

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM OCONEE COUNTY

Court of Common Pleas

Alexander S. Macaulay, Circuit Court Judge

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SC Court of Appeals

Case No. 2011198189

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

v.

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

FINAL BRIEF OF APPELLANT

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(864)647-9085
Appellant, Pro Se

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STATEMENT OF ISSUES ON APPEAL

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). (R. pp. 9-10)

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.

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. (R. pp. 2-3)

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. (R. pp. 2-3)

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 or 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’s 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.

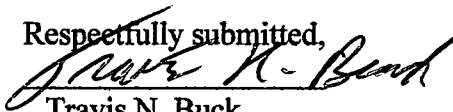
The assertion the Respondent makes about the Appellant meaning the “next time” he and the alleged victim met, the Appellant was going to resort to violence and shoot the alleged victim is nothing short of high theater and hubris on the part of the Respondent. There is nothing in the record that would 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.

May 3, 2012

Respectfully submitted,

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CERTIFICATE OF COUNSEL IN FINAL BRIEF

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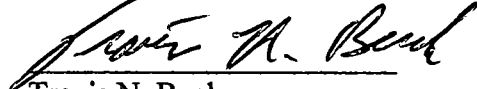
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CERTIFICATE OF COUNSEL

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

May 3, 2011


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