

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM OCONEE COUNTY

Court of Common Pleas

Alexander S. Macaulay, Circuit Court Judge

**RECEIVED**

APR 17 2012

**SC Court of Appeals**

Case No. 2011198189

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

v.

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

RECORD ON APPEAL

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

**RECORD ON APPEAL**

**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**

---

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

**David Spencer  
Post Office Box 11549  
Columbia, South Carolina 29211  
Senior Assistant Attorney General**

## INDEX

Letter to Magistrate's Court requesting Recording of Proceeding.....	2
Letter from Magistrate saying the Recording was destroyed.....	3
Motion to Dismiss of April 11,2011.....	4
Defendants Request to Charge Jury of May 4, 2011.....	7
Case report detail of December 29, 2010.....	9
Transcript of Common Pleas proceeding, pages 1-16.....	11
Certificate of Appellant, Pro Se.....	27

**LETTER TO MAGISTRATE DERRICK  
REQUESTING RECORDED RECORD**

February 23, 2012

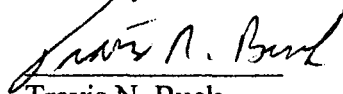
The Honorable William Derrick  
Magistrate for Oconee County  
106 East Windsor Street  
Westminster, South Carolina 29693

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 oversight 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

STATE OF SOUTH CAROLINA ) IN THE MAGISTRATE'S COURT  
 OCONEE COUNTY ) WESTMINSTER MAGISTRATE  
 State of South Carolina, )  
 )  
 ) MOTION TO DISMISS CHARGES  
 VS. ) WARRANT # N137361  
 )  
 Travis Noah Buck, )  
 )  
 Defendant. )  
 \_\_\_\_\_ )

TO: OFFICER K. DAVIS, OCONEE COUNTY SHERIFF'S DEPARTMENT:

Please take notice that the Defendant will move before this Honorable Court for an Order of Dismissal, on the following grounds:

1. On or about November 29, 2010, the Oconee County Sheriff's Department arrested the Defendant for allegedly violating S.C. Code 16-17-430 (A)(1). The case is presently set for disposition before the Honorable William F. Derrick, Jr.
2. On November 20, 2010, the Defendant witnessed Officer Blaine being let into a locked gate at the Long Creek Tract WMA by C G Phillips. Officer Blaine then proceeded to drive his vehicle onto the WMA to confront two minors who were legally hunting for dove. He took and inspected their weapons and their hunting licenses. After presumably determining that there was no violation of state law, Officer Blaine exited the property the way he came in. At that point he exited his vehicle and insisted on proof of identification and hunting licenses from the Defendant and a companion. Both complied. Once again, after determining there was no violation of state law, Officer Blaine left the scene.
3. By initiating an independent investigation of state law, Officer Blaine was in violation of S.C. Code 23-1-212(C)(3). 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.

4. On November 20, 2010, there were no memorandums of mutual understanding in place with either the Oconee County Sheriff's Department or the South Carolina Department of Natural Resources.

5. The Defendant has seen or known Officer Blaine to violate S.C. 23-1-212 at other times in the past. Including, but not exclusive to, Officer Blaine arresting the Defendant illegally in the Defendant's driveway. Resulting in Officer Blaine assaulting and battering the Defendant in front of his wife and six month old son.

6. The resulting charges against the Defendant were dismissed and Officer Blaine sheltered behind Qualified Immunity.

7. The Defendant viewed Officer Blaine's violation of S.C. 23-1-212 on November 20, 2010 in light of Officer Blaine's prior violations of said statute, and made the phone call to Officer Blaine on November 22, 2010.

8. Regardless of whether the Defendants language was offensive and odious, or whether it was in person or telephonic, viewed in the light of the 1<sup>st</sup> 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.

9. According to the prosecuting officer, the language used by the Defendant is profane and/or obscene, and is, therefore, in violation of the law. It should be noted that the language used was directed at a law enforcement officer, the alleged victim, Officer Charles T. Blaine of the United States Forest Service.

10. According to the South Carolina Court of Appeals, *City of Landrum v. Sarratt*, 352 S.C. 139,141,572 SE 2d 476,477: "Profane language alone cannot constitute a violation of law in light of the First Amendment to the Constitution of the United States." Rather, the circuit court found that the profane language must be accompanied by fighting words or other behavior such as gross intoxication.

11. Fighting words is defined by *Chaplinsky v. New Hampshire*, 315 U.S. 568, 571-572 (1942). Fighting words are words which "by their utterance inflict injury or tend to incite an immediate breach of peace."

12. *Chaplinsky* goes further to address profanity directed 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. 451 (1987) limited the fighting words doctrine holding that the addressee, as a properly trained police officer, is reasonably expected to exercise a higher degree of restraint than the average citizen.

13. The language of S.C. Code 16-17-430(A)(1) has been addressed in several cases. Walker v. Dillard, 523 F2d 3 (4th circuit 1975) "Without [a] limiting instruction the statute is vague and overbroad, as the words vulgar, profane, immoral, and indecent are all substantially overbroad." Radford v. Webb, 446 F. Supp. 608 (1978) Holding that "absent limiting construction of statute proscribing vulgar or profane language, statute was unconstitutional because it was facially and substantially overbroad." The South Carolina Supreme Court concurred in State v. Brown, 274 S.C. 506, 266 SE2d 64 (1980). The statute was narrowly construed 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."

14. In the light of the South Carolina Supreme Court's ruling in State v. Brown, the Defendant has been erroneously charged with illegal use of telephone. The Defendant'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), as well as under Miller v. California, 413 U.S. 15 (1973).

15. The Defendant inviting Officer Blaine to "polish up his request, turn it sideways, and shove it up his ass," was clearly a suggestion and not an imminent threat.

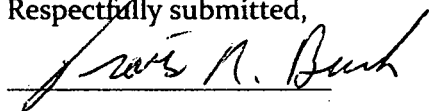
16. There is no history of the Defendant repetitively calling the alleged victim, so there is no basis of harassment.

17. The Defendant is informed and believes the legal cases set forth above, along with constitutional principles of the State of South Carolina and of the United States of America require that the presiding Judge in this matter dismiss the charge against the Defendant.

18. This motion is based upon the various case law of the State of South Carolina, the legal principles embodied in the United States Constitution, and the oral arguments to be submitted the court upon arguing this motion.

WHEREFORE, the Defendant prays that Judge William F. Derrick, Jr. issue an order dismissing the charge of illegal use of telephone against the Defendant.

Respectfully submitted,



Travis N. Buck

Longcreek, SC

April 11, 2011

STATE OF SOUTH CAROLINA )  
)  
OCONEE COUNTY )  
)  
State of South Carolina, )  
)  
VS. )  
)  
)  
Travis Noah Buck, )  
Defendant, )  
\_\_\_\_\_ )

IN THE MAGISTRATE’S COURT  
WESTMINSTER MAGISTRATE  
DEFENDANTS REQUEST  
TO CHARGE JURY  
WARRANT # N137361

1. The Defendant requests that when charging the jury, the Judge limits the scope of the charge 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.” As per the South Carolina Supreme Court’s decision in State v. Brown, 274 S.C. 506, 266 S.E.2d at 65.

2. The Defendant requests that when charging the jury, the Judge informs the jury of The South Carolina Court of Appeals reaffirming the decision of State v. Brown in State v. Buckner. “In order to be convicted under the statute, the telephone call must be made with the intent and sole purpose of conveying an unsolicited obscene or imminently threatening message or made to harass the recipient.”

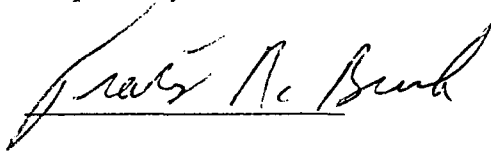
3. The Defendant requests the Judge use the definitions of obscenity set forth in Miller v. California, 413 U.S. 15, and South Carolina Code 16-15-305(B)(1-4) when charging the jury.

4. The Defendant requests that when charging the jury, that the Judge informs the jury the profane language used while addressing a law enforcement officer has been upheld as protected speech by the Supreme Court of the United States in both Houston v. Hill (1987) and Chaplinsky v. New Hampshire. To quote the latter, “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.”

5. The Defendant requests that when charging the jury, that the Judge informs the jury the exact charge that the Defendant has been charged with, 16-17-430(A)(1).

WHEREFORE, the Defendant prays that Judge William F. Derrick, Jr. Charge the jury under the preceding parameters.

Respectfully submitted,

A handwritten signature in cursive script that reads "Travis N. Buck". The signature is written in black ink and is positioned above a horizontal line.

Travis N. Buck

Longcreek, SC

May 4, 2011

# Case Report Detail

Print Date/Time: 12/29/2010 16:56  
 Login ID: KDavis  
 Case Number: 2010-00033192

OCONEE COUNTY SHERIFF OFFICE  
 ORI Number: SC0370000

## Case Details

Case Number: 2010-00033192	Incident Type: TELEPHONE CALLS - UNLAWFUL USE
Location: 112 ANDREW PICKENS CIR MOUNTAIN REST, SC, 29664	Occurred From: 11/22/2010 18:00 Occurred Thru: 11/22/2010 19:00 Reported Date: 11/23/2010 14:56

Reporting Officer ID: JV7198 - VICKERY	Status: CLOSED (C)	Status Date: 11/30/2010
Assigned Bureau: ROAD PATROL	Exc Clear:	Exc Clear Date:

## Offenses

No.	Group/ORI	Crime Code	Statute	Description	Counts
1	State	90Z	16-17-0430 (A) (1)	USE OF TELEPHONE OR ELECTRONIC MEANS TO HARASS	1

### Offense #1

Group/ORI: State      Crime Code: 90Z      Statute: 16-17-0430 (A)(1)      Counts: 1      Attempt/Commit Code: COMMIT (C)

Description: USE OF TELEPHONE OR ELECTRONIC MEANS TO HARASS      Offense Date: 11/22/2010  
 NCIC Code:      Scene Code: RESIDENCE/HOME (20)      Bias/Motivation: NO HATE/BIAS MOTIVATION (88)

Offense Status: CLOSED BY ARREST	Status Date: 11/30/2010	Occupancy Code:
Gang Related: NO	Aiding/Abetting:	Sub-Code:
# of Adults: 1	# of Juveniles:	IBR Seq. NO: 1
Property Damage Amt:	Abandoned Structure: No	Household Status:
Domestic Circumstance:	Carjacking: No	Lane:
Accosting Situation:	Gambling Motivated: No	Hate Bias Indicator:

### Offender Suspected Of Using

Alcohol: UNKNOWN  
 Drugs: UNKNOWN

### Victim Suspected Of Using

Alcohol: NO  
 Drugs: NO

## Subjects

Type	No.	Name	Address	Phone	Race	Sex	DOB/Age
COMPLAINANT	1	CHARLES THEODORE BLAINE	112 ANDREW PICKENS CIR MOUNTAIN REST, SC 29664	(864) 638-9568	WHITE (W)	MALE (M)	08/31/1967 43
SUSPECT (S)	1	TRAVIS NOAH BUCK	499 WOODALL SHOALS RD LONG CREEK, SC 29658	(864) 647-9085	WHITE (W)	MALE (M)	11/16/1972 38
VICTIM (V)	1	CHARLES THEODORE BLAINE	112 ANDREW PICKENS CIR MOUNTAIN REST, SC 29664	(864) 638-9568	WHITE (W)	MALE (M)	08/31/1967 43

### Subject #1 - COMPLAINANT

Primary: No  
 Name: CHARLES THEODORE BLAINE  
 Address: 112 ANDREW PICKENS CIR  
MOUNTAIN REST, SC 29664  
 Phone: (864) 638-9568

COMPLAINANT Type: COMPLAINANT  
 Race: WHITE (W)      Sex: MALE (M)      DOB: 08/31/1967  
 Height:      Weight:      Build:  
 Eyes:      Hair:      Age: 43  
 SSN:      DVL#:      State:

Resident Type: COUNTY

Resident Status: JURISDICTION (J)

Statement Type:

### Related Offenses

Group/ORI	Crime Code	Statute	Description
State	90Z	16-17-0430 (A)(1)	USE OF TELEPHONE OR ELECTRONIC MEANS TO HARASS

Domestic Violence: No

Domestic Violence Referrals:

Federal Agencies Involved: No

### Subject #1 - SUSPECT (S)

Primary: No  
 Name: TRAVIS NOAH BUCK  
 Address: 499 WOODALL SHOALS RD  
LONG CREEK, SC 29658  
 Phone: (864) 647-9085

SUSPECT (S) Type: SUSPECT (S)  
 Race: WHITE (W)      Sex: MALE (M)      DOB: 11/16/1972  
 Height: 5ft. 10in.      Weight: 175.0 lbs.      Build: MEDIUM  
 Eyes: BLU      Hair: BRO      Age: 38  
 SSN:      DVL#: 011625768      State: SC

# Case Report Detail

Print Date/Time: 12/29/2010 16:56  
 Login ID: KDavis  
 Case Number: 2010-00033192

OCONEE COUNTY SHERIFF OFFICE  
 ORI Number: SC0370000

Resident Type: COUNTY

Resident Status: JURISDICTION (J)

Statement Type:

Related Offenses

Group/ORI	Crime Code	Statute	Description
State	90Z	16-17-0430 (A)(1)	USE OF TELEPHONE OR ELECTRONIC MEANS TO HARASS

Domestic Violence: No

Domestic Violence Referrals:

Federal Agencies Involved: No

Subject #1 - VICTIM (V)

Primary: No

VICTIM (V) Type:

VICTIM (V)

Name: CHARLES THEODORE BLAINE

Race: WHITE (W)

Sex: MALE (M)

DOB: 08/31/1967

Address: 112 ANDREW PICKENS CIR

Height:

Weight:

Build:

MOUNTAIN REST, SC 29664

Eyes:

Hair:

Age: 43

Phone: (864) 638-9568

SSN:

DVL#:

State:

Resident Type: COUNTY

Resident Status: JURISDICTION (J)

Statement Type:

Related Offenses

Group/ORI	Crime Code	Statute	Description
State	90Z	16-17-0430 (A)(1)	USE OF TELEPHONE OR ELECTRONIC MEANS TO HARASS

Victim/Offender Relationship

No.	Type	Name	Relationship
1	604	TRAVIS NOAH BUCK	ACQUAINTANCE (AQ)

Domestic Violence: No

Domestic Violence Referrals:

Federal Agencies Involved: No

Arrests

Arrest No.	Name	Address	Date/Time	Type
13293 A	TRAVIS NOAH BUCK	499 WOODALL SHOALS RD LONG CREEK, SC 29658	11/30/2010 08:41	TAKEN INTO CUSTODY (T)

Arrest No.: 13293 A

Date/Time: 11/30/2010 08:41

Type: TAKEN INTO CUSTODY (T)

Status:

No.:

Name: TRAVIS NOAH BUCK  
 Address: 499 WOODALL SHOALS RD  
 LONG CREEK, SC 29658

Race: WHITE (W)  
 Height: 5ft. 10in.  
 Eyes: BLU

Sex: MALE (M)  
 Weight: 175.0  
 Hair: BRO

DOB: 11/16/1972  
 Build: MEDIUM  
 Marital: MARRIED/MARRIED  
 COMMON LAW

Phone: (864) 647-9085

SSN:

DVL#: 011625768

State: SC

Age At Arrest: 38

Resident Type:

Resident Status: JURISDICTION (J)

Basis For Caution:

Arrest Result Of:

Clears Case: YES

Alcohol Influence: UNKNOWN

Drug Influence: UNKNOWN

Resisted Arrest:

Arresting Officers

Bureau

School Resource Officer

Weapon Codes

Feature

DW1910 - WINCHESTER

No

UNARMED (01)

Associated Numbers

Booking ORI:

SC037023C

Booking Number:

2010-00004056

Arrest Charges

No.	Group/ORI	Crime Code	Statute	Description
1	State	90Z	16-17-0430 (A)(1)	USE OF TELEPHONE OR ELECTRONIC MEANS TO HARASS

Counts: 1      Charge Date/Time:      Attempt/Commit: COMMIT (C)

Property

Vehicles

# ORIGINAL

State of South )  
Carolina ) In the Court of Common Pleas  
County of Oconee ) Case No: 2011-CP-37-00433

Travis N. Buck, )  
Appellant, )  
-vs- ) Transcript of Record  
State of South ) Magistrate's Court Appeal  
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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Index

Witnesses

Page

No witnesses were called.

Certificate of Court Reporter

17

Exhibits

No.

Description

ID/EV

No exhibits were introduced.

1   \*\* Start of Requested Certified Transcript of Record \*\*

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

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

6           **MR. STOUDEMIRE:** Yes, sir.

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

10          Mr. Buck, you are representing yourself?

11          **MR. BUCK:** Yes, sir.

12          **THE COURT:** Very good.

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

14          **MR. STOUDEMIRE:** Yes, sir.

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

17          **MR. BUCK:** May it please the Court?

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

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

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

1 THE COURT: Very good.

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

6 THE COURT: Which says?

7 MR. BUCK: Our Supreme Court addressed the  
8 Constitutionality of South Carolina Code Section  
9 16-17-430(a)(1). They ruled that the statute was not  
10 Constitutionally vague, nor overly broad, but the Court  
11 narrowly construed the state statute to prohibit only  
12 calls initiated by one with the intent and sole purpose  
13 of conveying an unsolicited, obscene, eminently  
14 threatening, and/or harassing message to an unwilling  
15 recipient.

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

20 THE COURT: Would you mind passing it up?

21 MR. BUCK: Yes, sir (handing).

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

25 Secondly, there was no eminently threatening

1 message.

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

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

8 All right. Anything else?

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

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

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

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

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

8 Is that correct, Mr. Stoudemire?

9 At least that's what the record says.

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

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

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

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

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

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

3 THE COURT: I understand. Go ahead.

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

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

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

13 THE COURT: That's your position, right?

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

17 THE COURT: Go ahead.

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

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

24 THE COURT: Is he a law enforcement officer?

25 MR. BUCK: Pardon me?

1 THE COURT: Is he a law enforcement officer?

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

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

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

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

18 THE COURT: All right. Anything else?

19 MR. BUCK: No, Your Honor.

20 THE COURT: All right. Mr. Stoudemire?

21 MR. STOUDEMIRE: Thank you, Judge.

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

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

2 THE COURT: Was it a jury trial?

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

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

8 MR. STOUDEMIRE: Yes, sir.

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

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

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

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

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

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

6 With regard to the jury charge --

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

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

15 Judge, with regard to the jury charge, I think  
16 that's within the Judge's discretion. However, my  
17 feeling is it looks like from the jury charge and the  
18 notes that Judge Derrick wrote on it, that he did charge  
19 the jury that -- the Judge informed the Jury that the  
20 exact charge the Defendant has been charged with is  
21 16-17-430(a)(1) which does contain the word "obscene" in  
22 that section of the Code.

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

25 **MR. STOUDEMIRE:** Yes, sir.

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

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

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

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

14 MR. BUCK: Just one item, Your Honor.

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

21 And that would be it, Your Honor.

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

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

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

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

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

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

13 THE COURT: I understand.

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

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

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

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

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

1           MR. BUCK: It did.

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

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

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

7           MR. BUCK: Precisely.

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

11          MR. BUCK: No. It was made I want to say November  
12 22nd of 2010.

13          THE COURT: After the expiration of the memorandum  
14 agreement?

15          MR. BUCK: It was. Officer Blaine --

16          THE COURT: And --

17          MR. BUCK: I apologize.

18          THE COURT: No. Go ahead.

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

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

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

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

2 THE COURT: Was it recorded?

3 MR. BUCK: Yes, it was.

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

6 MR. BUCK: Yes, they did.

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

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

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

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

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

1 Jury, he read the entire statute.

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

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

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

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

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

23 Very good. Thank you.

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

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

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

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

5 THE COURT: All right. Thank you very much.

6 MR. STOUDEMIRE: Thank you, Your Honor.

7 MR. BUCK: Thank you, Your Honor.

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

10 \*\* End of Requested Certified Transcript of Record \*\*

11

12

13

14

15

16

17

18

19

20

21

22

23

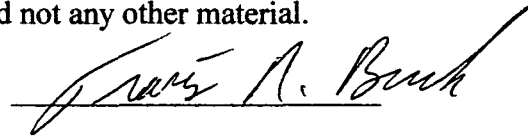
24

25

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.

April 14, 2012

A handwritten signature in cursive script, reading "Travis A. Buck", is written over a horizontal line.

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

THE UNIVERSITY OF CHICAGO

THE UNIVERSITY OF CHICAGO LIBRARY  
540 EAST 57TH STREET, CHICAGO, ILL. 60637

CHICAGO, ILL.

THE UNIVERSITY OF CHICAGO  
540 EAST 57TH STREET  
CHICAGO, ILL. 60637  
TEL: 773-936-3000  
FAX: 773-936-3000

**PROOF OF SERVICE OF RECORD ON APPEAL**

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. 2011-CP-37-00433

**RECEIVED**

APR 17 2012

**SC Court of Appeals**

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

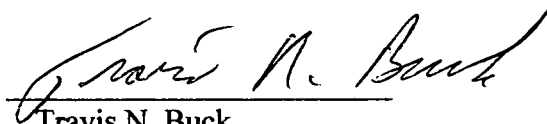
v.

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

**PROOF OF SERVICE**

I certify that I have served the Notice of Appeal on the State of South Carolina by depositing a copy of it in the United States Mail, postage prepaid, on April 16, addressed to the counsel for Respondent, David Spencer, Senior Assistant Attorney General, at P.O. Box 11549, Columbia, South Carolina 29211.

April 16, 2012



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