

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

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

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**LETTER TO MAGISTRATE DERRICK
REQUESTING RECORDED RECORD**

February 23, 2012

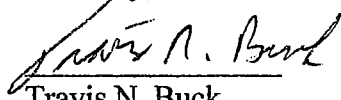
The Honorable William Derrick
Magistrate for Oconee County
106 East Windsor Street
Westminster, South Carolina 29693

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 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

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 CONTINUES 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 DECIDED TO TAKE ACTION THIS TIME.

ON CROSS, TESTIFIED THERE WAS AN INCIDENT FOUR YEARS AGO WHERE DEFENDANT WAS ARRESTED FOR PDC AND RESISTING. 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 OF 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. DIFFERENCE BETWEEN CASE AND STATUTORY LAW. NOT ILLEGAL, FREEDOM OF SPEECH.

ORIGINAL

State of South) In the Court of Common Pleas
Carolina)
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

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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 réciprocité 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 **

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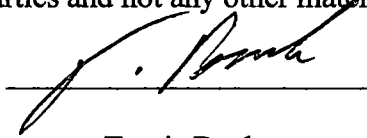
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Certificate of Appellant, Pro Se

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

A handwritten signature in black ink, appearing to read "T. Buck", is written over a horizontal line.

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