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STATE OF SOUTH CAROLINA

In The Court of Appeals

 ORIGINAL

APPEAL FROM CHARLESTON COUNTY

R. Knox McMahon, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

ANTHONY BAILEY,

APPELLANT

— APPELLATE CASE NO. 2014-001938 —

RECORD ON APPEAL

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF CHARLESTON) Court of General Sessions
3 _____) Case No. 2014-GS-10-00629
4 STATE OF SOUTH CAROLINA)
5 VS.) Transcript of Record
6 ANTHONY BAILEY,)
7 Defendant.) DATE: September 4, 2014
8 _____)

9 B E F O R E:

10 The Honorable R. Knox McMahon

11
12 A P P E A R A N C E:

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14 For the State

15 Mary Ford and Meagan Gentry
16 For the Defendant

17 Karen V. Andersen, RMR, CRR
18 Circuit Court Reporter

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1 THE COURT: All right. This is 2013A-10-10900800,
2 State vs. Anthony Bailey. Mr. Bailey is present in the
3 courtroom and you represent him, Ms. Ford?

4 MS. FORD: Yes, Your Honor.

5 THE COURT: Is anyone else assisting you in your
6 representation of Mr. Bailey?

7 MS. FORD: Yes, Meagan Gentry, with my office.

8 THE COURT: Thank you.

9 All right. Solicitor, is the State prepared to call
10 this case for trial?

11 MR. ZIEGLER: State is prepared to do that, Your
12 Honor.

13 THE COURT: Would you state your name for the record
14 and anyone assisting you in the trial of this case.

15 MR. ZIEGLER: Yes, Your Honor.

16 My name is Alexander Ziegler with the Ninth Circuit
17 Solicitor's Office. I'm an assistant solicitor. Assisting
18 me is Nicholas Lewis, also assistant solicitor with the Ninth
19 Circuit Solicitor's Office.

20 THE COURT: Thank you very much, solicitor. How do
21 you all want to proceed? Do you want to do an opening? Do
22 you want to call witnesses? Do you want to argue a motion?
23 What do you want to do first?

24 MS. FORD: Well, Your Honor, I do think we need to
25 have a Blair hearing briefly first. Your Honor, just to fill

1 you in on the background, initially Mr. Bailey, right after
2 this incident occurred, he was sent through probate court to
3 Just Care. And so when he came back, that's when he was
4 evaluated under the order I had asked for for competency. At
5 that point, they said that he was competent, since he had
6 just gotten back from Just Care, but that he was likely to
7 deteriorate.

8 So then a few months, I noticed that he was
9 deteriorating, so I hired a private doctor to see him to make
10 sure. And he was -- we came back before Judge Young and did
11 a Blair hearing. And Dr. Knight from M.U.S.C. at the time,
12 who is the same doctor who saw him initially, she and Dr.
13 Mulbry both agreed that he was not competent at that point.

14 Since they did say that they thought he could be
15 restored again, Judge Young ordered that he go back to Just
16 Care and that he be tried basically as soon as possible. And
17 so he just got back from Just Care two weeks ago, Your Honor.
18 He was re-evaluated by M.U.S.C. last Friday.

19 And so they do not have an official report on that
20 yet, but Dr. Pagano is here to testify to that. My
21 understanding is he would say he is competent for the record.
22 So that shouldn't take too long, Your Honor. We do not
23 intend to impose that finding, but just for the record.

24 And just so Your Honor knows, because of his
25 medication, he does suffer from some side effects of

1 trembling and everything, but that's a side effect, Your
2 Honor, of the medication.

3 THE COURT: All right.

4 MS. FORD: So I think we need to start there. I
5 think the trial is -- mostly it's about the legal issue,
6 though, Your Honor. We don't intend to put up any of our own
7 witnesses. So I do think the briefs cover most of what we
8 would be arguing.

9 The State does have several witnesses, Your Honor.

10 THE COURT: I will be glad to conduct a Blair
11 hearing.

12 Solicitor.

13 MR. ZIEGLER: Yes, Your Honor. The State calls Dr.
14 Joshua Pagano.

15 JOSHUA PAGANO,
16 having been duly sworn, testifies as follows:

17 THE CLERK: State your first and last name loudly
18 and clearly into the microphone; and spell your last name,
19 please, sir.

20 THE WITNESS: Dr. Joshua Pagano, P-a-g-a-n-o.

21 MR. ZIEGLER: Thank you, Your Honor.

22 DIRECT EXAMINATION

23 BY MR. ZIEGLER:

24 Q. Good morning, Dr. Pagano.

25 A. Good morning.

1 Q. Doctor, what is your educational background?

2 A. I started out undergrad at Xavier University,
3 received a bachelor's in psychology there; went to medical
4 school at Lake Erie College of Osteopathic Medicine. And
5 then I received my general psychiatry residency training at
6 East Carolina University in Greenville, North Carolina. And
7 then this past July, I began my forensic psychiatry
8 fellowship training here at M.U.S.C.

9 Q. Okay. And would you consider that your employment
10 now?

11 A. Yes.

12 Q. Could you please describe for the Court the breadth
13 of your experience in the field of forensic psychiatry.

14 A. Since I began here, I've done approximately 10 of
15 these competency-to-stand-trial evaluations. I've done one
16 criminal responsibility evaluation. I've treated prisoners
17 in various locations. I've done probate civil commitment
18 court here, upstairs, actually, on the fourth floor, as well
19 as in Berkeley County. I do that on a weekly basis. And
20 while I was in residency back in Greenville, North Carolina,
21 I also testified in civil commitments as well.

22 Q. If you had to approximate how many times you've
23 testified before a court in this field of forensic
24 psychiatry, what would your estimate be?

25 A. As far as for civil commitments, back in residency,

1 it was probably 50 times. Since I've been a fellow, maybe
2 five times or so since July.

3 MR. ZIEGLER: Your Honor, the State move to qualify
4 Dr. Pagano as an expert in the field of forensic psychiatry.

5 THE COURT: Any voir dire, Ms. Ford?

6 MS. FORD: No, Your Honor.

7 THE COURT: Thank you. He shall be qualified to
8 give opinions in psychiatry.

9 MR. ZIEGLER: Thank you, Your Honor.

10 BY MR. ZIEGLER:

11 Q. Dr. Pagano, did you receive an order from the court
12 to examine the defendant, Mr. Bailey?

13 A. Yes.

14 Q. And did you complete that examination of Mr. Bailey?

15 A. I did.

16 Q. What information did you obtain prior to that
17 examination?

18 A. So, I received the court order, the official arrest
19 report, and I received psychiatric records from M.U.S.C.,
20 from Palmetto, from his variation hospitalizations. I
21 received his competency restoration records from Just Care
22 and reviewed all that information.

23 Q. What is the significance of that information when
24 you are conducting your examination?

25 A. So, look at the long-term history of any mental

1 illnesses, with all that information and most recently, what
2 I see as being the more important information, is most
3 recently what happened at Just Care, how he was doing there
4 and what happened, you know, what occurred there. And looked
5 like there was a lot of improvement that happened there.

6 Q. Okay. When was the examination of the defendant
7 done?

8 A. I had spoken to him last Friday for about an hour
9 and a half, so it happened then.

10 Q. Who was present for that?

11 A. Myself, Molly Dadden, who was the second examiner,
12 and she also works at M.U.S.C., the defendant, and his
13 attorney, Ms. Ford.

14 Q. And can you briefly describe for the Court what was
15 done as part of that investigation.

16 A. So, we ask him how he's feeling currently, his
17 emotions, his thinking, so kind of evaluating him for any
18 signs of mental disorders, anxiety disorders, psychotic
19 disorders, cognitive disorders, the whole gamut. And then we
20 went into legal issues, his understanding of the charges that
21 are against him, the way he can work with his defense
22 attorney, his understanding of concepts like pleas, judges,
23 jurors, solicitor, the role of evidence, the role of
24 witnesses, the role of testimony and taking the oath, the
25 role of plea bargaining. And he was able to articulate his

1 understanding of all of those concepts.

2 Q. And so you completed that examination just this past
3 Friday. Did you examine Mr. Bailey today?

4 A. Yes, I did.

5 Q. Are you familiar with the legal standards for
6 competency?

7 A. Yes, I am.

8 Q. Can you summarize those?

9 A. For a defendant to have both a rational and a
10 factual understanding of the proceedings against them and the
11 abilities to work rationally with their defense attorney.

12 Q. And what was done to -- well, you've already
13 discussed this somewhat, but what was done to determine
14 whether the defendant met those standards?

15 A. I asked all that on Friday and then I reviewed all
16 that material with him this morning as well. And he was able
17 to explain both factually and rationally his understanding of
18 all of those components this morning as well.

19 Q. Okay. Is there any evidence that the defendant has
20 any intellectual disabilities?

21 A. No.

22 Q. Is there any evidence that the defendant has any
23 mental illness?

24 A. Yes, he does.

25 Q. Could you describe his illness for the Court and the

1 necessary course of treatment for that.

2 A. So, he's got a bipolar disorder. And, currently,
3 it's well-stabilized on the medication. And I think the
4 course of the illness will remain stabilized so long as
5 there's medication and regular checkups with a psychiatrist
6 to continue to monitor how he's doing.

7 Q. Does that mental illness affect Mr. Bailey's
8 competency to stand trial?

9 A. Not at this time.

10 Q. What is your expert opinion to a reasonable degree
11 of medical certainty regarding Mr. Bailey's current
12 competency to stand trial?

13 A. He's competent to stand trial right now.

14 Q. Have you had time to generate a report of your
15 findings in this matter?

16 A. I have not yet generated a full report as to the
17 expedited nature of this.

18 MR. ZIEGLER: Thank you. The State has no further
19 questions, Your Honor.

20 THE COURT: Thank you very much, solicitor.

21 Ms. Ford.

22 MS. FORD: Thank you, Your Honor. I have no
23 questions for this witness.

24 THE COURT: Thank you very much, Doctor. You may
25 step down.

1 (Whereupon the witness is excused.)

2 THE COURT: All right. Solicitor.

3 MR. ZIEGLER: Your Honor, the State would argue that
4 Dr. Pagano's testimony indicates that Mr. Bailey is today
5 competent to stand trial.

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

7 Ms. Ford.

8 MS. FORD: Thank you, Your Honor. As of today, I
9 have no objections to a finding that Mr. Bailey is competent.
10 I did have my own doctor, Dr. Mulbry, see him as well about a
11 week or two ago. He did feel that he would be competent as
12 well. And recently, since he's been back in the past two
13 weeks, I haven't had any difficulties in communicating with
14 him, Your Honor.

15 THE COURT: All right. Thank you very much. I
16 would find that Mr. Bailey is competent to stand trial based
17 on the totality of all the circumstances, the testimony of
18 the -- the expert testimony of Dr. Joshua Pagano, who has
19 examined him last Friday, I believe he said, which I think
20 would have been the 29th of August, reexamined him today,
21 found that he had a rational and factual basis for the
22 charges placed against him, and he had an ability to
23 rationally assist in his own defense.

24 Although he may suffer from a mental illness,
25 bipolar disorder, he is well-stablized and on medication, and

1 he would just need to maintain medication and have regular
2 checkups for monitoring by a psychiatrist. I take into
3 account the previous court order. I take into account Dr.
4 Pagano has reviewed the arrest report, psychiatric records,
5 M.U.S.C. records, hospital records, Just Care, and he has
6 seen a lot of improvements since he has been treated at Just
7 Care.

8 Further, Ms. Ford, his attorney, as an officer of
9 the court, indicates that she has seen improvement and has no
10 problem or issues -- perhaps I will rephrase it differently.
11 Ms. Ford stated that in the last two weeks, has offered no
12 evidence of incompetency. So I would find he is competent to
13 stand trial at this time.

14 All right. What's next, solicitor?

15 Ms. Ford?

16 MR. ZIEGLER: Your Honor, the State would seek
17 guidance as to how Your Honor would like us to proceed as far
18 as whether we should give opening statements or whether you
19 would like to hear arguments about the main legal issue in
20 the case.

21 THE COURT: I will be glad to hear opening
22 statements if each of you choose to do so, or if only one of
23 you choose to do so, I will be glad to do that. I will leave
24 that up to y'all individually. I think then you would have
25 to lay a foundation, a factual basis for the charge, and then

1 a factual basis over and above the briefs themselves as to
2 whether or not Ms. Cradock was a proposed official or public
3 employee. If you want to make a brief opening statement, I
4 would be glad to hear from you, Ms. Ford; either one or both,
5 or none.

6 MR. ZIEGLER: Your Honor, I will start with a brief
7 opening statement.

8 THE COURT: All right. Thank you very much,
9 solicitor.

10 MR. ZIEGLER: Your Honor, this incident occurred on
11 August 28th, 2013. Ms. Amy Cradock was working at the
12 Charleston County jail. She works for South Carolina
13 Department of Mental Health, but she is stationed at the jail
14 to provide mental health services for the inmates at the
15 jail. There is a contract between the Department of Mental
16 Health and the jail to be the provider of mental health
17 services at the jail. Ms. Cradock is a mental health
18 professional. That is her title with the -- within the South
19 Carolina Department of Mental Health. She is also a
20 designated examiner within the South Carolina Department of
21 Mental Health.

22 When an inmate at the detention center needs mental
23 health attention, a referral can be made to the Department of
24 Mental Health team at the jail of which Ms. Cradock is a
25 member. In this particular incident, a referral was, indeed,

1 made to the mental health team, which was received by
2 Ms. Cradock. She went to see the defendant based on that
3 referral. And she went to see him because -- and that
4 referral was for threats to a detention officer. Thus, the
5 referral was made for Ms. Cradock to go assess the defendant
6 based on his actions towards the detention officers.

7 So Ms. Cradock, as part of her job duties as a
8 mental health professional, went to Mr. Cradock -- I'm sorry,
9 Mr. Bailey's, the defendant's, cell in the jail to speak with
10 him to evaluate him for his mental health needs. When he got
11 there, she introduced herself to the defendant. She
12 introduced herself as a member of the South Carolina
13 Department of Mental Health. And she did not get much
14 further than that before the defendant began making threats
15 towards her.

16 The defendant indicated -- well, he became agitated
17 at Ms. Cradock's introduction to him and indicated that when
18 he gets out of jail, he intended to go to the mental health
19 center, shoot up the mental health center, and kill everyone
20 in the mobil crisis unit of the mental health center. He
21 then indicated to Ms. Cradock that if she did not get out of
22 his -- if she did not get out of his face -- or excuse me, if
23 she did not want to be on that list, then we should get out
24 of his face.

25 At that point, Ms. Cradock terminated her interview,

1 her evaluation of Mr. Bailey, due to those threats. As she
2 was walking away from Mr. Bailey's cell, Mr. Bailey told
3 Ms. Cradock, you know what -- he indicated that she might as
4 well add herself to the list, that he's going to kill her
5 too.

6 That was the extent of the contact between
7 Ms. Cradock and the defendant. After the incident,
8 Ms. Cradock reported the incident to several people at the
9 jail. She also reported the incident to responding deputies
10 from the Charleston County Sheriff's Office.

11 Ms. Cradock has certain duties at the detention
12 center. And those duties involve some discretion and power
13 on her part. When she goes to evaluate someone at the jail,
14 there are a variety of actions that she can take based on her
15 evaluations of an inmate. She can recommend classification
16 and housing arrangements to the jail. She can refer a
17 defendant or an inmate to a psychiatrist for medication
18 assessment. She can also begin -- petition to begin
19 commitment proceedings for that inmate, even on an emergent
20 basis, if that's what her evaluation indicates is
21 appropriate.

22 So, Your Honor, Ms. Cradock has an important role at
23 the jail, an important role in evaluating inmates. And, Your
24 Honor, the State would just urge you to look at those -- that
25 discretion and the power that Ms. Cradock has when she sees

1 individuals like Mr. Bailey at the jail.

2 THE COURT: Thank you very much, Mr. Ziegler.

3 Ms. Ford.

4 MS. FORD: Yes, Your Honor. May it please the
5 Court. Your Honor, Anthony Bailey, unfortunately, suffers
6 from a pretty severe mental illness. And he was incarcerated
7 back in August of last year for municipality charge. And
8 recognizing that he had a mental illness and needed mental
9 health assistance, jail staff did call Ms. Cradock that day,
10 and she came to see him, and some statements were made to
11 her.

12 I'm not 100 percent sure what exactly she will
13 testify to regarding the statements, she did not give a
14 written statement, but from my understanding, I believe that
15 in general, we admit that those statements were made, Your
16 Honor. That is not the question. That is not the reason why
17 we are here.

18 Ms. Cradock -- Mr. Bailey ended up being charged
19 with threatening a public official. We believe, and we would
20 ultimately ask the Court to find that Ms. Cradock is not a
21 public official; rather, she's a public employee. And there
22 are many reasons for that, Your Honor. Yes, there is --
23 Ms. Cradock is considered a designated examiner, for example,
24 under probate proceedings. However, she was not there --
25 admittedly, she was not there at that point for that purpose.

1 And so we feel that that would not be the basis for finding
2 her to be an official. From my understanding, that is why
3 Mr. Bailey was charged with the "official" charge over the
4 "employee" charge.

5 We know that she works for the Department of Mental
6 Health. We do not deny, obviously, that the Department of
7 Mental Health is a government entity. Your Honor, however,
8 its workers, its employees, including Ms. Cradock, they are
9 healthcare providers, mental healthcare providers. And just
10 because someone is an inmate or a patient of the Department
11 of Mental Health, just because they have to use a public
12 service rather than a private service, it doesn't mean that
13 they aren't entitled to the rights afforded to all patients
14 of mental health providers.

15 For example, Ms. Cradock and the Department of
16 Mental Health in particular at the jail, they are subject to
17 HIPAA laws. And they cannot talk about a client even to
18 their attorney, such as myself, without a release. So they
19 have a release. DMH has a particular release that an inmate
20 can sign in order for people, the mental health professionals
21 like Ms. Cradock, to talk to people and to tell people what
22 they've noticed and things of that nature, Your Honor.

23 We ultimately are going to ask the Court to find
24 that Ms. Cradock is an employee because, quite frankly,
25 counselors at the Department of Mental Health, their most

1 important responsibility is to patients. They exist -- you
2 know, obviously, there's a public benefit to DMH existing.
3 Otherwise, why would they exist? Why would any public
4 employee exist if there wasn't some benefit to the public.
5 However, it exists to help particularly mentally ill people.
6 And finding otherwise -- finding that they are officials,
7 Your Honor, we believe would have a detrimental effect.
8 Because it would basically be holding that patients of the
9 Department of Mental Health are not granted the same
10 protections that a patient of a private provider would be
11 given.

12 And we also would argue, ultimately, and we are
13 going to ask you to consider throughout the course of this
14 trial, that Ms. Cradock's position is not similar to that of
15 a police officer. While she has an ability to refer people
16 to a probate proceeding, for example, or can make
17 recommendations on where they should be classified in the
18 jail, ultimately, she has no actual power or authority.

19 Certainly, it's nothing similar to what a cop, a
20 police officer, what his authority may be. A police officer
21 can make the decision to arrest people and they enforce the
22 laws. And they also do not have particular responsibilities
23 to individuals, necessarily; society at large they are there
24 to protect. But they don't have a responsibility towards the
25 people they are arresting other than to treat them, you know,

1 according to civil rights rules, Your Honor.

2 But, ultimately, that is what this trial is about.

3 Ms. Cradock is an employee, not an official.

4 THE COURT: Thank you very much, Ms. Ford.

5 All right. Solicitor, you may call your first
6 witness.

7 MR. ZIEGLER: The State call Ms. Amy Cradock.

8 AMY CRADOCK,

9 having been duly sworn, testifies as follows:

10 THE CLERK: State your first and last name loudly
11 and clearly into the microphone, and spell your last name,
12 please, ma'am.

13 THE WITNESS: My name is Amy Cradock,
14 C-r-a-d-o-c-k.

15 DIRECT EXAMINATION

16 BY MR. ZIEGLER:

17 Q. Good morning, Ms. Cradock.

18 A. Good morning.

19 Q. Ms. Cradock, how old are you?

20 A. I'm 38.

21 Q. What is your educational background?

22 A. I have bachelor's degree in psychology, and I have
23 my master's degree in social work.

24 Q. What is your current employment?

25 A. I work for the Charleston/Dorchester Mental Health

1 Center, Department of Mental Health.

2 Q. What is your -- can you please describe your
3 employment history, your past employment and the course of
4 that.

5 A. Okay. I started out doing some internships in
6 college. I worked with an alternative high school in
7 undergrad. In graduate school, I worked at a regular
8 education high school. I also worked with the VA, the
9 Healthcare for Homeless Veterans program. When I was hired
10 on with the Department of Mental Health in 2001, I was -- my
11 first position was with the county's alternative high school.
12 It's now referred to as Liberty Hill Academy. I was there
13 for two years, took about a six-month break, and went to a
14 regular elementary school, and then went back to what's now
15 called Liberty Hill Academy. And then I believe in 2004, I
16 took the position over at the -- as a counselor over at the
17 jail.

18 Q. Okay. How many total years of work experience do
19 you have in mental health counseling?

20 A. Fourteen

21 Q. And how many years have you been employed at the
22 jail? Since when have you been employed at the jail?

23 A. It's been almost nine years, I believe.

24 Q. Okay. How have you -- how was your position
25 advanced since you've been working for the Department of

1 Mental Health at the jail?

2 A. Originally, I was just regular mental health
3 counselor, and I have since become the supervisor of the
4 mental health team in the jail.

5 Q. How many people do you supervise?

6 A. Five people.

7 Q. Do you have any specialties within the Department of
8 Mental Health? Have you been given any special appointments
9 or any special training?

10 A. I'm one of the Lowcountry negotiators. I've been
11 trained as a crisis hostage negotiator with the various law
12 enforcement teams.

13 Q. What does that duty entail when you are actually
14 working in that capacity?

15 A. You know, I use that training quite often.
16 Oftentimes, I work with our special operations team, the SOG
17 team in the jail. If someone has barricaded themselves in a
18 cell or is a behavior problem in some way or acting out in
19 some way, sometimes they will contact me to come try to help
20 resolve the situation peacefully rather than them having to
21 use force.

22 Q. Does anyone else in your mental health team at the
23 jail have that crisis negotiator training that you have?

24 A. Not on my team, no.

25 Q. Do you have any other special appointments within

1 South Carolina Department of Mental Health?

2 A. I'm a designated examiner.

3 Q. And can you briefly explain what that role is and
4 how you came to be a designated examiner as well?

5 A. I was appointed to be a designated examiner, and am
6 sent to probate court along with a doctor to do assessments
7 on folks that are sent through the probate court to determine
8 whether or not they need to stay in the hospital and/or have
9 a commitment for -- or a court order for inpatient or
10 outpatient treatment.

11 Q. And as a mental health counselor -- or can I call
12 you a mental health professional?

13 A. Sure, yeah.

14 Q. Is that -- what is your title within the Department
15 of Mental Health?

16 A. Within the Department of Mental Health, I think
17 sometimes mental health counselor/mental health professional
18 are used interchangeably. Mental health professional is
19 usually what I use.

20 Q. What are your job duties as a mental health
21 professional?

22 A. Within the jail, I see the inmates for various
23 reasons. Oftentimes, we get referrals from -- that are court
24 ordered. We get referrals from lawyers, from family members,
25 from the inmates themselves. We have a kiosk system where

1 the inmates can even write to us and express they are having
2 problems and need to be seen. Just about any way you can
3 think of, we get referrals and we see people.

4 I also assess people on suicide watch, determine
5 whether they need to stay on suicide watch, or if they meet
6 criteria to go to the hospital. We follow up with folks that
7 we have suicide watch. We have some folks that come inside
8 the jail that are chronically mentally ill and that need to
9 be followed more closely. So we do do some more intensive
10 work with some of those inmates than we do with some of the
11 others.

12 We do involuntary commitments to the hospital. If
13 someone comes in and they are mentally ill and not well, we
14 can determine whether or not they need to go to the hospital,
15 and we can initiate that paperwork. And I do that quite
16 often.

17 Q. And as a mental health professional -- I want to
18 backtrack a little bit. Are there any special qualifications
19 you are required to have to work in that position with the
20 Department of Mental Health?

21 A. You have to have a master's degree.

22 Q. And back to the designated examiner appointment that
23 you have, are there any special qualifications for that?

24 A. I believe you also to have a master's degree and
25 then you have to have a certain number of years, possibly two

1 years of work behind you as a master-degree level clinician.

2 Q. So we've already touched on this some, but please
3 describe for the Court a normal day at work at the detention
4 center for you. What kind of things do you see?

5 A. There's no real normal day, which is part of what I
6 like about my job, but it really depends. I mean, sometimes
7 we've got upwards of 10 to 12 people on suicide watch on any
8 given day. I might come into a situation where our SOB team
9 is dealing with one, possibly two people who are having a
10 situation that we have to respond and help try to, like I
11 said, resolve the situation peacefully without them having to
12 use any use of force.

13 Some days are a little slower and you just go in and
14 you process -- I process the referrals mostly for our team
15 and determine who -- you know, kind of triage the referrals,
16 determine who needs to be seen more quickly versus those that
17 can wait.

18 Q. Okay. And while you are carrying out those duties
19 at work at the jail, how often do you get -- do you receive
20 threats towards you from people at the jail?

21 MS. FORD: Objection. Relevance.

22 THE COURT: What would be the relevance?

23 MR. ZIEGLER: Your Honor, I intend to highlight how
24 seriously she took this particular threat by talking about
25 past threats that she has received.

1 MS. FORD: I think that's irrelevant, Your Honor, to
2 the charge. The charge is simply, did someone make a threat.
3 There's no actual -- there's nothing in the law saying how
4 someone felt about that threat.

5 THE COURT: Without going into prior threats, you
6 can certainly ask her how seriously she took this one. So I
7 would sustain the objection as to prior threats.

8 MS. FORD: Yes, Your Honor.

9 BY MR. ZIEGLER:

10 Q. So, Ms. Cradock, let's go back to your normal duties
11 at work.

12 A. Uh-huh.

13 Q. When you process these referrals and you deal with
14 inmates at the jail for their mental health needs, what
15 things can you -- can you in your position -- what things can
16 you do once you've done that initial evaluation based on a
17 referral? What actions can you take that have an effect on
18 that inmate that you've seen?

19 A. I can make housing recommendations. I often develop
20 behavior management plans. I can have somewhat of an
21 influence as far as -- we have an interdisciplinary team, I
22 guess, that meets weekly to discuss inmates that are having
23 issues that we all need to be involved with. And oftentimes,
24 that's where we discuss whether or not they need to be given
25 a management plan or they need a special housing assignment

1 or any specific issues that someone might be having. We all
2 have our own specialties, I guess. And we, you know, try to
3 come up with the best plan for that inmate. I can make
4 recommendations for an inmate to meet with our psychiatrist.

5 Q. Earlier you mentioned commitment proceedings. What
6 can you do regarding commitment proceedings?

7 A. I can initiate a commitment. And I do that in a
8 couple different ways. If it's -- for example, oftentimes we
9 have inmates that are in jail on general sessions charges and
10 not expected to be leaving jail anytime soon. We can still
11 get that person to the hospital. What I do is I start the
12 commitment process by completing Part 1 commitment paper, and
13 then refer them to our psychiatrist to be assessed and to
14 complete the Part 2.

15 Once that's complete, we get them on the list, the
16 waiting list for the hospital, depending on what their
17 charges are, where they need to go.

18 I get asked to do assessments quite often of someone
19 who has been bonded out or their time has been served and the
20 jail staff feel that they would be unsafe in the community.
21 And so I often do those assessments and determine whether or
22 not I need to send that person to, for example, the ER. That
23 process means that I fill out that Part 1 commitment paper.
24 But if I don't have access to a psychiatrist, I have to send
25 that person to the ER with the sheriff's therapeutic

1 transport team. And I have to get an order of detention to
2 make sure that they can be held and transported for that,
3 so ...

4 Q. Okay. Thank you. In these actions that you can
5 take, is there any discretion involved on your part as far as
6 what actions to take and how to go about them?

7 A. Yes. I have to definitely use my professional
8 judgment and make a decision based on whether or not I feel
9 that person is a danger to themselves or the community. And
10 if I deem that they are, then I do complete that Part 1 and
11 ask in some way, shape, or form, the doctor assess them as
12 well.

13 Q. Okay. Now, Ms. Cradock, I want to direct you to
14 August 28th, 2013.

15 A. Okay.

16 Q. Were you at work at the jail on that day?

17 A. Yes.

18 Q. And did you receive a referral to see Anthony Bailey
19 on that day?

20 A. Yes, yes.

21 Q. Could you please describe the format of that
22 referral, how it was received by you?

23 A. I received a written referral. I believe I also got
24 a phone call too that Mr. Bailey had threatened to shoot an
25 officer when he gets released. And I went to assess whether

1 or not he needed to be in the hospital for homicidal
2 ideations.

3 Q. And did you go to -- what did you do based on that
4 referral?

5 A. I immediately went to the unit where he was. He was
6 in Unit A1A, our disciplinary unit. I informed the officers
7 who I was there to see. And I was escorted by an officer
8 back to Mr. Bailey's cell. At that point, I barely had a
9 chance to introduce myself. I just walked up and said, you
10 know, I'm Amy with mental health. I reminded him that we had
11 met before. I let him know that I was there based on a
12 referral that he had made a threat towards an officer. And
13 he immediately got very, very agitated. And then started
14 making some very negative statements about the mental health
15 center, and stated that he intended to go shoot up the mental
16 health center and kill everyone in the mobil crisis and said
17 to me that if I didn't get away from his door fast enough, I
18 would be added to the list.

19 Q. And what did you do at that point?

20 A. I said, okay, thank you, and I walked away. And as
21 I was walking away, he just continued to be agitated and
22 said, you know what, I'm adding you to the list anyway; I'm
23 going to kill you too.

24 Q. How did you perceive those statements from
25 Mr. Bailey?

1 MS. FORD: Objection. Relevance.

2 THE COURT: Overruled.

3 You may answer that question.

4 THE WITNESS: Because the reason I went to see him
5 was to see if he was homicidal or not. He had made a threat.
6 The referral that I got stated that he had said that when he
7 got out, he was going to get his gun and point it in the
8 officer's face and shoot it, and he swore on his mother's
9 life, that to me suggested that he probably had a weapon,
10 which increased my concern.

11 Based on a lot of the history in dealing with
12 Mr. Bailey, I knew him to be someone that made threats often
13 and that was quite often on our disciplinary unit for being
14 aggressive. And just based on my history of knowing our
15 interaction -- my team's interactions with him and the mental
16 health counselor and everything, I just felt that it was a
17 very, very serious threat.

18 Q. Could you briefly explain the statement Mr. Bailey
19 made referring to mobil crisis? Can you briefly explain what
20 that is?

21 A. Mobil crisis is the area -- it's basically a team on
22 the Department of Mental Health. They respond to our clients
23 or people that are not open with the Department of Mental
24 Health in the community in crisis situations 24/7. They work
25 very closely with the various police departments to try to

1 help de-escalate situations, and/or if someone is extremely
2 mentally ill and psychotic, for example, they can hospitalize
3 -- get that person into the hospital.

4 Q. Is that a unit of the Department of Mental Health?

5 A. Yes.

6 Q. The individual who you went to see that day on
7 August 28th, 2013, that made these threats, do you see him in
8 the courtroom today?

9 A. Yes.

10 Q. Could you please point him out for the Court.

11 A. (Witness indicates.)

12 Q. What's he wearing?

13 A. White shirt, brown shoes, black pants, I think.

14 Q. Thank you. And on this particular incident date,
15 you were at the jail you said?

16 A. Uh-huh.

17 Q. What county did this incident occur in?

18 A. Charleston County.

19 Q. Now, after you received these threats, these
20 statements from Mr. Bailey, what did you do at that point?
21 How did you act on that?

22 A. I immediately notified my supervisor. I spoke with
23 our contracts manager at the jail, requested that a deputy be
24 called so that I could make a statement. I spoke to several
25 people in the chain of command.

1 Q. Okay. Did you tell them all these statements that
2 were made?

3 A. Absolutely. I was very concerned.

4 Q. And did you indicate to the officers that you spoke
5 to that you were interested in charges being pursued for you?

6 A. Absolutely, yes.

7 MR. ZIEGLER: Court's indulgence.

8 THE COURT: Yes, sir.

9 BY MR. ZIEGLER:

10 Q. Ms. Cradock, as a mental health professional with
11 the Department of Mental Health, are you required to serve
12 the clients that are referred to you or come to you or need
13 the help of the Department of Mental Health?

14 A. Yes.

15 Q. Can you turn anyone away if they need mental health
16 help?

17 A. No, no.

18 MR. ZIEGLER: No further questions for this witness,
19 Your Honor.

20 THE COURT: Thank you, solicitor.

21 Ms. Ford.

22 MS. FORD: Yes, Your Honor, may it please the Court.

23 CROSS-EXAMINATION

24 BY MS. FORD:

25 Q. So, your occupation is as a mental health counselor?

1 A. A mental health professional, yes.

2 Q. You are often referred to as a mental health
3 counselor?

4 A. Some do, yeah.

5 Q. And you told us you have your master's in social
6 work, correct?

7 A. Yes.

8 Q. Do you have any accreditations or anything like
9 that?

10 A. No.

11 Q. As a mental health professional, is it fair to say
12 that there are standards that apply to you that apply to all
13 mental health professionals?

14 A. Yes.

15 Q. And those standards would apply whether you work for
16 the Department of Mental Health or if you were in private
17 practice, correct?

18 A. Some in private practice can turn away clients and
19 say they didn't want to work with certain people if they
20 didn't want to. With the Department of Mental Health, you
21 can't turn people away.

22 Q. But when dealing with people -- and are they
23 referred to you as patients, or how do you refer to people
24 you see?

25 A. Well, inside the jail, they are referred to as

1 inmates. At the Department of Mental Health, though, we
2 refer to them as clients.

3 Q. Clients at the Department of Mental Health?

4 A. Uh-huh.

5 Q. When -- you are held to certain standards of
6 confidentiality, correct?

7 A. Yes.

8 Q. And are you aware of HIPAA laws?

9 A. Yes.

10 Q. And HIPAA laws require that you cannot reveal
11 somebody's mental health issues unless they basically tell
12 you in a release that you can, correct?

13 A. Correct.

14 Q. So as far as you know, your work with a particular
15 inmate or client would not be subject to, for example, the
16 Freedom of Information Act, correct?

17 A. What was that?

18 Q. Your work with a client, your records, if someone
19 just sent you a letter saying I want these records, you could
20 not give it to them, correct?

21 A. Correct, not without release of information.

22 Q. And you told us about some of your duties at the
23 jail in working with the inmates, but is it fair to say that
24 all mental health counselors working for the Department of
25 Mental Health, they would obviously not have the same job

1 description, correct?

2 A. Correct.

3 Q. So they will not be working with inmates unless they
4 worked at the jail, correct?

5 A. Correct.

6 Q. You told us that you are considered a designated
7 examiner, correct?

8 A. Yes.

9 Q. But that is not something that you are able to do on
10 your own, correct? You have to have a doctor with you, a
11 second person?

12 A. Correct.

13 Q. And so the ultimate decision is not up to you,
14 correct?

15 A. The ultimate decision is up to the judge.

16 Q. You and the doctor will make a recommendation
17 together?

18 A. We make separate recommendations.

19 Q. And being an examiner, that is through probate
20 court, correct?

21 A. Yes.

22 Q. And so, probate court deals with people in jail and
23 out of jail, correct?

24 A. Yes.

25 Q. So, do you ever examine people who are not inmates

1 through that position as a designated examiner?

2 A. Yes.

3 Q. How often do you act as designated examiner?

4 A. Recently, not very often.

5 Q. When you were seeing Mr. Bailey that day at the
6 jail, August 28th of last year, you were not seeing him as a
7 designated examiner, correct?

8 A. No.

9 Q. But if he raised a concern of being a threat to
10 himself or others, you have the ability to make a referral,
11 correct?

12 A. Yes.

13 Q. And then the probate court would -- I guess they
14 would get two designated examiners at that point; is that
15 what happens?

16 A. No. If I felt like he was a danger to himself or
17 someone else, then we would complete the commitment papers.

18 Q. And you would refer it to the doctor, correct?

19 A. Right, right.

20 Q. And the person would be sent -- do they have to go
21 through probate, or can they be sent from the jail?

22 A. They can be sent from the jail.

23 Q. But the doctor is the one who has to ultimately make
24 that decision; is that correct?

25 A. Yes, yes.

1 Q. So is that actually why you were there that day, to
2 see if you needed to make a referral to a doctor?

3 A. I was there to see if I needed to initiate that Part
4 1 commitment and also make a referral to a psychiatrist.

5 Q. Mr. Bailey, you indicated that you knew the history
6 of threats, correct?

7 A. Uh-huh.

8 Q. And you've talked about in his statement about the
9 gun, but you had no actual knowledge that he had a gun,
10 correct?

11 A. No.

12 Q. And as far as you knew, his charge that he was there
13 for did not involve a gun or an act of violence, correct?

14 A. Correct.

15 Q. So in your job, the Department of Mental Health is
16 open to the public, correct?

17 A. Correct.

18 Q. But, once someone comes to the Department of Mental
19 Health for treatment, they are considered clients of the
20 Department of Mental Health, correct?

21 A. Yes.

22 Q. Is it fair to say that a big part of your job is to
23 do what you can to help them, correct?

24 A. Of course we try to help.

25 MS. FORD: Beg the Court's indulgence.

1 THE COURT: Yes, ma'am.

2 BY MS. FORD:

3 Q. Ms. Cradock, after the threat was made, you reported
4 everything to your supervisors, correct?

5 A. Yes.

6 Q. And a deputy sheriff came in to take a statement,
7 correct?

8 A. Yes.

9 Q. And that's because you did not have the ability to
10 arrest Mr. Bailey yourself, correct?

11 A. Correct.

12 Q. And you are saying you did not tell -- the deputy
13 who saw you was Deputy Taylor. Does that ring a bell?

14 A. I believe so.

15 Q. And you are saying you did not tell him, initially
16 at least, that you -- you did not want to pursue charges at
17 that point?

18 A. I always said I wanted to pursue charges. I had
19 some issues with his statement at the preliminary hearing.

20 MS. FORD: Okay. All right. Thank you. No further
21 questions.

22 THE COURT: Redirect, solicitor?

23 MR. ZIEGLER: Yes, Your Honor. Thank you.

24 REDIRECT EXAMINATION

25 BY MR. ZIEGLER:

1 Q. Ms. Cradock, had you been appointed as a designated
2 examiner when you went to see Mr. Bailey on August 28th,
3 2013?

4 THE COURT: Say that question again.

5 MR. ZIEGER: Yes.

6 BY MR. ZIEGLER:

7 Q. Had you been appointed at the time as a designated
8 examiner at the time when you went to see Mr. Bailey on
9 August 28th, 2013?

10 A. Yes.

11 Q. I will make it a little clearer. When you went to
12 see Mr. Bailey on August 28th, 2013, were you at that time
13 appointed as --

14 A. For his case?

15 Q. No, in general, by the Department of Mental Health,
16 were you appointed as a designated examiner? Did you have
17 that appointment?

18 A. Before I went to see him? Yes.

19 Q. And did you have it when you saw him?

20 A. Yes.

21 Q. What decisions could you have made about
22 Mr. Bailey's mental health services, mental healthcare, when
23 you went to see him on August 28th, 2013?

24 A. Certainly, he was in an appropriate place as far as
25 housing goes. I could have -- if his housing status were

1 different, I could have made a decision about that. Most
2 importantly, I have a responsibility to maintain safety in
3 the community as well. And completing the commitment papers
4 would be a big decision as far as that goes, to make sure if
5 he's a threat to other people, that he get treatment.

6 Q. And when Deputy Taylor from the Sheriff's Office
7 spoke with you for the first time, did you inform him that
8 you specifically had been threatened --

9 A. Yes.

10 Q. -- by Mr. Bailey?

11 A. Yes.

12 Q. And did you inform him of the other threats that
13 were made towards --

14 A. Absolutely.

15 Q. -- towards the mental health center and mobile
16 crisis unit?

17 A. Yes.

18 Q. And did you ever tell any of the responding deputies
19 that you did not wish to pursue any charges against
20 Mr. Bailey for his actions?

21 A. There was a brief period of time where I think I had
22 to kind of sit back and think about whether I wanted to
23 pursue this or not. I was assuming that if someone threatens
24 to shoot and kill people in a mental health center, that that
25 would be a charge in itself. And I found out that it's not

1 illegal to threaten to murder people. So, it was only going
2 to be me that was going to be highlighted in all of that, not
3 myself and the mental health center. And so there was a day
4 where I had to sit back and think about whether or not I
5 wanted to be the highlight, you know, of that situation.

6 Q. But did you ever indicate that you did not want to
7 go forward with this?

8 A. No, no.

9 MR. ZIEGLER: No further questions.

10 THE COURT: Recross.

11 RECROSS-EXAMINATION

12 BY MS. FORD:

13 Q. You told us that you do not often act as a
14 designated examiner. Do you recall the last time you acted
15 in that position?

16 A. I don't remember exactly.

17 Q. And at the time last year that Mr. Bailey -- that
18 this incident happened, at that time, were you actively and
19 frequently acting as a designated examiner?

20 A. No.

21 MS. FORD: Thank you.

22 THE COURT: All right. Thank you very much,
23 Ms. Cradock. You may step down.

24 All right. Solicitor, you may call your next
25 witness.

1 MR. ZIEGLER: The State calls Officer Patrick Wiley.

2 PATRICK WILEY,

3 having been duly sworn, testifies as follows:

4 THE CLERK: State your name loudly, and speak
5 clearly into the microphone, and spell your last please, sir.

6 THE WITNESS: First name Patrick. Last name
7 W-i-l-e-y.

8 DIRECT EXAMINATION

9 BY MR. ZIEGLER:

10 Q. Can I call you Officer Wiley?

11 A. Yes, sir.

12 Q. Officer Wiley, how old are you?

13 A. I'm 26.

14 Q. Where are you employed?

15 A. Sheriff Al Cannon Detention Center.

16 Q. Who is your employer?

17 A. Sheriff Al Cannon.

18 Q. What is your particular position at the detention
19 center?

20 A. I'm a housing officer.

21 Q. How long have you been in that position?

22 A. In October it will be three years.

23 Q. What is your educational and prior work history for
24 your work at the detention center?

25 A. I have some college, and I've been with Charleston

1 County now for three years. Prior to that, I worked for a
2 prosecuting company and some construction.

3 Q. And in your current position, can you give a brief
4 description of your duties at work, please?

5 A. At the detention center or previous?

6 Q. Currently at the detention center.

7 A. I'm a housing officer. I maintain safety, security
8 for all inmates until their court date.

9 Q. And what unit are you usually signed to?

10 A. Alpha Alpha.

11 Q. How many inmates are housed in that unit?

12 A. We can house up to 54.

13 Q. Officer Wiley, I want to direct you to August 28th,
14 2013. Do you recall an incident where Ms. Amy Cradock came
15 to the unit where you were working to assess an inmate?

16 A. I do recall that incident.

17 Q. And when she arrived at the unit, what did you do
18 when she arrived there?

19 A. I escorted her back to talk to Inmate Bailey.

20 Q. And after you escorted her back to speak with him,
21 what did you witness at that point?

22 A. The only thing I did witness is that he told her
23 that he would threaten to blow up Just Care, which is the
24 mental health center in Columbia.

25 Q. Now, were you listening to the entire conversation

1 between --

2 A. No.

3 Q. What was your role in that particular instance?

4 What were you there to do?

5 A. I was there to escort and provide security for

6 Ms. Amy while she was in our unit.

7 Q. Was there anything else that was -- was anything
8 else distracting you or keeping your attention at the time?

9 A. Yes. Primarily, behind the wall, we keep our more
10 problem inmates. And if we go behind the wall and someone
11 decides -- before unit officers are in there, everybody tries
12 to get their attention, especially mental health or medical.
13 So at that time, everybody was beating and banging, trying to
14 get their attention. And I was trying to provide the needs
15 of them at the same time watch over here.

16 Q. So what was the volume --

17 A. It was very loud.

18 Q. At the conclusion of Ms. Cradock's encounter with
19 Mr. Bailey, what did you do?

20 A. I escorted her back to the desk where she had her
21 paperwork. She asked me if I heard him threaten her. I
22 informed her that I did not personally hear him threaten her.
23 I did hear him threaten to blow up Just Care, and she exited
24 the unit.

25 Q. Did you do anything else in this case after that?

1 A. No.

2 Q. And you said you informed her that you didn't hear
3 the -- some of the threats that were made to her?

4 A. No, I did not.

5 Q. Is it possible that you wouldn't have been able to
6 hear those?

7 A. Due to the loudness in the unit, there's a
8 possibility I would not be able to hear anything.

9 MR. ZIEGLER: State has no further questions, Your
10 Honor.

11 THE COURT: Thank you, solicitor.

12 Ms. Ford?

13 MS. FORD: No questions for this particular witness.

14 THE COURT: Thank you very much, Officer. You may
15 step down. Thank you for being with us this afternoon.

16 All right, solicitor. You may call your next
17 witness.

18 MR. ZIEGLER: The State calls Ms. Debra Blalock.

19 DEBRA BLALOCK,

20 having been duly sworn, testifies as follows:

21 THE CLERK: State your first and last name loudly
22 and clearly into the microphone, and spell your last name.

23 THE WITNESS: Debra B-l-a-l-o-c-k.

24 DIRECT EXAMINATION

25 BY MR. ZIEGLER:

1 Q. Hello, Ms. Blalock.

2 A. Good morning -- or afternoon.

3 Q. Ms. Blalock, where are you currently employed?

4 A. Charleston-Dorchester Mental Health Center, which is
5 1 of the 17 mental health centers operated by the Department
6 of Mental Health.

7 Q. So that's a local center of the Department of Mental
8 Health?

9 A. Correct.

10 Q. What is your role at the center?

11 A. I'm the executive director.

12 Q. And I missed -- I think the Court may have missed
13 it. What was the name of the center that you are the
14 executive director of?

15 A. Charleston Dorchester Mental Health Center. It's
16 the largest of the 17 centers operated by the department.

17 Q. So who's your employer, what agency?

18 A. Department of Mental Health.

19 Q. And how was your position of executive director
20 obtained by you? What was the process for that?

21 A. I had to apply for the position. And then I had to
22 interview twice with the board of directors for the
23 Charleston Dorchester Mental Health Center. That board is
24 appointed -- well, actually, the board is recommended in
25 Charleston County by the legislative delegation in Dorchester

1 by Dorchester County Council. Then they send those
2 recommendations to the governor, and the governor appoints
3 the board. And so I interviewed with that board. And then
4 the board submits two names, two top candidates to the
5 director of the Department of Mental Health, who is hired by
6 the commission.

7 And the commission is a seven-person body which is
8 appointed by the governor. And then the director of the
9 department selects his or her first choice candidate, sends
10 that name back down to the board, and then the board makes
11 the final selection.

12 Q. And how long have you been in your position of
13 executive director?

14 A. It was 10 years August 4th.

15 Q. How long have you been with the South Carolina
16 Department of Mental Health?

17 A. 20 years.

18 Q. You highlighted some of the organizational structure
19 of the South Carolina Department of Mental Health. As
20 briefly as you can, can you please go back through that and
21 explain that carefully as far as the different actors within
22 the Department of Mental Health?

23 A. Sure. So, the department was actually created in
24 1821 by statute to become the public mental health authority
25 in the state of South Carolina. And as a result of that

1 statute, at that time, it was a nine-member commission, but
2 it's now a seven-member commission. So the commissioners are
3 appointed by the governor, standing governor for five-year
4 terms. And they actually select the state director of the
5 Department of Mental Health. So we are a state agency. We
6 are not a cabinet agency. And then that director is over the
7 entire department, which today is about 4,300 employees
8 state-wide. There are 17 mental health centers, 4 hospitals,
9 4 nursing homes.

10 Q. And does that -- does the director of mental
11 health -- how does he operate the Department of Mental Health
12 as far as personnel and other officials within the Department
13 of Mental Health? Does the director make appointments of
14 certain people that have the power of the department?

15 A. He appoints the deputy directors. Currently there
16 are three deputy directors: Deputy director of community
17 services, which is the outpatient side; inpatient services,
18 which is obviously the inpatient side; and deputy director of
19 administration. And then under those individuals would be
20 the center directors within the community side. And that's
21 where I fall.

22 Q. Okay. Are you familiar with Ms. Amy Cradock?

23 A. I am.

24 Q. And what is her position in the Department of Mental
25 Health?

1 A. Currently, she is the chief mental health
2 professional that we employee in our team at the Charleston
3 County Detention Center or Al Cannon Detention Center.

4 Q. And please explain the contract and the arrangement
5 that the Department of Mental Health has with the detention
6 center?

7 A. We have a contract with the Charleston County
8 Sheriff's Office to provide the mental healthcare at the Al
9 Cannon Detention Center. So we have five employees that are
10 embedded there. We also have a sixth employee that Amy
11 supervises, but that's not part of the contract. And that
12 person is a liaison between the detention center and the
13 mental health center proper. So we are responsible in that
14 capacity for serving the inmates, for helping to manage -- I
15 guess I will use the word milieu -- probably too touchy-feely
16 a word, but I'm going to use that word -- to make sure that
17 everybody is safe to the best of our ability within our
18 capacity as mental health professionals.

19 We help them to achieve their accreditation, because
20 mental health component is a huge component for the detention
21 center. So we have a lot of roles there. We participate on
22 a team with the leadership of the detention center to talk
23 about various mental health issues.

24 Q. Okay. Can you briefly explain that team you are
25 referring to at the detention center?

1 A. Uh-huh. When I go and participate, which is not
2 near -- Amy does it regularly. I go occasionally. I will
3 just speak to what I see on there. It will be the chief
4 deputy of the detention center, his command staff, the
5 nursing staff, the medical staff, which is a separate
6 contract. They are not part of us, but we obviously work
7 with them, and Amy and her supervisor.

8 Q. What is Ms. Cradock's -- you refer to her as chief,
9 can you explain her role?

10 A. Uh-huh. As chief mental health -- so the department
11 has three -- four categories for mental health professionals.
12 So it's an MHP-1, which is a person who has to have a
13 master's degree in either counseling or social sciences. And
14 they can be straight out of school. MHP-2 has to have a
15 master's, same master's and one-year postmaster experience.
16 MHP-3, same master's and two years postmaster's experience.
17 And a chief, which is same master's and three years
18 postmaster's experience. And in our center, chiefs will
19 always be supervisors. So she supervises that team. She's
20 responsible for all of the administrative supervision of that
21 team, and obviously for the clinical supervision of that team
22 also.

23 And she has an interesting role, because she kind of
24 has two different sets of folks that she has to respond to
25 and be responsible to, so not only the mental health side,

1 but also the detention center side too.

2 Q. I see. Besides that role as chief mental health
3 professional, does she have any other specialized
4 appointments or any other specialized training within the
5 Department of Mental Health?

6 A. Yes, she does. So within the department, the
7 internal process for someone to become a DE is that the
8 mental health center director recommends people on his or her
9 staff to the Department of Mental Health's medical director,
10 who currently is Dr. Robert Bank. And then Dr. Bank, through
11 the authority vested in him by the Governor's Office, then
12 appoints those individuals as DE's. So Amy is a DE.

13 Q. And what are you referring to when you say DE?

14 A. Designated examiner. And then Amy is also on the
15 Lowcountry Crisis Negotiators Team, which is a really elite
16 team of mental health professionals --

17 MS. FORD: Objection. Cumulative.

18 THE COURT: Sorry?

19 MS. FORD: Ms. Cradock testified to this. I'm not
20 sure the point of having her basically trying to --

21 THE COURT: Can you tell me the point, solicitor?

22 MR. ZIEGLER: I'm just trying to show further
23 evidence of Ms. Cradock's position within the Department of
24 Mental Health from the person who supervises her and who is
25 the director, who is basically her executive director, who

1 might be able to add additional insight to her position.

2 MS. FORD: Seems like bolstering, Your Honor.

3 THE COURT: Well, Ms. Cradock did not visit the
4 organizational structure brought on by the governor to the
5 selection of the director to then the selection of the 17
6 center directors throughout the state. So I took it as
7 being somewhat of the organizational chart. And I don't
8 think Ms. Cradock addressed that issue in that regard. She
9 addressed the issue of her being a mental health
10 professional, her being a designated examiner, and her
11 various roles within the jail. So I would overrule the
12 objection.

13 You may ask your question, solicitor.

14 MR. ZIEGLER: Thank you, Your Honor.

15 BY MR. ZIEGLER:

16 Q. Ms. Blalock, can you please explain the process of
17 Ms. Cradock's appointment as a designated examiner and your
18 involvement in that?

19 A. Uh-huh. So we actually have an individual on our
20 staff that is responsible for sending the names to me of the
21 individuals who are qualified to become DE's. So not
22 everybody on staff is a DE. There's a selection process.
23 And then once I get the names, I review the names to see if I
24 concur with that individual selection. If I do, which I
25 typically do, I will then send those names up to Dr. Bang for

1 appointment. And then he will respond back to me, and
2 typically within a letter, not always, sometimes just a list
3 saying that, yes, I'm now appointing your recommendations to
4 become designated examiners for the Department of Mental
5 Health. And the department is required by statute to keep a
6 list of the DE's within the department that have been
7 appointed.

8 Q. Did you go through that appointment process with
9 Ms. Cradock? Did you complete --

10 A. I did.

11 Q. And was she appointed?

12 A. She was appointed, yes, by Dr. Bang as a designated
13 examiner, correct.

14 Q. Does she remain as a designated examiner?

15 A. Yes, she does.

16 Q. Ms. Blalock, can you please explain the role of a
17 mental health professional within the Department of Mental
18 Health? In general, what are their common duties? What kind
19 of decisions can they make?

20 A. Sure. It's a somewhat expansive role. It's a
21 difficult role. So the mental health professionals that work
22 for the department, first and foremost, are responsible to
23 public safety. They do have to be cognizant of an
24 individual's status to make sure that decisions that they are
25 making on behalf of the department are with regard to public

1 safety. So they serve folks who come to our door. We don't
2 turn people away for inability to pay. We accept
3 court-ordered folks all the time. We are responsible to see
4 anyone that comes to the door that needs care. And we make a
5 decision on if -- where the appropriate place to provide that
6 care for that individual.

7 And then folks get -- obviously, there are lots of
8 different roles. So if you are in the mobil crisis unit or
9 forensic unit or school-based, you have a different function.
10 But what they do then is they have a -- several of those
11 people, if not all, carry caseload. And then they serve the
12 individuals that are on their caseload.

13 Some people like Ms. Cradock and those that work at
14 mobil crisis don't carry caseloads. They have a different
15 function. So their function is more of an assessment
16 function. And they are constantly assessing individuals to
17 determine if they are going to be safe and if the public is
18 going to be safe by wherever their placement is.

19 Q. In carrying out that goal of safety for the public,
20 safety for the individuals that are being served, what are
21 common actions that mental health professional can take to
22 achieve that goal?

23 A. Whether it's Amy in the detention center or mobil
24 crisis out in the field with law enforcement, they are going
25 to be assessing an individual to see if they can be served

1 safely in the community and safely both for the community and
2 for the individual being served, or if they need to be
3 inpatient. So they will be making that kind of
4 determination. What is the best -- what we attempt to look
5 for is the least restrictive level of care that will keep
6 everybody safe.

7 Sometimes the least restrictive happens to be
8 inpatient facility. And they will begin that process of
9 starting the commitment process, emergency admission process,
10 if that is what is warranted and what is deemed to be the
11 least restrictive level of care for that person's safety and
12 the community's safety.

13 Q. And in taking those action, in achieving those
14 goals, is there any level of discretion that a mental health
15 professional has?

16 A. Absolutely. Pretty much their whole job is
17 discretion. So they are always determining if a person -- if
18 there is risk of imminent danger to self or others. And they
19 take that very seriously because it's a big role. It's an
20 important role, and it has -- for good or for bad, it has
21 power attached to it, because if they begin the commitment
22 proceeding, then they are starting the process of taking away
23 someone's civil liberties. So they take it very seriously.

24 Q. And do the mental health professionals, do they have
25 an effect on how those proceedings begin?

1 A. Oh, absolutely. Well, very often they are the
2 catalyst for those proceedings.

3 Q. I want to visit the more broader general rule of
4 South Carolina Department of Mental Health. What is the duty
5 of South Carolina Department of Mental Health to the citizens
6 of the state of South Carolina?

7 A. It's two-fold. So the mission statement, actual
8 official mission statement is to report the recovery of those
9 living with mental health. That is achieved, obviously, by
10 providing care to those individuals and by ensuring that the
11 environment and the public is safe in regard to individuals
12 who might present a threat to the public safety. So it's
13 very much a two-fold mission. And I would say as the public
14 mental health authority in the state, there's a burden on
15 Department of Mental Health employees that you don't
16 necessarily see in the private sector.

17 Q. How so?

18 A. Because we answer to the public; and private
19 providers do not have to do that.

20 MR. ZIEGLER: The State has no further questions for
21 this witness, Your Honor.

22 THE COURT: Thank you, very much.

23 Ms. Ford.

24 MS. FORD: Yes, sir.

25 CROSS-EXAMINATION

1 BY MS. FORD:

2 Q. Ms. Blalock, the Department of Mental Health has a
3 mission statement, correct?

4 A. Correct.

5 Q. And that mission statement is to support the
6 recovery of people with mental illnesses?

7 A. Correct, as I said.

8 Q. That's your main mission statement?

9 A. That's our mission statement.

10 Q. It's even important enough to include at the bottom
11 of letter sent out by Department of Mental Health, correct?

12 A. Correct.

13 Q. So you told us a little about a commission,
14 correct?

15 A. Correct.

16 Q. And that commission actually appointments a state
17 director, correct?

18 A. Correct.

19 Q. Is that director still John Magill?

20 A. Yes, it is.

21 Q. He, therefore, then appoints you, correct, and
22 others in your position?

23 A. He makes a recommendation for center directors. The
24 process is he makes a recommendation to the board of the
25 county of where the center is located. So there are 17

1 mental health centers. And each one has a board of directors
2 appointed by the governor. He makes his recommendation back
3 to the board. And then the board actually extends the
4 position to the center director.

5 Q. And you told us how the Department of Mental Health
6 in South Carolina has approximately 4,300 employees.

7 A. I think it's around there, between 4,000, 4,300,
8 uh-huh.

9 Q. Do you know how many Charleston Dorchester Mental
10 Health, that area, how many --

11 A. About 230.

12 Q. 230?

13 A. About 230.

14 Q. Do you personally hire each and every one of them?

15 A. I have to sign off on their letter that we then send
16 to the Department of Mental Health. The Department of Mental
17 Health has to actually extend the position. They offer the
18 position to the individuals. I obviously have to approve it
19 to send to them, but they are the ones who make the extension
20 of the offer.

21 Q. And you explained to us a bit about designated
22 examiners. Someone does not have to be an employee of the
23 Department of Mental Health to be a designated examiner,
24 correct?

25 A. No, I think DAODAS, which is the Department of

1 Alcohol and Drugs and Other Substances, also has DEs, and
2 M.U.S.C. also has DEs.

3 Q. And so is it your contention that you treat clients
4 differently than private mental health professionals treat
5 their clients? Is that what you are saying today,
6 Ms. Blalock?

7 A. I'm not sure what the question means. Can you
8 further explain?

9 Q. You are telling us how, because of your duty to the
10 public, that basically you are suggesting that y'all treat
11 the clients of DMH differently than a provider would treat
12 their clients, that you have --

13 A. I don't think we treat clients differently.

14 Q. So you don't have different responsibilities and
15 duties?

16 A. We do have different responsibilities, but it's not
17 in terms of treating a client differently.

18 Q. So do you think it's fair to say that when you have
19 a client, your main responsibility is to treat them?

20 A. We have two responsibilities. I think we have two
21 responsibilities.

22 Q. So when meeting a client, are you saying that the
23 first thing that DMH workers consider, before I find out this
24 person's background and try to help them and come up with a
25 plan, I'm going to immediately consider if they are a danger

1 to the public so I can have them committed?

2 A. We wouldn't know that information until we found out
3 their background.

4 Q. Is that how you instruct your employees to meet
5 their clients, with that in mind?

6 A. With public safety in mind?

7 Q. With immediately that's their first thought?

8 A. I instruct them, as the department instructs them,
9 to assess an individual, to determine what the individual's
10 needs are. In doing that, they are also assessing for public
11 safety.

12 Q. And that's if they indicate that they have thoughts
13 about harming others, correct?

14 A. If they indicated or if there's collateral
15 information coming from other places. We are often called to
16 scenes by law enforcement to assess an individual because law
17 enforcement has concerns about the individual.

18 Q. And are private healthcare professionals, are they
19 also able to refer people to probate court, for example? Are
20 they not allowed -- are private mental health professionals,
21 since they don't work for the Department of Mental Health,
22 are they, therefore, not allowed or discouraged to report
23 someone if they express a desire to hurt someone in the
24 community?

25 A. The process the current probate court has in

1 Charleston County is that if people want to become an
2 applicant for emergency admission papers, they direct
3 individuals to the Charleston Dorchester Mental Health Center
4 to complete those papers. So a private provider could come
5 to the Department of Mental Health and complete those papers
6 through the center's process. Then the center then faxes
7 those papers to the probate court.

8 Q. But they do have those abilities as well, correct?

9 A. To come to the center, certainly.

10 Q. Yes.

11 MS. FORD: Beg the Court's indulgence.

12 THE COURT: Yes, ma'am, certainly.

13 MS. FORD: No further questions.

14 THE COURT: Redirect, solicitor?

15 MR. ZIEGLER: Yes, Your Honor.

16 REDIRECT EXAMINATION

17 BY MR. ZIEGLER:

18 Q. Ms. Blalock, is the South Carolina Department of
19 Mental Health, is it a state agency?

20 A. Yes.

21 Q. Does the Department of Mental Health owe any duty to
22 the public of the State of South Carolina?

23 A. Yes, because funding for the department comes from
24 taxes, absolutely.

25 MR. ZIEGLER: Thank you.

1 No further questions, Your Honor.

2 THE COURT: Recross, Ms. Ford?

3 MS. FORD: No, Your Honor.

4 THE COURT: Thank you. Thank you.

5 How many more witnesses do you have, solicitor?

6 MR. ZIEGLER: Your Honor, the State rests at this
7 point.

8 THE COURT: Thank you very much. Why don't we take
9 about a 15-minute recess.

10 (Whereupon, recess transpired.)

11 THE COURT: All right. Any motions, Ms. Ford?

12 MS. FORD: Thank you, Your Honor. At this time I
13 would ask for a directed verdict, even though my directed
14 verdict motion is going to be the same as my closing
15 argument, so I don't know -- I guess I can go ahead and state
16 my case, my reasoning.

17 But, Your Honor, we do not believe the State has
18 proven that Ms. Cradock is a public official; rather, she
19 should be considered a public employee. And so we would find
20 that would be the more appropriate thing to find Mr. Bailey
21 guilty of. To find her to be an official dilutes the term
22 and just makes no sense, Your Honor.

23 The State first contends that because she's a
24 designated examiner, that that means that she's an appointed
25 and, therefore, an official. However, she admits that she

1 was not there in that capacity that day. Not only that, but
2 she admits that that is something that she rarely does, to
3 the extent that she cannot remember the last time that she
4 has acted as a designated examiner.

5 A designated examiner is a position that many people
6 hold, employees of DMH, but also, as Ms. Blalock testified
7 to, people who work for DAODAS and for M.U.S.C. So many of
8 those, the M.U.S.C. doctors, for example, they have many
9 private clients. And so, obviously, if they were seeing
10 somebody in a private capacity, they would not be considered
11 a public official just because their name's on a list saying
12 they can be a designated examiner.

13 In this situation, Ms. Cradock's job is similar in
14 that she was not there acting as a designated examiner. In
15 case law, they've held when looking at whether somebody
16 should be a public official, one thing is that they look at
17 if the role is continuous in nature. Because if it's
18 intermittent, then it wouldn't make someone an official. So,
19 I think, therefore, her role as a designated examiner is
20 intermittent.

21 Also, I know the State in their brief has referred
22 Your Honor to a statute that talks about the hierarchy of the
23 mental health -- Department of Mental Health. And there is a
24 commission and there is a state director. As we've heard,
25 there are three deputy directors. And then we heard there

1 are directors of each of the 17 areas. And then we've heard
2 that there are directors of hospitals and so forth, Your
3 Honor. The State's using that law to say just merely because
4 they use the word appoint, they appoint officers and
5 employees.

6 You heard Ms. Blalock testify that Department of
7 Mental Health has 4,300 employees. The statute does not
8 distinguish what kind of employees. So under the State's
9 argument, every single employee, including secretaries,
10 janitors, every single person who works for the Department of
11 Mental Health would be an official. That makes absolutely no
12 sense and, again, dilutes the whole term and the point of the
13 law.

14 Your Honor, the solicitor also refers a lot to the
15 duty to the public. Your Honor, the Department of Mental
16 Health is obviously a public entity. They exist, though,
17 their mission -- their expressed mission is to support the
18 recovery of people with mental health. That is their number
19 one concern. And by supporting those people and helping
20 them, then that benefits the community and public at large.
21 Only one very small portion of their job is referring people
22 when they threaten others in the community. So at that
23 point, they do make a referral.

24 And that goes to Ms. Cradock's position. She has no
25 actual authority or power. All she's able to do -- she does

1 have discretion to make a referral, and that's all she's able
2 to do. She makes a referral to a doctor who can have someone
3 committed or makes a referral to probate court, and then they
4 have two designated examiners. And then the judge is the one
5 who makes the decision about the commitment. But all she can
6 do is make a referral.

7 And then in everyday -- everyday business of the
8 jail, she can make recommendations on where somebody should
9 be housed and things of that nature. But that also, it goes
10 to the fact that holding her to be an official because of
11 certain responsibilities at the jail, that would just make it
12 confusing, because not all mental health workers at the
13 Department of Mental Health have the same duties as she does.
14 They don't work at the jail. And so, obviously, they deal
15 with completely different issues. So now we have this
16 slippery slope. We have this hierarchy of which levels of
17 mental health workers are considered officials or employees.
18 So, it doesn't make sense at all, Your Honor.

19 The State also would like for you to declare that
20 Ms. Cradock's position is similar to that of teachers and
21 police officers, and so she should be an official since they
22 are. First of all, I would like to point out that teachers
23 and principals are not considered officials, necessarily.
24 The law just specifically includes them independent of an
25 analysis. They just say officials or teachers or principals.

1 So I guess the legislature probably just wanted to give them
2 a little special extra attention. But that analysis, I
3 think, is irrelevant.

4 As far as police officers, their job is completely
5 different than a police officer. A police officer obviously
6 has the duty to protect the public at large. But the people
7 who are presumably threatening them are people who they are
8 trying to arrest, the people that they are actively working
9 in opposition to.

10 Mental health, when they are in this position, it's
11 the people that they are trying to assist and help and serve.
12 Just because they work in the public and anybody can come to
13 mental health and they can't turn people away, doesn't mean
14 that that makes them similar to police officers, Your Honor.

15 Quite frankly, when I first got this case, it really
16 hit home for me, because even though I am not a mental
17 healthcare professional, in my job as a public defender,
18 often, sometimes it feels that I am in that profession
19 because so many of my clients have mental health issues. And
20 so, I view -- this is my personal opinion, but I think based
21 on -- I think there are many similarities between my position
22 and the position of a mental health worker for the Department
23 of Mental Health. I am a government employee. The State of
24 South Carolina, the County of Charleston pays for my salary.
25 We exist because the Constitution requires people to have

1 fair trials and representation. So we exist for the good of
2 the community. But, ultimately, our responsibility, our
3 duties are to individual clients. And by serving those
4 individual clients, that helps the community at large.

5 Just like attorneys have ethics guidelines that we
6 have to adhere to, even though we are government employees, I
7 still owe responsibilities to zealously advocate to keep our
8 conversations confidential. I still have to stick to those.
9 I am required. And mental health workers, similarly, they
10 have the same requirements, Your Honor. Their work is not
11 subject to the Freedom of Information Act. Instead, they
12 have to have a release or a court order because of HIPAA
13 laws, Your Honor. They have certain rules about
14 confidentiality. They are there serving individual people.
15 And I think the statute setting out the Department of Mental
16 Health and all of the statutes, they do focus on they are
17 there to serve the individual citizens of South Carolina.

18 To hold that the Department of Mental Health, those
19 counselors -- and you heard they refer to themselves
20 sometimes as counselors -- that they are officials, I believe
21 that it actually is against public policy, because of the
22 possible detrimental effect that it has on relations with
23 their clients. And they do consider them clients.

24 Again, my job, I hear all the time people say; well,
25 you work for the State, so how can you represent me? And I

1 have to assure them that: Yes, I get a paycheck from the
2 State, but I do not owe responsibility to the State; they are
3 not going to tell me what to do; I'm here to help you.

4 And I think holding these workers as officials, it
5 really goes home to say that they are different than private
6 healthcare providers, Your Honor. The people who go to DMH,
7 yes, there are many different roles that DMH serves, but
8 people go to them because, quite frankly, many of them don't
9 have money. They don't have resources. They are poor. So
10 just like people go to the public defender instead of a
11 private attorney, they don't have any other choice. Just
12 because they don't have any other choice, doesn't mean that
13 they should have a diluted relationship with their
14 counselors, with their providers.

15 Ultimately, Your Honor, I do believe, and the reason
16 I'm asking for a directed verdict, is that I believe that
17 holding them as officials really does make the term
18 "officials" meaningless. There are simply way too many
19 positions at DMH. And I do not think it goes along with
20 statute or public policy or common law. Thank you.

21 THE COURT: Thank you.

22 Mr. Ziegler.

23 MR. ZIEGLER: Your Honor, at this point, I will
24 simply argue the directed verdict motion.

25 Your Honor, the State is not requesting that you

1 find that all Department of Mental Health employees are
2 public officials; rather, the State is requesting that the
3 Court employs a hybrid analysis using statutes, regulations,
4 and common law, to find this particular instance a mental
5 health -- someone who is a mental health professional and a
6 designated examiner is a public official for the purposes of
7 the applicable statute.

8 Regarding the directed verdict motion, the State has
9 introduced evidence that the victim, Ms. Cradock, is employed
10 by a state agency. Ms. Cradock -- the State has introduced
11 evidence that Ms. Cradock is appointed as a designated
12 examiner by the state agency, the South Carolina Department
13 of Mental Health, and that she is also employed as a mental
14 health professional with the South Carolina Department of
15 Mental Health.

16 As far as the hybrid analysis goes, this evidence
17 can be applied to the statutes and the common law regarding
18 public officials or the distinction between public officials
19 and public employees. Courts have looked to statutes for
20 evidence of appointment of someone a court is determining
21 whether to be a public official or not.

22 For instance, in the case of police officers, the
23 court in Carter looks to a statute which says that a
24 municipality may appoint or elected as many police officers
25 as may be necessary for law enforcement. The court used that

1 simple statute as evidence that police officers are
2 appointed.

3 Likewise, there is a statute regarding the
4 Department of Mental Health which says -- that it is 44-940
5 of the South Carolina Code -- that says that the director,
6 that is the director of the Department of Mental Health, must
7 appoint and remove all other officers and employees of the
8 Department of Mental Health.

9 Using the analogous analysis from the Carter court,
10 the State -- or, I'm sorry, the Court can use such a statute
11 as evidence that certain employees and certain officials of
12 the Department of Mental Health are appointed.

13 Another part of this approach is the common law.
14 Your Honor, in Sanders vs. Belue, one of the key elements in
15 determining whether an individual is a public official is
16 whether they exercise some part of the sovereign power. The
17 State has introduced evidence that Ms. Cradock works for the
18 Department of Mental Health, which is a state agency, and has
19 some discretion and power in her official status with the
20 Department of Mental Health, in her work. For that reason,
21 she exercises some part of the sovereign of power.

22 Furthermore, courts have looked to a duty to the
23 public in determining whether someone is a public official or
24 public employee. And the State has introduced evidence that
25 the South Carolina Department of Mental Health has a duty to

1 the public of South Carolina, the citizens of South Carolina,
2 to provide mental health services for them. Ms. Cradock is
3 instrumental in providing those mental healthcare services to
4 citizens who need them, and also is instrumental in providing
5 for the safety of those individuals that need mental health,
6 as well as the public of South Carolina at large.

7 The State has introduced evidence that this
8 defendant did threaten Ms. Cradock on the day she went to
9 visit him, August 28th, 2013. And for that reason, the State
10 argues that, first, Ms. Cradock is a public official in terms
11 of the applicable statute, and that while performing her
12 duties of her job, she was threatened by the defendant. And
13 the State requests that you deny the motion for a directed
14 verdict.

15 THE COURT: Thank you.

16 The standard being all inferences and otherwise be
17 resolved in favor of the nonmoving party, I would
18 respectfully deny the motion for a directed verdict.

19 Of course, we will include the lesser-included
20 offense as far as consideration of the evidence at this point
21 to the determination of whether she was a public official or
22 a public employee.

23 That being said, Ms. Ford, does the defendant intend
24 to present any evidence or testimony in that regard?

25 MS. FORD: No, Your Honor.

1 THE COURT: Would you like me to question your
2 client about his right to testify or not to testify?

3 MS. FORD: Yes, Your Honor.

4 THE COURT: All right.

5 Well, I understand the jury has a verdict (referring
6 to another case). I would like to take that verdict and
7 perhaps that will give you an opportunity to speak with him
8 about his right to testify or not to testify while I'm taking
9 the verdict. And, thereafter, after I take the verdict, we
10 will then be back in session as far as this case is
11 concerned.

12 MS. FORD: Yes, Your Honor.

13 THE COURT: Thank you very much.

14 (Whereupon, a recess is taken.)

15 THE COURT: All right. Ms. Ford, did you have the
16 opportunity to speak with your client, Mr. Bailey, during the
17 recess?

18 MS. FORD: Yes, Your Honor, I did.

19 THE COURT: Would you like now for me to interview
20 him concerning his right to testify or not testify?

21 MS. FORD: Yes, Your Honor.

22 THE COURT: Please stand for me, Mr. Bailey.

23 Mr. Clerk, will you please put Mr. Bailey under oath
24 for me please.

25 (Whereupon, the defendant is sworn.)

1 THE CLERK: State your first and last name, please.

2 THE DEFENDANT: Anthony Bailey.

3 THE COURT: Mr. Bailey, I'm going to ask you to
4 speak up for me, please. I have certain matters to go over
5 with you. I do this with everyone who is on trial, and I
6 have to have the responses placed under oath. That's why I
7 had you sworn in. Do you understand?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: What is your full name?

10 THE DEFENDANT: Anthony Bailey.

11 THE COURT: And how old are you, Mr. Bailey?

12 THE DEFENDANT: 37.

13 THE COURT: How much education do you have?

14 THE DEFENDANT: 10th grade, GED.

15 THE COURT: 10th grade and you completed your GED?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: We've reached the stage of the trial
18 where the State had rested. And your side, the defense, now
19 has the opportunity to present evidence for me to consider.
20 Do you understand where we are at in the trial?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And in that regard, you or your
23 attorneys may call witnesses to testify on your behalf. If
24 you choose to testify yourself, you may do so. Do you
25 understand?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: No one can force you to testify. You
3 have the absolute right to remain silent. And if you do not,
4 if you choose not to testify, I will advise you that I will
5 not consider that in any way as evidence against you. Do you
6 understand?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: If your side offers no evidence at all,
9 in other words, if neither you nor anyone on your behalf
10 testifies or offers any exhibits, then your attorney,
11 Ms. Ford, will get to make the last argument to me;
12 otherwise, the prosecutor gets to make the last argument. Do
13 you understand?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Does Mr. Bailey have a criminal history
16 that would cause him to be subject to -- keep him under Rule
17 609, Ms. Ford?

18 MS. FORD: He does, Your Honor. Mostly it consists
19 of drug offenses and magistrate-type of offenses, like
20 trespasses, especially anything in recent history. There
21 might be one false info to police in there.

22 THE COURT: Would he have any that you would intend
23 to use for impeachment purposes, Mr. Ziegler?

24 MR. ZIEGLER: Your Honor, the State would intend to
25 use the false information to police. He also --

1 MS. FORD: He has a very old common law ABHAN from
2 1996, but --

3 THE COURT: Has he previously been given notice that
4 they would use that?

5 MS. FORD: No, Your Honor.

6 THE COURT: I would not allow that. I would allow
7 the false information to police, and I would only take that
8 into account, if at all, on the issue of his credibility if
9 he were to testify.

10 Mr. Bailey, the decision about whether you testify
11 or not is your decision to make and yours alone. I expect
12 that you may have conferred with your attorney or with others
13 whose opinions you value on very important issues in life,
14 but the decision about whether you testify or not is your
15 call and your decision to make. Do you understand?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Has anyone exercised any undue influence
18 over you to get you to choose to testify or not to testify?

19 THE DEFENDANT: No, sir.

20 THE COURT: Besides your prescribed medications, are
21 you under the influence of any drugs, alcohol or medication
22 that negatively affects your thinking ability?

23 THE DEFENDANT: No, sir.

24 THE COURT: Do you suffer from any physical or
25 mental problems that affect your thinking today?

1 THE DEFENDANT: No, sir.

2 THE COURT: Have you made your decision?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Is that decision made of your own of
5 your own free will and accord?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Do you have any questions you would like
8 to ask me about your right to testify or not to testify?

9 THE DEFENDANT: No, sir.

10 THE COURT: And what is your decision?

11 THE DEFENDANT: Not to, sir.

12 THE COURT: Thank you very much, Mr. Bailey. You
13 may be seated.

14 I find that Mr. Bailey has made a decision and he
15 understands his right to testify or not to testify, and he's
16 made his decision to not testify freely and voluntarily.

17 Ms. Ford, I will ask you again, does the defense
18 intend to present any evidence or testimony?

19 MS. FORD: No, Your Honor.

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

21 I have heard the motion for directed verdict, and I,
22 of course, denied it. I will -- and I heard the solicitor's
23 argument against it. Is there anything further you would
24 like to offer in that regard, solicitor?

25 MR. ZIEGLER: No, Your Honor.

1 THE COURT: Is there anything further you would like
2 to offer, Ms. Ford?

3 MS. FORD: No, Your Honor.

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

5 I will start with the analysis of the law. I find
6 the testimony of Ms. Cradock to be credible as far as the
7 threat itself is concerned, and the corroboration from the
8 Deputy Wiley that testified. Beyond that, the real issue
9 appears to be an issue of law and for the fact finder as to
10 whether or not Ms. Cradock, as Ms. Ford and the solicitor
11 clearly stated out, is a public officer or employee.

12 The case first cited by both of the parties is
13 Sanders vs. Belue. Any time I find a case prior to 1910, I
14 have to look at the facts, as they are generally fascinating.
15 This was an individual, Mr. Sanders, who appointed the county
16 board of commissioners of Union County on January 7th, 1907,
17 appointed the plaintiff, Mr. Sanders, as superintendent of
18 the poorhouse and farm. The prior county board of
19 commissioners on October 15, 1906, had undertaken to appoint
20 the defendant, J. Fincher Belue, superintendent for the term
21 of one year from that date. Claiming the right to hold the
22 position under this appointment until October 15, 1907, the
23 defendant, Belue, refused to surrender to Howell the property
24 in his charge as superintendent. Thereupon, Howell and two
25 of the county board of commissioners, Joseph Sanders and W.

1 Fowler Bobo, brought this action to restrain the defendant
2 Belue from interfering with Howell in taking possession of
3 the property of the poorhouse and farm and discharging his
4 duties as superintendent. Judge Aldrich refused the
5 application for temporary injunction, and plaintiffs appeal.

6 As both briefs had appointed out, prior to Title 16
7 statute, the term 'public officers' shall be construed to
8 mean all officers of the state that have heretofore been
9 commissioned, and trustees of the various colleges of the
10 state, members of the various state boards, dispensary
11 constables, and other persons whose duties are defined by
12 law." The literal meaning of the words "other persons whose
13 duties are defined by law" could hardly have been intended;
14 for the duties of guardians, administrators, and other
15 trustees are defined by law, and yet it could scarcely have
16 been the intention to include such persons in the definition
17 of public officers.

18 The thought will hardly be entertained for a moment
19 that the defining of the duties necessary to make one a
20 public officer necessarily means setting them out with such
21 precision as to leave no room for the exercise of discretion
22 in details of management. If this were so, very few county
23 officers would fall within the definition.

24 The defining "to run the poorhouse" was sufficient
25 setting up the duty as to superintendent.

1 Now, this case runs a thread through the other cases
2 cited by both of the parties, the 1980 case of State v.
3 Crenshaw, Crenshaw and others which were police officers
4 convicted of bribery in Anderson County. That part of
5 Sanders that is cited is: One who is charged by law with
6 duties involving an exercise of some part of the sovereign
7 power, either small or great, in the performance of which the
8 public is concerned, and which are continuing, and not
9 occasional or intermittent, is a public officer. Conversely,
10 one who merely performs the duties required of him or her by
11 persons employing him under an express contract or otherwise,
12 though such persons be themselves public officers, and though
13 the employment be in or about a public work or business, is a
14 mere employee.

15 Criteria to be considered in making the distinction
16 between an officer and an employee include whether the
17 position was created by the legislature; whether the
18 qualifications for appointment are established; whether the
19 duties, tenure, salary, bond and oath are prescribed or
20 required; whether the one occupying the position is a
21 representative of the sovereign; among others.

22 No single criteria is conclusive; neither is it
23 necessary that all the characteristics of an officer or
24 officers be present.

25 The Crenshaw court found that a police officer is a

1 public official. And the thread of Sanders v. Belue comes
2 forward to 1997 where a highway patrolman in Florence County
3 was threatened. And the issue is whether or not highway
4 patrol officers are public officials. It cites that same
5 language I just cited out of Belue. It goes on to say: As a
6 result of Bridgers and Carter, the law currently protects law
7 enforcement officers inconsistently. An individual may
8 threaten the life of a city police officer and violate the
9 statute, while no violation of the statute would occur if
10 that individual made the same threat to a highway patrol
11 officer.

12 As far as the qualifications, the definition of
13 designated examiner is established by statute in 44-23-10-4:
14 Designate examiner means a physician licensed by the board of
15 medical examiners of this state or by a person registered by
16 the department, as especially qualified under standards
17 established by the department in the diagnosis of mental or
18 related illnesses.

19 So Ms. Cradock, as I understand it, is a mental
20 health professional and also a designated examiner in that
21 regard and that term is defined by statute. Her duties and
22 responsibilities include referrals to probate court where
23 judicial officer would make the decision. She gives an
24 independent evaluation. The other designated examiner, I
25 think one of the two, must be a medical doctor of some

1 degree.

2 She also has input into various matters of housing
3 of inmates at the jail, is a member of the committee as far
4 as referrals to appropriate treatment or treatment plans.
5 Also, she is a member of crisis response team. She and
6 Ms. Blalock both testified that there is both a treatment and
7 safety issue in that regard.

8 As the Bridgers case had pointed out with the
9 highway patrolman, public policy always -- also favors
10 treating highway patrol officers as public officials, but it
11 goes on to say that there is a high degree of public interest
12 and public concern for highway patrol officers. And I would
13 agree, the same as the Department of Mental Health
14 professionals and designated examiners, there is a high
15 degree of public concern in the area of mental health,
16 particularly those that may deal with a population of
17 individuals, inmates in jail, clients if they are transferred
18 to the Department of Mental Health, because of the potential
19 for those individuals to harm themselves and others. So
20 there is that very high degree of interest to the public.
21 And there is a very high component of safety involved in that
22 regard.

23 Further, it is no doubt that she is a representative
24 of the sovereign, of the State, and that she does have
25 certain discretionary authority. She doesn't have just a set

1 of rules and regulations where you plug it into some type of
2 a matrix or mathematical factoring system and the answers are
3 given. She says she has to use her professional judgment.
4 Bridgers also stands for the proposition that I said before
5 that all of the criteria need not be present.

6 Further, I find that the last sentence before the
7 last paragraph in Bridgers is very important to me. The last
8 paragraph: As a result of Bridgers and Carter, the law
9 currently protects law enforcement officers inconsistently.
10 An individual may threaten the life of a city police officer
11 and violate the statute, while no violation of the statute
12 would occur if that individual made the same threat to a
13 Highway Patrol officer. No rational basis exists for this
14 inconsistency.

15 I would say the law is also very inconsistent where
16 the same threat could have been made to a correctional
17 officer in the detention center, and he could have been
18 charged with a violation of a threat to a public official,
19 and that threat having been made to a mental health
20 professional and designated examiner, that charge could not
21 have been made except under Subsection (b). No rational
22 basis exists for that inconsistency.

23 Therefore, I find that she is an appointed official,
24 a public official of this state. There is a regulation that
25 requires the department to maintain the list of designated

1 examiners, and that I find she is a public official. And I
2 would find Mr. Bailey guilty as charged, violation of
3 16-3-1048 of the statute.

4 All right. Anything further from the State,
5 Ms. Ford?

6 MR. ZIEGLER: Nothing further from the State, Your
7 Honor.

8 THE COURT: Excuse me, I said State. Ms. Ford, I
9 apologize.

10 Anything further from the defense, Ms. Ford?

11 MS. FORD: Well, just I think I made my positions
12 clear in my brief and my argument, Your Honor, so I
13 respectfully disagree, but I'm ready for sentencing whenever
14 you are ready.

15 THE COURT: You renew all your motions for the
16 record?

17 MS. FORD: Yes, Your Honor, I do renew all of my
18 motions.

19 THE COURT: Thank you very much. And I will renew
20 all my previous rulings in this regard.

21 Anything further from the State?

22 MR. ZIEGLER: Regarding sentencing, Your Honor?

23 THE COURT: Regarding the verdict.

24 MR. ZIEGLER: No, Your Honor.

25 THE COURT: I would ask Ms. Ford first, are you

1 prepared to go forward with sentencing today, Ms. Ford?

2 MS. FORD: Yes, Your Honor.

3 THE COURT: All right. Then we can go forward with
4 that, if you have anything further, Mr. Ziegler.

5 MR. ZIEGLER: Thank you, Your Honor. This defendant
6 does have a criminal record that goes back to 1994, Your
7 Honor. He has a 1994 possession of marijuana and common law
8 ABHAN; 1995, trespassing and possession of marijuana; 1996
9 trespassing and walking in roadway --

10 THE COURT: Trespassing and what?

11 MR. ZIEGLER: Walking in roadway.

12 THE COURT: Trespassing in the roadway? I didn't
13 know they did that.

14 MR. ZIEGLER: Well, I guess it was walking in the
15 roadway, a violation of the ordinance.

16 THE COURT: All right. Thank you.

17 MR. ZIEGLER: 1998 shopping lifting; 2000 possession
18 of marijuana, false information, possession with intent to
19 distribute crack, and possession of cocaine; 2001, seatbelt
20 violation and false information; 2002, possession of
21 marijuana, possession with intent distribute cocaine with a
22 proximity; 2005, possession of crack; 2007, possession of
23 cocaine; 2008, violation of drug distribution law; 2011,
24 defrauding a hotel; 2012, entering premises after warning;
25 and 2013, wearing masks.

1 THE COURT: Has he ever been in prison on those drug
2 charges, solicitor?

3 MR. ZIEGLER: Your Honor, for the 2000 -- well,
4 excuse me, Your Honor. Court's indulgence please.

5 THE COURT: I will ask him or I will ask Ms. Ford.

6 MS. FORD: Earlier when I spoke to him, I asked him
7 the most time he had ever done, and he said about a couple of
8 years; he said one or two years.

9 THE COURT: All right. Thank you, Ms. Ford. I will
10 accept that response.

11 MR. ZIEGLER: Okay. Thank you, Your Honor. This
12 particular incident, Your Honor, was taken very seriously by
13 the victim. She found it to be a very credible threat.
14 That's the reason that she reported it and that is the reason
15 that she has pursued it. As someone who has a duty to serve
16 the public and places herself -- makes herself available to
17 the public every day, places herself at risk by being exposed
18 and being required to work with a certain segment of the
19 public, by doing that, she deserves to be protected from
20 threats to her safety, to her family's safety, and threats to
21 her life.

22 And, Your Honor, the State just asks that you give a
23 sentence that is commensurate with the seriousness of this
24 threat, and that threat was that the defendant intended to
25 kill people at the crisis unit, at the Department of Mental

1 Health, and the victim herself.

2 THE COURT: Solicitor, he doesn't have -- as I
3 recall you reading his prior criminal history, he doesn't
4 have any record of violence?

5 MR. ZIEGLER: Just the common law --

6 THE COURT: ABHAN in '94.

7 MR. ZIEGLER: Well, it looks like the conviction was
8 1996, but, yeah, incident was 1994, I believe.

9 THE COURT: And how, solicitor, if you've talked
10 with the victim, can you give me an idea of how his medical
11 or mental diagnosis may have come into play in this regard?
12 What became his status after August 28th as far as that's
13 concerned?

14 MR. ZIEGLER: Your Honor, I'm not entirely sure
15 enough to speak on that. The victim might be able to provide
16 better information.

17 THE COURT: Does she want to address the Court?

18 MR. ZIEGLER: May I approach, Your Honor?

19 THE COURT: Yes, sir.

20 (Whereupon, a bench conference takes place off the
21 record.)

22 THE COURT: Thank you, solicitor. Anything further,
23 solicitor?

24 MR. ZIEGLER: Nothing further, Your Honor.

25 THE COURT: Thank you, Ms. Ford.

1 MS. FORD: Thank you, Your Honor. May it please the
2 Court.

3 Mr. Bailey, what happened to him after August 28th
4 is that due to the threats and everything, he was actually
5 judicially committed, not through our system in general
6 sessions court, but he was committed to Just Care. So,
7 actually, he was there before I had an opportunity to meet
8 with him. So they sent him there, not under the same
9 guidelines that they would send somebody through our system,
10 but they did send him there for a brief amount of time. And
11 he came back and he's competent, but he did deteriorate
12 quickly.

13 What happens with Mr. Bailey is, quite frankly, is
14 that he does have a hard time acknowledging, you know, the
15 seriousness of his issue, and so sometimes he will stop
16 taking his medication. And that is what happened, Your
17 Honor. So that's what happened this time when he was in
18 jail. After a few months, we had to have a Blair hearing and
19 send him back to Just Care. So he's been there now since
20 about May, Your Honor. They sent him there pretty quickly.
21 And he's done very well there. As you heard from Dr. Pagano
22 testified, he said he was making great improvements there.

23 I can tell you that Anthony, he's only been back a
24 few weeks, but he has been, you know, the past few weeks, his
25 behavior has been very good. And I notice a difference this

1 time than when he came back the first time. The first time
2 he was still a little on edge, but, you know, he seems very
3 calm, very rational. I went to his evaluation last week.
4 He's an intelligent man. The doctor even said, you know,
5 more than most people, he's answering some basic questions
6 about knowledge. And he did indicate to the doctor when they
7 asked him at his evaluation last Friday, they said, are you
8 going to keep taking your meds? And he said yes, he is. He
9 is given a shot, which is once a month, so it is easier to
10 comply with that. So I think that's a good sign.

11 I mean, hopefully, based on his history, you know,
12 we are not going to say that there's no chance he will stop
13 taking his meds, that is a possibility, but I know in the
14 past, he refused to take his meds because he thinks, I don't
15 need it. But this time he is saying, I will take it. So we
16 are hopeful that this has done good for him, being
17 incarcerated for over a year now, Your Honor.

18 I would like to introduce some people in the
19 courtroom, one lady, his mom.

20 THE COURT: This is his mother?

21 MS. FORD: Yes, Your Honor. His mom is here. She's
22 been involved since the beginning and has come to his
23 hearings. He also has a sister outside, but she has a small
24 child, so she can't be in the courtroom. But he does have
25 family support, and with people who recognize his mental

1 illnesses and do not want him to be there and want him to get
2 to mental health. So we were talking about that, so Anthony
3 would go with her, Your Honor.

4 As you pointed out, he has no violence in his
5 history other than a common law ABHAN from 20 years ago. And
6 so while we do understand that Ms. Cradock took the threat
7 seriously, you know, she also noted he had -- basically, he
8 made threats a good bit. She was there for another threat.
9 And despite threats, he never acted on them. There's no
10 indication he ever did anything to Ms. Cradock or the
11 Department of Mental Health. And his mom does, for the
12 record -- says, I've never seen him with a gun. That has
13 never been an issue. I think that was running his mouth
14 because he was frustrated, quite frankly, that they wouldn't
15 leave him alone at that time

16 THE COURT: "They" being --

17 MS. FORD: Mental Health.

18 THE COURT: Mental Health?

19 MS. FORD: You know, she wouldn't leave him alone.
20 So he was like, why are y'all here? So, fortunately, I don't
21 have the issues that Mr. Bailey does. I see a lot of my
22 clients do. And I can't imagine living the way that they do,
23 thinking the way they do with paranoia, and just people
24 basically always telling them that there's something wrong
25 with them. But Mr. Bailey, he is intelligent. He likes to

1 write. He writes a lot of raps and stories.

2 THE COURT: Writes what?

3 MS. FORD: Raps, like songs and stories.

4 THE COURT: Oh, yes, ma'am.

5 MS. FORD: So he does use that as an outlet to
6 express himself, but he is intelligent. I can say he is much
7 different today. He's very passionate. So that's why I can
8 see why I'm sure especially seems scary to Ms. Cradock that
9 day, because he is very passionate. But during the course of
10 my representation, I have not felt threatened at all. He has
11 not been threatening towards mental health in particular.

12 Your Honor, we would ask you to consider
13 probationary sentence since he has been incarcerated little
14 over a year now. His record consists mostly of drugs and
15 misdemeanor offenses that basically demonstrate probably
16 someone who has a mental health issue, who is doing stupid
17 things, acting up on the street, causing a scene, and using
18 drugs to self-medicate. We would ask if you give him the
19 opportunity to see if he can comply with mental health.

20 Again, he says he's willing to do that. That's a
21 big first step. I know he has support. We would ask if you
22 consider that. Again, he's been incarcerated since August
23 28th. I think originally -- was actually a --

24 THE COURT: What was he charged in municipal court?

25 MS. FORD: It was wearing face mask. So he was in

1 jail for that. My understanding, they originally threatened
2 him with threatening a public employee, but DMH complained
3 from my understanding and talked to the county attorneys and
4 it was upgraded. That was officially served September 11th,
5 but he has been incarcerated since this event on August 28th
6 of last year.

7 And in addition, Your Honor, I did have him
8 evaluated for criminal responsibility as well. Since that is
9 an ex parte order, I did not provide that to the State. Dr.
10 Knight did find he would be criminally responsible. She did
11 say it would be a guilty but mentally ill finding. So I
12 don't think the State would probably object to that. But I
13 do have the report, so I just wanted to bring that to the
14 Court's attention as well.

15 THE COURT: I was going to ask if you considered
16 guilty but mentally ill in that regard based on both your
17 evaluation and the doctor's testimony regarding his
18 diagnosis.

19 MS. FORD: We did, Your Honor. And, again, the
20 basis for today's bench trial, it wasn't because he wasn't
21 accepting responsibility. He has accepted responsibility for
22 that. It's because of the legal issue that I brought to his
23 attention as his attorney.

24 THE COURT: And let me ask you this question,
25 Ms. Ford. I guess, obviously, you've already objected as far

1 as my findings.

2 MS. FORD: Yes, Your Honor.

3 THE COURT: Obviously, without waiving any of your
4 rights to that objection, do you have any objection if I
5 sentence him guilty but mentally ill?

6 MS. FORD: No, I don't have an objection to that
7 finding. We do plan to appeal the decision.

8 THE COURT: I understand.

9 MS. FORD: But, no, that's what we would ask for. I
10 think that would be appropriate. Again, it's really the
11 legal issue. We would argue he's guilty of a
12 lesser-included.

13 THE COURT: And you don't think that affects -- you
14 don't think that affects your client's public rights? I
15 don't know the answer to that question. I just --

16 MS. FORD: Right. Well, because I guess we would
17 argue he's guilty but mentally ill to the public employee
18 charge. But, so, we admit to that part, Your Honor. So I
19 think that would be okay.

20 THE COURT: You know, criminal defense attorney is
21 put in a -- I don't know the answer to protect the record in
22 that regard.

23 Do you have any objections to that, solicitor,
24 guilty but mentally ill?

25 MR. ZIEGLER: To be frank, I'm not sure what the

1 ramifications of that --

2 THE COURT: Quite frankly, he's sentenced as if he's
3 guilty, but he goes -- I put him in the Department of
4 Corrections, he would go to a, I think, just -- used to be
5 guilty and psychiatric center. I don't know what it is now.
6 That's two or three decades ago. He would just go to a
7 facility within the Department of Corrections. That was many
8 years. And, of course, you put up testimony today that he's
9 bipolar, which is a major mental illness in that regard. I
10 think that will be the only ramifications as far as I
11 understand.

12 MS. FORD: That is my understanding as well. It
13 just affects his classification. Doesn't affect him getting
14 out or anything like that, just effects where he's sent while
15 in SCDC.

16 THE COURT: Even if you object, quite frankly, I'm
17 not going to put somebody that's mentally ill in with the
18 general population if that individual needs care and
19 treatment, which I think he does. I don't think I was
20 improperly exercising my judicial discretion for that.

21 MR. ZIEGLER: The State would have no objection to
22 that.

23 THE COURT: Do I have a sentence -- anything
24 further, Ms. Ford?

25 MS. FORD: No, Your Honor.

1 THE COURT: Anything you would like to say,
2 Mr. Bailey? I would be glad to hear from you.

3 THE DEFENDANT: Only thing I would like to say is
4 that I'm doing -- going to treatment at Charlie Hall
5 Boulevard.

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

7 Anything his mother would like to say to the Court,
8 Ms. Ford?

9 THE MOTHER: Only thing --

10 THE COURT: Tell me your name.

11 THE MOTHER: Elizabeth Bailey. Only thing I like to
12 say is if you let him go, I make sure that he gets to Charlie
13 Hall this time.

14 THE COURT: Thank you so much, Ms. Bailey. Thank
15 you for being here.

16 THE MOTHER: Thank you.

17 THE COURT: Do I have a sentencing sheet?

18 MR. ZIEGLER: May I approach, Your Honor?

19 THE COURT: Certainly. He was initially
20 incarcerated 28 August of '13.

21 MS. FORD: Yes, Your Honor. He's been incarcerated
22 since then. I think originally they charged him with the
23 employee charge, so we ask for credit --

24 THE COURT: Say that again.

25 MS. FORD: They actually only charged him with the

1 employee charge at first, from my understanding. He was
2 officially served the warrant on the official charge
3 September 11th, I believe. But we would ask for credit since
4 August 28th. He's been in jail since then.

5 THE COURT: 2013-A10900800, the State vs. Anthony
6 Bailey, threatening the life of a public official, under
7 16-3-1040, I find the defendant guilty but mentally ill as to
8 that charge based on the reason I've already stated in the
9 record. He is committed to the State Department of
10 Corrections for a determinate term of five years provided
11 upon the service of 18 months. The balance is suspended with
12 five years probation. He shall be given credit for time
13 served since 28, August '14.

14 Once he is released from incarceration, he shall be
15 on probation for those five years following, special
16 conditions: Substance abuse counseling, if needed; random
17 drug and alcohol testing; maintain all prescribed medication
18 and mental health counseling; no contact with the victim in
19 any manner, by any means.

20 Good luck to you, Mr. Bailey.

21 MS. FORD: Thank you, Your Honor.

22 THE COURT: Thank you, Ms. Ford.

23 Thank you, solicitor.

24 Good luck to you, Ms. Craddock.

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I, Karen V. Andersen, Registered Merit Reporter
certified Realtime Reporter, and Notary Public for the State
of South Carolina at Large, do hereby certify that the
foregoing transcript is a true, accurate and complete
Transcript of Record of the proceedings.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 7th day of October, 2014, at Charleston, Charleston County, South Carolina.


Karen V. Andersen
Registered Merit Reporter
Certified Realtime Reporter
My Commission expires:
September 14, 2016

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF CHARLESTON	)	FOR THE NINTH JUDICIAL CIRCUIT
	)	Charge: Threatening a Public Official
State of South Carolina,	)	Warrant No: 2013A1010900800
v.	)	
ANTHONY BAILEY	)	DEFENDANT'S TRIAL MOTION
	)	(ARGUMENT IN SUPPORT OF FINDING
DEFENDANT	)	VICTIM A PUBLIC EMPLOYEE RATHER
_____	)	THAN A PUBLIC OFFICIAL)

STATEMENT OF THE FACTS

Defendant Anthony Bailey was incarcerated at the Sheriff Al Cannon Detention Center (SACDC) in Charleston, South Carolina, on a municipal charge. Detention center staff requested that he be screened by a mental health counselor working at the jail. Ms. Amy Cradock, an employee with the Department of Mental Health (DMH) working at the detention center, saw Defendant on August 28, 2013. During the course of this meeting, according to Deputy Taylor's police report, Ms. Cradock says that Defendant threatened to shoot up the mental health building and Mobile Crisis office and said, "if you don't want to be part of this killing, get out of my face," while referring to her. Defendant was ultimately charged with Threatening a Public Official.

Ms. Cradock has been appointed as a Designated Examiner for purposes of Probate proceedings. However, she has indicated she was not seeing Defendant in that role on August 28, 2013.

DISCUSSION

The South Carolina General Assembly made it a crime to threaten government employees. However, it distinguished between threats made to “public employees” and ones made to “public officials,” the former being a misdemeanor and the latter being a felony. S.C. Code Ann. § 16-3-1040. The statute does give some guidance on how to distinguish between the two positions. While a “[p]ublic 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,” a “[p]ublic employee” means a person employed by the State, a county, a municipality, a school district, or a political subdivision of this State, . . . “ *Id.* at (E). Courts have given some further guidance as well by looking into common law definitions of a “public official.”

Ms. Cradock is employed by the Department of Mental Health, which is a government entity. As a mental healthcare counselor employed by the DMH, Ms. Cradock is a public employee rather than a public official.

- I. **SINCE MS. CRADOCK IS NOT ELECTED OR APPOINTED TO HER POSITION, AND SINCE SHE WAS NOT SEEING DEFENDANT IN THE CAPACITY OF A DESIGNATED EXAMINER, SHE WOULD NOT BE CONSIDERED A PUBLIC OFFICIAL UNDER § 16-3-1040 OF THE S.C. CODE.**

As an employee of the Department of Mental Health, Ms. Cradock has the ability, through an appointment, to examine individuals, as directed to, for the purpose of civil

commitment in Probate Court. This is the basis for why Defendant was charged with Threatening a Public Official instead of Threatening a Public Employee.

However, the role of a Designated Examiner is not a role Ms. Cradock exercises on a regular basis. Instead, she works as a mental healthcare counselor at the SACDC. Since Ms. Cradock was not meeting with Defendant to examine him as a Designated Examiner, she would not be considered a “public official” under § 16-3-1040. According to the statute, “It is unlawful for a person knowingly and wilfully to deliver or convey to a public official . . . any . . . verbal . . . communication which contains a threat to take the life of or to inflict bodily harm upon the public official . . . if the threat is directly related to the public official's . . . professional responsibilities.” S.C. Code Ann. § 16-3-1040(A). Since Ms. Cradock was not seeing Defendant directly related to her responsibilities as a Designated Examiner, as required by the law, then he could not possibly have been threatening her with respect to those responsibilities.

Further, even if Ms. Cradock had been seeing Defendant in her role as a Designated Examiner, she still would not be considered a “public official.” In *Sanders v. Belue*, 78 S.C. 171, 174, 58 S.E. 762, 763 (1907), the South Carolina Supreme Court helped to define an official in comparison to an employee: “One 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, is a public officer.” Ms. Cradock’s role as a Designated Examiner would be considered “occasional or intermittent” and therefore not of the nature and expectancy of an “official.”

The State relies on § 44-9-40 of the S.C. Code to say that Ms. Cradock is appointed: “The director must appoint and remove all other officers and employees of the Department of Mental Health, subject to the approval of the Mental Health Commission.” While that statute

uses the term, “appoint,” § 16-3-1040 still requires that one be an “appointed official.” Even if she is considered “appointed,” that does not mean she is an official. Ultimately, her job still is as “one who merely performs the duties required of [her] by persons employing [her] under an express contract or otherwise, though such persons be themselves public officers, and though the employment be in or about a public work or business,” and she is therefore “a mere employee.” *Sanders*, 78 S.C. at 174. It would make more sense to say that the term “appoint” is referring to the officers. In fact, the General Assembly more specifically instructs the Director, in § 44-9-60 of the S.C. Code, to “appoint a director of each hospital” and in turn the “director of each hospital under the jurisdiction of the Department of Mental Health is responsible for the employment of all personnel at the hospital, subject to the approval of the director of the department.” Under the State’s theory, every single person who works for the DMH would be an official since § 44-9-40 does not specify what kind of employees and merely says, “officers and employees.”

The State’s interpretation dilutes the term of “appointment” to the point of making it meaningless.

II. THE COURT SHOULD NOT FIND MENTAL HEALTHCARE COUNSELORS WORKING WITH THE DEPARTMENT OF MENTAL HEALTH TO BE PUBLIC OFFICIALS, CONSIDERING THERE IS NO APPROPRIATE BASIS UNDER COMMON LAW AND SUCH FINDING WOULD BE CONTRARY TO THE STANDARDS OF THE HEALTHCARE PROFESSION AND THEREFORE DETRIMENTAL TO THE PUBLIC.

Mental health counselors do not qualify as “public officials” under the common law. The State argues that they should be declared officials because they are similar to teachers and police officers or troopers. The comparison to teachers is irrelevant because they are not considered public officials. Rather, the General Assembly decided in § 16-3-1040(A) to specifically hold

that a threat to them, without any consideration of them being officials or employees, would be declared a felony. As for police officers and troopers, their duties are entirely different than the duties of a mental healthcare worker. *State v. Bridges*, 329 S.C. 11, 14-15, 495 S.E.2d 196, 198 (1997), set out some guidelines when establishing that highway patrol officers are public officials:

First, as law enforcement officers, they are charged with the discretionary exercise of the sovereign power. Specifically, the officers and troopers must enforce the "traffic and other related laws." S.C. Code Ann. § 23-6-100(A) (Supp. 1996). Second, their positions were created by the Legislature. *See id.* Third, their duties and powers are established by statute and include accepting money in the form of bail for traffic violations, serving criminal process, and making arrests. *See* S.C. Code Ann. §§ 23-6-140 to -150 (Supp. 1996). Finally, each Highway Patrol officer and trooper must file a bond that is conditioned on the faithful performance of his duties. *See* S.C. Code Ann. § 23-6-120; *see also* S.C. Code Ann. § 8-3-30 (1986) (providing the form of the bond to be given by all public officers).

Police are representative of the sovereign because they enforce laws and make decisions on whether or not to arrest people. Mental health workers such as Ms. Cradock arguably have no power or authority other than to make a referral to others to see if an individual should be committed through Probate Court. While the Legislature created the position and duties of the South Carolina Mental Health Commission and the State Director, it did not specifically create Ms. Cradock's position or duties. *See* § 44-9-30 and 44-9-40, S.C. Code. Rather, Ms. Cradock is merely an employee, "one who merely performs the duties required of [her] by persons employing [her] under an express contract or otherwise, though such persons be themselves public officers, and though the employment be in or about a public work or business." *Sanders*, 78 S.C. at 174.

Police exist to protect the public at large and to find and arrest people violating crimes. They do not really have duties to individual citizens other than to abide by their constitutional rights. Mental health workers, on the other hand, have many duties to individual citizens. The

statutes regarding the Department of Mental Health help establish why the DMH exists. Section 44-9-90 of the S.C. Code sets out the powers and duties of the Mental Health Commission:

The commission shall:

- (1) form a body corporate in deed and in law with all the powers incident to corporations;
- (2) cooperate with persons in charge of penal institutions in this State for the purpose of providing proper care and treatment for mental patients confined in penal institutions because of emergency;
- (3) inaugurate and maintain an appropriate mental health education and public relations program;
- (4) collect statistics bearing on mental illness, drug addiction, and alcoholism;
- (5) provide vocational training and medical treatment which must tend to the mental and physical betterment of patients and which is designed to lessen the increase of mental illness, drug addiction, and alcoholism;
- (6) encourage the directors of hospitals and their medical staffs in the investigation and study of these subjects and of mental health treatment in general; and
- (7) provide a statewide system for the delivery of mental health services to treat, care for, reduce, and prevent mental illness and provide mental health services for citizens of this State, whether or not in a hospital. The system must include services to prevent or postpone the commitment or recommitment of citizens to hospitals.

While the Department of Mental Health serves the public, its primary duties are to individuals.

While professionals such as Ms. Cradock may work for the government, that does not mean that they do not have to adhere to standards set out by their respective professions. For example, government attorneys still have to follow the same ethics standards that non-government attorneys are bound to. More specifically, for example, public defenders are employed by the various counties in South Carolina. The counties and the State provide public defenders to the public in order to live up to the requirements of the Constitution. Despite this

government funding, public defenders have a duty first and foremost to their clients, not to society at large. They have ethical duties to zealously advocate for their clients and to honor confidentiality requirements, among other obligations. Similarly, mental health professionals working for the DMH, including Ms. Cradock, have to follow professional standards.

The State's proposal to make all DMH employees "officials" would interfere with their responsibilities to patients as required by the mental health profession. While the state of South Carolina recognized the public importance of creating the DMH and there are public benefits to its existence, there is no indication that its goal was to defeat patient needs and rights.

The SACDC has standards for health care services for inmates, including mental health services, demonstrating its understanding of such patient needs and rights. It set out rules in Section Eight of its Policy Handbook (see "Policy," Exhibit 1): "It is the policy of SACDC to provide a continuum of health care, dental, and mental health services for all inmates It is the mission of the health authority to provide healthcare services to all clients in an efficient and timely manner by professional health care staff. The South Carolina Department of Mental Health is the designated mental health facility." (Policy at p.1) Also, "Inmates are afforded the same level of informed consent as in any community medical facility for the specific type of treatment involved and have a right to refuse routine medical, dental, psychological, or psychiatric treatment." (Policy at p.4)

According to jail policy, "On-site mental health services are provided by a psychiatrist and full-time mental health professionals. Treatment services include on-site or off-site crisis intervention, short-term individual and/or group therapy and psychotropic medication management." (Policy at p.12) The mental health workers are able to make "an emergency referral to an appropriate facility" if the inmate is displaying "dangerous behavior as a symptom

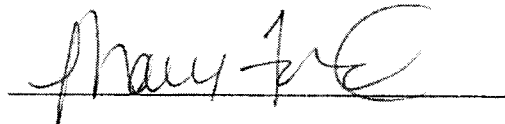
of several mental illness” and he “cannot be adequately managed by SACDC resources.” (Policy at p.13) In addition, inmates are entitled to confidentiality rights afforded by HIPPA: “HIPPA requires that inmate medical records are confidential” and “not only does this prohibit anyone not authorized to view these records, but it also insures that all SACDC staff (detention, civilian, or contracted employees) will not discuss any medical records or information with any other individual.” (Policy at p.28)

Finding mental healthcare providers employed by the DMH to be “public officials” would be contrary and therefore detrimental to the goals of the creation of the Commission and the DMH, the goals of helping individual citizen patients.

CONCLUSION

The Court should not find mental healthcare providers working for the Department of Mental Health to be public officials, and in particular, it should not find Ms. Cradock to be a public official. While Ms. Cradock has been appointed to be a Designated Examiner, she was not seeing Mr. Bailey in that capacity. Even if she were, she would still not be an official because that appointment is not a position she holds on a continuous basis as required by law. Further, the Court should not create a rule holding that mental healthcare workers in general should be considered public officials, considering that they arguably have no authority over anyone and exist primarily to see to individual citizen patients, both according to statute and professional standards.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Mary A. Ford", written over a horizontal line.

Mary A. Ford

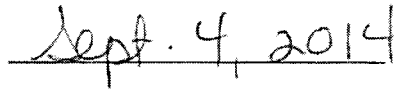
ATTORNEY FOR ANTHONY BAILEY

101 Meeting Street, Fifth Floor

Charleston, SC 29401

(843) 958-1850

Charleston, South Carolina

A handwritten date "Sept. 4, 2014" written in dark ink over a horizontal line.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	Warrant No(s): 2013A1010900800
	)	
-vs-	)	Indictment No(s): 2014-GS-10-00629
	)	
ANTHONY BAILEY,	)	
	)	STATE'S TRIAL BRIEF
Defendant	)	
_____	)	

I. INTRODUCTION

Defendant, Anthony Bailey, is charged with Threatening Life of Public Official for violating S.C. Code Ann § 16-3-1040, in that he made verbal threats to the victim while housed at the Charleston County jail. The victim is Amy Cradock, a Mental Health Professional and Designated Examiner for South Carolina Department of Mental Health ('SCDMH'). The State's position is that Ms. Cradock is a "public official" for purposes of the above statute, not merely a "public employee." As such, Bailey may be convicted and sentenced under the portion of the above statute that is applicable to a "public official."

II. QUESTION PRESENTED

Whether under South Carolina law, a Mental Health Professional and Designated Examiner employed by SCDMH is considered a "public official" or a "public employee?"

III. STATEMENT OF THE CASE

On August 28, 2013, Amy Cradock, a Mental Health Professional and Designated Examiner employed by SCDMH, was conducting a follow-up mental health evaluation of the

Defendant, Anthony Bailey, at the Sheriff Al Cannon Detention Center. Ms. Cradock alleges that, during the evaluation, the Defendant communicated to her a verbal statement that upon his release from jail he would “shoot up” the Mental Health Center and then kill everyone at in the Mobile Crisis Unit. Ms. Cradock also states that the Defendant threatened to kill her specifically. Ms. Cradock then terminated her evaluation of Defendant and reported the incident to jail personnel.

IV. ARGUMENT

A. THE OFFENSE STATUTE DISTINGUISHES BETWEEN A PUBLIC OFFICIAL AND A PUBLIC EMPLOYEE, AND THE VICTIM IN THIS CASE SHOULD BE CONSIDERED A PUBLIC OFFICIAL.

The offense statute: S.C. Code Ann. § 16-3-1040(A) provides that it is unlawful for a person knowingly and wilfully to deliver or convey to a “*public official*” or a *teacher or principal* any verbal communication which contains a threat to take the life or inflict bodily harm upon the public official. S.C. Code Ann. § 16-3-1040(B) contains the same language as subsection (A), but replaces the words “public official” with “*public employee*”. S.C. Code Ann. § 16-3-1040 (1976).

“Public official” is defined as “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 Ann. § 16-3-1040(E)(1) (1976).

“Public employee is defined as “a person employed by the State, a county, a municipality, a school district, or a political subdivision of this State[...].” This definition goes on

to exclude teachers and principals from “public employee.” S.C. Code Ann. § 16-3-1040(E)(2) (1976).

A wide sentencing gap exists between a “public official” and a “public employee,” as S.C. Code Ann. § 16-3-1040(A) carries a fine of not more than five thousand dollars or not more than five years imprisonment, while S.C. Code Ann. § 16-3-1040(B) carries a fine of not more than five hundred dollars or not more than thirty days imprisonment. S.C. Code Ann. § 16-3-1040 (1976).

The State’s position is that the victim in the case before the Court is a “public official” for purposes of S.C. Code Ann. § 16-3-1040.

B. STATUTES AND REGULATIONS GOVERNING SCDMH DEMONSTRATE THE APPOINTMENT RESPONSIBILITIES OF THE DIRECTOR OF SCDMH.

The Commission. The South Carolina Mental Health Commission (‘Commission’) is the governing body of SCDMH and is appointed by the Governor. S.C. Code Ann. § 44-9-30 provides: “There is created the governing board for the State Department of Mental Health known as the South Carolina Mental Health Commission. The commission shall consist of seven members, one from each congressional district, *appointed by the Governor*, upon the advice and consent of the Senate.” S.C. Code Ann. § 44-9-30 (1976).

The Director. The State Director of Mental Health (‘Director’) is the chief executive of SCDMH and is appointed by the Commission. S.C. Code Ann. § 44-9-40 (1976). The Director, in turn, “must appoint and remove all other officers and employees of the Department of Mental Health, subject to the approval of the Mental Health Commission.” S.C. Code Ann. § 44-9-40 (1976).

The Designated Examiner. Administrative regulations narrow down these broader appointment powers of the Commission and the Director to the appointment of Designated Examiners. Section 87-1 of the South Carolina Code of Regulations is captioned “Designated Examiners” and sets out the qualifications needed for a person to act as a designated examiner. For example, the regulation provides that, to act as a designated examiner, a counselor must have a master’s degree in counseling and two years of related experience. The regulation goes on to provide that a mental health professional who has the appropriate qualifications and experience as listed and is approved by the Mental Health Office of Quality Assurance “may be *appointed* as designated examiner” in a SCDMH facility. S.C. Code Ann. Regs. 87-1 (1976).

S.C. Code Ann. § 44-23-10 defines a “Designated Examiner” as a physician or “a person registered by the department as specially qualified, under standards established by the department, in the diagnosis of mental or related illness.” S.C. Code Ann. § 44-23-10 (1976).

The foregoing statutes and regulations show that the Governor of South Carolina appoints the Commission, which in turn appoints the Director of SCDMH, who in turn appoints all officers and employees of SCDMH. Furthermore, a designated examiner is a specially appointed position within SCDMH based on a candidate’s attainment of certain qualifications.

C. COURTS HAVE LOOKED FOR EVIDENCE OF APPOINTMENT IN DETERMINING THAT POLICE OFFICERS ARE PUBLIC OFFICIALS.

South Carolina Courts have assessed statutes and regulations in finding that both municipal police officers and highway patrol officers are public officials for purposes of S.C. Code Ann. § 16-3-1040.

In State v. Carter, the Court of Appeals looked to a statute to establish that municipal police officers are “elected or appointed” within the meaning of S.C. Code Ann. § 16-3-1040, and thus should be considered public officials. State v. Carter, 478 S.E.2d 86, 87 (S.C. Ct. App. 1996). That particular statute provides: “Any municipality may appoint or elect as many police officers, regular or special, as may be necessary for the proper law enforcement in such municipality and fix their salaries and prescribe their duties.” S.C. Code Ann. § 5-7-110 (1976). The Court viewed this statute as an indication that municipal police officers are elected or appointed and as a result, denied appellant’s argument that a municipal police officer is not a public official. Carter, 478 S.E.2d at 87.

This Court should look to S.C. Code Ann. § 44-9-40, which provides that the director of SCDMH “must appoint and remove all other officers and employees of the Department of Mental Health, subject to the approval of the Mental Health Commission.” S.C. Code Ann. § 44-9-40 (1976). This is an indication that individuals working for the Department of Mental Health are “appointed” within the meaning of S.C. Code Ann. § 16-3-1040, and thus should be considered public officials. Appointment as a designated examiner is further indication that an individual is “appointed” within the meaning of S.C. Code Ann. § 16-3-1040. S.C. Code Ann. § 16-3-1040 (1976).

In State v. Bridgers, the Supreme Court also looked to statute to establish that Highway Patrol officers are “appointed” within the meaning of S.C. Code Ann. § 16-3-1040, and thus should be considered public officials. State v. Bridgers, 495 S.E.2d 196, 197 (S.C. 1997). The Bridgers Court first looked at the statutory definition of “public official,” and found that highway patrol officers fit into that definition because they are commissioned by the Governor upon the recommendation of the Department of Public Safety. Id. at 197. Citing its ruling in State v.

Lewis, the Court noted that even though this commission does not confer the position of highway patrol officer, it is *evidence of appointment*, and thus Highway Patrol officers are “public officials.” Id. at 197.

In the instant case, as previously noted, evidence of appointment of SCDMH personnel is found in S.C. Code Ann. § 44-9-40. S.C. Code Ann. § 44-9-40 (1976). Furthermore, evidence of appointment for designated examiners is found in the language of S.C. Code Ann. Regs. 87-1, which provides that a person who meets the qualifications established by the Commission may be appointed as a designated examiner. S.C. Code Ann. Regs. 87-1 (1976).

D. COMMON LAW DISTINGUISHES BETWEEN PUBLIC OFFICIALS AND PUBLIC EMPLOYEES.

After analyzing statutes for evidence of appointment, The Bridgers Court looked to common law for guidance as to whether a highway patrol officer is a “public official.” The Bridgers Court employed the following cases in its analysis:

Sanders v. Belue. The Supreme Court held that the superintendent of the Union County poorhouse and farm was a “public officer.” Sanders v. Belue, 58 S.E. 762, 764 (S.C. 1907). The Court defined a public officer as “one 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.” Id. at 763. On the other hand, an employee is “one who merely performs the duties required of him by persons employing him under an express contract or otherwise, though such persons themselves be public officers, and though the employment be in or about a public work or business.” Id. at 763.

In the instant case, S.C. Code Ann. § 44-9-90 confers certain powers and duties on the Commission. Among those duties is to “provide a statewide system for the delivery of mental health services to treat, care for, reduce, and prevent mental illness and provide mental health services for citizens of this State.” S.C. Code Ann. § 44-9-90 (1967). S.C. Code Ann. Regs. 87-1 suggests that designated examiners are qualified and appointed “For the purpose of carrying out the provisions of the laws relating to the commitment of mentally ill persons.” Thus, the Commission and, in turn, its appointed personnel and designated examiners are charged by law with duties involving an exercise of some sovereign power, that is, administering a state system of mental health services and the commitment of mentally ill persons.

State v. Crenshaw. The Supreme Court provided criteria for distinguishing between a public official and a public employee. Those criteria are “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.” None of these criteria are dispositive and not all of them are required. State v. Crenshaw, 266 S.E.2d 61, 62-63 (S.C. 1980).

In the instant case, the most important factor is that the qualifications for appointment of designated examiners are clearly established within S.C. Code Ann. Regs. 87-1. S.C. Code Ann. Regs. 87-1 (1976). Also, while the position of designated examiner is not directly created by the legislature, S.C. Code Ann. § 44-9-30 gives authority to the Commission to determine policies and promulgate regulations governing the employment of professional and staff personnel. S.C. Code Ann. § 44-9-30 (1976). Finally, designated examiners are representatives of the sovereign in that they are appointed by a state agency (SCDMH) and are registered by SCDMH as specially qualified in the diagnosis of mental illness. S.C. Code Ann. § 44-23-10

(1976). SCDMH Mental Health Professionals are also representatives of the sovereign in that they provide mental health services to the public on behalf of a state agency.

State v. Thrift. The Supreme Court looked at the duties owed to the public as a key factor in determining whether an individual is a “public official” in the context of a public corruption case against Highway Department officials. State v. Thrift, 440 S.E.2d 341, 356 (S.C. 1994). The Court found the Highway Department officials to be public officials because their duties were “of great concern to the public at large.” Id. at 356. In its summary of the common law definitions of public officials, the Court found that “a common thread lies in the exercise of the powers of or representation of the sovereign” and “the greater the duty to the public at large, the more likely it is that the individual will be a public official.” Id. at 356.

In the instant case, both Mental Health Professionals and Designated Examiners owe important duties to the public of South Carolina. They treat and care for citizens with mental illness, improving the quality of life for those citizens. They also owe a duty to every citizen in South Carolina in that they may identify individuals whose mental illness makes them a danger to themselves or society at large. They represent the sovereign and carry out the duties of the sovereign to provide services for its mentally ill citizens.

E. PUBLIC POLICY FAVORS TREATING A MENTAL HEALTH PROFESSIONAL AS A PUBLIC OFFICIAL.

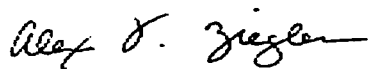
SCDMH personnel should be afforded protections under the law consistent with those enjoyed by teachers and police officers. The job duties of a SCDMH Mental Health Professional bear a major similarity to those of a teacher or a police officer: they all directly interact with and serve a segment of the public every day. In all three of these positions, one must be visible and

available to the public as an inherent part of the job. Therefore, Mental Health Professionals face similar risks in their job to those faced by teachers and police officers, posed by the individuals they serve. All three of these public actors should be protected consistently regarding threats made to them while carrying out their job duties.

V. CONCLUSION

The victim in this case is a Mental Health Professional and Designated Examiner working for the South Carolina Department of Mental Health. The State argues she should be considered a “public official” for purposes of S.C. Code Ann § 16-3-1040 because there is evidence that she is appointed to her position, she owes an important duty to the public as a provider of mental health services, and the risks she faces in her job are similar to those faced by teachers and police officers.

Respectfully submitted:



Alexander J. Ziegler
Assistant Solicitor, Ninth Judicial Circuit

AZ.R20130906700

WITNESSES

Charleston County Sheriff

AGENCY CASE NUMBER

2013012692B

ARREST WARRANT NUMBER

2013A1010900800

DATE OF ARREST

September 12, 2013

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury *[Signature]* FEB 03 2014
Date: *[Signature]*

VERDICT

Guilty But Mentally Ill
[Signature]

Foreperson of Petit Jury

4 Sept 14
Circuit Court Judge

DOCKET NO. 2014GS1000629

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

February Term 2014

THE STATE

vs.

ANTHONY BAILEY
[Redacted]
[Redacted]

Indictment for

Threatening Life of Public Official

ATTORNEY GENERAL
JULIE ARMSTRONG
By *[Signature]*
DEPUTY CLERK

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

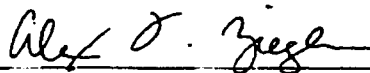
INDICTMENT

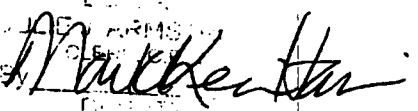
At a Court of General Sessions, convened on February 3, 2014 the Grand Jurors of Charleston County present upon their oath:

Threatening Life of Public Official

That in Charleston County, South Carolina, on or about August 28, 2013, the Defendant, ANTHONY BAILEY, knowingly and willfully did deliver or convey to a public official, teacher or principal of an elementary or secondary school, by way of writing, electronic or verbal communication, a threat to take the life of or to inflict bodily harm upon such public official, teacher or principal or her immediate family and such threat was directly related to her professional responsibilities, to wit: the Defendant did threaten to inflict bodily harm to Amy Cradock: this is in violation of Section 16-3-1040 of the South Carolina Code of Laws (1976) as amended

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ALEXANDER J. ZIEGLER
ASSISTANT SOLICITOR


MATTHEW H. [illegible]

COUNTY OF Charleston
STATE VS.
Anthony BaileyINDICTMENT/CASE#: 2014GS1000629A/W#: 2013A1010900800Date of Offense: 8/28/2013S.C. Code §: 16-03-1040CDR Code #: 0541

AKA:

Race: BLACK Sex: M Age: 33DOB: [REDACTED] SS#: [REDACTED]

Address:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Threatening Life of Public Official or Teacher☒ CONVICTED OF or ☐ PLEADSin violation of § 16-03-1040 of the S.C. Code of Laws, bearing CDR Code # 0541☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ § 17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: Alex J. Ziegler101014

Ziegler, Alexander J.

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of 18 days/months/years and/or paymentof \$; plus costs and assessments as applicable*; the balance is suspended with probation for 5

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. SINCE 29 AUG 14☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUPTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ca	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)		\$ <u>3.90</u>
TOTAL		\$ <u>133.90</u>

Clerk of Court/ Deputy Clerk

Court Reporter: Phyllis Norton

SCCA/217 (03/2011)

 days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☒Random Drug/Alcohol testing ☒Fine may be pd in equal, consecutive weekly/monthly
pmts. of \$ beginning \$ paid to Public Defender FundOther: maintain all prescribed
medication & mental health counseling
no contact with victim in
any form by any means☐ Appointed PD or appointed free counsel.§ 47.12 requires \$500 fee to Clerk
during probation.

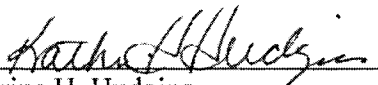
Presiding Judge

Judge Code: 2143Sentence Date: 4 Sept 14

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

June 22nd, 2015


Kathrine H. Hudgins
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

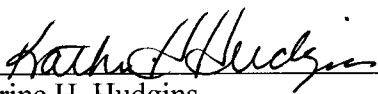
ATTORNEY FOR APPELLANT

RECEIVED
JUN 22 2015
SC Court of Appeals

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ATTORNEY FOR APPELLANT

7
STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

R. Knox McMahon, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ANTHONY BAILEY,

APPELLANT

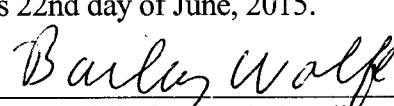
APPELLATE CASE NO. 2014-00629

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal 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 this 22nd day of June, 2015.


Cruise Mitchell
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 22nd day of June, 2015.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: October 24, 2021.

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SC Court of Appeals