

**NOTICE OF APPEAL FROM COMMON PLEAS REGARDING A  
CONVICTION IN MAGISTRATES OR MUNICIPAL COURT**

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM AIKEN COUNTY  
Court of Common Pleas

Doyet A. Early III, Circuit Court Judge

Case No. 2013-CP-02-01419

The City of Aiken,

Respondent,

v.

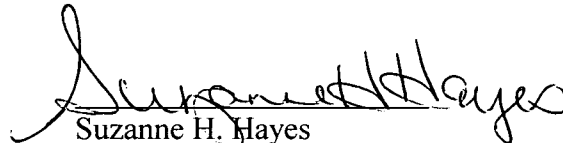
Larry D. Smith,

Appellant.

NOTICE OF APPEAL

Larry D. Smith appeals the order of the Honorable Doyet A. Early III, dated September 5, 2013, which affirmed his conviction in municipal court. Appellant received written notice of the order on October 3, 2013.

October 8, 2013



Suzanne H. Hayes  
Assistant Public Defender  
Post Office Box 2247  
Aiken, South Carolina 29802  
(803) 642-1732  
Attorney for Appellant

Other Counsel of Record:  
Paige E. Tiffany  
City Solicitor  
Post Office Box 1177  
Aiken, South Carolina 29802  
(803) 642-7654  
Attorney for Respondent

**RECEIVED**

OCT 15 2013

**S.C. SUPREME COURT**

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM AIKEN COUNTY  
Court of Common Pleas

Doyet A. Early III, Circuit Court Judge

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Case No. 2013-CP-02-01419

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The City of Aiken,

Respondent,

v.

Larry D. Smith,

Appellant.

PROOF OF SERVICE

I, Loretta Walker, do hereby certify that I have this day served the original of Appellate's Notice to Appeal upon the South Carolina Supreme Court, and copies of Appellate's Notice of Intent to Appeal to the Clerk of Court of Aiken County, and to Paige E. Tiffany, City Solicitor by placing same in the United States Mail properly addressed and with correct postage affixed thereto:

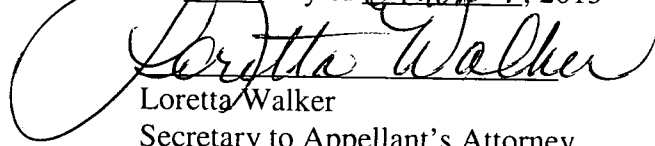
Supreme Court of South Carolina  
Post Office Box 11330  
Columbia, SC 29211

South Carolina Commission  
Of Appellate Defense  
P. O. Box 11589  
Columbia, SC 29211

Clerk of Court  
Aiken County Judicial Circuit  
Post Office Box 583  
Aiken, SC 29802

Paige E. Tiffany  
City Solicitor  
City of Aiken  
Post Office Box 1177  
Aiken, SC 29802

Dated this <sup>9<sup>th</sup></sup> day of October, 2013

A large, elegant handwritten signature in cursive script that reads "Loretta Walker". The signature is written in black ink and is positioned over the printed name and title.

Loretta Walker

Secretary to Appellant's Attorney

Post Office Drawer 2247

Aiken, SC 29802

803-642-1732

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF AIKEN )  
 )  
 )  
 City of Aiken, )  
 )  
 Respondent, )  
 vs. )  
 )  
 Larry Daniel Smith, )  
 )  
 )  
 Appellant. )

IN COMMON PLEAS COURT  
 FOR THE SECOND JUDICIAL CIRCUIT  
 Civil Number 2013-CP-02-01419

ORDER

Case Number 2013-CP-02-01419  
 Citation Number 72184 GA  
 Offense: Failure to Comply

STATE OF SOUTH CAROLINA  
 COUNTY OF AIKEN  
 I, Liz Godard, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

SEP 27 2013

*Liz Godard*  
 C.C.C.P. & G.S., Aiken County, S.C.  
 Deputy Clerk

Larry Daniel Smith was convicted in the City of Aiken Municipal Court under the City Ordinance Failure to Comply. A Motion for a New Trial was denied by the Trial Judge. The Defendant filed a timely appeal which was heard by this Court on August 29, 2013. Suzanne Hayes, Esq. represented the Appellant and Paige E. Tiffany, City Solicitor represented the Respondent.

FACTUAL HISTORY

On January 17, 2013, Sgt. Dowdy of Aiken Department of Public Safety responded to an urgent call from a hysterical female located at 231 Union Street in reference to a man in her house threatening her and her companions with a loaded machine gun. As Sgt. Dowdy approached the house he observed three females keeping their distance from a male in a yellow sweatshirt standing in the roadway in front of the residence, later identified as the Appellant. The females were yelling that the Appellant had a gun so as he approached the Appellant, Sgt. Dowdy ordered him to show his hands and remain still. The Appellant responded by yelling an expletive and charged the officer in an aggressive manner with his fists clenched. Cpl. Griswold, with Aiken Department of Public Safety, attempted to halt the Appellant's forward progress towards Sgt. Dowdy with a take-down maneuver. The Appellant then turned and approached

FILED 9.27 2013  
*Liz Godard*  
 C.C.C.P. & G.S.  
*Paige E. Tiffany* 10:45 am

*MAE*  
*#1*

Cpl. Griswold in the same aggressive manner. Sgt. Dowdy then deployed the Taser X26 to gain control of the Appellant who was then placed under arrest and charged with Pointing and Presenting a Firearm, Disorderly Conduct and Failure to Comply. The Appellant plead guilty to the weapons charge and received a three year sentence in General Sessions Court and requested a jury trial for his Municipal Court charges. A jury found him guilty of both counts on July 9, 2013, and the Appellant was sentenced to 30 days in jail for each count but was given credit for time served. The Appellant has challenged the constitutionality of the Aiken City Code, Chapter 22, Article I, Section 22-3(b) which reads: "It shall be unlawful for any person to willfully fail or refuse to comply with a lawful order or direction of a city public safety officer, while such officer is about the duties of his office within the city or upon properties owned by the city." The Appellant has claimed that the City's Ordinance for Failure to Comply is vague and/or overbroad.

### LAW/ANALYSIS

A City Ordinance is considered constitutional because it is created by a legislative body. Southern Bell Telephone and Telegraph Co. v. City of Spartanburg, 285 S.C. 495, 331 S.E.2d 333 (1985). In addition, the Court possesses a very limited scope of review in cases involving a constitutional challenge to a statute. Joytime Distrib. & Amusement v. State, 338 S.C. 634, 640, 528 S.E.2d 647, 650 (1999) (per curiam). "All statutes are presumed constitutional and will, if possible, be construed so as to render them valid." Last v. MSI Const. Co., 305 S.C. 349, 352, 409 S.E.2d 334, 336 (1991) (citations omitted). The party seeking to invalidate the statute has the burden of proving beyond a reasonable doubt that the statute violates some provision of the constitution. State v. White, 348 S.C. 532, 537, 560 S.E.2d 420, 422 (2002).

*DAE*  
*11/2*

Further, our State Supreme Court reaffirmed their position in State v. Green, 397 S.C. 268, 724 S.E.2d 664 (2012), "When the issue is the constitutionality of a statute, every presumption will be made in favor of its validity and no statute will be declared unconstitutional unless its invalidity appears so clearly as to leave no doubt that it conflicts with the constitution." State v. Gaster, 349 S.C. 545, 549-50, 564 S.E.2d 87, 89-90 (2002). "This presumption places the initial burden on the party challenging the constitutionality of the legislation to show it violates a provision of the Constitution." State v. White, 348 S.C. 532, 536-37, 560 S.E.2d 420, 422 (2002).

### VAUGENESS

Appellant argues that the City Ordinance for Failure to Comply is unconstitutional on its face. Specifically Appellant argues that the provision is unconstitutionally vague. In determining whether a statute is vague, the Court held in City of Greenville v. Bane, 390 S.C. 303, 702 S.E.2d 112 (2010):

"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 (1999)

(quoting State v. Albert, 257 S.C. 131, 134, 184 S.E.3d 605, 606).

The Court in Town of Mount Pleasant v. Chimento, 401 S.C. 522 (2012) stated:

Handwritten signature and initials, possibly "JAE" and "11/3".

“A statute's constitutionality [for vagueness] is judged on an objective, not subjective, basis. *E.g., City of Greenville v. Bane*, 390 S.C. 303, 308, 702 S.E.2d 112, 114 (2010) (issues are whether the statute's terms are "sufficiently defined 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"). Moreover, in many cases, it is "up to the police . . . to determine just where [a statutory] line is drawn," for example, where the issue is obscenity, loitering, disturbing the peace, or driving under the influence. The fact that an officer must make a judgment call does not render a statute unconstitutionally vague, any more than does the fact that a determination of guilt ultimately turns on the evidence (i.e., facts and circumstances) adduced at trial.”

The Court in Town of Mount Pleasant v. Chimento, *supra*, also stated that one whose conduct clearly falls within the statutory proscription does not have standing to raise a void-for-vagueness challenge. They found that the respondents lacked standing to challenge the statute but also noted that a person of reasonable intelligence would understand the statute to prohibit the activity therein. The conduct of the Appellant in this case was clearly a violation of the City Ordinance. When an officer is attempting to gain control of a potentially deadly situation in which a suspect is belligerent, intoxicated and reported to have in his possession a loaded machine gun, an order to halt and show his hands is the type of lawful order an ordinary person of reasonable intelligence would understand needed to be followed.

The mere fact that it may be difficult to determine whether certain conduct falls within the statute does not render it unconstitutionally vague. United States v. Nat'l Dairy Prods. Corp., 372 U.S. 29, 32, 83 S. Ct. 594, 9 L.Ed.2d 561 (1963). Furthermore, simply because a statute contains an undefined term does not automatically make the statute vague, Lansdell v. State, 25 So.3d 1169, 1176 (Ala.Crim.App.2007), and words in the statute may be “measured by common understanding a practices,” see Curtis, 345 S.C. at 572, 549 S.E.2d at 599.

*JME*  
#4

A statute can be challenged as vague on its face or as applied. An as-applied challenge requires the moving party to show that the statute cannot be constitutionally applied to the defendant under the particular facts of the case. Chapman v. United States, 500 U.S. 453, 467-468, 111 S. Ct. 1919, 114 L.Ed.2d 524 (1991). A facial challenge, on the other hand, is “the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exist under which the Act would be valid.” United States v. Salerno, 481 U.S. 739, 745, 107 S. Ct. 2095, 95 L.Ed.2d 697 (1987). Thus, if the moving party fails to show that the statute is unconstitutional as applied to him, any facial challenge must necessarily fail because there is at least one circumstance where the statute would constitutionally apply. People v. Stuart, 100 N.Y. 2d 412 (2003), 797 N.E.2d 28, 765 N.Y.S.2d 1; see also City of Chicago v. Morales, 527 U.S. 41, 78 n. 1, 119 S. Ct. 1849, 144 L.Ed.2d 67 (1999) (Scalia, J., dissenting) (“[A] facial attack, since it requires unconstitutionality in all circumstances, necessarily presumes that the litigant presently before the court would be able to sustain an as applied challenge.”)

The Appellant’s argument fails on the first prong of the vagueness analysis. As a reasonable intelligent person, the Appellant should have understood that the Ordinance would prohibit him from failing to stop and show his hands to an officer of the law and instead aggressively approach him with his fists clenched. The authority to give lawful orders to control a potentially dangerous situation is an essential requirement for law enforcement.

### **OVERBREADTH**

The Appellant also argues that the City Ordinance is unconstitutional because it is overbroad. The Overbreadth doctrine is referred to as “manifestly strong medicine” that is



employed “sparingly, and only as a last resort.” Massachusetts v. Oaks, 491 U.S. 576, 109 S. Ct. 2633 (1989) quoting Broadrick v. Oklahoma, 413 U.S. 601, 613 (1973). Overbreadth is a judicially created doctrine designed to prevent the chilling of protected expression. An overbroad statute is not *void ab initio*, but rather voidable, subject to invalidation notwithstanding the defendant’s unprotected conduct out of solicitude to the First Amendment rights of parties not before the court.

Overbreadth is a challenge predicated on the First Amendment, and cannot be used except where the statute arguably suppresses protected speech or conduct. State v. Newman, 384 S.C. 395, 683 S.E.2d 268 (2009).

State v. Green, 397 S.C. 268, 724 S.E.2d 664 (2012). In discussing the overbreadth doctrine, the United States Supreme Court (“USSC”) has stated:

“According to our First Amendment overbreadth doctrine, a statute is facially invalid if it prohibits a substantial amount of protected speech. The doctrine seeks to strike a balance between competing social costs. On the one hand, the threat of enforcement of an overbroad law deters people from engaging in constitutionally protected speech, inhibiting the free exchange of ideas. On the other hand, invalidating a law that in some of its applications is perfectly constitutional — particularly a law directed at conduct so antisocial that it has been made criminal — has obvious harmful effects. In order to maintain an appropriate balance, we have vigorously enforced the requirement that a statute’s overbreadth be *substantial*, not only in an absolute sense, but also relative to the statute’s plainly legitimate sweep. Invalidation for overbreadth is strong medicine that is not to be casually employed.”

Aiken’s City Ordinance which prohibits a person from failing to comply with a lawful order or direction of a police officer is not a danger to a person’s First Amendment rights and is

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therefore not subject to the overbreadth doctrine. There is not a substantial risk that the Ordinance will prevent citizens from Constitutionally protect speech and conduct.

Based on the foregoing, Appellant has failed to show this Court how the Aiken City Code, Chapter 22, Article I, Section 22-3(b) as applied to the Appellant is unconstitutional, therefore, IT IS ORDERED that the Appellant's Appeal be, and hereby is, DENIED, and that the Appellant's conviction be AFFIRMED.

August     , 2013

*Sept 5*



\_\_\_\_\_  
Doyet A. Early, III  
Presiding Judge Common Pleas Court  
Second Judicial Circuit

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS  
2nd JUDICIAL CIRCUIT

COUNTY OF Aiken )

CASE NO.: 2013-CP-02-01419

City of Aiken )

**MOTION AND ORDER INFORMATION  
FORM AND COVERSHEET**

Plaintiff, )

vs. )

Larry Daniel Smith )

Defendant. )

Plaintiff's Attorney: Paige E. Tiffany, Bar No. 5916 Address: P.O. Box 1177 Aiken, SC 29802 Phone: (803)642-7658 Fax (803)643-4777 E-mail: ptiffany@cityofaikensc.gov Other: _____	Defendant's Attorney: Suzanne Higgins Hayes, Bar No. _____ Address: P.O. Box 2247 Aiken, SC 29802 Phone: (803)642-1732 Fax (803)642-1739 E-mail: shayes@aikenpd.com Other: _____
<input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input checked="" type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
<b>SECTION I: Hearing Information</b>	
Nature of Motion: _____ Estimated Time Needed: _____ Court Reporter Needed: <input type="checkbox"/> YES / <input type="checkbox"/> NO	
<b>SECTION II: Motion/Order Type</b>	
<input type="checkbox"/> Written motion attached <input checked="" type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
Signature of Attorney for <input checked="" type="checkbox"/> Plaintiff / <input checked="" type="checkbox"/> Defendant <span style="float: right;">8/29/13 Date submitted</span>	
<b>SECTION III: Motion Fee</b>	
<input type="checkbox"/> PAID - AMOUNT: \$ _____ <input type="checkbox"/> EXEMPT: (check reason)	
<input type="checkbox"/> Rule to Show Cause in Child or Spousal Support <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC) <input checked="" type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ <input type="checkbox"/> Other: _____	
<b>JUDGE'S SECTION</b>	
<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE CODE _____  Date: _____
<b>CLERK'S VERIFICATION</b>	
Collected by: _____ Date Filed: _____ <input type="checkbox"/> MOTION FEE COLLECTED: \$ _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: \$ _____	

FILED 927 2013  
*Liz Godard*  
C.C.P.&G.S.

FORM 4

STATE OF SOUTH CAROLINA  
 COUNTY OF AIKEN  
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE  
 CASE NUMBER 2013CP0201419

Aiken City Of	Larry Daniel Smith
---------------	--------------------

PLAINTIFF(S)	DEFENDANT(S)
Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant

**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.  See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):**
  - Rule 12(b), SCRPC;
  - Rule 41(a), SCRPC (Vol. Nonsuit);
  - Rule 43(k), SCRPC (Settled);
  - Other: \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**
  - Rule 40(j) SCRPC;
  - Bankruptcy;
  - Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
  - Other: \_\_\_\_\_
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
  - Affirmed;
  - Reversed;
  - Remanded;
  - Other: \_\_\_\_\_

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:**  See attached order; (formal order to follow)  Statement of Judgment by the Court:

**ORDER INFORMATION**

This order  ends  does not end the case.  
 Additional Information for the Clerk: \_\_\_\_\_

**INFORMATION FOR THE JUDGMENT INDEX**

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge	Judge Code	Date
<b>For Clerk of Court Office Use Only</b>		

9/27/2013

This judgment was entered on **September 27, 2013**, and a copy mailed first class or placed in the appropriate attorney's box on **September 27, 2013**, to attorneys of record or to parties (when appearing pro se) as follows:

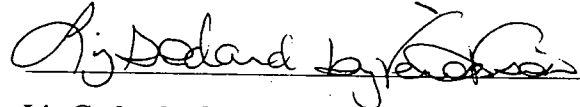
**Paige E. Tiffany** P.O. Drawer 1177 Aiken, SC 29802-1177

**Suzanne Higgins Hayes** PO Drawer 2247 Aiken, SC 29802

**ATTORNEY(S) FOR THE PLAINTIFF(S)**

**ATTORNEY(S) FOR THE DEFENDANT(S)**

**Court Reporter**



**Liz Godard - Clerk of Court**

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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**CERTIFIED MAIL™**

**Second Judicial Circuit Public Defender**  
P.O. Drawer 2247  
Aiken, SC 29802

neopost<sup>SM</sup>  
10/10/2013

**USPOSTAGE**

FIRST-CLASS MAIL

**\$06.51<sup>00</sup>**



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041L11219893



7007 2680 0000 2163 2514

*Supreme Court of South Carolina*  
*Post Office Box 11330*  
*Columbia, SC 29211*