

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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

OCT 14 2014

S.C. SUPREME COURT

Appellate Case No: 2014-001981

The State of South Carolina.....Respondent,
v.
Travis N. Buck.....Petitioner.

REPLY TO RESPONDENTS RETURN

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

Other Counsel of Record:

David A. Spencer
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ARGUMENT

- I. Counsel for Respondent claims evidence refutes that Blaine had state law enforcement powers and therefore the petitioner’s language is not constitutionally protected. At the time of the phone call Blaine was employed by the United States Department of Agriculture in the capacity of a law enforcement officer. Blaine worked as a law enforcement officer in the Andrew Pickens Nation Forest which is in South Carolina.....1
- II. There was no obscenity used by the Petitioner. Also there is nothing in the record that supports assertion of telephonic harassment, nor the Petitioner being an imminent threat.....2

ARGUMENT

I.

Counsel for Respondent claims evidence refutes that Blaine had state law enforcement powers and therefore the Petitioner’s language is not constitutionally protected. At the time of the phone call Blaine was employed by the United States Department of Agriculture in the capacity of a law enforcement officer. Blaine worked as a law enforcement officer in the Andrew Pickens Nation Forest which is in South Carolina.

The Petitioner maintains that his speech was constitutionally protected because it was directed at law enforcement. Under any definition Blaine would be considered law enforcement. But under South Carolina law specifically .

S.C. 23-1-212. Enforcement of state criminal laws by federal law enforcement officers.

(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:

- (1) Federal Bureau of Investigation special agents;
- (2) Bureau of Alcohol, Tobacco and Firearms special agents;
- (3) Drug Enforcement special agents
- (4) United States Secret Service special agents;
- (5) United States Customs Service officers;
- (6) United States Postal Service inspectors;
- (7) Internal Revenue Service special agents;
- (8) United States Marshal’s Service marshals and deputy marshals;
- (9) United States Department of Agriculture Forest Service law enforcement officers and special agents;
- (10) United States Department of Interior Fish and Wildlife special agents;
- (11) United States National Marine Fisheries special agents.

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

- (1) the federal law enforcement officer is asked by the head of a state or local law enforcement agency or his designee to provide the agency temporary assistance and the request is within the scope of the state or local law enforcement agency's subject matter and territorial jurisdiction;
 - (2) the federal law enforcement officer is asked by a state or local law enforcement officer to provide him temporary assistance when state or local law enforcement officer is acting within the scope of his subject matter and territorial jurisdiction; or
 - (3) a felony or misdemeanor is committed in the federal law enforcement officer's presence or under circumstances indicating a crime has been freshly committed.
- (C) A federal law enforcement officer acting pursuant to this section:
- (1) has the same powers as a South Carolina law enforcement officer:
 - (2) is not an officer, employee, or agent of a state or local law enforcement agency;
 - (3) cannot initiate or conduct an independent investigation into a violation of South Carolina law; and
 - (4) is subject to the Federal Tort Claims Act.

Either Blaine was working under a MOU with the South Carolina DNR or he felt a felony or misdemeanor was being committed in his presence by the Petitioner when he asked for a hunting license. Which ever the case may be, at that point he had the same powers as a South Carolina law enforcement officer. He also at that point was driving a Forest Service vehicle clearly marked law enforcement and was carrying a gun and handcuffs. The insistence of the Counsel for the Respondent that Blaine was not law enforcement is nothing more than nonsense on stilts. In his zeal to make a case he is willfully denying a blatant fact.

II.

There was no obscenity used by the petitioner. Also there is nothing in the record that supports assertion of telephonic harassment, nor the Petitioner being an imminent threat to Blaine.

The only legal definition of obscenity found in South Carolina is found in S.C. 16-15-305(B) (1-4). This specific section of the code defines what obscenity is in the State of South Carolina. The Petitioner's language did not rise to this definition. Nor did the Petitioner's language rise to the bar set by the "Miller Test" put forth by Miller v. California, 413 U.S. 15 (1973).

There are no additional recorded telephone calls made by the Petitioner that would support a history of telephonic harassment.

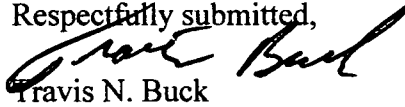
The Counsel for the Respondent makes assertions that the next time the Petitioner meet Blaine that he would shoot him. These assertions defy reality and the record. There is absolutely nothing in the record to support this high theater presented by Counsel. The Petitioner does not have a criminal record nor a history of violence. And the assertion Counsel makes that the comment made by the Petitioner were "violent and sexual" is an attempt by Counsel to dove tail his case to match the verbage put forth by the limiting language that State v. Brown applies to S.C. 16-17-(A)(1).

Conclusion

For the reasons stated above, including the fact the Respondents's return relies on artfully cited, persuasive case law and not one single controlling legal case, 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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cc: David A. Spencer, Esquire

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PROOF OF SERVICE

I certify that I have served the Reply to Respnce on the State of South Carolina by depositing a copy of it in the United States Mail, postage prepaid, on October 8, addressed to the counsel for Respondent, David Spencer, Senior Assistant Attorney General, at P.O. Box 11549, Columbia, South Carolina 29211.

October 8, 2014



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