

**APPENDIX A Order from the Colorado Supreme Court denying Writ of Certiorari**

Colorado Supreme Court 2 East 14th Avenue Denver, CO 80203	DATE FILED: November 8, 2021
Certiorari to the District Court, Adams County, 2020CV86 Northglenn Municipal Court, CR-2020-05	
<b>Petitioner:</b>  Richard Roy Blake,  v.	Supreme Court Case No: 2021SC559
<b>Respondent:</b>  The People of the State of Colorado.	
ORDER OF COURT	

Upon consideration of the Petition for Writ of Certiorari to the District Court of Adams County and after review of the record, briefs, and the judgment of said District Court,

IT IS ORDERED that said Petition for Writ of Certiorari shall be, and the same hereby is, DENIED.

BY THE COURT, EN BANC, NOVEMBER 8, 2021.

**APPENDIX B Order from Adams District Court affirming conviction**

# EXHIBIT A

District Court, Adams County, Colorado 1100 Judicial Center Dr., Brighton, CO 80601	DATE FILED: June 23, 2021 5:13 PM CASE NUMBER: 2020CV86
Plaintiff/Appellee: City of Northglenn  Defendant/Appellant: Richard Blake	Case No. 20CV86 Div. C Ctrm. 505
Appeal from Municipal Court Case No. CR-2020-05 Hon. Amanda Bailhache	
<b>ORDER AFFIRMING CONVICTION</b>	

On January 4, 2020, Mr. Blake was cited for Obstructing Streets and Sidewalks in violation of Northglenn Municipal Code §9-11-16.5. On October 9, 2020, a 3-person jury found Mr. Blake guilty of Obstructing Streets and Sidewalks. A Notice of Appeal and Designation of Record was filed on October 30, 2020. An Opening Brief was filed on November 17, 2020. An Amended Opening Brief was filed February 5, 2021. An Answer Brief was filed February 24, 2021. No Reply Brief was filed.

Mr. Blake asserts his conviction should be overturned because:

1. The Northglenn Police Department violated 42 U.S.C. 1983 when they issued the citation. Amended Opening, p. 2;
2. The Northglenn City Attorney invented an outrageous and unconstitutional legal theory. Amended Opening, p. 2;
3. The trial judge violated Mr. Blake's due process and would not allow exculpatory evidence to be admitted and gave an improper instruction to the jury to disregard the unadmitted evidence, and the jury was prejudiced. Amended Opening, p. 3;
4. Northglenn Municipal Code §9-11-16.5 is void for vagueness under the Fourteenth Amendment and overbroad under the First Amendment. Amended Opening, p. 3;
5. Judicial animus was demonstrated against Mr. Blake. Amended Opening, p. 4;
6. Ineffective assistance of counsel. Amended Opening, p. 4

## **BACKGROUND FACTS**

At trial, Mr. Riahi, Mr. Blake, and Officer Hong testified. The transcript reflects the following testimony:

### **Mr. Riahi**

Mr. Riahi was working at the Northglenn Mosque on January 4, 2020, when he noticed Mr. Blake on the sidewalk outside of the mosque. TR(10/9/20), p. 66:13-16. Mr. Riahi watched a pedestrian and a bicyclist avoid Mr. Blake by moving into the street. TR, p. 67:5-6.

Mr. Riahi took out his cell phone to record Mr. Blake on the sidewalk. TR(10/9/20), p. 67:10-13. Mr. Riahi recorded a vehicle coming to a stop and engaging in a conversation with Mr. Blake. TR(10/9/20), p. 69:1-7. Mr. Riahi called the [Northglenn Police Department] after making the video recording of Mr. Blake and the vehicle due to the hazard posed by the vehicle that stopped in the right-hand lane of the road. TR(10/9/20), p. 67:17-19.

### **Mr. Blake**

Mr. Blake was “protesting the open house” in front of the mosque on January 4, 2020. TR(10/9/20), p. 147:2-7. Mr. Blake was on the sidewalk that borders the mosque’s property. TR(10/9/20), p. 147:10-11.

Mr. Blake admitted that he was holding a sign while standing on the sidewalk in front of the mosque. TR(10/9/20), p. 184:14-23. Mr. Blake would “get out of anybody’s way,” however, he also tries to hand out leaflets and talk to the people who are using the sidewalk. TR(10/9/20), p. 186:1-4.

On January 4, 2020, Mr. Blake spoke to someone in a truck while standing on the sidewalk and it was the only vehicle that stopped near him that day. TR(10/9/20), pg. 189:13-23.

### **Officer Hong**

Officer Hong testified that she was dispatched to respond to a call at the Northglenn Mosque on January 4, 2020. TR(10/9/20), p. 107:6-13. As Officer Hong arrived at the mosque she saw Mr. Blake in the roadway talking to a vehicle that was stopped on the road. TR(10/9/20), p. 108:3-4.

Officer Hong first spoke with Mr. Riahi. Mr. Riahi showed Officer Hong the cell phone video he recorded earlier. TR(10/9/20), p. 137:10, 20.

Officer Hong attempted to speak with Mr. Blake about the incident. Mr. Blake told Officer Hong that he had the right to be on the sidewalk and that he was not leaving the area in front of the mosque. TR(10/9/20), p. 137-138:20-25, 1. Officer Hong believed that Mr. Blake was obstructing the sidewalk and issued a citation and served it to Mr. Blake. (TR)138:2-4.

## **SUFFICIENCY OF APPELLATE BRIEFS**

The court finds it necessary to first address the sufficiency of Mr. Blake's appellate brief.

C.A.R. 28(a) requires appellate briefs to contain:

- (1) a certificate of compliance as required by C.A.R. 32(h);
- (2) a table of contents, with page references;
- (3) a table of authorities--cases (alphabetically arranged), statutes, and other authorities--with references to the pages of the brief where they are cited;
- (4) a statement of the issues presented for review;
- (5) a concise statement identifying the nature of the case, the relevant facts and procedural history, and the ruling, judgment, or order presented for review, with appropriate references to the record (see C.A.R. 28 (e));
- (6) a summary of the arguments, which must:
  - (A) contain a succinct, clear, and accurate statement of the arguments made in the body of the brief;
  - (B) articulate the major points of reasoning employed as to each issue presented for review; and
  - (C) not merely repeat the argument headings or issues presented for review;
- (7) the arguments which must contain:
  - (A) under a separate heading placed before the discussion of each issue, statements of the applicable standard of review with citation to authority, whether the issue was preserved, and if preserved, the precise location in the record where the issue was raised and where the court ruled; and
  - (B) appellant's contentions and reasoning, with citations to the authorities and parts of the record on which the appellant relies;
- (8) a short conclusion stating the precise relief sought; and
- (9) any request for attorney fees.

C.A.R. 28(a).

### **Legal Standard:**

An appellate court will ordinarily strike a plaintiff's brief that fails to meet the requirements of C.A.R. 28(a) and dismiss the appeal. *Bruce v. City of Colorado Springs*, 252 P.3d 30 (Colo. App. 2010). “[The] court will not search through briefs to discover what errors are relied on, and then search through the record for supporting evidence.” *Maudlin v. Lowery*, 127 Colo. 234, 236, 255 P.2d 977 (Colo. 1953). The purpose of C.A.R. 28(a) is to place the burden on the appellant to notify the court of the issue on appeal and where it is located in the record as the court is “under no obligation to undertake such a search” of the record. *O'Quinn v. Baca*, 250 P.3d 629, 631 (Colo. App. 2010).

In the rare instances that the courts have allowed a review of deficient appellate briefs, a “public interest” is cited as the cause for granting review. *Bruce*, 252 P.3d at 32. (citing *Barr Lake Vill. Metro. Dist. v. Colo. Water Quality Control Comm'n*, 835 P.2d 613, 615 (Colo. App. 1992). “Appellate courts should consider the full range of possible sanctions and select the most appropriate under the circumstances in a particular case.” *State for Use of Dept. of Corrections v. Pena*, 788 P.2d 143, 147 (Colo. 1990).

“By electing to represent himself [a] defendant subject[s] himself to the same rules, procedures, and substantive law applicable to a licensed attorney. A *pro se* defendant cannot legitimately expect the court to deviate from its role of impartial arbiter and accord preferential treatment to a litigant simply because of the exercise of the constitutional right of self-representation.” *People v. Romero*, 694 P.2d 1256, 1266 (Colo. 1985). E.g., *Loomis v. Seely*, 677 P.2d 400, 402 (Colo. App. 1983); *Negron v. Golder*, 111 P.3d 538, 541 (Colo. 2004); *Knapp v. Fleming*, 127 Colo. 414, 415, 258 P.2d 489, 490 (1953).

“If a litigant, for whatever reason, sees fit to rely upon his own understanding of legal principles and the procedures involved in the courts, he must be prepared to accept the consequences of his mistakes and errors.” *Viles v. Scofield*, 128 Colo. 185, 261 P.2d 148 (1953).

In *Bruce*, the court recognized that the plaintiff's brief “contain[ed] no table of contents, [no] table of cases, [no] statement of the issues presented for review, [no] summary of the argument or any designation to the record other than bare references to certain exhibits. The brief also lack[ed] case citations, applicable standards of review, and certifications that the brief compl[ied] with C.A.R. 28.” Despite those flaws, the appeal was considered by the court because the matter was of “public concern” as it dealt with a citizen's ability to name a proposed ballot initiative.

Conversely, in *Maudlin*, the plaintiff's brief “contained no subject index and no summary of the argument...and no other provision for advising [the] court of the grounds relied on for reversal. There [was] no separate statement of the case, as required by [r]ule...and the part of the brief which might be considered as intended for such statement is intermingled with argument; the statement of facts is not supported by references to folio number of the record, and the verdict and judgment sought to be review[ed] are not set forth.” Based on the listed deficiencies, the court denied the plaintiff's request for reversal of judgment.

Additionally, in *O'Quinn, supra*, both parties failed to direct the court to a place in the record where the constitutionality of an issue was raised and ruled upon. The court declined to consider the issues raised in the briefs.

#### **Analysis:**

In the present case, Mr. Blake's appellate brief contains a certification of compliance, table of contents with page references, table of authorities (not arranged alphabetically) with references to the pages where they are cited, and a statement of the issues presented for review. [Amended Opening Brief of Mr. Blake, "Def. Brief" 1-8].

Mr. Blake's "Statement of the Case" contains relevant facts such as the date and location of the incident and the officer who issued the citation. [*Id.* at 9-13]. Mr. Blake's "Statement of the Case" does not contain the procedural history, nor does it address the ruling, judgment, or order presented for review and it does not contain any references to the record. [*Id.*].

Mr. Blake's "Argument Summary" is a 4-paragraph statement of his legal allegations. He quotes the municipal code under which he was issued a citation. Mr. Blake's brief does not contain a succinct, clear, and accurate statement of the arguments made in the body of his brief. It does not articulate the major points of reasoning employed as to each issue presented for review. It does not merely repeat the argument headings or issues presented for review. Mr. Blake's "Argument Summary" uses a combination of the language in the argument headings and issues presented. [*Id.*].

Mr. Blake's arguments in the brief begin with the term "Issue" in bold followed by the number of the issue being discussed and a colon. [*Id.* at 14, 17, 18, 20, 22, 25]. Following that title, Mr. Blake makes statements about his reasoning for being issued the citation, and then he begins citing statutes and case law he believes supports his argument. [*Id.* at 14-27].

The "Standard of Review" header is next in Mr. Blake's brief and contains a single statement of either "De novo" or "Reasonableness." No authorities are cited. [*Id.*].

The next heading in the brief is titled "Preservation" and contains two references to the trial transcript as well as excerpts from those references. This is done only for the first issue discussed, and for the remaining five issues, under the "Preservation" header, is the statement: "Same as described in the Preservation section of Issue One." [*Id.*].

The final header is titled "Discussion" and contains Mr. Blake's contentions and reasoning with citations to the record but no citations to the authorities. The "Discussion" section for Issue 2 contains a single statement: "Please see Statement of the Case". [*Id.*].

Mr. Blake's brief contains a short conclusion seeking a reversal and remand of the municipal court's judgment [*Id.* at 27].

Mr. Blake's brief does not contain a specific request for attorney fees, however, he does request the appellate court order "any sanctions that the court sees fit to impose on the trial court." [Id.].

Mr. Blake's appellate brief meets most of the procedural requirements of C.A.R. 28(a). However, it is lacking or devoid of the substantive requirements contained in C.A.R. 28(a)(4)-(7). Mr. Blake's statement of the case consists primarily of a narrative of his past experiences with the Northglenn Mosque and the Northglenn Police Department and contains little, if any, of the procedural history of the case. Mr. Blake's summary of the arguments is not "succinct, clear and accurate" and his arguments do not connect the facts on appeal to the legal authorities he cites. For example, the argument in "Issue 1" of the brief begins:

Mr. Blake/Appellant is of the firm belief that the issuance of a ticket and threatened arrest of him, was precipitated by an unconstitutional effort by the NPD to manufacture a premise with which to deprive him of his Constitutional rights "under color of the law." [Id. at 14].

The brief then cites "Title 42 U.S.C. § 1983" and quotes portions of the code. This is followed by a citation to "TITLE 18, U.S.C., SECTION 242" as a means of defining "color of law." Next is a citation to "Cf. 325 USC 111" as a basis for his "under color of law" argument. Next is citations to "Screws v. US (quoting Justice Douglas)"; "Bivens v. Six Unknown Agents of the Federal Bureau of Narcotics 403 US 388 (1971)"; "Monroe v. Pape 365 US 167, 222 (1961); and "Mesa v. California 489 121 (1989)." The statutes cited relate to civil remedies and are inapplicable to this appeal. The cited cases fail to connect Mr. Blake's arguments with relevant case law and are not "cogent arguments."

Similarly, two of the issues in the Statement of the Issues Presented are confusing to this Court. The second issue presented refers to an "unconstitutional legal theory" presented by the city prosecutor but does not indicate which statutes or Amendments were violated. The same is true for his fifth issue presented which alludes to the trial court's "unconstitutional animus" towards Mr. Blake without citing which statutes or Amendments were violated. [Id. at 8-9].

Furthermore, in the second, fifth and sixth issue presented Mr. Blake cites an unknown standard of review of "Reasonableness" without citing to any legal authority to support this standard. [Id. at 18, 22, 25].

Finally, Mr. Blake's contention that "[a]ll issues were preserved in pre-trial motions and hearings and at trial" without any citation to the record is wholly inadequate and would force this Court to search the record to confirm that the issues were raised and how the trial court ruled. [Id. at 16].<sup>1</sup>

This Court acknowledges the fact that while Mr. Blake was represented by counsel at trial, he now proceeds as a *pro se* litigant on this appeal. However, Mr. Blake is still held to the same standards as a licensed attorney and he must accept the results of his *pro se* representation.

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<sup>1</sup> The court notes that Appellee found similar difficulties with Appellant's brief and drafted its Answer Brief based on its understanding of the issues and arguments presented. [Appellee Answer Brief, 3-4].

Mr. Blake's first, second, third and fifth issues presented do not contain "cogent arguments." Each issue cites an unrecognized standard of review. Additionally, Mr. Blake does not provide any citations to the record that indicate these issues were raised with the trial court and how the court ruled. This Court will not "undertake such a search" of the record to determine which, if any, issues relate to Mr. Blake's arguments in issues 1, 2, 3 and 5. Due to the aforementioned reasons, and considering the "full range of sanctions," this Court dismisses Mr. Blake's claims for issues 1, 2, 3, and 5 as presented.

Despite the limitations in Mr. Blake's appellate brief, he does present issues of Constitutional rights that affect the "public interest." In his fourth issue presented, Mr. Blake challenges the constitutionality of the ordinance as overbroad under the First Amendment and void for vagueness under the Fourteenth Amendment.

In his sixth issue presented there is a claim of ineffective assistance of counsel. Mr. Blake does not identify which Amendment is violated under this claim, however, an ineffective assistance of counsel claim falls under the Sixth Amendment's right to counsel.

Mr. Blake's appellate brief is arguably of the type in *Maudlin* and *O'Quinn* that requires dismissal of the appeal. However, this Court finds that the possible implication of Constitutional rights warrants a review of Mr. Blake's appeal as to his fourth and sixth issues presented.

#### **ISSUE FOUR: ORDINANCE UNCONSTITUTIONAL DUE TO VOID FOR VAGUENESS AND OVERBREADTH**

##### **Preservation:**

Mr. Blake raised the issue of the constitutionality of Northglenn Municipal Code §9-11-16.5 as being void for vagueness or overbreadth in his Motion for Summary Judgment filed on March 24, 2020. The trial court denied the motion on June 6, 2020. Court File, pp.48-62.

##### **Standard of Review:**

"We review de novo the constitutionality of a municipal enactment. *Trinen v. City & County of Denver*, 53 P.3d 754, 757 (Colo. App. 2002)." *Bruce v. City of Colorado Springs*, 252 P.3d 30, 33 (Colo. App. 2010).

##### **Legal Standard:**

"A statute or ordinance is unconstitutionally vague only if persons of common intelligence must guess at its meaning or would differ as to its application. *See Collins v. Jaquez*, 15 P.3d 299, 302 (Colo. App. 2000). A reviewing court should interpret a statute, if possible, in a manner that will not render it unconstitutional. *Powell v. City of Colorado Springs*, 131 P.3d 1129, 1134 (Colo. App. 2005) (cert. granted Apr. 10, 2006, 2006 WL 1628167); *see Sanger v. Dennis*, 148 P.3d 404, 411 (Colo. App. 2006) (facial challenges must be rejected unless there

exists no set of circumstances in which the statute can be constitutionally applied)." *JJR I, LLC v. Mt. Crested Butte*, 160 P.3d 365 (Colo. App. 2007).

In *Robertson v. City and County of Denver*, the court determined:

Like statutes, municipal ordinances are presumed constitutional. Where statutes or ordinances are challenged on the ground of vagueness, a court must attempt to construe the law in a manner that will satisfy constitutional due process requirements, if a reasonable and practical construction of the statute will achieve such a result. *People v. Gross*, 830 P.2d 933 (Colo. 1992); *Bell & Pollock, P.C., v. City of Littleton*, 910 P.2d 69 (Colo. App. 1995).

The basic inquiry in a void-for-vagueness challenge is whether the law forbids or requires the doing of an act in terms so vague that persons of ordinary intelligence must necessarily guess as to its meaning and differ as to its application. The statutory language must be specific enough to give fair warning of the prohibited conduct, yet must be sufficiently general to address the problem under varied circumstances and during changing times. *Robertson v. City & County of Denver*, 874 P.2d 325 (Colo. 1994).

The level of scrutiny to be used by a court in reviewing a vagueness challenge depends on the nature of the enactment, which is determined by considering four factors: (1) whether the statute is an economic regulation; (2) whether the statute imposes civil or criminal penalties; (3) whether the statute contains a scienter requirement; and (4) whether the statute threatens to inhibit the exercise of constitutionally protected rights. *Parrish v. Lamm*, 758 P.2d 1356 (Colo. 1988); *see also Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 102 S.Ct. 1186, 71 L.Ed.2d 362 (1982).

Less specificity is required when a statute or ordinance is an economic regulation, imposes civil penalties, or contains a scienter requirement. By contrast, when the statute imposes criminal penalties or threatens to inhibit the exercise of constitutionally protected rights, more specificity is required. *See Parrish v. Lamm, supra*.

The last of the four factors is the most important. In evaluating the vagueness challenges to the ordinance at issue here, the supreme court observed that when constitutionally protected behavior may be inhibited by a challenged law, a greater degree of specificity is required than when a law does not implicate constitutionally protected rights. *Robertson v. City & County of Denver, supra*.

*Robertson v. City and County of Denver*, 978 P.2d 156, 159 (Colo. App. 1999).

Where conduct and not merely speech is involved, the overbreadth of a statute must be both real and substantial. *Broadrick v. Oklahoma*, 413 U.S. 601, 93 S.Ct. 2908, 37 L.Ed.2d 830 (1973).

“When fundamental freedoms are not implicated by unconstitutional overbreadth, the statute will pass constitutional muster as long as it is reasonably related to a legitimate governmental interest. See, e.g., *Village of Hoffman Estates*, 455 U.S. at 494–97, 102 S.Ct. at 1191–92; *People v. Pharr*, 696 P.2d 235, 237 (Colo.1984).” *People v. Becker*, 759 P.2d 26, 29 (Colo. 1988).

“[A] State's interest in protecting the ‘safety and convenience’ of persons using a public forum is a valid governmental objective.” *Heffron v. International Soc. For Krishna Consciousness, Inc.*, 452 U.S. at 650, 101 S.Ct. at 2565 (1981).

#### **Analysis:**

Mr. Blake argues that “Northglenn Municipal Code Section 9-11-16.5 is facially overbroad pursuant to the First Amendment and facially void-for-vagueness pursuant to the Fourteenth Amendment.” [Def. Brief, p. 20].

Specifically, Mr. Blake argues that the ordinance is unconstitutional for the following reasons:

1. “[Code] are vague and not clearly defined.”
2. “[Code] offers no clear or measurable standard by which Plaintiff and others can act lawfully.”
3. “[Code] does not provide explicit standards for application by law enforcement officers.”
4. “[Code] fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits and authorizes, or encourages or discriminatory enforcement.”
5. “[Code] is unconstitutionally overbroad in violation of the First Amendment.”
6. “[Code] is not narrowly tailored to achieve any significant government interest.”
7. “[Code] fails to leave open ample alternatives for Defendant/Appellant’s expression.”
8. “[Code] was the justification for the Defendant’s decision to cite Plaintiff.”

The Northglenn Municipal Code Section 9-11-16.5 states as follows:

Obstructing Streets and Sidewalks. It is unlawful for any person to willfully, maliciously or recklessly place in any doorway or driveway not owned by him or under his lawful control or on any sidewalk, public highway, street or alley in the City any object which causes or tends to cause the obstruction thereof or of any part thereof.

Any violation of this section is a civil infraction, punishable according to Section 1-1-10(a)(3) of the Municipal Code, as amended, or is a nuisance, punishable according to this Chapter, or both. In no case shall a violation of this section be deemed to be punishable by jail time. The penalty set forth in Section 1-1-10(a)(2) of the Municipal Code does not apply.

### **Vagueness claim:**

In many of the cases that address void-for-vagueness claims, the statutes and ordinances at issue implicate Constitutional rights. *Robertson* involved a municipal ordinance that banned assault rifles which affected a person's Second Amendment rights. *Broadrick, Village of Hoffman Estates*, and *Becker* involved statutes that regulated speech in one manner or another and had an impact on a person's First Amendment rights. Here, we do not have a similar implication of a Constitutional right.

Applying the four-part vagueness test set forth in *Robertson*, it is apparent that Northglenn Municipal Code §9-11-16 imposes a civil penalty and has a scienter requirement. Also, the ordinance does not "threaten to inhibit the exercise of constitutionally protected rights." As a result, less specificity is required in the ordinance.

In any event, the ordinance meets the specificity requirement. It prohibits the placement of objects in a manner that obstructs travelling routes whether by foot, bicycle, or automobile. It is specific as to where objects cannot be placed ("doorway or driveway not owned by him or under his lawful control or any *sidewalk*, public highway, street or alley") and "persons of ordinary intelligence" do not have to "guess as to its meaning." (emphasis added). Consequently, there is sufficient specificity in the ordinance to survive a void-for-vagueness challenge.

### **Overbreadth claim:**

As titled, Northglenn Municipal Code §9-11-16.5 is aimed at regulating obstructions on streets and sidewalks. It is an ordinance partly designed to prevent dangerous situations for pedestrians, cyclists and motorists.

First, the ordinance does not regulate "speech" in any manner. It does not facially implicate constitutional rights.

Second, as enforced, the ordinance was not aimed at regulating Mr. Blake's "speech." While Mr. Blake was cited as he was engaging in activities constituting "speech," he was not cited for engaging in speech. Mr. Blake admitted to standing on the sidewalk while holding a large sign. He admitted to talking with the occupants of a truck that stopped in the roadway for "no more than 5 minutes." He admitted he was trying to hand leaflets to pedestrians as they passed by him on the sidewalk. Mr. Blake was recorded on a cell phone talking with people in a truck that had stopped in the roadway to speak with Mr. Blake. Mr. Riahi witnessed pedestrians stepping into the roadway in order to avoid Mr. Blake who occupied the sidewalk. Officer Hong saw a vehicle stopped along the roadway as the driver spoke with Mr. Blake. Based on his actions, Mr. Blake was issued a citation.

At no time did Mr. Riahi or Officer Hong discuss the contents of Mr. Blake's sign. Mr. Blake was issued a citation based on eye-witness accounts and the video recording showing a truck stopped in the roadway obstructing one lane of traffic while talking with Mr. Blake. Because conduct and not speech is involved, Mr. Blake must prove real and substantial overbreadth of the ordinance. He has not met that burden.

Finally, the ordinance relates to safety in general. The City of Northglenn has a valid governmental interest in the “safety and convenience” of pedestrians who use public sidewalks such as the one that runs in front of the Northglenn Mosque. As such, the ordinance reasonably relates to a legitimate governmental interest and passes constitutional muster.

Mr. Blake’s appeal on the grounds that the Northglenn ordinance is void-for-vagueness or overbroad fails.

## **ISSUE 6: INEFFECTIVE ASSISTANCE OF COUNSEL**

### **Preservation:**

The “Preservation” section of this issue meets the criteria of C.A.R. 28(a)(7)(A). Because ineffective assistance of counsel claims are often raised in post-conviction relief petitions, Mr. Blake cannot, nor is he required to, cite to the record where this claim was preserved. *See, e.g., People v. Thomas*, 867 P.2d 880 (Colo. 1994); *People v. Pozo*, 746 P.2d 523 (Colo. 1987); *People v. Lancaster*, 446 P.3d 912 (Colo. App. 2018).

### **Standard of Review:**

“A claim of ineffective assistance of counsel presents a mixed question of fact and law. *Dunlap v. People*, 173 P.3d 1054, 1063 (Colo. 2007). While we defer to the trial court’s findings of fact, if they are supported by the record, we review legal conclusions *de novo*. *Id.*” *People v. Ray*, 378 P.3d 772, 774 (Colo. App. 2015).

### **Legal Standard:**

“A convicted defendant’s claim that counsel’s assistance was so defective as to require reversal of a conviction or setting aside of a...sentence requires that the defendant show, first, that counsel’s performance was deficient and, second, that the deficient performance prejudiced the defense so as to deprive the defendant of a fair trial.” *Strickland v. Washington*, 4166 U.S. 668, 669, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674 (1984).

“Judicial scrutiny of defense counsel’s performance is highly deferential, and we indulge a strong presumption that counsel’s conduct fell within the wide range of reasonable professional assistance. *Strickland*, 466 U.S. at 689, 104 S.Ct. 2052. A defendant must show that counsel’s representation fell below an objective standard of reasonableness. *Id.* at 688, 104 S.Ct. 2052. ‘Strategic choices made after thorough investigation of the law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation.’ *Ardolino*, 69 P.3d at 76; *see also Strickland*, 466 U.S. at 690–91, 104 S.Ct. 2052. A reasonable investigation is one that is “ ‘sufficient to reveal potential defenses and the facts relevant to guilt.’ ” *People v. Newmiller*, 2014 COA 84, ¶ 45, 338 P.3d 459, 468 (quoting *Davis v. People*, 871 P.2d 769, 773 (Colo. 1994)). In assessing the reasonableness of defense counsel’s conduct, we must make ‘every effort ... to eliminate the

distorting effects of hindsight ... and to evaluate the conduct from counsel's perspective at the time.' *Strickland*, 466 U.S. at 689, 104 S.Ct. 2052." *Ray*, 378 P.3d at 774.

**Analysis:**

Mr. Blake asserts defense counsel was ineffective for the following reasons: 1) defense counsel was "hampered by health concerns having to do with his amputated leg and perhaps Covid;" 2) defense counsel failed to adequately assert a First Amendment defense; 3) defense counsel should have objected to unflattering statements made by Mr. Riahi during cross-examination; and 4) defense counsel should have requested a sequestration order for the City's witnesses. [Def. Brief, pg. 26].

Mr. Blake's first contention that defense counsel's physical health contributed to the guilty verdict is not supported by any facts or citation to the record which indicates the trial court or the jury was influenced by defense counsel's physical condition. Likewise, there are no facts or citation to the record indicating defense counsel was somehow hampered by his physical condition.

Mr. Blake's second claim of ineffective assistance of counsel relating to a First Amendment defense is not supported by any facts in the record. Defense counsel raised the First Amendment argument as early as opening statements and again in closing arguments. The fact that the jury did not find the First Amendment argument "crystal clear" does not demonstrate defense counsel's incompetence any more than it promotes the City Attorney's persuasiveness. Mr. Blake does not articulate how defense counsel's failure to present a more adequate First Amendment argument was deficient and how that deficiency prejudiced the jury.

The same is true for Mr. Blake's third argument that defense counsel should have objected during portions of Mr. Riahi's cross-examination. There are legitimate reasons for defense counsel's failure to object (including letting the jury hear how Mr. Riahi felt about Mr. Blake as a means to enhance his client's standing with the jury). Regardless of the reason, defense counsel's trial strategy is "virtually unchallengeable" and this Court will not second-guess the strategy in hindsight.

Mr. Blake's fourth and final argument that defense counsel or the trial court should have insisted that the prosecution witnesses be sequestered from one another is also without merit. There were only two witnesses for the City. Mr. Riahi was not present during Officer Hong's original testimony. Officer Hong was sitting as an advisory witness and would not have been excluded from the courtroom even if there was a sequestration order.

Mr. Blake has not provided adequate evidence that defense counsel's performance "fell below an objective standard of reasonableness." There is nothing in Mr. Blake's brief nor is there any indication in the record that defense counsel's physical condition was ever an issue. Defense counsel's trial strategy was reasonable and there are valid reasons for presenting the case in the manner that defense counsel chose. The results are not what Mr. Blake was hoping for but that is more attributable to the facts and testimony presented during trial than it is to the ineffectiveness of defense counsel.

Mr. Blake's conviction is **AFFIRMED**.

SO ORDERED THIS 23rd day of June, 2021

BY THE COURT:

A handwritten signature in black ink, appearing to read "Jeri H. Gray".

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District Court Judge

**APPENDIX C Jury verdict from Northglenn Municipal Court**

CITY OF NORTHGLENN  
V.  
RICHARD BLAKE

JURY VERDICT, Count No. 1

## CHARGE OF OBSTRUCTING STREETS AND SIDEWALKS

I. We, the jury, find the defendant, Richard Blake, NOT GUILTY of Count No. 1, Obstructing Streets and Sidewalks.

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**FOREPERSON\***

II. We, the jury, find the defendant, Richard Blake, GUILTY of Count No. 1, Obstructing Streets and Sidewalks.

  
Edith Forn  
FOREPERSON\*

\* The foreperson should use ink to sign on one of the two lines indicating a verdict of "not guilty" or "guilty."

**APPENDIX D Orders from Colorado Supreme Court and Adams District Court granting  
En Pauperis status**

Colorado Supreme Court 2 East 14th Avenue Denver, CO 80203	DATE FILED: July 26, 2021
Certiorari to the District Court, Adams County, 2020CV86 Northglenn Municipal Court, CR-2020-05	
<b>Petitioner:</b>	
Richard Roy Blake,  v.	Supreme Court Case No: 2021SC559
<b>Respondent:</b>	
The People of the State of Colorado.	
ORDER OF COURT	

Upon consideration of the Motion to File Without Payment of Filing Fee  
filed in the above cause, and now being sufficiently advised in the premises,  
IT IS ORDERED that said Motion shall be, and the same hereby is,  
GRANTED.

BY THE COURT, JULY 26, 2021.

Colorado Supreme Court 2 East 14th Avenue Denver, CO 80203	DATE FILED: July 26, 2021
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County Court  District Court  Denver Juvenile Court  Denver Probate Court

ADAMS COUNTY JUSTICE CENTER County, Colorado  
Court Address: 1100 JUDICIAL CENTER DRIVE  
BRIGHTON, CO 80601

Plaintiff/Petitioner: Northglenn Municipal Court

v.

Defendant/Respondent/Co-Petitioner: Richard Roy Blake

COURT USE ONLY

Case Number:

20CV086

Division

Courtroom

FINDING AND ORDER CONCERNING  
PAYMENT OF FILING FEES

Name of Party filing Motion: Richard Roy Blake on 10/30/2020 (Date).

Upon review of the attached Motion, the above party is:

Eligible to proceed without payment of the following filing fee(s):

complaint  petition

answer

response  motion to modify

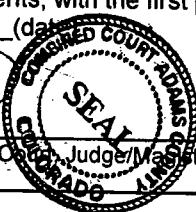
other: Appeal

Eligible to have the filing fee of \$ \_\_\_\_\_ paid in  two  three payments, with the first payment due by \_\_\_\_\_ (date) and the final payment due by \_\_\_\_\_ (date)

Not Eligible to proceed. Party is responsible for payment of the filing fees.

Date: 10-30-20

Signature of Eligibility Investigator, Clerk of Court, Judge/Magistrate



ORDER

The Court has reviewed the Motion (JDF 205) and so orders:

As indicated above.  
 The specified party is ordered to pay \$ \_\_\_\_\_ by \_\_\_\_\_ (Date) to cover filing fees.  
 Other \_\_\_\_\_

If the Court finds that by allowing a party to proceed with a payment plan, the party has agreed to pay the fee as listed above. Failure to pay will result in collection against the party. Costs associated with collection will be assessed.

A subsequent motion to proceed without payment of filing fees must be filed upon order of the court or anytime the case is re-opened. Pursuant to §13-16-103, C.R.S., in the event the party who receives a waiver of costs prosecutes or defends an action or proceeding successfully, there shall be a judgment entered in his/her favor in the amount of the court costs and the party shall, upon collecting such court costs, remit them to the Court.

The Court orders the appointment of counsel for appeal purposes.

Date: 10-30-20

Judge  Magistrate