

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

G. Edward Welmaker, Circuit Court Judge

RECEIVED

JUL 10 2013

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

KEEON BUTLER,

APPELLANT

APPELLATE CASE NO. 2012-212340

INITIAL BRIEF OF APPELLANT

LANELLE CANTEY DURANT
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TABLE OF AUTHORITIES

Cases

State v. Bridgers, 329 S.C. 11, 495 S.E.2d 196 (1997) 6, 7, 8, 9

Statutes

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STATEMENT OF ISSUE ON APPEAL

Did the trial court err in finding that the corrections officer, Danielle Woods-Tisdale, was a public official pursuant to S.C. Code Section 16-3-1040(A) rather than a public employee under 16-3-1040(B) which was prejudicial to appellant because threatening a public official required a longer sentence?

STATEMENT OF THE CASE

On August 16, 2011, the Greenville County Grand Jury indicted Keeon D. Butler on the charge of threatening the life of a public official. On June 14, 2012, Butler proceeded to trial before the Honorable Edward Welmaker and a jury. Butler was represented by Caroline Horlbeck, and the state was represented by Lisa Bentley. The jury returned a verdict of guilty as indicted. Judge Welmaker sentenced Butler to five years suspended to the service of thirteen months and thirty months probation. Tr. 127, ll. 11 – 25. Butler's attorney filed a notice of appeal. This appeal follows.

ARGUMENT

The trial court erred in finding that the corrections office, Danielle Woods-Tisdale, was a public official pursuant to S.C. Code Section 16-3-1040(A) rather than a public employee under 16-3-1040(B) which was prejudicial to appellant because threatening a public official required a longer sentence.

In August 2010, Keeon Butler was incarcerated at Perry Correctional Facility. He was serving an eight year sentence for aggravated assault and attempted armed robbery of which he was convicted in March 2005. Tr. 93, ll. 21 – Tr. 94, ll. 24.

Butler had requested legal materials from the prison law library. Sergeant Danielle Woods-Tisdale, who was a corporal at the time of this incident, testified that she worked as a legal law clerk and delivered the legal materials and law books, as well as writing materials, to the inmates on the lock-up facility at Perry. She also supervised security in the “building of inmates.” Tr. 60, ll. 1 – Tr. 62, ll. 20.

On August 24, 2010, Corporal Woods-Tisdale was delivering legal books and materials to the inmates. However, she was unable to deliver to Butler the legal books he had requested because he had broken one of the prison’s policies.¹ She had his books on the cart because it had been prepared based on the requests before the policy was violated. Tr. 36, ll. 17 – 25; Tr. 66, ll. 6 – Tr. 67, ll. 6.

When she told him he could not receive the books, he became extremely angry and was “verbally assaultive.” Tr. 67, ll. 1 – 10. A few days later, she received an unsigned

¹ Woods-Tisdale said Butler had a prior incident of masturbating which violated the prison policies. Tr. 36, ll. 1 – 25.

letter which she “believed” was from Butler based on his unusual handwriting which she had seen in his previous requests. Tr. 67, ll. 11 – Tr. 69, ll. 25.

Sergeant Woods-Tisdale read the letter, which was marked as State’s Exhibit One, to the jury. Tr. 69, ll. 2 – 6; See State’s Exhibit One. When the state requested to admit this letter into evidence, the judge held a bench conference with the attorneys. During this conference, defense counsel objected to the letter as evidenced by the judge saying: “All right, over objection, Exhibits One and Six are admitted and may be published.” Tr. 68, ll. 14 – 25.

In a pretrial motion, defense counsel had objected to the complete letter being admitted because, she argued, it contained only two threats. Tr. 6, ll. 12 – 25; Tr. 40, ll. 21 – Tr. 41, ll. 8.

Defense counsel read the two threats to the court:

I’m going to chop your 1st, 2nd, 3rd born in half...(Line 4)
I might spare you a funeral and just feed you and dem dusty ass
bastards to the hogs. (Last line).

Tr. 41, ll. 5 – 20.

The judge admitted the complete letter because he ruled, it could not be taken out of context. Tr. 43, ll. 15 – Tr. 44, ll. 2; Tr. 46, ll. 1 – 21.

In her first pretrial motion, defense counsel argued to the court that a corrections officer was not a public official pursuant to S.C. Code Section 16-3-1040 (A). Counsel argued that a corrections officer came under a different part of the statute as an employee and the penalty was different. It was a magistrate’s level offense. Tr. 5, ll. 1 – Tr. 6, ll. 2.

The state cited the case of State v. Bridgers, 329 S.C. 11, 495 S.E.2d 196 (1997), where the Supreme Court held that a state trooper was a public official based on the fact that a trooper was charged by law with discretionary exercise of the sovereign power where

public was concerned. The state argued that Bridgers held that the greater the duty to the public at large, the more likely the individual was a public official. The case also considered whether the qualifications for appointment are met; and whether the duties, bond, salary, tenure, and oath were prescribed or required. The state said the SCDC policy manual described how the officials were hired and who selected those positions. The state argued that corporal Woods-Tisdale was a public official based on the selection process and her duty to the public at large. A corrections officer was just like any police officer or highway patrolman. Tr. 7, ll. 16 – Tr. 8, ll. 24.

Defense counsel argued that Butler's case was distinguished from Bridgers in that employees like Ms. Woods-Tisdale were selected by the warden. State troopers were commissioned by the governor upon a recommendation from the director of the Department of Public Safety. The corrections officer position was not created by the Legislature. Also, counsel argued, the qualifications did not deal with appointment, bond and oath. In Bridgers, counsel said the Supreme Court found that state troopers must file a bond conditioned upon the faithful performance of his duties. Counsel finally argued that the Legislature amended 16-3-1040 to specifically include teachers and principals as public officials. They did not name corrections officers which the Legislature could have done. Tr. 10, ll. 1 – Tr. 14, ll. 1.

The judge reviewed the SCDC policy manual and said that the warden makes the ultimate call on selection so that "shows that this is a public official." He denied defense counsel's motion and ruled that the corrections officer was a public official. Tr. 14, ll. 1 – 17.

S.C. Code Section 16-3-1040 (A) provides:

It is unlawful for a person knowingly and willfully to deliver or convey to a public official or to a teacher or principal of an elementary

or secondary school any letter or paper, writing, print, missive, document or electronic communication or verbal or electronic communication which contains a threat to take the life of or to inflict bodily harm upon the public official, teacher, or principal or members of his immediate family if the threat is directly related to the public official's , teacher's, or principal's professional responsibilities.

S.C.Code Section 16-3-1040(B) makes the same provision for a "public employee."

S.C. Code Section 16-3-1040(E) (1) defines a "public official:"

"Public official" means an elected or appointed official of the United States or of this State or of a county, municipality, or other political subdivision of this State.

S.C. Code Section 16-3-1040 (E) (2) defines a "public employee:"

"Public employee" means a person employed by the State, a county, a municipality, a school district, or a political subdivision of this State, except that for purposes of this section, a "public employee" does not include a teacher or principal of an elementary or secondary school.

In State v. Bridgers, *supra*, the Supreme Court reversed the Court of Appeals by holding that a highway patrol officer and state trooper were "public officials" within the meaning of S.C. code Section 16-3-1040(A). The Court wrote that the Legislature had directed that all highway patrol officers and state troopers be commissioned by the Governor upon the recommendation of the Director of Public Safety.

The Court listed the criteria they considered when distinguishing between public officers and public employees. First, highway patrol officers and troopers are charged with the discretionary exercise of the sovereign power as they must enforce traffic laws. Second, their positions were created by the Legislature. Third, their duties and powers are established by statute and include accepting money in the form of bail for traffic arrests, serving criminal process, and making arrests. Fourth, highway patrol officers and troopers must file a bond that is conditioned on the faithful performance of their duties.

The Court then named other law enforcement officers considered to be public officials. These included a deputy sheriff for purposes of workers' compensation; police officers for purposes of defamation and bribery.

S.C. Code Section 24-1-110 provides that the director of the Department of Corrections shall employ and discharge such persons as necessary for the efficient conduct of the prison. Part (B) provides that the director was authorized to provide services to the correctional officers such as haircuts, cleaning of uniforms, and other services.

S.C. Code Section 24-1-120 provides that the director of the Department of Corrections should execute a "good and sufficient" bond for \$50,000 payable to the state conditioned upon the faithful performance of the duties of his office. The director may require of other officers and employees a bond.

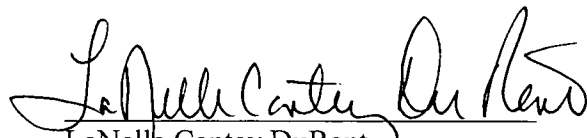
The state did not produce evidence of a bond that Ms. Woods-Tisdale had to provide. The state simply asked Ms. Woods-Tisdale if she were commissioned and she responded yes. The state did not show where the legislature created her position. The state did not provide evidence that met the criteria as listed in Bridgers. She was not elected or appointed as required by the statute.

The trial court erred in ruling that she was a public official pursuant to S.C. code Section 16-3-1040(A).

CONCLUSION

Based on the above, the conviction and sentence should be reversed, and the case remanded.

Respectfully submitted,


LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

This 10th day of July, 2013.

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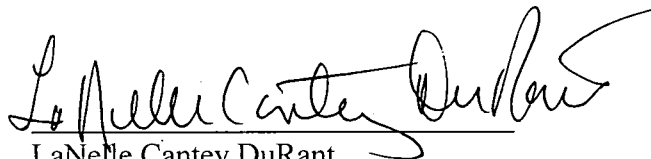
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment(s);
- (2) Trial Transcript Pages 1-14, 40-46, 56 – 69, 93, 94, 98 – 128.
- (3) State's Exhibit One

I certify that this designation contains no matter which is irrelevant to this appeal.

July 10th, 2013



LaNelle Cantey DuRant
Appellate Defender

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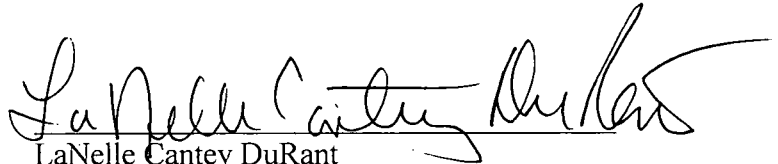
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CERTIFICATE OF SERVICE


The undersigned attorney hereby certifies that a true copy of the Initial Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 10th day of July, 2013.



LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 10th day of July, 2013.



(L.S.)
Notary Public for South Carolina
My Commission Expires: November 16, 2022.