THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

Alexander S. Macaulay, Circuit Court Judge

Opinion No. 2014-UP-230 (S.C. Ct. App. Filed June 18, 2014)

The State of South Carolina.....Respondent,

v.

Travis N. Buck,.....Petitioner.

PETITION FOR A WRIT OF CERTIORARI

Travis N. Buck
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Appellant, Pro Se

Other Counsel of Record:

David A. Spencer
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Certificate Of Counsel

Counsel for petitioner certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on August 25, 2014

QUESTIONS PRESENTED

1. Did the Court of Appeals err in not recognizing the petitioner's speech was Constitutionally protected being directed at a member of law enforcement?

2. Did the Court of Appeals err in determining the Petitioner abandoned the argument that limiting language set forth by State v. Brown should have been included in the Magistrates jury charge, as well as the reiteration of this by the Court of Appeals in State v. Buckner.

3. Did the Court of Appeals err in not recognizing that under SC 22-3-790 there was no recorded record of Magistrates trial and the Petitioner was prejudiced and placed in the position of not being able to properly defend his case.

4, Did the Court of Appeals err in not recognizing that there was nothing in the record to support the State's assertion that there was any evidence or history of harassment by the Petitioner.

STATEMENT OF THE CASE

On November 22, 2010, the Petitioner made the phone call in question to the alleged victim, Federal Law Enforcement Officer Charles Theodore Blaine.

On November 29, 2010, the Oconee County Sheriff's Department arrested the Petitioner for allegedly violating S.C. Code 16-17-430(A)(1). The Petitioner was released the same day on a P.R. bond.

On May 4, 2011, the case was tried by a jury which found the Petitioner guilty and the Magistrate fined the Petitioner the sum of $470. Also on May 4, 2011, the Petitioner served Notice of Appeal to the magistrates court.

On August 1, 2011, the appeal was heard by the Honorable Alexander S. Macaulay, Circuit Court Judge, in Oconee County. The conviction was affirmed. On August 24, 2011, the Petitioner served Notice of Appeal to the South Carolina Court of Appeals.

The appeal was predicated on three points.

1. There was no obscenity used by the petitioner.
2. The language used by the Petitioner was directed at a law enforcement officer.
3. The trial judge failed to recognize and apply law pertaining to the case.

The first two points are argued below. The third stemmed from the trial judge's unwillingness and out right refusal to instruct the jury using the limiting language found in State v. Brown. His recalcitrance to properly instruct the jury was not preserved due to the fact the trial judge destroyed the digital recording of the proceeding, despite the fact Notice of Appeal was filed on the same day of the proceeding, (R.pp. 2-3),The Circuit Court affirmed the jury's decision despite these facts.

The Court of Appeals affirmed the judgement of the circuit court. State v. Buck, Op. No. 2014-UP-230 (S.C. Ct. App. Filed June 18, 2014) Petitioner seeks a writ of certiorari to review that decision.

ARGUMENT

1.THE COURT OF APPEALS SHOULD HAVE RECOGNIZED THE PETITIONER'S LANGUAGE WAS CONSTITUTIONALLY PROTECTED AS IT WAS DIRECTED AT LAW ENFORCEMENT.

The alleged victim is employed by the United States Forest Service as a law enforcement officer. The phone call made by the Petitioner stemmed from an incident in which the Petitioner had contact with the alleged victim in his official capacity as a law enforcement officer. The phone call was made to the alleged victim's work cell phone. Chaplinsky v. New Hampshire, 315 U.S. 568, 571-572 (1942) addresses profanity towards law enforcement: Freedom of individuals verbally to oppose or challenge police action without thereby risking arrest is one of the principle characteristics by which we distinguish a free nation from a police state." City of Houston v. Hill, 482 U.S. (1987) goes further to say "as a properly trained police officer, is reasonably expected to exercise a higher degree of restraint than the average citizen." The Court of Appeals completely ignored these rulings.

2. THE PETITIONER DID RAISE AND PRESERVE BOTH STATE V. BROWN AND STATE V BUCKNER IN BOTH THE INITIAL BRIEF AND THE FINAL BRIEF.. AS WELL AS BOTH THE MAGISTRATE AND CIRCUIT COURT PROCEEDINGS .

State v. Brown, 274 S.C. 506, 266 SE 2d 64 (1980) narrowly construes S.C. 16-17-(A)(1) to prohibit, "only calls initiated by one with the intent and sole purpose of conveying an unsolicited obscene, imminently threatening, and/or harassing message to an unwilling recipient." This was reiterated in State v. Buckner, Op No. 3192 (S.C. Ct App. Filed June 12, 2000). It has been established the language used by the Petitioner was not obscene under the definition set forth by S.C. 16-15-305(B)(1-4), nor by the "Miller Test" put forth by Miller v. California, 413 U.S. 15 (1973). The Petitioner inviting Officer Blaine to "polish up his request real nice, turn it sideways, and shove it up his ass," was clearly a suggestion and not an imminent threat. By ignoring State v. Brown, The Appeals Court erred and ruled in contradiction to the Supreme Court ruling.

3. THE COURT OF APPEALS SHOULD HAVE RECOGNIZED THAT UNDER S.C. 22-3-790, THERE WAS NOT A PROPER NOR LEGAL RECORD PRESENTED BY THE STATE.

A magistrates summary of proceedings was all that was provided by the state. Under S.C. 22-3-790, " if a recording is not provided in the return, then the magistrate shall hand write all testimony and have it signed by the witness or witnesses." No signed testimony was provided. The Petitioner maintains that the magistrate's summary is both incomplete and inaccurate. The Petitioner is prejudiced by this fact and placed in the position of not being able to properly defend his case. A letter from the magistrate was included in the Record on Appeal admitting to

destroying the recording of the trial. (R.pp. 2-3) Due to the fact the digital recording was destroyed, the Petitioner was not allowed to included Motion to Dismiss and the Petitioner's Request to Charge Jury in The Record On Appeal. Also missing was the Magistrates out right refusal to charge the jury. Once again, placing the Petitioner in the position of not being able to properly defend his case.

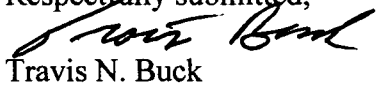
4. THE COURT OF APPEALS SHOULD HAVE RECOGNIZED THAT THERE WAS NOTHING IN THE RECORD TO SUPPORT THE ASSERTION THAT THERE WAS A HISTORY OF HARASSMENT BY THE PETITIONER.

The alleged victim testified that numerous messages were left by the Petitioner at the alleged victims office. There is no evidence in the record that supports this assertion. Also the alleged victim testified to other incidents of harassment by the Petitioner. The facts are quite to the contrary. The alleged victim, acting in his official capacity, illegally arrested the Petitioner resulting in an investigation into his actions. This resulted in his eventually transfer to another district. It also result in a civil suit in which the petitioner prevailed. The Petitioner maintains the magistrates summary was both incorrect and incomplete.

CONCLUSION

For the reasons stated, plus the fact that this is a clear issue of infringement of First Amendment Rights, petitioner asks the Court to grant the petition for a writ of certiorari.

Respectfully submitted,



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September 5, 2014

cc: David A Spencer, Esquire
Jenny Abbott Kitchings, Clerk Court of Appeals

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PROOF OF SERVICE

I certify that I have served the Petition for Writ of Certiorari on the State of South Carolina by depositing a copy of it in the United States Mail, postage prepaid, on September 17 addressed to the counsel for Respondent, David Spencer, Senior Assistant Attorney General, at P.O. Box 11549, Columbia, South Carolina 29211. Also sent to Jenny Abbott Kitchings, Clerk for South Carolina Court of Appeals, at P.O. Box 11629 Columbia, South Carolina 29211.

September 17, 2014

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