

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

Hon. Diane Schafer Goodstein, Circuit Court Judge

RECEIVED  
MAY 12 2016  
SC SUPREME COURT

Case No. 2014-CP-40-05599

Johnnie L. Clark and Harriet Clark. .... Appellants,

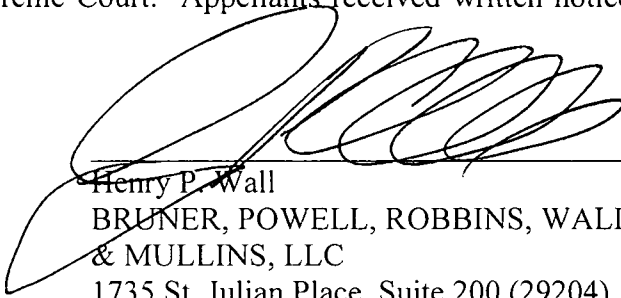
v.

The City of Columbia..... Respondent.

NOTICE OF APPEAL

Johnnie L. Clark and Harriet Clark appeal the order of the Honorable Diane Schafer Goodstein, Circuit Court Judge, dated April 14, 2016, but filed April 18, 2016, and served by mail on April 21, 2016, denying their appeal from the City of Columbia Municipal Court which imposed a prison sentence and criminal fine for alleged noise ordinance violations during the conduct of Christian worship services inside the Appellants' church building. This case raises significant issues of law arising under the First Amendment of the United States Constitution and therefore the appeal properly lies in the Supreme Court. Appellants received written notice of entry of this order on May 2, 2016.

May 11, 2016

  
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BRUNER, POWELL, ROBBINS, WALL  
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Lexington, SC 29072

THE STATE OF SOUTH CAROLINA  
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APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

Hon. Diane Schafer Goodstein, Circuit Court Judge

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Case No. 2014-CP-40-05599

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Johnnie L. Clark and Harriet Clark. .... Appellants,

v.

The City of Columbia.....Respondent.

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PROOF OF SERICE

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I certify that I have served the *Notice of Appeal by Appellants Johnnie L. Clark and Harriet Clark* by depositing a copy of it in the United States Mail, postage prepaid, on May 12, 2016, addressed to the Respondent The City of Columbia's attorneys of record, Jessica R. Mangum, Esquire at City Attorney's Office, 1401 Main Street, 10<sup>th</sup> Floor, Columbia, South Carolina 29201 and to the Appellants co-counsel of record for Johnnie L. Clark and Harriet Clark attorneys of record, Orin G. Briggs, Esquire, Briggs Law Firm, 101 Bennock Mill Ct., Lexington, South Carolina 29072.

  
Bridget S. Steele

May 12, 2016

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2014CP4005599

Johnnie L Clark

City of Columbia

Harriet Terry Clark

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: \_\_\_\_\_

Attorney for :  Plaintiff  Defendant or  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.
- 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
		\$
		\$
		\$

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 2112 Date \_\_\_\_\_

**For Clerk of Court Office Use Only**

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this 21 day of April, 2016 to attorneys of record or to parties (when appearing pro se) as follows:

Orin Gail Briggs

Henry Pickett Wall

Jessica Mangum

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter \_\_\_\_\_

Clerk of Court Jeanette W. McBride

RICHLAND COUNTY  
FILED  
2016 APR 20 PM 3:15  
JEANETTE W. MCBRIDE  
C. CLERK

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF RICHLAND )  
 )  
 City of Columbia, )  
 )  
 Respondent, )  
 )  
 v. )  
 )  
 Johnnie L. Clark and Harriet Clark, )  
 )  
 Appellants. )

IN THE COURT OF COMMON PLEAS  
 FIFTH JUDICIAL CIRCUIT

C/A No.: 2014-CP-40-05599

**ORDER**

2016 APR 18 PM 2:54  
 HARRIETTE W. HARRISON  
 C.C.P. & G.S.  
 NON-PAYABLE

This matter came before the Court on May 15, 2015, on an appeal from Johnnie L. Clark and Harriet Clark. Orin Briggs represented the Appellants and the City of Columbia (“City”) was represented by Jessica R. Mangum.

**BACKGROUND**

Johnnie L. Clark and Harriet Clark (“Appellants”) were cited for excessive noise in violation of Columbia, South Carolina Municipal Code § 8-67(c), stemming from incidents that took place on February 27, 2013; February 28, 2013; March 10, 2013; April 19, 2013; October 4, 2013; November 21, 2013; and April 4, 2014. Appellants were convicted of these violations following a jury trial on September 11, 2014. Appellant Johnnie L. Clark was sentenced to Two Thousand One Hundred Eighty-five dollars in fines and fourteen days jail, while Appellant Harriet Clark was sentenced to a fine of One Thousand ninety-two dollars and fifty cents or fifteen days. Appellants timely filed their appeal on September 12, 2014 and filed an amended appeal on September 17, 2014. On December 8, 2014, the municipal court filed a transcript of the proceeding below.

**STANDARD OF REVIEW**

“In a criminal appeal from the municipal court, the circuit court does not review the matter de novo; rather, the court reviews the case for preserved errors raised by appropriate exception.”

City of Greer v. Humble, 402 S.C. 609, 613, 742 S.E.2d 15, 17 (Ct. App. 2013). Furthermore, “the circuit court, sitting in its appellate capacity, may not engage in fact finding.” Rogers v. State, 358 S.C. 266, 270; 594 S.E.2d 278, 280 (Ct. App. 2004). On appeal from municipal court, “[t]he appeal must be heard by the Court of Common Pleas upon grounds of exceptions made and upon the papers required under this chapter, without the examination of witnesses in that court. . . . [T]he [circuit] court may either confirm the sentence appealed from, reverse or modify it, or grant a new trial.” S.C. Code Ann. § 18-3-70 (Supp. 2008).

### **GROUND FOR APPEAL**

Appellants assert five grounds for appeal. First, the Clarks argue the lower court erred in failing to give a jury instruction about their First Amendment rights of free speech and freedom of religion. Second, they argue the lower court should have instructed the jury about the City of Beaufort’s noise ordinance. Third, the Clarks claim the trial court erred in allowing a jury to be pulled when less than 40 available members of the jury pool were present. Fourth, the Clarks argue the trial court erred in relying on a circuit court order to deny the Appellants protection under the First Amendment. Finally, the Clarks claim the trial judge granted a broad definition of admissible evidence on behalf of the City, while enforcing a narrow definition of admissible evidence for the Appellants, and these evidentiary decisions amounted to an error of law.

### **DISCUSSION**

#### **1. First Amendment charge**

Appellants first argue the lower court erred in failing to give a First Amendment jury instruction. During the charge conference, the trial judge asked counsel for the City and counsel for the Appellants if there were any objections to the charges read or any additional charges requested. The Clarks responded, “No, no objection and no complaint, Your Honor.” See Tr. p. 152, lines 15-

16. Additionally, the Clarks said, "But I feel like they need some constitutional law and I would suggest a summary of the Edwards case, Your Honor." See Tr. p. 5, lines 16-17.

"Notwithstanding any request for legal instructions, the parties shall be given the opportunity to object to the giving or failure to give an instruction before the jury retires, but out of the hearing of the jury. Any objection shall state distinctly the matter objected to and the grounds for objection. Failure to object in accordance with this rule shall constitute a waiver of objection."

South Carolina Rules for Criminal Procedure: Rule 20, SCRCrimP.

"A proper objection should be sufficiently specific to bring into focus the precise nature of the alleged error so that it can be reasonably understood by the trial court". *State v. Wigington*, 375 S.C. 25, 35-36, 649 S.E.2d 185, 190 (Ct. App. 2007). Appellants' failure to object to the charge as given constitutes a waiver of their right to complain on appeal. *State v. Whipple*, 324 S.C. 43, 52, 476 S.E.2d 683, 688, (S.C. 1996). By Appellants' plain language during the jury trial conference, there was no objection to the trial court's charge. Any subsequent statements or suggestions made by the Clarks did not rise to the level of a proper objection as required by Rule 20. Therefore, this issue is not preserved, and this Court declines to address it.

## 2. City of Beaufort Noise Ordinance charge

During the charge conference, the Clarks requested a jury charge instruction that included the City of Beaufort noise ordinance. The court did not give the requested instruction, and the Appellants now assert reversible error.

An appellate court will not reverse the trial judge's decision regarding jury charges absent an abuse of discretion. *State v. Santiago*, 370 S.C. 153, 159, 634 S.E.2d 23, 26, (S.C. Ct. App. 2006) (citing *Clark v. Cantrell*, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000); *State v. Williams*, 367 S.C. 192, 624 S.E.2d 443 (Ct. App. 2005)). If there is any evidence to support a jury charge, the trial judge should grant the requested charge. *Id.* The refusal to grant a requested jury charge that

states a sound principle of law applicable to the case at hand is an error of law. *Id.* A charge is not required unless the evidence supports it. *Id.*

Here, the record does not support a jury charge on the City of Beaufort noise ordinance. At issue in this trial was whether the Clarks violated the City of Columbia noise ordinance. That ordinance makes it “unlawful for any person to operate, or cause or permit to be operated, any instrument or sound-producing or sound-amplifying device so loudly as to unreasonably disturb persons in the vicinity thereof or in such a manner as renders the instrument or device a public nuisance.” *Columbia, South Carolina Municipal Code* § 8-67(c). The City of Beaufort noise ordinance relies on decibel readings from a decibel meter and specific distance measurements related to where the noise was heard in relation to the original source of the noise. *See e.g., Beaufort, South Carolina Municipal Code* § 9-1008 (requiring decibel level of seventy decibels measured by sound level decimeter located fifty feet from the source). The two ordinances each have separate and distinct elements and require substantially different methods of proof.

During the charge to the jury, the trial court read the City of Columbia ordinance and therefore provided an instruction consistent with the evidence presented by both the City and the Appellants. There was no evidence presented that made the Beaufort noise ordinance applicable to the case at hand. The transcript includes no mention of decibel readings taken by the City of Columbia Police Department, nor was there any evidence in the record related to distance measurements taken. The City of Beaufort’s noise ordinance does not properly state the law of this case and likely would have served only to confuse the jury. Because the City of Beaufort noise ordinance has no applicability to the case at hand, the trial judge did not err in refusing to charge the jury on that ordinance.

**SCANNED**

### 3. Jury pool

In their Amended Notice of Appeal, the Clarks assert the trial court erred in allowing a jury to be pulled when less than 40 available members of the jury pool were present. However, there is nothing in the record to show this issue was raised at the lower court level. An issue not raised at trial is waived on appeal. *State v. Bailey*, 298 C.C. 1, 377 S.E.2d 581 (1989). During arguments before this Court, the Clarks' conceded they did not preserve this issue by objecting to the jury pool at the time of trial and thus the issue was waived. Therefore, this Court declines to address this issue.

### 4. First Amendment protections

The Clarks argue the lower court erred in relying on a circuit court order when deciding to deny them protection under the First Amendment. The record shows the trial court did a careful and thorough review of the law in this area and spent a great deal of time entertaining the Clarks' varied arguments related to this issue. After thoughtful consideration and review, the lower court found the ordinance was not unconstitutionally vague. For the following reasons, this Court agrees.

At issue in this case was whether the City's ordinance failed to give notice of prohibited conduct and was thus unconstitutionally vague. The traditional standard of unconstitutional vagueness is whether the terms of a statute are so indefinite that "men of common intelligence must necessarily guess at its meaning and differ as to its application." *Reeves v. McConn*, 631 F.2d 377, 383 (5th Cir. Tex. 1980). "This standard is applied even more strictly to statutes that inhibit free speech because of the value our society places on the free dissemination of ideas." *Id.*

SCANNED

The City relied on *City of Columbia v. Johnny Gardner*, a circuit court order from Judge L. Henry McKeller, presiding judge of the Court of Common Pleas in the Fifth Judicial Circuit. In *Gardner*, the City appealed a ruling from the Columbia Municipal Court holding City Ordinance § 2-2082 was unconstitutionally vague. That ordinance provided, "It shall be unlawful for any person to create, assist in creating, permit, continue or permit the continuance of any *unreasonably loud*, disturbing or unnecessary noise in the City." (emphasis added). In ruling for the City, Judge McKeller held "unreasonably loud" was not an unconstitutionally vague term. See, eg., *Kovacs v. Cooper*, 336 U.S. 77 at 89 (1949)(holding *loud* , while an abstract word, "has through daily use acquired a content that conveys to any interested person a sufficiently accurate concept of what is forbidden"); *Reeves v. McConn*, 631 F.2d 377, 382 (5th Cir. 1980) (holding "flexibility and reasonable breadth, rather than meticulous specificity," is acceptable in this area"). Moreover, the Fourth Circuit Court of Appeals held "unreasonably loud" was "invulnerable from [constitutional] attack[s]for vagueness. *Jim Crockett Promotion, Inc. v. Charlotte*, 706 F.2d 486, 489, 1983 U.S. (4th Cir. N.C. 1983).

The circuit court case and subsequent federal cases cited within it make it clear: "unreasonably loud" is not unconstitutionally vague. The Clarks had fair notice about prohibited conduct, and they cannot, therefore, claim protection under the First Amendment. The lower court correctly held the Clarks' First Amendment rights do not supersede the citizenry's rights to peace and general well-being. "The preferred position of freedom of speech in a society that cherishes liberty for all does not require legislators to be insensible to claims by citizens to comfort and convenience. To enforce freedom of speech in disregard of the rights of others would be harsh and arbitrary in itself. *Kovacs v. Cooper*, 336 U.S. 77 (U.S. 1949).

SCANNED

## 5. Evidentiary issues

Lastly, the Clarks claim the trial judge granted a broad definition of admissible evidence on behalf of the City, while enforcing a narrow definition of admissible evidence for the Appellants, and these evidentiary decisions amounted to an error of law. Specifically, the Clarks claim the trial judge erred in not allowed them to inquire into a victim/witness's affiliation with a church or other religious organization.

Generally, all relevant evidence is admissible. *State v. Pittman*, 373 S.C. 527, 578, 647 S.E.2d 144, 170 (S.C. 2007). Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." *Id.* (citing *South Carolina Rules of Evidence*: Rule 401, SCRE). However, relevant evidence may be excluded when its probative value is "substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury . . . ." *Id.* "Evidence is unfairly prejudicial in the context of Rule 403, if the evidence has an undue tendency to suggest a decision on an improper basis, such as an emotional one." *State v. Spears*, 393 S.C. 466, 479, 713 S.E.2d 324, 331(S.C. Ct. App. 2011). The trial court has wide discretion in ruling on the admissibility of evidence in a criminal case. *State v. Cheatham*, 349 S.C. 101, 106, 561 S.E.2d 618, 621 (S.C. Ct. App. 2002). The lower court will not be disturbed on appeal absent a clear abuse of discretion, amounting to an error of law. *Adamson v. Marianne Fabrics, Inc.*, 301 S.C. 204, 208, 391 S.E.2d 249, 251 (S.C. 1990). Rule 403, SCRE.

The trial court did not allow the Clarks to question victim/witness Shari Callahan about her personal affiliation with a church or other religious organization. The court did permit the Clarks to proffer testimony in an attempt to show relevance, and the court also allowed the Clarks to question the victim/witness about any religious bias or prejudice she might have. Based on the proffered testimony, and the Clarks' inability to show how the testimony was relevant, the court properly

excluded such testimony. The record shows a conscientious decision on the part of the trial court to exclude evidence that was not relevant. Additionally, the trial court correctly found that the prejudicial effects outweighed the probative value of any such evidence. See, *South Carolina Rules of Evidence*: Rule 403, SCRE. Therefore, the trial court did not err in excluding any testimony related to the victim's personal religious affiliation.

**ORDER**

For the foregoing reasons, the Court finds that the conviction of the lower court is affirmed, and that the Appellant's appeal **IS DENIED**.

**AND IT IS SO ORDERED.**

April 14, 2016  
~~June 2015~~  
Columbia, South Carolina  
J. Grog

  
DIANE SCHAFER GOODSTEIN  
Presiding Judge

**SCANNED**