.

8 So let us return to the specific facts of this case
9 and the questions you must answer. And while we do, let us set
10 aside any feelings or opinions we might have about the
11 specifics of anyone's message on June 27, 2021. Because you
12 are not here to judge Aden Rusfeldt. You're not here to judge
13 the actions of the crowd that Aden Rusfeldt attracted and
14 antagonized.

15 The crowd is not on trial today. Aden Rusfeldt is not
16 on trial today. It is Chief Stephen Hughes, the defendant in
17 this case, who is on trial today. It is the New York City
18 Police Department that is on trial today. And what you must
19 decide is did Chief Hughes and the other officers present that
20 day under his command act reasonably and responsibly in the
21 interest of everyone's safety, in the interest of public
22 safety? That is what you are being asked to deliberate.

23 And in doing so, you should ask yourselves what should
24 the police have done differently? Because if the answer is
25 nothing, than it simply cannot be that they did everything

1 right and still somehow violated the constitutional rights of
2 Aden Rusfeldt. It simply cannot be that the New York City
3 Police Department in seeking to peacefully defuse a volatile
4 situation, in trying to gain through voluntary compliance a
5 result that would have left everyone free to go about their
6 day, somehow, in plaintiff's words, spit on the blood of our
7 soldiers and desecrated our flag.

8 Plaintiff wants you to believe that the police
9 violated the constitution because they did not do what
10 plaintiff wanted them to do, they did not do what plaintiff was
11 trying to make them do. And what plaintiff really wanted is so
12 contrary to what any reasonable person would want, instead he
13 merely seeks to suggest that such options were available. When
14 he asks where was the LRAD? Where was SRG?

15 Let us say plainly what plaintiff will only tiptoe
16 around. It was plaintiff's deepest desire and indeed his
17 intention that the NYPD should call out its riot squad to clear
18 the street, to arrest the supporters of gay rights that he
19 hates so much. What plaintiff wanted and what he is here
20 demanding is he has a constitutional right to have the ability
21 to weaponize the NYPD against his ideological opponents. That
22 is what plaintiff really means when he says "heckler's veto" in
23 this case.

24 But plaintiff even goes further than simply trying to
25 mislead you. Plaintiff lied to you, ladies and gentlemen. He

1 got on the stand here and affirmed under penalty of perjury
2 that he would tell you the truth, and then he lied.

3 On Monday, plaintiff's attorney asked him, "In your
4 experience, does the sign often cause a reaction by the crowd?"
5 Plaintiff lied. This is what plaintiff said to you and the
6 Court when he was asked that question on Monday. "I don't know
7 about the word 'often.' It's -- some street corners people
8 walk by us, but sometimes, more than 50 percent of the time --
9 have to make a guess."

10 And when the Court asked plaintiff to clarify that
11 word salad, he flat-out lied when he said, "My guess is about
12 50 percent of the time it causes a reaction." Unfortunately
13 for plaintiff, he had already testified in this case under
14 penalty of perjury that his sign causes a violent reaction
15 99.9 percent of the time. So while plaintiff wants you to
16 believe that he was shocked and surprised by the reaction of
17 the crowd, he is simultaneously seen on his own video saying
18 with a smirk, "It's about to get crazy."

19 One of your jobs as jurors is to decide who is telling
20 the truth and who is lying. And I assert to you, ladies and
21 gentlemen, Plaintiff Aden Rusfeldt is not an honest man. That
22 was not the only lie plaintiff told with a straight face.

23 Yesterday, my colleague asked plaintiff what he meant
24 near the end of the third video when he said, "They can leave."
25 And what was plaintiff's answer? What is his version now in

1 this moment when his story is falling apart? He said, "Oh, I
2 meant the officers who were protecting him. They could leave."
3 He was saying I don't need them to protect me.

4 When those patrol officers literally placed themselves
5 between plaintiff's group and the angry crowd they had
6 deliberately provoked, did he say, hey, thanks for coming, we
7 don't need you here? He said no, why don't you bring in
8 barricades and they could leave, meaning the crowd. Over and
9 over again plaintiff lied in June of 2021.

10 He told every officer he spoke to that his attorney
11 sent a letter to Captain Spataro to give the NYPD notice. And
12 while he wrote Captain Spataro's name on that letter, he never
13 actually took any steps to send it to him. He simply plucked a
14 handful of email addresses at random, none of which he had any
15 reason to believe would be effective.

16 "I gave them notice," plaintiff wants you to believe.
17 Yet he had been planning for months to return to Pride Festival
18 in 2021. It had been his intention since 2016 to attend every
19 Pride Festival in New York City. So when did he send this
20 notification letter? At 11:46 the night before. It takes the
21 NYPD months to plan for Pride weekend. But plaintiff only
22 thought to give them 12 hours' notice that he planned to come
23 and proclaim a message that he knew would cause a public
24 disturbance.

25 Now, one last point on plaintiff's behavior. I return

1 back to the verdict form. Plaintiff told us over and over
2 again that he has no control over the crowd, that the crowd
3 could leave, that he didn't control their feet, that he was
4 powerless to effect the control one way or the other.

5 But plaintiff also testified that he came to New York
6 intending to make converts. So plaintiff would have you
7 believe that he has the power to convert people's religion, but
8 he has no power to persuade them to stop throwing bottles at
9 him. The reaction he got was exactly the point. It's what he
10 was looking for. And that matters because he lied about it.

11 It is in the context of these self-serving lies, these
12 cynical actions by plaintiff, that you are asked to weigh the
13 actions of Chief Hughes and the NYPD. So let us look at the
14 specific questions that you have to answer.

15 The first question is has Aden Rusfeldt proven by a
16 preponderance of the evidence that the following person
17 arrested him on June 27, 2021 in violation of a right protected
18 by the Fourth Amendment as defined by the Court? And then you
19 will have to answer that question yes or no as to Chief Hughes.
20 The answer is no.

21 The judge is going to explain to you the meaning of
22 "probable cause." And he's going to instruct you that the
23 Fourth Amendment means there must be probable cause to arrest
24 someone. He will explain to you that an officer has probable
25 cause to arrest a person if he has knowledge that the person

1 being arrested has committed or is committing an offense.

2 In this case, the specific offense at issue is
3 disorderly conduct. And as the Court will instruct you,
4 disorderly conduct for the purpose of this case requires three
5 things. First, plaintiff was given a lawful order by the
6 police to disperse; second, plaintiff refused to comply with
7 that order; and, third, plaintiff acted with the intent to
8 cause public inconvenience, annoyance, or alarm or was reckless
9 to the risk of public inconvenience, annoyance, or alarm.

10 There is no legitimate dispute about any of those
11 elements. Plaintiff was asked to disperse many times. And in
12 fact, you don't even need to agree among yourselves exactly
13 which of the numerous instructions, requests, or orders by the
14 police was the lawful order to disperse that plaintiff refused.
15 As long as each of you agree that plaintiff received at least
16 one order to disperse and refused to comply, that is enough.

17 And we heard plaintiff say on more than one occasion,
18 I respectfully decline, I'm not moving. Plaintiff heard and
19 understood the orders but refused to comply because he believed
20 that he did not need to follow them, that he was above such
21 orders, that the Constitution of the United States gave him a
22 free pass to disobey the order of the police.

23 So the Court will instruct you that a lawful order is
24 any order that's not completely arbitrary. An order given for
25 the purpose of public safety is not completely arbitrary. The

1 police made very clear on that day and in this courtroom why
2 they wanted plaintiff to move a little bit of distance away
3 from the crowd he had provoked. They weren't trying to silence
4 him. No one ever said, you can't say what you're saying. They
5 said can you just go and say it over here, things are a little
6 bit too tense right now in this spot. No.

7 And finally, there's no real dispute that plaintiff
8 acted with the intent to cause exactly the situation he
9 achieved. He announced his intentions explicitly when he took
10 off his outer shirt and said, "It's about to get crazy."
11 Plaintiff knew that when he held up the sign he was carrying,
12 things tended to get violent 99.9 percent of the time in his
13 words. And when plaintiff directed his companions to make a
14 new sign saying homos are rapists, he was already standing
15 behind a line of officers who were protecting him from the
16 crowd he had antagonized.

17 Because plaintiff's actions clearly met all of the
18 elements of disorderly conduct, Chief Hughes and all of the
19 officers had probable cause to arrest Plaintiff Aden Rusfeldt
20 for refusing multiple lawful orders to disperse. And because
21 there was probable cause, Chief Hughes did not violate
22 plaintiff's Fourth Amendment rights.

23 The second question you'll answer is this. Has Aden
24 Rusfeldt proven by a preponderance of the evidence that the
25 following person or persons on June 27, 2021 deprived him of a

1 right protected by the First Amendment as defined by the Court?
2 And you will have to answer that for both Chief Hughes
3 specifically and the NYPD in general. And once again, your
4 answer to both should be no because the First Amendment does
5 not give Plaintiff Aden Rusfeldt the right to refuse lawful
6 orders to disperse.

7 The First Amendment does not give Aden Rusfeldt the
8 right to violate New York State law. No First Amendment right
9 of Plaintiff Aden Rusfeldt was violated when he was given a
10 lawful order to disperse from a hazardous situation that he
11 himself instigated.

12 You will be instructed that if there was probable
13 cause, there was no violation of the First Amendment. And even
14 if that weren't true, no one was motivated by plaintiff's
15 speech. For that matter, he was never actually precluded from
16 speaking up until the moment he was put in handcuffs. No First
17 Amendment right was violated when he was arrested for breaking
18 the law by refusing to comply with those orders.

19 Finally, ladies and gentlemen, the verdict sheet asks
20 you what is the amount of damages you award to Aden Rusfeldt.
21 But since no one violated plaintiff's rights, you do not even
22 need to consider that question.

23 So that's the case, ladies and gentlemen. Plaintiff
24 was given a lawful order. Plaintiff refused the lawful order.
25 Plaintiff was arrested. No false theories about hecklers and

1 vetoes justifying what Aden Rusfeldt did on June 27, 2021, no
2 imaginary theories of law can negate the fact that Chief Hughes
3 and the New York City Police Department acted precisely the way
4 we would want them to, by seeking to deescalate, by trying to
5 avoid making any arrests, by giving plaintiff more slack than
6 he was really entitled to or even deserved, all to keep the
7 peace and maintain the safety of the public.

8 So once again, ladies and gentlemen, when you go back
9 to deliberate, remember that it is not Aden Rusfeldt whose
10 actions you are deliberating. You are deliberating whether
11 Chief Hughes did the right thing. Chief Hughes is the one on
12 trail today, and it is plaintiff's own video evidence that
13 demonstrates just how professional Chief Hughes and all of the
14 NYPD officers under his command were and just how much
15 restraint they afforded plaintiff and his obnoxious companions.

16 Thank you very much.

17 THE COURT: All right. Thank you, Mr. Zimmerman.

18 Mr. Dixon, if you'd like a ten-minute rebuttal.

19 MR. DIXON: May I approach, your Honor?

20 THE COURT: You may.

21 (Continued on next page)

P6IJRUS2

1 (At sidebar)

2 MR. DIXON: As I understand, one of the Court's
3 motions *in limine* ruling I'm not permitted to say that the NYPD
4 should have given the crowd dispersal order. I would contend
5 that in his closing statement Mr. Tobias opened the door
6 because he said what should the police do differently? I
7 should be able to say to the jury that the police should have
8 given the dispersal order.

9 THE COURT: I'll allow you to make that argument.

10 MR. DIXON: Thank you.

11 (Continued on next page)

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1 (In open court; jury present)

2 MR. DIXON: Ladies and gentlemen, I'll be very brief.

3 Consider the implications of Mr. Zimmerman's argument.
4 You're a Mets fan, you go to a Yankees game. Few guys are
5 drunk, few guys start throwing bottles at you. Maybe it's more
6 than a few. Maybe things get out of hand. You're just there
7 to watch a game. Police come in and arrest you because you got
8 a bottle thrown at you for wearing a hat to a game. That's the
9 rule that the police want. It's law and order.

10 But that under-protects speech. You see, we can't
11 have a world where you can't feel free to express yourself
12 because you're worried about what a crowd of hecklers might do,
13 and the police come in and all of a sudden they're knocking
14 heads.

15 Mr. Zimmerman asked what should the police do
16 differently. It's very easy. Disperse the crowd. That's what
17 the police do when there's an unlawful assembly. They disperse
18 the crowd. They give an order to disperse. They don't target
19 the people who are speaking.

20 I just point out Mr. Zimmerman's statement about lying
21 is -- it's really ridiculous. I mean, the judge will have a
22 charge about this. I don't remember exactly what it says, but
23 you should consider in the context whether misstatements deem
24 the witness untrustworthy or whether they're minor things that
25 a witness, you know, may have said wrong.

1 I would also point out if you want to see -- let me
2 start that again. Mr. Aden Rusfeldt did not say that things
3 got violent 99 percent of the time. He said that people get
4 mad, throw stuff 99 percent of the time. So people get mad,
5 sure, but not that they throw stuff 99 percent of the time.

6 Mr. Zimmerman went on and on about Pastor Aden's
7 intent. Cut right to the heart of this case. Probable cause
8 did not exist because that was -- none of those orders,
9 whatever you deem to be an order, none of those orders complied
10 with the First Amendment. That's the heart of the case. None
11 of them were lawful orders because they were predicated on the
12 actions of the hostile crowd.

13 This is what this case is about, this speech. NYPD
14 doesn't want people saying these types of things at Pride
15 events. Today it's Pastor Aden. Tomorrow it could be you.
16 Thank you, ladies and gentlemen.

17 THE COURT: All right. Ladies and gentlemen, we're
18 going to take a very short recess, comfort break, and then I
19 will give you my final instructions on the law and then you may
20 discuss the case, but not yet. You haven't heard my
21 instructions. Thank you. Ten minutes. Thank you.

22 (Jury not present)

23 THE COURT: We have a new verdict sheet that's going
24 to be marked as Court Exhibit 5 and a new set of instructions
25 which will be marked as Court Exhibit 6.

P6IJRUS2

1 We're in recess.

2 MR. ZIMMERMAN: I want to alert you there's a couple
3 of minor evidentiary things before the exhibits go back to the
4 jury that we would just like to address to the Court.

5 THE COURT: Have you resolved the redacted document?

6 MR. ZIMMERMAN: We thought we had, but it's more
7 complicated, and there's a second issue that's arisen. It's
8 not a major issue, but --

9 THE COURT: We're in recess.

10 MR. ZIMMERMAN: Thank you.

11 (Recess)

12 (Continued on next page)

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P6iFrus3

Charge

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THE COURT: All right. Flo, bring our jury in.
Now that you're seated, you can get up again.
(Continued on next page)

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Charge

1 (Jury present)

2 THE COURT: Members of the jury, you've now heard all
3 the evidence in the case as well as the final arguments of the
4 parties. We have reached the point where you're about to
5 undertake your final duties and functions as jurors.

6 You have paid careful attention to the evidence. I am
7 confident that you'll act together with fairness and
8 impartiality to reach a just verdict in this case.

9 It has been my duty to preside over the trial and to
10 decide what testimony and evidence was relevant under the law
11 for if you to consider. My duty, at this point, is to instruct
12 you as to the law. It is your duty to accept these
13 instructions of law and to apply them to the facts as you
14 determine them.

15 On these legal matters, you must take the law as I
16 give it to you. If any attorney has stated a legal principle
17 different from any that I state to you in my instructions, it
18 is my instructions you must follow. You must not substitute
19 your own ideas of what the law is or ought to be. You are not
20 to infer from any of my questions or rulings or anything else
21 I've said or done during the trial that I have any view as to
22 the credibility of the witnesses or how you should decide this
23 case.

24 I will give you the typed text of these instructions
25 for your use in the jury room. It is possible that there's a

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Charge

1 slight variance between the words I speak and the typed text
2 that you will receive. It's the words I speak that control
3 over the typed text.

4 As members of the jury, you are the sole and exclusive
5 judges of the facts. You pass upon the evidence. You
6 determine the credibility of the witnesses. You resolve such
7 conflicts as there may be in the testimony. You draw whatever
8 reasonable inferences you decide to draw from the facts as you
9 have determined them. You determine the weight of the
10 evidence. You have taken the oath as jurors, and it is your
11 sworn duty to determine the facts and to follow the law as I
12 give it to you.

13 It is the duty of the attorneys to object when the
14 other side offers testimony or other evidence that the attorney
15 believes is not properly admissible. Therefore, you should
16 draw no inference from the fact that an attorney objected to
17 any evidence, nor should you draw any inference from the fact
18 that I sustained or overruled an objection.

19 From time to time, the lawyers and I had sidebar
20 conferences and other conferences out of your hearing. These
21 conferences involved procedural and other matters, and none of
22 the events relating to these conferences should enter into your
23 deliberations at all.

24 Your verdict must be based solely upon the evidence
25 developed at trial or the lack of evidence. It would be

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Charge

1 improper for you to consider any personal feelings you may have
2 about a party's race, religion, national origin, sex, or age.
3 The parties in this case are entitled to a trial free from
4 prejudice, and our judicial system cannot work unless you reach
5 your verdict through fair and impartial consideration of the
6 evidence.

7 Similarly, under your oath as jurors, you're not to be
8 swayed by sympathy. Once you let fear, prejudice, bias, or
9 sympathy interfere with your thinking, there is a risk that you
10 will not arrive at a just and true verdict. Your verdict must
11 be exclusively upon the evidence or the lack of evidence. This
12 case should be decided by you as an action between parties of
13 equal standing in the community, of equal worth, and holding
14 the same or similar stations in life.

15 Neither the defendant Hughes nor defendant City of New
16 York are to be favored or disfavored because defendant Hughes
17 is a former employee of the New York City Police Department,
18 which I'll sometimes refer as the NYPD, or because the
19 defendant City of New York is a municipal entity, nor is
20 plaintiff Rusfeldt to be favored or disfavored because of his
21 status. All parties are entitled to the same fair trial at
22 your hands. They stand equal before the law and are to be
23 dealt with as equals in this court.

24 In a civil case such as this, the plaintiff has the
25 burden of proving all the elements his claim by a preponderance

1 of the evidence. I will instruct you that on one defense to
2 one claim, defendant bears the burden of proof.

3 What does a preponderance of the evidence mean? To
4 establish a fact by a preponderance of the evidence means to
5 prove that the fact is more likely true than not. A
6 preponderance of the evidence means the greater weight of the
7 evidence. It refers to the quality and persuasiveness of the
8 evidence, not to the number of witnesses or documents.

9 In determining whether a claim has been proven by a
10 preponderance of the evidence, you may consider the relevant
11 testimony of all witnesses, regardless of who may have called
12 them and all the relevant exhibits received in evidence,
13 regardless of who may have produced them.

14 If, after considering all the testimony, you are
15 satisfied that the party with the burden of proof has carried
16 its burden of proof on each essential point as to which he has
17 the burden of proof, then you must find in his favor. If,
18 after such consideration, you find that the credible evidence
19 on a given issue is evenly divided between the parties, that
20 is, it is equally probable that one side is right as it is the
21 other side is right or that the evidence produced by the party
22 with the burden of proof is outweighed by the evidence against
23 his claims, then you must decide that issue against that party.

24 That is because the party bearing the burden of proof
25 must prove more than the simple equality of evidence. The

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Charge

1 party must prove each element of the claim by a preponderance
2 of the evidence. On the other hand, the party with this burden
3 of proof need prove no more than the preponderance. So long as
4 you find that the scales tip, however slightly, in favor of the
5 party bearing the burden of proof that what he claims is more
6 likely true than not, then the element will have been proven by
7 a preponderance of the evidence.

8 The evidence in this case is the sworn testimony of
9 the witnesses and the exhibits received into evidence. By
10 contrast, as I told you at the outset, the questions of lawyers
11 are not to be considered by you as evidence. It is the
12 question together with the answer of the witness that makes
13 something evidence.

14 Testimony that has been stricken or excluded by me is
15 not evidence and may not be considered by you in rendering your
16 verdict. Arguments made by lawyers are not evidence. What
17 they have said to you in their opening statements and in their
18 closing arguments is intended to help you understand the
19 evidence to reach your verdict. If, however, your recollection
20 of the facts differs from the lawyer's statements, it's your
21 recollection that controls. Any statements that I may have
22 made during the trial is not evidence.

23 To constitute evidence, exhibits must first be
24 received in evidence. Exhibits marked for identification but
25 not admitted are not evidence nor are materials brought forth

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Charge

1 only to fresh your recollection. It is for you alone to decide
2 the weight, if any, to be given to the testimony you have heard
3 and the exhibits you've seen.

4 You heard testimony regarding Stephen Hughes's
5 guidelines. This was only admitted as background evidence.
6 It's important to understand that a violation of an internal
7 policy, rule, guide, or guideline does not establish the
8 required element of a violation of the U.S. Constitution. A
9 particular action could violate a provision of an internal
10 policy, rule, guide, or guidelines without violating the
11 Constitution. Similarly, an officer could violate the
12 Constitution without violating any portion of an internal
13 rule, policy, guide, or guideline. In this case, it is the
14 Constitution that controls. Therefore, you must determine
15 whether plaintiff's constitutional rights were violated, not
16 whether all parties complied with the rules and regulations of
17 the NYPD.

18 Generally, there are two types of evidence that you
19 may consider in reaching your verdict. One type is direct
20 evidence. Direct evidence is when a witness testifies about
21 something he or she knows by virtue of his or her own senses,
22 something he or she has seen, felt, touched, or heard.

23 Circumstantial evidence is evidence from which you may
24 infer the existence of certain facts. Let me give you an
25 example to help you understand what is meant by circumstantial

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Charge

1 evidence.

2 Now, this is going to be a hypothetical, because the
3 weather has been very weird the last couple of days.

4 Assume that when you came into the courthouse this
5 morning, the sun was shining and it was a beautiful morning.
6 Assume, further, that these draperies were closed shut so that
7 you couldn't look outside. You couldn't even see whether it
8 was night or day. That's how heavy the draperies are when
9 they're pulled shut.

10 And now you're sitting in the courtroom, and assume
11 you see that someone walks in the back door of the courtroom
12 with an umbrella, which is dripping moisture of some sort.
13 Then, a few minutes later another person enters with a
14 raincoat, and you could see wet staining on the raincoat. Now,
15 you cannot look outside the courtroom and you cannot see
16 whether it was raining or not, so you have no direct evidence
17 of that fact, but on the combination of facts that I have asked
18 you to assume, it would be reasonable and logical for you to
19 conclude that it had been raining.

20 That's all there is to circumstantial evidence. You
21 infer on the basis of reason and experience and common sense,
22 from one established fact, the existence or non-existence of
23 some other fact.

24 Circumstantial evidence is of no less value than
25 direct evidence. As a general rule, the law makes no

1 distinction between direct and circumstantial evidence. It
2 simply requires that your verdict be based on all the evidence
3 presented.

4 The law does not require any party to call as
5 witnesses all persons who may have been present at any time or
6 place involved in the case or may have appeared to have some
7 knowledge of the matters at issue in the trial, nor does the
8 law require any party to produce as exhibits all papers and
9 things mentioned in the evidence in the case. I instruct you
10 that you are not to speculate as to why any of the parties did
11 not call certain witnesses or produce certain exhibits.

12 You have had the opportunity to observe all of the
13 witnesses. It's now your job to decide how believable each
14 witness was in his testimony. You are the sole and exclusive
15 judges of the credibility of each witness and the importance of
16 his testimony. You should carefully scrutinize all of the
17 testimony of each witness, the circumstance under which each
18 witness testified, the impression the witness made when
19 testifying, and any other matter in evidence that may help you
20 decide the truth and importance of each witness's testimony.
21 In other words, in assessing credibility, you may size up a
22 witness in light of his or her demeanor, the explanations
23 given, and all of the other evidence in the case.

24 In making your credibility determinations, use your
25 common sense, your good judgment, and your everyday experiences

1 in life. If you believe that a witness knowingly testified
2 falsely concerning any important matter, whether at trial or in
3 a pretrial proceeding, you may distrust the witness's testimony
4 concerning other matters. You may reject all the testimony or
5 may accept such parts of the testimony that you believe are
6 true and give it such weight as you think it deserves.

7 In deciding whether to believe a witness, you may take
8 account of the fact that a witness is a party to the lawsuit.
9 You may also take into consideration any evidence of hostility
10 or affection that witnesses may have towards one of the
11 parties. Likewise, you should consider evidence of any other
12 interests or motive that the witness may have in cooperating
13 with a particular party. You should also take into account any
14 evidence that a witness or party may benefit in some way from
15 the outcome of the case.

16 It is your duty to consider whether the witness has
17 permitted any bias or interest to color his or her testimony.
18 In short, if you find that a witness is biased, you should view
19 his testimony with caution, weigh it with care, and subject it
20 to close and searching scrutiny.

21 Of course, a mere fact that a witness has an interest
22 of outcome of the case does not mean that he hasn't told the
23 truth. It's for you to decide from your observations and
24 applying your common sense and experience and all the other
25 considerations mentioned whether the possible interest of any

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Charge

1 witness or of any party has intentionally or otherwise colored
2 or distorted his or her testimony.

3 You are not required to disbelieve an interested
4 witness. You may accept as much of his or her testimony as you
5 deem reliable and reject as much as you deem unworthy of
6 acceptance. You've heard testimony of former NYPD officers.
7 The fact that a witness may have been employed by NYPD does not
8 mean that his testimony is necessarily deserving or more or
9 less consideration or greater or lesser weight than that of an
10 ordinary witness. It is your decision, after reviewing all the
11 evidence, whether to accept the testimony of the law
12 enforcement witnesses and to give that testimony whatever
13 weight, if any, you find it deserves.

14 You've heard evidence that at some earlier
15 time, witnesses have said or done something that counsel argues
16 is inconsistent with their trial testimony. Evidence of a
17 prior inconsistent statement is placed before you for the
18 purpose of helping you decide whether to believe the trial
19 testimony of a witness who may have contradicted a prior
20 statement. If you find that the witness made an earlier
21 statement that conflicts with the witness's trial
22 testimony, you may consider that fact in deciding how much of
23 the witness's trial testimony, if any, to believe.

24 In making this determination, you may consider whether
25 the witness purposely made a false statement or whether it was

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Charge

1 an innocent mistake, whether the inconsistency concerns an
2 important fact, or whether it had to do with a small detail,
3 whether the witness had an explanation for the inconsistency,
4 and whether that explanation appealed to your common sense. It
5 is exclusively your duty, based upon all the evidence and your
6 own good judgment, to determine whether the prior statement was
7 inconsistent, and if so, how much if any weight to give the
8 inconsistent statement in determining whether to believe all or
9 part of the witness's testimony.

10 I instruct you that anything you may have seen or
11 heard about this case or the issues outside the courtroom is
12 not evidence and must be disregarded. Your verdict must be
13 based solely on the evidence or lack of evidence that came out
14 in this courtroom and the Court's instructions on the law.

15 Ladies and gentlemen, join me and stand up and
16 stretch, if you'd like.

17 (Pause)

18 THE COURT: With the instructions I've given you thus
19 far, let me turn to the substantive claims and the law
20 governing those claims in this case.

21 First, the plaintiff, Aden Rusfeldt, claims that he
22 was deprived of his right under the Fourth Amendment to be free
23 from an unlawful arrest by defendant Hughes. Second, Aden
24 Rusfeldt claims that he was deprived of his right under the
25 First Amendment to be free from retaliation from engaging in

1 protected speech. Defendant Hughes denies that he deprived
2 plaintiff of any right under the Fourth and First Amendments,
3 and the City denies that any other officer deprived plaintiff
4 of such rights under the First Amendment.

5 For Aden Rusfeldt's Fourth Amendment claim, he must
6 prove, by a preponderance of the evidence, the following.

7 And I should say, the Fourth Amendment protects
8 citizens from unreasonable seizures of the person. An arrest
9 is the seizure of the person. That's why we call it a Fourth
10 Amendment claim.

11 So, plaintiff must prove the following:

12 First, he must prove that the acts complained of were
13 committed by Stephen Hughes while he was acting under the color
14 of state law. I'm going to define all these terms in a moment,
15 but I'm laying them out in summary now.

16 Second, Aden Rusfeldt must prove that Stephen Hughes
17 acted intentionally or recklessly and that those acts deprived
18 him of the rights protected under the Fourth
19 Amendment, specifically, the right to be free from an unlawful
20 arrest.

21 Third, Aden Rusfeldt must prove that the unlawful acts
22 of Stephen Hughes were the proximate cause of the injuries he
23 sustained.

24 I now describe each of these three elements in greater
25 detail. As to the first element, whether defendant Hughes was

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1 acting under color of state law, I instruct you that because
2 defendant Hughes purported to be acting in his capacity as a
3 member of the NYPD at the time he interacted with Aden Rusfeldt
4 and arrested him, defendant Hughes was acting under the color
5 of state law. Therefore, the first element Aden Rusfeldt's
6 claim is satisfied, and you do not need to deliberate on it.

7 The second element that plaintiff is required to prove
8 is that the defendant committed acts intentionally or
9 recklessly that deprived the plaintiff of his Fourth Amendment
10 right. To prove the second element of his claims, Aden
11 Rusfeldt must show that Stephen Hughes deprived him of his
12 Fourth Amendment right to be free from unlawful arrest and
13 committed those acts intentionally or recklessly.

14 An act is intentional if it is done voluntarily and
15 deliberately and not because of mistake, accident, negligence,
16 or other innocent reason. Please note that intent can be
17 proved directly or it can be proved by reasonable inference
18 from circumstantial evidence.

19 An act is reckless if it's done in conscious disregard
20 of his known probably consequences. Stated another way, even
21 if Stephen Hughes did not act intentionally, if he,
22 nevertheless, disregarded the high probability of the
23 consequences of his actions, then the second essential element
24 would be satisfied. But if you find that his actions were
25 merely negligent, then even if you find that Aden Rusfeldt was

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1 deprived of a constitutional right and injured as a
2 result, then you must return a verdict for the defendant.

3 To prove this part of his unlawful arrest
4 claim, plaintiff need not show that defendant Hughes intended
5 to cause injury to him, nor does Aden Rusfeldt need to prove
6 that the defendant was reckless in believing that no injury to
7 Aden Rusfeldt would result. Rather, plaintiff must prove that
8 Stephen Hughes intentionally or recklessly committed an act or
9 acts that deprived Aden of his right under the Fourth
10 Amendment.

11 Aden Rusfeldt alleges that Stephen Hughes deprived him
12 of his right to be free from an unlawful arrest under the
13 Fourth Amendment. The Fourth Amendment protects the right to
14 be free from an arrest without probable cause. An arrest of an
15 individual occurs when a member of law enforcement
16 intentionally confines or detains an individual. There is no
17 dispute in this case that plaintiff was arrested by officers of
18 the NYPD at the direction of Stephen Hughes.

19 An officer has probable cause to arrest a person if he
20 has knowledge or reasonably trustworthy information that the
21 person being arrested has committed or is committing an
22 offense. Whether or not an officer had probable cause to
23 arrest someone -- even if he is acting on incorrect
24 information -- as long as the officer acted reasonably and in
25 good faith by relying on that information, if an officer has

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1 probable cause to arrest or detain an individual, the officer
2 is not liable for a claim of false or unlawful arrest.

3 While plaintiff must prove each element of his claim,
4 there is one exception to that rule. For plaintiff's Fourth
5 Amendment claim, defendant Hughes bears the burden of proving
6 by a preponderance of the evidence that he had probable cause
7 to arrest Aden Rusfeldt. It is only on this issue, on this
8 claim, that a defendant bears a burden of proof.

9 In determining whether probable cause existed, the law
10 recognizes what is called the collective knowledge doctrine.
11 Under the collective knowledge doctrine, probable cause will
12 attach to an officer who lacks specific information, so long as
13 other officers initiating or involved in the investigation have
14 sufficient information to form the basis for probable cause.

15 This rule exists because in light of the complexity of
16 modern police work, the arresting officer cannot always be
17 aware of every aspect of an investigation. Defendant Hughes
18 claims that he had probable cause to arrest plaintiff for the
19 offense of disorderly conduct failure to disperse.

20 I will now instruct you regarding the elements of this
21 offense. Under New York State Law, a person is guilty of the
22 offense of disorderly conduct failure to disperse when he
23 congregates with other persons in a public place and refuses to
24 comply with a lawful order of the police to disperse.

25 To find probable cause existed to arrest plaintiff for

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Charge

1 disorderly conduct failure to disperse, you must find that
2 while Aden Rusfeldt was congregating with his group, which
3 consisted of himself and three other persons, first, plaintiff
4 was given a lawful order by police to disperse. I'm going to
5 give you the elements, and then I'll go into each element.
6 Second, that plaintiff refused to comply with that order. And
7 third, plaintiff acted with the intent to cause public
8 inconvenience, annoyance, or alarm or was reckless to the risk
9 of public inconvenience, annoyance, or alarm. And of
10 course, as a fourth element, you have to find that plaintiff's
11 injury was proximately caused by the arrest, the unlawful
12 arrest.

13 An order to disperse is lawful if its purpose is to
14 promote public order and was not issued in a purely arbitrary
15 manner. An order that is motivated by an intent to suppress or
16 discriminate against a particular viewpoint is not a lawful
17 order.

18 You will recall that I previously defined intentional
19 and reckless acts. Those instructions apply here.

20 If you find that that defendant has proven probable
21 cause for an arrest for disorderly conduct failure to
22 disperse, you must find in favor of defendant with respect to
23 plaintiff's Fourth Amendment claim. If, however, you find that
24 Stephen Hughes did have probable cause to arrest Aden Rusfeldt
25 for this offense, then you must consider the next

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1 element, whether plaintiff proved by a preponderance of the
2 evidence that defendant's acts were the proximate of his
3 injury.

4 The third element plaintiff must prove is that
5 defendant's acts were the proximate cause of the injuries he
6 sustained. An act is a proximate cause of an injury if the act
7 was a substantial factor in bringing about that injury and if
8 an injury was a reasonably foreseeable consequence of
9 defendant's act. In other words, if Stephen Hughes' act or
10 omissions had such an effect in producing the injury that
11 reasonable persons would regard it as being a cause of the
12 injury, then the act or omission is a proximate cause.

13 As I've told juries before, that's proximate cause,
14 not approximate cause. Okay.

15 Ladies and gentlemen, stand up and stretch again.

16 (Pause)

17 THE COURT: All right.

18 Plaintiff Rusfeldt asserts that his right to free
19 speech under the First Amendment was violated on June 27, 2021,
20 by the conduct of defendant Hughes or another officer of NYPD.

21 The First Amendment provides that Congress shall make
22 no law abridging the freedom free speech. In general, the
23 First Amendment prohibits a person acting under color of state
24 law, such as a police officer, from restricting speech because
25 of its message, its ideas, its subject matter, or its content.

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Charge

1 To establish his claim, plaintiff Rusfeldt must prove
2 by a preponderance of the evidence: First, that plaintiff was
3 engaging in speech protected by the First Amendment; second,
4 that defendant Hughes or another officer of the NYPD, acting
5 under color of state law, intentionally or recklessly arrested
6 him; third, that plaintiff Rusfeldt was arrested by defendant
7 Hughes or another officer of the NYPD either (a) without
8 probable cause and with a motive to retaliate against him
9 because of his protected speech, or (b) under circumstances
10 where officers typically exercise their discretion not to make
11 an arrest, even if they have probable cause but defendant
12 Hughes or another officer did so because of plaintiff's
13 protected speech; fourth, that the acts of defendant Hughes or
14 another officer proximately caused plaintiff's damages.

15 The first element is whether plaintiff's speech was
16 protected. I instruct you that speech or other expressive
17 conduct that is merely offensive, insulting, rude, or hateful
18 is protected under the First Amendment. It is not in dispute
19 that Aden Rusfeldt was exercising a right protected by the
20 First Amendment. Rusfeldt's speech took place in a public
21 forum, a public sidewalk of the City of New York, which is a
22 traditional public forum.

23 The second element that plaintiff must prove is that
24 defendant Hughes or another officer of the NYPD acting under
25 color of state law intentionally or recklessly took adverse

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Charge

1 action against him, in this case, by arresting him. Plaintiff
2 must prove that defendant Hughes or another officer of NYPD was
3 acting under color of state law in their interactions with
4 plaintiff Rusfeldt.

5 As noted -- well, I'll note it here. There is no
6 dispute that all NYPD officers responding to the scene on
7 June 27, 2021 were acting under color of state law, so you need
8 not deliberate on that issue.

9 The instruction that I previously gave you on what it
10 means to have acted intentionally or recklessly applies here to
11 this claim as well.

12 The third element I will now address. Probable cause
13 to make an arrest ordinarily defeats a claim by a plaintiff
14 that he was arrested in retaliation for the exercise of his
15 rights under the First Amendment. You should first decide
16 whether defendant Hughes or another officer had probable cause
17 to arrest plaintiff for the offense of disorderly conduct
18 failure to disperse. In this respect, you should follow my
19 instructions on the elements of this offense and on the
20 definition of probable cause that I gave you in connection with
21 the Fourth Amendment claim.

22 On the First Amendment claim, however, plaintiff has
23 the burden of proofing that that there was no probable cause
24 for the arrest. Remember, I told you that defendant Hughes has
25 the burden of proving probable cause on the Fourth Amendment

1 claim. On the First Amendment claim, it's the plaintiff who
2 has to prove that there was no probable cause.

3 If plaintiff fails to prove that there was no probable
4 cause for his arrest for the disorderly conduct failure to
5 disperse, then his First Amendment claim is defeated, except if
6 it falls within a narrow exception. Under this exception, the
7 existence of probable cause does not defeat plaintiff's claim
8 if he proves by objective evidence that he was arrested when
9 otherwise similarly-situated individuals not engaged in the
10 same sort of protected speech had not been arrested.

11 If plaintiff fails to prove that there was no probable
12 cause for his arrest but does prove that he was arrested when
13 individuals not engaged in the same sort of protected speech
14 have not been arrested, then he will have proved his First
15 Amendment retaliation claim, and your verdict must be for the
16 plaintiff.

17 If the plaintiff proves that there was no probable
18 cause for his arrest, then you must consider whether plaintiff
19 Rusfeldt has also proven that defendant's decision to arrest
20 plaintiff Rusfeldt was motivated or substantially caused by his
21 exercise of free speech.

22 The fourth element that plaintiff must prove on his
23 claim of an arrest in retaliation for engaging in protected
24 speech is that the arrest was the proximate cause of his
25 injuries. With this element, you should simply apply the

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Charge

1 instruction I gave on proximate cause as to the Fourth
2 Amendment claim.

3 If you find that Aden Rusfeldt has met his burden of
4 proof with respect to a claim, that is, that he has proven one
5 or more of his claims against Stephen Hughes or another officer
6 by a preponderance of the evidence, then you must consider the
7 issue of damages.

8 The fact that I am giving you an instruction on
9 damages, however, should not be considered as an indication of
10 any view of mine on what your verdict should be. Rather,
11 instructions on damages are given only so that you will have
12 them in the event you should find in favor of plaintiff on any
13 question of liability.

14 If your verdict is in favor of the plaintiff, whether
15 or not income taxes will be paid out of any portion of the
16 award is not part of your consideration. You must not add to
17 the award or subtract from the award on account of income
18 taxes. Additionally, in the event you find that damages should
19 be awarded, you should not take into consideration attorneys'
20 fees or costs, which are addressed separately.

21 You should not award compensatory damages more than
22 once for the same injury. For example, if plaintiff were to
23 prevail on both claims and establish an injury worth a certain
24 amount, you could not award him that certain amount of
25 compensatory damages on each claim. He's only entitled to be

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Charge

1 made whole again, not to recover more than he was injured by.
2 Of course, if different injuries are attributed to the separate
3 claims, then you must compensate him fully for all of the
4 injuries.

5 There are two times of damages that you may consider:
6 Compensatory damages and nominal damages. I'll discuss each of
7 them. If you return a verdict for Aden Rusfeldt, then you must
8 first award him such sum out of money as you believe will
9 fairly and justly compensate him for any injury you believe he
10 actually sustained direct consequence of Stephen Hughes' action
11 if that's who you found liable or another officer's conduct.

12 Compensatory damages seek to make a plaintiff
13 mole, that is, to compensate him for the damage suffered.
14 Compensatory damages are not only for expenses that a plaintiff
15 may have borne. A prevailing plaintiff is entitled to
16 compensatory damages for physical injury, pain and
17 suffering, emotional and mental anguish, and shock and
18 discomfort that he has suffered because of defendant's conduct.

19 The law does not require the plaintiff to prove his
20 losses with mathematical precision. I cannot give you a
21 yardstick by which to the dollar amount of pain or injury.

22 You heard Aden Rusfeldt's testimony. If you award
23 compensatory damages, you will have to determine, based on your
24 common sense and experience, the amount of money that will
25 fairly and reasonably make him whole or compensate him for pain

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Charge

1 and suffering that he sustained and may continue to sustain as
2 a consequence of any acts that violated his rights. You are to
3 use your sound discretion in fixing an award of compensatory
4 damages, drawing all reasonable inferences where you deem
5 appropriate from the facts and circumstances in evidence. In
6 sum, your award of compensatory damages should reasonably
7 compensate plaintiff for such injuries and damages you find the
8 plaintiff sustained or is reasonably likely to sustain in the
9 future.

10 There's a different kind of damage. It's
11 called nominal damage. Nominal damages are the law's way of
12 recognizing that a constitutional right must be scrupulously
13 observed even when constitutional violations have not been
14 shown to cause actual injury. If you return a verdict in
15 plaintiff's favor on a claim but find that he has failed to
16 meet his burden of proving by the preponderance of the credible
17 evidence that he suffered any actual injuries for that claim,
18 then you must return an award of damages for that claim in some
19 nominal or token amount not to exceed the sum of \$1.

20 I have prepared a verdict form for you to use in
21 recording your decisions. Remember, each verdict must reflect
22 the conscientious judgment of each juror. You should answer
23 each question, except where the verdict form indicates
24 otherwise. You should proceed through the questions in the
25 order in which they are listed. When you answer the questions

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Charge

1 on the verdict form, you are to answer them based on the facts
2 that you find and pursuant to the instructions on the law that
3 I've given you.

4 You will be given a verdict form. I'm going to hand
5 out one for each of you, so you can all read along, but only
6 one verdict form is signed by whoever winds up being your
7 foreperson, signed and dated.

8 The form first asks whether plaintiff has proven a
9 claim under the Fourth Amendment against defendant Hughes and
10 separately, whether -- that's on the Fourth Amendment claim.

11 Next, it asks if plaintiff has proven a claim under
12 the First Amendment against defendant Hughes and separately,
13 whether plaintiff has proven such a claim against an officer or
14 officers of the NYPD other than defendant Hughes.

15 Finally, it asks if you have found in favor of
16 plaintiff, on either of these two claims, what damages you
17 award to plaintiff. You should answer those questions in the
18 order in which they're presented.

19 Now, you will have the exhibits to the jury room.
20 When you go back to the jury room, I need to talk to the
21 lawyers for a minute or two about the logistics and getting the
22 laptop if you want to look at the video. The other exhibits
23 are going to be given to you the old-fashioned way, in
24 something called paper, so you'll have them in the jury room,
25 also. And I will need a minute with the lawyers on that.

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Charge

1 If you want any of the testimony read back, please
2 send out a note specifying what you want to hear. We'll bring
3 you back to the courtroom to read it back.

4 Please be as specific as possible if you're requesting
5 any portion of the testimony to be read back.

6 If you want any further explanation of the law as I
7 have given it to you, you may also request that. Your request
8 for testimony, in fact, any communication with the Court should
9 be made in writing, signed by your foreperson, and given to the
10 deputy marshal. The foreperson should put their Juror number
11 underneath, so we know.

12 In any event, do not tell me or anyone else how the
13 jury stands on the issue -- in other words, what the vote is --
14 until a unanimous verdict is reached.

15 Some of you have taken notes periodically throughout
16 the trial. I want to emphasize to you as you're about to begin
17 your deliberation that notes are simply an aid to memory.
18 Notes that any of you may have may not be given any greater
19 weight or influence in determination of the case than the
20 recollections or impressions of other jurors, whether from
21 notes or memory, with respect to the evidence presented or what
22 conclusions, if any, should be drawn from such evidence.

23 Any difference between a juror's recollection and
24 another juror's notes should be settled by asking to have the
25 court reporter read back the transcript, for it's the court

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Charge

1 record rather than any juror's notes upon which the verdict
2 must be based.

3 In a few moments, you'll retire to decide the case,
4 and I think your lunch will be there by the time you return.
5 It's supposed to be here around noon. I ordered it early.

6 It is your duty to consult with one another and to
7 deliberate with a view to reaching an agreement. Each of you
8 must decide this case for himself or herself, but you should do
9 so only after consideration of the case with your fellow
10 jurors. You should not hesitate to change an opinion when
11 convinced that it has erroneous.

12 Your verdict must be unanimous, but you're not bound
13 to surrender your honest convictions concerning the effect or
14 weight of the evidence for the mere purpose of returning a
15 verdict solely because of the opinion of other jurors.

16 (Continued on next page)

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Charge

1 THE COURT: Discuss and weigh your respective opinions
2 dispassionately without regard to sympathy, without regard to
3 prejudice or favor for either party, and adopt the conclusion
4 that in your good conscience appears to be in accordance with
5 the truth. Please remember you are not partisans. You are
6 judges, judges of the facts, not representatives of a
7 constituency or cause. Your sole interest is to seek the truth
8 from the evidence in this case.

9 Again, each of you must make your own decision about
10 the proper outcome of this case based on your consideration of
11 the evidence and your discussion with your fellow jurors. No
12 juror should surrender his or her consciously held beliefs
13 solely for the purpose of returning a unanimous verdict.

14 If at any point you find yourselves divided, do not
15 inform the Court of how the jurors are split. Once you've
16 reached a verdict, do not announce what the verdict is until I
17 ask you to do so in the courtroom.

18 Once you get into the jury room, you must select a
19 foreperson who will be responsible for signing all
20 communications to the Court on behalf of the jury and for
21 handing them to the deputy marshal during your deliberations.
22 This should not be understood to mean that an individual cannot
23 send the Court a note should the foreperson refuse to do so.

24 As I previously stated, I will give you the typed text
25 of these instructions for use in the jury room. There may be -

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Charge

1 in fact, there is - a slight variance between the words I've
2 spoken and the words that are in the typed text. It's the
3 words that I've spoken that control.

4 After you have reached a verdict, your foreperson will
5 fill in one of the original verdict forms, sign and date it,
6 and advise the deputy marshal outside your door that you're
7 ready to return to the courtroom. I will stress that each of
8 you must be in agreement with the verdict that is announced in
9 court. Once your verdict is announced by your foreperson in
10 open court and officially recorded, it cannot ordinarily be
11 revoked.

12 Finally, let me state that your oath sums up your
13 duty, and that is without fear or favor to anyone. You will
14 well and truly try the issues based solely upon the evidence
15 and this Court's instructions as to the law.

16 Members of the jury, that concludes my instructions.
17 You may stand up and stretch for a moment while I speak with
18 the lawyers to see whether there's anything else that I should
19 be instructing you on.

20 (Continued on next page)

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Charge

1 (At sidebar)

2 THE COURT: Anything from the plaintiff?

3 MR. DIXON: I have a request. For the record, we got
4 these charges very late in the day today, had very little time
5 to look at them. Upon hearing them again, I believe there's a
6 clarification that's needed with respect to -- let me get there,
7 if I may. The disorderly conduct charge --

8 THE COURT: Move back. You can't invade the court
9 reporter's space.

10 MR. DIXON: The disorderly conduct charge, the order
11 to disperse, lawfulness of it, the charge says an order that is
12 motivated by an intent to suppress or discriminate against a
13 particular viewpoint is not a lawful order. However, request
14 to charge that says discriminating against the individual based
15 on a crowd's response to that individual's speech constitutes
16 discrimination based on viewpoint, and I would cite the *Forsyth*
17 *County* case for that proposition.

18 THE COURT: Actually, that whole sentence is
19 superfluous because I've said what a lawful order is. A lawful
20 order is an order issued with the intent to maintain public
21 order and is not purely arbitrary. That's what a lawful order
22 is.

23 I gave an example of what an unlawful order might be,
24 one that doesn't meet that definition. So let me hear from the
25 defendants any objection to what plaintiff is requesting.

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Charge

1 MS. FADDIS: Yes, your Honor. That's a significant
2 and substantive alteration of the language. Obviously we had
3 an opportunity to review the charge beforehand. We closed
4 based on the charge as the Court prepared it. Certainly we
5 disagree with that formulation, that expression of the law.
6 But even if the Court would have been inclined to give it,
7 which I don't think would be appropriate, it certainly would
8 have affected how we summed up the case.

9 THE COURT: I'm going to stand on the charge as given.

10 Anything else?

11 MR. DIXON: Nothing from the plaintiff.

12 THE COURT: From the defendants?

13 MS. FADDIS: I had two very minor issues. I noted one
14 was on page 19, I think. There was a sentence towards the top
15 of the page, third line, that begins "whether or not." I think
16 the "whether or not" is superfluous and may have been carried
17 over from an earlier draft and it renders the rest of the
18 sentence somewhat confusing.

19 I believe if the sentence simply began, if the officer
20 had probable cause and "whether or not" were removed, that
21 would be accurate.

22 THE COURT: Tell me exactly what you're asking me to
23 do. I understand you don't like the "whether or not." What
24 are you asking me to say?

25 MS. FADDIS: To repeat that instruction, that sentence

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Charge

1 without the "whether or not." So just to say an officer had
2 probable cause to arrest someone, even if he is acting on
3 incorrect information as long as the officer --

4 THE COURT: Well, no, no. You're changing the
5 sentence. So you can't do that to me. So if I take out
6 "whether or not an officer had probable cause to arrest
7 someone," then it starts, "even if he is acting on incorrect
8 information, as long as --" so tell me -- that's obviously not
9 what you're asking me to say.

10 MS. FADDIS: That is not. I'm sorry.

11 THE COURT: So I'm asking you to tell me what you're
12 asking me to say.

13 MS. FADDIS: Yes, your Honor. So simply to recite the
14 sentence without the words "whether or not," so just to begin
15 the sentence, "An officer had probable cause to arrest
16 someone," and leave the rest of the sentence.

17 THE COURT: Maybe I'm thick. We are talking about
18 the second sentence at the top of page 19?

19 MS. FADDIS: Correct, your Honor. So, "An officer had
20 probable cause to arrest someone, even if he is acting on
21 incorrect information, as long as the officer acted reasonably
22 and in good faith by relying on information --"

23 THE COURT: You're asking me to delete the words
24 "whether or not an officer had probable cause to arrest
25 someone"?

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Charge

1 MS. FADDIS: No, your Honor, just the words "whether
2 or not."

3 THE COURT: And start the sentence with the words "an
4 officer had probable cause to arrest someone even if he is
5 acting on --"

6 MS. FADDIS: Yes, your Honor.

7 THE COURT: Okay. Well, we'll make it "has probable
8 cause."

9 MS. FADDIS: Understood.

10 THE COURT: Yes.

11 MS. FADDIS: And then the second comment I had was on
12 page 21. The written charge says, "If you, however, find that
13 Stephen Hughes did not have probable cause to arrest, then you
14 must consider the next element." I believe as read, the Court
15 read, "If Stephen Hughes did have probable cause." And just to
16 avoid any disagreements, we would just ask that that be reread
17 to the jury so they're clear. Those were the only two.

18 THE COURT: Okay. Any objection to either of those?

19 MR. DIXON: No objection.

20 THE COURT: All right. If you'll turn off the
21 machine.

22 (In open court; jury present)

23 Ladies and gentlemen, on the Fourth Amendment claim,
24 I'm just going to reread one paragraph from my charge with a
25 correction. And this is to give you some context, I'm talking

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Charge

1 about the definition of probable cause. And this applies as it
2 winds up to both the Fourth Amendment and the First Amendment
3 claim.

4 An officer has probable cause to arrest a person if he
5 has knowledge or reasonably trustworthy information that the
6 person being arrested has committed or is committing an
7 offense. An officer has probable cause to arrest someone even
8 if he is acting on incorrect information as long as the officer
9 acted reasonably and in good faith by relying on that
10 information. If an officer has probable cause to arrest or
11 detain an individual, the officer is not liable for a claim of
12 false or unlawful arrest.

13 Also, at one point before leading into the proximate
14 cause instruction on the Fourth Amendment claim, I said if you
15 find that defendant has proven probable cause for an arrest for
16 disorderly conduct failure to disperse, you must find in favor
17 of the defendant with respect to plaintiff's Fourth Amendment
18 claim. If, however, you find that Stephen Hughes did not have
19 probable cause to arrest Aden Rusfeldt for this offense, then
20 you must consider the next element where the plaintiff proved
21 by a preponderance of the evidence that defendants' acts were
22 the proximate cause of his injury. Thank you.

23 (At sidebar)

24 THE COURT: Anything else?

25 MS. FADDIS: No, your Honor. Thank you very much.

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Charge

1 MR. DIXON: Nothing further.

2 THE COURT: Okay. Thank you.

3 (Continued on next page)

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1 (In open court; jury present)

2 (Marshal sworn)

3 THE COURT: All right. Do you have the verdict sheets
4 and the instructions? If you could just leave that on the
5 counter for one of the jurors to take into the jury room. And
6 how many copies of the verdict sheet do you have?

7 THE LAW CLERK: I have four. I wasn't sure how many
8 they --

9 THE COURT: We'll get you a total of eight. So we'll
10 give you one for starters, and we'll shortly have seven more
11 for you. Okay? And how many copies of the instructions do you
12 have?

13 THE LAW CLERK: I have two.

14 THE COURT: We'll get you seven more copies of the
15 instructions so you all -- six more copies of the instructions
16 so you have them.

17 And you may now retire and discuss the case amongst
18 yourselves.

19 (At 12:13 p.m., the jury retired to deliberate)

20 THE COURT: What's the issue with the exhibits?

21 MR. ZIMMERMAN: It's just two exhibits, your Honor.
22 One exhibit, number seven was the --

23 THE COURT: What about the laptop?

24 MR. ZIMMERMAN: The laptop is prepared, ready to go.

25 THE COURT: Can you please hand it to my deputy so

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1 that she can hand it to the deputy marshal so he can give it to
2 the jurors in the jury room.

3 MR. ZIMMERMAN: Absolutely, your Honor.

4 THE COURT: Any objection from the plaintiffs?

5 MR. DIXON: No objection.

6 THE COURT: Have you had a chance to look at it?

7 MR. DIXON: I have, your Honor.

8 THE COURT: Okay, thank you. Thank you.

9 Go ahead, Mr. Zimmerman.

10 MR. ZIMMERMAN: There were two summonses entered into
11 evidence. They were not objected to. One of them was the
12 summons written for subsection seven, the hazardous condition.
13 Your Honor later said you were not going to charge the jury on
14 that, so we believe that exhibit is now irrelevant and
15 confusing --

16 THE COURT: No, it was -- was it received into
17 evidence?

18 MR. ZIMMERMAN: It was, your Honor.

19 THE COURT: It was received into evidence.

20 MR. ZIMMERMAN: Okay. The second one was plaintiff's
21 letter that he sent the night before.

22 THE COURT: Unless there's some stipulation to strike
23 it from the record.

24 MR. DIXON: No stipulation.

25 MR. ZIMMERMAN: The other one, your Honor admitted the

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1 letter that plaintiff sent the night before for the purposes of
2 the notice issue. So we've proposed -- and I know plaintiff
3 didn't agree, but we would redact all of the legal verbiage
4 that's in this.

5 THE COURT: Yes.

6 MR. ZIMMERMAN: But leave --

7 THE COURT: Let me see the exhibit. You described it
8 yesterday not as legal verbiage, but, as I remember it, as
9 citations to cases.

10 MR. ZIMMERMAN: And I have expanded, and that's why we
11 are bringing it back.

12 THE COURT: If you can hand it to my deputy and hand
13 it to me.

14 MR. ZIMMERMAN: The redactions are marked, but not --

15 THE COURT: Let me hear Mr. Dixon on this.

16 MR. DIXON: I'm not sure I heard Mr. Zimmerman
17 correctly. I think he said plaintiff does not agree.
18 Plaintiff does agree. We're fine with this.

19 MR. ZIMMERMAN: Oh, really?

20 MR. DIXON: Yes.

21 MR. ZIMMERMAN: Even the new redacted one?

22 MR. DIXON: Yes. I'm sorry I didn't have time to talk
23 to you about it.

24 MR. ZIMMERMAN: Then there is no dispute, your Honor.

25 MR. DIXON: There is no dispute on this.

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1 THE COURT: It's just the one page of this exhibit
2 that goes into the jury room; is that correct?

3 MR. ZIMMERMAN: There's a few pages at the front that
4 are not redacted.

5 THE COURT: I'll tell you what. Tell me and tell
6 Mr. Dixon on the record. This is which exhibit number?

7 MR. ZIMMERMAN: It's Plaintiff's Exhibit K.

8 THE COURT: All right. Which pages of Plaintiff's
9 Exhibit K are you proposed go in to the jury?

10 MR. ZIMMERMAN: We would allow the jury to have the
11 whole thing, but with the redactions applied on the page -- the
12 third page of the exhibit, which is marked Plaintiff 04,
13 Plaintiff 05, Plaintiff 06, Plaintiff 07, Plaintiff 08,
14 Plaintiff 09, Plaintiff 10, Plaintiff 11, Plaintiff 12, and
15 Plaintiff 13 all would have some or all redactions.

16 THE COURT: All right. And I see those redactions,
17 presumably in the color red, is that it?

18 MR. ZIMMERMAN: That's correct, your Honor.

19 THE COURT: And Mr. Dixon, do you have any objection
20 to those redactions?

21 MR. DIXON: My only hesitation, your Honor --

22 THE COURT: I'm not concerned about hesitation, but go
23 ahead.

24 MR. DIXON: I don't object to the redactions. I don't
25 want the jury to think the letter was sent with the redactions.

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1 THE COURT: I understand. That's a fair point, and I
2 have a proposal to take care of that.

3 I assume you have the redacted document in your hands?

4 MR. ZIMMERMAN: We do, your Honor.

5 THE COURT: As well as the other exhibits?

6 MR. ZIMMERMAN: Yes, your Honor.

7 THE COURT: I propose to send it in with the
8 following. It will have the docket number and name of the case
9 and will read as follows: One of the exhibits that you're
10 receiving in the jury room, Plaintiff's Exhibit K, contains
11 redactions. Redactions mean nothing more than that certain
12 materials appearing in the original document were deemed by the
13 Court to be irrelevant and have therefore been covered. You
14 are to draw no inference that certain material has been
15 redacted by the Court.

16 Any objection by the plaintiff?

17 MR. DIXON: None.

18 THE COURT: By the defendant?

19 MR. ZIMMERMAN: No, your Honor. Thank you.

20 THE COURT: One second. One of them is going to be
21 marked as Court Exhibit 7, and that can go with the document.
22 You're going to get the power cord, the documents --

23 MS. FADDIS: Your Honor, I think we're trying to
24 locate a physical copy of Plaintiff's Exhibit D.

25 THE COURT: This is something that should have been

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1 done before. That's why I told you yesterday. What is
2 Plaintiff's Exhibit 4?

3 MR. ZIMMERMAN: The mobile field force guidelines.
4 The witness has a copy.

5 THE COURT: Show it to the plaintiff before it goes
6 in. Make sure it's marked as an exhibit there, has the exhibit
7 number on it.

8 MR. DIXON: This does not have the defendants' Bates
9 labels on it. May I send an email to have the court clerk
10 print it?

11 THE COURT: So what?

12 MR. DIXON: If your Honor's okay with that, we'll do
13 it.

14 THE COURT: Does it need to be stapled?

15 MR. DIXON: It does.

16 THE COURT: We offer that service.

17 MR. DIXON: It also needs to be punched.

18 THE COURT: Okay. Anything else? Plaintiff?

19 MR. DIXON: Nothing further.

20 THE COURT: Defendant?

21 MR. ZIMMERMAN: Nothing further, your Honor.

22 THE COURT: All right. So let me say that I have a
23 lot of lawyers. Please be seated.

24 I have a lot of lawyers who come through the doors of
25 this courtroom, and a small number of them actually try cases.

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1 This case has been pending for quite some time. It's a '22
2 case. And I want to remark that I think that the lawyers on
3 both sides proceeded in this case with great professionalism,
4 and that includes Josh Dixon and Ron Coleman, and Tobias
5 Zimmerman and Hannah Faddis, acquitted themselves with
6 exceptional competency and professionalism.

7 It was a delight to have the four of you in my
8 courtroom, and I will say that you'll always be welcome back.
9 Trial work is not for every lawyer, let alone for every human
10 being, and it's not easy operating under the pressures that
11 you're under. And certainly a trial judge doesn't help by
12 making demands on counsel. But I'm not here to be warm and
13 fuzzy or friendly. I'm here to give us a fair and expeditious
14 trial, and each of you in your own way cooperated in that.

15 And so I want to say that I think you were
16 exceptionally professional and competent in this trial, and it
17 would be a pleasure to have you back in my courtroom again.

18 Now, I subscribe to something which I call the
19 eight-minute rule. The eight-minute rule is no, there's not
20 enough time for any of you to go back to your law office. But
21 you need to be back in the courtroom within eight minutes of
22 getting notice from Flo. Flo has to be able to reach each of
23 you because we get a jury note, we don't want to keep the jury
24 waiting and we have to respond quickly.

25 So make sure that you keep Flo informed at all times

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1 as to your whereabouts and come promptly back to the courtroom.
2 You need to be in touch with your clients if your clients want
3 to be here for the notes, which I expect they would be. But
4 they then are susceptible to that same rule with the exception
5 that we're not calling any clients. We're calling the
6 attorneys. The attorneys must promptly arrange for a client to
7 be present. All right?

8 And with that, we're adjourned. Thank you.

9 (Recess pending verdict)

10 THE COURT: We have a note from the jury.

11 Oh, where is Mr. Rusfeldt?

12 MR. DIXON: He's not going to be joining us.

13 THE COURT: Fine.

14 We have a note from the jury which has been marked as
15 Court Exhibit 8. It says, "Regarding the probable cause
16 exception discussed at top of page 25 of the instructions, we
17 would like a clarification regarding what facts we can consider
18 in applying this exception."

19 The Court proposes as the response to the question the
20 following: The evidence to support a finding that Rusfeldt was
21 arrested for disorderly conduct failure to disperse when
22 otherwise similarly situated individuals not engaged in the
23 same sort of protected speech would not have been arrested must
24 be objective evidence.

25 Objective evidence is evidence of what a reasonable

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1 police officer has done or would do under such circumstances.
2 Objective evidence would not include the statements and
3 motivations of the particular arresting officers. Objective
4 evidence does not include conjecture, speculation, or surmise.

5 Let me hear from the plaintiff.

6 MR. DIXON: Your Honor, I believe that sounds right.
7 Is it too much to ask that -- I didn't catch that
8 full second sentence.

9 THE COURT: Okay, sure. I'll read it a second time.
10 I'm going to type it up, but the sentence is: The evidence to
11 support a finding that Rusfeldt was arrested for disorderly
12 conduct failure to disperse when otherwise similarly situated
13 individuals not engaged in the same sort of protected speech
14 would not have been arrested must be objective evidence.

15 Objective evidence is evidence of what a reasonable
16 police officer has done or would do under such circumstances.
17 Objective evidence does not include the statements and
18 motivations of the particular arresting officers. Objective
19 evidence does not include conjecture, speculation, or surmise.

20 MR. DIXON: Your Honor, I have *Nieves v. Bartlett* open
21 on my computer. I see your Honor has read that as well. No
22 objection from plaintiff.

23 THE COURT: Okay. And from the defendant?

24 MS. FADDIS: Sorry. Just one moment, your Honor.

25 THE COURT: Yes.

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1 MS. FADDIS: Your Honor, I think the only modification
2 we would request is to the last sentence, the second sentence,
3 the reference to objective evidence not including the
4 statements or motives of arresting officers. That in
5 particular just jumps out at me as it identifies a particular
6 motive. Obviously we don't dispute that. But because it
7 identifies statements and motives of one type of witness
8 without regard to other witness statements or anything like
9 that, I think we would propose removing that language but
10 keeping what follows, which is it doesn't include conjecture.
11 And I apologize, I don't remember all of the words that are in
12 there.

13 THE COURT: Well, let me just read to you from *Nieves*.
14 And it's somewhere in pages 407, 408. "Because an inquiry is
15 objective, the statements and motivations of the particular
16 arresting officers are irrelevant at this stage."

17 MR. ZIMMERMAN: I'm sorry, your Honor. My memory
18 fails me. Can you remind me what the procedural stage in
19 *Nieves* was.

20 THE COURT: You'll have to look it up yourself.

21 MS. FADDIS: Your Honor, I think we're fine with the
22 language of the Court's note. Thank you.

23 THE COURT: Okay. Thank you.

24 MR. ZIMMERMAN: If I may, your Honor?

25 THE COURT: Yes, Mr. Zimmerman.

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1 MR. ZIMMERMAN: Well, there is this part -- and it is
2 in front of us, this part that was crossed out that seems to
3 indicate that they are attempting to apply the *Nieves* exemption
4 to the decision to give an order to disperse, and that would be
5 improper. It only applies to the decision to arrest, and so --

6 THE COURT: So what's wrong with my answer then?

7 MR. ZIMMERMAN: Nothing. I'm just saying maybe
8 there's a further instruction necessary.

9 THE COURT: I should say, "Ladies and gentlemen, in
10 addition to answering the question you posed, we've looked at
11 your note and there is something there that was crossed out, so
12 we're going to guess that you also had a concern about that,
13 and we're going to address the part of the note that was
14 crossed out." Is that what you'd like me to do?

15 MR. ZIMMERMAN: Yes, your Honor.

16 THE COURT: Okay. No.

17 MR. ZIMMERMAN: Okay. Thank you, your Honor.

18 THE COURT: Mr. Zimmerman, when you become a judge,
19 which may happen, you will have the opportunity to read between
20 the lines and read the crossed-outs on the note and address
21 them in your supplemental instructions. For the moment, you're
22 stuck with me.

23 MR. ZIMMERMAN: I thank your Honor for your faith in
24 my career possibilities.

25 THE COURT: I would say you couldn't afford to be a

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1 judge, but I won't say that to somebody working in the Corp.
2 Counsel's office.

3 The draft response is being marked as Court Exhibit 9,
4 and please review it. I see there's a misspelling of the
5 defendant's name in the title, which I'll correct. Okay.

6 Does it work for the plaintiff?

7 MR. DIXON: Yes, your Honor.

8 THE COURT: Does it work for the defendant?

9 MR. ZIMMERMAN: Yes, your Honor.

10 THE COURT: All right. So mark that as Court Exhibit
11 9A. And madam deputy, would you please show this to counsel on
12 both sides and then you can bring it to the marshal.

13 Okay. We're adjourned.

14 (Recess pending verdict)

15 THE COURT: Please remain standing for the jury. I
16 understand we have a verdict.

17 (In open court; jury present)

18 THE COURT: Ladies and gentlemen, will the foreperson
19 please identify themselves. Okay. Thank you. And has the
20 jury reached a verdict?

21 THE FOREPERSON: Yes, your Honor.

22 THE COURT: It is unanimous?

23 THE FOREPERSON: Yes, your Honor.

24 THE COURT: Is it in this envelope?

25 THE FOREPERSON: Yes, your Honor.

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Verdict

1 THE COURT: And is it signed and dated?

2 THE FOREPERSON: Yes, your Honor.

3 THE COURT: Okay. Please be seated.

4 All right. Madam deputy, if you'd kindly take the
5 verdict. And you have the verdict sheet there, if you please
6 remain standing.

7 THE DEPUTY CLERK: Please respond to the following
8 question in accordance with the Court's instructions on the
9 law. One, has Aden Rusfeldt proven by a preponderance of the
10 evidence that Defendant Stephen Hughes arrested him on June 27,
11 2021 in violation of a right protected by the Fourth Amendment
12 as defined by the Court?

13 THE FOREPERSON: No.

14 THE DEPUTY CLERK: Two, has Aden Rusfeldt proven by a
15 preponderance of the evidence that the following person or
16 persons on June 27, 2021 deprived him of a right protected by
17 the First Amendment as defined by the Court: Stephen Hughes.

18 THE FOREPERSON: No.

19 THE DEPUTY CLERK: An officer or officers of the NYPD
20 other than Stephen Hughes?

21 THE FOREPERSON: No.

22 THE COURT: All right. Please be seated.

23 And madam deputy, please poll the jury.

24 THE DEPUTY CLERK: Juror No. 1, is that your verdict?

25 JUROR NO. 1: Yes.

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Verdict

1 THE DEPUTY CLERK: Juror No. 2, is that your verdict?

2 JUROR NO. 2: Yes.

3 THE DEPUTY CLERK: Juror No. 3, is that your verdict?

4 JUROR NO. 3: Yes.

5 THE DEPUTY CLERK: Juror No. 4, is that your verdict?

6 JUROR NO. 4: Yes.

7 THE DEPUTY CLERK: Juror No. 5, is that your verdict?

8 JUROR NO. 5: Yes.

9 THE DEPUTY CLERK: Juror No. 6, is that your verdict?

10 JUROR NO. 6: Yes.

11 THE DEPUTY CLERK: Juror No. 7, is that your verdict?

12 JUROR NO. 7: Yes.

13 THE DEPUTY CLERK: Juror No. 8, is that your verdict?

14 JUROR NO. 8: Yes.

15 THE DEPUTY CLERK: The jury's been polled.

16 THE COURT: Any objection to my discharging the jury?

17 MR. DIXON: None from plaintiff.

18 MS. FADDIS: No, your Honor.

19 THE COURT: All right. The jury is discharged, but I
20 have a few remarks I want to deliver to you.

21 I am in awe of you and the work that you have done.

22 The remarks I want to deliver to you, I would deliver the
23 identical remarks even if your verdict were very different than
24 the one that you have returned in this case.

25 The reason I am in awe of you is that you are people

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1 who have come from all walks of life, all geographic areas,
2 people who would never have met each other probably in a whole
3 entire lifetime but for this trial. And as total strangers you
4 came, you answered the call for jury duty, you didn't try and
5 duck out of jury service as sometimes happens.

6 You realized that this is an important part of being a
7 United States citizen. It's a direct way to participate in our
8 form of government, our democracy. This and those who serve in
9 the armed forces, there are very few who get to participate in
10 government so directly as you do and have by your jury service.

11 I wish each of you long and healthy lives, but when
12 you look back on your lives, I hope that you look upon this as
13 a proud moment because you served when you were called upon to
14 serve. You did your duty. You did something difficult. You
15 don't know the people at the front table. You don't know the
16 people at the back table. This is not your problem, but it is
17 your problem because you're U.S. citizens, and this is a
18 dispute that comes before a United States District Court, and
19 people are looking for justice.

20 And we could devise a system where people with black
21 robes decided cases like this, but there would always be doubt
22 in somebody's mind about the person with the black robe. Where
23 did they come from? Who appointed them? Are they looking for
24 a promotion? What's their angle on all of this? What have
25 they done in their lives? Why did they rule against me or them

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1 or somebody?

2 But when eight people come together who never would've
3 met each other in a country where eight people can't agree on a
4 pizza topping and reach a unanimous verdict, it inspires awe in
5 me. That's what I tell people when they ask me about my job,
6 which I'm now doing in my twenty-second year. What inspires
7 you? What impresses you? What do you find to be the most
8 amazing part? It's you, ladies and gentlemen.

9 Now, we're coming up - blink of the eye - it's going
10 to be the Fourth of July. I hope that you're getting together
11 with neighbors and friends, maybe a little barbecue cookout,
12 maybe a beer, a burger, a hotdog, a steak, whatever you like.
13 Or maybe it's a vegetable or eggplant or something, but
14 whatever your choice is, I hope you enjoy it.

15 And you're going to see people you care about, maybe a
16 cousin, maybe a friend, maybe a sibling. And it's natural
17 you'll tell them you served on a jury. You can even tell them
18 about the case. But you're going to find that somebody close
19 to you is going to tell you how they beat their way out of jury
20 service or how they plan to beat their way out of jury service.
21 And in your own polite way - don't be unkind to anybody - but
22 in your own polite way let them know that you don't find that
23 one bit funny.

24 Because you served. You now see how truly important
25 it is in the resolution of disputes. It cannot be done

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1 otherwise in a way that will result in satisfaction and
2 finality. You heard what I just said about not really having
3 the confidence in somebody who happens to own a black robe, and
4 I understand that. That's why we've been doing this now in
5 this country for more than 250 years.

6 So the other thing I wanted to let you know is, as I
7 said to you, and I'm true to my word, that after the case is
8 over you can discuss this with whoever you choose to. One of
9 the things I've found with some of my jurors that I just want
10 to tell you about - you can follow what they do or you can do
11 what you want to do. But what they have decided to do is
12 they'll tell people about what they saw in the courtroom, what
13 they thought of what went on in the courtroom, quality of
14 lawyering and judging and even witnesses, whatever it may be.

15 But they keep amongst themselves and do not disclose
16 to anyone what was said by their fellow jurors in the jury
17 room. That, they consider to be private and eternally so.
18 That's up to you. You can do whatever you choose to do. But
19 I'm just telling you that that's what some of the jurors before
20 me have decided to do.

21 So may we all live long and healthy lives. And if it
22 happens that our paths should cross one of these days, as it
23 might - we take subways, we walk, we enjoy the fresh air - and
24 if we do stumble upon each other, I hope that you'll remind me
25 of how we first met.

