

*Ronald M Adams*  
CLERK SUPERIOR COURT

IN THE SUPERIOR COURT OF GLYNN COUNTY  
STATE OF GEORGIA

STATE OF GEORGIA :  
 :  
v. : INDICTMENT NO.  
 : CR-2000433  
TRAVIS MCMICHAEL :  
 :  
GREGORY MCMICHAEL, :  
 :  
Defendants. :  
 :

**4.5**  
**MOTION TO MAINTAIN THE SAFETY AND DECORUM**  
**OF THE COURTROOM**

Pursuant to O.C.G.A. § 15-1-3 and U.S.C.R. 22, Defendants, GREGORY MCMICHAEL and TRAVIS MCMICHAEL, through counsel, move this Court to make certain orders controlling the behavior of spectators so as to maintain the dignity and decorum of the courtroom and to ensure the safety of the courtroom and its open access to all witnesses and spectators, regardless of whether they support the state or the defense. In support of this Motion, the defendants show this Court the following:

1.

“Every court has power: (1) To preserve and enforce order in its immediate presence and, as near thereto as is necessary, to prevent

interruption, disturbance, or hindrance to its proceedings. . ." O.C.G.A. § 15-1-3(1).

During the pretrial proceedings that have been held in this matter, including the preliminary hearing and bond hearings, spectators have engaged in two types of behavior that affect the safety of, decorum of, and access to the courtroom, which behavior the defense seeks to have this Court address:

**1. Facemasks containing slogans of partiality.**

A number of spectators who have aligned themselves with the prosecution have entered the courtroom wearing facemasks containing phrases such as "Black Lives Matter," "I Can't Breathe," and "Justice for George Floyd." Attached as Exhibit 1 to this Motion are two photos showing these facemasks worn during the proceedings. Likewise, in and out of the courthouse, there are facemasks, T-shirts, and other items that contain similar slogans, such as "I Run With Maud" (referring to Ahmaud Arbery) and "Justice for Ahmaud."

The Court has the power to control the donning of articles of clothing that contain political or social agendas upon them, specifically when those messages directly address the matters at issue in the litigation. This case

has garnered national attention by way of its characterization in the media as one more in a number of recent examples of racially-motivated crimes by white men against Black men and women, such as George Floyd and Breonna Taylor, oftentimes acting in a law enforcement capacity. While defendants in this case are white and Ahmaud Arbery was a Black man, the similarities between this and these other famous cases end there. Yet this case has been swept-up in this narrative and, consequently, demonstrators and spectators appear to support this larger cause as they stand with the prosecution and Arbery's family.

It is the right of those supporters to wear whatever clothing they choose, to hold up any sign they wish, and to chant whatever slogan they like **outside** the courtroom. That is the beauty of our First Amendment. But once inside the courthouse, the sanctity of the defendants' right to a fair and impartial trial trumps the First Amendment.

"Although the First Amendment is written in absolute language that Congress shall make 'no law,' the Supreme Court never has accepted the view that the First Amendment prohibits all government regulation of expression." Erwin Chemerinsky, *Constitutional Law: Principles and Policies* 750 (1997). *The First Amendment to the United States Constitution*

does *not* protect all forms of expression. See *Miller v. California*, 413 U.S. 15, 23 (1973) (observing that it “has been categorically settled by the Court, that obscene material is unprotected by the First Amendment”). In *Schenck v. United States*, 249 U.S. 47, 52 (1919). Justice Oliver Wendell Holmes, Jr., wrote:

The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree.

*Id.*

“The constitution guaranties to every defendant a fair and impartial trial. Every litigant is entitled to the same right, and he does not get it where any influence except the law and the evidence is allowed to affect the minds of the jury. Hisses, cheers, demonstrations, improper appeals, argument not warranted by the evidence, and such like, all constitute an impairment of the right to a fair trial.” *Patton v. State*, 117 Ga. 230, 43 S.E. 533 (1903). Abrogating the defendants’ right to a fair and impartial trial is the “substantive evil” that occurs whenever a spectator is permitted to silently demonstrate within the confines of the courtroom by wearing a

facemask containing his or her feelings about what happened to Ahmaud Arbery.

A judge has a duty to decide all cases brought before him, including those cases that are controversial and that may “arouse the most intense feelings in the litigants.” *Pierson v. Ray*, 386 U.S. 547, 554, 87 S.Ct. 1213, 18 L.Ed.2d 288 (1967). That is why “[j]udges have an obligation to maintain control over the courthouse and over the conduct of persons in the courthouse.” *Stevens v. United States Attorney General*, 877 F.3d 2193, 1305 (11th Cir. 2017).

The facemasks bearing writing or pictures that link this case to any number of other cases or that articulate the wearer’s feelings about the guilt or innocence of the defendants must be prohibited. It eviscerates the impartiality of the courtroom, it silently brings into the courtroom the chants of the demonstrators outside, and it undermines the sanctity and decorum of the judicial proceedings.

- 2. Unauthorized use of cell phones during court proceedings to broadcast photographs, purported courtroom activity, and commentary.**

Rule 22 of the Uniform Superior Court Rules sets forth the rules for use of electronic devices in the courtroom. The Overview to this rule explains:

This rule similarly governs the use of electronic devices, including mobile phones and computers, in a courtroom for purposes other than recording sounds and images. Such use is generally allowed by lawyers, by employees of lawyers, and by self-represented parties, **but to ensure decorum and avoid distraction, such use is generally prohibited by jurors, witnesses, parties, and spectators**, including representatives of the news media. (emphasis added).

Part C (1) of this Rule sets forth the directive for all parties and spectators:

(1) All parties and **spectators shall turn the power off to any recording device while present in a courtroom**, unless the judge allows orally or in writing the use of recording devices in the courtroom for purposes other than recording sounds and images, which the judge may freely do when he or she believes such use would not be disruptive or distracting and is not otherwise contrary to the administration of justice.

(emphasis added).

“Courtroom” is defined as “the room in which a judge will conduct a court proceeding and the areas immediately outside the courtroom entrances or any areas providing visibility into the courtroom.”

USCR 22(B)(3).

Yet, it has come to the attention of defense counsel that there are spectators in the gallery of the courtroom who have used their cell phones during the preliminary hearing and the McMichaels' bond hearing to photograph witnesses and the defendants, and transmit to other entities through their cellular phones those photographs as well as courtroom events, along with the spectators' personal comments concerning the events.

In keeping with this Court's power to control the proceedings, we ask that this Court enforce the directive of USCR 22.

The courtroom should be a place of safety for all. We recognize the widespread attention that this case has received. We are also aware— as are local law enforcement agencies--of the threats and intimidation that have been directed at the McMichael family. This Court cannot control the transmission of filth enabled by the anonymity of social media. But this Court can help to assure the defense that, at the very least, the courtroom is a safe place for them, their family, their supporters, and their witnesses.

A fair trial for every accused person is at the heart of our judicial system. The defendant is denied that right when they call witnesses, and those witnesses are improperly photographed during court, their

testimony unfairly summarized, and the photographs and commentary transmitted – in real time – to social media outlets that then locate the personal information of those witnesses, including address, employment, and contact information, which results in threats and intimidation to those witnesses, sufficient to make them reasonably fear any further participation in the proceeding.

Therefore, Pursuant to O.G.C.A. § 15-1-3 and U.S.C.R. 22, Defendants Gregory and Travis McMichael respectfully move this Court to (1) prohibit anyone entering the courtroom from wearing any facemask or clothing containing insignia, photographs, or words relating to the Arbery case or the public narrative with which it is being associated; and (2) enforce the directive of U.S.C.R. 22 by prohibiting the use of recording devices in the courtroom without a Court Order.

[SIGNATURES ON FOLLOWING PAGE]

This 30th day of December, 2020.

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**Certificate of Service**

I hereby certify by my signature that I have served a copy of **4.5 Motion to Maintain the Safety and Decorum of the Courtroom** on the Office of the District Attorney for the Cobb Judicial Circuit by delivering it to District Attorney Joyette Holmes, by emailing it to:

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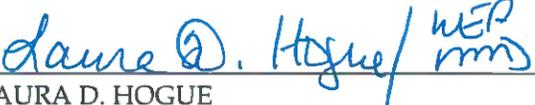
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December 30, 2020.

  
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LAURA D. HOGUE

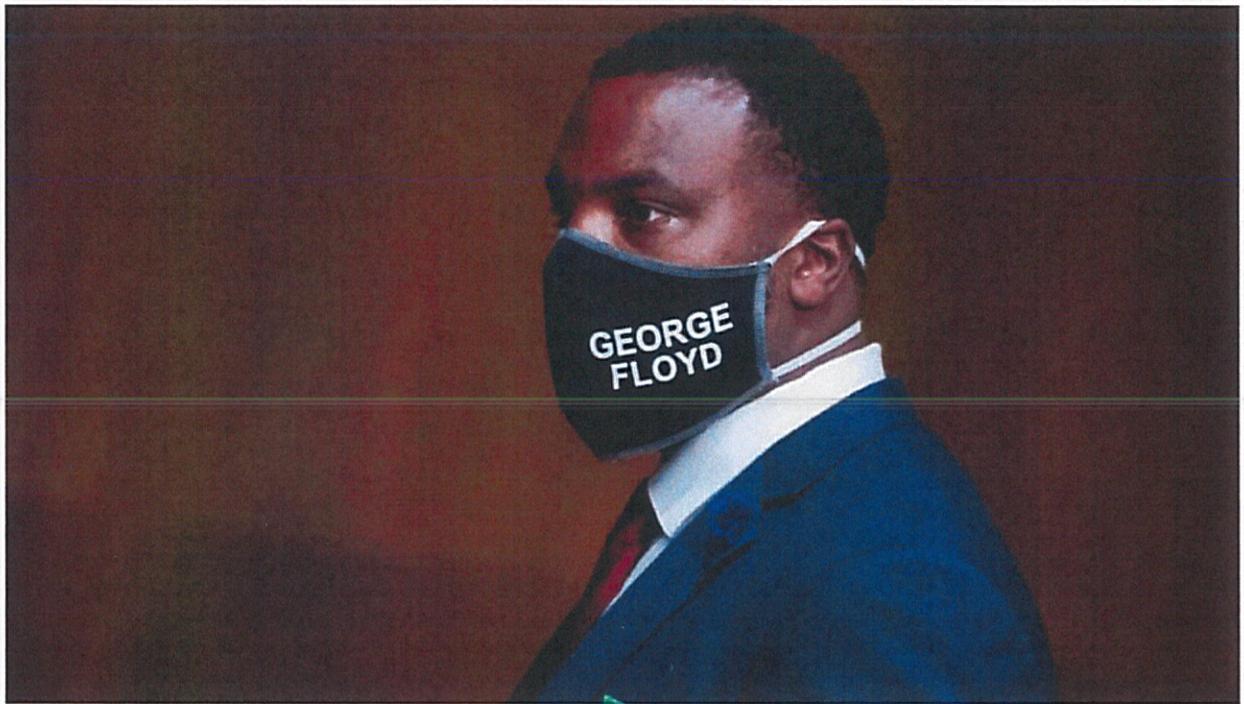


EXHIBIT 1