THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Bentley Price, Circuit Court Judge
Case No. 2023-CP-10-01941

Appellate Case No. 2023-001941

Meredith Logan Whitehurst,

Appellant,

versus

Town of Sullivans Island,

Respondent.

INITIAL BRIEF OF APPELLANT

C. Austin Elliott, Esq.
Kulp & Elliott – Attorneys at Law
116 Church Street, 3rd Floor
Charleston, SC 29403
SC Bar Number: 100072
Attorney for Appellant

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STATEMENT OF THE ISSUES ON APPEAL

I. Did the Circuit Court err in denying Appellant's appeal on First Amendment and Due Process grounds of her conviction in the Municipal Court for Disorderly Conduct under the Town of Sullivans Island Ordinance?

II. Whether certain subsections of the Town of Sullivans Island Disorderly Conduct Ordinance are unconstitutionally vague?

III. Did the Circuit Court err in denying Appellant's appeal in affirming Trial Court's decision to allow the State to proceed against Appellant under multiple Ordinance subsections without prior notice?

IV. Did the Circuit Court err by denying Appellant's appeal in regard to evidentiary issues raised at trial and denial of her motion to suppress the three-minute video clip?

STATEMENT OF THE CASE

On June 11, 2022, Appellant and her friend hired an Uber operated by Ahmed Ghozlan (Complainant). Complainant picked up Appellant and her friend in downtown Charleston and began traveling to their requested destination on Sullivan's Island. At some point during the ride, Complainant asked Appellant and her friend to be quiet, eventually ordering them to "shut the fuck up." As the Uber neared Sullivan's Island, Complainant made an audible 'scoff' or 'sigh' in response to Appellant's conversation with her friend.

Appellant and her friend then asked Complainant to pull over and allow them to exit the vehicle before arriving at their destination, which resulted in an argument between Complainant, Appellant, and Appellant's friend. Appellant and her friend then used profane and insulting language directed at Complainant as they exited the vehicle. It is undisputed that Appellant called the Complainant an "Arabic piece of shit" after he demanded Appellant and her friend leave his vehicle, which they were already in the process of doing. Complainant dialed 911 as Appellant and her friend exited the vehicle, alleging that his two female Uber passengers "insulted" him during the ride.

The 911 call prompted the dispatch of Sullivan's Island Police Officers, Sydney DeNett and Joseph McMullen, to the location of Complainant's vehicle. The responding officers questioned Complainant, who explained that Appellant shouted expletives and racial insults directed at him while exiting the vehicle. Officer DeNett verbally informed Officer McMullen and Complainant of her intent to charge Appellant and her friend with disorderly conduct, provided the officers could locate them. Complainant then showed Officer DeNett a short video recorded by the inward-facing dash camera he installed in his vehicle showing Appellant's insulting and profane statements as earlier described by Complainant. The officers located Appellant and her friend by obtaining from Complainant the address of their destination. When the officers arrived at the address, Appellant and her friend were inside the house located at that address. Officer DeNett ordered Appellant and her friend out of the house and detained them for further questioning. After Appellant and her friend confirmed they were Complainant's passengers and admitted to making

insulting and profane statements to Complainant, Officer DeNett charged them with Disorderly Conduct pursuant to Sullivan's Island Town Ordinance Section 14-8 (the Town Ordinance) on a Uniform Traffic Ticket (UTT). The UTT issued by Officer DeNett did not specify a particular subsection of the Town Ordinance alleged against Appellant.

On the day of the trial, March 21, 2023, Counsel for the Appellant asked for clarification on the specific sections of the Ordinance that the Appellant was charged with, as no such specificity was ever given on the Uniform Traffic Ticket or in any subsequent summons or court document. The State chose six (6) of the eighteen (18) Ordinance subsections to proceed against the Appellant. Counsel for the Appellant raised an objection to the Trial Court, arguing that proceeding in this manner violated procedural due process rights. The Municipal Court denied Appellant's motion to dismiss on the basis of the vagueness of the Town Ordinance and two motions to suppress evidence. The Appellant then made two additional motions *in limine* relating to evidentiary matters. The first evidentiary motion raised moved for suppression of the video clip in the State's evidence referred to by the parties as the 'three-minute video clip' on the basis the clip was not the entire video of the incident and, therefore, prejudicial. The Appellant then made a second evidentiary motion to suppress this same 'three-minute video clip' on the basis of deficiencies in the chain of custody related to the Complainant's delivery of the video clip to the Town of Sullivan's Island Police Department[2]. The Trial Court denied both of the Appellant's evidentiary motions to suppress this video evidence.

At the conclusion of the State's case in chief, the Trial Court denied the Appellant's motion for Directed Verdict and other pretrial motions renewed by the Appellant. After the denial of the Appellant's Motion for Directed Verdict but prior to closing arguments, the State elected to withdraw four (4) of the six (6) subsections charged against the Appellant. Counsel for the Appellant further renewed all prior objections on the record, then the State and Appellant proceeded with their respective closing arguments.

The Trial Court then instructed the jury on the remaining two (2) subsections of the Town of Sullivans Island Disorderly Conduct Ordinance. The two subsections of the Disorderly Conduct Ordinance presented to the jury as follows:

> (A) A person shall be guilty of disorderly conduct if, with the purpose of causing public danger, alarm, disorder or nuisance, or if his or her conduct is likely to cause public danger, alarm, disorder or nuisance, he or she willfully does any of the following acts in a public place or within public view:
>
> …
>
> (8) Makes or causes to be made any loud, boisterous and unreasonable noise or disturbance to the annoyance of any other persons nearby, or near to any public park, square or common, whereby the public peace is broken or disturbed, or the public annoyed;
>
> …
>
> (11) Makes or causes to be made any loud, boisterous or unreasonable noise or disturbance to annoy other persons nearby, or near to any public highway, road, street, lane, alley, park, square, or common, whereby the public peace is broken or disturbed or the traveling public annoyed;

SULLIVAN'S ISLAND, SC., ORDINANCE FOR DISORDERLY CONDUCT, § 132.08 (2023).[1]

[1] https://codelibrary.amlegal.com/codes/sullivansislandsc/latest/sullivansisland_sc/0-0-0-2913#JD_132.08

The jury found Appellant guilty of violating the remaining two sections of the Ordinance after deliberation. Appellant timely noticed her appeal of the trial court's verdict to the Charleston County Court of Common Pleas. Judge Bentley Price considered briefs submitted by the Parties, the record on appeal, and oral argument in the matter. Judge Price then denied the appeal by written order dated December 12, 2023, finding the Trial Court made no error of law. Appellant then timely noticed her appeal of the Circuit Court order directly to the South Carolina Supreme Court as the issues in question involve Procedural Due Process and First Amendment protections guaranteed by the United States Constitution.

STANDARD OF REVIEW

"In criminal appeals from municipal court, the circuit court does not conduct a de novo review." *City of Rock Hill v. Suchenski*, 374 S.C. 12, 15 (2007). "In criminal cases, the appellate court reviews errors of law only." *State v. Vinson*, 400 S.C. 347, 351 (Ct. App. 2012). "Therefore, our scope of review is limited to correcting the circuit court's order for errors of law." *Suchenski*, 374 S.C. at 15. Moreover, "[q]uestions of statutory interpretation are questions of law, which are subject to de novo review and which we are free to decide without any deference to the court below." *State v. Whitner*, 399 S.C. 547, 552 (2012).

ARGUMENT

I. THE CIRCUIT COURT ERRED IN DENYING APPELLANT'S APPEAL AS SUBSECTIONS OF THE TOWN'S DISORDERLY CONDUCT ORDINANCE VIOLATE FIRST AMENDMENT PROTECTIONS OF PRIVATE SPEECH AND ARE UNCONSTITUTIONALLY VAGUE OFFENDING DUE PROCESS.

This is **not** a 'Fighting Words' case. Appellant made comments to an Uber driver (Complainant) that were highly offensive, very rude, and even profane. Appellant's comments to the Complainant took place over a thirty (30) second time frame while he stopped the vehicle and Appellant exited. This matter should have ended there.

However, the Complainant called 911, informing dispatch that the Appellant and her friend were insulting him. The 911 dispatch operator misunderstood what the Complainant said and ran the call as an 'assault' setting this case in motion. The arresting officer did not observe or hear the statements made by the Appellant to the Complainant. There is nothing in the record, nor was any evidence presented or suggested that Appellant's statements were heard by anyone other than the Complainant, the Appellant, and her friend (Co-Defendant). Appellant's comments to the Complaint were highly offensive, they were not and cannot be a crime. The Town of Sullivan's Island violated Appellant's rights by prosecuting her for private speech, protected by the First Amendment.

A. The Guilty Verdict and the Town Ordinance Violate Protected Private Speech Guaranteed by the First Amendment.

The Trial Court erred in denying Appellant's pretrial Motion to Dismiss on the basis that the allegations against the Appellant were clearly protected private speech under the First Amendment. The Appellant's conviction under the Town Ordinance violates both her First Amendment Right to Free Speech and Due Process protections because of the unconstitutionally vague nature of the language in the Town Ordinance. Furthermore,

the statements made by the Appellant are not 'Fighting Words' as defined in state and federal jurisprudence.

The United States Supreme Court has repeatedly struck down statutes and city ordinances such as Sullivan's Island Town Ordinances as unconstitutionally vague and overbroad where their meaning is not limited to "fighting words," or "those which by their very utterance inflict injury or tend to incite an immediate breach of the peace." *Gooding v. Wilson*, 405 U.S. 518 (1972); *Chaplinsky v. New Hampshire*, 315 U.S. 568, 572 (1942). This limitation is incredibly restrictive, allowing for the criminalization of speech only "where there was [a] likelihood that the person addressed would make an immediate violent response." *Id.* at 528, 92 S.Ct. 1103 (emphasis added); *See also Johnson*, 491 U.S. at 410, 109 S.Ct. 2533." *United States v. Bartow*, 997 F.3d 203, 208 (4th Cir. 2021). Indeed, "The [Supreme] Court has so narrowed the 'fighting words' exception that it has not upheld a criminal conviction under the doctrine since *Chaplinsky* itself." *Id.*

South Carolina jurisprudence also places limiting construction on our Disorderly Conduct State Statute under S.C. Code § 16- 17-530. The South Carolina Court of Appeals held that even if profanity is used in a public place, "profane language alone is insufficient to constitute a violation of the public disorderly conduct statute." *Landrum v. Sarratt,* 352 S.C. 139, 141 (Ct. App. 2002). Statutes or ordinances that limit speech are only constitutional if the speech in question rises to the level of fighting words, and "[t]he fact that words are vulgar or offensive is not alone sufficient to classify them as fighting words, thereby removing them from the protection provided by the First Amendment." *Id.* at 142,

citing *Gooding*, 405 U.S. at 527. The Town of Sullivan's Island charged and convicted the Appellant based solely on her use of insulting and profane language directed at the Complainant Uber Driver.

An extensive analysis of whether Appellant's speech rises to the level of 'fighting words' under the Town Ordinance is unnecessary. The Town explicitly elected **not** to prosecute the Appellant under subsection 132.08 (A)(18) of the ordinance concerning 'fighting words or gestures'.[2] SULLIVAN'S ISLAND, SC., ORDINANCE FOR DISORDERLY CONDUCT, § 132.08 (A)(18) (2023). Appellant's words did not "by their very utterance inflict injury or tend to incite an immediate breach of the peace," and did not arise to the level of fighting words garnering an "immediate violent response". *Bartow*, 997 F.3d at 208. Moreover, the Town Ordinance's requirement that the fighting words create 'turmoil', is not sufficient under the Constitution. As outlined in *Bartow*, the fighting words by their utterance must incite an immediate "violent response". *Id.* Furthermore, South Carolina jurisprudence holds that "profane language alone is insufficient to constitute a violation of the public disorderly conduct" ordinance. *See Sarratt*, 352 S.C. at 41.

B. The Town Ordinance is Unconstitutionally Vague and Offends Due Process.

The Trial Court erred in denying the Appellant's Motion to Dismiss on the basis that the Town Ordinance itself is unconstitutionally vague. The Ordinance fails to give

[2] "Any person who shall use "fighting words or gestures" directed toward any other person who becomes outranged and thus creates turmoil." SULLIVAN'S ISLAND, SC., ORDINANCE FOR DISORDERLY CONDUCT, § 132.08 (A)(18) (2023).

notice as to the conduct that is truly prohibited under many of the subsections in question. Furthermore, the subjective nature of the Ordinance offends the Constitution and was therefore misused to charge the Appellant for her Constitutionally protected speech. The Appellant was convicted solely based on offensive comments she made to the Complainant, which were not witnessed or heard by the public or any other person.

The United States Supreme Court has repeatedly struck down statutes and city ordinances similar to the Town Ordinance in this matter. However, statutes or ordinances such as this Ordinance will withstand facial constitutional challenges where the statute, as construed by the State's courts, "is not susceptible of application to speech, although vulgar or offensive, that is protected by the First and Fourteenth Amendments." *Gooding*, 405 U.S., citing *Cohen v. California*, 403 U.S. 15, 18-22 (1971).

The 4th Circuit has further bolstered this perspective in their recent decision in *Carolina Youth Action Project v. Wilson*, which considered the Constitutionality of the state of South Carolina's Disorderly Conduct Statute, specifically whether the statute could withstand the "void for vagueness" doctrine. *Manning v. Caldwell*, 930 F.3d 264, 272 (4th Cir. 2019) (en banc). That doctrine bars a State from taking away life, liberty, or property under a law that fails to "give a person of ordinary intelligence adequate notice of what conduct is prohibited" or lacks "sufficient standards to prevent arbitrary and discriminatory enforcement." *Id.*

The Fourth Circuit Court found that the State's statute failed to withstand the "void for vagueness" doctrine as applied to school children, stating that "[the Court is]

skeptical that [appellant's] statements "fuck you" and "fuck all of you" were fighting words under modern First Amendment doctrine. See *Bartow*, 997 F.3d at 211 (noting that the Supreme Court "has so narrowed the 'fighting words' exception that it has not upheld a criminal conviction under the doctrine since *Chaplinsky v. New Hampshire*, 315 U.S. 568, 62 S.Ct. 766, 86 L.Ed. 1031 (1942)] itself.") *Carolina Youth Action Project v. Wilson*, 60 F.4th 770, 785 (4th Cir. 2023).

The ruling, while focusing on the application of the statute to school children, provides substantial support for challenging other statutes and ordinances that are vague and fail to give adequate notice to citizens.

> The 4th Circuit held that the Constitution does not permit "criminal laws broadly drafted to serve as all-purpose tools of law enforcement." *See Goguen*, 415 U.S. at 575, 94 S.Ct. 1242 (admonishing legislators against "entrusting lawmaking to the moment-to-moment judgment of the policeman on his beat' ") (citation omitted); *Papachristou v. City of Jacksonville*, 405 U.S. 156, 165, 92 S.Ct. 839, 31 L.Ed.2d 110 (1972) (noting the danger associated with allowing the legislature to "set a net large enough to catch all possible offenders, and leav[ing] it to the courts to step inside and say who could be rightfully detained, and who should be set at large") (citation omitted); *Coates*, 402 U.S. at 614, 91 S.Ct. 1686 (explaining that the city is free to prohibit certain conduct through the enactment and enforcement of ordinances directed with reasonable specificity toward the conduct to be prohibited but cannot "constitutionally do so through the enactment and enforcement of an ordinance whose violation may entirely depend upon whether or not a policeman is annoyed"); *Chicago v. Morales*, 527 U.S. 41, 71, 119 S.Ct. 1849, 144 L.Ed.2d 67 (1999) (Breyer, J., concurring in part and concurring in the result) ("[The ordinance] is unconstitutional, not because a policeman applied his discretion wisely or poorly in a particular case, but rather because the policeman enjoys too much discretion in every case ... [a]nd if every application of the ordinance represents an exercise of unlimited discretion, then the ordinance is invalid in all its applications"); *Manning*, 930 F.3d at 276 (finding as unacceptable that application of the challenged phrase in an individual case would depend "entirely upon the

> prohibition philosophy of the particular individual enforcing the scheme at that moment").

Carolina Youth Action Project, 60 F.4th at 785. Ordinances and statutes by legislatures, both state and local, that restrict the First Amendment rights of its citizens cannot be vague and withstand due process challenges. The Fourth Circuit Court in the *Carolina Youth Action Project v. Wilson* decision held that:

> "because the [South Carolina] Disorderly Conduct Law provides no objective criteria by which to apply and enforce it, law enforcement perennially rely on subjective assessments of the kind of behavior that should be considered criminal, assessments based on the officers' personal opinions and predilections. This degree of unpredictability is not compatible with the protections afforded by due process." See *Goguen*, 415 U.S. at 575, 94 S.Ct. 1242 (holding as incurably standardless statutory language that allows policemen, prosecutors, and juries to pursue their personal predilections, stating that "[l]egislatures may not so abdicate their responsibilities for setting the standards of the criminal law")

Kenny v. Wilson, 566 F. Supp. 3d 447, 465 (D.S.C. 2021), *aff'd sub nom.. Carolina Youth Action Project*, 60 F.4th at 770.

The Fourth Circuit Court found that South Carolina's Disorderly Conduct Statute "is vague because of 'the intractability of identifying the applicable legal standard.' *Kolbe*, 849 F.3d at 149 (citing *United States v. Williams*, 553 U.S. 285, 306 (2008)) ('What renders a statute vague is not the possibility that it will sometimes be difficult to determine whether the incriminating fact it establishes has been proved; but rather the indeterminacy of precisely what that fact is')"; *Kenny v. Wilson*, 566 F. Supp. 3d 447, 467 (D.S.C. 2021), *aff'd sub nom. Carolina Youth Action Project*, 60 F.4th at 770. The Fourth Circuit noted the South Carolina Disorderly Conduct Statute allows for the criminal prosecution of "just

about any minor perceived infraction," without providing notice as to "the type of conduct that will lead to an arrest." *Id*.

The South Carolina's Disorderly Conduct statute was not saved by the inclusion of a scienter requirement. The Fourth Circuit noted:

> Defendant argues that the term "willfully" creates an element of knowledge and thereby provides notice of the prohibited conduct. It is true that a scienter requirement "may mitigate a law's vagueness, especially with respect to the adequacy of notice to the complainant that his conduct is proscribed." *Village of Hoffman Estates*, 455 U.S. at 499, 102 S.Ct. 1186… However, the term willful is used alternatively with the term "unnecessary"; therefore, a student could be held in violation of the statute having acted without knowledge or intent.

Kenny v. Wilson, 566 F. Supp. 3d 447, 470 (D.S.C. 2021), *aff'd sub nom. Carolina Youth Action Project,* 60 F.4th at 770. In this case, the charge against the Appellant is based solely on her use of insulting and profane language against the Complainant. The town ordinance that supplies the description of criminal disorderly conduct is undeniably similar to the South Carolina state statute partially overruled by the Fourth Circuit.

The Town Ordinance fails to deliver an objective standard of what is indeed criminal disorderly conduct and leaves the determination in the hands of the police who must "rely on subjective assessments of the kind of behavior that should be considered criminal, assessments based on the officers' personal opinions, and predilections". *Carolina Youth Action Project*, 60 F.4th at 770. The Town Ordinance also contains a scienter requirement in which 'willfully' is used to impart some form of notice. Here, the terms willfully and unnecessary are not used alternatively. See *Kenny v. Wilson*, 566 F. Supp. 3d 447, 470

(D.S.C. 2021), *aff'd sub nom. Carolina Youth Action Project*, 60 F.4th at 770. Furthermore, the ordinance fails to give adequate notice of the actual conduct that could earn criminal penalties. The Town Ordinance prohibits "boisterous conduct", among many other behaviors, allowing for the criminal prosecution of "just about any minor *perceived* infraction," without providing notice as to "the type of conduct that will lead to an arrest." Accordingly, the Appellant's right to due process was violated as she was incapable of knowing what kind of behavior could be deemed disorderly. *Id.*

This Court ruled on a constitutional question extremely similar to the issue Appellant now raises in the present case. In 2010, the South Carolina Supreme Court overturned a conviction and found a Greenville city ordinance was unconstitutionally vague. *City of Greenville v. Bane*, 390 S.C. 303 (2010). In *Bane*, this Court found the Greenville ordinance was unconstitutionally vague holding:

> The concept of vagueness or indefiniteness rests on the constitutional principle that procedural due process requires fair notice and proper standards for adjudication. The primary issues involved are whether the provisions of a penal statute are sufficiently definite to give reasonable notice of the prohibited conduct to those who wish to avoid its penalties and to apprise Judge and jury of standards for the determination of guilt. If the statute is so obscure that men of common intelligence must necessarily guess at its meaning and differ as to its applicability, it is unconstitutional. *City of Beaufort v. Baker,* 315 S.C. 146, 152, 432 S.E.2d 470, 473-74 (1993) (quoting *State v. Albert,* 257 S.C. 131, 134, 184 S.E.2d 605, 606 (1971)).

*City of Greenville v. Ban*e, 390 S.C. 303, 308 (2010). The provisions in the Greenville ordinance were found to be too subjective because the words that humiliated, insulted, or scared one person may not have the same effect on another person.

The similarities between *Bane* and the present case are compelling. Both cases involve unpleasant comments and vague city ordinances where the primary elements of the offense allow for very disparate interpretations of the prohibited conduct. This Court found the words "humiliate," "insult," and "scare" unconstitutionally vague. Appellant asks this same Court to apply the same analysis in *Bane* to the words used in the Town's Ordinance, such as "alarm," "disorder," or "nuisance," and phrases like "Makes or causes to be made any loud, boisterous and unreasonable noise or disturbance to the annoyance of any other persons nearby"[3] Applying the standard in *Bane* to the present case results in an undeniable conclusion; the relevant subsections of the Town's Disorderly Conduct Ordinance are unconstitutional.

II. THE TRIAL COURT ERRED BY ALLOWING THE STATE TO PROCEED AGAINST THE APPELLANT UNDER MULTIPLE ORDINANCE SUBSECTIONS THAT WERE NOT SPECIFIED ON THE CHARGING DOCUMENT IN VIOLATION OF DUE PROCESS AND FURTHER ERRED BY DENYING APPELLANT'S MOTION FOR A DIRECTED VERDICT.

A. Failure To Charge with Specificity Violates Due Process.

The Trial Court erred in denying the Appellant's Request to Charge and Motion for the State to provide a more definite statement or charge a specific subsection under The Town of Sullivan's Island Disorderly Conduct Ordinance § 132.08 (formerly 14-8), which contains eighteen (18) subsections of various conduct prohibited[4].

[3] SULLIVAN'S ISLAND, SC., ORDINANCE FOR DISORDERLY CONDUCT, § 132.08 (A)(8) (2023).
[4] SULLIVAN'S ISLAND, SC., ORDINANCE FOR DISORDERLY CONDUCT, § 132.08 (2023).

A Defendant in a criminal case has the right to be made aware of the specific charge or charges against them, including the specifics of the allegations in support of those charges, in order to prepare a defense. Prior to opening statements, and outside the presence of the jury, Counsel for the Appellant made a motion *in limine* to dismiss the charge for lack of a definite allegation or, alternatively, direct the State to elect a specific subsection of the ordinance in which to proceed. The trial court denied this motion, but the State announced in response its intention to proceed against the Appellant by electing six (6) of the eighteen (18) subsections of the Town Ordinance.

The Trial Court permitted the State to proceed against the Appellant on the day of trial without prior notice, with a varied '*dealer's choice*' assortment of subsections under the Town Ordinance in violation of the Appellant's due process and constitutional rights. The subsections of the Town Ordinance are significantly varied in their prohibited conduct and underlying elements as referenced *infra*.

The State elected the following six (6) subsections of the ordinance:

> (A) A person shall be guilty of disorderly conduct if, with the purpose of causing public danger, alarm, disorder or nuisance, or if his or her conduct is likely to cause public danger, alarm, disorder or nuisance, he or she willfully does any of the following acts in a public place or within public view:
>
> …
>
> (4) Interferes with another's pursuit of a lawful occupation by acts of violence.
>
> …
>
> (7) Addresses abusive language or threats to any police officer, any other authorized official of the town who is engaged in the lawful performance of his or her duties, or any other person when such words

> have a direct tendency to cause acts of violence. Words merely causing displeasure, annoyance or resentment are not prohibited;
>
> (8) Makes or causes to be made any loud, boisterous and unreasonable noise or disturbance to the annoyance of any other persons nearby, or near to any public highway, road, street, lane, alley, park, square or common, whereby the public peace is broken or disturbed, or the public annoyed;
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> (9) Is in a public place under the influence of an intoxicating liquor or drug in such a condition as to be unable to exercise care for his or her own safety or the safety of others;
> …
> (12) Makes or causes to be made any loud, boisterous or unreasonable noise or disturbance to annoy other persons nearby, or near to any public highway, road, street, lane, alley, park, square, or common, whereby the public peace is broken or disturbed or the traveling public annoyed;
> …
>
> (18) Any person who shall use "fighting words or gestures" directed towards any other person who becomes outraged and thus creates turmoil.

SULLIVAN'S ISLAND, SC., ORDINANCE FOR DISORDERLY CONDUCT, § 132.08 (2023).

Counsel for the Appellant made a contemporaneous objection, arguing that allowing the State to proceed in this manner violated the Appellant's Due Process Rights under the Fourteenth Amendment of the United States Constitution. The Sullivan's Island Municipal Court overruled the Appellant's objection and allowed the State to begin opening statements with the six (6) alleged subsection violations to be factually determined by the jury.

After the conclusion of the State's case, the Appellant renewed all prior motions and objections and moved for a directed verdict, which was summarily denied by the Trial

Court. Then, prior to the start of closing arguments, the State elected to withdraw four (4) of the six (6) charged subsections, further compounding the violations of the Appellant's constitutional rights and due process protections. The State and Appellant proceeded with closing arguments to the jury, who were then instructed by the trial court solely on the two remaining subsections of the Town Ordinance, both of which describe the same conduct, with the only difference being the class of the public affected by the alleged conduct:

> (A) A person shall be guilty of disorderly conduct if, with the purpose of causing public danger, alarm, disorder or nuisance, or if his or her conduct is likely to cause public danger, alarm, disorder or nuisance, he or she willfully does any of the following acts in a public place or within public view:
>
> …
>
> (8) Makes or causes to be made any loud, boisterous and unreasonable noise or disturbance to the annoyance of any other persons nearby, or near to any public highway, road, street, lane, alley, park, square or common, whereby the public peace is broken or disturbed, or the public annoyed;
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> …
>
> (12) Makes or causes to be made any loud, boisterous or unreasonable noise or disturbance to annoy other persons nearby, or near to any public highway, road, street, lane, alley, park, square, or common, whereby the public peace is broken or disturbed or the traveling public annoyed;

SULLIVAN'S ISLAND, SC., ORDINANCE FOR DISORDERLY CONDUCT, § 132.08 (2023).

The Trial Court erred in denying the Appellant's motion for the State to provide a more definite statement or charge a specific subsection under the Disorderly Conduct Town Ordinance. The Trial Court's ruling on the Appellant's various motions put the Appellant in an untenable position, unable to effectively assert her rights and defenses without the State putting forth the alleged conduct that was prohibited. Thus, the

Appellant's Due Process Rights afforded to her under the 14th Amendment of the United States Constitution were violated.

III. THE TRIAL COURT ERRED BY DENYING THE APPELLANT'S EVIDENTARY MOTIONS TO SUPPRESS THE 'THREE-MINUTE VIDEO' CLIP.

The Trial Court erred in denying the Appellant's two evidentiary motions to suppress the 'three-minute' video clip on the basis of prejudice and chain of custody. T]he admission of evidence is within the discretion of the trial court and will not be reversed by this Court absent an abuse of discretion." *State v. McDonald*, 343 S.C. 319, 325 (2000) (citing *State v. Smith*, 337 S.C. 27, 34 (1999)). "An abuse of discretion occurs when the trial court's ruling is based on an error of law." *Id.* (citing *Clark v. Cantrell*, 339 S.C. 369, 389 (2000)).

The Trial Court erred by not granting the Appellant's first evidentiary motion for suppression of the video clip on the basis that the clip was not the 'entire video' of the incident and, therefore, prejudicial. The Trial Court further erred by not granting the Appellant's second evidentiary motion to suppress this same 'three-minute video clip' on the basis of deficiencies in the chain of custody related to the Complainant's delivery of the video clip to the Town of Sullivan's Island Police Department.

CONCLUSION

Portions of the Town of Sullivan's Island Disorderly Conduct Ordinance relevant to this case criminalize private speech that is protected by the First Amendment. The Town Ordinance is unconstitutionally vague, offends due process, and has a chilling effect on

protected speech. Moreover, the vagueness of the Town Ordinance creates a scenario for wildly disparate outcomes and burdens police with unconstitutional discretion in the enforcement of this law. Additionally, allowing the State to proceed against Appellant without prior notice, under a variety of Ordinance subsections and alleged prohibited conduct, violates due process protections under the law. Finally, incomplete video evidence that depicts only one 'side' of an interaction between two people, which was recorded, selected, and produced by an aggrieved party and the prosecution's sole fact witness, is clearly prejudicial, demanding suppression.

Appellant respectfully asks this Court to overturn her conviction, reverse the Circuit Court's finding that the Trial Court made no error of law, and void relevant portions of the Town's Disorderly Conduct Ordinance as unconstitutional.

Respectfully submitted,

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s/ C. Austin Elliott
C. Austin Elliott, Esq.
Kulp & Elliott – Attorneys at Law
116 Church Street, 3rd Floor
Charleston, SC 29403
SC Bar # 100072
Attorney for Appellant