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.

APPENDIX

Travis N. Buck
499 Woodall Shoals Road
Longcreek, South Carolina 29658
(864)647-9085
Appellant, Pro Se

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499 Woodall Shoals Rd.
Long Creek, SC 29658
(864) 647-9085
Appellant, Pro Se

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The South Carolina Court of Appeals

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June 18, 2014

Travis N. Buck
499 Woodall Shoals Rd.
Long Creek SC 29658

Re: The State v. Buck, Travis N.
Appellate Case No. 2011-198189

Dear Counsel:

Enclosed is the decision of the Court. The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

Very truly yours,

Jenny Abbott Kitchings

CLERK

cc: David A. Spencer, Esquire
John W. McIntosh, Esquire
Salley W. Elliott, Esquire
Alan McCrory Wilson, Esquire
Christina Theos Adams, Esquire
The Honorable Alexander S. Macaulay

Christina Theos Adams, Esquire
The Honorable Alexander S. Macaulay

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Travis N. Buck, Appellant.

Appellate Case No. 2011-198189

Appeal From Oconee County
Alexander S. Macaulay, Circuit Court Judge

Unpublished Opinion No. 2014-UP-230
Submitted April 1, 2014 – Filed June 18, 2014

AFFIRMED

Travis N. Buck, of Long Creek, pro se.

Attorney General Alan McCrory Wilson, Chief Deputy Attorney General John W. McIntosh, Senior Assistant Deputy Attorney General Salley W. Elliott, and Assistant Deputy Attorney General David A. Spencer, all of Columbia; and Solicitor Christina Theos Adams, of Anderson, for Respondent.

PER CURIAM: Travis N. Buck appeals the circuit court's order affirming his conviction in magistrates court for unlawful use of a telephone. On appeal, he argues the magistrates court erred in failing to (1) direct a verdict, (2) properly charge the jury, and (3) recognize and apply pertinent law. We affirm.

1. We find the circuit court did not err in finding Buck was not entitled to a directed verdict. "On appeal from the denial of a directed verdict, an appellate court must view the evidence in the light most favorable to the State." *State v. Bailey*, 368 S.C. 39, 44, 626 S.E.2d 898, 901 (Ct. App. 2006). "If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find the case was properly submitted to the jury." *Id.* at 45, 626 S.E.2d at 901. We find sufficient evidence existed for the jury to find Buck's phone call was threatening or harassing. *See* S.C. Code Ann § 16-17-430(A)(2), (3) (2003); *State v. Brown*, 274 S.C. 506, 508, 266 S.E.2d 64, 65 (1980) (construing the language of the unlawful communications statute "as proscribing 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"). The victim testified Buck had been harassing and attempting to intimidate him; Buck continued to call the victim's office and leave messages; Buck had been driving up and down the road blowing his horn and pointing his middle finger at the victim; and the situation was escalating. The State played a recording of a message Buck left with the victim, and Buck admitted to making the call. Additionally, Buck stated the victim "reignited [his] spark of anger." Buck's assertion that his phone call was not obscene is inapposite because the unlawful communications statute is not limited to obscenity. To the extent Buck contends his speech was protected, the circuit court did not rule on this issue, and it is not preserved. *See State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693 (2003) ("In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the [circuit court]."). There is no indication the magistrates court applied the wrong law when determining whether to grant a directed verdict, and sufficient evidence existed for the jury to find Buck's phone call was threatening or harassing.

2. We find Buck abandoned the issue of whether the circuit court erred in finding the magistrates court properly charged the jury. "An issue raised on appeal but not argued in the brief is deemed abandoned and will not be considered by the appellate court." *Wright v. Craft*, 372 S.C. 1, 20, 640 S.E.2d 486, 497 (Ct. App. 2006). Buck raised the jury charge issue in his statement of issues on appeal, but the body of his brief does not indicate what the magistrates court charged or why

Buck believed the charge was erroneous. Although Buck cites to *Brown* and *State v. Buckner*, 342 S.C. 241, 534 S.E.2d 15 (Ct. App. 2000), it is unclear from his brief how they pertain to the magistrates court's charge. *See State v. Tyndall*, 336 S.C. 8, 16-17, 518 S.E.2d 278, 282-83 (Ct. App. 1999) (determining the appellant abandoned an issue when he cited to several cases and averred the officers acted contrary to the cases, but failed to refer to the cases again in his brief and failed to "include in his argument any discussion of [the] decisions or their applicability to his situation"). Accordingly, we find this argument is abandoned.

AFFIRMED.[1]

HUFF, THOMAS, and GEATHERS, JJ., concur.

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[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

PETITION FOR REHEARING

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

Alexander S. Macaulay, Circuit Court Judge

Case No. 2011198189

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

v.

Travis N. Buck,.....Appellant.

PETITION FOR REHEARING

Appellant now petitions the court for rehearing pursuant to Rule 221(a), SCACR. In the Courts decision, there was a failure to address the fact that the language contained in the phone call to the victim was directed at law enforcement therefore protected speech. This was argued in the Appellants brief.

Also there is nothing in the record that would support the Courts assertion of harassment. There exists one recording of a call made by the Appellant. There is no evidence in the record that would support the victims claim of multiple, harassing messages. Furthermore, pursuant to SC 223-3-790, a magistrates summary of testimony is not an adequate substitute for a trial record. It reads in part "If a recording is not provided in the return, than the magistrate shall hand write all testimony and have it signed by the witness or witnesses." This was also included in the Appellants brief. The Appellant is prejudiced by this fact and placed in the position of not being able to properly defend his case.

CONCLUSION

In the light of the issues contained therein above, the Appellant respectfully requests that the court rehear this case.

Respectfully submitted,

Travis Buck

Travis Buck
499 Woodall Shoals Road
Longcreek, South Carolina 29658
(864)647-9085
Appellant, Pro Se

The South Carolina Court of Appeals

The State, Respondent,

v.

Travis N. Buck, Appellant.

Appellate Case No. 2011-198189

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

Thomas E. Huff J.

Paula H. Thomas J.

J. J.

Columbia, South Carolina

cc: Travis N. Buck
David A. Spencer, Esquire
John W. McIntosh, Esquire
Salley W. Elliott, Esquire
Alan McCrory Wilson, Esquire

FILED
8/25/14

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM OCONEE COUNTY

Court of Common Pleas

Alexander S. Macaulay, Circuit Court Judge

Case No. 2011198189

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

v.

Travis N. Buck,.....Appellant.

RECORD ON APPEAL

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499 Woodall Shoals Rd.
Longcreek, South Carolina 29658
(864)647-9085
Appellant, Pro Se

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ATTORNEYS FOR RESPONDENT

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LETTER TO MAGISTRATE DERRICK
REQUESTING RECORDED RECORD
February 23, 2012

The Honorable William Derrick
Magistrate for Oconee County
106 East Windsor Street
Westminster, South Carolina 29693

RE: State of South Carolina, Respondent, v. Travis N. Buck, Appellant,
Case No. 2011-CP-37-00433

Dear Judge Derrick,

I spoke with Clerk of Courts for Oconee County, Beverly Whitfield, about your return in the above referenced case. Her office never received the recording of the trial from your office. Pursuant to SC 18-3-40, I would respectfully request that you send certified true copies of the record to both Travis Buck, Appellant Pro Se, and David Spencer, Senior Assistant Attorney General. Find enclosed the addresses of both. Between the fact the Notice of Appeal was submitted to your office on the same day of the trial and the Memoranda section of the Bench Book requires you to maintain these records for five years, this should not be a problem. Furthermore, pursuant to SC 22-3-790, if a recording is not provided in the return, than the Magistrate shall hand write all testimony and have it signed by the witness or witnesses. I am sure that it was a simple oversite on the part of your office. However, if you cannot produce the requested recording, could you please forward a letter explaining why the recording cannot be provided and the return not completed.

Sincerely,

Travis N. Buck
Post Office Box 5
Longcreek, South Carolina 29658
(864) 647-9085
Appellant, Pro Se

cc: David Spencer, Senior Assistant Attorney General
Post Office Box 11549
Columbia, South Carolina 29211-1549

Tanya A. Gee, Clerk for South Carolina Court of Appeals

OCONEE COUNTY SUMMARY COURT
106 E. WINDSOR ST.
WESTMINSTER, SC 29693
864-647-5998 (phone)
864-647-4844 (fax)

February 29, 2012

Travis N. Buck
PO Box 5
Long Creek, SC 29658

Re: Case Number 2011-CP-37-433

Dear Mr. Buck:

Enclosed you will find a copy of the summary of the testimony which was provided to the circuit court. As you have been informed, the recording of the trial is not available. Pursuant to SC 22-3-790, the testimony is to be signed by the witnesses, as you state. However, this trial was originally recorded and inadvertently erased. Therefore, the only remedy is for the Court to provide a summary of all testimony, which does not require it to be verbatim. This has been done, and it is enclosed.

If you have any questions, please contact my office.

Sincerely,

Will F. Derrick
Magistrate

Cc: Mr. David Spencer
Senior Asst. Attorney General
PO Box 11549
Columbia, SC 29211

SUMMARY OF TESTIMONY

STATE V. BUCK, MAY 4, 2011 JURY TRIAL

STATE

KEVIN DAVIS- TESTIFIED HE WAS NOTIFIED BY VICTIM OF PHONE CALL. LISTENED TO CALL, WENT TO MAGISTRATE WHO ISSUED WARRANT. 911 COMMUNICATIONS PULLED CD AND REPORT FROM RECORDS.

REBECCA CARTER- CHIEF DISPATCHER, OCSD. TESTIFIED SHE PULLED CALL FROM 911 SYSTEM, VERIFIED IT, AND COPIED TO CD.ALSO, LOG OF ACTIVITY FOR THE NUMBER BY DATE AND TIME.

CHARLIE BLAINE- U.S.F.S OFFICER. FILED REPORT. RECEIVED CALL FROM DEFENDANT. HAS DEALT WITH HIM BEFORE, AND HE HAS BEEN HARASSING ME. RECOGNIZED NUMBER AND VOICE AS DEFENDANT. SUBJECT CNTINUES TO CALL USFS OFFICE AND LEAVE MESSAGES, CALLS SUPERVISOR, REFERS TO ME BY MIDDLE NAME. ATTEMPTING TO INTIMIDATE AND AGITATE ME.CALLED AT 651PM THIS DAY, USED MY MIDDLE NAME, CURSING, AND TOLD ME WHERE TO STICK IT. HAD CHECKED HIS AND ANOTHER HUNTERS ID AT A DOVE FIELD TWO DAYS BEFORE, AND THEY WERE GOOD TO GO. THEN STARTED QUESTIONING JURISDICTION. WENT OVER AUTHORITY AND COOPERATION WITH DNR. SUBJECT RIDES UP AND DOWN ROAD, FLIPS ME OFF AND YELLS, BLOWS HORN. SITUATION IS ESCALATING AND DEICED TO TAKE ACTION THIS TIME.

ON CROSS, TESTIFIED THERE WAS AN INCIDENT FOUR YEARS AGO WHERE DEFENDANT AWAS ARRESTED FOR PDC AND RESISITNG. DUE TO HIS HARASSING OTHER PEOPLE ON A USFS ROADWAY. WENT OVER AUTHORITY AND PROCEDURES AGAIN. DOVE FIELD SIGN CLEARLY STATES THAT IT IS A JOINT DNR/USFS COOPERATION.

STATE RESTS

DEFENSE

TRAVIS BUCK- TESTIFIED NO HISTORY ODF HARASSMENT ON ROAD. OFFICER BLAINE HAS BEEN VINDICTIVE SINCE PREVIOUS CHARGES WERE DROPPED AND EXPUNGED. CAUSED INTERNAL INVESTIGATION. PRODUCED LETTER FROM SHERIFF AND MOA WHICH WAS NOT RENEWED FROM OCSD. LED TO BEHAVIOR. BLAINE ASKED FOR DL AT DOVE FIELD ON 11/20. FEDERAL LEO CANNOT INITIATE INVESTIGATION UNDER SC LAW. HE REIGNITED MY SPARK OF ANGER. MY CALL WAS RUDE IN BAD TASTE, BUT NOT ILLEGAL.

ON CROSS, TESTIFIED DID MAKE PHONE CALLS TO USFS. DID USE HIS MIDDLE NAME BECAUSE HIS MOTHER GAVE HIM THAT NAME. DO NOT HAVE HARSH FEELINGS TOWARDS HIM. DO AGREE NOW IT IS FEDERAL PROPERTY. DIDN'T TREAT ME POORLY, JUST OUTSIDE AUTHORITY. DIFFERNCE BETWEEN CASE AND STATUTORY LAW.NOT ILLEGAL, FREEDOM OF SPEECH.

ORIGINAL

State of South Carolina	)	In the Court of Common Pleas
	)	
	)	Case No: 2011-CP-37-00433
County of Oconee	)	
	)	
Travis N. Buck,	)	
	)	
Appellant,	)	
	)	Transcript of Record
-vs-	)	Magistrate's Court Appeal
	)	
State of South Carolina,	)	
	)	
	)	
Respondent.	)	

August 1, 2011
Walhalla, South Carolina

B E F O R E:

The Honorable Alexander S. Macaulay, Judge.

A P P E A R A N C E S:

Travis N. Buck
Pro Se Appellant

Blair Stoudemire, Esq.
Assistant 10th Circuit Solicitor
Attorney For the State of South Carolina

Robin Sue Hild, FCRR, RPR
Circuit Court Reporter
Post Office Box 9
Walhalla, SC 29691

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Exhibits

** Start of Requested Certified Transcript of Record **

(Whereupon, the foregoing Appeal Hearing commenced at approximately 11:48 a.m.)

THE COURT: The first one is *Travis N. Buck versus the State of South Carolina*; is that correct?

MR. STOUDEMIRE: Yes, sir.

THE COURT: All right. This is the appeal from the Magistrate's Office of *Travis Noah Buck versus the State of South Carolina*, 2011-CP-37-433.

Mr. Buck, you are representing yourself?

MR. BUCK: Yes, sir.

THE COURT: Very good.

And Mr. Stoudemire is here on behalf of the State?

MR. STOUDEMIRE: Yes, sir.

THE COURT: Very well. What's the grounds for your appeal?

MR. BUCK: May it please the Court?

The grounds for my appeal are predicated upon three points; the first of which was the failure of Judge Derrick to direct a verdict when no evidence existed to convict in accordance with --

THE COURT: Let's see. You were charged with unlawful use of the telephone?

MR. BUCK: Yes, sir, under 16-7 -- 16-17-430, I believe -- '430(a)(1).

THE COURT: Very good.

MR. BUCK: The failure of Judge Derrick to direct a verdict when no evidence existed to convict in accordance with the decisions of the Supreme Court of South Carolina in *State v. Brown*.

THE COURT: Which says?

MR. BUCK: Our Supreme Court addressed the Constitutionality of South Carolina Code Section 16-17-430(a)(1). They ruled that the statute was not Constitutionally vague, nor overly broad, but the Court narrowly construed the state statute to prohibit only calls initiated by one with the intent and sole purpose of conveying an unsolicited, obscene, eminently threatening, and/or harassing message to an unwilling recipient.

On the first point, obscenity, the language in the phone call never rose to the point of obscenity according to South Code Section 16-15-305, which I have a copy of.

THE COURT: Would you mind passing it up?

MR. BUCK: Yes, sir (handing).

Also, the language did not rise to the definition put forth by the United States Supreme Court in *Miller versus California*, under the *Miller* test.

Secondly, there was no eminently threatening

message.

And thirdly, there is no history of harassment, either. And so none of those requirements were met by the said phone call. And I've got a copy of *Miller versus California*, too.

THE COURT: That's all right. I'm familiar with that one.

All right. Anything else?

MR. BUCK: The second point would be in failing to properly charge the Jury and failure to recognize and apply law pertaining to the case. I've requested, submitted a Defendant's Request to Charge the Jury, and I requested that when charging the jury, the Judge informed the Jury about the South Carolina Court of Appeals reaffirming the decision of *State v. Brown* and *State versus Buckner* -- I also have a copy of the *State versus Buckner* -- about the language of in order to be convicted under the statute, the obscenity and eminently threatening message and the harassment; and I was told that application of case law was inappropriate.

Secondly, when the Judge charged the Jury, I was charged with 16-17-830 -- sorry -- 16-17-430(a)(1), the Judge read the entire statute.

My third point would be that this language was directed to the alleged victim, who is a law enforcement

officer with the United States Department of Agriculture, and obviously language directed at law enforcement is protected speech. *Chaplinsky versus New Hampshire*, freedom --

THE COURT: Well, I understand that the law enforcement officer of the federal government doesn't have arrest authority.

Is that correct, Mr. Stoudemire?

At least that's what the record says.

MR. STOUDEMIRE: Yes, sir. That would appear. It also would appear that some of Mr. Blaine's testimony I think during this trial --

THE COURT: Well, I'm just curious. When he says that a law enforcement officer has, the first thing a law enforcement officer requires by definition is to have the power of arrest.

MR. BUCK: He has arrested me, sir. He arrested me in my own driveway.

THE COURT: Well, the victim says he doesn't.

MR. BUCK: That's been my argument the entire time. But he has -- obviously it's not pertinent to this case, but he arrested me illegally in my driveway for a supposed misdemeanor of public disorderly conduct that, number one, never happened; number two, if it had, it was not committed in his presence, and it resulted in an

assault and battery on his part on me, and the case was eventually dismissed without warrant.

THE COURT: I understand. Go ahead.

MR. BUCK: But nevertheless, one of the -- in *Chaplinsky versus New Hampshire*, the United States Supreme Court affirmed our right and the freedom of individuals verbally to oppose or challenge police action without --

THE COURT: Again, police meaning he has the power of arrest?

MR. BUCK: And he does, Your Honor, have the power of arrest. And that's one of the -- thereby --

THE COURT: That's your position, right?

MR. BUCK: Well, it's -- I think it's also the County's position and the United States Forest Service position.

THE COURT: Go ahead.

MR. BUCK: Thereby risking arrest is one of the principal characteristics by which we distinguish a free nation from a police state.

The other thing is is my language never rose to the level of fighting words. And obviously, even if it had, with a law enforcement officer, he --

THE COURT: Is he a law enforcement officer?

MR. BUCK: Pardon me?

THE COURT: Is he a law enforcement officer?

MR. BUCK: Yes, sir. Officer Charles Blaine is the law enforcement officer for the National Forest.

The fighting words doctrine holding that the addressee is a properly trained police officer and should reasonably be expected to exercise a higher degree of restraint than the average citizen.

On these points I would request that obviously it would be in my best interests if the case was dismissed. But realizing that the Court is probably not inclined to a dismissal, I would request alternatively that the case be remanded for a retrial.

In Oconee County Judge Blake Norton has already recused himself in this case. Judge Will Derrick, Junior, has already heard the case, and I would request that it be remanded to the Chief Magistrate of Oconee County for disposition and retrial.

THE COURT: All right. Anything else?

MR. BUCK: No, Your Honor.

THE COURT: All right. Mr. Stoudemire?

MR. STOUDEMIRE: Thank you, Judge.

First, with regard to Judge Derrick not granting a directed verdict, I think that a judge has to view -- at that stage of the proceedings I think the Judge has to view in the light, view the evidence in the light most

favorable to the State. At that point there was --

THE COURT: Was it a jury trial?

MR. STOUDEMIRE: Yes, sir, it was a jury trial.

THE COURT: So; all of these were questions of, other than the law enforcement officer, if he was a law enforcement officer or not, would be questions of fact for the jury?

MR. STOUDEMIRE: Yes, sir.

THE COURT: If it rose to obscenity, intimidation, and eminently threatened?

MR. STOUDEMIRE: Yes, sir. Yes, sir. And I think that there was testimony -- at the end of the State's case there was testimony from Officer Blaine that he said he felt threatened by the nature of the phone call, so I think that Judge Derrick was within his discretion to deny a motion for a directed verdict at that stage.

Skipping over to the jury charge just briefly, Judge, there is evidently a memorandum of understanding between the Forest Service and the Oconee County Sheriff's Department that is attached to the documentation I have in this case signed by John Gregory, who is in charge of the U.S.D.A. Forest Service in this area and Sheriff Singleton from 2004.

Now, in reading that, it expired in 2009. I do not know if it was extended. But evidently at some point in

time Officer Blaine did have the power to arrest in Oconee County based on that Memorandum of Understanding.

So I think it, I think it's possible at least that Mr. Buck could have perceived him as a law enforcement officer.

With regard to the jury charge --

THE COURT: Well, if he's regarded as a law enforcement officer, then he is subject to some strong language.

MR. STOUDEMIRE: Could have been that he's subject to strong language. And depending upon the nature of the language, it could have been that Mr. Buck would have potentially exposed himself to a greater charge than illegal use of telephone, as well.

Judge, with regard to the jury charge, I think that's within the Judge's discretion. However, my feeling is it looks like from the jury charge and the notes that Judge Derrick wrote on it, that he did charge the jury that -- the Judge informed the Jury that the exact charge the Defendant has been charged with is 16-17-430(a)(1) which does contain the word "obscene" in that section of the Code.

THE COURT: Well, it also has the alternative, rather, it says and/or.

MR. STOUDEMIRE: Yes, sir.

THE COURT: So; it doesn't have to be obscene.

MR. STOUDEMIRE: It does not. It does not. Judge, it's up to you whether or not, whether or not you think that the Judge should have, should have charged the definition under, under case law. My understanding has always been that you can charge case law.

But at any rate, those are -- I think those are things within the Judge's discretion as to whether or not he wanted to charge them; and also within his discretion whether or not he wanted to charge the entire statute and not just the Code section that Mr. Buck was charged with.

THE COURT: All right, Mr. Buck? Anything else?

MR. BUCK: Just one item, Your Honor.

In response to the question of whether Officer Blaine is a law enforcement officer, when Officer Blaine showed up for court that day, Officer Blaine was wearing a sidearm and had handcuffs, so I'm a little confused about the definition of law enforcement if that doesn't get us there.

And that would be it, Your Honor.

THE COURT: Do you think he has a permit to carry a weapon?

MR. BUCK: I -- we would probably have to -- it would probably have to be in the State of Georgia

considering that's where he resides, and there's no reciprocity between Georgia and South Carolina on a conceal and carry permit.

THE COURT: How do you know he lives in Georgia?

MR. BUCK: Because we've -- I get my groceries in Clayton, Georgia, and there's been many a times when I've been crossing the river and Officer Blaine was in his vehicle marked United States Forest Service Law Enforcement, and he pulled into a driveway on Highway 76 in Georgia.

Plus, at one point in time I did work at his place. I helped build a carport at his residence in Georgia.

THE COURT: I understand.

Where were the alleged phone calls made? Well, they actually weren't alleged because you admit making the calls.

MR. BUCK: Yes, sir. They were made from my residence to --

THE COURT: No. Where? To whom and where?

MR. BUCK: To Officer Blaine's, his cell phone that is his law enforcement cell phone for the United States Forest Service.

THE COURT: All right. Well, I was looking at the Memorandum of Understanding, which apparently is Defense Number 2 Exhibit, and it expired May the 31st, 2009.

MR. BUCK: It did.

THE COURT: So; he was not a law enforcement officer under that in Oconee County.

MR. BUCK: No, he wasn't. But --

THE COURT: So; he was limited to any enforcement on the Forest Service.

MR. BUCK: Precisely.

THE COURT: So; he would be entitled to be armed there. But the phone call wasn't made to him there. Or was it?

MR. BUCK: No. It was made I want to say November 22nd of 2010.

THE COURT: After the expiration of the memorandum agreement?

MR. BUCK: It was. Officer Blaine --

THE COURT: And --

MR. BUCK: I apologize.

THE COURT: No. Go ahead.

MR. BUCK: Officer Blaine, on the 20th -- and obviously this is not really pertinent in so much as why the phone call was made -- two days prior on the 20th --

THE COURT: I notice there's a recording of the proceeding. Was the telephone call recorded?

MR. STOUDEMIRE: I don't know, Judge. We haven't been furnished with a copy of the recording of the

proceedings. I don't know if the 9-1-1 --

THE COURT: Was it recorded?

MR. BUCK: Yes, it was.

THE COURT: So the Jury had an opportunity to hear it?

MR. BUCK: Yes, they did.

THE COURT: And they had to make the determination of whether or not...

MR. BUCK: They basically made a determination strictly on statutory law, without the knowledge of the case law and the Supreme Court's narrowly construing the statute to only the call was initiated with the intent and full purpose of unsolicited, obscene, and/or threatening and/or harassing messages to an unwilling recipient.

Which incidentally was upheld by the South Carolina State Court of Appeals in *State versus Buckner* in 2000.

THE COURT: All right. I'll look at it. But I must tell you now that it looks like it was a factual determination whether or not it was a threatening in a telephone communication or any other electronic means -- I guess that's a cell phone -- with an unlawful active attempt to coerce, intimidate, or harass -- you say he charged the whole amount -- whole statute?

MR. BUCK: Yes, Your Honor. When he charged the

Jury, he read the entire statute.

THE COURT: All right. I'll read your cases. But I would -- at this point I think there was a question of fact for the Jury, and there's sufficient evidence to support that.

Of course, I'm very sympathetic to people who like to exercise their First Amendment rights, but I'm always reminded of what, I think it was Crusoe said, Jean Jacques Crusoe, a good French philosopher, who said a person's rights, personal rights, end at the tip of their nose. So once you start interfering with somebody else, you've got to have a certain balance.

All right. Very good. We'll find out. But I'll read your cases. Have you got any other cases?

MR. BUCK: Just the *State versus Buckner* with the Appellate Court and the *State versus Brown* with the original decision from the Supreme Court on that statute.

THE COURT: Very good. All right. Thank you very much. I'll either -- what I'll do is I'll enter a short Order one way or the other, and the short Order will instruct one of you to draw an Order.

Very good. Thank you.

MR. BUCK: Shall I pass these up, Your Honor?

THE COURT: Certainly you can. I'll take anything

you've got. Obviously, I didn't know anything about this case until a few minutes ago.

MR. BUCK: This is the *State versus Brown*. Thank you.

THE COURT: All right. Thank you very much.

MR. STOUDEMIRE: Thank you, Your Honor.

MR. BUCK: Thank you, Your Honor.

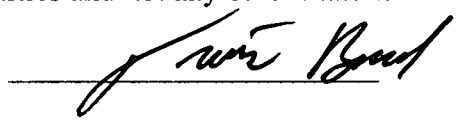
(Whereupon, the above Appeal Hearing was concluded at approximately 12:14 p.m.)

** End of Requested Certified Transcript of Record **

Certificate of Appellant, Pro Se

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

October 24, 2012



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THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM OCONEE COUNTY

Court of Common Pleas

Alexander S. Macaulay, Circuit Court Judge

Case No. 2011198189

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

v.

Travis N. Buck,.....Appellant.

INITIAL BRIEF OF APPELLANT

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

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1. DID THE TRIAL COURT ERR IN FAILING TO DIRECT A VERDICT WHEN NO EVIDENCE EXISTED TO CONVICT?

2. DID THE TRIAL COURT ERR IN FAILING TO PROPERLY CHARGE THE JURY?

3. DID THE TRIAL COURT ERR IN FAILING TO RECOGNIZE AND APPLY LAW PERTAINING TO THE CASE?

STATEMENT OF THE CASE

On November 22, 2010, the Appellant 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 Appellant for allegedly violating S.C. Code 16-17-430(A)(1). The Appellant was released the same day on a P.R. bond.

On May 4, 2011, the case was tried by a jury which found the Appellant guilty and the Magistrate fined the Appellant the sum of $470.00. On May 4, 2011, the Appellant served the 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 Appellant served the Noticed of Appeal to the South Carolina Court of Appeals.

FACTS

On March 25, 2007, the alleged victim, US Forest Service officer Charlie Blaine, unlawfully arrested the Appellant in his yard for public disorderly conduct and resisting arrest. The alleged victim also threatened the appellant's wife with arrest while she was holding their infant son.

The charges were dismissed in Magistrates Court due to no probable cause. The Appellants record was expunged.

On November 20, 2010, the Appellant witnessed the alleged victim, Officer Blaine initiating an independent investigation into a possible violation of state game laws. This in itself would constitute a violation of S.C Code 23-1-212(C)(3) on the part of the alleged victim. The above mentioned statute states in part: "A federal law enforcement officer acting pursuant to this section:(3) cannot initiate or conduct an independent investigation into a violation of South Carolina law." After presumably determining there was no violation of state law, Officer Blaine insisted on proof of identification and hunting licenses from the Appellant and a companion. Both complied . After determining there was no violation of state law, the alleged victim left the scene.

The Appellant viewed Officer Blaine's violation of S.C. 23-1-212 in light of Officer Blaine's prior violation of said statute resulting in the Appellant's unlawful arrest. The Appellant made the phone call to the alleged victim on November 22, 2010. The language in question is as follows according to the recording of the call submitted by the state at trial. "The next time you ask for my hunting license, and try to enforce state law, you can take your request, polish it up real nice, and shove it sideways up your ass. You got me buddy? You'd better fucking make sure, and goddamn sure that you are operating under a mutual understanding with either the DNR of the sheriff's department before you even have a word with me again."

On November 29, 2010, the Oconee County Sheriff's Department arrested the Appellant for allegedly violating S.C. Code 16-17-430(A)(1).

ARGUMENTS

I. THERE WAS NO OBSCENITY USED BY THE APPELLANT.

Regardless of whether the Appellants language was offensive and odious, or whether it was in person or telephonic, viewed in the light of the 1st Amendment of the Constitution of the United States and various case law of both the State of South Carolina and the United States Supreme Courts is protected and is not illegal. The Appellant invited officer Blaine to "take your request, polish it up real nice, and shove it sideways up your ass." The Appellant when on to say, "you'd better fucking make sure, and goddamn sure that you are operating under a mutual understanding with either the DNR or the sheriff's department before you even have a word with me again." In the light of the South Carolina Supreme Court's ruling in State v. Brown, the Appellant was erroneously convicted with illegal use of telephone. The Appellant's use of the words,

"fucking", "god damn", and "ass", while distasteful to some, are protected speech. Furthermore, these words are not even considered 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).

II. THE LANGUAGE USED BY THE APPELLANT WAS DIRECTED AT A LAW ENFORCEMENT OFFICER.

The alleged victim is employed by the United States Forest Service as a Law Enforcement Officer. The phone call made by the Appellant stemmed from an incident in which the Appellant 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 reasonable expected to exercise a higher degree of restraint than the average citizen."

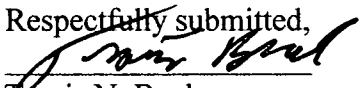
III. THE TRIAL JUDGE FAILED TO RECOGNIZE AND APPLY LAW PERTAINING TO THE CASE.

State v. Brown 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 by the South Carolina Court of Appeals. It has been established that the language used by the Appellant was not obscene. The Appellant 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. There is no history of the Appellant repetitively calling the alleged victim, so there is no basis for harassment. No facts existed to sustain a conviction based upon the law applicable to the case.

Conclusion

For the reasons stated, the Court should reverse the conviction should it deem it proper to do so. Alternatively, I would request that the court remand the case to the Chief Magistrate of Oconee County for proper disposition.

Respectfully submitted,



November 3, 2011

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

Alexander S. Macaulay, Circuit Court Judge

Case No. 2011198189

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

v.

Travis N. Buck,.....Appellant

REPLY BRIEF OF APPELLANT

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Regardless of whether the Appellants language was offensive and odious, or whether it was in person or telephonic, viewed in the light of the 1st Amendment of the Constitution of the United States and various case law of both the State of South Carolina and the United States Supreme Courts is protected and is not illegal. The Appellant invited officer Blaine to "take your request, polish it up real nice, and shove it sideways up your ass." The Appellant when on to say, "you'd better fucking make sure, and goddamn sure that you are operating under a mutual understanding with either the DNR or the sheriff's department before you even have a word with me again." In the light of

the South Carolina Supreme Court's ruling in State v. Brown, the Appellant was erroneously convicted with illegal use of telephone. The Appellant's use of the words, "fucking", "god damn", and "ass", while distasteful to some, are protected speech. Furthermore, these words are not even considered 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).

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IV. REPLY TO THE RESPONDENTS INITIAL BRIEF

The Respondents assertion that the jury charge request by the Appellant is abandoned on appeal is moot. The Appellant's Motion to Charge Jury was properly preserved in the record. It was also included in the Designation Of Matter to be included in the Record On Appeal, under Recording of trial in Magistrates court. The language of Brown was also addressed in the Initial Brief of the Appellant and well as it reaffirmation by the South Carolina Court of Appeals in State v. Buckner. As the Court is aware of, the recording of trial in Magistrates Court has been destroyed and there is no signed witness testimony. The Appellant is prejudiced by this fact and placed in a position of not being able to properly defend his case.

In the Respondents Statement Of Facts, he claims the Appellant "called the victim's work cell phone and left an obscene, unsolicited, and harassing message." A statement of fact would be the Appellant "called the victim's work cell phone and left an unsolicited

message." The question of "obscene and harassing" are obviously points of argument and not fact. The question of obscenity has been settled both by S.C. 16-15-305, as well as the "Miller Test" established by Miller v. California, 413 U.S. 15 (1973). There is nothing in the record that supports any claims of telephonic harassment. The Appellant disputes the claims asserted in the summary of testimony by the alleged victim. No record exists to support this testimony. Further more the Appellant disputes the testimony of said calls to the USFS office were even made. Once again the trial recording was destroyed and the Appellant is prejudiced by this fact and placed in the position of not being able to properly defend his case.

The fact that the phone call was made to the alleged victim's work cell phone is central to the fact that the language contained in the phone call was directed at a law enforcement officer. The assertion that the alleged victim did not have state law enforcement power is not accurate nor relevant. According to S.C. 23-1-212, which proscribes, in relevant part, the following:

(A) For purposes of this section, "federal law enforcement officer" means the following persons who are employed as full-time law enforcement officers by the federal government and who are authorized to carry firearms while performing their duties:

(9)United States Department of Agriculture Forest Service law enforcement officer and special agents

(B)A federal law enforcement officer is authorized to enforce criminal laws within the State when:

(3)a felony of misdemeanor is committed in the federal law enforcement officer's presence or under circumstances indicating a crime has been freshly committed.

Officer Charles T. Blaine is a federal law enforcement officer who worked for the Forest Service in the Andrew Pickens District in South Carolina. The victim's residency is irrelevant to the case. The alleged victim wore USFS law enforcement uniform to the trial in Magistrates Court in addition to a gun, a badge, and hand cuffs. He arrived at the Magistrate's office in a vehicle clearly marked "Law Enforcement".The Appellant's assertion that the language in the phone call was directed at law enforcement and should be treated as such stands.

The Respondent references Johnson v. State, 37 S.W.3d 191 (Ark 2001) in which "that police officers knew Johnson previously assaulted a police officer and was now cursing them." There is absolutely nothing in the record that remotely suggests that the Appellant assaulted the alleged victim. Quite the opposite actually. As mentioned in the Appellant's Motion to Dismiss, the victim illegally arrested the Appellant on the Appellant' private property. Assaulting and battering the Appellant in the process. This resulted in a ongoing lawsuit against the Oconee County Sheriff's Department and an internal investigation of Officer Blaine, which eventually resulted in Officer Blaine being transferred to another district. The Respondent's brief relies on artfully cited, persuasive case law, and not controlling legal cases.

The assertion the Respondent makes about the Appellant meaning the "next time" he and the alleged victim met, the Appellant was going to resort to violence and shoot the alleged victim is nothing short of high theater and hubris on the part of the Respondent. There is nothing in the record that would even remotely support the assumptions the Respondent would have his audience make.

The assertion the Respondent makes that the Appellant made violent and sexual suggestions is also not supported by the record. Nothing the Appellant said to the alleged victim was violent or sexually suggestive based on any standard or normal definition.

Conclusion

For the reasons stated, including the fact the recording of the trial in Magistrates Court was destroyed, no signed testimony exists, and the Appellant is prejudiced by this fact and placed in the position of not being able to properly defend his case. The Court should reverse the conviction should it deem it proper to do so. Alternatively, I would request that the court remand the case to the Chief Magistrate of Oconee County for proper disposition.

Respectfully submitted,

March 13, 2012

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Oconee County
Alexander S. McCauley, Circuit Court Judge

THE STATE,

Respondent,

vs.

TRAVIS N. BUCK,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

The circuit court correctly affirmed the magistrate's denial of directed verdict on the charge of unlawful use of a telephone where Buck's invitation to shove a request "sideways up the victim's ass" and his veiled threat served no purpose but to harass and threaten victim (Appellant's Issues I, II, and III).

STATEMENT OF THE CASE

Appellant Buck was arrested for unlawful use of a telephone in violation of S.C. Code Ann. § 16-17-430(A). Buck was convicted as charged by a jury in Oconee County Magistrate's Court. On May 4, 2011, the Honorable William F. Derrick sentenced Appellant to thirty days in jail or a $470.00 fine. Appellant appealed to Common Pleas. After argument was heard on August 1, 2011, the Honorable Alexander S. Macauley affirmed the conviction and sentence.

STATEMENT OF FACTS

Appellant Buck unlawfully used a telephone when he called the victim's work cell-phone and left an obscene, unsolicited, and harassing message.

On November 20, 2010, Appellant was dove hunting in Oconee County when the victim, Charlie Blaine, with the United States Forrest Service, approached Buck and a friend and asked them for their identification and hunting licenses. R. p. 4. After determining Buck and his companion were not hunting in violation of the law, Blaine departed.

On November 22, 2010, Buck placed a call to Blaine's work-related cellular phone and left a voicemail message as follows:

> The next time you ask for my hunting license, and try to enforce state law, you can take your request, polish it up real nice, and shove it sideways up your ass. You got me buddy? You'd better fucking make sure, and goddamn sure that you are operating under a mutual understanding with either the DNR or the sheriff's department before you even have a word with me again.

(Compact Disc recording of call, on file with Court of Appeals).

After listening to the voicemail left by Buck, Blaine called the sheriff's office, and a warrant was issued for Appellant's arrest. R. p. 4.

ARGUMENT

The circuit court correctly affirmed the magistrate's denial of directed verdict on the charge of unlawful use of a telephone where Buck's invitation to shove a request "sideways up the victim's ass" and his veiled threat served no purpose but to harass and threaten victim (Appellant's Issues I, II, and III).

Buck argues the trial court should have a granted a directed verdict because: (1) the language he used, while offensive, was not obscene, (2) the abusive language was addressed to a law enforcement officer so the trial court should have applied a heightened standard in the instant case, and (3) the trial court failed to apply the proper standard of State v. Brown, 274 S.C. 506, 266 S.E.2d 64 (1980).[1] However, the record reflects Buck made multiple calls to the office and was harassing Blaine by making obscene gestures and yelling at Blaine whenever he drove past Blaine. In the message he leaves for Blaine, Buck makes vulgar, violent, and sexual suggestions to Blaine and ominously advises Blaine he "better fucking make sure" the next time. Buck does not say what would happen if Blaine did not "make sure" next time and it is the unknown answer to that question that was undoubtedly vexing to Blaine given the other harassing conduct. Blaine felt matters had escalated to the degree that he should contact the Sheriff. The call was nothing short of threat, vulgar and without

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[1] Buck also raised the issue in circuit court that the trial court erred in denying Buck's requests to charge the jury on Brown; however that issue is not raised in his brief and therefore is abandoned on appeal. Fields v. Fields, 342 S.C. 182, 191, 536 S.E.2d 684, 689 n.8 (Ct. App. 2000) (finding appellant included issue in the statement of issues on appeal, but failed to argue the issue in the body of the brief); State v. Bray, 342 S.C. 23, 535 S.E.2d 636, 639 n.2 (2000) (a reviewing court should not consider an issue that is not presented on appeal); see also State v. Jones, 344 S.C. 48, 58, 543 S.E.2d 541, 546 (2001) (finding the argument was so conclusory that it was deemed abandoned).

any intent but to harass, and is not protected speech. Further, evidence presented indicates Blaine did not have law enforcement powers. The issue is therefore one, even under Brown, that was properly presented to the jury.

"Upon a motion for directed verdict, a trial court is concerned only with the existence of evidence, not its weight." State v. Gaster, 349 S.C. 545, 564 S.E.2d 87 (2002). "When reviewing a denial of a directed verdict, this Court must view the evidence and all reasonable inferences in the light most favorable to the state." State v. Burdette, 335 S.C. 34, 46, 515 S.E.2d 525, 531 (1999). "If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find the case was properly submitted to the jury." State v. Harris, 351 S.C. 643, 653, 572 S.E.2d 267, 273 (2002); State v. Venters, 300 S.C. 260, 264, 387 S.E.2d 270, 272-73 (1990).

Appellant was charged and convicted under S.C. Code Ann. § 16-17-430(A), which proscribes, in relevant part, the following:

> (A) It is unlawful for a person to:
>
> (1) use in a telephonic communication or any other electronic means, any words or language of a profane, vulgar, lewd, lascivious, or an indecent nature, or to communicate or convey by telephonic or other electronic means an obscene, vulgar, indecent, profane, suggestive, or immoral message to another person;
>
> (2) threaten in a telephonic communication or any other electronic means an unlawful act with the intent to coerce, intimidate, or harass another person;
>
> (3) telephone or electronically contact another repeatedly, whether or not conversation ensues, for the purpose of annoying or harassing another person or his family.

"The State has a legitimate interest in prohibiting obscene, threatening or harassing telephone calls." State v. Brown, 274 S.C. 506, 508, 266 S.E.2d 64, 65 (1980) ("We shall not repeat the words appellant allegedly used in the telephone calls to Mrs. Odom. Suffice it to say they were lewd, lascivious and indecent as those words are generally defined and understood."). "The use of one's telephone involves substantial privacy interests which the State may protect. Section 16-17-430 seeks to protect that interest from an invasion made in a shocking manner." Id.

Brown found the statute only proscribed 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." Id.

"A resort to epithets of personal abuse is not in any proper sense communication of information or opinion safeguarded by the Constitution, and its punishment as a criminal act raises no constitutional question." Cantwellv. Connecticut, 310 U.S. 296, 309-310, 60 S.Ct. 900, 906, 84 L.Ed. 1213 (1940) (quoted in Baker v. State, 494 P.2d 68 (Ariz. Ct. App. 1972); Chaplinsky v. New Hampshire, 315 U.S. 568, 572, 62 S.Ct. 766, 769, 86 L.Ed.2d 1031 (1942) (quoting the same with approval).

"A threat need not be in any particular form or in any particular words, and it may be made by innuendo or suggestion. All that is necessary is that it be definite and understandable to a mind of ordinary intelligence." State v. McGinnis, 243 N.W.2d 583, 589 (Iowa 1976).

"Evidence of the language used in an alleged violation of the harassment statute is relevant to show the intent of the accused in making the telephone call as well as the

likelihood of its causing annoyance or alarm." State v. Lewton, 497 A.2d 60, 63 (Conn. App. Ct. 1985); see also State. v. Adams, 67 P.3d 103 (Id. Ct. App. 2003) (finding the requisite intent to convict of telephone harassment where the defendant called the investigating officer an "asshole" within twenty-one seconds into the conversation before proceeding to use other profane language and threaten the lives of another officer).

Buck attempts to rely on definitions found in S.C. Code Ann. § 16-15-305. That statue is inapplicable, as that statute proscribes dissemination of materials among individuals or to the public at large, and not use of offensive language as part and parcel of a campaign to harass the unwanted recipient in a phone conversation. The Arizona Court of Appeals noted, in assessing its statute proscribing harassing telephone calls, that "we are not here faced with the complexities of the sexual connotation of obscene as used in obscenity statutes and applied to literature or the theater." Baker, at 71. "It would be . . . inane to interpret the word obscene in the context of Roth standards when dealing with obscene phone calls." Id. (referring to Roth v. United States, 354 U.S. 476, 77 S.Ct. 1304, 1 L.Ed.2d 1498 (1957)).

Further, Buck's arguments that he is allowed to be more abusive to Blaine as opposed to private individuals is without merit. Even though dealing artfully with a venting public may be a dimension of employment for government employees, their positions require significant public contact that should require some protection from such outlandish bullying as demonstrated in the instant case. Evidence refutes that Blaine, a Georgia native, had state law enforcement powers and therefore, City of Houston v. Hill, 482 U.S. 451, 107 S.Ct. 2502, 96 L.Ed.2d 398 (1987) does not apply. Specifically, the previous agreement between the Oconee Sheriff's Office and the United States Forest Service had expired and the record

fails to reflect it was renewed. R. p. 4. Additionally, the phone call obviously was not made while Blaine was executing his duties in Buck's presence, unlike Hill; instead the call was made two days after an encounter between the two.

Further, Hill is inapplicable to the instant case. In Hill, the city ordinance at issue was overbroad because it prohibited an individual who in any manner verbally interrupts a police officer. Id. In the instant case, the threatening and harassing nature of the phone call takes the case outside the confines of any protection Hill offers. For instance, in Johnson v. State, 37 S.W.3d 191 (Ark. 2001), the Arkansas Supreme Court found that Johnson's conduct was sufficient to support the crime of disorderly conduct where Johnson was shouting: "Why are you fucking harassing me" and "flailing his arms, cursing loudly, and eventually demonstrating a violent demeanor toward [the officer]." Id., at 348. The court found that they could not ignore that fact that police officers knew Johnson previously assaulted a police officer and was now cursing them. Id. The court concluded that while the words alone would not support conviction, the language in conjunction with Johnson's actions did support conviction. Id.

In State v. Lynch, 392 N.W.2d 700 (Minn. Ct. App. 1986), Lynch was convicted for disorderly conduct and interfering with a police officer. Her first amendment claims were rejected, with the Minnesota Court of Appeals where Lynch approached officers that had made a stop of another individual and:

> immediately started swearing at us. Her immediate term was motherfucker and then [she] called us motherfucking pigs and stated that we had no business stopping this person for no reason at all and that the only reason we were stopping him is because he was black.

Id. at 702. Officers noted a crowd had gathered, including some who were carrying clubs and others were swearing at police. She then was arrested with some resistance. The court concluded that whether words are "fighting words" depends on the circumstances surrounding their utterance. Id. at 704. The additional facts of the crowd gathering supported conviction. Id.

Likewise in the instant case, the language, which was threatening as well as obscene, in conjunction with circumstances leading to the call, support conviction. Blaine testified at trial that he had "dealt with" the Appellant previously, and "he has been harassing me." R. p. 4. The victim further testified that Appellant "continues to call USFS office and leave messages, calls supervisor, refers to me by middle name. Attempting to intimidate and agitate me." R. p. 4.

Buck would drive past Blaine, make obscene gestures and yell at him. R. p. 4. Concerning this dispute concerns Buck's authority to hunt, the record suggests he owns a gun. The phone call, inviting Blaine to shove an imaginary item up Blaine's ass sideways and letting him know he "fucking better" make sure Buck's unilateral conditions are met next time they meet[2], in light of the evidence presented in this case, clearly indicate the phone call was intended solely to harass Blaine with vulgar, obscene, and profane language and veiled threats.

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[2] If the "next time" they met was for Blaine to check a permit again while Buck was hunting, then Buck would be armed. So Blaine would reasonably be concerned Buck would perhaps resort to violence and shoot him if Blaine attempted to check the permit, especially in light of the escalating conduct. In this context, the jury rightfully could find the call was intended to intimidate Blaine.

The evidence in the light most favorable to the State supports conviction. Accordingly, the trial court did not err in denying the motion for directed verdict.

CONCLUSION

For all of the foregoing reasons, the judgment and conviction of the lower court should be affirmed.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

November 13, 2012

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Oconee County
Alexander S. McCauley, Circuit Court Judge

THE STATE, Respondent,

vs.

TRAVIS N. BUCK, Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR.

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PROOF OF SERVICE

I, Norma Bigbee, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

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499 Woodall Shoals Rd.
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I further certify that all parties required by Rule to be served have been served.

This 13th day of November, 2012

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