THE STATE OF SOUTH CAROLINA
In The Court of
Appeals

APPEAL FROM THE ADMINISTRATION LAW COURT

Hon. S. Phillip Lenski, Administrative Law Judge

Case No. 2024-002073

Anthony Crosby, Appellant,

v.

South Carolina Criminal Justice Academy, Respondent.

RESPONDENT'S FINAL BRIEF

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STATEMENT OF THE CASE

The South Carolina Criminal Justice Academy (CJA) received a PCS of Separation (PCS) form for Anthony Crosby (Appellant) from the South Carolina Department of Public Safety (Agency). (R. pp. 651 - 652). The Agency alleged that Appellant committed law enforcement certification misconduct by providing false information in a report. (R. p. 645).

On July 18, 2023, Appellant was served the misconduct allegation. (R. p. 646). Appellant requested a contested case hearing on August 17, 2023.. On September 14, 2023, a Contested Case Hearing Notice was sent to Appellant and Agency notifying them of a November 7, 2023 hearing. (R. pp. 647).

The Contested Case Hearing was held on November 7, 2023. (R. p. 238). The Hearing Officer's Findings and Recommendation, hearing transcript and exhibits were sent to the parties on January 5, 2023. (R. pp. 10 - 35). On January 24, 2024, Appellant's counsel filed a Motion in Opposition of the Hearing Officer's Recommendation. (R. pp. 709). On March 7, 2024, the parties were notified that the Law Enforcement Training Council (LETC) would meet to render a Final Agency Decision in the present case on March 18, 2024. 2024. On March 18, 2024, LETC met to discuss the present case and vote on a Final Agency Decision. (R. pp. 574 - 637). Counsel for the parties were present at this meeting and addressed LETC. (R. p. 574 - 637). LETC voted to adopt the Hearing Officer's Recommendation and to permanently deny Appellant a law enforcement certification. (R. pp. 574 - 637-525). On April 23, 2024, a Final Agency Decision was signed. (R. p. 33). On April 25, 2024, a

certified letter was sent, which contained a copy of the Final Agency Decision, to Appellant. Appellant filed a Notice of Appeal on May 21, 2024. The Notice of Assignment was filed on June 3, 2024. On July 18, 2024, Respondent filed the Record on Appeal. The ALC issued its Final Order on November 6, 2024, (R. p. 1) and Appellant filed this appeal on November 26, 2024. (R. p. 731)

STATEMENT OF FACTS

Russell Thompson (Thompson) testified he is employed by the Department as a lieutenant with the South Carolina Highway Patrol. He has been employed by the Department for approximately 24 years. He is currently assigned to Troop 3 Headquarters. Troop 3 covers Greenville, Spartanburg, Pickens, Oconee, and Anderson counties. Thompson confirmed he is familiar with Crosby, explaining that Crosby was a Highway Patrol trooper assigned to Spartanburg County. (R. pp. 269 - 270).

Thompson testified that when a trooper with the Department conducts a traffic stop, the stop will result in the issuance of one of two types of documents. The motorist can be issued a ticket, which can also be referred to as a citation or a summons. Alternatively, the motorist can be issued a warning, also commonly referred to as a public contact form. Thompson explained that warnings are typically utilized by troopers in situations where a ticket could have been issued but the trooper, in their discretion, decided not to. The warning includes spaces for the trooper to notate which offense the warning is being issued in reference to. This portion of the warning also includes the option, "other" and allows the trooper to enter offenses not otherwise listed on the document. The document is produced electronically. The form also allows the officer to check "contact only." Thompson explained that this option is used when a trooper is required to document their contact with an individual, but the interaction was not initiated by a legal violation. (R. pp. 270-275).

Thompson confirmed he is familiar with South Carolina's public contact statute and

confirmed that the requirements of the statute have been incorporated into the Department's policies. Thompson identified the South Carolina Department of Public Safety Policy 300.21 and stated that the policy addresses individual officer discretion. Thompson read the portion of the policy addressing the public contact statute, "In accordance with South Carolina Code of Laws 56-5-6560, anytime a motor vehicle is stopped by an officer without a citation being issued or an arrest made, the officer shall complete a public contact/warning form that includes information regarding the age, gender, and race or ethnicity of the driver of the vehicle." Thompson stated that while the policy did not prohibit officers from issuing warnings when the contact was otherwise recorded, it was not common practice to do so. Thompson further explained that the purpose of the public contact statute was to allow the Department to collect demographic information about the stops being conducted by officers. In situations where other documents were issued, such as a traffic collision, this data was already being recorded and collected on these other documents. (Transcript, pp. 38-43)

Thompson was asked to detail how the command staff at Troop 3 evaluated the activity levels of troopers under their command. He explained that a monthly meeting is held where the activity of each officer is considered by the command staff in order to identify who might not be working to their full potential. Thompson recalled that activity levels declined for all troopers during COVID based on instructions to only conduct traffic stop for "egregious violations." Thompson testified that troopers' activity levels are evaluated by looking at tickets, warnings, DUI arrests, collision reports produced, and the total number of traffic stops conducted. Thompson identified several documents as portions of accountability presentations made to command staff. (R. pp. 275-287).

Referencing the presentation for September 2022, Thompson reported Crosby worked seven days, wrote 26 tickets, 80 warnings, investigated sixteen collisions, and made three DUI arrests. Thompson characterized Crosby's performance during this time frame as, "no cause for concern" and stated that Crosby would not have been identified as a "problem" in the command staff meeting. He characterized Crosby's performance for January 2023 similarly. Thompson reported that in February 2023, Crosby worked 15 days, wrote 114 tickets, 179 warnings, investigated 29 collisions, and made eight DUI arrests. Thompson characterized Crosby's activity as "outstanding work." Based on his activity levels, Crosby was assigned an unmarked patrol vehicle in February 2023. Thompson explained that unmarked vehicles are one of the few ways the Department has to reward high performers. Another trooper in Crosby's unit was noticed by command staff due to his tickets and warnings being disproportionate to the number of collisions investigated and traffic stops conducted. This led to an audit of Crosby's unit. As a result of the audit, the initial officer was discovered to have falsified public contacts in order to increase the number of warnings written. Further investigation into this trend led to several officers being identified "as having numbers that didn't match up." Thompson recalled Crosby as being amongst this group of officers. (R. pp. 288-292).

Thompson identified three spreadsheets documenting the public contacts/ warnings written by Crosby in September 2022, January 2023, and February 2023. The documents also displayed the number of public contacts/ warnings that listed no offense and were entered as "contact only." Thompson did not believe it was common for troopers to issue this type of warning. In September 2022, fourteen of Crosby's 64 warnings were "contact only." In

January 2023, 86 of the 97 warnings written by Crosby were "contact only." Thompson expressed concern regarding the proportion of "contact only" warnings, explaining that it appears Crosby was not taking enforcement action against the people he interacted with. The next officer in Crosby's unit wrote only fifteen "contact only" warnings during the same time period, and the next officers in the unit wrote two apiece in January 2023. In February 2023, 160 of Crosby's 169 warnings were "contact only." In addition to his previously explained concerns, Thompson also stated that he believed Crosby's numbers painted a false picture of his productivity. Thompson testified that an officer writing 179 warnings in a month is impressive but that in reality he would have only counted Crosby as having written nineteen, due to the number of "contact only" warnings produced.[1] An investigation into Crosby's activities was opened as a result of these numbers. (R. pp. 292-296).

In addition to the type of documentation Crosby was producing, Thompson testified the Department also became concerned about Crosby's issuance of the warnings. Further investigation into Crosby's warnings indicated that a substantial portion of warnings being written were not printed by Crosby and, as a result, not actually issued to the subject offenders. Thompson and Captain Brown met with Crosby and Crosby denied having done anything wrong but confirmed that he understood he benefited from the appearance of increased activity. (R. pp. 297-299).

The Department's investigation also raised concerns regarding Crosby's handling of

[1] Thompson initially testified Crosby had written 169 total warnings in February 2023, his subsequent testimony misstated this figure as 179. State's Exhibit 4 indicates Crosby wrote 169 warnings during the subject timeframe.

collision investigations. Ordinarily, an officer performing a collision investigation will complete a form known as a TR-310. The parties to the collision will be provided with a document referred to as an FR-10. Thompson confirmed that the parties can also be issued citations in the wake of a collision if circumstances merit. The officer investigating the collision is granted the discretion to issue warnings in lieu of tickets. Thompson explained that it would be inappropriate to issue a "contact only" warning in these circumstances since the officer's contact with the particular individuals would be documented in the TR- 310 and any citations. Thompson concluded his direct testimony, stating that, after the Department's investigation, he did not believe Crosby's activity levels were accurately documented during the subject timeframe due to his issuance of "contact only" warnings. He also confirmed that Crosby benefited from conducting his business in this manner. (R. pp. 299-302).

On cross examination, Thompson denied he addressed the matter directly with Crosby when it first came to the Department's attention. Thompson similarly denied he had any firsthand knowledge of the training Crosby had received. Thompson testified he was not aware of any inconsistency as to how the "contact only" warnings were utilized by the Department's various regional troops. He stated the specific troop Crosby was assigned to had received instructions as to their use. Thompson testified that he did not review video footage of all of the interactions for which Crosby had written a warning, as such he could state with certainty whether Crosby had actually been in contact with all of the individuals he documented. Thompson stated that several of the warnings were written days after Crosby's interaction with the subject individuals, but Thompson was unable to recall specific dates as

to when this occurred. (R. pp. 302-307).

On redirect examination, Thompson confirmed Crosby had received a commendation in January 2023. Thompson stated the Department did not discover the issue with how Crosby was documenting activity until March 2023. Thompson denied troopers were trained to document their activity in the manner used by Crosby but could not speak to Crosby's specific training. Thompson confirmed discrepancies were found with the numbers documented by other troopers and that they were similarly investigated. On recross examination, Thompson testified he could not speak to whether similar issues occurred in the other regional troops. Thompson identified a January 2023 letter of commendation from Captain Brown to Crosby. The letter was entered into the record as Respondent's Exhibit 1. (R. pp. 308-312).

James Reap testified he is employed by the Department as a lieutenant in the Office of Professional Responsibility (OPR). He has been a member of OPR for four years and was a trooper with the Department for eight preceding years. Reap confirmed he is familiar with Crosby and that he previously investigated "anomalies" in Crosby's activity. Reap testified his investigation initially consisted of a "comprehensive" review of data in the SmartCOP system, the software utilized by the Department to generate documentation. Reap subsequently conducted two interviews with Crosby on April 19, 2023 and May 22, 2023. Reap identified recordings of the two interviews which were then entered into the record as State's Exhibit 5. (R. pp. 323-326).

Reap recalled his investigation of Crosby beginning with the issue surrounding Crosby's

issuance of "contact only" warnings. Reap explained the effect of selecting "contact only" when issuing a warning, "That signifies that you have now made a contact with a member of the public in a professional capacity, your official capacity, who did not violate the law. And there's very limited reasons why you would do that." Reap stated that, in his personal experience, he had issued "contact only" warnings when conducting consensual educational stop of "vulnerable roadway users." He explained that these stops were not premised on any violation of law and that the warnings were produced document the demographic information of the subject, in order to comply with the law. In the course of his investigation, Reap determined Crosby generated 398 "contact only" warnings between April 2022 and March 3, 2023. Although Reap was unsure of the exact number of individuals, all of the other troopers assigned to Spartanburg County generated 76 "contact only" warnings during the same period. During his initial interview, Crosby attributed this number to selecting ""contact only"" as the reason for the warning when there was in fact a violation of the law. Crosby stated that this option was more efficient than going through the list of potential options and selecting the correct violation. Crosby maintained throughout the first interview that all of the warnings were based on a violation of the law, even if listed as ""contact only."" Reap identified a screenshot of the warning drop down menu used in the SmartCOP application. Reap stated the options were selected via touch screen and did not believe that picking "contact only" was any faster than selecting the correct violation. (R. pp. 327-344).

Reap recalled he also addressed the unprinted warnings with Crosby during the interview. During Reap's review period, Crosby wrote 911 total warnings. Reap determined that 349 of these warnings had not been printed off. Crosby initially attributed his failure to print these

warnings to the desire to conduct his stops more efficiently. (R. pp. 344-351).

Reap's initial interview with Crosby also covered Crosby's practice of issuing warnings during collision investigations. Specifically, Crosby admitted to generating warnings for all of the parties involved in the collisions he investigated. Reap stated that he had been instructed not to do this during his time as a trooper but was not aware of the instructions provided to Crosby's troop. Reap explained that the practice was duplicative, as the necessary demographic information to satisfy the statute was documented on the FR- 10 form completed as part of the collision investigation. Crosby explained to Reap that it was his practice to cite the at fault violator and issue warnings for any offenses he determined the other drivers had committed. Crosby advised Reap he had employed this practice for a collision Crosby investigated on March 3, 2023. Reap obtained Crosby's body-worn camera footage of the incident as well as the various documents produced by Crosby. (R. pp. 351-369).

Reap reported what his investigation into the March 3, 2023 collision investigation uncovered. Reap testified that the collision involved four drivers, Karr, Plumley, Watson, and Keith. Crosby determined Watson was at fault and issued him two citations, one for driving on the wrong side of the road and another for being uninsured. Additionally, Crosby generated a "contact only" warning for Watson. Crosby also issued warnings for Karr, Plumley, and Keith. Keith and Karr had "contact only" warnings generated in their names. Plumley was the subject of a "contact only/ vehicle license violation/ other (insurance card)" warning. Reap recalled Crosby had first addressed Karr, who provided Crosby with all of the necessary documents. Crosby was advised by Keith that his insurance documentation was stored on his cell phone. Crosby stated to Keith that he would look it himself and did not provide Keith

with the opportunity to produce the documentation. Plumley was able to provide Crosby with a driver's license but advised Crosby that the vehicle belonged to his employer. Upon hearing this Crosby ended the conversation as it pertained to providing insurance documentation. At the conclusion of his investigation, Crosby printed and issued the two citations and an FR-10 to Watson and FR-10s for the other three parties. The four warnings Crosby generated were not printed, issued to, nor discussed with any of the parties subject to those warnings. Reap explained that in a general sense none of the warnings were necessary because the required demographic information was documented on the FR-10. Reap further explained that ""contact only"" was an inappropriate way to document Crosby's interaction with the parties since the interaction was premised on violations of the law and the collision itself. Additionally, Reap stated that the video did not contain sufficient evidence that Plumley committed the offenses that served as the basis for his warning. Finally Reap pointed out that the warnings generated for Keith and Karr contradicted Crosby prior assertion that all of the warnings he authored were connected to violations of the law. (R. pp. 353-370).

In their subsequent interview, Reap recalled Crosby attributing his adoption of this practice to prior remarks by Captain Brown that overall contacts for the troop were low. Reap uncovered a February 4, 2023 incident similar to the March 3, 2023 collision investigation. During the February 4, 2023 interaction, Crosby provides the driver with an FR-10 and then generates a public contact that was not provided to the driver. Reap testified as to additional findings from October 19 and 20, 2022. On October 20, 2022, Crosby stopped a driver named Frady and issued her a citation at 4:30 p.m. for driving on the wrong side of the road. Crosby generated a "contact only" warning based on the same interaction at 11:32 p.m. that same

day. By reviewing the data Crosby input into the SmartCOP software, Reap determined Crosby generated a duplicate "contact only" warning for the same stop on October 30, 2022. Reap identified the ticket issued by Crosby to Frady, the two warnings Crosby created, and a screenshot of the relevant SmartCOP data. (R. pp. 193- 205). Reap identified a similar incident also occurring on October 20, 2022. On that date, Crosby issued a citation to a driver named Frasier for failure to yield right of way at 3:55 p.m. Crosby generated a "contact only" warning in conjunction with the stop at 11:32 p.m. that same day. Through a review of SmartCOP data, Reap determined Crosby generated a second "contact only" warning premised on this stop ten days later on October 30, 2022. Reap identified the documents generated in response to the stop, along with a screenshot of the SmartCOP data. Reap determined Crosby issued a citation to a driver named Wallace on October 19, 2022 at 7:28 p.m. Crosby generated a "contact only" warning for Wallace on October 19, 2022 at 7:44 p.m. On October 30, 2022, Crosby generated a second "contact only" warning for the stop. Again, Reap identified the ticket, warnings, and SmartCOP data for this stop. Reap testified that the "contact only" warnings generated on October 30, 2022 were created in the SmartCOP systems within seconds of each other. (R. pp. 370-389).

Reap testified that on July 27, 2022 Crosby issued eight traffic citations between the hours of 7:24 a.m. and 10:31 a.m. Reap believed this to be normal activity for a trooper. On that same date, Crosby generated eight warnings for the same individuals he ticketed earlier in the day. All eight of the warnings were completed between 5:15 p.m. and 5:19 p.m. Seven of the warnings were listed as "Other: insurance card." The remaining warning was listed as "contact only." Reap identified the eight citations, eight warnings, and a summary of

Crosby's activity on July 27, 2022. (R. pp. 212-218). Reap identified two traffic citations and two "contact only" warnings Crosby had generated for a driver named Prak. Reap testified that other than serial numbers, the two warnings were identical. Reap's research indicated that the warnings were never printed out or issued to the driver. Reap identified two traffic citations Crosby issued to a driver named Black. The citations were for speeding and driving under suspension. Crosby also generated two warnings at the same time the tickets were issued, one was a "contact only" warning, the other was listed as "contact only/ other/ vehicle license violation." Neither of the warnings were printed or issued to the driver. (R. pp. 395-399).

Reap testified Crosby was employed by the Department for approximately four years. In his first year with the Department, Crosby generated three "contact only" warnings. In his second year, Crosby generated nine "contact only" warnings. In his third year, Crosby generated 39 "contact only" warnings. In his four years, Crosby generated 393 warnings. Crosby advised Reap that he was not trained to generate warnings in this manner and acknowledged he was violating policy by creating "contact only" warnings for otherwise documented interactions with the public. (R. pp. 399-400).

On cross-examination, Reap confirmed Crosby engaged in the practice of duplicating contacts only during his last year. Reap stated he was unaware of any training Crosby may have received specific to generating warnings. Reap explained that the information contained in the warnings was not false but that the documents themselves were false, as they should not have been created in the first place. Reap stated he was never advised by Crosby that this practice resulted from a lack of training. Reap explained that in the cases of Frady, Frasier,

and Wallace, Crosby's conduct represented to the Department he had conducted multiple traffic stops when, in fact, he had only interacted with each of these individuals on a single occasion. Given the timing of and the steps necessary to create the subsequent documents, Reap did not believe they were created by mistake. (R. pp. 406-415).

Reap recalled that the only explanation provided by Crosby as to why he did not print many of his warnings was that he was trying to save time and paper. Reap asserted that the printed warnings require little paper use. Addressing Crosby's March 3, 2023 collision investigation, Reap stated that the warnings were "generated" but never issued to the motorists. Reap conceded that the South Carolina Code of Laws does not specifically prohibit the issuance of these warnings but reiterated that, in this situation, a "contact only" warnings misrepresented the nature of Crosby's activity. Reap explained that a "contact only" warning, "signifies to the agency that you've dealt with this person in some capacity that falls outside of your normal traffic stops, crashes, lawful stops." In this instance Crosby's contact with the individuals involved in the collision was adequately documented in the FR-10s he issued. From 2021 and 2022 to 2023, Crosby's overall warnings increased roughly by the number of warnings he did not print. Reap explained that Crosby gained multiple benefits from increasing his activity in this manner, "personal satisfaction, admiration from his peers. . . high activity got him an unmarked car." (R. pp. 415-425).

Reap recalled that during the course of his interviews with Crosby, they specifically discussed how generating warnings but never issuing or discussing them with the motorists "robs" the motorist of the opportunity to correct the behavior. Reap stated that the duplication of warnings can be accomplished very quickly because the duplicate warning

does not require the trooper to reenter the driver's information. Reap explained why the duplication of warnings was fraudulent in his determination, So the problem is and why they're untrue is he's not making contact with these people when he's doing this. He – he sat there in a matter of four minutes, made, essentially, in the view of the agency, eight traffic stops in a matter of four minutes, which we know that's impossible, by duplicating all of these to make it appear he properly generated or issued these citations – or warnings. So that's why they're untrue, because it didn't happen. These traffic stops happened that morning. If he'd done it that morning – and printed it and issued it, it wouldn't be an issue. But no one on the highway patrol is trained to go back at the end of the day and generate more paperwork for somebody they dealt with hours prior. That's clearly improper.

Reap agreed that the tickets written by Crosby were legitimate. He drew a distinction between transmitting a document and generating one for the first time. All documents are required to be transmitted by the end of a trooper's shift. Some documentation is appropriate to generate after the fact but due to nature of tickets and warnings, Reap explained they should be generated at the time of the actual traffic stop. (R. pp. 425-435).

Kevin Renneker testified he is employed by the Department as a trooper. He has worked for the Department since October 2020 and is assigned to Spartanburg County. Renneker confirmed he is familiar with Crosby, explaining that Crosby helped train him and they worked on the same shift. Renneker testified Crosby has always been truthful and honest with him. Renneker recalled Crosby generally "beat" him in various activity categories tracked by the Department with the exception of driving under the influence. He stated Crosby was "always one of the harder workers on our crew." (R. pp. 438-439).

On cross-examination, Renneker stated he had no personal knowledge of the investigation into Crosby's conduct. After examining State's Exhibit 4, Renneker testified he wrote nineteen warnings in January 2023, two of those were for "contact only." In February 2023, Renneker wrote 34 warnings, none of which were for "contact only." In September 2022, Renneker wrote 43 warnings, none of which were for "contact only." Renneker explained that he does not typically write "contact only" warnings, preferring to select "other" and specify the offense. He stated he has been completing warnings in this fashion since 2008 when he worked for a different law enforcement agency. (R. pp. 440-442).

On redirect examination, Renneker testified he had been trained on how to complete warnings by his field training officer (FTO). He was instructed that they could be written for any type of violation and that they should then be printed out and issued every time. Since Crosby's investigation, Renneker received specific instruction to print and issue any warnings he has written. (R. pp. 443-444).

On recross-examination, Renneker agreed that warnings should be printed because they need to be issued to the motorist. He stated that this practice complied with all of the training and instructions he has received while employed by the Department. (R. pp. 444-445).

Anthony Crosby (Crosby) testified he joined the Department in May 2019 and was assigned to Spartanburg County for his entire employment. At the time his employment was terminated, Crosby's unit was under the supervision of Brown. Crosby confirmed he had been issued a letter of commendation by Brown and was named Trooper of the Quarter. Crosby was assigned an unmarked patrol vehicle in March 2023. (R. pp. 445-446).

Crosby first learned he was the subject of an investigation while on scene at the March 3, 2023 collision. Crosby was interviewed by Lt. Reap. Prior to the interview Crosby had not been subject to any form and discipline and had never missed a scheduled day of work, other than when he contracted COVID while working. Crosby explained that he had been trained to utilize warnings in conjunction with tickets and that, recently, he had been using them to "document who I was out with." Crosby recalled that the Department had switched from using software called ReportBeam to SmartCOP during the course of his employment. Crosby did not receive formal training on the use of SmartCOP and had to "figure it out on [his] own." Crosby explained that the software links all tickets, warnings, and other documentation from the same incident together. This includes any videos relevant to an incident as well. Crosby stated that, due to this software function, it is impossible to hide or cover up any activity he engaged in. (R. pp. 445-453).

Crosby explained his actions in regard to the March 3, 2023 collision investigation. When he arrived four vehicles were blocking the road creating a "mess." Crosby stated that his first priority was to determine whether emergency medical services were necessary and to gather the necessary information to facilitate towing vehicles and clearing the road. Crosby recalled there were officers from other agencies on scene but that he was the only trooper. Crosby then began addressing the first driver and attempting to obtain the information he needed for his collision report, such as their insurance or registration. Crosby noted that the other three drivers were also attempting to address him during this conversation. Crosby explained that his primary motivation was to investigate the collision as quickly as possible so that he could move on to his next task and that this was his normal procedure for handling collision

investigations. Crosby asserted all of the information included on the warnings was accurate to his knowledge. Crosby denied he interpreted S.C. Code §56-5-6560(A) as requiring him to actually issue the warnings to the subject motorists. Crosby expressed confusion as to how his conduct at the collision investigation could be construed as making eight separate contacts, given that all of the documentation was linked together in the system. Crosby denied generating the warnings in order to deliberately increase the appearance of activity, "I don't see how that would help when they can clearly see that category and see when it was produced, who it was produced for. It was all there for them. There's – there's nothing to hide." (R. pp. 453-460).

Crosby confirmed he had attended a troop wide meeting wherein he was public contacts were addressed. Crosby asserted that, following the meeting, he focused on documenting all of his contacts with the public. In the absence of any specific instructions regarding warnings, Crosby stated, "I'm doing exactly what I'm asked, and I'm going to make sure I document everything." (R. pp. 460-468).

Crosby inspected State's Exhibit 14 and identified it as a ticket he wrote to a motorist named Frasier. According to the documentation, Crosby created a subsequent warning for the driver ten days after the initial citation. Crosby again professed ignorance as to why the subsequent warning was entered into the system. He reiterated that a close inspection of the ticket and associated documentation should have prevented it from being counted as multiple public contacts. Crosby claimed that he did not, to his knowledge, submit the second warning. He stated, "Because it wouldn't make sense. What would three benefit out of 900?" Crosby inspected State's Exhibit 13 and identified it as the ticket he wrote to Frady and the

two associated warnings. Crosby stated they were filled out in the same manner as the previously identified documents and that they were completed in accordance with departmental policy. Crosby again asserted that, to his knowledge, he had not generated the warning a second time. (R. pp. 468-469).

Crosby testified his goal each shift was to make as many traffic stops as possible. The practices questioned by the Department were done in an effort to increase the efficiency of traffic stops. Crosby felt that he was inconveniencing the drivers and did not want to keep any longer than was necessary. As such, he frequently did not wait for drivers to provide their registration or insurance documentation as he could look their status up himself. Crosby explained that he would write tickets for the violations he observed and generate "contact only" warnings to further document the interaction. He believed, based on his training, he had the discretion to generate both tickets and warnings as part of the same interaction. He did not believe it was necessary to always issue warnings to the drivers based on his assertion the document was being generated merely to memorialize the interaction and because the warning would be linked to any ticket he wrote in the Department's software. He denied generating the warnings in order to get "two-for-one" credit. He stated that he now understands how the practice could be misinterpreted but denied having this understanding at the time of his interview with Reap. Crosby asserted he had nothing to gain from artificially inflating his contact numbers, it was his belief the unmarked vehicle was provided to him based on his DUI and traffic stop activity. Crosby stated that State's Exhibit 6 is larger than the image that would appear in the Department's software and that the individual violations could be difficult to read. Crosby confirmed that, at the time, he felt printing all the warnings

was a waste of paper and recalled that he would have "trouble" with the paper from time to time. He understood his training to only require the printing on "pertinent information." Crosby denied attempting to mislead the Department. Crosby denied changing his story from interview to interview, asserting that his practices were based on multiple motivating factors. Crosby stated he is still somewhat confused as to what would qualify as a public contact in the Department's view. Crosby denied receiving any promotions while employed by the Department. Crosby attributed his practice to instructions from Captain Brown to, "do a better job of making that we do document those individuals that we're out with, making sure we're documenting those pedestrians." Crosby confirmed he graduated from The Citadel in 2017. (R. pp. 475-489).

Lt. Thompson was recalled as a witness by the Department at the conclusion of the Respondent's case-in-chief. In reference to State's Exhibit 3, Thompson explained what data is used to generate the numbers included in the report. Due to the manner in which the data is utilized, each warning written by a trooper is tallied in the report, regardless of if multiple warnings are written for the same individual or as part of the same stop. Thompson stated that it is not command staff's general practice to investigate every traffic stop made by each of the troopers under their supervision. Typically, he explained, they start with the numbers generated for the report and only investigate further if there is an issue with these numbers. (R. pp. 526-532).

Lt. Reap was recalled as a witness by the Department following the conclusion of the Respondent's case-in-chief. Reap testified he explained to Crosby during their interviews that tickets, warnings, and traffic collisions are considered "public contacts" by the Department. Since documents are generated in the course of these activities they do not need to be re-documented through the generation of a "contact only" warning. (R. pp. 532-535).

STANDARD OF REVIEW

The Law Enforcement Training Council (LETC) is the governing body of the South Carolina Criminal Justice Academy (Academy). S.C. Code Ann. § 23-23-20 (Supp. 2014). As the governing and adjudicative body of the South Carolina Criminal Justice Academy, an "agency" under the Administrative Procedures Act, the ALC has jurisdiction to hear the appeal of a final decision of the LETC in a contested case. S.C. Code Ann. § 1-23-600 (D) (Supp. 2018) (directing administrative law judges to conduct appellate review in the same manner prescribed in § 1-23-380). Section 1-23-380 provides, in relevant part:

The court may reverse or modify the decision [of an agency] if substantial rights of the Appellant have been prejudiced because the administrative findings, inferences, conclusions or decisions are:

(a) in violation of constitutional or statutory provisions;

(b) in excess of the statutory authority of the agency;

(c) made upon unlawful procedure;

(d) affected by other error of law;

(e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or

(f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

S.C. Code Ann. § l-23-380(5); see also Todd's Ice Cream, Inc. *v.* S.C. Employment Sec.Comm'n, 315 S.E.2d 373, 375 (Ct. App. 1984).

The standard to be applied by the reviewing court is that of substantial evidence. A decision is supported by substantial evidence when the record as a whole allows reasonable minds to reach the same conclusion as the agency. Friends of the Earth v. Pub. Serv.Comm'n of SC., 387 S.C. 360, 366, 692 S.E.2d 910, 913 (2010). The fact that the record, when considered as a whole, presents the possibility of drawing two inconsistent conclusions from the evidence does not prevent the agency's findings from being supported by substantial evidence. Waters v. S.C. Land Res. Conservation Comm'n, 321 5.C. 219, 226, 467 S.E.2d 913, 977 (1996). The evidence should not be "viewed blindly from one side of the case." Myers v. S.C. Dept. of HHS, 418 S.C. 608, 616, 795 S.E.2d 301, 305 (Ct. App. 2016) When applying the substantial evidence rule, the factual findings of the administrative agency are presumed to be correct. Rodney v. Michelin Tire Co., 320 S.C. 515, 519, 466 S.E.2d 357, 359 (1996). In applying the substantial evidence rule, when "determining whether the record contains substantial evidence to support an administrative agency's findings, [the appellate court] cannot substitute its judgment on the weight of the evidence for that of the agency." Myers, 418 S.C. at 615 – 616, 795 S.E.2d at 305.

Furthermore, the reviewing court is prohibited from substituting its judgment for that of the agency as to the weight of the evidence on questions of fact. Grant v. S.C. Coastal Council, 319 S.C 348, 353, 461 S.E.2d 388, 391 (1995). "[A] reviewing court will not overturn a finding of fact by an administrative agency 'unless there is no reasonable probability that the facts could be as related by a witness upon whose testimony the finding was based.'" Sea Pines Ass'n for Prot. of Wildlife, Inc. v. S.C. Dep't of Natural Res., 345 S.C. 594, 603-04, 550 S.E.2d 287, 292 (2001) (quoting Lark v. Bi-Lo, Inc., 276 S.C. 130, 136, 276 S.E.2d 304, 307 (1981)). Finally, the party challenging an agency action has the burden of proving convincingly that the agency's decision is unsupported by substantial evidence. Waters, 321 S.C. at 226, 467 S.E.2d at 917.

ARGUMENT

I. THERE IS SUBSTANTIAL EVIDENCE TO SUPPORT THE ALC'S FINAL AGENCY DECISION.[2].

There is substantial evidence to support the LETC's conclusion Appellant intentionally provided false information to deceive by generating and transmitting contact only warnings. An agency is given deference to its interpretation of a statute unless the interpretation goes against the plain meaning of the statute. Brown v. Bi-Lo, Inc., 354 S.C. 436, 440 581 S.E.2d 836, 838 (2003). South Carolina Code section 56-5-6560 provides, "anytime a motor vehicle is stopped by an Officer without a citation being issued or an arrest made, the officer shall complete a public contact/ warning form." The statute speaks to instances when a public contact/ warning must be completed by the officer. The South Carolina Highway Patrol (Agency) was tasked with creating the form and promulgating the rules to enforce the statute.

While it is true the statute does not mention anything about issuing the public contact/ warnings to the driver, it was required by the agency. The purpose of the statute is to capture demographic information to ensure a specific demographic was not targeted and to track any instances of selective law enforcement of certain charges. (R. p. 412). The agency had additional requirements of troopers and measured a trooper's performance using a variety of metrics including the number of "contact only" warnings issued by a trooper. Appellant

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[2] Respondent will address Appellant's arguments I and II in this section.

created "contact only" warnings even when a ticket was given to the driver, FR-10 forms were completed, generated the contact only warnings hours after an interaction was completed, and in two cases created two additional contact-only warnings 10-days after an encounter with drivers. Out of the 911 public contact warnings generated and transmitted by Appellant, only 349 of them were given to the driver. (R. p. 604) These forms captured the same information, if not more, than the contact only warning forms. Completing the contact only warnings in that manner was deceptive because it made Appellant appear more productive to the agency. The use of the form in the instances raised by the agency was also a mischaracterization of the interaction. Appellant did not only have contact with the individuals but issued tickets and responded to the location because of a traffic collision. Appellant's witness, Renneker, testified he was trained to issue public contact/ warning forms to the person.

Appellant acted willfully and with the intent to deceive the agency. The term "willful" may be defined as follows:

> willful adj. (13c) Voluntary and intentional, but not necessarily malicious. A voluntary act becomes willful, in law, only when it involves conscious wrong or evil purpose on the part of the actor, or at least inexcusable carelessness, whether the act is right or wrong… [See, Black's Law Dictionary (11th ed. 2019)]

Appellant received benefits from his high performance as determined by the agency. Appellant received credit for contact only warnings and credit for issuing tickets or handling collisions stemming from the same incident. It was reasonable for the LETC to conclude

Appellant issued "contact only" in situations where a ticket or citation was already issued to inflate his activity numbers. Appellant's decision not to issue the contact only warnings to the drivers strengthens the LETC's conclusion.

Appellant's method of gathering contact only warnings was not in conformity with the practices of Troop 3. Nothing suggests a directive was given to complete contact only warnings in the manner by Appellant. Furthermore, Appellant's numbers were much higher than many other troopers which could be attributed to the method he used to generate contact only warnings. If the purpose of the form is to track demographic information than the objective is done when a person is issued a citation or given a FR- 10 form. There is no logical reason to complete a public contact after the issuance of either of those forms.

Departmental policy 300.21 allow troopers to use discretion when executing their duties and responsibilities, however, the policy also provides the discretion given is not meant to disregard SCDPS policy or established procedure. (State's Exhibit 2) Renneker, who was in the same troop, worked the same days, and was trained by the same officer, testified he was taught to print and issue the warnings to the driver. (R. pp. 438-439; pp. 444-445). Appellant disregarded agency policy by not issuing the contact only warnings to drivers. Appellant's failure to issue the public contact warnings combined with the method used to created them supports the LETC's final agency decision.

Based on the above, substantial evidence exists to support the LETC's final agency decision. Appellant received benefits such as an unmarked vehicle, awards, and praise from peers because he was identified as a high performer. However, the manner in which

Appellant generated contact only warnings was improper and done to inflate his productivity.

II. THE LETC AND HEARING OFFICER DID NOT ACT ARBITRARILY AND CAPRICIOUSLY, ABUSE ITS DISCRETION, OR COMMIT FUNDAMENTAL ERRORS IN HEARING PROCEDURES.

The LETC did not act arbitrarily and capriciously finding Appellant intended to deceive when he created "contact only" warnings when a ticket was issued, Crosby responded to a collision, or generated a contact only warning after the encounter. A decision is considered arbitrary and capricious if "it is without a rational basis, is based alone on one's will and not upon any course of reasoning and exercise of judgment, is made at pleasure, without adequate determining principles, or is governed by no fixed rules or standards." Deese v. State Bd. of Dentistry, 286 S.C. 182, 184–85, 332 S.E.2d 539, 541 (Ct.App.1985). A decision is also arbitrary and capricious if it is not not supported by competent evidence. Wyndham Enterprises, LLC v. City of N. Augusta, 401 S.C. 144, 150, 735 S.E.2d 659, 662 (Ct. App. 2012). Lt. Reap testified the transmission of the information is fine as long as the officer transmits the information before the end of the shift. However, generating the warning hours or days after the encounter is improper and does not serve a purpose.

Appellant had the opportunity to speak before the LETC. (R.p. 584-634) Members of the LETC asked questions about the system and asked Crosby if the information in the FR- 10 forms and tickets would provide the same demographics as the "contact only" warnings. (R. p. 634) For the aforementioned reasons the LETC did not act arbitrarily or capriciously in reaching a decision.

A. Lt. Reap did not need to be classified as an expert.

Lt. Reaper testified to matters within his personal knowledge. Reaper was a trooper with highway patrol before working in the Office of Professional Responsibility. Reaper's testimony explained what was on the documents such as when contacts were generated, transmitted, and duplicated. What conclusions to draw from the information was based on the testimony and exhibits in the record. Even if Reaper should have been qualified as an expert witness, allowing him to testify to the Smartcop system was harmless error. The documents show the date, time, and number of contact only warnings generated by Crosby.

B. The Law Enforcement Training Council properly denied the motion for remand to reopen the record by Appellant.

During the meeting, Appellant moved for remand of the hearing to allow additional evidence into the Record. The LETC denied the motion. It was within the LETC's discretion to reopen the record to allow for additional evidence. Wright v. Strickland, 306 S.C. 187, 188, 410 S.E.2d 596, 597 (Ct. App. 1991)(A trial judge's decision not to reopen a case for additional testimony is a matter within his or her sound discretion, and the decision will not be disturbed on appeal absent an abuse of discretion). Appellant was aware the allegation of misconduct involved his contact only warning numbers and had the spreadsheets before the contested case hearing (R. p. 590-591). Appellant could have presented the evidence at the contested case hearing. Furthermore, there is nothing to suggest the spreadsheets would have changed the outcome of the case. Therefore, Appellant's request for remand to reopen the record was properly denied by LETC.

C. An abuse of discretion did not occur when Lt. Reap and Lt. Thompson were allowed to testify as rebuttal witnesses even though they were not sequestered after their initial testimony.

Lt. Reap and Lt. Thompson were recalled after Crosby's testimony. R. pp. 341-254; pp. 355-359) They remained in the hearing room after their initial testimony and heard the entirety of Crosby's testimony. The sequestration of witnesses is within the discretion of the hearing officer. State v. Huckabee, 388 S.C. 232, 241, 694 S.E.2d 781, 785 (Ct. App. 2010) (A party is not entitled to the sequestration of witnesses as a matter of right). No abuse of discretion occurred when the hearing officer allowed Lt. Reap and Lt. Thompson to testify after their initial testimony.

III. APPELLANT RAISED AN ISSUE FOR THE FIRST TIME ON APPEAL, THEREFORE IT WAS NOT PRESERVED FOR THIS APPEAL.

On page 32 of Appellant's initial brief, he argued that "The LETC erred, acted arbitrarily and capriciously and abused its discretion, by failing to even consider any other discipline besides denial of law enforcement certification and termination regardless of the circumstances of this case.

This issue was not preserved for appeal. "It is well-settled that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial court to be preserved for appellate review." Staubes v. City of Folly Beach, 339 S.C. 406, 412, 529 S.E.2d 543, 546 (2000) Additionally, it "is well settled that a constitutional question not raised or passed upon in the lower court cannot be raised for the first time on appeal." Eagerton v.

Eagerton, 285 S.C. 90, 96, 217 S.E.2d 146, 148 (1975); Grant v. S.C. Coastal Council, 319 S.C. 348, 356, 461 S.E.2d 388, 392 (1995) ("This appeal is Grant's first mention of any deprivation of due process and, therefore, this issue is not preserved."

Appellant did not raise this issue: in his Motion in Opposition to the Hearing Officer's Recommendation dated January 24, 2024; to LETC during oral argument; or in his appeal to the ALC. (R. pp. 248 – 282) Appellant had numerous occasions to raise this issue, but is doing so only now. Clearly, this issue has not been preserved and this Court must dismiss Appellant's new argument.

Alternatively, South Carolina Code Ann. Regs. 37-25(B) states that LETC "In considering whether to deny certification based on misconduct, the Council may consider the seriousness, the remoteness in time and any mitigating circumstances surrounding the act or omission constituting or alleged to constitute misconduct." (emphasis added)

"The use of the word 'may' signifies permission and generally means that the action spoken of is optional or discretionary unless it appears to require that it be given any other meaning in the present statute." State v. Wilson, 274 S.C. 352, 356, 264 S.E.2d 414, 416 (1980). "The term 'shall' in a statute means that the action is mandatory." Johnston v. S.C. Dept. of LLR, 365 S.C. 293, 296, 617 S.E.2d 363, 364 (2005)

Appellant is attempting to impose a mandatory duty on LETC to consider mitigating evidence, where LETC has the discretion to determine whether to consider mitigating evidence.

Based upon the evidence adduced at Appellant's hearing and for the reasons herein stated, that Appellant committed misconduct has been established by substantial evidence.

Further, Appellant did not produce any credible evidence of circumstances that would serve to mitigate his behavior in this matter and he has failed to meet his burden of proving convincingly that LETC should have been required to consider any such mitigating circumstances even had he produced them, which he did not, or that LETC's Final Agency decision in this matter could in any way be considered to have been arbitrary, capricious, or that it manifested an abuse of discretion.

IV. APPELLANT FAILED TO FOLLOW RULE 40(B), SCALC THEREFORE DID NOT PROPERLY PERFECT HIS APPEAL.

Rules 33 – 41, SCALC govern cases on appeal to the ALC from Final Agency Decision from certain agencies; Respondent is one such agency, and these rules are binding on this case. Therefore, Appellant must comply with all the above rules in order to perfect his appeal.

Rule 40(B), SCALC states: "Prior to filing a Notice of Appeal from the decision of an administrative law judge, a party must file a motion for rehearing stating with particularity the points supposed to have been overlooked or misapprehended by the court. A motion for rehearing must be filed within ten days of receipt of the order. The opposing party may file a response to the motion within ten (10) days of the filing of the motion. The time for appeal is stayed by a timely motion for rehearing and runs from receipt of an order granting or denying the motion."[3] (emphasis added)

The ALC Order in this case was filed on November 6, 2024. In Appellant's initial brief, he states "On November 6, 2024, the Hon. S. Phillip Lenski summarily adopted the LETC's factual

[3] It should be noted that this rule was amended in 2021 (three years prior to this ALC final order and appeal) and specifically states, in part, "The 2021 amendment changed the rule to require a motion for rehearing as a prerequisite to filing a notice of appeal from the administrative law judge's decision."

findings and conclusions, and affirmed the LETC"s decision to deny recertification. The Appellant filed his Notice of Appeal from Judge Lenski's decision to this court on November 26, 2024. Appellant admits in his initial brief that he failed to comply with Rule 40(B), SCALC. Additionally, Appellant did not add an ALC motion to reconsider[4], pursuant to Rule 40(B), SCALC to his designation of matter to be included in the record on appeal, because the motion was never filed.

In the present case, Appellant failed to file a motion to reconsider[5] pursuant to Rule 40(B), SCALC. As such, Appellant has failed to properly perfect his appeal, which Respondent believes is not properly before this Court and Respondent requests that this appeal be dismissed with prejudice.

[4] Respondent meant to say motion for rehearing.
[5] Respondent meant to say motion for rehearing

CONCLUSION

For the reasons stated, Respondent asks this Court to affirm the ALC's decision and Appellant should be permanently denied a law enforcement certification in the State of South Carolina. In the alternative, if this Court finds error, Respondent requests that the case be remanded for a new contested case hearing to comply with this Court's Final Order.

Respectfully Submitted,

/s/ James M. Fennell
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April 30, 2025

THE STATE OF SOUTH CAROLINA
In The Court of
Appeals

APPEAL FROM THE ADMINISTRATION LAW COURT

Hon. S. Phillip Lenski, Administrative Law Judge

Case No. 2024-002073

Anthony Crosby, Appellant,

v.

South Carolina Criminal Justice Academy, Respondent.

PROOF OF SERVICE

I, James M. Fennel, counsel for Respondent, hereby certify that service of the RESPONDENT'S INITIAL BRIEF in the above captioned matter was made, pursuant to Supreme Court Order Dated April 24, 2024, upon all counsel via email only to oleary_email@yahoo.com this 30 day of April, 2025.

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April 30, 2025

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APPEAL FROM THE ADMINISTRATION LAW COURT

Hon. S. Phillip Lenski, Administrative Law Judge

Case No. 2024-002073

Anthony Crosby, Appellant,

v.

South Carolina Criminal Justice Academy, Respondent.

PROOF OF SERVICE

I, James M. Fennel, counsel for Respondent, hereby certify that service of Respondent's Final Brief in the above captioned matter was made, pursuant to the Court's letter dated July 23, 2025, upon all counsel via email and US mail on July 31, 2025.

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January 31, 2025

South Carolina Criminal Justice Academy

July 31, 2025

RECEIVED
Jul 31 2025
SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk of court, S.C. Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

Re: Anthony Crosby v. South Carolina Criminal Justice Academy
Appellate Case No. 2024-002073
Respondent's Final Brief

Dear Ms. Kitchings:

Please find Respondent's Final Brief, and Proof of Service. The bound hard copy will be hand delivered today and a copy mailed US mail to Appellant.

Thank you for your consideration of this matter. If you have any questions or concerns, please do not hesitate to contact me.

Respectfully,

/s/ James M. Fennell
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