

# SUPREME COURT OF SOUTH CAROLINA

## City of Greenville v. Bane, 390 S.C. 303

702 S.E.2d 112 (2010) · No. No. 26888 · Decided November 8, 2010

### SUMMARY

The Supreme Court of South Carolina reversed Joseph D. Bane's conviction under a City of Greenville ordinance prohibiting molesting or disturbing persons. The court held that the evidence did not support violations of subsections (1), (2), (4), or (5), and that subsection (3), which prohibited speech that would humiliate, insult, or scare another person, was facially unconstitutionally vague. The court declined to address the remaining overbreadth, as-applied, and religious-freedom challenges.

### CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|-----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of South Carolina                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| WRITING FOR THE COURT | Justice Pleicones; Chief Justice Toal; Justice Beatty; Justice Kittredge; Justice Hearn                                                                                                                                                                                                                                                                                                                                                                                                          |
| JURISDICTION          | South Carolina                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| DECIDED               | November 8, 2010                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| DOCKET                | No. 26888                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| DISPOSITION           | reversed                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| PROCEDURAL POSTURE    | Bane was convicted in Greenville municipal court of violating a city ordinance prohibiting molesting or disturbing others. The circuit court affirmed, and the South Carolina Supreme Court accepted certification under Rule 204(b), SCACR.                                                                                                                                                                                                                                                     |
| STANDARD OF REVIEW    | On a directed-verdict motion, the trial court considers the existence rather than the weight of the evidence; on appeal, the evidence is viewed in the light most favorable to the State. A directed verdict is proper when the State produces no direct or substantial circumstantial evidence reasonably tending to prove the offense. Constitutional vagueness is reviewed under whether the provision gives reasonable notice of prohibited conduct and adequate standards for adjudication. |
| PRECEDENTIAL VALUE    | Published opinion of the Supreme Court of South Carolina; precedential within South Carolina.                                                                                                                                                                                                                                                                                                                                                                                                    |
| PARTIES               | Joseph D. Bane v. City of Greenville                                                                                                                                                                                                                                                                                                                                                                                                                                                             |

## TOPICS

free speech   first amendment   void for vagueness   criminal procedure   appellate procedure

## PRACTICE AREAS

constitutional law   criminal procedure   municipal law   civil rights   appellate procedure

## QUESTIONS PRESENTED

1. Whether the municipal court properly denied Bane's motion for a directed verdict as to the ordinance's subsections (1), (2), (4), and (5).
2. Whether subsection (3) of Greenville Code § 24-32 was facially unconstitutional because it was impermissibly vague.
3. Whether the ordinance was unconstitutionally overbroad or unconstitutional as applied, and whether it violated the South Carolina Religious Freedom Act.

## HOLDINGS

1. Bane was entitled to a directed verdict of acquittal as to subsections (1), (2), (4), and (5) because the City presented no evidence that he engaged in conduct proscribed by those provisions.
2. Subsection (3), which prohibited molesting or disturbing a person through obscene remarks or remarks and actions that would humiliate, insult, or scare the person, was facially unconstitutional because the terms "humiliate," "insult," and "scare" were insufficiently definite.

## KEY QUOTATIONS

*"The concept of vagueness or indefiniteness rests on the constitutional principle that procedural due process requires fair notice and proper standards for adjudication."* (390 S.C. at 308)

*"We find subsection (3) is unconstitutionally vague because the words "humiliate," "insult," and "scare" are not sufficiently definite to give reasonable notice of the prohibited conduct."* (390 S.C. at 309)

## FACTUAL BACKGROUND

Bane, a street preacher, was loudly preaching against homosexuality on a public sidewalk in downtown Greenville. After he directed the statement "Faggots, you will burn in hell" toward three young women, an officer cited him under Greenville Code § 24-32. The City presented evidence concerning only the verbal comment and no evidence that Bane invited anyone into an automobile, followed anyone, displayed lewd behavior, or engaged in nonverbal conduct disturbing or molesting others.

## PROCEDURAL HISTORY

Bane was convicted and fined \$200 in municipal court after preaching against homosexuality on a public sidewalk and directing an insulting statement toward three women. The circuit court affirmed the conviction and upheld the ordinance. The South Carolina Supreme Court reversed, holding that Bane was entitled to a directed verdict on four subsections and that subsection (3) was facially unconstitutional for vagueness.

## DISPOSITION

reversed

## CASES CITED

- State v. Parris, 363 S.C. 477, 611 S.E.2d 501 (2005)
- Morris v. Anderson County, 349 S.C. 607, 564 S.E.2d 649 (2002)
- City of Beaufort v. Baker, 315 S.C. 146, 432 S.E.2d 470 (1993)
- State v. Albert, 257 S.C. 131, 184 S.E.2d 605 (1971)
- Edwards v. South Carolina, 372 U.S. 229, 83 S.Ct. 680, 9 L.Ed.2d 697 (1963)
- Futch v. McAllister Towing of Georgetown, Inc., 335 S.C. 598, 518 S.E.2d 591 (1999)

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