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SC SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Charleston County

R. Knox McMahon, Circuit Court Judge

THE STATE,

PETITIONER,

V.

ANTHONY BAILEY,

RESPONDENT

APPELLATE CASE NO. 2016-001150

RETURN TO PETITION FOR WRIT OF CERTIORARI

KATHRINE H. HUDGINS
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR RESPONDENT

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QUESTION PRESENTED

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

STATEMENT OF THE CASE

In February of 2014, the Charleston County Grand Jury indicted Bailey for threatening the life of a public official, indictment #2014-GS-10-629. On September 4, 2014, Bailey proceeded to a bench trial before the Honorable R. Knox McMahan. Mary Ford and Meagan Gentry represented Bailey at trial. Alexander Ziegler and Nicholas Lewis prosecuted the case. Judge McMahan found Bailey guilty and sentenced him to five (5) years suspended upon the service of eighteen (18) months followed by five (5) years of probation. A timely notice of intent to appeal was served on September 10, 2014, and the direct appeal perfected. On April 6, 2016, the South Carolina Court of Appeals, in a published opinion, reversed the conviction for threatening the life of a public official. State v. Bailey, 785 S.E.2d 622 (S.C. Ct. App. 2016), reh'g denied (May 16, 2016). On June 1, 2016, the State filed a petition for writ of certiorari.

STATEMENT OF FACTS

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

ARGUMENT

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

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

S.C. Code §16-3-1040 provides:

(A) It is unlawful for a person knowingly and wilfully to deliver or convey to a public official or to a teacher or principal of an elementary or secondary school any letter or paper, writing, print, missive, document, or electronic communication or verbal or electronic communication which contains a threat to take the life of or to inflict bodily harm upon the public official, teacher, or principal, or members of his immediate family if the threat is directly related to the public official's, teacher's, or principal's professional responsibilities.

(B) It is unlawful for a person knowingly and wilfully to deliver or convey to a public employee a letter or paper, writing, print, missive, document, or electronic communication or verbal or electronic communication which contains a threat to take the life of or to inflict bodily harm upon the public employee or members of his immediate family if the threat is directly related to the public employee's official responsibilities.

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

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

(E) For purposes of this section:

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

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

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

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

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

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

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

The State argued that Ms. Cradock was a public official within the meaning of the statute because she was appointed. (R. p. 69, lines 3-12). The State additionally argued that she was a public official because she was appointed by the Department of Mental Health as a designated examiner. (R. p. 68, lines 8-15). All employees of the South Carolina Department of Mental Health are appointed pursuant to S.C. Code §44-9-40. Ms. Cradock's appointment as a designated examiner does not qualify her as a public official, especially in light of the fact that she testified that at the time of interaction with Respondent Bailey she was not acting as a designated examiner. (R. p. 35, lines 3-8). The appointment factor alone is not sufficient to qualify Ms. Cradock as a public official.

Ms. Cradock's status as a public employee rather than a public official is supported by the four factors from Bridgers: 1.) Is the position created by the legislature?; 2.) Are the qualifications for appointment of the position established by law?; 3.) Are the duties, tenure, salary, bond, and oath prescribed or required by law?; and 4.) Is the person occupying the position as a representative of the sovereign? First, while the legislature created the position and duties of the Director and Commission of the South Carolina Department of Mental Health, it did not specifically create Ms. Cradock's position or duties. The legislature created the position of designated examiner but, again, at the time of interaction with Respondent Bailey, Ms. Cradock was not acting as a designated examiner. As to the second factor, while the qualifications for appointment to the position of designated examiner are established by law, the qualifications for Ms. Cradock's position as a mental health professional are not established by law.

As to the third factor, there was no evidence about Ms. Cradock's tenure or salary or whether a bond and oath are prescribed or required for her position as a mental health

professional. As to the fourth factor, unlike the highway patrol officers found to be public officials in Bridgers and the police officers found to be public officials in State v. Carter, 324 S.C. 383, 478 S.E.2d 86 (Ct.App.1996), mental health professionals do not exercise discretionary use of sovereign power.

The Court in Bridgers additionally discussed duties in distinguishing public employees from public officials writing:

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

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

In support of finding that Ms. Cradock, the mental health professional, was a public official within the meaning of the statute, the judge analogized the inconsistency corrected in Bridgers of treating city police officers as public officials but not highway patrol officers to the inconsistency of treating correctional officers as public officials but not mental health professionals. (R. p. 81, lines 6-22). The duties of the correctional officers are akin to the duties to the public at large of police officers and highway patrol officers. As discussed above, the duties of the mental health professional are to the individual patients. The differing duties provide a rational basis upon which to treat correctional officers differently than mental health professionals. Ms. Cradock was not an employee of the correctional facility. Ms. Cradock was an employee of the Department of Mental Health working at the detention center. (R. p. 47, line

22 – p. 48, lines 1-3). Ms. Cradock was a public employee within the meaning of S.C. Code §16-3-1040. The judge erred in finding she was a public official.

Public employee is clearly defined by the statute as a person employed by the State, a county, a municipality, a school district, or a political subdivision of this State, except that for purposes of this section, a “public employee” does not include a teacher or principal of an elementary or secondary school. S.C. Code §16-3-1040(E)(2). “The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature.” Charleston Cnty. Sch. Dist. v. State Budget & Control Bd., 313 S.C. 1, 5, 437 S.E.2d 6, 8 (1993). The text of a statute is considered the best evidence of the legislative intent or will, and the courts are bound to give effect to the expressed intent of the legislature. Grier v. AMISUB of S.C., Inc., 397 S.C. 532, 535, 725 S.E.2d 693, 695 (2012). “Where the statute’s language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning.” Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). The language of the statute defining public employees conveys a clear and definite meaning. If the legislature had intended to treat mental health professionals as public officials rather than public employees, it could have specifically omitted mental health professionals from the definition of public employee, as it did for teachers and principals. Mental health professionals are public employees within the meaning of the statute.

The Court of Appeals correctly reversed Respondent Bailey’s conviction for threatening a public official holding that Ms. Cradock was a public employee rather than a public official. The Court of Appeals wrote:

In sum, the lack of evidence regarding the final two *Bridgers* factors—coupled with the absence of a sound policy justification for elevating a designated mental health examiner for the Department to the status of a public official—compels us to find Cradock's position does not come within the definition of a public official as set forth in section 16–3–1040. Based upon our review of the record, as well as the relevant authority, we hold that Cradock is a public employee. *Sanders*, 78 S.C. at 174, 58 S.E. at 763 (providing a public employee is “one who merely performs the duties required of him by persons employing him 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”).

State v. Bailey, 785 S.E.2d 622, 626 (S.C. Ct. App. 2016), reh'g denied (May 16, 2016).

The Court of Appeals found that the State failed to prove that a designated examiner's tenure, salary, bond and oath are prescribed or required by law. Additionally, the Court of Appeals found that Ms. Cradock's position as a designated examiner did not require the exercise of sovereign power. The Court noted that her duties as a designated examiner were intermittent and wrote, “The intermittent nature of her duties is highlighted by Cradock's testimony that she was not acting in her capacity as a designated examiner at the time Bailey allegedly threatened her.” Id. 785 S.E.2d at 626. At the time Bailey allegedly threatened Ms. Cradock, she was acting as a mental health professional not a designated examiner. As to her role as a mental health professional, Ms. Cradock fails to meet any of the four Bridgers factors. As to her role as a designated examiner, the Court of Appeals correctly found that the State's failure to meet the final two Bridgers factors combined with the absence of sound a public policy to treat designated examiners as public officials supported the Court's finding that she was a public employee. The Court noted that “any duties Cradock owed in her role as a designated examiner were strictly to the patients whom she was called to examine to ensure compliance with Section 44-23-220.” Id. 785 S.E.2d at 626.

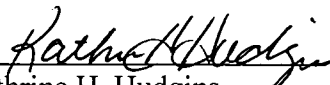
The Court also wrote, “Treating mental health examiners differently from law enforcement officers, however, does not raise the same concerns of inconsistency in applying the statute because these two positions are inherently dissimilar under the law.” Id. 785 S.E.2d at 626.

The Court of Appeals correctly went beyond the appointment factor alone to determine that Ms. Cradock was a public employee rather than a public official. The analysis by the Court of Appeals is supported by the common law as well as rules of statutory construction. The State overcharged Respondent Bailey in indicting him for threatening a public official rather than a public employee.

CONCLUSION

Based on the above argument, the petition for writ of certiorari should be denied.

Respectfully submitted,



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR RESPONDENT.

This 28th day of June, 2016

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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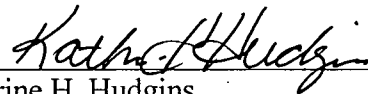
ANTHONY BAILEY,

RESPONDENT

APPELLATE CASE NO. 2016-001150

CERTIFICATE OF SERVICE

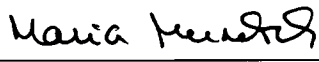
I certify that a true copy of the return to petition for writ of certiorari in this case have been served on Susannah R. Cole, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 this 28th day of June, 2016.



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR RESPONDENT

SWORN TO BEFORE ME this 28th day
of June, 2016.

 (L.S.)

Notary Public for South Carolina
My Commission Expires: July 3, 2023.