

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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JUL 13 2015

SC Court of Appeals

Appeal from Charleston County

R. Knox McMahon, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ANTHONY BAILEY,

APPELLANT

APPELLATE CASE NO. 2014-001938

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

In this bench trial for threatening a public official, did the trial judge err in finding that the threatened mental health professional employed by the South Carolina Department of Mental Health was a public official rather than a public employee within the meaning of S.C. Code §16-3-1040?

STATEMENT OF THE CASE

In February of 2014, the Charleston County Grand Jury indicted Bailey for threatening the life of a public official, indictment #2014-GS-10-629¹. On September 4, 2014, Bailey proceeded to a bench trial before the Honorable R. Knox McMahon. Mary Ford and Meagan Gentry represented Bailey at trial. Alexander Ziegler and Nicholas Lewis prosecuted the case. Judge McMahon found Bailey guilty and sentenced him to five (5) years suspended upon the service of eighteen (18) months followed by five (5) years of probation. A timely notice of intent to appeal was served on September 10, 2014. This appeal follows.

¹ It is unclear who testified before the Grand Jury as the witness is listed as Charleston County Sheriff.

STATEMENT OF FACTS

Appellant suffers from bi-polar disorder. (R. p. 10, lines 2-6). On August 28, 2013, Appellant was in the Charleston County Jail for municipal level offenses. (R. p. 16, lines 4-11). At the request of jail staff based on threats made by Appellant, Amy Cradock, a mental health professional who was employed by the South Carolina Department of Mental Health and who was working at the Charleston County Jail, checked on Appellant.. (R. p. 13, line 10 – p. 14, lines 1-6). Cradock testified that when she went to see Appellant he became very agitated. She testified, “And then started making some very negative statements about the mental health center, and stated that he intended to go shoot up the mental health center and kill everyone in the mobil [sic] crisis and said to me that if I didn’t get away from his door fast enough, I would be added to the list.” (R. p. 28, lines 12-18). Cradock then testified, “And as I was walking away, he just continued to be agitated and said, you know what, I’m adding you to the list anyway; I’m going to kill you.” (R. p. 28, lines 20-23).

ARGUMENT

In this bench trial for threatening a public official, the trial judge erred in finding that the threatened mental health professional employed by the South Carolina Department of Mental Health was a public official rather than a public employee within the meaning of S.C. Code §16-3-1040.

In South Carolina threatening a public employee is a misdemeanor offense while threatening a public official is a felony. S.C. Code §16-3-1040. When Amy Cradock, a mental health professional who was employed by the South Carolina Department of Mental Health and working at the Charleston County Jail, saw Appellant, who suffers from bi-polar disorder, Ms. Cradock was a public employee, not a public official within the meaning of S.C. Code §16-3-1040.

S.C. Code §16-3-1040 provides:

(A) It is unlawful for a person knowingly and wilfully 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.

(B) It is unlawful for a person knowingly and wilfully to deliver or convey to a public employee a 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 employee or members of his immediate family if the threat is directly related to the public employee's official responsibilities.

(C) A person who violates the provisions of subsection (A), upon conviction, must be fined not more than five thousand dollars or imprisoned not more than five years, or both.

(D) A person who violates the provisions of subsection (B), upon conviction, must be fined not more than five hundred dollars or imprisoned not more than thirty days, or both.

(E) For purposes of this section:

(1) "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.

(2) "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.

(3) "Immediate family" means the spouse, child, grandchild, mother, father, sister, or brother of the public official, teacher, principal, or public employee.

At the close of the State's case Appellant moved for a directed verdict of acquittal. (R. pp. 61-67). Appellant argued that Ms. Cradock was a public employee rather than a public official within the meaning of S.C. Code §16-3-1040. The judge denied the motion. (R. p. 70, lines 16-22). The trial judge erred.

In State v. Bridgers, 329 S.C. 11, 495 S.E.2d 196, (1997), the South Carolina Supreme Court found that highway patrol officers were public officials within the meaning of S.C. Code §16-3-1040. In Bridgers the Court wrote:

We have held that a public officer is "[o]ne who is charged by law with duties involving an exercise of some part of the sovereign power, either small or great, in the performance of which the public is concerned, and which are continuing, and not occasional or intermittent." Sanders v. Belue, 78 S.C. 171, 174, 58 S.E. 762, 763 (1907). Moreover, the criteria we have considered when distinguishing between public officers and public employees include "whether the position was created by the Legislature; whether the qualifications for appointment are established; whether the duties, tenure, salary, bond and oath are prescribed or required [and] whether the one occupying the position is a representative of the sovereign." State v. Crenshaw, 274 S.C. 475, 478, 266 S.E.2d 61, 62 (1980). No single criterion is dispositive and not all the criteria are necessary to find that an individual is a public officer. *Id.*

Bridgers, 329 S.C. at 14, 495 S.E.2d at 198.

The State argued that Ms. Cradock was a public official within the meaning of the statute because she was appointed, as are all other employees of the South Carolina Department of Mental Health, pursuant to S.C. Code §44-4-90. (R. p. 69, lines 3-12). The State additionally argued that she was a public official because she was appointed by the Department of Mental Health as a designated examiner. (R. p. 68, lines 8-15). While Ms. Cradock was technically appointed to her job with the Department of Mental Health, so were all other employees. The appointment factor alone is not sufficient to qualify Ms. Cradock as a public official.

Looking to the other factors from Bridgers to consider when distinguishing a public official from a public employee, unlike the highway patrol officers found to be public officials in Bridgers and the police officers found to be public officials in State v. Carter, 324 S.C. 383, 478 S.E.2d 86 (Ct.App.1996), mental health professionals do not exercise discretionary use of sovereign power. While the Legislature created the position and duties of the Director and Commission of the South Carolina Department of Mental Health, it did not specifically create Ms. Cradock's position or duties. There was no evidence about Ms. Cradock's tenure or salary or whether a bond and oath are prescribed or required for her position as a mental health professional. As to duties, the Court in Bridgers wrote:

Moreover, we have held that the Highway Commissioner and lower level Highway Department officials are public officials because their duties are of great concern to the public. See State v. Thrift, 312 S.C. 282, 440 S.E.2d 341 (1994) (lower level officials); State v. Wannamaker, 213 S.C. 1, 48 S.E.2d 601 (1948) (Commissioner). In fact, "the greater the duty to the public at large, the more likely it is that the individual will be a public official." Thrift, 312 S.C. at 309, 440 S.E.2d at 356. Highway Patrol officers and troopers are engaged in a duty of great concern to the public: enforcement of the criminal laws of the state.

State v. Bridgers, 329 S.C. 11, 15, 495 S.E.2d 196, 198 (1997). In contrast, the duties of the mental health professional are to the individual patients rather than the public at large.

In support of finding that Ms. Cradock, the mental health professional, was a public official within the meaning of the statute, the judge analogized the inconsistency corrected in Bridgers of treating city police officers as public officials but not highway patrol officers to the inconsistency of treating correctional officers as public officials but not mental health professionals. (R. p. 81, lines 6-22). First, the duties of the correctional officers are akin to the duties to the public at large of police officers and highway patrol officers. As discussed above, the duties of the mental health professional are to the individual patients. The differing duties provide a rational basis upon which to treat correctional officers differently than mental health professionals. Second, the legislature specifically addressed assaults upon employees of correctional facilities in a separate statute, S.C. Code §16-3-630. Ms. Cradock was not an employee of the correctional facility. Ms. Cradock was an employee of the Department of Mental Health working at the detention center. (R. p. 47, line 22 – p. 48, lines 1-3). Ms. Cradock was a public employee within the meaning of S.C. Code §16-3-1040. The judge erred in finding she was a public official.

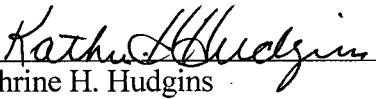
Public employee is clearly defined by the statute as a person employed by the State, a county, a municipality, a school district, or a political subdivision of this State, except that for purposes of this section, a “public employee” does not include a teacher or principal of an elementary or secondary school. S.C. Code §16-3-1040(E)(2). “The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature.” Charleston Cnty. Sch. Dist. v. State Budget & Control Bd., 313 S.C. 1, 5,

437 S.E.2d 6, 8 (1993). The text of a statute is considered the best evidence of the legislative intent or will, and the courts are bound to give effect to the expressed intent of the legislature. Grier v. AMISUB of S.C., Inc., 397 S.C. 532, 535, 725 S.E.2d 693, 695 (2012). “Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning.” Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). The language of the statute defining public employees conveys a clear and definite meaning. If the legislature had intended to treat mental health professionals as public officials rather than public employees, it could have specifically omitted mental health professionals from the definition of public employee, as it did for teachers and principals. Mental health professionals are public employees within the meaning of the statute.

CONCLUSION

Based on the above argument, the conviction and sentence should be reversed and the case remanded for re-sentencing for threatening a public employee.

Respectfully submitted,


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

This 13th day of July, 2015.

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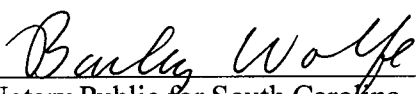
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Susannah R. Cole, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Anthony Bailey, in North Charleston, S.C. this 13th day of July, 2015.


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 13th day of July, 2015.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: October 24, 2021 .