

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

CASE NO.: 21-CR-387 (APM)

v.

AUDREY ANN SOUTHARD-RUMSEY,
also known as "Audrey Ann Southard"

_____ /

DEFENSE MOTION FOR VARIANCE/DOWNWARD DEPARTURE

COMES NOW, Defendant, Audrey Southard, via undersigned counsel, and moves this Court for a Variance and/or Downward Departure in support of a sentence below the federal sentencing guidelines range pursuant to 18 U.S.C. Sec. 3553. Ms. Southard requests this Court sentence her to 18 months of home detention followed by three years probation and as grounds in support thereof states as follows:.

I. Introduction:

1. Ms. Southard was indicted on June 4th, 2021 (ECF #6).
2. On November 17th, 2021, A Superseding Indictment was filed by the Government (ECF #28).
3. On October 26th, 2022, a Second Superseding Indictment was filed (ECF #38).
4. Subsequently, a stipulated fact trial was held on January 27th, 2023 and Ms. Southard was found guilty as charged to Counts 1, 4, 5, 6, 7, 8 and 9.

II. PSR and Advisory Guideline Sentencing Range

5. Ms. Southard has zero criminal history points. Defense objects to the PSR establishing a total offense level of 28. Defense also objects to any enhancement of points for aggravated assault and any upward departure requested by Government and agrees to -3 for acceptance of responsibility. Rather, Ms. Southard should have a total offense level of 22 resulting in a guidelines range of 41-51 months.
6. The PSR/Government indicates that Ms. Southard has accepted responsibility for the offense and decreases the offense by 3 levels.

III. Motion for Variance and grounds for Variance

7. Ms. Southard moves this Honorable Court for a variance and/or departure from the advisory sentencing guidelines pursuant to *United States v. Booker*, 543 U.S. 220 (2005).

A. The Nature and Circumstances of the Offense and the History and Characteristics of the Defendant.

8. The offense conduct facts are contained in Statement of Facts for Stipulated Trial.
9. Ms. Southard began protesting the state of this Nation's affairs in 2020. Said protest mostly included social media posts against Antifa and BLM which violently caused the death of many innocent lives and her dissatisfaction with Government.
10. As distasteful as some may find Ms. Southard's posts prior to January 6th, 2021 they are, nonetheless, protected speech under the 1st Amendment of the U.S. Constitution.
11. January 6th Courts should not turn a blind eye to America's heritage as taught to so many in history classes in our schools.
12. January 6th Courts should understand this history to be a mitigating circumstance for a

variance, not an aggravating one as the Government would like the Court to believe.

13. American heritage is rich with different emblems, logos, and slogans. Flags, such as the Gadsden Flag 'Don't Tread on Me', the flag of the Thirteen Colonies, differing State flags, etc., all comprise our Nation's history.
14. Many hold our American heritage, faith and rule of law as a cherished freedom of which no oppressor or tyrannical government can put asunder. Our Constitution, including the Declaration of Independence and Bill of Rights, holds, as a delineated duty, that Americans alter or abolish an oppressive and tyrannical government (Par. 2, Declaration of Independence).
15. This is our American heritage, the basis of our inalienable freedoms.
16. Ms. Southard grew up respecting the rule of law and our American history. Ms. Southard watched as American cities, state and federal buildings burned in the summer of 2020.
17. Ms. Southard decided to express her opinion as a form of protest as well as demonstrating at certain low level events commencing in Florida in 2020.
18. Ms. Southard's posts in 2020 referred repeatedly to 1776. It is important for the Court to understand that any United States citizen who verbalizes 1776 does so as that year symbolizes our freedom from a tyrannical government.
19. 1776 is the reason America celebrates the Federal Holiday of July 4th, the date of America's Declaration of Independence (July 4th, 1776).
20. During the summer of 2020 many American cities burned along with federal and state law enforcement facilities and courthouses due to horrifically, mostly violent, Antifa and BLM funded protests.

21. American citizens were left fending for themselves while many politicians in DC egged the violence on. During Trump's presidential term Maxine Waters called for violence against Trump supporters and politicians who supported Trump. Exhibit A – Washington Post video of Maxine Waters, June, 2018, [Rep. Waters on Trump administration: 'Tell them they're not welcome' – YouTube](#).
22. Simultaneously, the American presidential vote held November 3rd, 2020 had a reasonable potential to become compromised due to Covid and the lockdowns were upon us, except for Antifa and BLM violent protests, it seemed.
23. As the election drew near in 2020 many states adopted dropbox voting on a grand scale, and, many Americans believed the election had been rigged in favor of Joseph Biden on the evening of the November 3rd, 2020 election, due to these and other covid measure allowances and oftentimes, unlegislated changes among the states which led to the objections of the Electoral College vote by many lawmakers in DC.
24. The circumstances surrounding the events of January 6th, 2021 as to Ms. Southard was the same as millions of adults in America who firmly believe in the Constitutional right of the people to peacefully protest and redress their grievances with Government.
25. Ms. Southard also firmly believes in her freedom of speech under the 1st Amendment of the U.S. Constitution as many millions of American adults do. Said speech includes emblems, flags and slogans reference our Nation's day of Independence, July 4th, 1776, a Federal holiday,
26. Interestingly, prior to January 6th, 2021, Ms. Southard was not going to travel to DC as she could not afford to go to the District of Columbia for the January 6th, 2021 protest,

however, a few friends offered her a seat on their drive up to DC.

27. Ms. Southard still was not going to go to DC as she had no extra funds to do so. On January 4th, 2021 Ms. Southard received a covid stimulus check.
28. But for that covid check's arrival on January 4th, 2021, Ms. Southard would not have gone to D.C. evincing her lack of preparation or planning to disrupt the Electoral vote on January 6th, 2021 despite her bravado in her social media posts.
29. The decision for Ms. Southard to go to the District of Columbia in the early morning hours of January 5th, 2021 was more so a happenstance, nonetheless folks like her were cheered on by then President Trump to get up there and that it was going to be 'wild'.
30. Ms. Southard's expressed opinions for the majority of 2020 against violent Antifa and BLM should not be considered by the Court in this January 6th, 2021 case.
31. While protesting at the east end of the Capitol, Ms. Southard was attacked by law enforcement (and likely others) with mace. That was the first of three times Ms. Southard was sprayed, one of the times was inside the Capitol with gel mace. However, it was after the first spray outside that Ms. Southard became extremely agitated and irate.
32. The effects of the attack outside left Ms. Southard confused, angry, and agitated, and in a dream-like state.
33. Relevant to her actions on January 6th, Ms Southard had major surgery in 2007 to remove a substantial sized brain tumor. (See Exhibit B, MRI images and medical report filed under seal).
34. Said surgery left Ms. Southard with loss of hearing, and loss of mostly long-term memory. Ms. Southard will be testifying at sentencing as to her condition.

35. Mace aerosols cause cerebral hypoxia. The National Institute of Health finds that cerebral hypoxia causes immediate poor judgment and decision making (Exhibit C, NIH Report).
36. Ms. Southard experienced those symptoms in a severe manner on January 6th, 2021.
37. Ms. Southard will testify to the Court that she accepts responsibility, however, her behavior was brought on and extremely aggravated by the first aerosol attack that day and her recollection of events is not clear, at times in disbelief that it was actually her in the pictures outside and inside the Capitol.
38. Due to Ms. Southard's physical and mental state on January 6th, 2021 the Court should vary and not follow the sentencing guidelines. Note: Ms. Southard brought no weapons to DC, the flag she was in possession of was owned by someone else, the gold stanchion was never wielded as it never left the ground.
39. Ms. Southard cherishes this country and the freedoms of which she is accustomed. Ms. Southard believed the reasons she went to DC were noble, and constitutional. moreover, she was following the directive of then President Trump, Commander in Chief.
40. This 54-year-old single woman who has lived a clean and honest life, never having been arrested, who was taught to fight when necessary to preserve our freedoms a la July 4th, 1776, should be given mercy by the Court for her largely, mostly overblown actions of that day due to the three aerosol attacks and Ms. Southard's sensitivity to said attacks due to having had major brain surgery.
41. Ms. Southard was born in California on November 14th, 1968. Ms. Southard grew up as 1 out of 2 children.

42. Ms. Southard is a mother to her 21-year-old son.
43. Ms. Southard experienced a traumatizing divorce after 19 years of marriage.
44. Ms. Southard is a trained vocalist who sang at Carnegie Hall.
45. Ms. Southard, prior to January 6th, 2021 enjoyed a modest living as a vocal coach (Ms. Southard lost the majority of her work as an instructor due to these charges).
46. Ms. Southard is not married.
47. Defense also respectfully requests, if the Court sentences Ms. Southard to incarceration, this Court allows Ms. Southard to participate in the Federal Bureau of Prisons First Step Act.
48. If this Court sentences Ms. Southard to incarceration, Ms. Southard requests a sentencing date in the future to a facility closest to Spring Hill, Florida.
49. Ms. Southard has several family members and friends write short letters of Ms. Southard's character for this Court's consideration. Exhibit D, letter from Mary and Walter Southard, Ms. Southard's parents, and Exhibit E letter from friend Donna Weaver.
50. Ms. Southard has no prior criminal records, or arrests. Ms. Southard, since her arrest in June, 2021, has not violated any laws or ordinances of any kind. Ms. Southard has no substance abuse issues.

IV. Motion for Departure and grounds for Departure

51. Ms. Southard is 54 years old. Home detention, pursuant to U.S.S.G. Sec. 5F1.2, as a substitute for imprisonment, is sufficient for Ms. Southard and less costly than imprisonment.

52. Mr. Southard would be vulnerable to victimization or abuse in prison as she is very kind spoken and older. U.S.S.G. 5H1.4.

53. Imprisonment for Ms. Southard would have harsh consequences on innocent family members, including her son, and both parents who reside in the same neighborhood as Ms. Southard. Ms. Southard does caretake for her family and is irreplaceable. U.S.S.G. 5H1.6.

54. Mr. Southard is a law-abiding citizen and regrets her involvement on January 6th, 2021. Ms. Southard is remorseful.

55. Ms. Southard is an older Defendant at 54 years old. The recidivism rate among older defendants is much lower than that of younger defendants.

V. The Need For Unwarranted Disparities

56. When considering a sentence, the Court should also take into account the sentences of other individuals who participated in civil disorders in Washington, DC.

57. Ms. Southard should not be given a punishment in excess of other defendants whose conduct was comparable or worse to the conduct that Ms. Southard is accused of.

58. Jason Charter, 1:20-cr-135, dismantled multiple fences to gain access to restricted areas, carried a large stick, and participated in the destruction of an historical monument. *See id.*, ECF 1-1, 38. While Charter's case was pending he was arrested on two separate occasions for assaulting police. Charter was sentenced to probation without incarceration.

59. Jacob Fracker, 1:21-cr-34, donned a gas mask and approached the lower west terrace, “where he joined an advancing mob of rioters.” Mr. Fracker is also accused of deliberately standing in the path of MPD officers to impede the officers from assisting the Capitol Police from holding off the mob. Then Fracker joined rioters “engaged in destructive and violent behavior.” Mr. Fracker was sentenced to no incarceration and just 12 months probation.
60. David Lee Judd, 1:21-cr-40, was accused of violently clashing with police in the Lower West Terrace tunnel, the most violent altercation of January 6. He participated in the “heave-ho” against the police line. Judd lit an object that appeared to be a firecracker and threw it at the police line. He was sentenced to 32 months.
61. Glen Mitchell Simon, 1:21-cr-346, was accused of “pushing against law enforcement officers on Capitol Grounds using a metal bike rack” and “actively resisting officers’ efforts to clear the Rotunda.” Simon was sentenced to 8 months incarceration.
62. Mathew Wood, 1:21-cr-223, entered and remained in the Capitol for an hour and seventeen minutes, entered Speaker Pelosi’s chamber, and displayed uncooperative behavior, yet received no jail time at all, and only 12 months of home detention.
63. Scott Fairlamb 1:21-cr-120 screamed and cursed at MPD officers, picked up a police baton, and shoved and punched an officer. He received 41 months.
64. Devlyn Thompson, 1:21-cr-461: (1) yelled obscenities and called the officers “traitors” as they forcibly tried to gain entry past the officers who were blocking the entrance to the

U.S. Capitol; (2) yelled regularly for volunteers to continue the assault on the officers by yelling to the crowd “we need more fresh bodies” and “we need more patriots;” (3) sprayed OC/pepper spray and bear spray at the officers; (4) threw objects and projectiles at the officers, including flag poles; (5) grabbed and took law enforcement riot shields from the officers to prevent the officers from defending themselves; and (6) assisted others in the crowd to commit additional acts of violence against the officers. He received 46 months.

65. Nicholas Languerand, 1:21-cr-353, was present at the LWT where the worst violence transpired and hurled heavy objects at the police that could have caused serious bodily harm. He received 44 months.
66. Mark Leffingwell, 1:21-cr-05, repeatedly punched multiple MPD officers with closed fists, including one officer in the head and the chest. Several officers were needed to restrain him. The government only asked for 27 months incarceration and he was given only 6 months.
67. Lonnie Coffman, 1:21-cr-04, drove a pickup truck to Washington, DC with an arsenal of guns, hundreds of rounds of ammunition, a crossbow, machetes, and materials to create homemade explosive devices. He received 46 months.
68. Ms. Southard’s conduct was no worse than any of these defendants, and accordingly she should not receive a harsher sentence.

VI. Conclusion

69. Based on Ms. Southard's mitigating circumstances, Ms. Southard moves this Honorable Court for a variance and departure below the advisory guideline range specifically asking the Court for an 18 month home detention sentence followed by 3 years of probation.

WHEREFORE, Defendant, Audrey Southard, respectfully requests this Honorable Court grant the relief requested depart and vary and sentence Ms. Southard to 18 months home detention followed by 3 years probation.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Notice of Appearance of Counsel has been furnished via Electronic Filing to Alexis Loeb, AUSA, Office of the U.S. Attorney, District of Columbia, alexis.loeb@usdoj.gov, on this 6th day of July, 2023.

/S/ Maria T. Rodriguez

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