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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

April 30, 1998

Chief Steve Harwell
Edisto Beach Police Department
Town of Edisto Beach
2414 Murray Street
Edisto Beach, South Carolina 29438

Re: Informal Opinion

Dear Chief Harwell:

You have requested an opinion concerning interpretation of S.C. Code Ann. Sec. 16-3-1040, which proscribes making threats against a public official. You note that a particular individual threatened to shoot holes in any police car that came on or near his property. You further indicate that the magistrate refused to sign a warrant pursuant to § 16-3-1040, reasoning that a specific officer was not threatened by the individual -- only the police vehicle was threatened.

Law / Analysis

Section 16-3-1040 provides as follows:

> [i]t is unlawful for any person to knowingly and wilfully 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 any verbal or electronic communication which contains any threat to take the life of or to inflict bodily harm upon the public official, teacher, or principal, or members of their immediate families.

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Request Letter

> Any person violating the provisions of this section must, upon conviction, be punished by a term of imprisonment of not more than five years.
>
> For purposes of this section:
>
> (1) "Public official" means any 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) "Immediate family" means the spouse, child, grandchild, mother, father, sister, or brother of the public official, teacher or principal.

Our courts have construed § 16-3-1040 to cover threats made against police officers. See, State v. Carter, 324 S.C. 383, 478 S.E.2d 86 (Ct. App. 1996). The South Carolina Supreme Court recently concluded that the statute encompasses Highway Patrol officers and troopers. State v. Bridgers, 329 S.C. 11, 495 S.E.2d 196 (1997). The Court of Appeals has also found that the statute embraces generalized threats made by a student against all his teachers which was not made directly to a teacher but was overheard by one of the teachers. In the Interest of Steven S., 315 S.C. 472, 434 S.E.2d 312 (1993). In the latter case, the Court found that the standard "conveyed" the threat to the teacher even though he did not make the remark to her because he made it loud enough for her to overhear.

Other courts have concluded that a "threat" may be made by means of innuendo or suggestion as well as by express language. Words and Phrases, "Threat." The term "threat" is generally construed broadly to cover any intention to do harm. State v. Mayer, 87 W.Va. 137, 104 S.E. 407 (1920). See also, People v. Zeig, 841 P.2d 342, 343 (Ct. App. Colo. 1992). A threat may be made by imposition of psychological pressure against a person who, under the circumstances, is vulnerable and susceptible to such pressure. State v. Burke, 522 A.2d 725, 735 (R.I. 1987). Inference from the physical act can constitute a threat. State v. Miller, 6 Kan. App. 2d 432, 629 P.2d 748, 751 (1981). Threats can be made by innuendo and the circumstances under which the threat is uttered. People v. Massengale, 68 Cal. Reptr. 415, 419, 261 C.A.2d 758 (1968). A threat includes any menace to unsettle the mind of the person on whom it operates and to take away free and voluntary action constituting consent. Hadley v. State, 575 So.2d 145, 146 Ala. Cr.

App. 1991). The question of whether the language used constitutes a threat is typically an issue of fact for the jury, taking into account the context of communication. U.S. v. Bellrichard, 779 F.Supp. 454, 457 (D.Minn. 1991). The question is whether the words used would have a reasonable tendency to create apprehension that the originator will act according to the tenor of the communication. State v. Porter, 384 A.2d 429, 432 (Me. 1978).

The case of State v. Hass, 268 N.W.2d 456 (N.D. 1978) is particularly enlightening. There, the defendant made a statement to the effect that he ought to blow the head off one of the parties. The defendant argued that the statement was not a threat. Rejecting the contention, the Court stated the following:

> [t]he defendant, according to the prosecution, was standing within a few feet of the vehicle in which the witness and others were seated, pointing a rifle directly at them, and discussing the possibility of blowing their heads off. It should be no surprise to anyone if they were terrorized or considered themselves menaced. That is all the law requires. Threats may be made by innuendo and the circumstances may be taken into account in deciding whether the words used constitute a threat. People v. Massengale, 261 Cal. App. 2d 758, 68 Cal. Reptr. 415 (1968).

The Court also quoted State v. Howe, 247 N.W.2d 647, 654 (N.D. 1976) which had observed as follows:

> "No precise words are necessary to convey a threat. It may be bluntly spoken, or done by innuendo or suggestion. In re Burke, 9 O.C.D. 350, 17 Cr. Ct. R., N.S. 315 (1899). A threat often takes its meaning form the circumstances in which it is spoken and words that are innocuous in themselves may take on a sinister meaning in the context in which they are recited. Herbert Burman, Inc. v. Local 3 International Brotherhood of Electrical Workers, 214 F.Supp. 353 (S.D.N.Y. 1963)."

268 N.W.2d at 463.

Of course, the decision as to whether or not to issue a warrant rests in the discretion of the magistrate or judge hearing the matter. The decision whether or not to

prosecute a case is a matter for the circuit solicitor. This Offices does not "second-guess" warrant decisions in an opinion.

Moreover, this Office cannot itself make factual findings in an opinion. Op. Atty. Gen., December 12, 1983. However, based upon the situation as you have presented it, § 16-3-1040 does not **as a matter of law** foreclose finding a violation thereof simply because a threat is made to shoot at any police car which comes on or near the individual's property. Obviously, a police officer would typically be riding in the car. To shoot at the car is to threaten the officer inside as a matter of course. It would be virtually impossible to separate the two. Thus, a violation of § 16-3-1040 could be found based upon such an utterance, presuming it was conveyed to the police department and presuming the threat was serious. Again, it would be within the discretion of the magistrate whether or not to issue the warrant, based upon all the facts and circumstances.

This letter is an informal opinion only. It has been written by a designated Assistant Deputy Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I am

Very truly yours,

Robert D. Cook
Assistant Deputy Attorney General

RDC/an