

RECEIVED

Sep 02 2025

SC Court of Appeals

RECORD ON APPEAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA
Administrative Law Court

ROBERT L. REIBOLD,
Administrative Law Judge

Appellate Case No. 2024-001562

George Brisbon,
.....Appellant

v.

South Carolina Criminal Justice Academy,
.....Respondent

RECORD ON APPEAL

Donald Gist
4400 North Main Street
Columbia, SC 29203
(803) 771-8007
Attorney for Appellant

Rebecca S. Williams
South Carolina Criminal Justice Academy
5400 Broad River Road
Columbia, South Carolina 29212
(803) 896-7128
Attorney for Respondent

September 2, 2025

INDEX

Order Denying Petition for Rehearing filed August 23, 2024, ...	4
Final Order and Decision dated July 16, 2024, ...	11
Notice of Assignment filed March 7, 2024, ...	22
Final Agency Decision dated January 29, 2024, ...	23
Notice of Appeal to Administrative Law Court and Proof of Service dated February 17, 2024, and Certificate of Service, ...	45
Findings and Recommendation of Hearing Officer, ...	47
Request for Contested Hearing, ...	72
Transcript of Contested Case Hearing dated February 28, 2023, ...	81

Contested Case Hearing Exhibits

a. Council Exhibit #1	364
b. State's Exhibit #1	394
c. State's Exhibit #2	398
d. State's Exhibit #3	399
e. State's Exhibit #4	402
f. State's Exhibit #5	404
g. State's Exhibit #6	406
h. State's Exhibit #7	409

i. State’s Exhibit #8	412
j. State’s Exhibit #9	415
k. State’s Exhibit #10	417
l. State’s Exhibit #11	421
m. State’s Exhibit #12	424
n. State’s Exhibit #13	431
o. State’s Exhibit #14	432
p. State’s Exhibit #15	437
q. State’s Exhibit #16	442
Appellant's Brief to the ALC dated May 9, 2024,.....	473
Brief in Support of State Exhibit #12	
Officer’s Brief in Support of Exclusion of State Exhibit #12.....	484
Department’s Brief in Support of Admitting State Exhibit #12.....	490
Motion in Opposition to the Hearing Officer Recommendation.....	499
Law Enforcement Training Council Meeting, October 30, 2023, Transcript.....	501
Law Enforcement Training Council Meeting Minutes, October 30, 2023, ...	566
Other Materials or Documents	

a. Proof of Service Misconduct Allegation.	573
b. Notice of Contested Case Hearing.	574
c. Notice of Hearing Officer’s Recommendation	580
d. Notice of October 30, 2023, LETC Meeting for Final Agency Decision.	581
e. Letter Sending Final Agency Decision dated January 30, 2024.	582
Certificate of Service.....	583

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

George Brisbon,

Appellant;

v.

South Carolina Criminal Justice Academy,

Respondent.

Docket No. 24-ALJ-30-0054-AP

**ORDER DENYING PETITION FOR
REHEARING**

This matter is before the South Carolina Administrative Law Court (Court or ALC) upon the appeal of George Brisbon (Appellant) from a final agency decision issued by the Law Enforcement Training Council (LETC or Council) of the South Carolina Criminal Justice Academy (SCCJA or Respondent) permanently denying Appellant a law enforcement certification. This Court has jurisdiction pursuant to S.C. Code Ann. Section 1-23-600(D) (Supp. 2023); *see also* S.C. Code Ann. § 1-23-505(2) (Supp. 2023).

BACKGROUND

In 2019, the Charleston Police Department conducted an internal affairs investigation of an officer suspected of charging improper administrative fees when arranging for himself and other officers to fill off-duty employment assignments, such as providing security at concerts and other events. During the course of this investigation, the police department began to suspect that Appellant may have been involved in similar conduct.

Captain Anthony Cretella was instructed to and did open an investigation into Appellant's conduct. Captain Cretella interviewed Appellant multiple times. He also interviewed Linda McCormick, the manager of the Thomas Bennett House, about her dealings with Appellant regarding off-duty security jobs. Ms. McCormick later provided a written statement to Cretella for use in proceedings before the LETC.¹

The record reflects that Appellant had received permission from his supervising officer to receive administrative fees when arranging off-duty security for the South Carolina Ports Authority. However, Appellant's supervisor and the police department have denied that Appellant

¹ The admissibility of this statement is the primary issue on appeal.

FILED

08/23/2024

SC Admin. Law Court

had permission to charge such fees when arranging off-duty employment for other events like church functions, tennis matches, and movie industry jobs. While Appellant was not criminally charged, the Charleston Police Department terminated Appellant's employment and submitted a PCS² of Separation form for Appellant to the Criminal Justice Academy on February 13, 2020. The form alleged that Appellant has committed misconduct by charging and accepting improper administrative fees for off-duty employment. On February 18, 2020, Appellant was served with the misconduct allegation and requested a contested case hearing, which was held on February 28, 2023.

During the contested case hearing Appellant's attorney objected to State's Exhibit #12, a letter by Linda McCormick, describing Appellant's misconduct while providing off-duty security services for the Governor Thomas Bennett House. The Hearing Officer ordered briefs on the admissibility of Ms. McCormick's letter and admitted the letter into evidence. On June 9, 2023, the Hearing Officer's Findings and Recommendation, hearing transcript and exhibits were sent to the parties. Appellant filed a Motion in Opposition to the Findings and Recommendations on June 29, 2023. On October 18, 2023, the parties were notified that the Law Enforcement Training Council (LETC) would meet to render a Final Agency Decision in Appellant's case and vote on a Final Agency Decision. On October 30, 2023, the LETC met to discuss Appellant's case and vote on a Final Agency Decision. After considering the recommendation, hearing transcript, exhibits, and all comments, the LETC voted to find misconduct and permanently deny Appellant a law enforcement certification. The Final Agency Decision was signed January 29, 2024, and a letter notifying the parties of the Final Agency Decision was sent January 30, 2024.

Appellant filed a Notice of Appeal on February 29, 2024. The Notice of Assignment was filed on March 7, 2024. On April 19, 2024, Respondent filed the Record of Appeal. Appellant filed his brief on May 17, 2024 and Respondent filed its brief on June 6, 2024. Appellant filed a Reply brief was filed on June 14, 2024.

The primary issue in the appeal involved the admissibility of the statement given by Linda McCormick. Appellant argued that the statement should not have been admitted into evidence because it was not properly authenticated and was not excepted from the hearsay rule by the public records exception. The Court concluded that the hearing officer had not abused his or her discretion in concluding that the letter was properly authenticated, but had erred in ruling that the

² "PCS" is a human resources term referring to "personnel change in status."

letter, although hearsay, was admissible under the public records exception. Nevertheless, the Court, by order dated July 16, 2024, affirmed the final decision of the LETC because it concluded that Appellant was not prejudiced by the admission of the McCormick statement.

Appellant filed a petition for rehearing on July 24, 2024. The Respondent filed an opposition to the petition on July 30, 2024. After carefully considering the parties' submissions, the Court denies the petition for the reasons stated below.

DISCUSSION

Petitions for rehearing are authorized by SCALC Rule 40(B). A petition for rehearing should state with particularity the points supposed to have been overlooked or misapprehended by the court. *See* Rule 221(a), SCACR; SCALC Rule 68. Appellant contends that the Court overlooked or misapprehended the following matters:³

- (1) The McCormick statement was not properly authenticated;
- (2) The McCormick statement was prejudicial to the Appellant;
- (3) The McCormick statement was inadmissible pursuant to Rule 403, SCRE, because its prejudicial effect outweighed its probative value.

The Court will address the first two of these arguments.⁴

I. Authentication

The standard for authentication of a writing or letter is not strict and a party need not rule out any possibility the evidence is not authentic. *State v. Green*, 427 S.C. 223, 230, 830 S.E.2d 711, 714 (Ct. App. 2019) (citation omitted), *aff'd as modified*, 432 S.C. 97, 851 S.E.2d 440 (2020)). "The court decides whether a reasonable jury could find the evidence authentic; therefore, the proponent need only make 'a prima facie showing that the 'true author' is who the proponent claims it to be.'" *Green*, 427 S.C. at 230, 830 S.E.2d at 714 (quoting *United States v. Davis*, 918 F.3d 397, 402 (4th Cir. 2019)). Once the trial court determines the *prima facie* showing has been met, the evidence is admitted, and the [fact finder] decides whether to accept the evidence as genuine and, if so, what weight it carries. *Id.* (citing Rule 104(b), SCRE; *see United States v. Branch*, 970 F.2d 1368, 1370–72 (4th Cir. 1992)). This prima facie showing may be made by circumstantial

³ In its opposition to Appellant's Petition for Rehearing, Respondent argues that the Court should have ruled that the McCormick statement was properly admitted pursuant to the public records hearsay exception. However, Respondent did not file a Petition for Rehearing, and this argument is not before the Court.

⁴ The third argument was not raised to or ruled upon by the Council and was not addressed by the Court in its order affirming the LETC. Stated differently, it is raised for the first time in the petition on rehearing and is not properly before the Court.

evidence. *State v. Hightower*, 221 S.C. 91, 105, 69 S.E.2d 363, 370 (1952). The hearing officer concluded that enough circumstantial evidence existed to allow for authentication of the McCormick statement. The Court was tasked with reviewing this conclusion under the abuse of discretion standard. *See State v. Adams*, 354 S.C. 361, 377, 580 S.E.2d 785, 793 (Ct. App. 2003) (“A court’s ruling on the admissibility of evidence will not be reversed on appeal absent an abuse of discretion”). “An abuse of discretion occurs when the trial court’s ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support.” *State v. Pittman*, 373 S.C. 527, 570, 647 S.E.2d 144, 166–67 (2007). “In other words, the abuse of discretion standard of review does not allow this court to reweigh the evidence.” *State v. Rosenbaum*, 438 S.C. 91, 102, 882 S.E.2d 180, 185 (Ct. App. 2022).

After review of the record below, the Court concludes that Appellant has not identified any fact which was overlooked or legal matter which was misapprehended. The Court was not at liberty to reweigh the evidence below and there is circumstantial evidence in the record that the McCormick statement was authentic.

II. Prejudice

Although the Court affirmed the conclusion below that the McCormick statement satisfied Rule 901 for purposes of admissibility, it nevertheless ruled that the statement was improperly admitted pursuant to a hearsay exception for public records. Appellant naturally does not challenge this conclusion.

The Court further concluded that a presumption of prejudice existed because the content of the McCormick statement was material. *Mali v. Odom*, 295 S.C. 78, 84, 367 S.E.2d 166, 170 (Ct.App.1988) (“[T]he admission of incompetent evidence having some probative value upon a material issue of fact in the case is ordinarily presumed to be prejudicial”). Ultimately, however, the Court reasoned that the content of the statement was cumulative, and, as a result, Appellant was not prejudiced by introduction of the statement. *See Conway v. Charleston Lincoln Mercury Inc.*, 363 S.C. 301, 307–08, 609 S.E.2d 838, 842 (Ct. App. 2005) (“When improperly admitted evidence is merely cumulative, no prejudice exists, and therefore, the admission is not reversible error.”) (citing *Creech v. South Carolina Wildlife Marine Res. Dept.*, 328 S.C. 24, 35, 491 S.E.2d 571, 576 (1997)).

Appellant argues against this conclusion, stating that the McCormick statement was, according to Appellant, highly prejudicial. Appellant notes that the admission of the statement

was fiercely contested below. He argues that the hearing officer gave great weight to the statement because the parties had contested its admissibility and because the hearing officer only allowed a short period of time for the parties to authenticate the statement. Appellant finally asserts that without Ms. McCormick's actual testimony at the hearing, Appellant's counsel was prevented from contesting the authenticity of the statement and was denied the opportunity to introduce evidence contesting the authenticity of the statement.

These arguments miss the mark. The fact that the parties contested the admission of evidence does not mean the evidence unduly influenced the finder of fact. Additionally, Appellant's arguments regarding Ms. McCormick's presence at the hearing and the denial of an opportunity to introduce evidence contesting the authenticity of the McCormick statement, are, if true, assignments of error which could have been raised to the Council. However, neither circumstance relates to the question of whether admission of the statement was prejudicial to the Appellant.

Nevertheless, the Court conducted a review of the decisions below to assess whether the evidence was merely cumulative, or instead, should be considered prejudicial. That review indicates that the McCormick statement should be considered cumulative. The hearing officer did not expressly refer to the statement in making findings of fact, and, in discussing the statement, said all of the following:

- "[t]he contents of the document itself are consistent with the other evidence and testimony entered onto the record without objection"
- "[t]he statement is generally consistent with the billing records admitted as State's Exhibit 9"
- "[t]he statement corresponds with information Cretella testified he received from McCormick as part of earlier conversations"
- "[t]he information contained in McCormick's statement is consistent with information relayed in the emails between Brisbon and McCormick included in the exhibit"
- "the contents of the document correspond with much of Brisbon's account of interactions with McCormick during his internal affairs investigation."

These same statements can be found in the Final Agency decision.

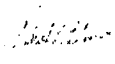
Moreover, as the Court noted in its initial decision, the content of the McCormick statement is cumulative of other evidence in the record. Information contained in the statement can also be

found in Exhibits 9, 10, 11 and 14. State's Exhibit 2 also contains admissions from Appellant regarding his off-duty rates and representations to civilians that they would have to pay a higher rate for his services.

The Court perceives no factual matters it overlooked in concluding that Exhibit 12 was cumulative to other evidence in the record.

ORDER

IT IS THEREFORE ORDERED that the Appellant's Petition for Rehearing is **DENIED**.
AND IT IS SO ORDERED.

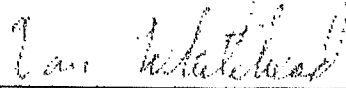


The Honorable Robert L. Reibold
Administrative Law Judge

August 23, 2024
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Van Whitehead, hereby certify that I have on this date served this order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).



Van Whitehead
Judicial Law Clerk

August 23, 2024
Columbia, South Carolina

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

George Brisbon,

Appellant,

v.

South Carolina Criminal Justice Academy,

Respondent.

Docket No. 24-ALJ-30-0054-AP

FINAL ORDER AND DECISION

STATEMENT OF THE CASE

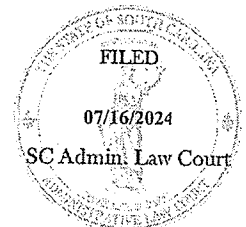
This matter is before the South Carolina Administrative Law Court (Court or ALC) upon the appeal of George Brisbon (Appellant) from a final agency decision issued by the Law Enforcement Training Council (LETC or Council) of the South Carolina Criminal Justice Academy (SCCJA or Respondent) permanently denying Appellant a law enforcement certification. This Court has jurisdiction pursuant to S.C. Code Ann. Section 1-23-600(D) (Supp. 2023); *see also* S.C. Code Ann. § 1-23-505(2) (Supp. 2023). After careful consideration, the Court affirms the final decision of the LETC.

FACTUAL BACKGROUND

In 2019, the Charleston Police Department conducted an internal affairs investigation of an officer suspected of charging improper administrative fees when arranging for himself and other officers to fill off-duty employment assignments, such as providing security at concerts and other events. During the course of this investigation, the police department began to suspect that Appellant may have been involved in similar conduct.

Captain Anthony Cretella was instructed to and did open an investigation into Appellant's conduct. Captain Cretella interviewed Appellant multiple times. He also interviewed Linda McCormick, the manager of the Thomas Bennett House, about her dealings with Appellant regarding off-duty security jobs. Ms. McCormick later provided a written statement to Cretella for use in proceedings before the LETC.¹

¹ The admissibility of this statement is the primary issue on appeal.



The record reflects that Appellant had received permission from his supervising officer to receive administrative fees when arranging off-duty security for the South Carolina Ports Authority. However, Appellant's supervisor and the police department have denied that Appellant had permission to charge such fees when arranging off-duty employment for other events like church functions, tennis matches, and movie industry jobs. While Appellant was not criminally charged, the police department later terminated Appellant's employment and submitted a PCS² of Separation form regarding Appellant to the Academy, resulting the administrative proceedings which are now on review.

PROCEDURAL HISTORY

The Charleston Police Department terminated Appellant's employment and submitted a PCS of Separation form for Appellant to the Criminal Justice Academy on February 13, 2020. The form alleged that Appellant has committed misconduct by charging and accepting improper administrative fees for off-duty employment. On February 18, 2020, Appellant was served with the misconduct allegation and requested a contested case hearing, which was held on February 28, 2023.

During the contested case hearing Appellant's attorney objected to State's Exhibit #12, a letter by Linda McCormick, describing Appellant's misconduct while providing off-duty security services for the Governor Thomas Bennett House. The Hearing Officer ordered briefs on the admissibility of Ms. McCormick's letter and admitted the letter into evidence. On June 9, 2023, the Hearing Officer's Findings and Recommendation, hearing transcript and exhibits were sent to the parties. Appellant filed a Motion in Opposition to the Findings and Recommendations on June 29, 2023. On October 18, 2023, the parties were notified that the Law Enforcement Training Council (LETC) would meet to render a Final Agency Decision in Appellant's case and vote on a Final Agency Decision. On October 30, 2023, the LETC met to discuss Appellant's case and vote on a Final Agency Decision. After considering the recommendation, hearing transcript, exhibits, and all comments, the LETC voted to find misconduct and permanently deny Appellant a law enforcement certification. The Final Agency Decision was signed January 29, 2024, and a letter notifying the parties of the Final Agency Decision was sent January 30, 2024.

Appellant filed a Notice of Appeal on February 29, 2024. The Notice of Assignment was filed on March 7, 2024. On April 19, 2024, Respondent filed the Record of Appeal. Appellant

² "PCS" is a human resources term referring to "personnel change in status."

filed his brief on May 17, 2024 and Respondent filed its brief on June 6, 2024. Finally, Appellant filed a Reply brief was filed on June 14, 2024.

ISSUES ON APPEAL

Appellant's brief raises a single issue on appeal: Did the hearing officer err by admitting the unsworn statement of Linda McCormick into evidence over the objections of counsel?

STANDARD OF REVIEW

The Respondent is an "agency" under the Administrative Procedures Act (APA). *See* S.C. Code Ann. §§ 1-23-310(2), -505(2), -600(A), (E)(Supp. 2023). Accordingly, the APA's standard of review governs appeals from decisions of the Respondent. *See id.* §§ 1-23-380 & -600(E) (Supp. 2023). The standard used by appellate bodies to review agency decisions is provided by Section 1-23-380(5) of the South Carolina Code (Supp. 2023). That section states:

The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision 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.

§ 1-23-380(5); *see also* § 1-23-600(E) (directing administrative law judges to conduct appellate review in the same manner prescribed in § 1-23-380).

A decision is supported by "substantial evidence"³ 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 S.C.*, 387 S.C. 360, 366, 692 S.E.2d 910, 913 (2010). The fact that the record 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 S.C. 219, 226, 467 S.E.2d 913, 917 (1996). In applying the substantial

³ This use of substantial evidence is in the context of an appellate standard of review.

evidence rule, “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)). When the evidence conflicts on an issue, the court’s substantial evidence standard of review defers to the findings of the fact-finder. *Risher v. S.C. Dep’t of Health & Envtl. Control*, 393 S.C. 198, 210, 712 S.E.2d 428, 435 (2011).

DISCUSSION

The hearing officer admitted into evidence a written statement from Linda McCormick (McCormick Statement). The statement was submitted as part of Exhibit 12 and contains a discussion of Ms. McCormick’s dealings with Appellant. In the McCormick Statement, Ms. McCormick states the following:

She serves as the manager of the Governor Thomas Bennett House, an historical site in Charleston, South Carolina. McCormick indicates that beginning in 2018 she dealt with Appellant in her role as manager in order to obtain security for special events at the Bennett House.

Appellant arranged to have off-duty personnel provide security at those events for a rate of \$25 per hour, a rate which later increased to \$30 per hour. When Appellant personally worked at these events, he received the same hourly rate as would any off-duty officer. However, there came a point at which Appellant informed McCormick that the police department required the Bennett House to pay him an additional monthly fee of \$150 for his services in coordinating the supply of off-duty personnel. McCormick was never charged an administration fee by anyone other than Appellant and was misled into believing that all private parties utilizing off-duty officers were required to pay the administrative fees. McCormick attached copies of invoices related to the monthly fee to her statement.

Appellant argues that this statement should not have been admitted for two reasons. First, Appellant contends that the McCormick Statement was not properly authenticated. Second, he argues that the statement did not meet the requirements of the public records exception for hearsay, Rule 803(8), SCRE. Respondent disagrees with both of these propositions, and also presents a third argument. According to Respondent, even if the McCormick Statement was improperly admitted, the result below must be affirmed because admission of the statement did not substantially prejudice Appellant. Each of these arguments will be addressed below.

I. The McCormick Statement was properly authenticated.

Authentication is the process of presenting competent evidence of the genuineness of a document and its execution by the party by whom it purports to be executed *Williams v. Milling-Nelson Motors*, 209 S.C. 407, 409, 40 S.E.2d 633(1946). It is a condition precedent to the admission of evidence. *State v. Hall*, 437 S.C. 107, 117, 876 S.E.2d 328, 333 (Ct. App. 2022) (evidence must be authenticated or identified in order to be admissible); *see also* Rule 901(a), SCRE.

However, the standard for authentication of a writing or letter is not strict and a party need not rule out any possibility the evidence is not authentic. *Hall*, 437 S.C. at 117-18, 876 S.E.2d at 333-34 (citing *State v. Green*, 427 S.C. 223, 230, 830 S.E.2d 711, 714 (Ct. App. 2019) (citation omitted), *aff'd as modified*, 432 S.C. 97, 851 S.E.2d 440 (2020)). "The court decides whether a reasonable jury could find the evidence authentic; therefore, the proponent need only make 'a prima facie showing that the 'true author' is who the proponent claims it to be.'" *State v. Green*, 427 S.C. 223, 230, 830 S.E.2d 711, 714 (Ct. App. 2019), *aff'd as modified*, 432 S.C. 97, 851 S.E.2d 440 (2020) (quoting *United States v. Davis*, 918 F.3d 397, 402 (4th Cir. 2019)). Once the trial court determines the *prima facie* showing has been met, the evidence is admitted, and the [fact finder] decides whether to accept the evidence as genuine and, if so, what weight it carries. *Id.* (citing Rule 104(b), SCRE; *see United States v. Branch*, 970 F.2d 1368, 1370-72 (4th Cir. 1992)). This prima facie showing may be made by circumstantial evidence. As our supreme court explained in *State v. Hightower*:

Like any other material fact, the genuineness of a letter may be established by circumstantial evidence if its tenor, subject-matter, and the parties between whom it purports to have passed make it fairly fit into an approved course of conduct, and manifests the probability that the subject-matter of its contents was known only to the apparent writer and the person to whom it was written,—these circumstances justify its admission.

221 S.C. 91, 105, 69 S.E.2d 363, 370 (1952).⁴ A writing may also be authenticated if it is made in reply to an earlier communication from a source known to be genuine. *Green*, 427 S.C. at 232, 830 S.E.2d at 715.

⁴ Appellant relies on *Williams v. Milling-Nelson Motors* in which the South Carolina Supreme Court stated:
A writing standing alone does not of itself constitute evidence; it must be accompanied by competent proof of some sort from which the jury can infer that it is authentic and that it was executed or written by the party by whom it purports to be, unless such facts are admitted by the adversary.

Appellant is correct that the McCormick Statement is unsworn and no witness was presented who could testify regarding the execution of the statement. However, upon review, the Court believes that sufficient circumstantial evidence existed to authenticate the McCormick Statement. Captain Cretella testified at the hearing and discussed the information he learned from Ms. McCormick. This testimony is consistent with the content of the McCormick statement. Cretella also testified that he asked Ms. McCormick to write the statement and that the statement, Exhibit 12, is what he received from Ms. McCormick in an email communication. The charts which were attached to the statement contained information regarding Appellant history of work with the Bennett House that only Ms. McCormick, the Bennett House manager, is likely to know. Copies of emails between Ms. McCormick and Appellant were also attached to the statement. Again, Ms. McCormick is the only person other than Appellant who is likely to have had access to those email messages.

Accordingly, the Court does not believe that the hearing officer committed an abuse of discretion in concluding that the McCormick Statement had been sufficiently authenticated. *State v. Washington*, 379 S.C. 120, 123-24, 665 S.E.2d 602, 604 (2008) (“A ruling on the admissibility of evidence is within the sound discretion of the trial court and will not be reversed absent an abuse of discretion.”).

II. The McCormick Statement does not qualify as a public record under Rule 803(8), SCRE.

Appellant next argues that the McCormick Statement should not be considered a public record for purposes of the hearsay exception contained in Rule 803(8), SCRE. This rule provides an exception to the hearsay rule for:

(8) Public Records and Reports. Records, reports, statements, or data compilations, in any form, of public offices or agencies, setting forth (A) the activities of the office or agency, or (B) matters observed pursuant to duty imposed by law as to which matters there was a duty to report, excluding, however, in criminal cases matters observed by police officers and other law enforcement

209 S.C. 407, 409, 40 S.E. 2d 633 (S.C. 1946). This case does not carry the day for Appellant. Our Supreme Court specifically distinguished *Williams* in *State v. Hightower* and explained that circumstantial evidence, including a writing’s tenor and subject matter may be used to authenticate a writing. Additionally, and in any event, both *Williams* and *Hightower* predate South Carolina’s adoption of the Rules of Evidence. Authentication is now governed exclusively by Rule 901, SCRE. Rule 901, like *Williams* does not typically permit authentication by offering a writing on its own, but it does expressly recognize the use of circumstantial evidence of the type discussed in *Hightower*. Rule 901b(4), SCRE; *see also Green*, 427 S.C. at 233, 830 S.E.2d at 716.

personnel; provided, however, that investigative notes involving opinions, judgments, or conclusions are not admissible. Accident reports required by S.C. Code Ann. §§ 56-5-1260 to -1280 (1991) are not admissible as evidence of negligence or due care in an action at law for damages.

Rule 803(8), SCRE.

Appellant argues that the McCormick Statement does not qualify as a public record. According to Appellant, the statement is neither a document setting forth the activities of the office or agency, or, in this case, the Charleston police department nor a document containing either information regarding matters observed pursuant to a duty imposed by law or matters observed by law enforcement officers.

Appellant also generally attacks admissibility on the ground that the McCormick Statement is simply not the type of document the public records exception was meant to include. He contends that the statement is not the type of document on which the public has a right to rely because no one witnessed the signature of the letter and it was not created by the Charleston police department.

Respondent argues that the McCormick statement should qualify as a public record. It suggests that the Agency had a statutory duty to investigate and report misconduct. *See* S.C. Code Ann. § 23-23-150(B)(1) (2022). Respondent further states that Captain Cretella spoke to Ms. McCormick as part of his investigation of the Appellant and asked Ms. McCormick to make the statement. Finally, Respondent notes that the statement does not involve opinions, judgments, or conclusions which are textually not within the ambit of the public records hearsay exception under Rule 803(8).

After careful review of the record and the parties' arguments on this issue, the Court concludes that the hearing officer erred in ruling that the McCormick statement was admissible under the public records exception.

As one commentator has stated:

The public records exception to the hearsay rule is based on the rationale that records made by public officials in the ordinary course of their duties evidence strong indicia of reliability, and that the documents are sufficiently reliable because they represent the outcome of governmental process and are relied upon for nonjudicial purposes. The exception is predicated on the presumption that public officials perform their duties properly, effectively and impartially, without motive to falsify. The objective of the exception is to eliminate the calling of each witness involved in the preparation of the record and to substitute the record of the transaction instead.

32A C.J.S. Evidence § 1079 (May 2024 update).

Accordingly, Rule 803(8) does not provide a blanket hearsay exception for documents obtained in a police investigation. The exception is instead textually limited to the following two alternative conditions: (1) that the document sets forth the activities of the office or agency; or (2) that the document sets forth matters (i) observed pursuant to a duty imposed by law and (ii) for which there was a duty to report. Rule 803(8), SCRE.

The McCormick Statement does not satisfy these conditions. Respondent argues that the statement was obtained as part of an investigation by the Charleston police department, but the statement does not set forth the activities of the police department. It sets forth the activities of the Bennett House. The statements also does not set forth matters observed by Captain Cretella or any other police officer. It sets forth matters observed by Ms. McCormick who had no legal duty to observe or report said matters. The Court therefore concludes that the hearing officer erred in admitting the McCormick Statement into evidence over objection pursuant to Rule 803(8), SCRE.

This result would not change even if Captain Cretella had himself prepared a written report incorporating the content of the McCormick Statement. *See MSC Mediterranean Shipping Co. SA Geneva v. Metal Worldwide Shipping Co., SA*, 884 F.Supp.2d 1277, 1282 (S.D.Fla. 2012) (reports of the Indian Customs Department did not contain factual findings of the Customs Department but rather statements from witnesses at the accident scene. These records do not fall into the public records exception to the hearsay rule because they consist of a collection of statements from a witness as opposed to the agent's own observations and knowledge); *State v. Jhun*, 927 P.2d 1355, 1363 (Haw. 1996) (cases from several jurisdictions indicate that when a police report simply records a witness's statement, absent a hearsay exception for the witness's statement, the police report cannot be admitted into evidence); *State v. York*, 685 N.E.2d 261, 264 (Ohio App. 4 Dist.1996) (a police report generally constitutes a public record for purposes of 803(8), but the statements made therein must be either the firsthand observations of the official making the report or those of one with a duty to report to a public official. All persons furnishing and recording information must be under an official duty to do so. If the supplier of information is not under a duty to do so, an essential link in Evid.R. 803(8)(b) is broken.”).

III. Appellant was not prejudiced by the improper admission of the McCormick Statement.

Respondent argues that the decision below should nevertheless be affirmed because Appellant's substantial rights were not prejudiced by the admission of the statement. *See* SCALC Rule 40(A) (the administrative law judge may affirm any ruling, order or judgment upon any ground(s) appearing in the Record). It is true that to warrant reversal based on the admission of evidence an appellant must "prove both the error of the ruling *and* the resulting prejudice." *Fowler v. Nationwide Mut. Fire Ins. Co.*, 410 S.C. 403, 408, 764 S.E.2d 249, 251 (Ct. App. 2014) (emphasis added). In this context, prejudice means that there is a reasonable probability that the determination of the fact finder, the hearing officer, was influenced by the improperly admitted evidence. *See id.*

The content of the McCormick Statement bears upon the primary issues considered below – whether Appellant was engaging in the charging of improper administrative fees in connection with off-duty work. As a result, the Court concludes that a presumption of prejudice exists in this case. *Mali v. Odom*, 295 S.C. 78, 84, 367 S.E.2d 166, 170 (Ct.App.1988) ("[T]he admission of incompetent evidence having some probative value upon a material issue of fact in the case is ordinarily presumed to be prejudicial").

However, the record demonstrates that the McCormick Statement was largely cumulative to other evidence admitted either without objection or for which no appeal was taken. For example, Exhibit 9, entered without objection, is a chart listing all of jobs Appellant had at the Bennett House and the invoice amount submitted by Appellant. The chart also displays the \$150 monthly administrative fee which Appellant charged the Bennett House. An exact copy of Exhibit 9 was one of the attachments to the McCormick Statement.

Exhibit 10, also admitted into evidence, contains an email from Ms. McCormick dated October 8, 2019 to Sergeant Lee Mixon at the Charleston police department asking whether the Bennett House would still be required to pay the \$150 monthly administrative fee. The same exhibit contains a second email from Ms. McCormick in which she asks Captain Cretella whether the fees that Appellant charged were unauthorized.

Exhibit 11 is an email from Sergeant Mixon to Captain Cretella in which Mixon states that Appellant confirmed he was not authorized to charge administrative fees to the Bennett House.

Exhibit 14 is an investigative summary signed by Cretella in which Cretella states that

Appellant has been working at the Bennett House for almost a year (as of the date of the summary) and that the prior officer handling off-duty assignments for the Bennett House did not charge an administrative fee and that Appellant received \$150 each month to manage to the Thomas Bennett House after Appellant took over the off-duty assignments.

Finally, Captain Cretella testified to a number of the details set forth in the McCormick Statement without objection specifically that Appellant was paid \$150 per month regardless of whether he works them all himself or not. (R at 125-129)

Because the information contained in the McCormick Statement is cumulative of other evidence in the record, any presumption of prejudice is defeated; there is no prejudice.⁵ See *Conway v. Charleston Lincoln Mercury Inc.*, 363 S.C. 301, 307–08, 609 S.E.2d 838, 842 (Ct. App. 2005) (“When improperly admitted evidence is merely cumulative, no prejudice exists, and therefore, the admission is not reversible error.”) (citing *Creech v. South Carolina Wildlife Marine Res. Dept.*, 328 S.C. 24, 35, 491 S.E.2d 571, 576 (1997)).

In conclusion, it is the opinion of the Court that the McCormick Statement was properly authenticated but was nevertheless inadmissible hearsay because the requirements of Rule 803(8), SCRE were not satisfied. However, the improper admission of the statement was not prejudicial to Appellant, as the statement was largely cumulative to other evidence in the record before the hearing officer.

ORDER

IT IS HEREBY ORDERED that this decision below is **AFFIRMED**.

AND IT IS SO ORDERED.



The Honorable Robert L. Reibold
Administrative Law Judge

July 16, 2024
Columbia, South Carolina

⁵ The Court also notes that Appellant’s reply brief did not directly respond to the Department’s argument regarding prejudice.

CERTIFICATE OF SERVICE

I, Van Whitehead, hereby certify that I have on this date served this order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).

A handwritten signature in cursive script that reads "Van Whitehead". The signature is written in dark ink and is positioned above a horizontal line.

Van Whitehead
Judicial Law Clerk

July 16, 2024
Columbia, South Carolina

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

George Brisbon,

) Docket No.24-ALJ-30-0054-AP
)
)

)
) Appellant(s),
) v.
)

) **NOTICE OF ASSIGNMENT**
) (Appeal)
)
)
)
)

South Carolina Criminal Justice Academy,)
)
)
)
)
)

) Respondent(s).
)
)
)
)
)
)

Judge Assigned: **Honorable Judge Robert L. Reibold**

Date Assigned: 3/7/2024

In accordance with S.C. Code Ann. § 1-23-570 (2005), the above Administrative Law Judge, has been assigned to preside in this appeal. The Administrative Law Judge may be contacted by mail at 1205 Pendleton Street, Suite 224, Columbia, South Carolina 29201, and by telephone at (803) 734-0550. Pursuant to SCALC Rule 4A, all future filings must be filed directly with the above assigned Judge and shall include the docket number.

The parties are required to meet the following deadlines, unless otherwise ordered by the assigned Administrative Law Judge:

Record on Appeal	Due within forty-five (45) days of the date of this Notice (to be filed by the agency)
Appellant's Brief	Due within thirty (30) days after the Record on Appeal is filed
Respondent's Brief	Due within thirty (30) days after the Appellant's Brief is filed
Reply Brief	Due within ten (10) days after the Respondent's Brief is filed

The parties are directed to the relevant provisions of the Rules of Procedure regarding these deadlines and other requirements applicable to the appeal process. Rules of Procedure governing matters before the Court may be obtained from the Clerk of Court or on the Court's website, www.scalc.net.

Ralph King Anderson, III
Chief Administrative Law Judge

FILED

3/7/2024

SC Admin. Law Court

STATE OF SOUTH CAROLINA

Before the South Carolina Law Enforcement Training Council

In the Matter of the Law Enforcement	)	Docket Number 2020-CJA-02-08
Certification of George Brisbon	)	
	)	
	)	FINAL AGENCY DECISION
	)	

George Brisbon (“Officer”), in response to an allegation of certification misconduct reported by the Charleston Police Department (“Department”) to the South Carolina Criminal Justice Academy (“Academy”), pursuant to the requirements of S.C. Code Ann. § 23-23-150 (B) (1), timely requested a contested case hearing to address the allegation of misconduct filed against him. Notice of the contested case hearing was communicated to the Officer and the Department, in accordance with the requirements of S.C. Code Ann. § 23-23-150 (D), and the matter was properly set for hearing on February 28, 2023.

On October 30, 2023, the South Carolina Law Enforcement Training Council met to, among other things, discuss this case, listen to oral arguments, and take a vote. Prior to October 30, 2023, the Training Council reviewed the transcript, exhibits, motions, and Hearing Officer’s Recommendation. On October 30, 2023, the Training Council voted that Officer did engage in misconduct and voted that Officer is permanently denied a law enforcement certification in South Carolina.¹

STATEMENT OF THE CASE

A. Documentary Evidence

The following documentation was accepted into evidence at the February 28, 2023 hearing and made part of the record:

Council Exhibit Number 1: Notice of Misconduct Allegation; Personnel Change in Status Report (Notification of Separation Due to Misconduct); Notice of Appearance; Request for Contested Case Hearing; Notice of Contested Case Hearing; Notice of Appearance.

State’s Exhibit 1: City of Charleston Police Department Administrative General Order 50- Off-Duty Employment (Revised 06/01/10)

State’s Exhibit 2: Email dated 03/14/2019 (Riley)

State’s Exhibit 3: Off-Duty Employment Sign Up Form, “Hootie Concert Aug 10th & 11th”

¹Chief Keel, Sheriff Foster, Director Gallman, Director Boyles, Director Woods, Sheriff Faile, and Director Thomas voted that Officer engaged in misconduct and to permanently deny Officer a law enforcement certification. Attorney General Wilson, Director Stirling, Chief Cornett, and Captain Gallam were not present.

Brisbon

Final Agency Decision Page 1 of 22

State's Exhibit 5: List of Officers and Amount Paid for 8/10-11/2018 Off-Duty Employment²
State's Exhibit 6: Off-Duty Employment Sign Up Form, "Luke Combs Concert"
State's Exhibit 7: Off-Duty Employment Sign Up Form, "JoJo Siwa Concert"
State's Exhibit 8: Off-Duty Employment Sign Up Form, "Sublime with Rome"
State's Exhibit 9: July- Dec. 2018, Feb.- June 2019- Officer Coverage/ Gov. Thomas Bennett House
State's Exhibit 10: Email Chain dated 10/8/2019- 10/9/2019 (McCormick)
State's Exhibit 11: Email Chain dated 08/19/2019- 08/20/2019 (Mullen)
State's Exhibit 12: Statement of Linda McCormick; July- Dec. 2018, Feb.- June 2019- Officer Coverage/ Gov. Thomas Bennett House; Email Chain dated 10/18/2018 (McCormick)
State's Exhibit 13: Charleston Police Department Authorization to Administer Off-Duty Employment
State's Exhibit 14: City of Charleston Investigative Report dated 08/28/2019
State's Exhibit 15: City of Charleston Police Department Administrative General Order 50- Off-Duty Employment (Revised 10/01/18)
State's Exhibit 16: Interview Transcript, "Captain G. Brisbon Interview II" dated 08/22/2019

B. Testimonial Evidence

The following testimony was accepted into evidence at the February 28, 2023 hearing and made part of the record:

1. Testimony of Captain Anthony Cretella, Charleston Police Department
2. Testimony of Charles Hawkins
3. Testimony of Deputy Chief Dustin Thompson, Charleston Police Department
4. Testimony of George Brisbon

Testimony of Capt. Anthony Cretella:

Cretella testified he is currently employed by the Department as the commander of the Professional Standards Division and holds the rank of captain. In 2019, Cretella held the rank of lieutenant and oversaw the Department's Internal Affairs unit. Cretella recalled that in July 2019, a meeting was held between the Department's chief, Reynolds, and members of the Charleston County School District about placing more officers in the district's schools. In the course of these conversations, it was discovered that Corporal Clyde Johnson was charging the district an administrative fee to fill these off-duty employment assignments. Cretella asserted that this practice is not permitted by the Department. During the internal affairs investigation into Johnson, Cretella determined Johnson was charging off-duty entities a fee to provide their work assignments with officers. Johnson also disclosed that Brisbon, then a captain with the

² The proposed exhibit identified as State's Exhibit 4 is substantively identical to State's Exhibit 5, with the exception of handwritten notes and calculations included by Department's counsel. This version of the document was objected to and not admitted.

Department, followed the same practice. After reporting this information through his chain of command, Cretella was instructed to open an investigation into Brisbon as well. (Transcript, pp. 21-24).

Cretella served as one of the lead investigators in the investigation of Brisbon. Cretella recalled interviewing Brisbon four times during the course of the investigation. The first interview occurred on August 12, 2019. Brisbon was advised of the allegation against him and asked if he was charging an administrative fee in conjunction with the off-duty assignments he was coordinating or “running.” Brisbon confirmed that he was and was asked to provide a list of the off-duty assignments he was running. Cretella explained the difference between “working” and “running” an off-duty assignment.

So to work an off-duty job, I would go at that time on our Signup Genius link, which is internet based, and I just sign up to work the off-duty job. All that means is you’re reporting – you have a reporting time at any time, and you’re working in an officer capacity. . . And for running the job, that means that you’re overseeing it, that you’re coordinating who works it, and sending the invoice to the company to ensure that everyone gets paid.

Brisbon advised Cretella that he ran or administered off-duty jobs for the movie industry, the Port Authority, at a church, the Thomas Bennett House, and the Daniel Island Tennis Center, which held both tennis tournaments and concerts. Cretella explained that the Port Authority job differed from other off-duty assignments in that its terms were governed by a separate agreement between the City and other involved entities. Under the terms of this agreement, Brisbon was specifically authorized to collect an administrative fee to compensate him for the time he spent assigning officers to the job and reflecting how often officers were needed. All other assignments were governed by the Department’s off-duty policy. Charleston City Police Department General Order 50 was introduced to the record as State’s Exhibit 1. (Transcript, pp. 24-28).

General Order 50 is the Department’s off-duty employment policy. The policy establishes a set rate for all off-duty employment by the Department’s officers and prohibits officers from working for more or less than the established rate. The policy initially set the hourly rate at \$25 for officers, \$30 for supervisors, and \$35 for an event commander. By 2018 the policy had been modified to provide increased hourly rates of \$30 for officers, \$35 for supervisors, and \$40 for event commanders. (Transcript, pp. 28-29)

Cretella identified an email chain between Brisbon and an individual named Riley. Cretella further identified Riley as a film industry employee. In his email to Riley, Brisbon copied a paragraph of the policy establishing the rate of pay for various types of employees. The quoted language specifically states event commanders will be paid \$40 per hour. Brisbon goes on to explain that an event commander will

be necessary for movie related events. Brisbon asserts that as a captain his hourly rate is actually \$50 per hour but since he rarely hires a sergeant for his events, he is willing to split the difference. Cretella confirmed that the Department's off-duty policy does not allow an event commander to be paid \$50 per hour. Cretella also confirmed that the Department's off-duty policy does not allow officers to negotiate their hourly rates. Brisbon was subsequently asked during the investigation if he had any additional documentation concerning the hourly rate he received at other jobs. Brisbon advised Cretella he was unable to provide any additional documentation or records pertaining to the film jobs he administered. (Transcript, pp. 29-34).

The Department produced a number of documents showing events Brisbon and other officers had worked at off-duty (State's Exhibits 3, 5-8).³ The documents indicate officers signed up for the events using a Signup Genius link. The series of documents also showed the total amount paid to each of the officers for each of the events. In respect to the first event portrayed in the records, Cretella explained that it was a two-night concert wherein officers could sign up to work one or both of the nights. Working one night resulted in officers being paid for six hours, working both nights resulted in officers being paid for twelve hours. Cretella testified the payment amounts recorded for each of the officers was consistent with the hours worked at the applicable pay rate set by policy, with the exception of Brisbon. Brisbon was paid significantly more money for the two nights he signed up work. Specifically, State's Exhibit 5 indicates Brisbon received \$1,520.00 for the two nights he signed up for.⁴ When asked to explain the discrepancy, Brisbon told Cretella that there had been multiple events going on in Charleston on the weekend in question and that he was required to make numerous phone calls over the course of the weekend to ensure all events were adequately staffed. Cretella testified Brisbon was paid for making 19 hours' worth of phone calls to coordinate the various off duty events. Cretella further explained officers were not permitted by policy to charge for making these phone calls and that Brisbon had admitted his actions were not consistent with the Department's policy. Brisbon further claimed the work was not performed on Department time due to him having built up "administrative time" which Cretella

³ State's Exhibit 4 was marked but used for questioning the witness on the record. Respondent's counsel objected to handwritten notes produced by Department counsel. With the exception to the handwritten notes, State's Exhibits 4 and 5 are the same record.

⁴ The next closest sworn officer received \$420.00 for working two nights. An individual named Brian Hinton received \$500.00 but Cretella stated he was not a sworn employee was not paid according to the same policy as sworn police officers.

understood to mean “comp time.” Cretella asserted Department policy does not allow salaried employees to accrue comp time. (Transcript, pp. 35-58).

Cretella identified State’s Exhibits 6-8 as the sign-up and pay records for 3 additional off-duty jobs. Each was a one-day assignment wherein officers would work for six hours. For each of these events, Brisbon was paid \$600.00. Brisbon similarly attributed the pay discrepancy to charging for the time it took to find officers to work the events. Cretella testified this same pattern was present in other concert events he uncovered as part of his investigation. (Transcript, pp. 59-62).

In addition to films and concerts, Cretella determined Brisbon also worked off-duty events for a church and the Thomas Bennett House. Cretella explained the Thomas Bennett House was an event site within the city and, based on a memorandum of understanding, are required to have an officer present while events are being held. Brisbon both administered and worked the events held at this location. Brisbon admitted to Cretella that he charged for administrative duties for this job as well. Cretella subsequently learned from Linda McCormick, the manager of the Thomas Bennett House, that Brisbon attributed the need to collect an administrative fee to a memorandum of understanding. Specifically, according to McCormick, Brisbon proposed working some of the events himself and charging a fee to find officers to work on dates he was not available himself. (Transcript, pp. 62-65).

Cretella obtained scheduling and payment records from McCormick for July to December 2018 and February through June 2019. The document was entered into the record as State’s Exhibit 9. For multiple recorded months, Brisbon received a payment of \$150.00. These payments were made regardless of how many events Brisbon was recorded as working or how many events other officers were recorded as working. Cretella stated these payments were inconsistent with the arrangement Brisbon claimed he had made with the Thomas Bennett House. When confronted with this information, Brisbon claimed he had never authorized McCormick to pay him outside their initial arrangement. While he admitted to accepting the funds indicated in the payment record, Brisbon indicated he was opposed to paying the money back due to his belief McCormick had made a mistake and should bear responsibility for that mistake. (Transcript, pp. 65-71).

Cretella denied Brisbon had ever suggested or asserted he could renegotiate his off-duty rate or charge an administrative fee under the Department’s off-duty policy. Rather, Cretella testified that Brisbon attributed his entitlement to do so to a conversation with the Department’s former chief, Greg Mullen. Specifically, Brisbon stated he had been instructed by Mullen to treat all the off-duty jobs he administered as if they fell under the city’s agreement with the Port Authority. Mullen was contacted by

the internal affairs unit in the course of the investigation into Brisbon. Mullen responded by email, acknowledging the Port Authority agreement but asserting that he had never provided Brisbon with the authority to do so for other off-duty assignments. Cretella explained that while Mullen would have had the authority to grant Brisbon an exception to the general policy, Mullen was adamant he had not done so. Ultimately Cretella found Mullen more credible than Brisbon, citing the fact that, faced with an investigation, Brisbon had motive to fabricate this excuse while, based on the circumstances and his former position as chief, Mullen did not. Mullen's emailed response was entered to the record as State's Exhibit 11. (Transcript, pp. 73-77).

Cretella identified a written statement provided to him by McCormick. He testified the statement was provided to him in response to Brisbon grieving the termination of his employment with the Department. The statement was accompanied by an invoice record prepared by McCormick (State's Exhibit 9) and prior emails between Brisbon and McCormick discussing the payment of an administrative fee. Cretella confirmed that McCormick stated the administrative fee was represented to her by Brisbon as a departmental requirement and that she did not attempt to negotiate or question the fee due to Brisbon's position as a captain with the Department. When questioned about the fee Brisbon indicated to Cretella that it was intended to serve as compensation for the time and effort he expended staffing the assignment. (Transcript, pp. 78-80).

Cretella identified the Department's Authorization to Administer Off-Duty Employment form. The Department requires anyone intending to administer an off-duty assignment to complete and submit the form. The request would then be approved or denied by the officer's chain of command. The form requires those completing the request to acknowledge they have reviewed the Department's off-duty employment policy. Cretella explained this portion of the form would indicate any officer administering an off-duty assignment would understand the Department's policy. (Transcript, pp. 81-82).

Cretella testified that following his interviews with Brisbon, he prepared an investigative overview. This report was forwarded through his chain of command, starting with Dustin Thompson. The report concluded Brisbon had violated Department policy and Brisbon's employment with the Department was terminated as a result. Additionally, Chief Reynolds initiated a broader investigation into all officers working or administering off-duty events for the Department. Cretella stated he was included in those interviewed as part of this investigation. The secondary investigation was conducted by Thompson. (Transcript, pp. 82-85).

Cretella clarified earlier testimony concerning the Department's off-duty employment policy. He explained that the policy was updated on October 1, 2018. The update increased the authorized hourly pay rate by \$5.00 for all positions. From 2010 through September 30, 2018, the authorized hourly rate was \$25.00, \$30.00 for supervisors, and \$35.00 for event commanders. As of October 1, 2018, the authorized hourly rate was \$30.00, \$35.00 for supervisors, and \$40.00 for event commanders. The previously referenced Hootie concert was held on August 10, 2018. Based on his investigation, Cretella stated Brisbon invoiced himself and other officers working the event at the higher pay rate. Cretella concluded his direct testimony by affirming that the Department operated an office which would administer off-duty jobs at no charge to the entities requesting officers. (Transcript, pp. 85-87).

On cross-examination, Cretella testified that he has worked for the Department for seventeen and a half years and has previously worked off-duty assignments. He did not recall having received any specific training on the Department's off-duty employment policy but stated that it was freely available for review and that he has been required to acknowledge the policy by signature on previous occasions. Cretella could not recall the specific number of times he has investigated other officers for off-duty employment violations, explaining that the internal affairs office is responsible for investigating any policy violations. (Transcript, pp. 88-92).

Cretella confirmed that his questioning of Mullen occurred while Mullen was employed by the Clemson Police Department and not the Department. Cretella stated Mullen did not provide him with any notes, e-mails, or other additional documentation that would have recapped any conversations he may have had with Brisbon. Nothing uncovered during the investigation indicated Mullen had specifically prohibited Brisbon from collecting an administrative fee. Cretella was not aware of whether Mullen had ever initiated an investigation into Brisbon. Cretella read the portion of the off-duty employment policy stating, "payment arrangements, collections, and terms associated with such matters are the responsibility of the officers employed by the employer and not the department." Cretella confirmed entities such as the cruise line would have been Brisbon's employer under these terms and was unaware of any instance wherein Brisbon would have compensated by the Department for time dedicated to off-duty employment. Cretella agreed the Department served as a conduit for these payments, but the actual compensation was provided by entities utilizing off-duty officers. Cretella testified further regarding the subject policy language, "Payment arrangements, in terms of how I'm going to get paid, the check. Collections, how it's going to be paid, weekly, monthly, however it's done. And terms that are associated with such matters.

It's not allowing you to charge what you want to charge or for your administrative—" (Transcript, pp. 92-100, 107-108, 110).

Cretella recalled he received McCormick's statement (State's Exhibit 12) upon his request. Cretella explained that the statement was settled on as the best way to record the information McCormick had provided to the Department after consultation with the legal team. Cretella testified McCormick was apprehensive about providing information due to the fact that it would be included in a law enforcement investigation. McCormick was not warned that the information could lead to further investigation into her conduct. Cretella believed McCormick prepared and signed the document but stated he was not otherwise familiar with her signature or the specific circumstances by which the document was created. Cretella testified the statement was not provided under oath and that she had not been interviewed in person. Cretella indicated that the statement had been provided via email and that his prior interactions with McCormick had been conducted via phone or email. (Transcript, pp. 100-104).

Cretella explained that his role was to collect information and forward that information to additional parties, including the State Law Enforcement Division (SLED). Cretella stated that SLED ultimately concluded that the information uncovered by his investigation into Brisbon would not support bringing criminal charges against Brisbon. The Department did, however, terminate Brisbon's employment based on the investigation. (Transcript, pp. 112-114).

On redirect examination, Cretella denied Brisbon ever claimed he felt his conduct was justified by the language of the policy. Rather, Brisbon attributed his actions to "personal compensation" and Mullen's permission to administer all of his off-duty jobs in the same manner as the Port Authority agreement. Cretella agreed, that based on the information provided to him by Brisbon, that Brisbon claimed to be operating under a "special exception" to policy granted to him by Mullen. Cretella reiterated that Mullen had denied doing so when contacted as part of the investigation. Brisbon did not provide Cretella with any documentation reflecting the special exception and did not identify any witnesses to his alleged conversation with Mullen. (Transcript, pp. 116-121).

On recross-examination, Cretella agreed that it could hurt the Department's relationship with the community if events were not staffed with off-duty officers when such officers were requested. In such a situation the Department would need to assign on-duty officers to the event. Cretella agreed that his investigation had not uncovered any evidence whereby Brisbon had been specifically prohibited from administering off-duty assignments in this fashion. (Transcript, pp. 121-126).

Testimony of Charles Hawkins:

Hawkins was called to testify on behalf of Brisbon.⁵ Hawkins testified he retired from the Department in 2020. Hawkins was employed by the Department for thirty-five years. The last position was as the lieutenant over the Special Events Unit. The Special Events Unit was created to manage the Department's special events and off-duty jobs. These included off-duty events like weddings or retail security, as well as special events such as a presidential visit or races. Hawkins stated this was his full-time position with the Department and he did not receive any type of administrative fee for providing these services. Hawkins frequently worked at the events managed by the unit but would not receive off-duty pay until he completed his full-time hours for the Department. The Special Events Unit did not exist prior to 2018-2019 when Hawkins was assigned to supervise the unit. (Transcript, pp. 136-141).

Prior to the founding of the Special Events Unit, individual officers administered and staffed off-duty jobs. Hawkins explained that officers would become associated with various off-duty assignments based on being approached by the entity seeking officers. Officers were still bound by the Department's off-duty policy under this system. Hawkins confirmed that it could be difficult to find officers for certain assignments, but it largely depended on the nature of the assignment and the number of officers needed. Hawkins stated that he knows Brisbon and that they had worked together over the course of their careers with the Department. Hawkins did not believe he had ever been lied to by Brisbon and was willing to vouch for Brisbon's integrity. Hawkins recalled working for both Mullen and Reynolds during their tenures as chief of the Department. Hawkins characterized Mullen as being a micromanager and strict, whereas he described Reynolds leadership style as more "laissez-faire." Hawkins stated he had no doubts that Mullen would have intervened if someone at the Department was engaged in improper or wrong behavior. (Transcript, pp. 141-153).

On cross-examination, Hawkins confirmed that he began working in the Special Events Unit on May 18, 2019. He reiterated that, prior to the founding of the Special Events Unit, there was not a specific unit tasked with organizing off-duty employment. Upon reviewing multiple iterations of the Department's off-duty employment policy, he conceded that it appeared off-duty employment was managed by the Professional Standards Office prior to the founding of the Special Events Unit. Hawkins explained that

⁵ Due to a personal scheduling conflict, Hawkins was called to testify by Brisbon prior to the conclusion of the Department's case-in-chief.

he was not involved in off-duty employment prior to his assignment to the Special Events Unit. He was aware however that certain officers administered individual assignments during this period. This practice continued after Hawkins's assignment to the special events unit. (Transcript, pp. 153-158).

Hawkins reviewed State's Exhibit 13 and identified it as the form officers were required to complete in order to administer individual off-duty assignments. The particular example he reviewed was the form completed by Brisbon in order to administer the Thomas Bennett House job. Hawkins explained that the form was essentially asking permission to take the job from the Special Events Unit and manage it individually. Hawkins stated he was unaware of any departmental rule requiring officers to charge a service fee for administering a job. He only became aware of the practice when he took over the Special Events Unit. In general, Hawkins stated, "Rules existed and [were] not being followed and not being checked to see if there was any rules." Hawkins explained that this applied to raising hourly rates for certain jobs. He was aware of instances where officers administering jobs would have the third-party entities contact the Department on their behalf and state that the rate for that job needed to be raised in order to fill the job. Hawkins asserted that it was wrong for the officers to engage in this practice, given there was a rate set by policy. Hawkins believed the Special Events Unit was founded in order to combat these issues but indicated that such practices persisted during his tenure with the unit. (Transcript, pp. 158-163).

Testimony of Dep. Chief Dustin Thompson:

Thompson testified he holds the rank of deputy chief with the Department. Upon the conclusion of Cretella's investigation into Brisbon, the investigative report was reviewed by Thompson. Thompson then forwarded the report up his chain of command. Ultimately, both Brisbon's and Johnson's employment with the Department ended. Based on the findings of the investigation into Brisbon and Johnson, Thompson was tasked with overseeing a second investigation into the off-duty employment practices of 38 other officers. These officers ranged from private to captain and included Cretella. The second investigation identified three additional officers who were in violation of the Department's off-duty employment policy: Two officers were found to be improperly charging supervisor rates, the third was accepting payment in cash. All three officers were subject to disciplinary measures. A third investigation was subsequently initiated. The third investigation identified two additional officers accepting cash payments. Thompson testified they were subject to similar disciplinary actions as the other officer found to be violating the policy by accepting cash payments. Thompson stated Brisbon and Johnson were the only officers identified as charging an administrative fee. (Transcript, pp. 171-178).

Brisbon

Final Agency Decision Page 10 of 22

On cross-examination, Thompson testified that policy does not allow officers to accept cash payments. Thompson testified the officers identified as accepting cash payments were disciplined but did not have their employment with the Department terminated. On redirect examination Thompson recalled that each of the disciplined officers held the rank of sergeant or below. He agreed that higher ranked officers are held to stricter standards. On recross-examination, Thompson confirmed that the Department's off-duty policy applies equally to all officers regardless of rank. (Transcript, pp. 179-180).

Upon questioning by the hearing officer, Thompson explained that Department policies are currently distributed to officers using an electronic system and that officers are required to sign stating they read and understood each policy. This system was introduced in 2018 or 2019. In 2010, policies were distributed on a thumb drive, officers were required to sign they understood the policy at that point as well. Policies are available to officers at any time through the electronic system and must be reviewed any time updates or revisions are made. (Transcript, pp. 190-192).

Testimony of George Brisbon:

Brisbon testified he was employed by the Department from May of 1984 through January of 2020 and has held a law enforcement certification for thirty-five years. He began his career as a patrol officer and eventually attained the rank of captain, holding numerous positions within the Department. Brisbon first recalled having access to the Department's policies in 2004 in the form of a written manual. He confirmed he received and signed the Department's off-duty employment policy in 2008. By that time, he was managing other officers in their off-duty capacity. Brisbon began managing off-duty officers as the captain at the Special Operations Bureau. Initially he did so while on duty and being paid by the Department. Shortly after Mullen became chief, Brisbon was instructed to manage off-duty assignments on his own time. Brisbon denied he was ever prohibited by Mullen from charging an administrative fee to a venue. Brisbon recalled his initial conversations on the issue with Mullen,

This was all initiated initially with the South Carolina State Ports Authority. They was now going to be receiving cruise ships into the city, and it required hiring officers more than what the State – State Ports Authority could handle. They didn't have enough officers... [T]here was a meeting with the chief, individuals from the mayor's office, legals, just a wide variety of people. An in that meeting, I explained to them that the City has an off-duty rate but that this job required – because a cruise ship is going to come in when it's going to come...[T]hat because the volume of officers, we had to have the officers... So I says, well, in a way to guarantee you will have officers is, you need to pay more than the standard off-duty rate. That will attract officers to the job. And – and also with Mullen being there, I says, I'm under instructions from Chief Mullen that I can't handle this on City time. I have to handle and manage this entire operation on my own time. So there it was agreed that, one, they would pay a differential rate, and, two, they would pay me to manage this on my own time.

Brisbon

Final Agency Decision Page 11 of 22

Brisbon explained that going forward, invoices for the Port operations included his administrative hours. Brisbon testified he did not have any specific discussion with Mullen at this point regarding the Department's off-duty employment policy. (Transcript, pp. 194-203).

Reviewing the off-duty employment policy from 2010 (State's Exhibit 1), Brisbon noted that the policy states, "All contracted assignments where the fee has already been set prior to... October 9, 2009, will remain in place." Brisbon confirmed that the fee charged for work on the Port assignment exceeded the fee set by the Department's policy. He then explained that the administrative fee he charged the Port was based on the number of hours he worked organizing the assignment. Brisbon asserted that, at some point in 2011 or 2012, he met with Mullen regarding assignments at the Family Circle Tennis Center and was instructed by Mullen to, "handle it just like handled the Port." Brisbon further asserted that Mullen's instructions came in direct response to Brisbon voicing concerns about having to perform duties related to the assignment off-duty. Brisbon testified he later met with the Charleston Administrative Services Manager, Susan Utnick, regarding the assignment. He was told that, because of workers' compensation concerns, he should not use City letterhead or other paraphernalia in administering the assignment. Based on this meeting as well as the language of the Department's off-duty policy, Brisbon considered himself an independent contractor and that his employer was the venue holding the event, not the Department. Specifically, the policy language referenced by Brisbon states, "Additionally, payment arrangement, collection, and terms that are associated with such matters are the responsibility of the officers employed by the employer and not the department." Brisbon also asserted the Department's policy only addressed working off-duty jobs and not managing off-duty jobs. (Transcript, pp. 204-211).

Brisbon explained he began managing assignments at the Thomas Bennett House when another employee decided doing so was taking up too much of her time. He recalled being summoned to a meeting by the chief's administrative assistant and then accepting the management role. Brisbon recalled his initial interaction with Thomas Bennett House personnel,

When I contacted her, I explained to her that I, under the instructions of Chief Mullen, cannot manage off-duty assignments on City time. All of my arrangements and managements has to be done on my own time. I said, so, therefore, the hourly rate at this time is \$25 an hour. I will charge you, whatever you want to call it, for one—a lot of times it took me four or five hours to find somebody. I said, one hour at \$25 of the hourly rate. It wasn't a fee. It was one hour's pay at the off-duty rate to manage people and to hire people for the job. I says, now, the police department has a separate mechanism or off-duty umbrella. You are free to utilize that system. She tells me, no. We have a court order from the City of Charleston that states that we absolutely must have officers at this venue, because of our loud noise statute.

Brisbon explained that management at the Thomas Bennett House was aware of the Department's free service but instead chose to use him to manage the job to ensure officers would be available. Brisbon again asserted that the Thomas Bennett House, and not the Department, was his employer in this context, with invoices being completed without the Department's involvement. These invoices were generated by the Thomas Bennett House, not Brisbon, and he was paid by check. He testified he never received any complaints in regard to the Thomas Bennett House job or any of the other jobs he managed. (Transcript, pp. 213-220).

Brisbon then addressed his management of film industry assignments. Brisbon recalled that as long as he had been employed by the Department, the film industry had paid a higher rate for officers working on their assignments. Based on the unique time demands and the various stakeholders involved in setting up film events, Brisbon perceived that it was absolutely necessary for officers to report to these off-duty assignments. In order to attract the necessary officers to staff these assignments, events for the film industry paid an hourly rate higher than what was authorized by policy. Brisbon stated that this rate was set by film industry entities, who he, again, asserted were the employers in these circumstances. In reference to his email interaction with Riley (State's Exhibit 2), Brisbon explained,

So in this incidence where Ms. Cleveland [Department Counsel] brought up the 47.50, the officers were being paid \$40 an hour, not – not 25, not 35. In this particular instance, they were being paid \$40 an hour. In policy, it states that an event commander would get paid \$10 more than the officer. So I negotiated. Instead of charging her 50, which would be \$10 more than the officers who were making 40, I said 47.50, which is \$2.50 less. I did not charge more. I actually charged less. The officers got paid 40. I got paid 47.50.

Brisbon went on to explain the duties he performed to earn this money. The duties included creating a SignUp Genius link, calling additional officers to check availability, assisting officers in completing a 25-to-30-page long application form, and distributing and collecting timesheets from the officers. Brisbon asserted his negotiated rate garnered no complaints because it was still lower than what other available law enforcement organizations charged at the time. (Transcript, pp. 233-237).

Brisbon asserted that the third-party entities and not the Department were his employers in respect to the off-duty assignments. He stated that the Department had no structured way of monitoring, auditing, or evaluating the off-duty program. He additionally pointed out that, even after Hawkins's appointment to the special events unit in 2018, no violations or inconsistencies on his part were discovered. (Transcript, pp. 238-239).

On cross-examination, Brisbon claimed administration of off-duty assignments was mandated by Mullen due to the fact he was employed as a patrol division commander at the time. Brisbon stated

Brisbon

Mullen's order was verbal and that no written document was created because Mullen wished to avoid creating a "paper trail." Brisbon again addressed his email to Riley, explaining that he set a rate outside of policy for himself due to the fact that the officers working the event were being paid above the rate established by policy. Brisbon claimed that policy and established practice entitled him to collect \$10 more per hour than whatever the rate for working officers was. When asked whether this practice conformed with the Department's policy, Brisbon replied, "I did what Chief Mullen established and what he told me to do." Brisbon acknowledged that his practices deviated from the Department's written policy but again attributed his authority to do so to verbal instructions from Mullen. (Transcript, pp. 244-261).

On redirect examination, Brisbon additionally asserted he was entitled to negotiate his rates with third party entities because they were his employers and not the Department under policy. Brisbon also recalled his negotiations with the Thomas Bennett House,

I never have invoiced the Thomas Bennett House, never did. Never instructed her to pay me – to pay \$150 a month. My explicit explanation to her was that for one hour, one administrative hour, to hire officers to work the job, and that if she did not want to – to – if she did not want that agreement, that the City of Charleston has another mechanism where her jobs would be posted on its website.

Brisbon subsequently stated he informed Linda McCormick, the Thomas Bennett House manager, he was under instructions from Mullen to manage off-duty assignments on his personal time. He denied he had been accused of misrepresentation by McCormick. (Transcript, pp. 264-267).

On recross examination, Brisbon was asked whether he had agreed to pay back the \$150 monthly payments from the Thomas Bennett House he previously stated he had not authorized or agreed to. Brisbon replied, "I said no, because, to me, that would have shown an admission of guilt, and I had done nothing wrong." (Transcript, pp. 268-269).

V. ANALYSIS

State's Exhibit 12

In the course of the hearing, the Department offered an evidentiary exhibit, marked on the record as State's Exhibit 12. State's Exhibit 12 consisted of a written statement, identified by Cretella as being authored and provided to the Department by Linda McCormack, the manager at the Thomas Bennett House. The statement purports to detail McCormack's interactions with Brisbon concerning off-duty employment and compensation at the Thomas Bennett House. The written statement is accompanied by an email chain, dated October 18, 2018, between Brisbon and McCormick. Additionally, the exhibit

contains assignment and payment records for the Thomas Bennett House from July 2018 through December 2018 and February 2019 through June 2019.⁶ Counsel for Brisbon objected to the admission of the statement as lacking proper authentication and being prohibited as hearsay. The parties were provided with the opportunity to prepare and submit briefs on the issue of whether the exhibit should be admitted to the record.⁷ (Transcript, pp. 127-133).

As an initial matter, as stated in the Department's brief, the controlling authority regarding the admission of evidence at a contested case hearing conducted pursuant to S.C. Code Ann. § 23-23-150 (D) are the South Carolina Rules of Evidence. S.C. Code Ann. Regs. 37-105 F. The Federal Rules of Evidence, cited throughout the Respondent's brief, are applicable only when no definitive South Carolina case law exists. D. Brief, p. 2 (citing *Maybank v. BB&T Corp.*, 416 S.C. 541, 787 S.E.2d 498 (2016) and *State v. Wills*, 409 S.C. 183, 762 S.E.2d 3, 13 (2014)). As such, the admission of proposed State's Exhibit 12 will be considered under the South Carolina Rules of Evidence where applicable.

"The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." Rule 901(a), SCRE. "The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims. The burden to authenticate evidence is not high and requires only that the proponent offer a satisfactory foundation from which the jury could reasonably find that the evidence is authentic." D. Brief, p. 2 (citing, *Berry v. Spang*, 433 S.C. 1, 10-11, 855 S.E.2d 309, 314-15 (Ct. App. 2021)). Rule 901 goes on to provide ten nonexclusive examples of how authentication may be achieved by the proponent of the evidence. See, Rule, 901(b), SCRE. The Respondent's brief specifically focuses on two of these methods with respect to the statement purportedly submitted by McCormick.

First, that Cretella lacked sufficient personal knowledge to authenticate the document. Cretella testified he did not witness McCormick sign or prepare the document. Additionally, the document was not prepared as a affidavit, Cretella could not attest to whether McCormick was properly sworn, and the document was not verified by a notary. R. Brief, p. 2. The Respondent additionally asserts Cretella testified he was not familiar with McCormick's handwriting or signature nor that any other documents used by the Department could be used for comparison. R. Brief, p. 2. The Department responds to the

⁶ These records were independently admitted to the record as State's Exhibit 9.

⁷ The briefs submitted by the parties will be referred to as "Respondent's Brief" and "Department Brief" in the record.

Respondent's objections by arguing that the statement is sufficiently authenticated by its consistency with other available evidence under Rule 901(b)(4). (Distinctive Characteristics and the Like. Appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances. Rule 901(b)(4), SCRE).

Based on the testimony offered by Cretella as well as the additional context provided by other admitted evidence, State's Exhibit 12 meets the low authentication burden imposed by Rule 901. Cretella provided testimony regarding the circumstances under which he received the statement, namely that he requested the statement to memorialize prior conversations he and McCormick had conducted up to that point. The contents of the document itself are consistent with other evidence and testimony entered onto the record without objection. The statement is generally consistent with the billing records admitted as State's Exhibit 9. The statement corresponds with information Cretella testified he received from McCormick as part of earlier conversations. The information contained in McCormick's statement is consistent with the information relayed in the emails between Brisbon and McCormick included in the exhibit.⁸ Most convincingly, the contents of the document correspond with much of Brisbon's account of his interactions with McCormick during his internal affairs investigation. See, State's Exhibit 16.

While the document can be properly authenticated, its admission to the record is also potentially barred due to the statements contained in the document constituting hearsay evidence. "'Hearsay' is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Rule 801(c), SCRE. "Hearsay is not admissible except as provided by these rules or by other rules prescribed by the Supreme Court of this State or by statute." Rule 802, SCRE. The Department argues that, despite McCormick's absence, her statements are not hearsay because they were not offered to prove the truth of the matter asserted but rather as evidence of the steps taken by the Department in course of investigating Brisbon's alleged misconduct. D. Brief, pp. 6-7. While the document does illustrate investigative steps taken by the Department, when examined in the context of the overall case presented against Brisbon, the statements contained therein pertain to the central point of the of the Department's allegation. Based on the totality of evidence presented at the hearing, there is no question the Department performed an extensive investigation into Brisbon's alleged misconduct. The probative value in admitting the statement for the Department's asserted purpose is minimal. The statement possesses significant probative value in proving the ultimate

⁸ Respondent's Brief does not address the exclusion of the email portion of the exhibit independently and relies on the same arguments advanced to exclude the statement itself. Department's addresses the issue at pp. 3-4.

allegation against Brisbon. See, *State v. Hendricks*, 408 S.C. 525, 532-33, 759 S.E.2d 434, 438 (Ct. App. 2015).

The Department argues in the alternative that the exhibit should be admitted, if deemed hearsay, pursuant to the public record and/or report exception to the prohibition on hearsay. D. Brief, pp. 7-8. “Records, reports, statements or data compilations, in any form, of public offices or agencies, setting forth (A) the activities of the office or agency, or (B) matters observed pursuant to duty imposed by law as to which matters there was a duty to report...” are not excluded by the hearsay prohibition. Rule 803(8), SCRE. Specifically, the Department asserts that it bears a legal obligation to investigate its own officers for compliance with laws and policies, to include reporting alleged misconduct to the Academy. Once Cretella collected McCormick’s statement and included it in the Department’s internal records, it be a public record or report. As such, according to the Department, the statement now falls within the exception created by Rule 803(8). D. Brief, pp. 7-8. Addressing the admission of the exhibit pursuant to a hearsay exception, the Respondent notes that doing so would deprive Brisbon of the opportunity to confront and cross-examine McCormick. R. Brief, p. 5.

Ultimately, the McCormick statement should be found to conform to the public records exception and, as such, is admissible. As noted by the Department, law enforcement agencies operate under a general legal obligation to uncover and discipline inappropriate conduct by their officers. More specifically, S.C. Code Ann. § 23-23-150(B)(1) mandates the chief executive officer of an agency report to the academy “the occurrence of any act or multiple acts by a law enforcement officer, who is currently or was last employed by his agency, he reasonably believes to be misconduct.” This command implicitly creates a duty to investigate suspected acts of misconduct so that an appropriate report can be made in compliance with the statute. The testimony provided by Cretella establishes that McCormick’s statement was collected during just this sort of investigation.

Misconduct

The Department was required to prove by the preponderance of evidence that Brisbon engaged in misconduct, as defined in S.C. Code Ann. § 23-23-150, through, “[t]he misrepresentation of employment related information” while employed by the Department.

“Preponderance of evidence” is evidence which convinces the fact finder as to its truth. See, e.g., *Pascoe v. Wilson*, 416 S.C. 628, 640, 788 S.E.2d 686, 693 (2016) (citing *Gorecki v. Gorecki*, 387 S.C. 626, 633, 693, S.E.2d 419, 422 (Ct. App. 2010)). Further, a showing of a preponderance of the evidence means, “[t]he greater weight of the evidence, not necessarily established by the greater number of

witnesses testifying to a fact but by evidence that has the most convincing force; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other. . . stronger evidence, however slight the edge may be.” See, “preponderance of evidence”, *Black’s Law Dictionary*, (11th ed. 2019).

Based on the evidence presented at the contested case hearing in this matter, the Department has alleged Brisbon misrepresented employment related information in collecting administrative pay or by negotiating his own compensation rate in excess of what was permitted by Department policy. Accordingly, to prove the allegation against Brisbon, the evidence presented at the hearing must have been such that, after consideration of the entire record in this matter, one could reasonably conclude that Brisbon made misrepresentations regarding these two issues.

To “misrepresent” may be defined as “to give a false or misleading representation of usually with an intent to deceive or be unfair.” See, “misrepresent”, *Merriam-Webster Dictionary* online at <https://www.merriam-webster.com/dictionary/misrepresent>. A “misleading” statement is one that is “deceptive.” See, <https://www.dictionary.com/browse/misleading>. A “deceptive” statement is a statement, “tending to having power to cause someone to accept as true or valid what is false or invalid.” See, “deceptive”, *Merriam-Webster Dictionary* online at <https://www.merriam-webster.com/dictionary/deceptive>.

As previously noted, the Department’s allegation is twofold, first, that Brisbon engaged in misrepresentation by requiring third parties to provide him administrative compensation and, second, that Brisbon misrepresented the hourly rate he was to earn based on providing off-duty services. In regard to Brisbon’s receipt of administrative compensation, it is clear from the record that Brisbon did require third party entities to compensate him for time spent staffing off-duty assignments but not physically working them. The various records presented by the Department, as well as Brisbon’s own testimony, offer conflicting and inconsistent accounts as to whether Brisbon charged a flat fee for these services or was paid on an hourly basis. The distinction between these two different compensation schemes is ultimately immaterial to a determination of whether Brisbon engaged in misrepresentation. Brisbon established through his own testimony that, regardless of how his compensation was calculated, the payments were rendered to him in exchange for the specific service of staffing and otherwise performing administrative functions connected to the off-duty work completed by other officers. The Department’s policy neither requires nor forbids officers from receiving compensation for such services. However, based on the testimony provided by Cretella and the statement submitted by McCormick, Brisbon represented to McCormick that the charging of an administrative was required by the Department. Such a contention is

not supported by the Department's policy. For his part, Brisbon attributes the collection of the administrative compensation to unrecorded conversations he purportedly had with the Department's former chief, Mullen. As discussed below, Brisbon's blanket defense that all out of policy conduct on his part was authorized by Mullen is unconvincing. As such, the Department has demonstrated Brisbon misrepresented the authority by which he collected administrative compensation.

Additionally, Brisbon misrepresented the hourly rate he was permitted to collect pursuant to Department policy. The Department's policy concerning off-duty employment sets specific amounts officers are able to earn based on the nature of the assignment they fulfill. The versions of this policy present in the record (State's Exhibit 1 and State's Exhibit 15) are consistent on this point. Both the 2010 and 2018 version of the policy state,

The Chief of Police will establish a standardized minimum and maximum hourly rate, after consultation with those individuals deemed appropriate. Once established, this will be the minimum and maximum rate that can be charged by any officer for police related services. No officer will work for any or less than the established hourly rate.

The 2010 version of the policy makes an exception to this provision, stating, "All contracted assignments where the fee has already been set prior to October 9, 2009 will remain in place." This exception was specifically removed with the October 1, 2018 revision of the policy.

On March 14, 2019, Brisbon authored an email to an individual identified as "Riley," a representative of the film industry with whom Brisbon was coordinating off-duty assignments. Brisbon quotes the rates provided in the Department's 2018 off-duty policy establishing the hourly rate for an event commander at \$40.00 per hour. Brisbon then goes on to state that he, as an event commander holding the rank of captain, should actually be paid \$50.00 per hour. Brisbon then offers to "save you some money" and split the difference between his purported rate and the \$45.00 per hour rate he represents supervisors are entitled to receive. By his own testimony, Brisbon established he charged \$47.50 per hour in this instance. Despite having quoted actual departmental policy immediately beforehand, Brisbon misrepresents his ability, pursuant to that policy, to collect an hourly rate deviating from what is established by the policy. It is notable that in quoting the policy to Riley, Brisbon specifically omits the policy language stating, "Once established, this will be the minimum and maximum rate that can be charged by any officer for police related services. No officer will work for any more or less than the established rate."

Brisbon offers a number of defenses for his conduct. Particularly relevant to his misrepresentation of his hourly rate is that officers working on this particular assignment were being paid \$40.00 per hour,

therefore entitling him to collect a rate \$10.00 higher. Brisbon explained that this was a common practice within the Department and was designed to ensure that assignments with a critical need for officers could attract the necessary personnel. This reasoning does not, however, explain why it would be necessary for Brisbon, as the administrator, to receive a higher rate. Brisbon testified that the work he performed in relation to film industry assignments was administrative, such as, finding officers, assisting them with their applications, and collecting payroll information, not physically working the functions in a law enforcement capacity. Brisbon was fulfilling these duties on a voluntary basis and if he was unsatisfied with the compensation as defined in policy was free to withdraw from the assignment. The services offered by Brisbon would have, based on the testimony of Hawkins, been fulfilled by either the Professional Standards Unit or Special Events Unit for free.

Brisbon also argues in defense of his conduct, that he was permitted to deviate from the standards established by policy due to the instructions he received from the Department's previous chief, Mullen. Brisbon asserted multiple times, in response to nearly all of the Department's allegations of wrongdoing, that his actions were authorized by these instructions. While it is true that certain deviations from established policy were authorized in relation to the Port Authority assignment, under the auspices of the memorandum of understanding with the Port Authority, the Department has presented specific evidence refuting Brisbon's claim he was permitted to violate policy with respect to all or most of the jobs he administered. (State's Exhibit 11). Communications from Mullen, obtained as part of the Department's investigation, deny allowing policy deviations from film industry events and provide specific reasoning for the denial. Additionally, at the time of such communications, Mullen was no longer employed or connected with the Department. In contrast, Brisbon offered self-serving testimony that anytime he approached Mullen with a new administrative opportunity he received blanket instructions to, "treat it like the Port" and, in turn, reap significant personal financial benefit. Brisbon offered no additional facts or evidence, tending to corroborate his assertions. Ultimately, Mullen's denial of such conversations should be deemed more credible.

Brisbon offers a third argument in defense of his conduct, that the language of the Department's policy itself rendered him an independent contractor, rather than an employee of the Department. As such, Brisbon asserts he was, in effect, free to disregard the policy's limitations and guidelines on the terms of his employment. Brisbon cites the policy language stating, "Additionally, payment arrangements, collection, and terms that are associated with such matters are the responsibility of the officers employed by the employer and not the Department." The cited statement is immediately preceded by language

Brisbon

Final Agency Decision Page 20 of 22

addressing acceptable forms of payment. “Employees working off-duty jobs will be compensated for services rendered only in the form of checks drawn on the business organization’s bank account. If an individual sponsors the event, a check drawn on that persons [sic] account will be acceptable. Under no conditions will an officer work an off-duty job for cash.” The juxtaposition of these statements supports the conclusion that the language cited by Brisbon does not give him a free hand to negotiate every aspect of his employment relationship with the third-party entities. The preceding language of the policy specifically removes certain aspects of the employment relationship from negotiation. Just as the policy prevents officers from accepting cash payment, the policy specifically prohibits officers from working hourly rates above or below those set therein.

Brisbon’s larger argument that he was essentially an independent contractor, exempt from the terms of the policy as a whole is equally unpersuasive. Brisbon’s access to off-duty employment is directly premised on his employment as a law enforcement officer with the Department. His ability to fulfill the job duties for which he was compensated is inherently connected to this employment. Without access to officers utilizing authority and equipment supplied as a result of their employment with the Department, Brisbon would have no services to offer. Brisbon unavoidably served as a representative of the Department when working in his off-duty capacity. As such, despite his assertions to the contrary, Brisbon was obligated to operate within the confines set by the Department which afforded him these off-duty opportunities in the first place.

In summary, the evidence presented by the Department establishes that Brisbon misrepresented employment related information pertaining to administration of off-duty assignments. As such, the misconduct alleged by the Department to have been committed by Brisbon, as set out in the Personnel Change in Status Report, should be deemed supported and proven by the preponderance of evidence presented at the hearing on this matter.

FINDINGS OF FACT

Based on the Hearing Officer’s Recommendation, Hearing Transcripts, Hearing Exhibits, motions, oral arguments, and all factors offered by the Officer in mitigation we find as a fact:

1. The allegation of misconduct against George Brisbon, as reported in the Personnel Change in Status Report (Notification of Separation Due to Misconduct) provided to the Criminal Justice Academy (“Academy”) by the Charleston Police Department (“Department”), alleging Brisbon misrepresented employment related information is supported by the evidence adduced at the contested case hearing on February 28, 2023;

2. The Department has established by the "preponderance of evidence" that George Brisbon engaged in misconduct by misrepresenting employment related information relating to his off-duty compensation; and
3. The allegation of misconduct against George Brisbon set forth in the Personnel Change in Status Report by Department should be deemed proven by the evidence adduced at the contested case hearing.

CONCLUSIONS OF LAW

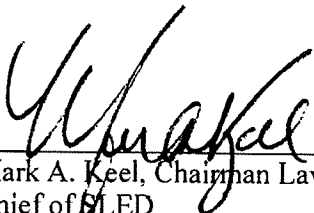
Based on the Hearing Officer's Recommendation, Hearing Transcripts, Hearing Exhibits, motions, oral arguments, and all factors offered by the Officer in mitigation we conclude as a matter of law:

1. Pursuant to S.C. Code Ann. § 23-23-80 (6), the South Carolina Law Enforcement Training Council ("Council") is authorized, *inter alia*, to "provide for suspension, revocation, or restriction" of law enforcement certification in accordance with the regulations promulgated by the Council;
2. Pursuant to S.C. Code Ann. Regs. 37-025, Council may deny law enforcement certification "based on evidence satisfactory to the Council that the candidate has engaged in misconduct";
3. A review of the record in this matter discloses that George Brisbon committed misconduct, pursuant to S.C. Code Ann. § 23-23-150 (3) (h), through the "[m]isrepresentation of employment related information," as reported to the Academy by the Department; and
4. The misconduct allegation reported by the Department has been proven by the preponderance of evidence and, pursuant to the provisions of S.C. Code Ann. Regs. 37-107, Council may conclude that, based on the evidence adduced at the contested case hearings and applicable statutes and regulations, George Brisbon has committed misconduct.

SANCTION

THEREFORE, IT IS ORDERED: Mr. Brisbon is permanently denied a law enforcement certification in South Carolina.

AND IT IS SO ORDERED.



Mark A. Keel, Chairman Law Enforcement Training Council
Chief of SLED
On Behalf of the Law Enforcement Training Council

January 29, 2024

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

George Brisbon,)
(Your Name))
)
Appellant,)
)
v.)
)
SC Criminal Justice Academy,)
(Agency Name))
)
Respondent(s).)
)

DOCKET NO. -ALJ- - -AP
(To be completed by the Court)

NOTICE OF APPEAL

Notice is hereby given that George Brisbon (your name), does hereby appeal the final decision of the SC Criminal Justice Academy (agency name), dated January 30, 2024 received February 7, 2024, a copy of which is attached.

In accordance with SCALC Rule 33(B), please provide a general statement of the grounds for appeal below:

The grounds for the appeal are as follows: The Agency Hearing Officer erred in not allowing the Affidavit of George Brisbon to be introduced into the evidence as presented into the record to the hearing officer by counsel for George Brisbon. The hearing officer erred in allowing State's Exhibit 12, an unsworn affidavit by Linda McCormick over the objection of Brisbon's counsel. The probative value of allowing this evidence to be admitted, although unsworn testimony, severely prejudiced Officer Brisbon's case. The preponderance of the evidence as well as the objections submitted show that Officer Brisbon did not commit misconduct and should not have his Police Officer Certification revoked.

Also attached is the request for transcript to the agency dated February 29, 2024.

Filing Fee (See SCALC Rule 71) is being submitted today to the Court via:

☒ Check ☐ Money Order ☐ Cash ☐ Waiver Form/Affidavit

Erica McCrea
Your Signature or Signature of Attorney

2/29/24
Date

4400 N. Main Street

Columbia, SC 29203

Mailing Address

City, State, Zip code

dtommygist@yahoo.com

(803) 771-8007

***Email Address**

Phone Number

*By providing your e-mail address, you consent to receive court orders and notices via electronic transmission

REPRESENTATION			
Are you representing yourself? ☐ Yes ☒ No			
Are you represented by an Attorney? ☒ Yes ☐ No	Name of Attorney: Gist Law Firm, P.A.		
Attorney Mailing Address: 4400 N. Main St.	City, State and Zip: Columbia, SC 29203		
Attorney Work Number and Cell Number: (803) 771-8007 / (843) 372-2108	Attorney E-Mail Address: dtommygist@yahoo.com / ericamccrea@gistlawfirm.com		
PROOF OF SERVICE (MUST BE COMPLETED)			
Your Name: Erica McCrea		Date: February 29, 2024	City: Columbia State: SC
I hereby certify that on the date and place listed above, I served a copy of the foregoing Notice of Appeal <u>on all other parties</u> to this matter by depositing the same in the United States Mail, postage paid, and addressed as follows (use the reverse side for any additional names):			
Timothy Plunkett, Esq.	5400 Broad River Road	Columbia, SC 29212	
Name and/or Agency Name	Address	City, State and Zip	
Caroline Cleveland, Esq.	171 Church Street, Suite 310	Charleston, SC 29401	
Name and/or Agency Name	Address	City, State and Zip	
<i>Erica McCrea</i> X Your Signature or Signature of Attorney		2/29/24 Date	

Attention: All cases filed in the Administrative Law Court are subject to the Rules of Procedure found at the Court's website www.scalc.net or from the Clerk of Court. Failure to follow these rules may result in dismissal of your case.

STATE OF SOUTH CAROLINA

Before the South Carolina Law Enforcement Training Council

In the Matter of the Law Enforcement)
Certification of George Brisbon)
)
)
Charleston Police Department)
)
)
_____)

Docket Number 2020-CJA-02-08

**FINDINGS AND RECOMMENDATIONS
OF HEARING OFFICER
(Contested Case)**

Hearing Officer: Timothy J. Plunkett
Hearing Date: February 28, 2023
Hearing Reporter: Robin Dunn, Southern Reporting, Inc.

Appearances

For Officer: Donald Gist, Esq.
For Agency: Caroline Wrenn Cleveland, Esq.

I. JURISDICTION AND AUTHORITY FOR HEARING

The undersigned, a member in good standing of the South Carolina Bar employed as an attorney by the South Carolina Criminal Justice Academy, was duly appointed by the South Carolina Law Enforcement Training Council (“Council”), pursuant to S.C. Code Ann. § 23-23-80 (10), to sit as hearing officer for the contested case hearing in this matter, pursuant to S.C. Code Ann. § 23-23-150 (D).

George Brisbon (“Officer”), in response to an allegation of certification misconduct reported by the Charleston Police Department (“Department”) to the South Carolina Criminal Justice Academy (“Academy”), pursuant to the requirements of S.C. Code Ann. § 23-23-150 (B) (1), timely requested a contested case hearing to address the allegation of misconduct filed against him. Notice of the contested case hearing was communicated to the Officer and the Department, in accordance with the requirements of S.C. Code Ann. § 23-23-150 (D), and the matter was properly set for hearing on February 28, 2023.

III. ALLEGATIONS OF MISCONDUCT

The Department’s “Personnel Change in Status: Separation Due to Misconduct” (PCS) report, produced in response to Brisbon’s February 13, 2020 separation, alleged Brisbon had

committed misconduct, as defined in S.C. Code Ann. § 23-23-150, based upon the alleged misrepresentation of employment related information.

Specifically, the factual description set forth in the PCS alleged Brisbon had collected unauthorized administrative fees for administrating off duty employment assignments. When questioned about the practice, Brisbon allegedly stated he had been authorized to do so by former Chief of Police, Greg Mullen. The Department obtained statements from Mullen denying such authorization.

IV. DOCUMENTARY AND TESTIMONIAL EVIDENCE

A. Documentary Evidence

The following documentation was accepted into evidence at the February 28, 2023 hearing and made part of the record:

Council Exhibit Number 1: Notice of Misconduct Allegation; Personnel Change in Status Report (Notification of Separation Due to Misconduct); Notice of Appearance; Request for Contested Case Hearing; Notice of Contested Case Hearing; Notice of Appearance.

State's Exhibit 1: City of Charleston Police Department Administrative General Order 50- Off-Duty Employment (Revised 06/01/10)

State's Exhibit 2: Email dated 03/14/2019 (Riley)

State's Exhibit 3: Off-Duty Employment Sign Up Form, "Hootie Concert Aug 10th & 11th"

State's Exhibit 5: List of Officers and Amount Paid for 8/10-11/2018 Off-Duty Employment¹

State's Exhibit 6: Off-Duty Employment Sign Up Form, "Luke Combs Concert"

State's Exhibit 7: Off-Duty Employment Sign Up Form, "JoJo Siwa Concert"

State's Exhibit 8: Off-Duty Employment Sign Up Form, "Sublime with Rome"

State's Exhibit 9: July- Dec. 2018, Feb.- June 2019- Officer Coverage/ Gov. Thomas Bennett House

State's Exhibit 10: Email Chain dated 10/8/2019- 10/9/2019 (McCormick)

State's Exhibit 11: Email Chain dated 08/19/2019- 08/20/2019 (Mullen)

State's Exhibit 12: Statement of Linda McCormick; July- Dec. 2018, Feb.- June 2019- Officer Coverage/ Gov. Thomas Bennett House; Email Chain dated 10/18/2018 (McCormick)

State's Exhibit 13: Charleston Police Department Authorization to Administer Off-Duty Employment

State's Exhibit 14: City of Charleston Investigative Report dated 08/28/2019

¹ The proposed exhibit identified as State's Exhibit 4 is substantively identical to State's Exhibit 5, with the exception of handwritten notes and calculations included by Department's counsel. This version of the document was objected to and not admitted.

State's Exhibit 15: City of Charleston Police Department Administrative General Order 50- Off-Duty Employment (Revised 10/01/18)

State's Exhibit 16: Interview Transcript, "Captain G. Brisbon Interview II" dated 08/22/2019

B. Testimonial Evidence

The following testimony was accepted into evidence at the February 28, 2023 hearing and made part of the record:

1. Testimony of Captain Anthony Cretella, Charleston Police Department
2. Testimony of Charles Hawkins
3. Testimony of Deputy Chief Dustin Thompson, Charleston Police Department
4. Testimony of George Brisbon

Testimony of Capt. Anthony Cretella:

Cretella testified he is currently employed by the Department as the commander of the Professional Standards Division and holds the rank of captain. In 2019, Cretella held the rank of lieutenant and oversaw the Department's Internal Affairs unit. Cretella recalled that in July 2019, a meeting was held between the Department's chief, Reynolds, and members of the Charleston County School District about placing more officers in the district's schools. In the course of these conversations, it was discovered that Corporal Clyde Johnson was charging the district an administrative fee to fill these off-duty employment assignments. Cretella asserted that this practice is not permitted by the Department. During the internal affairs investigation into Johnson, Cretella determined Johnson was charging off-duty entities a fee to provide their work assignments with officers. Johnson also disclosed that Brisbon, then a captain with the Department, followed the same practice. After reporting this information through his chain of command, Cretella was instructed to open an investigation into Brisbon as well. (Transcript, pp. 21-24).

Cretella served as one of the lead investigators in the investigation of Brisbon. Cretella recalled interviewing Brisbon four times during the course of the investigation. The first interview occurred on August 12, 2019. Brisbon was advised of the allegation against him and asked if he was charging an administrative fee in conjunction with the off-duty assignments he was coordinating or "running." Brisbon confirmed that he was and was asked to provide a list of the off-duty assignments he was running. Cretella explained the difference between "working" and "running" an off-duty assignment.

So to work an off-duty job, I would go at that time on our Signup Genius link, which is internet based, and I just sign up to work the off-duty job. All that means is you're reporting

– you have a reporting time at any time, and you’re working in an officer capacity. . . And for running the job, that means that you’re overseeing it, that you’re coordinating who works it, and sending the invoice to the company to ensure that everyone gets paid.

Brisbon advised Cretella that he ran or administered off-duty jobs for the movie industry, the Port Authority, at a church, the Thomas Bennett House, and the Daniel Island Tennis Center, which held both tennis tournaments and concerts. Cretella explained that the Port Authority job differed from other off-duty assignments in that its terms were governed by a separate agreement between the City and other involved entities. Under the terms of this agreement, Brisbon was specifically authorized to collect an administrative fee to compensate him for the time he spent assigning officers to the job and reflecting how often officers were needed. All other assignments were governed by the Department’s off-duty policy. Charleston City Police Department General Order 50 was introduced to the record as State’s Exhibit 1. (Transcript, pp. 24-28).

General Order 50 is the Department’s off-duty employment policy. The policy establishes a set rate for all off-duty employment by the Department’s officers and prohibits officers from working for more or less than the established rate. The policy initially set the hourly rate at \$25 for officers, \$30 for supervisors, and \$35 for an event commander. By 2018 the policy had been modified to provide increased hourly rates of \$30 for officers, \$35 for supervisors, and \$40 for event commanders. (Transcript, pp. 28-29)

Cretella identified an email chain between Brisbon and an individual named Riley. Cretella further identified Riley as a film industry employee. In his email to Riley, Brisbon copied a paragraph of the policy establishing the rate of pay for various types of employees. The quoted language specifically states event commanders will be paid \$40 per hour. Brisbon goes on to explain that an event commander will be necessary for movie related events. Brisbon asserts that as a captain his hourly rate is actually \$50 per hour but since he rarely hires a sergeant for his events, he is willing to split the difference. Cretella confirmed that the Department’s off-duty policy does not allow an event commander to be paid \$50 per hour. Cretella also confirmed that the Department’s off-duty policy does not allow officers to negotiate their hourly rates. Brisbon was subsequently asked during the investigation if he had any additional documentation concerning the hourly rate he received at other jobs. Brisbon advised Cretella he was unable to provide any additional documentation or records pertaining to the film jobs he administered. (Transcript, pp. 29-34).

The Department produced a number of documents showing events Brisbon and other officers had worked at off-duty (State's Exhibits 3, 5-8).² The documents indicate officers signed up for the events using a Signup Genius link. The series of documents also showed the total amount paid to each of the officers for each of the events. In respect to the first event portrayed in the records, Cretella explained that it was a two-night concert wherein officers could sign up to work one or both of the nights. Working one night resulted in officers being paid for six hours, working both nights resulted in officers being paid for twelve hours. Cretella testified the payment amounts recorded for each of the officers was consistent with the hours worked at the applicable pay rate set by policy, with the exception of Brisbon. Brisbon was paid significantly more money for the two nights he signed up work. Specifically, State's Exhibit 5 indicates Brisbon received \$1,520.00 for the two nights he signed up for.³ When asked to explain the discrepancy, Brisbon told Cretella that there had been multiple events going on in Charleston on the weekend in question and that he was required to make numerous phone calls over the course of the weekend to ensure all events were adequately staffed. Cretella testified Brisbon was paid for making 19 hours' worth of phone calls to coordinate the various off duty events. Cretella further explained officers were not permitted by policy to charge for making these phone calls and that Brisbon had admitted his actions were not consistent with the Department's policy. Brisbon further claimed the work was not performed on Department time due to him having built up "administrative time" which Cretella understood to mean "comp time." Cretella asserted Department policy does not allow salaried employees to accrue comp time. (Transcript, pp. 35-58).

Cretella identified State's Exhibits 6-8 as the sign-up and pay records for 3 additional off-duty jobs. Each was a one-day assignment wherein officers would work for six hours. For each of these events, Brisbon was paid \$600.00. Brisbon similarly attributed the pay discrepancy to charging for the time it took to find officers to work the events. Cretella testified this same pattern was present in other concert events he uncovered as part of his investigation. (Transcript, pp. 59-62).

² State's Exhibit 4 was marked but used for questioning the witness on the record. Respondent's counsel objected to handwritten notes produced by Department counsel. With the exception to the handwritten notes, State's Exhibits 4 and 5 are the same record.

³ The next closest sworn officer received \$420.00 for working two nights. An individual named Brian Hinton received \$500.00 but Cretella stated he was not a sworn employee was not paid according to the same policy as sworn police officers.

In addition to films and concerts, Cretella determined Brisbon also worked off-duty events for a church and the Thomas Bennett House. Cretella explained the Thomas Bennett House was an event site within the city and, based on a memorandum of understanding, are required to have an officer present while events are being held. Brisbon both administered and worked the events held at this location. Brisbon admitted to Cretella that he charged for administrative duties for this job as well. Cretella subsequently learned from Linda McCormick, the manager of the Thomas Bennett House, that Brisbon attributed the need to collect an administrative fee to a memorandum of understanding. Specifically, according to McCormick, Brisbon proposed working some of the events himself and charging a fee to find officers to work on dates he was not available himself. (Transcript, pp. 62-65).

Cretella obtained scheduling and payment records from McCormick for July to December 2018 and February through June 2019. The document was entered into the record as State's Exhibit 9. For multiple recorded months, Brisbon received a payment of \$150.00. These payments were made regardless of how many events Brisbon was recorded as working or how many events other officers were recorded as working. Cretella stated these payments were inconsistent with the arrangement Brisbon claimed he had made with the Thomas Bennett House. When confronted with this information, Brisbon claimed he had never authorized McCormick to pay him outside their initial arrangement. While he admitted to accepting the funds indicated in the payment record, Brisbon indicated he was opposed to paying the money back due to his belief McCormick had made a mistake and should bear responsibility for that mistake. (Transcript, pp. 65-71).

Cretella denied Brisbon had ever suggested or asserted he could renegotiate his off-duty rate or charge an administrative fee under the Department's off-duty policy. Rather, Cretella testified that Brisbon attributed his entitlement to do so to a conversation with the Department's former chief, Greg Mullen. Specifically, Brisbon stated he had been instructed by Mullen to treat all the off-duty jobs he administered as if they fell under the city's agreement with the Port Authority. Mullen was contacted by the internal affairs unit in the course of the investigation into Brisbon. Mullen responded by email, acknowledging the Port Authority agreement but asserting that he had never provided Brisbon with the authority to do so for other off-duty assignments. Cretella explained that while Mullen would have had the authority to grant Brisbon an exception to the general policy, Mullen was adamant he had not done so. Ultimately Cretella found Mullen more credible than Brisbon, citing the fact that, faced with an investigation, Brisbon had motive

to fabric this excuse while, based on the circumstances and his former position as chief, Mullen did not. Mullen's emailed response was entered to the record as State's Exhibit 11. (Transcript, pp. 73-77).

Cretella identified a written statement provided to him by McCormick. He testified the statement was provided to him in response to Brisbon grieving the termination of his employment with the Department. The statement was accompanied by an invoice record prepared by McCormick (State's Exhibit 9) and prior emails between Brisbon and McCormick discussing the payment of an administrative fee. Cretella confirmed that McCormick stated the administrative fee was represented to her by Brisbon as a departmental requirement and that she did not attempt to negotiate or question the fee due to Brisbon's position as a captain with the Department. When questioned about the fee Brisbon indicated to Cretella that it was intended to serve as compensation for the time and effort he expended staffing the assignment. (Transcript, pp. 78-80).

Cretella identified the Department's Authorization to Administer Off-Duty Employment form. The Department requires anyone intending to administer an off-duty assignment to complete and submit the form. The request would then be approved or denied by the officer's chain of command. The form requires those completing the request to acknowledge they have reviewed the Department's off-duty employment policy. Cretella explained this portion of the form would indicate any officer administering an off-duty assignment would understand the Department's policy. (Transcript, pp. 81-82).

Cretella testified that following his interviews with Brisbon, he prepared an investigative overview. This report was forwarded through his chain of command, starting with Dustin Thompson. The report concluded Brisbon had violated Department policy and Brisbon's employment with the Department was terminated as a result. Additionally, Chief Reynolds initiated a broader investigation into all officers working or administering off-duty events for the Department. Cretella stated he was included in those interviewed as part of this investigation. The secondary investigation was conducted by Thompson. (Transcript, pp. 82-85).

Cretella clarified earlier testimony concerning the Department's off-duty employment policy. He explained that the policy was updated on October 1, 2018. The update increased the authorized hourly pay rate by \$5.00 for all positions. From 2010 through September 30, 2018, the authorized hourly rate was \$25.00, \$30.00 for supervisors, and \$35.00 for event commanders. As of October 1, 2018, the authorized hourly rate was \$30.00, \$35.00 for supervisors, and \$40.00 for

event commanders. The previously referenced Hootie concert was held on August 10, 2018. Based on his investigation, Cretella stated Brisbon invoiced himself and other officers working the event at the higher pay rate. Cretella concluded his direct testimony by affirming that the Department operated an office which would administer off-duty jobs at no charge to the entities requesting officers. (Transcript, pp. 85-87).

On cross-examination, Cretella testified that he has worked for the Department for seventeen and a half years and has previously worked off-duty assignments. He did not recall having received any specific training on the Department's off-duty employment policy but stated that it was freely available for review and that he has been required to acknowledge the policy by signature on previous occasions. Cretella could not recall the specific number of times he has investigated other officers for off-duty employment violations, explaining that the internal affairs office is responsible for investigating any policy violations. (Transcript, pp. 88-92).

Cretella confirmed that his questioning of Mullen occurred while Mullen was employed by the Clemson Police Department and not the Department. Cretella stated Mullen did not provide him with any notes, e-mails, or other additional documentation that would have recapped any conversations he may have had with Brisbon. Nothing uncovered during the investigation indicated Mullen had specifically prohibited Brisbon from collecting an administrative fee. Cretella was not aware of whether Mullen had ever initiated an investigation into Brisbon. Cretella read the portion of the off-duty employment policy stating, "payment arrangements, collections, and terms associated with such matters are the responsibility of the officers employed by the employer and not the department." Cretella confirmed entities such as the cruise line would have been Brisbon's employer under these terms and was unaware of any instance wherein Brisbon would have compensated by the Department for time dedicated to off-duty employment. Cretella agreed the Department served as a conduit for these payments, but the actual compensation was provided by entities utilizing off-duty officers. Cretella testified further regarding the subject policy language, "Payment arrangements, in terms of how I'm going to get paid, the check. Collections, how it's going to be paid, weekly, monthly, however it's done. And terms that are associated with such matters. It's not allowing you to charge what you want to charge or for your administrative—" (Transcript, pp. 92-100, 107-108, 110).

Cretella recalled he received McCormick's statement (State's Exhibit 12) upon his request. Cretella explained that the statement was settled on as the best way to record the information

McCormick had provided to the Department after consultation with the legal team. Cretella testified McCormick was apprehensive about providing information due to the fact that it would be included in a law enforcement investigation. McCormick was not warned that the information could lead to further investigation into her conduct. Cretella believed McCormick prepared and signed the document but stated he was not otherwise familiar with her signature or the specific circumstances by which the document was created. Cretella testified the statement was not provided under oath and that she had not been interviewed in person. Cretella indicated that the statement had been provided via email and that his prior interactions with McCormick had been conducted via phone or email. (Transcript, pp. 100-104).

Cretella explained that his role was to collect information and forward that information to additional parties, including the State Law Enforcement Division (SLED). Cretella stated that SLED ultimately concluded that the information uncovered by his investigation into Brisbon would not support bringing criminal charges against Brisbon. The Department did, however, terminate Brisbon's employment based on the investigation. (Transcript, pp. 112-114).

On redirect examination, Cretella denied Brisbon ever claimed he felt his conduct was justified by the language of the policy. Rather, Brisbon attributed his actions to "personal compensation" and Mullen's permission to administer all of his off-duty jobs in the same manner as the Port Authority agreement. Cretella agreed, that based on the information provided to him by Brisbon, that Brisbon claimed to be operating under a "special exception" to policy granted to him by Mullen. Cretella reiterated that Mullen had denied doing so when contacted as part of the investigation. Brisbon did not provide Cretella with any documentation reflecting the special exception and did not identify any witnesses to his alleged conversation with Mullen. (Transcript, pp. 116-121).

On recross-examination, Cretella agreed that it could hurt the Department's relationship with the community if events were not staffed with off-duty officers when such officers were requested. In such a situation the Department would need to assign on-duty officers to the event. Cretella agreed that his investigation had not uncovered any evidence whereby Brisbon had been specifically prohibited from administering off-duty assignments in this fashion. (Transcript, pp. 121-126).

Testimony of Charles Hawkins:

Hawkins was called to testify on behalf of Brisbon.⁴ Hawkins testified he retired from the Department in 2020. Hawkins was employed by the Department for thirty-five years. The last position was as the lieutenant over the Special Events Unit. The Special Events Unit was created to manage the Department's special events and off-duty jobs. These included off-duty events like weddings or retail security, as well as special events such as a presidential visit or races. Hawkins stated this was his full-time position with the Department and he did not receive any type of administrative fee for providing these services. Hawkins frequently worked at the events managed by the unit but would not receive off-duty pay until he completed his full-time hours for the Department. The Special Events Unit did not exist prior to 2018-2019 when Hawkins was assigned to supervise the unit. (Transcript, pp. 136-141).

Prior to the founding of the Special Events Unit, individual officers administered and staffed off-duty jobs. Hawkins explained that officers would become associated with various off-duty assignments based on being approached by the entity seeking officers. Officers were still bound by the Department's off-duty policy under this system. Hawkins confirmed that it could be difficult to find officers for certain assignments, but it largely depended on the nature of the assignment and the number of officers needed. Hawkins stated that he knows Brisbon and that they had worked together over the course of their careers with the Department. Hawkins did not believe he had ever been lied to by Brisbon and was willing to vouch for Brisbon's integrity. Hawkins recalled working for both Mullen and Reynolds during their tenures as chief of the Department. Hawkins characterized Mullen as being a micromanager and strict, whereas he described Reynolds leadership style as more "laissez-faire." Hawkins stated he had no doubts that Mullen would have intervened if someone at the Department was engaged in improper or wrong behavior. (Transcript, pp. 141-153).

On cross-examination, Hawkins confirmed that he began working in the Special Events Unit on May 18, 2019. He reiterated that, prior to the founding of the Special Events Unit, there was not a specific unit tasked with organizing off-duty employment. Upon reviewing multiple iterations of the Department's off-duty employment policy, he conceded that it appeared off-duty

⁴ Due to a personal scheduling conflict, Hawkins was called to testify by Brisbon prior to the conclusion of the Department's case-in-chief.

employment was managed by the Professional Standards Office prior to the founding of the Special Events Unit. Hawkins explained that he was not involved in off-duty employment prior to his assignment to the Special Events Unit. He was aware however that certain officers administered individual assignments during this period. This practice continued after Hawkins's assignment to the special events unit. (Transcript, pp. 153-158).

Hawkins reviewed State's Exhibit 13 and identified it as the form officers were required to complete in order to administer individual off-duty assignments. The particular example he reviewed was the form completed by Brisbon in order to administer the Thomas Bennett House job. Hawkins explained that the form was essentially asking permission to take the job from the Special Events Unit and manage it individually. Hawkins stated he was unaware of any departmental rule requiring officers to charge a service fee for administering a job. He only became aware of the practice when he took over the Special Events Unit. In general, Hawkins stated, "Rules existed and [were] not being followed and not being checked to see if there was any rules." Hawkins explained that this applied to raising hourly rates for certain jobs. He was aware of instances where officers administering jobs would have the third-party entities contact the Department on their behalf and state that the rate for that job needed to be raised in order to fill the job. Hawkins asserted that it was wrong for the officers to engage in this practice, given there was a rate set by policy. Hawkins believed the Special Events Unit was founded in order to combat these issues but indicated that such practices persisted during his tenure with the unit. (Transcript, pp. 158-163).

Testimony of Dep. Chief Dustin Thompson:

Thompson testified he holds the rank of deputy chief with the Department. Upon the conclusion of Cretella's investigation into Brisbon, the investigative report was reviewed by Thompson. Thompson then forwarded the report up his chain of command. Ultimately, both Brisbon's and Johnson's employment with the Department ended. Based on the findings of the investigation into Brisbon and Johnson, Thompson was tasked with overseeing a second investigation into the off-duty employment practices of 38 other officers. These officers ranged from private to captain and included Cretella. The second investigation identified three additional officers who were in violation of the Department's off-duty employment policy. Two officers were found to be improperly charging supervisor rates, the third was accepting payment in cash. All three officers were subject to disciplinary measures. A third investigation was subsequently

initiated. The third investigation identified two additional officers accepting cash payments. Thompson testified they were subject to similar disciplinary actions as the other officer found to be violating the policy by accepting cash payments. Thompson stated Brisbon and Johnson were the only officers identified as charging an administrative fee. (Transcript, pp. 171-178).

On cross-examination, Thompson testified that policy does not allow officers to accept cash payments. Thompson testified the officers identified as accepting cash payments were disciplined but did not have their employment with the Department terminated. On redirect examination Thompson recalled that each of the disciplined officers held the rank of sergeant or below. He agreed that higher ranked officers are held to stricter standards. On recross-examination, Thompson confirmed that the Department's off-duty policy applies equally to all officers regardless of rank. (Transcript, pp. 179-180).

Upon questioning by the hearing officer, Thompson explained that Department policies are currently distributed to officers using an electronic system and that officers are required to sign stating they read and understood each policy. This system was introduced in 2018 or 2019. In 2010, policies were distributed on a thumb drive, officers were required to sign they understood the policy at that point as well. Policies are available to officers at any time through the electronic system and must be reviewed any time updates or revisions are made. (Transcript, pp. 190-192).

Testimony of George Brisbon:

Brisbon testified he was employed by the Department from May of 1984 through January of 2020 and has held a law enforcement certification for thirty-five years. He began his career as a patrol officer and eventually attained the rank of captain, holding numerous positions within the Department. Brisbon first recalled having access to the Department's policies in 2004 in the form of a written manual. He confirmed he received and signed the Department's off-duty employment policy in 2008. By that time, he was managing other officers in their off-duty capacity. Brisbon began managing off-duty officers as the captain at the Special Operations Bureau. Initially he did so while on duty and being paid by the Department. Shortly after Mullen became chief, Brisbon was instructed to manage off-duty assignments on his own time. Brisbon denied he was ever prohibited by Mullen from charging an administrative fee to a venue. Brisbon recalled his initial conversations on the issue with Mullen,

This was all initiated initially with the South Carolina State Ports Authority. They was now going to be receiving cruise ships into the city, and it required hiring officers more than what the State – State Ports Authority could handle. They didn't have enough

officers... [T]here was a meeting with the chief, individuals from the mayor's office, legals, just a wide variety of people. An in that meeting, I explained to them that the City has an off-duty rate but that this job required – because a cruise ship is going to come in when it's going to come...[T]hat because the volume of officers, we had to have the officers... So I says, well, in a way to guarantee you will have officers is, you need to pay more than the standard off-duty rate. That will attract officers to the job. And – and also with Mullen being there, I says, I'm under instructions from Chief Mullen that I can't handle this on City time. I have to handle and manage this entire operation on my own time. So there it was agreed that, one, they would pay a differential rate, and, two, they would pay me to manage this on my own time.

Brisbon explained that going forward, invoices for the Port operations included his administrative hours. Brisbon testified he did not have any specific discussion with Mullen at this point regarding the Department's off-duty employment policy. (Transcript, pp. 194-203).

Reviewing the off-duty employment policy from 2010 (State's Exhibit 1), Brisbon noted that the policy states, "All contracted assignments where the fee has already been set prior to... October 9, 2009, will remain in place." Brisbon confirmed that the fee charged for work on the Port assignment exceeded the fee set by the Department's policy. He then explained that the administrative fee he charged the Port was based on the number of hours he worked organizing the assignment. Brisbon asserted that, at some point in 2011 or 2012, he met with Mullen regarding assignments at the Family Circle Tennis Center and was instructed by Mullen to, "handle it just like handled the Port." Brisbon further asserted that Mullen's instructions came in direct response to Brisbon voicing concerns about having to perform duties related to the assignment off-duty. Brisbon testified he later met with the Charleston Administrative Services Manager, Susan Utnick, regarding the assignment. He was told that, because of workers' compensation concerns, he should not use City letterhead or other paraphernalia in administering the assignment. Based on this meeting as well as the language of the Department's off-duty policy, Brisbon considered himself an independent contractor and that his employer was the venue holding the event, not the Department. Specifically, the policy language referenced by Brisbon states, "Additionally, payment arrangement, collection, and terms that are associated with such matters are the responsibility of the officers employed by the employer and not the department." Brisbon also asserted the Department's policy only addressed working off-duty jobs and not managing off-duty jobs. (Transcript, pp. 204-211).

Brisbon explained he began managing assignments at the Thomas Bennett House when another employee decided doing so was taking up too much of her time. He recalled being

summoned to a meeting by the chief's administrative assistant and then accepting the management role. Brisbon recalled his initial interaction with Thomas Bennett House personnel,

When I contacted her, I explained to her that I, under the instructions of Chief Mullen, cannot manage off-duty assignments on City time. All of my arrangements and managements has to be done on my own time. I said, so, therefore, the hourly rate at this time is \$25 an hour. I will charge you, whatever you want to call it, for one—a lot of times it took me four or five hours to find somebody. I said, one hour at \$25 of the hourly rate. It wasn't a fee. It was one hour's pay at the off-duty rate to manage people and to hire people for the job. I says, now, the police department has a separate mechanism or off-duty umbrella. You are free to utilize that system. She tells me, no. We have a court order from the City of Charleston that states that we absolutely must have officers at this venue, because of our loud noise statute.

Brisbon explained that management at the Thomas Bennett House was aware of the Department's free service but instead chose to use him to manage the job to ensure officers would be available. Brisbon again asserted that the Thomas Bennett House, and not the Department, was his employer in this context, with invoices being completed without the Department's involvement. These invoices were generated by the Thomas Bennett House, not Brisbon, and he was paid by check. He testified he never received any complaints in regard to the Thomas Bennett House job or any of the other jobs he managed. (Transcript, pp. 213-220).

Brisbon then addressed his management of film industry assignments. Brisbon recalled that as long as he had been employed by the Department, the film industry had paid a higher rate for officers working on their assignments. Based on the unique time demands and the various stakeholders involved in setting up film events, Brisbon perceived that it was absolutely necessary for officers to report to these off-duty assignments. In order to attract the necessary officers to staff these assignments, events for the film industry paid an hourly rate higher than what was authorized by policy. Brisbon stated that this rate was set by film industry entities, who he, again, asserted were the employers in these circumstances. In reference to his email interaction with Riley (State's Exhibit 2), Brisbon explained,

So in this incidence where Ms. Cleveland [Department Counsel] brought up the 47.50, the officers were being paid \$40 an hour, not – not 25, not 35. In this particular instance, they were being paid \$40 an hour. In policy, it states that an event commander would get paid \$10 more than the officer. So I negotiated. Instead of charging her 50, which would be \$10 more than the officers who were making 40, I said 47.50, which is \$2.50 less. I did not charge more. I actually charged less. The officers got paid 40. I got paid 47.50.

Brisbon went on to explain the duties he performed to earn this money. The duties included creating a SignUp Genius link, calling additional officers to check availability, assisting officers

in completing a 25-to-30-page long application form, and distributing and collecting timesheets from the officers. Brisbon asserted his negotiated rate garnered no complaints because it was still lower than what other available law enforcement organizations charged at the time. (Transcript, pp. 233-237).

Brisbon asserted that the third-party entities and not the Department were his employers in respect to the off-duty assignments. He stated that the Department had no structured way of monitoring, auditing, or evaluating the off-duty program. He additionally pointed out that, even after Hawkins's appointment to the special events unit in 2018, no violations or inconsistencies on his part were discovered. (Transcript, pp. 238-239).

On cross-examination, Brisbon claimed administration of off-duty assignments was mandated by Mullen due to the fact he was employed as a patrol division commander at the time. Brisbon stated Mullen's order was verbal and that no written document was created because Mullen wished to avoid creating a "paper trail." Brisbon again addressed his email to Riley, explaining that he set a rate outside of policy for himself due to the fact that the officers working the event were being paid above the rate established by policy. Brisbon claimed that policy and established practice entitled him to collect \$10 more per hour than whatever the rate for working officers was. When asked whether this practice conformed with the Department's policy, Brisbon replied, "I did what Chief Mullen established and what he told me to do." Brisbon acknowledged that his practices deviated from the Department's written policy but again attributed his authority to do so to verbal instructions from Mullen. (Transcript, pp. 244-261).

On redirect examination, Brisbon additionally asserted he was entitled to negotiate his rates with third party entities because they were his employers and not the Department under policy. Brisbon also recalled his negotiations with the Thomas Bennett House,

I never have invoiced the Thomas Bennett House, never did. Never instructed her to pay me – to pay \$150 a month. My explicit explanation to her was that for one hour, one administrative hour, to hire officers to work the job, and that if she did not want to – to – if she did not want that agreement, that the City of Charleston has another mechanism where her jobs would be posted on its website.

Brisbon subsequently stated he informed Linda McCormick, the Thomas Bennett House manager, he was under instructions from Mullen to manage off-duty assignments on his personal time. He denied he had been accused of misrepresentation by McCormick. (Transcript, pp. 264-267).

On recross examination, Brisbon was asked whether he had agreed to pay back the \$150 monthly payments from the Thomas Bennett House he previously stated he had not authorized or agreed to. Brisbon replied, “I said no, because, to me, that would have shown an admission of guilt, and I had done nothing wrong.” (Transcript, pp. 268-269).

V. ANALYSIS

State’s Exhibit 12

In the course of the hearing, the Department offered an evidentiary exhibit, marked on the record as State’s Exhibit 12. State’s Exhibit 12 consisted of a written statement, identified by Cretella as being authored and provided to the Department by Linda McCormack, the manager at the Thomas Bennett House. The statement purports to detail McCormack’s interactions with Brisbon concerning off-duty employment and compensation at the Thomas Bennett House. The written statement is accompanied by an email chain, dated October 18, 2018, between Brisbon and McCormick. Additionally, the exhibit contains assignment and payment records for the Thomas Bennett House from July 2018 through December 2018 and February 2019 through June 2019.⁵ Counsel for Brisbon objected to the admission of the statement as lacking proper authentication and being prohibited as hearsay. The parties were provided with the opportunity to prepare and submit briefs on the issue of whether the exhibit should be admitted to the record.⁶ (Transcript, pp. 127-133).

As an initial matter, as stated in the Department’s brief, the controlling authority regarding the admission of evidence at a contested case hearing conducted pursuant to S.C. Code Ann. § 23-23-150 (D) are the South Carolina Rules of Evidence. S.C. Code Ann. Regs. 37-105 F. The Federal Rules of Evidence, cited throughout the Respondent’s brief, are applicable only when no definitive South Carolina case law exists. D. Brief, p. 2 (citing *Maybank v. BB&T Corp.*, 416 S.C. 541, 787 S.E.2d 498 (2016) and *State v. Wills*, 409 S.C. 183, 762 S.E.2d 3, 13 (2014)). As such, the admission of proposed State’s Exhibit 12 will be considered under the South Carolina Rules of Evidence where applicable.

⁵ These records were independently admitted to the record as State’s Exhibit 9.

⁶ The briefs submitted by the parties will be referred to as “Respondent’s Brief” and “Department Brief” in the record.

“The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.” Rule 901(a), SCRE. “The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims. The burden to authenticate evidence is not high and requires only that the proponent offer a satisfactory foundation from which the jury could reasonably find that the evidence is authentic.” D. Brief, p. 2 (citing, *Berry v. Spang*, 433 S.C. 1, 10-11, 855 S.E.2d 309, 314-15 (Ct. App. 2021)). Rule 901 goes on to provide ten nonexclusive examples of how authentication may be achieved by the proponent of the evidence. See, Rule, 901(b), SCRE. The Respondent’s brief specifically focuses on two of these methods with respect to the statement purportedly submitted by McCormick.

First, that Cretella lacked sufficient personal knowledge to authenticate the document. Cretella testified he did not witness McCormick sign or prepare the document. Additionally, the document was not prepared as a affidavit, Cretella could not attest to whether McCormick was properly sworn, and the document was not verified by a notary. R. Brief, p. 2. The Respondent additionally asserts Cretella testified he was not familiar with McCormick’s handwriting or signature nor that any other documents used by the Department could be used for comparison. R. Brief, p. 2. The Department responds to the Respondent’s objections by arguing that the statement is sufficiently authenticated by its consistency with other available evidence under Rule 901(b)(4). (Distinctive Characteristics and the Like. Appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances. Rule 901(b)(4), SCRE).

Based on the testimony offered by Cretella as well as the additional context provided by other admitted evidence, State’s Exhibit 12 meets the low authentication burden imposed by Rule 901. Cretella provided testimony regarding the circumstances under which he received the statement, namely that he requested the statement to memorialize prior conversations he and McCormick had conducted up to that point. The contents of the document itself are consistent with other evidence and testimony entered onto the record without objection. The statement is generally consistent with the billing records admitted as State’s Exhibit 9. The statement corresponds with information Cretella testified he received from McCormick as part of earlier

conversations. The information contained in McCormick's statement is consistent with the information relayed in the emails between Brisbon and McCormick included in the exhibit.⁷ Most convincingly, the contents of the document correspond with much of Brisbon's account of his interactions with McCormick during his internal affairs investigation. See, State's Exhibit 16.

While the document can be properly authenticated, its admission to the record is also potentially barred due to the statements contained in the document constituting hearsay evidence. "Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Rule 801(c), SCRE. "Hearsay is not admissible except as provided by these rules or by other rules prescribed by the Supreme Court of this State or by statute." Rule 802, SCRE. The Department argues that, despite McCormick's absence, her statements are not hearsay because they were not offered to prove the truth of the matter asserted but rather as evidence of the steps taken by the Department in course of investigating Brisbon's alleged misconduct. D. Brief, pp. 6-7. While the document does illustrate investigative steps taken by the Department, when examined in the context of the overall case presented against Brisbon, the statements contained therein pertain to the central point of the of the Department's allegation. Based on the totality of evidence presented at the hearing, there is no question the Department performed an extensive investigation into Brisbon's alleged misconduct. The probative value in admitting the statement for the Department's asserted purpose is minimal. The statement possesses significant probative value in proving the ultimate allegation against Brisbon. See, *State v. Hendricks*, 408 S.C. 525, 532-33, 759 S.E.2d 434, 438 (Ct. App. 2015).

The Department argues in the alternative that the exhibit should be admitted, if deemed hearsay, pursuant to the public record and/or report exception to the prohibition on hearsay. D. Brief, pp. 7-8. "Records, reports, statements or data compilations, in any form, of public offices or agencies, setting forth (A) the activities of the office or agency, or (B) matters observed pursuant to duty imposed by law as to which matters there was a duty to report..." are not excluded by the hearsay prohibition. Rule 803(8), SCRE. Specifically, the Department asserts that it bears a legal obligation to investigate its own officers for compliance with laws and policies, to include reporting alleged misconduct to the Academy. Once Cretella collected

⁷ Respondent's Brief does not address the exclusion of the email portion of the exhibit independently and relies on the same arguments advanced to exclude the statement itself. Department's addresses the issue at pp. 3-4.

McCormick's statement and included it in the Department's internal records, it be a public record or report. As such, according to the Department, the statement now falls within the exception created by Rule 803(8). D. Brief, pp. 7-8. Addressing the admission of the exhibit pursuant to a hearsay exception, the Respondent notes that doing so would deprive Brisbon of the opportunity to confront and cross-examine McCormick. R. Brief, p. 5.

Ultimately, the McCormick statement should be found to conform to the public records exception and, as such, is admissible. As noted by the Department, law enforcement agencies operate under a general legal obligation to uncover and discipline inappropriate conduct by their officers. More specifically, S.C. Code Ann. § 23-23-150(B)(1) mandates the chief executive officer of an agency report to the academy "the occurrence of any act or multiple acts by a law enforcement officer, who is currently or was last employed by his agency, he reasonably believes to be misconduct." This command implicitly creates a duty to investigate suspected acts of misconduct so that an appropriate report can be made in compliance with the statute. The testimony provided by Cretella establishes that McCormick's statement was collected during just this sort of investigation.

Misconduct

The Department was required to prove by the preponderance of evidence that Brisbon engaged in misconduct, as defined in S.C. Code Ann. § 23-23-150, through, "[t]he misrepresentation of employment related information" while employed by the Department.

"Preponderance of evidence" is evidence which convinces the fact finder as to its truth. See, e.g., *Pascoe v. Wilson*, 416 S.C. 628, 640, 788 S.E.2d 686, 693 (2016) (citing *Gorecki v. Gorecki*, 387 S.C. 626, 633, 693, S.E.2d 419, 422 (Ct. App. 2010)). Further, a showing of a preponderance of the evidence means, "[t]he greater weight of the evidence, not necessarily established by the greater number of witnesses testifying to a fact but by evidence that has the most convincing force; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other. . . stronger evidence, however slight the edge may be." See, "preponderance of evidence", *Black's Law Dictionary*, (11th ed. 2019).

Based on the evidence presented at the contested case hearing in this matter, the Department has alleged Brisbon misrepresented employment related information in collecting administrative pay or by negotiating his own compensation rate in excess of what was permitted

by Department policy. Accordingly, to prove the allegation against Brisbon, the evidence presented at the hearing must have been such that, after consideration of the entire record in this matter, one could reasonably conclude that Brisbon made misrepresentations regarding these two issues.

To “misrepresent” may be defined as “to give a false or misleading representation of usually with an intent to deceive or be unfair.” See, “misrepresent”, *Merriam-Webster Dictionary* online at <https://www.merriam-webster.com/dictionary/misrepresent>. A “misleading” statement is one that is “deceptive.” See, <https://www.dictionary.com/browse/misleading>. A “deceptive” statement is a statement, “tending to having power to cause someone to accept as true or valid what is false or invalid.” See, “deceptive”, *Merriam-Webster Dictionary* online at <https://www.merriam-webster.com/dictionary/deceptive>.

As previously noted, the Department’s allegation is twofold, first, that Brisbon engaged in misrepresentation by requiring third parties to provide him administrative compensation and, second, that Brisbon misrepresented the hourly rate he was to earn based on providing off-duty services. In regard to Brisbon’s receipt of administrative compensation, it is clear from the record that Brisbon did require third party entities to compensate him for time spent staffing off-duty assignments but not physically working them. The various records presented by the Department, as well as Brisbon’s own testimony, offer conflicting and inconsistent accounts as to whether Brisbon charged a flat fee for these services or was paid on an hourly basis. The distinction between these two different compensation schemes is ultimately immaterial to a determination of whether Brisbon engaged in misrepresentation. Brisbon established through his own testimony that, regardless of how his compensation was calculated, the payments were rendered to him in exchange for the specific service of staffing and otherwise performing administrative functions connected to the off-duty work completed by other officers. The Department’s policy neither requires nor forbids officers from receiving compensation for such services. However, based on the testimony provided by Cretella and the statement submitted by McCormick, Brisbon represented to McCormick that the charging of an administrative was required by the Department. Such a contention is not supported by the Department’s policy. For his part, Brisbon attributes the collection of the administrative compensation to unrecorded conversations he purportedly had with the Department’s former chief, Mullen. As discussed below, Brisbon’s blanket defense that all out of policy conduct on his part was authorized by Mullen is unconvincing. As such, the

Department has demonstrated Brisbon misrepresented the authority by which he collected administrative compensation.

Additionally, Brisbon misrepresented the hourly rate he was permitted to collect pursuant to Department policy. The Department's policy concerning off-duty employment sets specific amounts officers are able to earn based on the nature of the assignment they fulfill. The versions of this policy present in the record (State's Exhibit 1 and State's Exhibit 15) are consistent on this point. Both the 2010 and 2018 version of the policy state,

The Chief of Police will establish a standardized minimum and maximum hourly rate, after consultation with those individuals deemed appropriate. Once established, this will be the minimum and maximum rate that can be charged by any officer for police related services. No officer will work for any or less than the established hourly rate.

The 2010 version of the policy makes an exception to this provision, stating, "All contracted assignments where the fee has already been set prior to October 9, 2009 will remain in place." This exception was specifically removed with the October 1, 2018 revision of the policy.

On March 14, 2019, Brisbon authored an email to an individual identified as "Riley," a representative of the film industry with whom Brisbon was coordinating off-duty assignments. Brisbon quotes the rates provided in the Department's 2018 off-duty policy establishing the hourly rate for an event commander at \$40.00 per hour. Brisbon then goes on to state that he, as an event commander holding the rank of captain, should actually be paid \$50.00 per hour. Brisbon then offers to "save you some money" and split the difference between his purported rate and the \$45.00 per hour rate he represents supervisors are entitled to receive. By his own testimony, Brisbon established he charged \$47.50 per hour in this instance. Despite having quoted actual departmental policy immediately beforehand, Brisbon misrepresents his ability, pursuant to that policy, to collect an hourly rate deviating from what is established by the policy. It is notable that in quoting the policy to Riley, Brisbon specifically omits the policy language stating, "Once established, this will be the minimum and maximum rate that can be charged by any officer for police related services. No officer will work for any more or less than the established rate."

Brisbon offers a number of defenses for his conduct. Particularly relevant to his misrepresentation of his hourly rate is that officers working on this particular assignment were being paid \$40.00 per hour, therefore entitling him to collect a rate \$10.00 higher. Brisbon explained that this was a common practice within the Department and was designed to ensure that assignments with a critical need for officers could attract the necessary personnel. This reasoning

does not, however, explain why it would be necessary for Brisbon, as the administrator, to receive a higher rate. Brisbon testified that the work he performed in relation to film industry assignments was administrative, such as, finding officers, assisting them with their applications, and collecting payroll information, not physically working the functions in a law enforcement capacity. Brisbon was fulfilling these duties on a voluntary basis and if he was unsatisfied with the compensation as defined in policy was free to withdraw from the assignment. The services offered by Brisbon would have, based on the testimony of Hawkins, been fulfilled by either the Professional Standards Unit or Special Events Unit for free.

Brisbon also argues in defense of his conduct, that he was permitted to deviate from the standards established by policy due to the instructions he received from the Department's previous chief, Mullen. Brisbon asserted multiple times, in response to nearly all of the Department's allegations of wrongdoing, that his actions were authorized by these instructions. While it is true that certain deviations from established policy were authorized in relation to the Port Authority assignment, under the auspices of the memorandum of understanding with the Port Authority, the Department has presented specific evidence refuting Brisbon's claim he was permitted to violate policy with respect to all or most of the jobs he administered. (State's Exhibit 11). Communications from Mullen, obtained as part of the Department's investigation, deny allowing policy deviations from film industry events and provide specific reasoning for the denial. Additionally, at the time of such communications, Mullen was no longer employed or connected with the Department. In contrast, Brisbon offered self-serving testimony that anytime he approached Mullen with a new administrative opportunity he received blanket instructions to, "treat it like the Port" and, in turn, reap significant personal financial benefit. Brisbon offered no additional facts or evidence, tending to corroborate his assertions. Ultimately, Mullen's denial of such conversations should be deemed more credible.

Brisbon offers a third argument in defense of his conduct, that the language of the Department's policy itself rendered him an independent contractor, rather than an employee of the Department. As such, Brisbon asserts he was, in effect, free to disregard the policy's limitations and guidelines on the terms of his employment. Brisbon cites the policy language stating, "Additionally, payment arrangements, collection, and terms that are associated with such matters are the responsibility of the officers employed by the employer and not the Department." The cited statement is immediately preceded by language addressing acceptable forms of payment.

“Employees working off-duty jobs will be compensated for services rendered only in the form of checks drawn on the business organization’s bank account. If an individual sponsors the event, a check drawn on that persons [sic] account will be acceptable. Under no conditions will an officer work an off-duty job for cash.” The juxtaposition of these statements supports the conclusion that the language cited by Brisbon does not give him a free hand to negotiate every aspect of his employment relationship with the third-party entities. The preceding language of the policy specifically removes certain aspects of the employment relationship from negotiation. Just as the policy prevents officers from accepting cash payment, the policy specifically prohibits officers from working hourly rates above or below those set therein.

Brisbon’s larger argument that he was essentially an independent contractor, exempt from the terms of the policy as a whole is equally unpersuasive. Brisbon’s access to off-duty employment is directly premised on his employment as a law enforcement officer with the Department. His ability to fulfill the job duties for which he was compensated is inherently connected to this employment. Without access to officers utilizing authority and equipment supplied as a result of their employment with the Department, Brisbon would have no services to offer. Brisbon unavoidably served as a representative of the Department when working in his off-duty capacity. As such, despite his assertions to the contrary, Brisbon was obligated to operate within the confines set by the Department which afforded him these off-duty opportunities in the first place.

In summary, the evidence presented by the Department establishes that Brisbon misrepresented employment related information pertaining to administration of off-duty assignments. As such, the misconduct alleged by the Department to have been committed by Brisbon, as set out in the Personnel Change in Status Report, should be deemed supported and proven by the preponderance of evidence presented at the hearing on this matter.

RECOMMENDED FINDINGS OF FACT

Based on the foregoing, I recommend the following findings of fact:

1. The allegation of misconduct against George Brisbon, as reported in the Personnel Change in Status Report (Notification of Separation Due to Misconduct) provided to the Criminal Justice Academy (“Academy”) by the Charleston Police Department (“Department”), alleging Brisbon misrepresented employment related information is supported by the evidence adduced at the contested case hearing on February 28, 2023;

2. The Department has established by the “preponderance of evidence” that George Brisbon engaged in misconduct by misrepresenting employment related information relating to his off-duty compensation; and
3. The allegation of misconduct against George Brisbon set forth in the Personnel Change in Status Report by Department should be deemed proven by the evidence adduced at the contested case hearing.

RECOMMENDED CONCLUSIONS OF LAW

Based on the foregoing, I recommend the following conclusions of law:

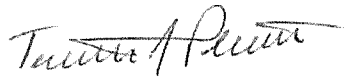
1. Pursuant to S.C. Code Ann. § 23-23-80 (6), the South Carolina Law Enforcement Training Council (“Council”) is authorized, *inter alia*, to “provide for suspension, revocation, or restriction” of law enforcement certification in accordance with the regulations promulgated by the Council;
2. Pursuant to S.C. Code Ann. Regs. 37-025, Council may deny law enforcement certification “based on evidence satisfactory to the Council that the candidate has engaged in misconduct”;
3. A review of the record in this matter discloses that George Brisbon committed misconduct, pursuant to S.C. Code Ann. § 23-23-150 (3) (h), through the “[m]isrepresentation of employment related information,” as reported to the Academy by the Department; and
4. The misconduct allegation reported by the Department has been proven by the preponderance of evidence and, pursuant to the provisions of S.C. Code Ann. Regs. 37-107, Council may conclude that, based on the evidence adduced at the contested case hearings and applicable statutes and regulations, George Brisbon has committed misconduct.

RECOMMENDED DISPOSITION

Based on the foregoing considerations and the evidence adduced at the contested case hearing of February 28, 2023, it is recommended that the South Carolina Law Enforcement Training Council:

- A) Issue its final agency decision, pursuant to S.C. Code Ann. Regs. 37-107 D. finding that an allegation of misconduct reported against George Brisbon by the Charleston Police Department has been proven by the preponderance of evidence; and
- B) Impose such sanction as the Council in its discretion deems appropriate pursuant to the authority set forth at S.C. Code Ann. Regs. 37-108 A.

I SO FIND AND RECOMMEND:

A handwritten signature in black ink, appearing to read "Timothy J. Plunkett", written in a cursive style.

Timothy J. Plunkett
Contested Case Hearing Officer

Date: June 9, 2023

GIST LAW FIRM, P.A.

**4400 North Main Street
Columbia, South Carolina 29203
Telephone (803) 771-8007
Facsimile (803) 771-0063**

**ATTORNEYS-AT-LAW
Donald Gist
Erica McCrea**

**Mailing Address
P.O. Box 30007
Columbia, South Carolina 29230**

December 2, 2022

Honorable Lewis J. Swindler, Jr., Director
Mr. James M. Fennell, Esquire
5400 Broad River Road
Columbia, South Carolina 29212

RE: George Brisbon Jr.
Case No.: 2020-CJA-02-08

Gentlemen,

Please note that I have been retained to represent Mr. George Brisbon, Jr. ex-Captain with the City of Charleston regarding the allegations of misconduct which is now before your agency to determine his certification status. I have done extensive investigation into the allegations which led to the termination of Mr. Brisbon and I represent him in the currently pending litigation, Brisbon v. The City of Charleston, in the Ninth Judicial Circuit, Case Number: 2020-CP-10-05157.

I am writing to request a contested case hearing regarding the allegations against my client which you previously noticed to Mr. Andrew J. Savage, Esq., as attorney to Mr. Brisbon on February 18, 2020. I am now counsel for Mr. Brisbon on this additional matter. Let this notice serve as my request for a contested case hearing with your agency in compliance with the 3-year statutory/administrative time limit.

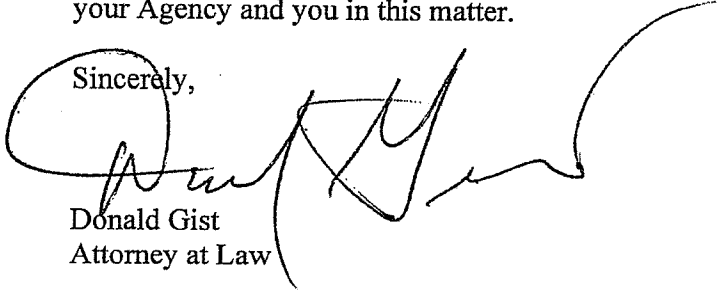
The case in Charleston County, Brisbon v. City of Charleston, is ongoing, still in discovery and is revealing everyday my support of my client's claims that at no time did he conduct misconduct while employed in the city of Charleston police department or the State of South Carolina as a certified police officer. Therefore, I am requesting that my notice for a contested hearing tolls the statute of limitations requirement. In addition, I am requesting

the contested hearing be stayed until the pending circuit court lawsuit, which alleges the same issues of misconduct, is concluded.

I will call you as of December 2, 2022 in addition to transmitting this letter. I ask that your General Counsel or Agency inform me of your decision no later than December 16, 2022 to honor my request. In the alternative if my request is not stayed, I am requesting all documents/evidence that has been provided by the City of Charleston or your investigator, Mr. Christopher B. Brumlow to date in anticipation of my having to move forward with the formal contested hearing.

I look forward to your response to my request and look forward to working with your Agency and you in this matter.

Sincerely,



Donald Gist
Attorney at Law

Cc: Erica McCrea, Esq.
Mr. George Brisbon



South Carolina Criminal Justice Academy

Christopher B. Brumlow, Investigator
Office of General Counsel
South Carolina Criminal Justice Academy
5400 Broad River Road
Columbia, South Carolina 29212
cbrumlow@sccja.sc.gov

I, George A. Busbon, hereby:



Request a Contested Case Hearing

If you are requesting a Contested Case Hearing, please provide the following contact information to assist with prompt scheduling of the hearing and other communications:

Mailing Address:

3910 Egret Pond Court
Johns Island, S.C. 29455

Phone Number:

803-693-1752

Home/Cell

E-Mail Address:

Redskin357@gmail.com

I Am Represented by Attorney Donald West
West Low Ave 803-771-8007

I understand that I am entitled to have an Attorney represent me at the Contested Case Hearing and during all proceedings from this point forward. I further understand that if I hire an Attorney to represent me in these proceedings that Attorney should send written notification of their representation of me to the South Carolina Criminal Justice Academy. Finally, I understand that my request for a contested case hearing must be served on the Academy within three (3) years after receipt of the written notice advising me of my right to a contested case hearing. If I fail to request a contested case, I understand that I will have waived my right to having one. Additionally, the Law Enforcement Training Council will proceed to enter a final agency decision, against me, to deny me a law enforcement certification for specified time period, up to permanent denial.

Respectfully,

George A. Busbon

Signature

George A. Busbon

Print Name

12-02-2022

Date

249-23-2201

Academy ID or Social Security



South Carolina Criminal Justice Academy
Certification-Compliance
PERSONNEL CHANGE IN STATUS REPORT:
NOTIFICATION OF SEPARATION DUE TO MISCONDUCT



This form **MUST** be completed within 15 days of the discovery of any event of misconduct which is determined to be "FOUNDED" by the agency or department. The Misconduct Report Form, Separation Supplement, and all documentation related to the misconduct must be forwarded to the Criminal Justice Academy's Certification Unit.

Reporting Department *

Charleston City Police Dept.

Agency Email *

harvillj@charleston-sc.gov
example@example.com

Agency Phone # *

843 - 720-2437
Area Code Phone Number

Today's Date *

02-13-2020
Date

Date of Separation *

01-21-2020
Date

Officer's Name *

George	Anthony	Brisbon
First Name	Middle Name	Last Name

Academy ID # *

7158-4327
XXXX-XXXX

Certification Type *

Class 1 LE

Officer's Current Home Address *

3910 Egret Pond Court
Street Address

Street Address Line 2

Johns Island

SC

City

State / Province

29455

Postal / Zip Code

Home Telephone # *

843

- 559-9952

Area Code

Phone Number

Separation Action *

Resignation INVOLVING MISCONDUCT as defined in S.C. Code Section 23-23-150 and/or S.C. Code of Re v

Only events which have been substantiated by investigation have been reported above. The facts & information herein are true & accurate to the best of my knowledge. DO NOT ATTACH, OR SUBMIT, ANY ADDITIONAL DOCUMENTS.

Please indicate the nature of the misconduct by selecting the appropriate choice below: *

- ☐ Conviction, plea of guilty, plea of no contest or admission of guilt (regardless of withheld adjudication) to a felony, a crime punishable by a sentence of more than one year (regardless of the sentence actually imposed, if any) crime of moral turpitude in this or any other jurisdiction;
- ☐ Unlawful use of a controlled substance;
- ☐ The repeated use of excessive force in dealing with the public and/or prisoners;
- ☐ Physical or psychological abuses of members of the public and/or prisoners;
- ☐ Dangerous and/or unsafe practices involving firearms, weapons and/or vehicle which indicated either a willful or wanton disregard for the safety of property;
- ☐ Dangerous and/or unsafe practices involving firearms, weapons and/or vehicle which indicated either a willful or wanton disregard for the safety of persons;
- ☒ Misrepresentation of employment-related information;
- ☐ Willfully making false, misleading, incomplete, deceitful, or incorrect statements to a law enforcement officer, a law enforcement agency, or a representative of the agency, except when required by departmental policy or by the laws of this State;
- ☐ Willfully making false, misleading, incomplete, deceitful, or incorrect statements to any court of competent jurisdiction, or their staff members, whether under oath or not;
- ☐ Willfully providing false, misleading, incomplete, deceitful, or incorrect information on a document, record, report, or form, except when required by departmental policy or by the laws of this State;
- ☐ The falsification of any application for certification and training based upon which the officer was admitted for training;
- ☐ Providing false information to the Criminal Justice Academy;
- ☐ Willful submission of false, misleading, incomplete, deceitful, or incorrect statements to the Criminal Justice Academy, or its representatives

Employing Agency Head (Chief, Sheriff, Director) *

Luther Reynolds

2-13-20

Clear

Date *

02-13-2020

D

Name (Chief, Sheriff, Director) *

Luther

First Name

Middle Name

Reynolds

Last Name

Official Title (Chief, Sheriff, Director) *

Chief of Police

Agency Head Academy ID Number *

4669-6074

XXXX-XXXX

South Carolina Criminal Justice Academy Certification-Compliance

PERSONNEL CHANGE IN STATUS REPORT NOTIFICATION OF SEPARATION DUE TO
MISCONDUCT-PAGE 2

(For any separation involving misconduct as defined in S.C. Code Section 23-23-150, completion
of this form is REQUIRED)

Officer's Name *

George

First Name

Anthony

Middle Name

Brisbon

Last Name

Academy ID # *

7158-4327

XXXXXX

Employing Agency's Contact Person (for more information) *

Sgt.	Joseph		Harvill
Prefix	First Name	Middle Name	Last Name

Contact Telephone Number *

843 - 720-2437

Area Code Phone Number

The below information is **REQUIRED** for all separations due to misconduct:

Reason for Separation: (Do not use generic terminology such as conduct unbecoming, failed to meet agency standards, violation of agency operating procedures, etc. Be specific. Detailed information describing act(s) of misconduct is necessary for efficient processing. Attach additional sheets if necessary for full documentation.) **DO NOT TYPE "SEE ATTACHED." USE THIS FORM TO WRITE A DESCRIPTION OF THE ALLEGED MISCONDUCT.**

Type description of the alleged misconduct *

A Charleston Police Department (CPD) administrative investigation was opened on July 31, 2019, involving employee Captain George Brisbon, a Police Officer. While attending a meeting with representatives from the Charleston County School District (CCSD), Chief Luther Reynolds was informed by the Director of Security and Emergency Management, Michael Reidenback, that a CPD supervisor was charging an administrative fee for managing an off-duty security assignment at Sanders Clyde Elementary School.

During the administrative investigation for the CPD supervisor, it was discovered that Captain Brisbon was also involved in the practice of charging an administrative fee for managing off-duty security assignments. Captain Brisbon negotiated a \$25 fee with the Thomas Bennett House to be paid to himself if any other officer besides him worked the off-duty. This fee was for him taking the time to find someone to work the off-duty job at the Thomas Bennett House when he (Brisbon) was unavailable. A review of the financial documentation provided by the Thomas Bennett House shows Captain Brisbon actually received an administrative fee of \$150 per month for managing the off duty assignment. It should be noted that the CPD has an Office of Special Events and Off-Duty Employment, which does the scheduling of off-duty jobs at no cost to the public.

In addition to the administrative fees to the Thomas Bennett House, the investigation revealed that Captain Brisbon was charging multiple duty hours for other off-duty assignments and large scale events that he managed, to include the Film Industry and Volvo Center Concerts. Captain Brisbon attempted to justify these extra hours by stating that Chief Greg Mullen had authorized him to run the large scale events as he did with the Carnival Cruise Ship off-duty contract that the City of Charleston had negotiated several years prior. Chief Mullen adamantly denied authorizing such charges.

On January 15, 2020, CPD held an administrative hearing for Captain Brisbon following the conclusion of the command review process. During the proceeding, the following Departmental charges were identified and sustained as violations:

17.6 Conduct Unbecoming of an Officer

17.9 Integrity

50.9 Off Duty Compensation

Subsequently, the Charleston Police Department recommended termination for Captain Brisbon; however, he appealed the findings to Chief Reynolds. On January 21, 2020, Chief Reynolds upheld the original charges and the recommendation for termination.

Continue If needed:

Criminal Charges Filed *

☐ Yes ☒ NO

Only events which have been substantiated by investigation have been reported above. The facts & information herein are true & accurate to the best of my knowledge. DO NOT ATTACH, OR SUBMIT, ANY ADDITIONAL DOCUMENTS.

Employing Agency Head (Chief, Sheriff, Director) *

Luther Reynolds

2-13-20

Clear

Date *

02-13-2020

Date

Name (Chief, Sheriff, Director) *

Luther

First Name

Middle Name

Reynolds

Last Name

Official Title (Chief, Sheriff, Director) *

Chief of Police

Agency Head Academy ID Number *

4669-6074

XXXX-XXXX

NOTE: A willful failure to report may subject the violator to a civil penalty as provided by law. The report shall be made within fifteen days of the final agency or department action resulting from the internal investigation conducted by the agency or department. No allegation of law enforcement certification misconduct in an original personnel change in status form, amended form, or any other form more than thirty days after the officer's separation from an agency, unless extenuating circumstances exist, as determined by the Council.*

1 SOUTH CAROLINA CRIMINAL JUSTICE ACADEMY

2 LETC CASE NUMBER: 2020-CJA-02-08

3

4 IN THE MATTER OF THE LAW ENFORCEMENT
5 CERTIFICATION OF GEORGE BRISBON

6

Transcript of Hearing

7

8

9

10

DATE: Tuesday, February 28, 2023

11

TIME: 10:23 a.m.

12

LOCATION: South Carolina Criminal Justice
Academy
5400 Broad River Road
Columbia, South Carolina

13

14

15

REPORTED BY: Robin Dunn
South Carolina Court Reporter

16

17

18

19

20

21

22

23

24

25

ORIGINAL

1 APPEARANCES:

2

3 Presiding: Hearing Officer Timothy J. Plunkett
4 South Carolina Criminal Justice Academy
5 Columbia, South Carolina

6

7 For George Brisbon
8 Donald Gist, Esquire
9 Gist Law Firm, PA
10 Post Office Box 30007
11 Columbia, South Carolina 29230

12

13 For Charleston Police Department
14 Caroline Wrenn Cleveland, Esquire
15 Cleveland & Conley, LLC
16 171 Church Street
17 Charleston, South Carolina 29401

18

19

EXHIBITS

20

21 Council Exhibit Number 1, Personnel Change
22 in Status Form 13

23

24 State's Exhibit No. 1, Statement 27

25

26 State's Exhibit No. 2, E-mail 29

27

28 State's Exhibit No. 3, Sign-Up 34

29

30 State's Exhibit No. 4, List of Officers 36

31

32 State's Exhibit No. 5, Original List 37

33

34 State's Exhibit No. 6, Sign-Up for Concert 59

35

36 State's Exhibit No. 7, Sign-Up for Concert 60

37

38 State's Exhibit No. 8, Sign-Up for Concert 61

39

40 State's Exhibit No. 9, Scheduling Thomas
41 Bennett House 66

42

43 State's Exhibit No. 10, E-mail 69

44

45 State's Exhibit No. 11, E-mail 73

46

1	State's Exhibit No. 12, Affidavit	77
2	State's Exhibit No. 13, Authorization Form	81
3	State's Exhibit No. 14, Investigative Overview	83
4	State's Exhibit No. 15, Policy	85
5	State's Exhibit No. 16, George Brisbon Interview	117
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1 PROCEEDINGS

2 HEARING OFFICER: Good morning. My name
3 is Timothy Plunkett. I'm an attorney employed by
4 the South Carolina Criminal Justice Academy and have
5 been designated by the South Carolina Law
6 Enforcement Training Council in accordance with
7 South Carolina Code Section 23-23-80 to sit as the
8 hearing officer for today's contested case hearing.

9 The hearing today is a certification
10 contested case hearing for George Brisbon.
11 Mr. Brisbon timely requested today's hearing after
12 being notified by the Criminal Justice Academy that
13 an allegation of misconduct had been filed against
14 him by the Charleston Police Department. This
15 allegation could affect Mr. Brisbon's ability to be
16 certified as a law enforcement officer in the State
17 of South Carolina.

18 The purpose of today's hearing is to
19 receive evidence that will allow the Law Enforcement
20 Training Council to render a final Agency decision
21 as to whether Mr. Brisbon is eligible for
22 certification as a law enforcement officer in the
23 State of South Carolina.

24 The case number for today's hearing is
25 2020-CJA-02-08. Mr. Brisbon is represented at

1 today's hearing by Mr. Donald Gist. Mr. Gist is a
2 member in good standing with the South Carolina Bar.
3 The Charleston Police Department is also represented
4 at today's hearing by Ms. Caroline Cleveland. She
5 is also a member in good standing with the
6 South Carolina Bar.

7 Anything said during today's proceeding
8 will be recorded so that a transcript may be
9 provided to the Law Enforcement Training Council for
10 its review.

11 My role in the proceeding is as a neutral
12 hearing officer. I have been provided prior to
13 today's hearing a copy of the personnel change in
14 status report, which includes the allegation of
15 misconduct made by the Charleston Police Department
16 against Mr. Brisbon, as well as documentation
17 previously provided to Mr. Brisbon by the Criminal
18 Justice Academy advising him of the misconduct
19 allegation and of the availability of the contested
20 case hearing regarding that allegation.

21 These documents provide the jurisdictional
22 basis for today's hearing in accordance with
23 Articles I and V of the Criminal Justice Academy
24 Regulations.

25 And just so that we're all on the same

1 page, that is the packet of documents that was at
2 the -- each respective side of the table when you
3 arrived.

4 These documents are not considered
5 substantive evidence in and of themselves, but based
6 on their jurisdictional role, I will in accordance
7 with Rule 201 of the South Carolina Rules of
8 Evidence take judicial notice of these documents.

9 I will preside over all procedural aspects
10 of the hearing, ruling on the admissibility of
11 evidence offered by either party and on any
12 objections raised thereto.

13 Because today's hearing has been convened
14 solely to address the specific misconduct allegation
15 made against Mr. Brisbon by the Charleston Police
16 Department, any offered evidence that is extraneous
17 to that allegation will not be entertained.

18 Because this is a contested case within
19 the meaning of the South Carolina Administrative
20 Procedures Act, the South Carolina Rules of Evidence
21 as applicable to proceedings before the Court of
22 Common Pleas will apply to today's hearing, as will
23 provisions of South Carolina Code Section 1-23-330
24 regarding the evidentiary aspects of contested case
25 hearings.

1 In accordance with the requirements of
2 Regulation 37-105H of the Criminal Justice Academy
3 regulations, evidence offered by the Charleston
4 Police Department and accepted into evidence will be
5 labeled as States exhibit and numbered sequentially.
6 Evidence offered by Mr. Brisbon and accepted into
7 evidence will be labeled as Respondents exhibit and
8 also numbered sequentially. Evidence entered
9 pursuant to judicial notice will be labeled as
10 Council exhibit.

11 The burden in the contested case rests
12 entirely upon the Department to prove the allegation
13 of misconduct it has made against Mr. Brisbon.
14 There is no requirement that Mr. Brisbon prove that
15 he did not commit the act set forth in the
16 allegation of misconduct. He is presumed at the
17 outset of the hearing to have not committed the
18 alleged misconduct, and that presumption will remain
19 until such time as the Department has met its burden
20 of proof.

21 The procedural order that we're going to
22 follow for today's hearing, we're going to start
23 with opening statements, beginning with the
24 Department. Mr. Brisbon will then have an
25 opportunity to make an opening statement or defer

1 that until the presentation of his case in chief.

2 We will then have a presentation of case
3 in chief by the Department, an opportunity for the
4 officer to do the same. There is an opportunity for
5 rebuttal and surrebuttal evidence by both parties if
6 deemed necessary.

7 And we will conclude with closing
8 arguments, beginning with the Department and
9 finishing with the officer.

10 Each party will have the opportunity to
11 call witnesses and to present evidence. Any person
12 who is called to testify will be required to take an
13 oath to tell the truth. The oath requirement will
14 also apply to Mr. Brisbon should he testify today.

15 The party calling its own witnesses will
16 conduct a direct examination of that witness. The
17 opposing party will then have the opportunity to
18 cross-examine that witness. Limited redirect and
19 re-cross examination may also be permitted.

20 As the hearing officer, I may also elect
21 to ask questions of any of the witnesses to include
22 Mr. Brisbon should he provide testimony during
23 today's proceeding.

24 At the conclusion of today's hearing, I
25 will draft and provide to the Law Enforcement

1 Training Council my recommendations based on
2 findings of fact and conclusions of law I deem to be
3 supported by the evidence received at today's
4 hearing. I may also include a recommendation to the
5 Council as to an appropriate sanction pursuant to
6 Regulation 37-108.

7 My recommendation is not binding on the
8 Training Council, and in making its final agency
9 decision regarding this case, the Council is not
10 obligated to accept my recommendation and may elect
11 to disregard or modify my recommendation and
12 findings as it sees fit. A copy of my findings and
13 recommendations will be provided to both parties.

14 Either party will have the opportunity in
15 accordance with Code Section 23-23-150E to file a
16 motion in opposition to my findings and
17 recommendations within 15 working days of their
18 receipt.

19 The opposing party will have the
20 opportunity in accordance with the same statutory
21 provision to file a response to the motion in
22 opposition within ten working days of the receipt of
23 the motion in opposition.

24 If both parties agree to receive these
25 documents by e-mail, which we'll get to in just a

1 second, the filing deadlines for the aforementioned
2 motions will begin to run from the date and time
3 that e-mail notification is sent by me based on the
4 timestamp provided by my Outlook e-mail server.

5 The Training Council may elect to schedule
6 oral arguments on any motion in opposition and any
7 response to the motion in opposition if it deems
8 such argumentation necessary and will separately
9 notify the parties of the time and location for the
10 presentation of such oral argument.

11 After receiving that documentation and
12 becoming familiar with the facts of the case, the
13 Training Council will vote and issue a final Agency
14 decision in writing as to whether Mr. Brisbon is
15 eligible to be certified as a law enforcement
16 officer in the State of South Carolina.

17 The final Agency decision will be provided
18 in writing to both parties as required by
19 Code Section 23-23-150E.

20 Should the Council's final Agency decision
21 be adverse to Mr. Brisbon and should he wish to
22 appeal that decision, he may do so in accordance
23 with the procedures set forth in the South Carolina
24 Administrative Procedures Act at
25 Code Section 1-23-380 and 1-23-600D.

1 Should the Council's final Agency decision
2 be that the allegation of misconduct brought against
3 Mr. Brisbon has not been proven, all records related
4 to the misconduct allegation will be expunged by
5 Council within 30 days of the issuance of the final
6 Agency decision as required by
7 Code Section 23-23-150M.

8 The Charleston Police Department and
9 Mr. Brisbon by respectively reporting the allegation
10 of misconduct and by requesting today's contested
11 case hearing, as well as by their presence here
12 today, are deemed to have stipulated that today's
13 hearing will be conducted in accordance with the
14 requirements of the South Carolina Administrative
15 Procedures Act as it relates to contested case
16 hearings as set forth in Title I Chapter 23
17 Article III of the South Carolina Code of Laws.

18 Next we will address the delivery method
19 for the findings and recommendations and additional
20 documentation produced by today's hearing. The
21 default method for providing that documentation to
22 parties is certified mail. However, pursuant to
23 23-23-150E, we can substitute e-mail delivery of
24 that documentation instead if the parties consent to
25 it.

1 Mr. Gist, I'll start with you. Would you
2 consent to the e-mail delivery of today's
3 documentation, or would you prefer to receive it by
4 certified mail?

5 MR. GIST: I have no objection to e-mail
6 notification.

7 HEARING OFFICER: Okay. And, Mr. Gist, I
8 was unable to locate initially this morning a good
9 e-mail address for you. If you could, provide one
10 for us. She'll give it to you, my law clerk.

11 LAW CLERK: (Unintelligible.)

12 HEARING OFFICER: And cc to?

13 LAW CLERK: S-H-I-A-Z-A-T-I-N-D-A-L.gist
14 law firm@gmail.com.

15 HEARING OFFICER: All right. Thank you
16 very much.

17 And, Ms. Cleveland, would the City also
18 consent?

19 MS. CLEVELAND: The City consents. We
20 would like to ask that you sent it both to me and to
21 Ms. Mulloy, just so if one of us misses it, the
22 other one is awake.

23 HEARING OFFICER: Understood.

24 Ms. Cleveland, I have your e-mail address listed
25 currently as, C Cleveland @ Cleveland labor law.com.

1 MS. CLEVELAND: That is correct.

2 HEARING OFFICER: And what is Ms. Mulloy's
3 e-mail address?

4 MS. MULLOY: It's Mulloy H, M-U-L-L-O-Y H
5 @ Charleston-SC.gov.

6 HEARING OFFICER: All right. Thank you
7 very much.

8 All right. Finally, as I indicated
9 earlier, the personnel change in status report
10 misconduct form, which includes the allegation of
11 misconduct reported to the Criminal Justice Academy
12 by the Department against Mr. Brisbon and the
13 documentation previously provided to Mr. Brisbon by
14 the Criminal Justice Academy advising of that
15 allegation and of the availability of a contested
16 case hearing will be judicially noticed pursuant to
17 my discretion under Rule 201C of the South Carolina
18 Rules of Evidence as records supporting the
19 convening of today's hearing and will be marked as
20 Council Exhibit 1 and made part of today's record.

21 Council Exhibit 1, Personnel
22 Change in Status Report, was
23 admitted in evidence.

24 HEARING OFFICER: Before we commence, does
25 either party object with proceeding to the hearing

1 today?

2 Mr. Gist?

3 MR. GIST: No objection.

4 HEARING OFFICER: All right.

5 Ms. Cleveland?

6 MS. CLEVELAND: None.

7 HEARING OFFICER: And are there any
8 prehearing motions or other matters to be addressed
9 before we commence with the hearing?

10 MR. GIST: Not on our side.

11 MS. CLEVELAND: Or ours.

12 HEARING OFFICER: Okay. Thank you. It is
13 our practice to sequester potential witnesses before
14 they testify. If we could identify who will be
15 serving as witnesses for your side prospectively,
16 Mr. Gist.

17 MR. GIST: Charles Hawkins.

18 HEARING OFFICER: And, Ms. Cleveland.

19 MS. CLEVELAND: I have a department rep
20 who will also be a witness, Tony Cretella, and a
21 second witness, Dustin Thompson.

22 HEARING OFFICER: Okay. If you guys would
23 go -- the three of you would proceed with
24 Mr. Brumlow. We'll find a space for you guys.

25 (Off-the-record discussion.)

1 HEARING OFFICER: Ms. Cleveland, would you
2 like to offer an opening statement on behalf of the
3 Department?

4 MS. CLEVELAND: Very briefly.

5 Like many city police departments, CPD has
6 a frequent demand from third parties for off-duty
7 officers to work for security at special events.
8 And this is not a bad thing. It gives extra
9 security at these events, and it gives extra income
10 opportunities to the various officers. But,
11 obviously, it's potential for -- it's rife with
12 potential for abuse if there aren't rules.

13 The department does have a policy on
14 off-duty work. It specifies how much work can be
15 done, what officers can do and what rates -- what
16 their rates will be, and have certain rules on how
17 those rates are received. And that's important so
18 that it's run fairly.

19 We received information of -- of an
20 allegation of infractions to that policy and opened
21 an investigation first into Clyde Johnson and then
22 into Mr. Brisbon.

23 And the evidence and the testimony that
24 we're going to present today will give you the
25 process through which we investigated that

1 allegation and other allegations that flowed from it
2 as well, and the fact findings and conclusions to
3 which we came and the action which the City took.

4 HEARING OFFICER: All right. Thank you,
5 ma'am.

6 Mr. Gist, would you like to offer an
7 opening statement at this point or defer that
8 until --

9 MR. GIST: I'd like to offer an opening
10 statement.

11 HEARING OFFICER: Yes, sir.

12 MR. GIST: Again, I believe that the crux
13 of today's hearing with respect to the evidence and
14 the burden of proof, which lies with the City of
15 Charleston, rests with them. I believe that the
16 evidence today is going to clearly exonerate my
17 client from any official misconduct.

18 The practice by which I believe that I'm
19 very confident in is two things, one, that there
20 were two different policies implemented by the City
21 of Charleston with two different chiefs of police.
22 And the most compelling evidence that I'm going to
23 present today comes from State Law Enforcement
24 Division, which is the highest law enforcement
25 agency in this state, charged with the

1 responsibility of investigating misconduct.

2 And we believe that based upon the
3 investigations of the State Law Enforcement Division
4 that my client primarily should be totally
5 exonerated. There's no misconduct on his part.

6 Absent of the policies and procedures by
7 the department -- police department chief -- two
8 chiefs at the department, one policy says go north,
9 another policy says go south. My client was
10 involved in the policy that says go north. Any
11 evidence offered today is going to be clearly
12 substantiated by the two men who were responsible
13 during these special events. And that's why I have
14 them both here, my client, who I'm representing, as
15 well as Mr. Hawkins, who took over the events
16 process as his official job duty under
17 Chief Reynolds. Thank you.

18 HEARING OFFICER: All right. Thank you,
19 sir.

20 MS. CLEVELAND: I'd like to make a motion
21 that any evidence from SLED has zero relevance on
22 the investigation of the City and to
23 Mr. Brisbon's -- excuse me -- Captain Brisbon's
24 misconduct. SLED's investigation was limited to
25 whether or not any criminal conduct took place

1 during the process. Our investigation was limited
2 solely to, was our internal policy violated. That
3 was the sole basis for employment. Whatever finding
4 SLED made later as to whether or not Captain Brisbon
5 engaged in any criminal conduct has zero relevance
6 and should not be allowed to come into this hearing.

7 HEARING OFFICER: Okay.

8 MR. GIST: And certainly I want to respond
9 to that. I think when you take the totality of the
10 facts, the totality of the issues, and what is
11 before this hearing board today, I think that it is
12 very clear that the totality of the circumstances
13 have to be investigated. We didn't ask SLED to
14 investigate him. They did.

15 The other side of the coin, if they felt
16 that there was anything criminal, it didn't rise to
17 that level, but SLED looked at the in-depth
18 policies, looked at the in-depth procedures.

19 And aside from that, unless we want to
20 reconvene this hearing at a later date, which I
21 don't see the necessity, and call SLED in to ask
22 them their full scope, what was the scope of their
23 investigation, I think the report speaks for itself.
24 It comes in. It comes in as an official document of
25 the chief law enforcement agency in this state

1 charged with the responsibility of looking at not
2 just only criminal matters, but looking also at
3 whether or not he had any issues going on.

4 In order to address this matter, they had
5 to examine the policies and procedures of the City
6 of Charleston.

7 I ask that you -- that you deny her
8 motion.

9 HEARING OFFICER: Okay. At this point --
10 and I thank you both for your input on this matter.
11 Just as a point of clarification, the hearing today
12 is actually about the specific allegation that was
13 made under 23-23-150, which is that Mr. Brisbon
14 misrepresented employment information. That scope
15 may be larger or more narrow than a policy
16 violation. Generally, it is a little bit more
17 narrow than allegations of criminal conduct.

18 And, so, with that being the case, at this
19 point, I am not going to blanket exclude the SLED
20 report. I will wait until either party wants to
21 present that evidence, and we will look at the
22 context in which it is being presented in, as well
23 as, like Mr. Gist pointed out, the totality of the
24 circumstances that we've arrived at that point,
25 pursuant and, of course, subject to any of the other

1 rules of evidence that might apply to the admission
2 of any documentary evidence.

3 So, at this point, Ms. Cleveland, I am
4 going to deny the motion with that caveat on the
5 record.

6 MS. CLEVELAND: Thank you.

7 HEARING OFFICER: All right.

8 Ms. Cleveland, are there any additional motions from
9 the City?

10 MS. CLEVELAND: Not at this time.

11 HEARING OFFICER: All right. Mr. Gist,
12 are there any additional motions that you would like
13 me to take up before --

14 MR. GIST: Not at this time.

15 HEARING OFFICER: All right. Thank you.

16 Ms. Cleveland, I think you indicated
17 Mr. Cretella will be the first --

18 MS. CLEVELAND: Captain Cretella, yes.

19 HEARING OFFICER: All right. Thank you.

20 Anthony Cretella, being first duly sworn,
21 testified as follows:

22 - - - - -

23 EXAMINATION

24 BY MS. CLEVELAND:

25 Q Captain Cretella, could you give us,

1 please, the full spelling of your name, just so we
2 have it in the record?

3 A Sure. It's Anthony, A-N-T-H-O-N-Y.
4 Cretella, C-R-E-T-E-L-L-A.

5 Q And are you employed at the City of
6 Charleston Police Department?

7 A Yes, ma'am.

8 Q And what is your current position?

9 A The professional standards division
10 commander.

11 Q And in what rank?

12 A Captain.

13 Q And in 2019 when this was -- this issue
14 arose, what was your assignment at that time?

15 A I was a lieutenant over our internal
16 affairs unit.

17 Q Same assignment, lower rank.

18 A Yes, ma'am.

19 Q All right. And at that time, did you have
20 occasion to perform an investigation into alleged
21 misconduct of then Captain George Brisbon?

22 A Yes, ma'am, I did.

23 Q How did that come about?

24 A So in July of 2019, the Charleston County
25 School District was looking to get more officers

1 within their schools. A conversation was had
2 between the school security team and Chief Reynolds,
3 and it came up that at that time,
4 Corporal Clyde Johnson, who was running it off duty,
5 was charging an administrative fee to fulfill it.

6 Q And is that allowed?

7 A No, that's not, ma'am.

8 Q And, so, what did Chief Reynolds do with
9 that information?

10 A So, Chief Reynolds asked us to open an
11 internal investigation, and we opened an internal
12 investigation into Corporal Johnson charging an
13 administrative fee.

14 Q And were you part of that investigation?

15 A Yes, ma'am.

16 Q Did you sit in on the interview with
17 Corporal Johnson?

18 A Yes, ma'am.

19 Q And can you tell me -- tell us about that
20 interview. What was revealed during that interview?

21 A Sure. So during the interview, I was
22 interviewing Corporal Johnson, and I asked him if he
23 was charging an administrative fee. And said that
24 he was. I asked what was it, because I've never
25 heard of that terminology before. And he said

1 essentially that he charges an entity or whoever
2 he's having to provide officers for, some time of
3 overhead to fulfill the officers there.

4 Q Okay.

5 A And after that we said, who else in the
6 department is charging an administrative fee. He
7 said that he knows of people, but he was reluctant
8 at first to tell us. But then I reminded him that
9 he was in the Office of Internal Affairs and he
10 doesn't have an option. And then he said that at
11 that time Captain George Brisbon was charging an
12 administrative fee.

13 Q Did he identify any other officer who was
14 also charging administrative fees?

15 A No, ma'am.

16 Q Did he contend that that was allowed under
17 the policy? Did Corporal Johnson contend that what
18 he did wasn't wrong under the policy?

19 A It was wrong, ma'am, yes.

20 Q Did he ever admit that he thought it was
21 wrong?

22 A Yes, he did.

23 Q Okay. And was that when he identified
24 George Brisbon?

25 A Yes, ma'am.

1 Q And after you had that information, what
2 did you do with that information?

3 A After we learned of that, I brought it to,
4 at that time, Captain Walker's attention, who then
5 brought it to Chief Reynolds' attention, and it was
6 determined that we would open an investigation into
7 Captain Brisbon as well.

8 Q All right. And once the investigation
9 extended to Captain Brisbon, did you have any role
10 in that investigation?

11 A Yes, ma'am.

12 Q And can you tell me what your role was?

13 A So I was one of the lead investigators for
14 that investigation.

15 Q And in that capacity, did you have the
16 opportunity to interview Captain Brisbon?

17 A I did, ma'am.

18 Q And do you remember about how many times
19 you interviewed him?

20 A I believe it was four times.

21 Q Okay. Do you recall when the first one
22 was?

23 A It would have been around early August of
24 2019.

25 Q Does August 12th sound about right?

1 A Yes, ma'am.

2 Q And were these interviews recorded and
3 transcribed?

4 A Yes, they were.

5 Q Okay. And during this interview, what
6 transpired?

7 A We asked Captain Brisbon, you know, this
8 was the allegation. Was he aware of it. He said
9 that he was. We then asked him if he was charging
10 an administrative fee for any of the off-duties that
11 he ran. He said that he was. Then we asked him
12 what off-duties was he actually running so we could
13 go back and see what was going on.

14 Q Okay. And when you say running an
15 off-duty, what's the difference between running an
16 off-duty and working an off-duty job?

17 A So to work an off-duty job, I would go at
18 that time on our SignUpGenius link, which is
19 internet based, and I just sign up to work the
20 off-duty job. All that means is you're reporting --
21 you have a reporting time at any time, and you're
22 working in an officer capacity.

23 Q For a particular hour or hours.

24 A Yes, ma'am. And for running the job, that
25 means that you're overseeing it, that you're

1 coordinating who works it, and sending the invoice
2 to the company to ensure that everyone gets paid.

3 Q Is that sometimes called administering the
4 job?

5 A Yes, ma'am.

6 Q Okay. And, so, you had mentioned that
7 Captain Brisbon was telling you about the jobs that
8 he ran. What were those, to the best of your
9 recollection?

10 A The movie industry job, there was a job at
11 the ports, there was a job at a church, I believe it
12 was Baptist Hill Church. There was a job at the
13 Bennett House, and there was a job at the Daniel
14 Island Tennis Center where they did tennis
15 tournaments, and they also hosted concerts there.

16 Q Like big -- like Hootie and the Blowfish
17 kind of concerts.

18 A Yes, ma'am.

19 Q Okay. I'm going to ask you about the
20 ports first. Was there anything different about the
21 Port Authority assignment than -- than these other
22 jobs?

23 A Yes, it was.

24 Q Can you tell me what it was?

25 A At that time, Carnival Cruise Ship had

1 negotiations with the City that there was a member
2 of understanding that Captain Brisbon would be
3 getting paid administrative fee for that job because
4 of the amount of time that it took to actually get
5 the officers there and how often the cruise ship
6 came in.

7 Q And this was a formal contract negotiated
8 between cruise -- excuse me -- Port attorneys and
9 City attorneys and -- and had binding terms that
10 were very different from your off-duty policy; is
11 that correct?

12 A Yes, ma'am.

13 Q Okay. And, so, the Port's job did not fit
14 under your off-duty policy; is that correct?

15 A That is correct.

16 Q All of these others that you mentioned,
17 the film industry, the tennis center concerts, the
18 Bennett House and the church, would they all be
19 governed by CPD policy?

20 A Yes, ma'am.

21 MS. CLEVELAND: I'd like to enter
22 State's 1, please.

23 State's Exhibit No. 1, Policy
24 for Off-Duty Employment, was
25 admitted into evidence.

1 BY MS. CLEVELAND:

2 Q Captain Cretella, I'd like you to look at
3 what's been marked as State's 1 and tell me if you
4 can identify that document.

5 A This is a Charleston City Police
6 Department policy general order 50 that covers our
7 off-duty employment.

8 Q And is this the primary policy for
9 off-duty employment?

10 A Yes, ma'am.

11 Q And this was revised, it looks like, in
12 '10. Was there a later policy from '18?

13 A Yes, ma'am.

14 Q Okay. I want to look, if you will -- and
15 to try to make it easier, I put some yellow
16 highlighting on about the third page back.
17 Section 50.7. Would you read us just the first, it
18 looks like, three sentences there?

19 A Yes, ma'am. The chief of police will
20 establish a standardized minimum and maximum hourly
21 rate after consultation with those individuals
22 deemed appropriate. Once established, this will be
23 the minimum and maximum rate that can be charged by
24 any officer for police-related services. No officer
25 will work for any more or any less than the

1 established hourly rate.

2 Q Thank you. And after that, it goes on to
3 set the hourly rate. It looks like 25 for most
4 officers, 30 for supervisor, if required, and 35 for
5 a commander. Did those rates change slightly with
6 the 2018 version?

7 A Yes, they did.

8 Q Would they have gone to 30, 35, and 40?

9 A Yes, ma'am.

10 Q Okay. Other than that, was there any
11 major change in this compensation section of the
12 policy?

13 A Not during that time.

14 Q Okay. And what does -- what do you
15 understand it to mean, no officer will work for more
16 or less than the established hourly rate?

17 A That what the hourly rate is given, if
18 it's 25 or 30, that's -- that's the only
19 compensation you're supposed to be for and nothing
20 more or less than that.

21 Q Okay. Let's start with the film industry.

22 MS. CLEVELAND: I'd like to mark
23 State's 2.

24 State's Exhibit No. 2, E-mail,
25 was admitted into evidence.

1 BY MS. CLEVELAND:

2 Q Captain Cretella, can you tell me if
3 you've ever seen this document before?

4 A I have, ma'am.

5 Q And can you tell me what it is?

6 A Sure. It's an e-mail from then
7 Captain Brisbon from his personal e-mail to himself,
8 which was his City e-mail address, from a copy and
9 paste that he had at one point in time.

10 Q All right. And do you know who Riley is?
11 It starts, good afternoon, Riley.

12 A I believe he was the director of the --
13 who oversaw the off-duty at that point in time.

14 Q The film director?

15 A The film director, yes.

16 Q This was not a City employee, but a film
17 industry --

18 A No. He worked independently for the film
19 industry.

20 Q Okay. And Captain Brisbon starts off,
21 sorry for the late response. I'm in block training
22 this week at the department and not available during
23 the day. Please see the below that was taken from
24 our sworn police manual.

25 And then there's a paragraph that's been

1 cut and paste. Can you read that short paragraph
2 for me, please?

3 A Yes, ma'am. The chief of police will
4 establishment a standardized minimum and maximum
5 hourly rate after consultation with those
6 individuals deemed appropriate. The rate is \$30 per
7 hour and \$35 per hour for the supervisor if one is
8 required. In the event any authorized non-sworn
9 personnel are used to fulfill a position, the pay
10 rate will be \$25 per hour. When an officer or job
11 requires an event commander, the rate will be \$40
12 per hour. An event commander is a sworn employee
13 with the rank of lieutenant or above. Sergeants and
14 command personnel working secondary employment but
15 not designated as supervisors for the job will be
16 paid at the same rate as police officers.

17 Q And this seems to track the same language
18 that you just read us from the policy, but, also,
19 the rates have now increased to 30, 35, and 40. Is
20 that consistent with your understanding of the
21 policy increase that had happened since 2010?

22 A Yes, ma'am.

23 Q All right. Now, just below that,
24 Captain Brisbon says, as you can see from the
25 highlighted area, the rate for an event commander is

1 \$40. An event commander is required for any event
2 that goes before the City's special event
3 application process, movies, commercials, concerts,
4 major sporting events, Spoleto Festival, Food and
5 Wine Festival, Cooper River Bridge Run. This is
6 basically any event that might involve multiple
7 days, requires street blockage, special requests
8 from traffic and transportation. To save you some
9 money, I very rarely -- I very rarely hire a
10 sergeant at the supervisor rate, which would be 45.
11 As the event commander at the rank of captain, my
12 rank actually should be \$50. But, again, to save
13 you some money, I split the difference between the
14 two, and hope this clears up the remaining issue.

15 Do you see anything in the portion -- the
16 excerpt from the actual policy that would say that
17 an event commander rate would be \$50?

18 A No, ma'am. That's not mentioned at all in
19 policy.

20 Q And does it actually talk about the rate
21 for an event commander?

22 A It does.

23 Q What does it say? I'm sorry. The -- the
24 excerpt that's in that letter in front of you.

25 A Oh, I'm sorry.

1 Q He actually pulled it from the policy.

2 A A supervisor rate, which would be \$45 an
3 hour.

4 Q And then what about the commander rate.
5 It's sketchy there, because it was -- it's kind of
6 blacked out there.

7 A And then he's -- it's \$40 an hour for the
8 event commander.

9 Q And -- and then it actually defines event
10 commander, does it not, as a sworn employee with the
11 rank of lieutenant or above.

12 A Yes, ma'am.

13 Q That would include captain, right?

14 A Yes, ma'am.

15 Q So this language at the bottom, this
16 representation at the bottom from Captain Brisbon
17 that at the -- at the rank of captain, my commander
18 rate should actually be \$50, that isn't true at all,
19 is it?

20 A That's inaccurate.

21 Q And, so, what is he doing here?

22 A It looks like he's negotiating a surcharge
23 for himself because he's saying as a rank, a captain
24 should be getting paid more than someone at
25 lieutenant or below.

1 Q But to save you some money, I'm going to
2 split the difference and -- and just take the 47.50.
3 Is that --

4 A He's negotiating a price.

5 Q Thank you. And is that prohibited by your
6 policy?

7 A Yes, ma'am.

8 Q Did you ask Captain Brisbon if he had any
9 records about other film jobs so you could look at
10 hours and pay?

11 A We did.

12 Q And what was the answer?

13 A That he was unable to provide any
14 documentation.

15 Q He was the record keeper. He was
16 administrator, but he had no records.

17 A Correct.

18 Q Thank you. Did -- let's go to concerts
19 next.

20 MS. CLEVELAND: This will be State's 3.
21 State's Exhibit No. 3, Sign-up
22 Sheet, was admitted into
23 evidence.

24 MS. CLEVELAND: This is 4.
25 Sate's Exhibit No. 4, List of

1 Officers, was marked for
2 identification.

3 BY MS. CLEVELAND:

4 Q All right. So looking at State's
5 Exhibit 3, can you tell me if you are familiar with
6 this document?

7 A Yes. This is the SignUpGenius that we
8 used at that time to sign up for an off-duty event.

9 Q And this was a concert?

10 A Yeah. It looks like it was a Hootie
11 concert on August 10th and 11th.

12 Q Does that mean there -- same concert two
13 nights in a row?

14 A Yes, ma'am.

15 Q Like a benefit?

16 A Yes, ma'am.

17 Q All right. And it looks here like it
18 says, Friday and Saturday. Friday, 5:30 p.m. to
19 12 a.m. Is that what you see on the -- mid-way down
20 the first page?

21 A Yes, ma'am.

22 Q And then below that, the next page, is
23 that officers signing up for the Friday duty?

24 A Yes.

25 Q Okay. And then behind that, there's

1 another sheet that talks about Saturday. And is
2 that a list of officers who signed up to work on
3 Saturday?

4 A Yes, it is.

5 Q And are there some of those officers who
6 signed up to work both Saturday and Sunday, like
7 Jack Weiss? He's easy to find at the bottom of the
8 list. I think he's on both of them. Yeah. Well,
9 he's not at the bottom both, but he's on both lists.
10 Yolanda Brown is another one. She's in all caps.

11 A Yes, ma'am.

12 Q If you'll look on State's Exhibit 4, the
13 one with the yellow line across it, that is a copy
14 of the list of officers worked and the amounts that
15 they were paid. I will represent to you that the
16 handwriting out to the left is my own. That was not
17 on the original document. I do have the original
18 clean document if Mr. Gist would like to look at it.
19 But the handwriting is my own.

20 And what I did for ease in review, the
21 first column there is, how many nights did each
22 officer sign up for.

23 MR. GIST: I'm sorry. Which exhibit are
24 you making reference to?

25 MS. CLEVELAND: This is State's 4.

1 MR. GIST: Okay. And you're saying the
2 handwriting is --

3 MS. CLEVELAND: The handwriting off to the
4 left is my own. I was just tabulating. If you look
5 at State's 3 --

6 MR. GIST: Do you have the original?

7 MS. CLEVELAND: I do. Right here.

8 Let's make this State's 5, since he wants
9 it there.

10 State's Exhibit No. 5, Original
11 list, was admitted into
12 evidence.

13 MR. GIST: I want to place a standard
14 objection to Exhibit No. 4 on the basis of
15 authenticity. It's not an acceptable business
16 record. It's an altered business record that's been
17 modified by counsel. Any questions with respect to
18 this witness asking him about the modified
19 interpretation by counsel, I think, are totally
20 irrelevant. It doesn't represent under the rules of
21 evidence an accurate business record.

22 She has every opportunity to question him
23 based upon Exhibit No. -- the original. I have no
24 objection to the original, but the Exhibit No. 4 is
25 not an authentic business record.

1 It is also on direct can be used to lead
2 him into his questions -- questions and answers on
3 direct. I think that it's totally irrelevant under
4 the Rules of Civil Procedure, as well as the
5 South Carolina Rules of Evidence.

6 MS. CLEVELAND: It's not offered as a
7 business document. It's offered as an exhibit for
8 our hearing.

9 MR. GIST: It's been offered as an exhibit
10 for a hearing, which has overall relevance to the
11 outcome of this hearing. And if she's questioning
12 him as to her calculations to provide substantive
13 evidence to the hearing officer, I think that she's
14 got to ask him those questions based upon the
15 original document, not a created document by
16 counsel. That it totally, totally in violation of
17 Rules of Evidence. She can't -- counsel can't add
18 her own interpretation, which this is what
19 Exhibit No. 4 is, as a witness on direct exactly
20 what those -- what those -- what her calculations
21 are.

22 MS. CLEVELAND: They're not even
23 calculations. They're simply the --

24 MR. GIST: Sir, the evidence is the
25 evidence.

1 HEARING OFFICER: Right. I'm going to
2 sustain the objection. If you'd like to question
3 the witnesses using State's Exhibit 5, I think that
4 would be --

5 MS. CLEVELAND: I will.

6 HEARING OFFICER: -- the more proper way
7 to do it.

8 MS. CLEVELAND: Then perhaps as you go
9 with 5, you can make your own --

10 MR. GIST: So you want to make Exhibit
11 No. 4, No. 5?

12 MS. CLEVELAND: No. I want to keep -- I'm
13 keeping their same numbers.

14 HEARING OFFICER: We'll keep --

15 MS. CLEVELAND: You can object to me
16 asking questions, but it's in evidence.

17 HEARING OFFICER: We'll keep the same
18 numbers, just because of the way -- just because of
19 the fact that we ruled on this objection.

20 MR. GIST: That's fine. No problem.

21 HEARING OFFICER: And then the -- and
22 then, like I said sustain Mr. Gist's objection.

23 BY MS. CLEVELAND:

24 Q For the individuals, looking at
25 Brian Ambrose on what is now State's 5, does it look

1 like he was paid for --

2 HEARING OFFICER: If I could interrupt, I
3 think he's still looking at 4.

4 BY MS. CLEVELAND:

5 Q You need the clean -- I'm sorry. We took
6 it away from you. You need to look at that one.
7 And if you will also -- now you're also going to
8 need 3, because all Exhibit 4 did was combine those
9 two so you could look at it on one piece of paper
10 without having to do it this way. But we'll --
11 we'll stay the extra time and do it.

12 If you look at Brian Ambrose and you look
13 at the two lists, how many nights did Brian Ambrose
14 sign up for?

15 A It appears he signed up for one.

16 Q And his rate would have been \$35 an hour,
17 correct?

18 A Yes, ma'am.

19 Q And, so, six hours for the concert for one
20 night times \$35 would be \$210, correct?

21 A Yes, ma'am.

22 Q All right. And, Monica Anderson, how many
23 nights did she sign up for?

24 A It appears to be one -- one night.

25 Q And her rate would have been what?

1 A \$30 an hour.

2 Q Okay. All right. So 30 times six would
3 be 180. So it appears she got paid for six hours,
4 correct?

5 A Yes, ma'am.

6 Q What about Omar Bautista?

7 A He worked two days, ma'am.

8 Q He worked two nights, and he got -- his
9 rate would have been --

10 A \$30 an hour.

11 Q And that would be times 12 hours would be
12 360; is that correct?

13 A Yes, ma'am.

14 Q Okay. And Robert Bennett, the next
15 officer, how many nights did he sign up for?

16 A One night.

17 Q One night. And it looks like he was paid
18 for six hours, is that correct, by your calculation?

19 A Six times 30, yes, ma'am.

20 Q All right. And, then, I believe is the
21 next one Salvador Brau?

22 A Yes, ma'am.

23 Q And how many nights did he sign up for?

24 A Two nights.

25 Q And he got paid for, it looks like,

1 12 hours at 360. Is that what your math says?

2 A Yes.

3 Q All right. And then the next one is
4 George Brisbon. He got paid -- well, he worked both
5 nights. He was there both nights; is that correct?

6 A Yes, ma'am.

7 Q He got paid \$1520 for that same concert;
8 is that correct?

9 A That is.

10 Q So for those two nights, he got paid for
11 38 hours at \$40 per hour. Does that sound right?

12 A Yes, it does.

13 Q Okay. And then down to the next person,
14 we have David Britten.

15 A He signed up for two nights, ma'am.

16 Q All right. And that would be 12 hours,
17 and at \$30, would that be consistent with the 360 he
18 was paid?

19 A Yes, ma'am.

20 Q How about Cory Broadwater?

21 A It looks like one night, ma'am.

22 Q Okay. And at 180, would that be
23 consistent with paying -- well, would his rate have
24 been \$30 an hour?

25 A Yes.

1 Q And would that be consistent with paying
2 him for six hours at \$30 an hour?

3 A Yes, ma'am.

4 Q Okay. Nicholas Brown, how many nights did
5 he sign up for?

6 A It appears to be two nights.

7 Q Okay. And what would his rate based on
8 his rank have been?

9 A \$30 an hour.

10 Q All right. And at 12 hours times 30 would
11 be 360; is that correct?

12 A Yes, ma'am.

13 Q Same thing for Yolanda Brown. She's
14 showing -- would she be at the same rate?

15 A Yes, at \$30 an hour.

16 Q And she's showing 12 hours. Did she also
17 show -- sign up for both nights?

18 A Yes, ma'am.

19 Q Okay. John Burek, how many nights did he
20 sign up for?

21 A One night, ma'am.

22 Q And his rate should have been what?

23 A \$30 an hour.

24 Q And, so, at 180, is that consistent with
25 him having been paid for six hours for one shift?

1 A Yes, ma'am.

2 Q All right. Tony Daniels, what would his
3 rate have been?

4 A \$30 an hour.

5 Q And did he sign up for one night or two?

6 A It appears one night, ma'am.

7 Q All right. And would that be consistent
8 with his having been paid \$30 an hour for six hours
9 for one shift?

10 A Yes, ma'am.

11 Q Tony Daniels, same question.

12 A We just did Tony Daniels.

13 Q Oh, I'm sorry. Timothy Dasher. Excuse
14 me.

15 A Yes, ma'am. One night.

16 Q And, again, his rate would have been 30?

17 A Yes, ma'am.

18 Q And, again, the 180 shows that he was paid
19 for only six hours for working one concert, correct?

20 A Yes, ma'am.

21 Q Adam Deming, what would his rate have
22 been?

23 A \$30 an hour.

24 Q And how many nights did he sign up for?

25 A It appears to be one night.

1 Q And, again, that would be six hours at
2 \$30; is that correct?

3 A Yes.

4 Q And Robert Feeters.

5 A It appears to be one night.

6 Q And his rate would have been 30 based on
7 his rank?

8 A Yes.

9 Q And, so, does he appear that he was paid
10 for six hours for working one night?

11 A Yes, it does.

12 Q Richard Gerten, what would his rate have
13 been based on his rank?

14 A \$30 an hour, ma'am.

15 Q And how many nights did he sign up for?

16 A One night.

17 Q All right. So the rate of -- or the
18 payment of 180 consistent with his having been paid
19 six hours for working one night of the concert?

20 A Yes, ma'am.

21 Q Jessica Hans, based on her -- her rank,
22 what would her rate have been?

23 A \$30 an hour.

24 Q And how many nights did she sign up for?

25 A One night.

1 Q All right. And is the amount of 180
2 consistent with her having been paid six hours for
3 one night concert?

4 A Yes.

5 Q All right. Letisha Harris.

6 A So she would be \$30.

7 Q And did she sign up for one night only?

8 A Yes, ma'am.

9 Q All right. So that, again, is consistent,
10 one night, six hours.

11 Now, Brian Hinton, he wasn't a police
12 officer, was he?

13 A No, ma'am.

14 Q And, so, we're not -- he wouldn't have
15 fallen under policy 50? Is it just for sworn
16 officers working under -- I didn't see a rate for
17 non-officers.

18 A It does not say in here about non-sworn.

19 Q All right. And I ask because 500 he was
20 paid does not divide evenly by any number or half
21 number of hours. So I -- I'm assuming that he was
22 paid outside the policy, because he was not an
23 officer covered by the policy?

24 A Yes, ma'am.

25 Q Okay. Alex Keeting, he is an officer,

1 correct?

2 A Yes, ma'am.

3 Q And how many nights did he sign up for?

4 A It appears one night.

5 Q And based on his rank at the time, what
6 would his rate have been?

7 A \$30 an hour.

8 Q And is the 180 he was paid consistent with
9 his having been paid for six hours for one night
10 concert?

11 A Yes, ma'am.

12 Q All right. Kate Lenihan.

13 A She signed up for two nights, it appears.

14 Q Okay. And what would her hourly rate have
15 been under the policy?

16 A \$30 an hour.

17 Q Okay. And would that -- is the 360 she
18 received consistent with her having been paid \$30 an
19 hour for 12 hours for two nights?

20 A Yes, ma'am.

21 Q All right. Kyle Luthman, what would his
22 rate have been?

23 A \$30 an hour.

24 Q And how many nights did he sign up for?

25 A One night.

1 Q Is 180 consistent with his having been
2 paid \$30 for six hours for a single night's concert?

3 A Yes, ma'am.

4 Q Patrick McLaughlin, what would his rate
5 have been based on his rank at the time?

6 A \$30 an hour.

7 Q And based on the exhibit before you, how
8 many nights did Patrick McLaughlin sign up for?

9 A It appears to be one.

10 Q Okay. Christine Middleton, how many
11 nights did she sign up for?

12 A I do not see her on this list.

13 Q All right. So we don't see her signed up
14 at all.

15 A No, ma'am.

16 Q Would her rate have been the higher rate?
17 What was her rank?

18 A Lieutenant.

19 Q Okay. So she would have been at the
20 , higher officer rank, correct?

21 A Correct.

22 Q And by my math, she was paid for
23 seven hours at \$35. Would that be consistent with
24 her working one night?

25 A Yes.

1 Q Okay. Russell Mitchell, what would his --
2 what would his rate have been?

3 A He was a non-sworn employee, so I'm not
4 exactly sure.

5 Q Okay. Does it appear that he was signed
6 up for both nights?

7 A Yes. According to this rate, yes.

8 Q Okay. And does that make it appear that
9 he was paid \$30 per hour for 12 hours?

10 A Yes, ma'am.

11 Q What about Tina Scales, was she an
12 officer?

13 A Yes, ma'am.

14 Q And what was her rate?

15 A \$30 an hour.

16 Q And how many nights did she sign up for?

17 A One night.

18 Q And is her rate consistent with having
19 been paid for six hours for working one night at the
20 concert?

21 A Yes, ma'am.

22 Q Alexander Summer, is that a sworn officer?

23 A Yes, ma'am.

24 Q And what would his rate have been?

25 A \$30 an hour.

1 Q And did he sign up for one night?

2 A Yes, he did.

3 Q And would that be consistent with the 180
4 he received?

5 A Yes, ma'am.

6 Q What about Cheeto Walker, would he have
7 been an officer with a higher rate?

8 A Yes, at the rank of captain.

9 Q All right. And that would be \$35?

10 A Yes, ma'am.

11 Q And would 210 be consistent with being
12 paid six hours at \$35 an hour?

13 A Yes, ma'am.

14 Q Jack Weiss. Would he be a higher-ranking
15 officer?

16 A Yes. He would have been a captain at the
17 time.

18 Q Okay. And he would have gotten to \$35 an
19 hour?

20 A Yes, ma'am.

21 Q And did he sign up for one night or two?

22 A It appears two nights.

23 Q All right. So \$35 times 12 hours by my
24 math came to 420. Is that consistent with your
25 understanding of the policy?

1 A Yes.

2 Q All right. Andre Wilson. Sworn officer?

3 A Yes, ma'am.

4 Q How many nights signed up?

5 A One night.

6 Q That would be six hours. What would his
7 rate have been?

8 A \$30 an hour.

9 Q Would that be consistent with being paid
10 180?

11 A Yes, ma'am.

12 Q Angela Wilson. Sworn officer?

13 A I believe she's professional staff.

14 Q Okay. And would she have been paid at the
15 \$30 rate?

16 A That's what the math -- yes. I think
17 that's what the math comes out to.

18 Q Okay. Is she shown as working both
19 nights?

20 A Yes, ma'am.

21 Q Okay. And Beth Wilson. She was an
22 officer?

23 A Yes, ma'am.

24 Q And how many nights did she sign up for?

25 A Two.

1 Q Okay. And what would her rate have been?

2 A \$30 an hour.

3 Q And times 12, is that consistent with
4 being paid 360 for the two nighs of work?

5 A Yes, ma'am.

6 Q I want to go back to Captain Brisbon's
7 rate. It shows him as making \$1520 for working for
8 the two concerts, which breaks down to a total of
9 38 hours at a rate of \$40. Are there any problems
10 with that?

11 MR. GIST: Objection.

12 HEARING OFFICER: On what grounds, sir?

13 MR. GIST: On the grounds of relevancy. I
14 think that this witness primarily has no day-to-day
15 direct knowledge of what Captain Brisbon did at this
16 event. And that's my objection.

17 HEARING OFFICER: Okay. Ms. Cleveland, do
18 you have a response?

19 MS. CLEVELAND: Absolutely. This witness
20 was the internal investigator who interviewed
21 Captain Brisbon at length on what he was doing, what
22 his hours were. His job was to be determining what
23 hours he was working, what pay he was getting, and
24 what it -- whether or not it complied with the
25 policy. That is the sole purpose this investigation

1 was taking place. There could not be anything any
2 more relevant.

3 MR. GIST: I think that the basis for my
4 objection, if she wants to bring that in, in terms
5 of his actual line of questions, I think that she
6 needs to try to bring it in with respect by showing
7 his investigative report. I see no direct evidence
8 or exhibit of his investigative report.

9 In other words, if she's saying that he
10 questioned my client and that my client said certain
11 things to him and so forth, certain things to him,
12 back to my client and he got a detailed
13 understanding of what Captain Brisbon did to earn
14 this \$1520. I don't know if that was one of the
15 questions in the investigative report.

16 I think we need to put the investigative
17 report into the record if that's going to be the
18 case.

19 MS. CLEVELAND: I think the order in which
20 I make my case is my purveyance, not Mr. Gist's.

21 HEARING OFFICER: Yes, ma'am. I'm going
22 to overrule the objection at this time. You can
23 answer questions and then we'll -- we'll go from
24 there.

25 If there are additional questions you feel

1 like need to be objected to, we can cover those when
2 they come about.

3 BY MS. CLEVELAND:

4 Q All right. Captain Cretella, what I had
5 asked you was, given that Captain Brisbon was paid
6 for 38 hours for the same two nights of concerts
7 when no one else was paid for more than 12, what, if
8 any, problem do you see in that relating to policy?

9 A That he would have --

10 Q Let me rephrase. Does the policy allow
11 charges for anything other than hours worked at the
12 event?

13 A No, ma'am.

14 Q And, so, how would we -- or how did
15 Captain Brisbon explain those extra hours?

16 A He said during our investigation, because
17 we asked him specifically about it, that it was a
18 weekend in Charleston. There was multiple events
19 going on, Sertoma, which is a football game that
20 requires numerous sponsors and some other stuff, and
21 he had to make some phone calls throughout the day
22 to get officers to work the job.

23 Q So he was making -- 19 hours a day making
24 phone calls to get officers to work on this job?
25 That was the explanation?

1 A Yes, ma'am.

2 Q All right. Is there anything in the
3 policy that permits an officer to charge for making
4 phone calls during the day to get officers to work?

5 A You're not allowed. It's against policy.

6 Q Did he ever claim that what he was doing
7 was in compliance with policy?

8 A No, ma'am.

9 Q He didn't. He admitted that it was not
10 consistent with the policy as written?

11 A Yes, ma'am.

12 Q What was his explanation for doing it
13 then?

14 A That he was trying to get spots filled
15 because he had to get them filled because the event
16 was so big that they needed officers there.

17 Q And it took him 38 hours to do that.

18 A That's what he said, ma'am.

19 Q Did he -- was he supposed to be working
20 those days, on his regular duties at the office on
21 Fridays?

22 MR. GIST: Objection.

23 HEARING OFFICER: Okay. Sir, go ahead.

24 MR. GIST: Basis of relevance. I mean, I
25 think that whether he was working that day -- those

1 days, she's trying to say he did this on department
2 time, and that means he was stealing department
3 time. There's no record he's stolen anything from
4 the department. No record that he ever stole
5 anything or that he was even working during those
6 hours. Objection on the basis of relevancy.

7 HEARING OFFICER: Okay. Ms. Cleveland.

8 MS. CLEVELAND: That's -- we have to
9 answer that question to answer any other questions.
10 That's the whole question. He had 19 hours per day.
11 Friday would have been a work day. Was he also
12 working. Where was he those days.

13 HEARING OFFICER: Okay. Mr. Gist, I
14 believe you want to respond.

15 MR. GIST: Yes. He needs to establish on
16 direct that there's evidence that he can show that
17 my client worked 38 hours on duty for the City of
18 Charleston on those days. Okay.

19 MS. CLEVELAND: That's what I'm trying to
20 ask him, did he take leave.

21 MR. GIST: Well, ask him that, and then
22 show him the leave records.

23 HEARING OFFICER: Well, I -- just to be
24 clear. I mean, I assume you're saying Ms. Cleveland
25 is allowed to present the evidence that she wishes

1 to present.

2 MR. GIST: I understand that.

3 HEARING OFFICER: I believe at this point
4 that it is a relevant question to ask. Again, what
5 the basis of his -- of his knowledge in that regard
6 would be something that would have to be covered.

7 But it is -- whether Officer --

8 MR. GIST: I'll withdraw my objection.
9 I'll get him on cross.

10 HEARING OFFICER: Okay.

11 BY MS. CLEVELAND:

12 Q Captain Cretella, would Friday have
13 normally been a normal duty day for Captain Brisbon?

14 A Yes, ma'am.

15 Q Did he -- did you ask if he was working
16 that day?

17 A I don't recall.

18 Q Did he ever tell you that he was on
19 administrative leave?

20 A I believe he said he had some
21 administrative time built up.

22 Q What is administrative time?

23 A I don't know.

24 Q Does the -- does the department have a
25 policy that allows administrative time?

1 A No. There's nothing in our handbook that
2 talks about administrative time.

3 Q Did he describe it to you as like comp
4 time, like I worked nine hours this day, so I get to
5 save that hour? What -- what -- what sense did you
6 get that he meant by administrative time?

7 A It was my understanding that, if we're
8 talking semantics, comp time and administrative time
9 are one word, and that if you worked over, then he
10 would apply those extra hours from his 40-hour
11 workweek to taking leave.

12 Q So he wasn't using his annual leave?

13 A No, ma'am.

14 Q He was just saying, well, I don't have to
15 go to work today because I worked some extra days --
16 extra hours other days, correct?

17 A Yes, ma'am.

18 Q Does the department allow that for exempt
19 employees, salaried employees?

20 A No, ma'am.

21 Q Okay. So, basically, by turning it in
22 that way, he got paid by the department for that
23 day, and he took the day off and worked for Hootie
24 and the Blowfish concert; is that correct?

25 A Yes, ma'am.

1 Q Thank you.

2 State's Exhibit No. 6, Sign-Up
3 for Concert, was admitted into
4 evidence.

5 BY MS. CLEVELAND:

6 Q I'm going to show you what's been marked
7 Department 6, and ask you if you can identify this
8 document for me.

9 A This appears to be the SignUp Genius link
10 for a Luke Combs concert on Thursday July 11, 2019,
11 from 5:30 to 11:30.

12 Q All right. And, again, is there a list of
13 officers who signed up?

14 A Yes, ma'am.

15 Q And on this instance, there's only one
16 night, so they can only sign up for one shift,
17 correct?

18 A Correct.

19 Q And the last page of this -- and I think
20 I've highlighted it on all the copies. You see the
21 list of amounts paid to each officer. And, again,
22 you see George Brisbon making a much higher
23 payment -- or receiving a much higher payment than
24 any other officer; is that correct?

25 A Yes, ma'am.

1 Q And, again, did he explain why that was?

2 A Yes, ma'am.

3 Q What was his explanation?

4 A That he had to spend time looking for
5 officers to sign up.

6 State's Exhibit No. 7, Sign-up
7 for Concert, was admitted into
8 evidence.

9 MR. GIST: That was Exhibit No. 6?

10 MS. CLEVELAND: That was. And this is --
11 I'm handing you right now No. 7.

12 MR. GIST: Thank you.

13 BY MS. CLEVELAND:

14 Q All right. Captain Cretella, I'm going to
15 show you what's been marked State's 7. Can you tell
16 me if you've ever seen that document before?

17 A Yes, I have.

18 Q And can you tell me what it is, please?

19 A This is a SignUpGenius link for the
20 JoJo Siwa concert on July 14, 2019, from 5:30 to
21 11:30.

22 Q And, again, flipping to the back page.
23 And this was a one-night event, correct?

24 A Yes, ma'am.

25 Q And for working this one night, did

1 Mr. Brisbon -- excuse me -- Captain Brisbon receive
2 far more than anyone else who worked that shift?

3 A Yes, ma'am.

4 Q And did you ask him what the extra payment
5 was for?

6 A Yes, ma'am.

7 Q And what did he tell you?

8 A Getting people to sign up and
9 administrative duties related.

10 Q Did you notice that it was the exact same
11 amount as the week before?

12 A Yes, ma'am, \$600.

13 State's Exhibit No. 8, Sign-up
14 for Concert, was admitted into
15 evidence.

16 BY MS. CLEVELAND:

17 Q And, Captain Cretella, could you please
18 look at the document that has been marked as
19 State's Exhibit 8 and tell me if you've ever seen
20 that document before?

21 A Yes, I have, ma'am.

22 Q Could you tell me what the document is,
23 please?

24 A It is a SignUp Genius link for the Sublime
25 with Rome concert that was July 27, 2019, from 5:30

1 to 11:30.

2 Q And this was, again, one night only?

3 A Yes, ma'am.

4 Q All right. If you'll turn to page 3,
5 please. And does it appear, again, that
6 Captain Brisbon was paid far more than anyone else
7 who worked?

8 A Yes, ma'am.

9 Q And did he explain what that difference
10 was for?

11 A The same thing, getting people to sign up
12 and administrative duties.

13 Q And did you notice that it took the exact
14 same amount of time and money to sign people up
15 again?

16 A Yes, ma'am.

17 Q Did that, in fact, turn out to be a
18 pattern from concerts beyond these?

19 A Yes, ma'am.

20 Q Beyond films and concerts, what other jobs
21 did Captain Brisbon tell you he worked?

22 A The church and the Thomas Bennett House.

23 Q All right. The church. Did he charge the
24 church any administrative fee?

25 A No, ma'am.

1 Q Any extra hours for finding people to
2 work?

3 A No, ma'am.

4 Q Did he say why?

5 A I believe he said that between him and at
6 the time I -- I forget her rank, but Officer Brown,
7 that they would split the days. There's four
8 Sundays in a month, and that he would take the first
9 and the last and she would take the middle two. If
10 they needed to swap, they would swap those days.

11 Q He didn't charge them any administrative
12 fees?

13 A No, ma'am.

14 Q He didn't charge them any time for finding
15 workers.

16 A No, ma'am.

17 Q And what other jobs did he have?

18 A The other one was the Thomas Bennett
19 House.

20 Q Tell us what the Thomas Bennett House is.

21 A It's a store house within the city to
22 where they have events there, and there is a
23 contract or member of understanding with the City
24 that they have to have an officer present while the
25 events are being held.

1 Q All right. And how did Captain Brisbon
2 tell you he handled administering the Thomas Bennett
3 House?

4 A He told us at the time that if he needed
5 officers to work, he would send out the e-mail for
6 whoever to work. He did work some of the events at
7 the house, though, itself.

8 Q And did he charge them an administrative
9 fee?

10 A Yes, he did.

11 Q And how did that come to be?

12 A From my recollection, at the time it was
13 Ms. McCormick who was managing the job, stated that
14 Captain Brisbon came to her and said, if you want to
15 have these fulfilled, to have your events go
16 forward, because of that memorandum of
17 understanding, then I would charge an administrative
18 fee to get an officer to work.

19 Q So -- and tell us who Linda McCormick is.

20 A She is the manager at the Bennett House.

21 Q But she doesn't work for CPD.

22 A No, ma'am.

23 Q She's the customer, the end-user of our
24 services here.

25 A At the time, yes.

1 Q Okay. And, so -- and, I'm sorry. Can you
2 explain to me again what -- how the -- how it
3 transpired that she was paying him administrative
4 fees?

5 A Sure. He told her that he would work some
6 days, and for the days that he couldn't find help,
7 he'd have to charge a fee to actually find officers
8 to work.

9 Q And whose idea was that?

10 A Captain Brisbon's.

11 Q So he approaches -- how long had he been
12 handling that job?

13 A I honestly don't know the timeline --
14 timeframe.

15 Q Do you know who had it before him?

16 A Yes. It would have been -- I forget the
17 rank at the time, but Officer McFadden.

18 Q Okay. And McFadden turned it over to him;
19 is that correct?

20 A Yes, ma'am.

21 Q And is it your understanding that after he
22 took over the job, he went and approached
23 Ms. McCormick, the end-user, if you will, the
24 citizen?

25 A Yes, ma'am.

1 Q Okay. And he was the one who suggested
2 the administrative fee?

3 A Yes, ma'am.

4 Q Do you know what the administrative fee
5 arrangement was supposed to be?

6 A I believe it was \$25 per event that he
7 would charge to find someone to work it.

8 Q So if -- if he had -- if he worked it
9 himself, there was no fee, but if he didn't work it,
10 he charged \$25 to have somebody come.

11 A Yes, ma'am.

12 Q That was his explanation to you of how the
13 administrative fee worked?

14 A Yes, ma'am.

15 Q Did that turn out to be consistent with
16 the administrative fees that were paid to him by the
17 Bennett House?

18 A No, ma'am.

19 State's Exhibit No. 9,
20 Scheduling for Thomas Bennett
21 House, was admitted into
22 evidence.

23 BY MS. CLEVELAND:

24 Q Captain Cretella, can you look at what's
25 been marked as State's Exhibit 9 and let me know if

1 you've ever -- if you can identify that document?

2 A Yes, ma'am. This appears to be the
3 document for the scheduling for the Thomas Bennett
4 House from July to December '18.

5 Q And the next page behind it picks up with
6 2019; is that correct?

7 A Yes, ma'am.

8 Q And where did you get this?

9 A From Ms. Linda McCormick.

10 Q Okay. So she is showing you everything
11 that she paid Captain Brisbon; is that correct?

12 A Yes, ma'am.

13 Q All right. So looking at this -- and, I
14 believe, in this kind of job, you have minimum
15 hours. Like if the wedding only lasts two and a
16 half hours, you're going to go ahead and get paid
17 for three or four, whatever it is?

18 A Yes, that was the policy.

19 Q What would be the minimum?

20 A Four hours.

21 Q All right. And, so, if we look at the
22 top -- well, let's look at Saturday October 6th,
23 because Captain Brisbon actually worked himself that
24 day. It says five hours times \$30, paid 150; is
25 that correct?

1 A Yes, ma'am.

2 Q And then she lists Friday the 12th,
3 Saturday the 13th, Friday the 19th, Saturday the
4 20th and 27th. It appears he worked all of the
5 events that happened that week -- that month. Is
6 that correct?

7 A Yes, ma'am.

8 Q And he got paid 150 for each of those
9 events.

10 A Yes, ma'am.

11 Q Now, according to his account to you,
12 because he worked them all himself, he should not
13 have received any fee at all that month; is that
14 correct?

15 A That is correct.

16 Q That's what he -- that's what he told you
17 the deal was.

18 A Yes, ma'am.

19 Q But what did she actually pay him for the
20 coordination fee that month?

21 A \$150 for the month.

22 Q And is that consistent with every month?

23 A Yes, it is.

24 Q And that's regardless of whether
25 Captain Brisbon works them all himself or not.

1 A Yes, ma'am.

2 Q So the records were consistent with her
3 version of what she was being charged and not with
4 what Captain Brisbon's version of what he was
5 charging?

6 A Yes, ma'am.

7 Q At some point during the investigation,
8 did Ms. McCormick ever ask for her money back?

9 A She did.

10 State's Exhibit No. 10, E-mail,
11 was admitted into evidence.

12 BY MS. CLEVELAND:

13 Q Captain Cretella, could you look at what
14 has been marked as State's Exhibit 10 and tell me if
15 you've ever seen this document?

16 A I have.

17 Q And it's e-mail, so it kind of runs
18 backwards. We'll start at the back page. And what
19 is it?

20 A It's an e-mail from Ms. McCormick, who
21 runs the Thomas Bennett House, to Sergeant Mixon and
22 to myself that talked about the monthly coordination
23 fee in the amount of \$1750 that was paid to
24 Captain Brisbon at the time.

25 Q All right. And looking at page -- well,

1 it's the third page down, the same one at the bottom
2 of it. Ms. McCormick says, thank you for the
3 information. Since the chief of police was
4 appointed in April of 2018, does this mean that
5 Captain Brisbon was not authorized to charge and
6 collect the monthly coordination fee after that
7 time? The amount totaling 1750 was paid to
8 Captain Brisbon by the Governor Thomas Bennett House
9 from January '18 through June of 2019.

10 Is that what you read there?

11 A Yes, ma'am.

12 Q And did you understand her to be asking if
13 she was going to get her money back?

14 A Yes, ma'am.

15 Q And did you have an opportunity after that
16 to interview Captain Brisbon about this particular
17 subject?

18 A Yes, ma'am, we did.

19 Q That would be your -- your fourth
20 interview?

21 A Yes, ma'am.

22 Q And that was in December, perhaps?

23 A Yes, ma'am.

24 Q And tell me about that. What did
25 Captain Brisbon have to say about the Bennett House

1 wanting their money back?

2 A I asked him if he would be willing to pay
3 it back. At first, he kind of thought about it.
4 And then he said, why should I pay it back if it's
5 not my mistake, that they're a larger entity and
6 they should be responsible for payroll, in the
7 summation.

8 Q And did he tell you that he had never
9 authorized her to pay him more than \$25 for the
10 weeks he did not work himself?

11 A Yes, ma'am.

12 Q And did he say he had never agreed to
13 accept any such funds from her?

14 A Yes, ma'am.

15 Q But did he deny accepting the funds?

16 A No, ma'am.

17 Q And he opposed paying them back?

18 A Correct.

19 Q At any time during your four interviews
20 with Captain Brisbon, did he say I believed the
21 policy allowed me to charge administrative fees?

22 A No, ma'am.

23 Q At any time during your interviews with
24 Captain Brisbon, did he say words to the affect of,
25 I believed that I was allowed under policy to

1 negotiate a different rate with the film industry?

2 A No, ma'am.

3 Q Did he suggest or claim at any time during
4 his interviews that he believed the language of the
5 policy permitted him to bill for extra hours for
6 concerts and -- and such things?

7 A No, ma'am.

8 Q If he -- if he admitted that he did it,
9 and he admitted that the policy did not permit him
10 to do it, what was his justification for what he
11 did, if he had one?

12 A He didn't really. He just charged an
13 administrative fee. That was his coordination fee.

14 Q Did he say anybody told him he could?

15 A No, ma'am.

16 Q He didn't say that a former chief had told
17 him --

18 A I'm sorry. He said that Chief Mullen, in
19 reference to the Ports agreement, which was a
20 separate agreement, allowed him to charge for that.
21 But that was only applicable to the Ports.

22 Q Okay. So he said that Chief -- he talked
23 about the Port contract.

24 A Yes.

25 Q So totally separate. And, so, we

1 established earlier, the Port does not fall under
2 this policy; is that correct?

3 A Correct.

4 Q Well, then why did he say -- why did he
5 say -- why did Captain Brisbon tell you he was
6 treating these three jobs more like the Port job?

7 A Because he was allowed to do it.

8 Q And who did he say allowed him to do it?

9 A Chief Mullen.

10 Q Chief Mullen.

11 And after he said that, did you bother to
12 ask Chief Mullen, did you tell Captain Brisbon he
13 could do this?

14 A We did reach out to Chief Mullen.

15 Q And how did that conversation go?

16 A I believe Sergeant Mixon contacted the
17 chief, gave him a little bit overview of what was
18 going on, and Chief Mullen responded with an e-mail
19 to us.

20 State's Exhibit No. 11, E-mail,
21 was admitted into evidence.

22 BY MS. CLEVELAND:

23 Q Captain Cretella, could you please take a
24 look at what has been marked as State's 11 and tell
25 me if you've ever seen that document?

1 A I have, ma'am.

2 Q And can you tell me what it is, please?

3 A Sure. It was the e-mail that Chief Mullen
4 sent to, at the time, Sergeant Lee Mixon, in
5 reference to our inquiries to Captain Brisbon saying
6 that this was allowed under Chief Mullen.

7 Q All right. And -- and what is
8 Chief Mullen's response?

9 A That this was against policy and that this
10 was not under any time permitted under
11 Chief Mullen's tenure to allot charges to
12 administrative fee.

13 Q All right. And did you ask him about
14 Clyde Johnson and about George Brisbon or only about
15 George Brisbon?

16 A We asked him just about -- I believe it
17 George Brisbon and Clyde Johnson initially. Yes,
18 ma'am.

19 Q And it appears here that Chief Mullen said
20 he had no knowledge about any off-duty work that
21 Clyde was performing. Is that correct?

22 A Yes, ma'am.

23 Q And then at the bottom of page 1, it also
24 appears that Chief Mullen is confirming that there
25 was a contract between the City and the Port

1 Authority that had different terms. Is that
2 correct?

3 A Yes, ma'am.

4 Q And anywhere else in this e-mail does
5 Chief Mullen indicate that he authorized
6 Captain Brisbon to make additional or special
7 charges with any other job covered by policy in the
8 way that he might be able to under the Port's
9 contract?

10 A No, ma'am.

11 Q In fact, was he adamant that he had not
12 done that?

13 A Yes, ma'am.

14 Q And, just for the record, who is -- who is
15 Chief Mullen?

16 A Chief Mullen now is a current chief at
17 Clemson but was our former chief of police.

18 Q So he would have been the chief of police
19 at the time just preceding this investigation by
20 maybe a couple years.

21 A Yes, ma'am.

22 Q And as the chief of police, does he write
23 the policies?

24 A Yes, he does.

25 Q As the chief of police, can he change a

1 policy?

2 A Yes, ma'am.

3 Q As the chief of police, can he grant an
4 exception to the policy?

5 A Yes, ma'am.

6 Q So if he had wanted to tell
7 Captain Brisbon, you know, it's okay. I think it's
8 fair. You can -- you can charge an administrative
9 fee there. He could have done that if he wanted to,
10 right?

11 A Yes, ma'am.

12 Q But if he had done that, what possible
13 motivation would he have to say, I didn't do that?

14 A There is none.

15 Q And, Captain Brisbon, on the other hand,
16 he's just been -- found himself faced with an
17 allegation he was making charges to clients he
18 should not have been. Would he have had a
19 motivation to change the reason why -- or to
20 fabricate a reason he did -- that he did that?

21 A Yes, ma'am.

22 Q All right. Do you -- did you find either
23 one of these two positions more credible?

24 A Yes.

25 Q Can you tell me which and why?

1 A We found Chief Mullen's position more
2 credible, just based on the circumstances that he
3 was the chief of police at the time. We knew his
4 position on off-duty employment and how he was
5 governing it.

6 Q All right. During the interview periods
7 with Captain Brisbon, were you able to get
8 Linda McCormick to give you anything in writing, or
9 did she just talk with you?

10 A I believe she sent that e-mail.

11 Q Okay. Other than the e-mail, did she just
12 give you -- and did she also send you the chart of
13 how much she paid?

14 A Yes, ma'am.

15 Q And did she give you any other sort of
16 written documentation at that point?

17 A Not to my recollection.

18 Q Did Captain Brisbon file a citywide
19 grievance of his dismissal?

20 A He did.

21 Q And in preparing for that grievance, did
22 Ms. McCormick give you a written document then?

23 A Yes, she did.

24 State's Exhibit No. 12,
25 Affidavit, was marked for

1 identification.

2 BY MS. CLEVELAND:

3 Q And can you look at this State's
4 Exhibit 12, Captain Cretella, and tell me if you've
5 ever seen this before?

6 A Yes, I have.

7 Q And what is it, please?

8 A This was an affidavit to her stating what
9 she told us in the e-mails was true, along with the
10 invoice that she provided us, and the additional
11 e-mail exchanges between her and Captain Brisbon at
12 the time.

13 Q And these last pages, the e-mail, I'm
14 going to start at the bottom, because they go bottom
15 up, of the last page, the last page with text on it.
16 Good afternoon, Captain Brisbon. Is this form
17 effective immediately, or does it begin in the new
18 year? I need to secure coverage for the remainder
19 of October and November and did -- not sure if you
20 would be able to fill those or if I needed to go on
21 the online request. I would like to keep the same
22 core group of officers so that they are aware of our
23 challenges with the noise ordinance and familiar
24 with residents in the surrounding neighborhood but
25 didn't know if this is something I would be able to

1 request. We have a wedding tomorrow and Saturday
2 evening, so I wanted to make sure.

3 Then in his response, Captain Brisbon
4 says, Hi, Linda. I will still be managing the
5 off-duty assignment at the Thomas Bennett House. I
6 sent you the form to indicate that the off-duty pay
7 rate had been changed from 25 to 30, and the rest of
8 the schedule will be covered by me or Police
9 Officer Yolanda Brown.

10 Then the next is from Linda McCormick
11 Thursday October 18th. Okay. Perfect. I will make
12 that change and see if I can edit the ones for
13 October events that have already been submitted.
14 Will this still require a monthly coordination fee
15 for the two of you in addition to the event
16 coverage?

17 Captain Brisbon responds, I am the only
18 one that gets the fee. I hope that two of us will
19 be the case, but I just found out about an event
20 November 10th that would require me finding someone
21 else. Thanks.

22 Is this consistent with the information
23 that she had given you throughout the investigation
24 as you spoke with her?

25 A Yes, ma'am.

1 Q And these two rosters of payment, are they
2 identical to the ones she had provided you earlier?

3 A Yes, ma'am.

4 Q And she states in her affidavit at
5 paragraph 6, I did not initiate the idea of a
6 management coordination fee, and was told by
7 Captain Brisbon it was required by the Charleston
8 Police Department to charge a monthly coordination
9 fee. And presented with this information, I was led
10 to believe that this new fee would be applied to all
11 other venues utilizing all off-duty officers. I did
12 not negotiate or question the coordination fee, as
13 he was a captain of the City of Charleston Police
14 Department, and I presumed what he stated was
15 correct.

16 Did the City of Charleston, in fact,
17 require this administrative fee?

18 A No, ma'am.

19 Q Did Captain Brisbon give you any
20 indication as to why he chose this small venue to
21 charge an administrative fee?

22 A Kind of in line with his other responses
23 was, his time and effort and his compensation for
24 it.

25 Q Okay. And did he ever contend that the

1 policy had any language that permitted him to do
2 this?

3 A No, ma'am.

4 State's Exhibit No. 13,
5 Authorization Form, was admitted
6 into evidence.

7 BY MS. CLEVELAND:

8 Q Captain Cretella, can you look at what's
9 been marked as State's Exhibit 13 and tell me if you
10 recognize this document?

11 A Yes, ma'am.

12 Q And what is it, please?

13 A This is the Charleston Police Department
14 authorization to administer off-duty employment
15 form. It's our Number 612 Form. And to run an
16 off-duty, you would fill in the information on the
17 top that talks about the location, the venue, and
18 the description of the duties. And then it would be
19 your signature. Then it would go through the chain
20 of command to either approve or deny this request.

21 Q Okay. And there where it says
22 Administrative General Order 50, is that the policy
23 you've already identified for us with the rates and
24 the hours?

25 A Yes.

1 Q And down at the bottom of this page,
2 there's a little box that Captain Brisbon had to
3 check saying he's completed a review of that policy,
4 correct?

5 A Yes, ma'am.

6 Q If this event were intended to be run
7 consistent with that policy, why on earth would you
8 have him sign a form saying he understood it had to
9 be run consistent with that policy?

10 A Because there's -- our understanding at
11 the time, that any officer that runs an off-duty
12 knows the policy, which is General Order 50.

13 Q And what about this, if anything, would
14 lead him to believe that he could run it differently
15 than what's in the policy?

16 A There is nothing.

17 Q Thank you. After you concluded your
18 investigation, Captain Cretella, what -- what
19 happened then?

20 A So I prepared a summation. It's just a
21 broad overview of our interviews with
22 Captain Brisbon and anyone else that we interviewed
23 in reference to that case. And then it went to the
24 chain of command for review.

25 Q Okay. Chain of command for you, would

1 that mean sending it up to Dustin Thompson?

2 A It went to Captain Walker at the time and
3 then Captain Thompson to review it first.

4 State's Exhibit No. 14,
5 Investigative Overview, was
6 admitted into evidence.

7 BY MS. CLEVELAND:

8 Q Okay. Captain Cretella, could you look at
9 the document that's been marked States Exhibit 14
10 and tell me if you've ever seen this document?

11 A Yes, ma'am. This is a document that I
12 prepared.

13 Q And what is it?

14 A It is our investigative overview of what
15 was conducted in the investigation.

16 Q And in this document, do you conclude that
17 he did or did not violate policy?

18 A That he did violate our general order for
19 off-duty employment.

20 Q All right. Do you know what ultimately
21 happened in the department relating to this
22 investigation?

23 A Yes, ma'am. It went through the command
24 review process, which means that the captain, the
25 deputy chief, and the chief of police reviewed the

1 case and the findings from the captain and the
2 deputy chief with the recommendations, and
3 Captain Brisbon was terminated from the police
4 department for violating policy.

5 Q All right. You testified earlier that you
6 had come to investigate Captain Brisbon, because you
7 had found another -- tripped over a violation by
8 Corporal Johnson; is that correct?

9 A Yes, ma'am.

10 Q Having found now two violations, do you
11 know whether any decision was made about whether the
12 investigation should be expanded to other officers?

13 A Yes. At that time, Chief Reynolds
14 authorized an independent investigation from this
15 one to look at every officer that was working or
16 running an off-duty event within the City of
17 Charleston Police Department.

18 Q Every single officer who was working or
19 running an event was investigated?

20 A Yes, ma'am.

21 Q Did you work off-duty jobs at the time?

22 A Yes, ma'am.

23 Q Did they interview you as well?

24 A Yes, ma'am.

25 Q What about any DCs, deputy chiefs?

1 A Yes. Any officer from the lowest to the
2 highest ranking.

3 Q Okay. And did you participate in that
4 other than to be a subject?

5 A No, ma'am.

6 Q Who would that have been?

7 A Captain Thompson at the time.

8 Q All right. And, Dustin Thompson, was he
9 chosen because he -- well, did he work off-duty
10 jobs? Let me start there.

11 A No, ma'am.

12 Q Do you know if that's the reason he was
13 chosen to do the investigation?

14 A Yes, ma'am.

15 Q All right. And I assume that you have no
16 firsthand knowledge of that investigation?

17 A No, ma'am.

18 MS. CLEVELAND: All right. I think that's
19 all I have for this witness. Oh. Apparently, I'm
20 not done.

21 (Off-the-record discussion.)

22 State's Exhibit No. 15, was
23 admitted into evidence.

24 BY MS. CLEVELAND:

25 Q Captain Cretella, you testified earlier,

1 you were testifying from a version of Standard
2 Operating Policy 50. And this is one that was
3 adopted by what date?

4 A October 1, 2018.

5 Q And can you flip to 50.9 and tell me what
6 the new rates would have been?

7 A The current rate is \$30 per hour, and \$35
8 per hour for supervisor, if one is required. When
9 secondary employment requires an event commander,
10 the rate would be \$40 per hour.

11 Q And look back at the one from 2010 that
12 had been the last revision. What were the rates
13 there comparatively?

14 A So in 2010, the current rate is \$25 per
15 hour, and \$30 per hour for supervisor if one is
16 required. When a secondary employment requires an
17 event commander, the rate will be \$35 per hour.

18 Q So each one just hiked up \$5.

19 A Yes, ma'am.

20 Q And what was the effective date of the
21 change?

22 A October 1, 2018.

23 Q And is that before or after the Hootie and
24 the Blowfish concert on August 12th -- or
25 August 10th?

1 A That would have been before.

2 Q The concert came before the new policy?

3 A No. The new policy happened
4 October 1, 2018. And Hootie and the Blowfish was
5 August 10, 2018.

6 Q So it should have been under the old
7 rates; is that correct?

8 A Yes, ma'am.

9 Q But he charged and gave himself and
10 everyone else the new rates; is that correct?

11 A Yes, ma'am.

12 Q Thank you. Was there an office within the
13 police department where citizens or -- or entities
14 could call in and have -- get their jobs
15 administered for free?

16 A Yes, ma'am.

17 Q So they didn't need to pay anybody to
18 administer a job; is that correct?

19 A Correct.

20 MS. CLEVELAND: Thank you. I think that's
21 all I have.

22 HEARING OFFICER: Okay. Thank you.

23 - - - - -

24 EXAMINATION

25 BY MR. GIST:

1 Q We'll start off with Exhibit No. 1 and
2 Exhibit No. 15. What's your name again?

3 A Captain Cretella.

4 Q Cretella?

5 A Yes, ma'am -- yes, sir.

6 Q Okay. Captain Cretella, the -- I want you
7 to look at Exhibit No. 1, and I want you to look at
8 Exhibit No. 15. Okay. Have you seen those
9 documents before?

10 A Yes, sir.

11 Q Are you familiar with those documents?

12 A Yes, sir.

13 Q Okay. And how long have you been working
14 for the City of Charleston Police Department?

15 A Seventeen and a half years.

16 Q Seventeen and a half years.

17 So were you -- Exhibit No. 1, effective
18 date is what, sir, of that policy?

19 A June 1, 2010.

20 Q It was -- no. What was the effective
21 date?

22 A I'm sorry. February 8, 2008.

23 Q Were you employed with the City of
24 Charleston on February 8th of 2008?

25 A Yes, sir.

1 Q Okay. And did anyone ever -- were you in
2 a position of internal affairs at that point?

3 A No, sir.

4 Q What were you doing at the City of
5 Charleston at that point?

6 A I believe I was a patrol officer in the
7 West Ashley area.

8 Q Did anybody ever review this policy with
9 you either after February 8th of 2008, in the -- in
10 the year 2008, between February and December 2008?

11 A I don't recall, sir.

12 Q Did you ever work off-duty assignments in
13 the year of 2008?

14 A Yes, sir.

15 Q 2009?

16 A Yes, sir.

17 Q Through June 1st of 2010?

18 A Yes, sir.

19 Q And did anyone ever go over the policy
20 with you as a police -- were you still a police
21 officer or patrolman?

22 A Yes, sir. We had a system called our
23 Power DMS, where our policies were uploaded on that.

24 Q Okay. And, so, did you ever have a
25 supervisor or anyone in HR go over this policy with

1 you, commanding officer?

2 A You have to sign off to be released for
3 independent duty acknowledging these policies back
4 when I first started.

5 Q And do you recall ever signing off to do
6 that?

7 A Yes, sir.

8 Q Okay. And that would be in your personnel
9 records. Am I correct?

10 A Yes, sir.

11 Q Okay. Now, would have been the chief of
12 police on June 1st of 2010?

13 A Chief Mullen.

14 Q Chief Mullen. Okay.

15 Did you ever at any point have any kind
16 of -- and what was your job duties on June 1st
17 of 2010? Had you been promoted?

18 A I believe I may have been a senior police
19 officer. I might have either -- it was no higher
20 ranking than a senior police officer in 2010.

21 Q So when did you become a, is it a
22 lieutenant in the internal affairs?

23 A Internal affairs.

24 Q What year?

25 A 2016.

1 Q 2016. So when is it prior to this
2 investigation of Captain Brisbon, when were you last
3 trained on policies and procedures after you became
4 an internal affairs investigator regarding off-duty
5 employment?

6 A Trained on it in what regards?

7 Q In terms of its applicability, its
8 administration, how it -- the operational side of
9 the procedure.

10 A I don't understand what you're -- I'm
11 sorry.

12 Q Did you take any formal training when you
13 became an internal affairs investigator in 2016?
14 Did you take any formal training on the policy
15 involving off-duty employment of police officers?

16 A No, sir.

17 Q Okay. So prior to your investigation of
18 Captain Brisbon, is that the first time that you had
19 the opportunity to investigate a police officer or a
20 commanding officer regarding the policies and
21 procedures, general administrative order 50 on
22 off-duty employment? Had you done any other
23 investigations prior to that time?

24 A Yes, sir. I was a sergeant in the
25 internal affairs office for roughly about a year and

1 three-quarters prior to that.

2 Q Okay. And what other officers did you
3 investigate about off-duty violations of employment,
4 of order number 50?

5 A I would have to go back on to those
6 records, sir. I don't have them here.

7 Q Well, just off the top of your head, was
8 it one, was it two, was it five, was it six?

9 A I honestly don't know.

10 Q You don't know.

11 A No, sir.

12 Q Don't you think it's important if you're
13 in investigations that you have some recollection of
14 how many times you have previous experience on doing
15 these types of -- doing these investigations of
16 off-duty employment violations by officers?

17 A So our job as an investigator is to
18 instigate any policy. And it could be from a simple
19 general order 1, which talks about our standards and
20 conduct, to off-duty employment, to our general
21 order 23, which is our use of force.

22 Q Okay. Well, let me ask you this. Why was
23 it necessary to -- to mix in your investigation of
24 Corporal Johnson with Captain Brisbon? Are they not
25 of two different ranks within the police department?

1 A They are. But the policy applies to both
2 of them.

3 Q It does, doesn't it?

4 A Yes, sir.

5 Q Okay. But -- but Captain Brisbon's
6 investigation, though, involved his -- did it
7 involve his working off-duty jobs, being actually on
8 the scene working, or did it involve a combination
9 of him working off-duty jobs as well as
10 administering other officers and supervising other
11 officers on off-duty jobs?

12 A We were looking into the conduct of his
13 actions when he was administering and working
14 off-duty jobs.

15 Q Okay. Good. All right. And, so, you
16 made it very clear during your responses to
17 Ms. Cleveland that there were two chiefs of police.
18 Am I correct?

19 A Yes, sir.

20 Q One was Chief Mullen, correct?

21 A Yes, sir.

22 Q And the only time that you actually
23 questioned Chief Mullen about his knowledge or
24 involvement involving Mr. Brisbon's behavior was
25 when Chief Mullen is in Clemson. Am I correct?

1 A Yes, sir.

2 Q He's not at the City of Charleston Police
3 Department.

4 A No, sir.

5 Q All right. Did he provide you with any
6 notes, any e-mails, or any documents other than this
7 e-mail he sent to you that recapped his recollection
8 of what his conversation was with he and
9 Captain Brisbon?

10 A No, sir.

11 Q Did you see anything in the files in the
12 Charleston Police Department that actually recapped
13 any directive from Chief Mullen telling
14 Captain Brisbon that he was prohibited from charging
15 an administrative fee? Any policy or any memorandum
16 from Chief Mullen to Captain Brisbon saying, I do
17 not authorize you to charge an administrative fee?

18 A There was no document that said that
19 specific language.

20 Q Exactly. Now, Ms. Cleveland made a big
21 point of saying whether or not there was a policy
22 that allowed him to charge that. My position on it
23 is, was there a policy that prohibited him from
24 charging an administrative fee?

25 A Yes. Our general order.

1 Q Well, let's look at the general order.
2 And I want you to take Exhibit No. 1 and
3 Exhibit No. 15. And there was a lot of questions
4 here made -- or asked of you about the general order
5 on hours, hours of work. But let's go back to the
6 whole context of order 50. I want you to turn to --
7 from Exhibit No. 1, I want you to turn to
8 Section 50.7 under compensation. And I'm not
9 concerned about the hours -- the hours, the 35
10 versus the 40, because I do believe in Exhibit 15,
11 there's an adjustment by \$5 going up to 40, correct?

12 A Yes, sir.

13 Q Okay. What I want you to look at and read
14 into the record is the last paragraph, the last
15 paragraph, starting with the word, additionally.
16 Read it into the record for me, starting with the
17 work additionally. I'll point it out to you right
18 here for brevity. There it is right there, on
19 page 303. What does that say?

20 A The sentence says, additionally, payment
21 arrangements, collections and terms are associated
22 with such matters are the responsibility of the
23 officers employed by the employer and not the
24 department.

25 Q Thank you. That policy is very clear.

1 That's order number 50.

2 A Yes, sir.

3 Q That policy says, basically, that any
4 payments arrangements that would be made, would be
5 made between the officer off duty and the employer.
6 So, at that point in time, if he's off duty with the
7 City of Charleston, then would it not be true that
8 the Thomas Bennett House would be his employer?

9 A Yes, sir.

10 Q Would it not be true that the cruise line
11 would be his employer?

12 A Yes, sir.

13 Q Okay. And is it not true with the
14 other -- is it not true that some of the other
15 venues that he worked on, that that would be -- they
16 would be his employer?

17 A Yes, sir.

18 Q Is there any record that the City of
19 Charleston Police Department ever paid Mr. Brisbon
20 any overtime or any administrative comp time for the
21 time that he worked off duty?

22 A Not that I'm aware of, sir.

23 Q You did the investigation. You should be
24 aware of it, correct?

25 A Correct.

1 Q Is it anywhere where he got -- because
2 he's an exempt employee, isn't he?

3 A Yes, sir.

4 Q But he's also, as an exempt employee, he's
5 entitled to have administrative or comp time,
6 correct?

7 MS. CLEVELAND: That's a question of law.

8 HEARING OFFICER: Sorry. Are you
9 objecting to the question?

10 MS. CLEVELAND: I am, because he -- he's
11 asking -- he's not a lawyer. But the question is --

12 MR. GIST: You asked him.

13 HEARING OFFICER: Let me see if I can
14 narrow the scope. I believe you're correct that any
15 legal parameters would potentially be outside of
16 Captain Cretella's direct knowledge.

17 Are you asking in terms of in a general
18 sense or what the department practice is?

19 MR. GIST: She asked him about the
20 practice of administrative leave.

21 HEARING OFFICER: Yes, sir.

22 MR. GIST: He said on his own testimony
23 that that was a mixed bag between administrative
24 leave and -- and -- and comp time. She opened the
25 door on that. Okay. I'm just simply asking him,

1 from his understanding, do you ever see any record
2 with the City of Charleston, okay, Police
3 Department, ever paid Captain Brisbon administrative
4 leave.

5 HEARING OFFICER: Okay. Now that it's
6 clarified, are you still objecting to this question?

7 MS. CLEVELAND: I think the witness has
8 already testified that there was no such thing
9 there. So he can answer it if he can. Before I
10 think the question had a legal implication.

11 HEARING OFFICER: I understand. Yeah.

12 MS. CLEVELAND: I do not believe it does
13 now.

14 HEARING OFFICER: All right. I'll
15 overrule the objection.

16 BY MR. GIST:

17 Q Now, I want you to look at -- I want you
18 to look at Exhibit No. 15. I want to cut through
19 the chase of all these hours and whether he got
20 hourly pay, whether he didn't get hourly pay. Go to
21 Exhibit No. 15 under compensation. Starting again
22 with the word additionally.

23 A What do you want me to do with this, sir?

24 Q Read it into the record. I would like for
25 you to do that, please, sir.

1 A Additionally, payment arrangement,
2 collection, and terms that are associated with such
3 matters are the responsibility of officers employed
4 by the employer, not the department.

5 Q Identical. Now, when was the date of
6 Exhibit No. -- of Exhibit No. 15? What was the
7 effective date of Exhibit No. 15?

8 A February 8, 2008.

9 Q Okay. Exhibit No. 15, same -- same
10 original date, right? 2/8/08 matches up for both
11 Exhibit No. 1 and Exhibit No. 15, correct, sir?

12 A Yes, sir.

13 Q Now, what is the revised date on
14 Exhibit No. 15?

15 A October 1, 2018.

16 Q 2018. Eight-year time span. Eight years
17 and two months time span. But no change as it
18 relates to the issue of additional payment
19 arrangement, collection, and terms that are
20 associated with such matters are the responsibility
21 of the officers employed by the employer and not the
22 department. Isn't it true that the arrangements --
23 that all of the department of -- City Police
24 Department of Charleston, it was just a processing
25 point for invoices to pass through the City of

1 Charleston in order for the officers to get paid?

2 Correct?

3 A Yes, sir.

4 Q And, so, if the officers, in fact, that
5 were getting paid, the City of Charleston was just a
6 conduit, but was it not true that the employer,
7 Thomas Bennett House, Ports Authority, any other
8 venues, that the employer really -- the venue
9 employer was the one who was cutting the checks to
10 the officers and Captain Brisbon?

11 A Correct, sir.

12 Q So the City of Charleston never played a
13 role in dispersing any money to the employer that in
14 essence was Thomas Bennett House, cruise ships, or
15 anywhere else he worked?

16 A Correct, sir.

17 Q And that's true for all of the officers.

18 A Correct, sir.

19 Q Now, you were asked to go back and look at
20 a diagram. So would that be the case if the
21 employers, outside the lady -- and we're going to
22 get to her, too. The lady that wrote you the
23 affidavit, how did she come to write an affidavit?
24 Did she just all of a sudden out the clear blue
25 provide you with an affidavit, or did y'all request

1 that affidavit?

2 A No, sir. We had a conversation with our
3 legal team about the best way to get her
4 recollection of what happened, because she didn't
5 want to -- she was -- I wouldn't say intimidated.
6 She --

7 Q She was what?

8 A I'm trying to use the correct words. They
9 were trying to find the best way to get her to help
10 us in our investigation, because she wasn't sure of
11 the ramifications that could possibly happen.

12 Q Why was she hesitant about -- being
13 hesitant about the ramifications? If she was
14 hesitant, what was the need for her hesitation? She
15 was told to tell the truth, correct?

16 A Like I said, I don't want to use the word
17 intimidated. I'm trying to find a good synonym for
18 it. She just wasn't aware of what was going on and
19 maybe what could possibly lead to this on her
20 personal own self.

21 Q Thank you. Because you all were the
22 police department, weren't you?

23 A Yes, sir.

24 Q And you were conducting an investigation,
25 weren't you?

1 A Yes, sir.

2 Q And did you tell her that the aspects of
3 your investigation was an investigation that could
4 have led to criminality against her?

5 A No, sir.

6 Q Did you ever give her or read her any --
7 prior to her providing you with this affidavit, did
8 you ever give her any kind of warnings that this was
9 an official police investigation and that her
10 testimony was necessary for the investigation and
11 she, too, might be implicated?

12 A We told her that she was part of the -- or
13 that whatever she gave us would be part of the
14 investigation but that she never -- I never said the
15 word implication or alluded to her being implicated
16 in the investigation.

17 Q But you never told her she might not --
18 you never told her she might not have been
19 implicated, though.

20 A I never told her she would not be
21 implicated.

22 Q All right. Now, who wrote the affidavit?
23 Did Linda McCormick write this affidavit? I don't
24 want to hear what your legal department told you. I
25 want to know who wrote the affidavit.

1 MS. CLEVELAND: And, for the record, he
2 can't tell you what his legal department told him.

3 MR. GIST: I know that. I just said that.
4 I think I said, I don't want him to tell me what his
5 legal department told him. Didn't I just say that?

6 THE WITNESS: It looks like that was
7 prepared by her, and she signed it.

8 BY MR. GIST:

9 Q Ms. Linda McCormick signed it. Do you
10 have an actual handwritten copy of a statement from
11 Linda McCormick?

12 A No. I have the e-mail, sir.

13 Q I'm talking about a handwritten statement
14 of Linda McCormick.

15 A No, I do not.

16 Q Okay. So you don't -- are you telling me
17 under oath that Linda McCormick actually typed this
18 statement up, or that this statement was provided to
19 her by your office for her to sign?

20 A Under oath, I -- I mean, I can't say how
21 she got to creating this document. I wasn't there.
22 I wasn't a part of it. So I honestly do not know.

23 Q Look at the document. Is there a -- she
24 says she's competent to attest to the matters. But
25 did you ever have her sign under the penalty of law

1 a statement saying that I am authoring this document
2 with the full understanding that it is a truthful
3 document and that if it is not truthful, that I --
4 that I could be charged with perjury?

5 A I never asked her to sign such a
6 statement.

7 Q The document doesn't have any kind of
8 attestation at the end of it, does it, sir?

9 A No, sir.

10 Q So how do we know that Ms. McCormick,
11 other than signing this is her signature, that she
12 actually wrote this statement?

13 A She provided the document to us.

14 Q I didn't ask you that. Did she write the
15 document?

16 A I can't say what she did. We received the
17 document. So I can't attest to who actually created
18 the document.

19 Q Who actually went to Ms. McCormick and
20 interviewed Ms. McCormick?

21 A We spoke to her over the phone and through
22 via e-mail.

23 Q Why didn't you go interview her?

24 A She didn't want to be -- have police
25 presence there.

1 Q You could have called her down to the
2 station to interview her.

3 A For some reason -- like I said, I don't
4 want to say she was intimidated, whatever the
5 synonym is for that.

6 Q So Ms. McCormick did not actually just
7 come in to the police department and file a
8 complaint against Captain Brisbon, did she, sir?

9 A No, sir.

10 Q Now, all of your actions involving the
11 investigation of Captain Brisbon -- and I want to go
12 to Section -- Exhibit No. 14.

13 A Yes, sir.

14 Q What happened to Corporal Johnson?

15 A He resigned from the Charleston Police
16 Department.

17 Q He resigned.

18 A Yes, sir.

19 Q Isn't it true, though, you had audio
20 recordings, and you had all kinds of information
21 regarding Corporal Johnson essentially that was
22 showing that he was, in fact, engaging in
23 wrongdoing, illegality?

24 A Yes, sir.

25 Q Why didn't you prosecute him?

1 A I believe that we asked South Carolina Law
2 Enforcement Division to look into the acts of
3 Captain Brisbon. And I'm not exactly sure if we
4 mentioned Corporal Johnson in that.

5 Q Isn't it true -- did you supply your
6 police memo of Exhibit No. 14 to the State Law
7 Enforcement Division with Corporal Johnson and
8 Captain Brisbon both being lumped into the same pot?
9 Isn't it true that when you provided the
10 documentation to SLED that you lumped both of these
11 men into the same pot?

12 A I don't have the SLED investigative file
13 in front of me. If you say that this was in the
14 SLED investigative file, but I don't have that file
15 in front of me.

16 Q You did provide this to SLED, did you not,
17 sir, from the department?

18 A I honestly don't recall.

19 Q Why were you lumping Corporal Johnson's
20 misdeeds -- did Corporal Johnson at any point to
21 your knowledge ever -- did he ever work directly in
22 any way on a supervised by Captain Brisbon?

23 A What timeframe or off-duty -- I don't know
24 that.

25 Q In the year 2019 -- between 2018 and 2019,

1 did Brisbon supervise Corporal Johnson?

2 A I'm trying to think of where they were,
3 sir.

4 Q Let me try to help you. What I'm trying
5 to figure out is, why did you lump both people
6 together when their incidences and events involve
7 certainly different stages? Corporal Johnson was
8 working for the Charleston County School District.
9 He was placed at Sanders Clyde Elementary School.

10 A So he was employed by us, and he worked
11 off duty at the school district.

12 Q Okay.

13 A So he was our employee.

14 Q Okay. But was he under any supervision of
15 Captain Brisbon?

16 A At that time, I do not believe so.

17 Q No, he wasn't. Why did you lump them
18 together, if not to try to get the most negative
19 impact for both of them, and particularly for -- for
20 Captain Brisbon.

21 Let's -- let's talk about Chief Mullen.
22 Now, Chief Mullen, in his day-to-day operations with
23 Captain Brisbon, was the chief of police, correct?

24 A Yes, sir.

25 Q So Chief Mullen never launched an

1 investigation against Captain Brisbon at any time
2 regarding off-duty work during his tenure as chief
3 of police.

4 A I don't have any information to say he did
5 or he did not.

6 Q But you -- you looked at the files, did
7 you not? You're the internal affairs man. Did you
8 not go look at the personnel records of -- of -- of
9 Captain Brisbon to see if there was any
10 investigation done prior to you being there as a
11 lieutenant? You were certainly there as a sergeant.

12 A Correct.

13 Q Did you ever go look in the file to see if
14 there were any prior actions against Captain Brisbon
15 that the chief had initiated for off-duty
16 violations?

17 A I cannot remember at this time.

18 Q Your investigation -- is it true or not
19 true that your investigation actually commences
20 under chief Reynolds?

21 A Correct.

22 Q And is there any policy directive by
23 Chief Reynolds that alters Exhibit 1 and Exhibit 15
24 in terms of the employment status and the right to
25 collect money from the employer by the off-duty

1 officers or -- off-duty officers?

2 A No, sir.

3 Q No. Is it?

4 A No, sir.

5 Q So all this talk about hours and
6 everything, let's get to the crux of the matter.
7 Was he authorized to, in fact, collect what you
8 called an administrative fee, or whether he had a
9 direct arrangement with his employer off-duty on
10 non-working hours?

11 I think the file clearly established that
12 Chief Mullen told him, you're not to do this while
13 on duty. But on his off-duty hours, was there any
14 evidence that shows that he didn't have the
15 authority to get paid by the employer that he was
16 working for, which wasn't the City of Charleston
17 Police Department, based on Exhibit No. 1 and
18 Exhibit No. 15? It says he could collect his own
19 money.

20 A It says, additionally, payment
21 arrangements, collection and terms that are
22 associated with such matters are the responsibility
23 of the officers, meaning the hours worked. This is
24 a policy that governs us. This is your hours
25 worked.

1 Q Sir, what does -- what does the section I
2 asked you to read say, though? Additionally. What
3 does that additional say?

4 A Payment arrangements, in terms of how I'm
5 going to get paid, the check. Collections, how it's
6 going to be paid, weekly, monthly, however it's
7 done. And terms that are associated with such
8 matters. It's not allowing you to charge what you
9 want to charge or for your administrative --

10 Q Where do you see that it says not allowed?
11 That's your -- where do you see that in there
12 saying, not allowing you to charge what you want to
13 charge? When you all solicit this woman at the
14 Thomas Bennett House, do you see anybody else in
15 there that had a problem with the fee that
16 Captain Brisbon was charging them?

17 A No one else is doing it. Like -- so
18 that's --

19 Q No. I'm asking any other employer.

20 A Thomas Bennett was the only one that came
21 forward that said they had an issue.

22 Q After y'all contacted them.

23 A Yes, sir.

24 Q Thank you, sir. All right. How does the
25 file get from -- you've already that, though,

1 haven't you. You said that you sent to SLED or
2 somebody in your department sent both Johnson and
3 Brisbon to SLED, correct?

4 A I believe that -- I believe so.

5 Q Asking for an investigation.

6 A To see if there were any criminal acts,
7 yes, sir.

8 Q Okay. But in looking and seeing if there
9 were any criminal action, would not SLED have had to
10 look at the entire totality of the involvement of
11 Captain Brisbon? Yes or no?

12 A They launched their own investigation.
13 Yes, sir.

14 Q Right. Which would have looked at in the
15 SLED report, personnel records, looked at this time
16 sheets, looked at the hours of work. Did SLED --
17 did you ask anybody from SLED to come here today to
18 testify as a witness as to whether or not
19 Officer Brisbon did anything in violation of
20 department policy?

21 MS. CLEVELAND: Objection. He doesn't
22 know who I have or have not called to come to be a
23 witness.

24 HEARING OFFICER: I'm going to sustain
25 that objection. You're asking him questions outside

1 really the scope of his -- of his role in this
2 hearing.

3 BY MR. GIST:

4 Q Sir, but your role was to collect
5 information, and to your knowledge, it went to SLED.

6 A Yes.

7 Q Have you seen the SLED -- SLED
8 determination?

9 A Yes, sir.

10 Q And what was the determination as it
11 relates to any accusations against Mr. Brisbon in
12 terms of any criminal issues?

13 A I believe it said there was nothing to
14 make criminal charges against him.

15 Q What was Captain Reynolds' involvement in
16 this?

17 A Chief Reynolds, when we told him about
18 the -- when Chief Reynolds found out about the
19 administrative fee back in July of 2019 at the
20 Charleston County School District, he told us to
21 launch an investigation to see what is this
22 administrative fee that Corporal Johnson was
23 charging.

24 Q Johnson?

25 A Yes, sir.

1 Q And then Johnson came in and said, oh, you
2 got me. But as a result, go over there and look at
3 Brisbon, correct?

4 A No. He didn't say, you got me. We had to
5 ask him questions, and then he was hesitant or
6 reluctant to give up Captain Brisbon's name.

7 Q Did you get him? Did you get Johnson?

8 A Get him as --

9 Q Did you fire him?

10 A No. He resigned, sir.

11 Q Okay. Did you offer Captain Brisbon any
12 option with respect to whether you were going to
13 terminate him or offer him to resign?

14 A He came to the initial administrative
15 review process. Then he was given his chance -- or
16 he was given his discipline action. He had a chance
17 to appeal it to Chief Reynolds. At that time in
18 between -- it was sustained. The disposition was
19 sustained with the action of termination, and, I
20 believe, two 40-hour suspensions. And then in
21 between that and his appeal hearing, I'm not sure if
22 City HR had any contact with him allowing him to
23 resign or not.

24 Q He was fired, wasn't he?

25 A His termination was upheld, yes.

1 Q But somebody had to initiate the
2 termination, correct?

3 A Yes, sir.

4 Q Was that Chief Reynolds?

5 A So he signed the paperwork, and the
6 recommendation was termination.

7 Q Okay. So, you fired him?

8 A Yes, sir.

9 Q Okay. But if we go back and we look at
10 the -- Chief Reynolds did not -- until y'all contact
11 Chief Mullen in Clemson, Chief Reynolds didn't
12 really have any direct supervision over
13 Captain Brisbon in terms of his off-duty work and
14 activities, correct --

15 A I don't know --

16 Q -- prior to that policy, Exhibit No. 1 and
17 Exhibit No. 15.

18 It says, additionally, he sets his own
19 rates with the employer. Is that not what it says,
20 in short? Do I need to have you read it again?

21 A He doesn't set his own rates, governed by
22 the policy.

23 Q Sir, I'm asking you, policy has two
24 different provisions on it. Did Mr. Brisbon write
25 this policy --

1 A No, sir..

2 Q -- in 2008?

3 Did he revise it in 2018?

4 A Captain Brisbon did not, no, sir.

5 Q But your policies don't diverge at all

6 over a ten-year time period -- eight-year time

7 period --

8 A Except for --

9 Q -- ten years.

10 A -- hourly rate.

11 Q Except for the hourly rate.

12 Is there anything in there, in either

13 Exhibit No. 1 or Exhibit No. 15 -- and I'm going to

14 let you go. Is there anything in Exhibit 1 or 15

15 that says you are prohibited from charging an

16 administrative fee?

17 A Those words are not in the policy, sir.

18 Q Thank you, sir. Unlike Ms. Cleveland, I'm

19 asking you, is there any prohibition. And there is

20 none, is it?

21 A Those words are not in this policy, no,

22 sir.

23 Q And you're under oath, and you're

24 testifying as to that -- your assessment of that,

25 correct?

1 A Yes, sir.

2 MR. GIST: No further questions.

3 HEARING OFFICER: All right. Thank you.

4 MS. CLEVELAND: I have some re-direct.

5 HEARING OFFICER: Okay. Go ahead.

6 MR. GIST: I reserve the right for --

7 HEARING OFFICER: I understand.

8 MR. GIST: -- re-direct.

9 HEARING OFFICER: Yes, sir.

10 - - - - -

11 RE-EXAMINATION

12 BY MS. CLEVELAND:

13 Q Under compensation, Mr. Gist keeps asking
14 you about payment arrangement. But up in the
15 highlighted sections, what is the last sentence
16 that's highlighted there?

17 A No officer will work for any more or less
18 than the established hourly rate.

19 Q Could that be clearer?

20 A It's -- it's in policy. No, ma'am.

21 Q Okay. And -- and that means that
22 Captain Brisbon could work for \$40 an hour, but he
23 couldn't work for any more, and he couldn't work for
24 any less. Is that correct?

25 A Yes, ma'am.

1 Q So the \$47.50 that he negotiated with the
2 film industry, that was clearly and egregiously
3 outside of your policy, was it not?

4 A Yes, ma'am.

5 Q At any point in the four times you
6 interviewed Captain Brisbon, did he ever claim that
7 he believed the language of this policy justified
8 what he did?

9 A No, ma'am.

10 Q And what was his only defense, if you
11 will, his only excuse for what he did?

12 A Personal compensation.

13 Q Well, what did he say gave him the
14 authority to do what he did?

15 A The MOU with the Ports.

16 Q But outside the Ports, was it -- did
17 someone give him permission to treat these jobs like
18 the Ports?

19 A No, ma'am.

20 Q Did he say that they did?

21 A No, ma'am.

22 Q He didn't claim that Chief Mullen told him
23 to do it just like you do the Ports?

24 A I don't recall.

25 State's Exhibit No. 16,

1 George Brisbon Interview, was
2 admitted into evidence.

3 BY MS. CLEVELAND:

4 Q All right. I'm going to ask you to take a
5 look -- this is Exhibit 16. Take a look at page 10,
6 if you will. Back up to page 9. On page 9, we have
7 Captain Brisbon talking to you for quite a long time
8 about how the cruise ship job works under its MOU.
9 Then if you turn to page 10, we have Captain Mixon
10 saying, but the cruise ship was a negotiated
11 contract between the City and the Port Authority.

12 What does Captain Brisbon say next at
13 line 3?

14 A Correct. And, like I said, the chief
15 wanted me -- he said, I want you to do this on your
16 own time. So then when the concerts came up, it was
17 the same thing. I said, hey, chief, because
18 initially didn't -- because they didn't do concerts
19 up there. Maybe they might have one a year, but
20 when they got to the point of having 12, 13, 14
21 concerts a year, had a meeting with inaudible, and
22 the chief says, you do it with the same way you do
23 the concerts. I don't want you spending all of this
24 time managing this on duty. You do it off duty on
25 your own time.

1 Q And what does Sergeant Mixon say next?

2 A Okay. And you felt he was explicit that
3 you could do all -- that you could add the hours for
4 managing this thing on the off-duty time.

5 Q And does Captain Brisbon agree with that?

6 A Exactly, he says.

7 Q And was this consistent throughout all of
8 his interviews, that -- that Captain Brisbon
9 consistently told you that Chief Mullen told him he
10 could -- he could charge these other fees just like
11 he did with the Port?

12 A Yes, ma'am.

13 Q And did he ever have any justification
14 other than Chief Mullen told me I could?

15 A No, ma'am.

16 Q So, to recap, he admitted the policy
17 didn't but that the chief gave him a special
18 exception.

19 A Yes, ma'am.

20 Q And the chief said what in return?

21 A That he did not.

22 Q I want you to look again at Exhibit 12,
23 State's Exhibit 12, please. Paragraph 6 on the
24 first page. That's Ms. McCormick's statement.
25 Page 6. She says, I did not initiate the idea of a

1 management coordination fee and was told by
2 Captain Brisbon it was required by Charleston Police
3 Department to charge a monthly coordination fee.

4 Was that true?

5 A Yes, that is true.

6 Q No. What Brisbon told her, though, that
7 Charleston Police Department was requiring him to
8 charge her that monthly fee, is that true?

9 A No, ma'am, that's not true.

10 Q That's not true. Was it ever true?

11 A No, ma'am.

12 Q And, here, she's saying that he used that
13 information to get me to pay him money, correct?

14 A Correct.

15 Q So he's told her something incorrect, and
16 representative that the Police Department said it so
17 that she feels like she has to pay him this money;
18 is that correct?

19 A That's correct, yes.

20 Q You were asked earlier if you've got any
21 notes from Chief Mullen or e-mails or anything that
22 talked about saying don't do this, don't -- don't
23 charge any administrative fees. But did
24 Captain Brisbon ever claim he had gotten any written
25 permission from Chief Mullen?

1 A No, ma'am.

2 Q He just said Chief Mullen told me in
3 some -- in some unwitnessed conversation?

4 A Yes, ma'am.

5 Q Was Brisbon fired for criminal conduct?

6 A He was terminated for onus compensation.

7 Q So it would be a --

8 A Administrative --

9 Q It's a civil violation of policy --

10 A Yes, ma'am.

11 Q -- not a criminal violation.

12 MS. CLEVELAND: I think that's all that I
13 have.

14 MR. GIST: Re-direct.

15 HEARING OFFICER: Yes, sir.

16 BY MR. GIST:

17 Q Go back to page number 9 and 10, standing
18 in the scope of her questions. On page 9, starting
19 at line number 17, it says, so, at that time, there
20 was no -- only thing the department had was a board,
21 a sheet, and I had it out there. And then the
22 people would come and sign up. Then most of the
23 time, we would not have enough people to sign up, so
24 then I'd get the roster. I would go home. I'd
25 start calling people. Hey, can you work. Can you

1 work. Can you work. And then I've got forms that
2 go back, I think, from 2006 to 2007. And clearly on
3 the bottom in red it -- it would say, administrative
4 hours for this week.

5 And it goes on. Now, this agreement,
6 which is the order 50 between the Charleston City
7 Police Department and really the world, but
8 particularly for events in Charleston common, City
9 of Charleston. Okay. Do y'all do stuff out in the
10 county, too?

11 A No, sir.

12 Q Only in the City of Charleston, right?

13 A Yes, sir.

14 Q Okay. So in the City of Charleston, y'all
15 had an arrangement that you would provide these
16 off-duty officers. Would it be as a convenience to
17 the venue or as a partnership with the venue hosting
18 that event? The Gaillard Auditorium, the -- they
19 hold a concert. Okay. They've got Mickey Mouse
20 coming, concert. Gaillard Coliseum. Okay. Disney
21 Escapades on Ice. You've got to put a -- you've got
22 to put -- you've got to put an officer on duty, one
23 or two officers, right?

24 A Yes, sir.

25 Q Okay. So what happens if those

1 officers -- so what happens if you don't put anybody
2 there? Does it not impede your good relationship
3 with the Gaillard Auditorium?

4 A Yes, sir.

5 Q Okay. So you shifted the parameters,
6 though, to Officer Brisbon or anyone before him.
7 You shifted the parameters to where Officer Brisbon
8 then had to have and made sure that he or she
9 secured the officers, right? So if two officers
10 didn't show up that day -- that night, say, hey, I'm
11 sick. Can't make the Gaillard event on my off-duty,
12 then was it the responsibility of Brisbon to find
13 the officers to replace them?

14 A Yes, sir.

15 Q Because had he not found the officer to
16 replace him, the City Police Department wouldn't
17 look too good, would it?

18 A We would also put an on-duty officer
19 there.

20 Q Yeah. You would have an on-duty officer,
21 but you needed off-duty. That's the whole purpose
22 of the policy, to help provide extra coverage,
23 right?

24 A Yes, sir.

25 Q And those persons would get compensated by

1 the employer, correct?

2 A Working off duty, yes, sir.

3 Q Okay. So if Brisbon on page 9 is saying,
4 I had to go home and start calling people and
5 calling people, okay. Then over here, which is
6 where Caroline was asking you about his interactions
7 with Chief Mullen, he says, and she did not ask
8 this, exactly -- your question, okay. And you felt
9 he was explicit, meaning Chief Mullen, that you
10 could add the hours for managing this thing on
11 off-duty time.

12 You're really referencing --
13 Sergeant Mixon is referencing Chief Mullen then at
14 that point, right?

15 A Yes, sir.

16 Q Not Reynolds, because Reynolds didn't have
17 no real direct involvement with Brisbon.

18 A It would have been Chief Mullen, yes, sir.

19 Q Brisbon says, exactly. And then again
20 with the movies, because often requests was late or
21 at last minute. They call you at night saying, hey,
22 we ain't shooting in North Charleston. We're
23 shooting over here. We need to push the time back
24 and start at 8:00 to 12:00. And then I have to
25 get -- get on the phone and say, okay, tomorrow,

1 instead of coming at this time, you need to come in
2 at this time. And, again, this is something that I
3 took explicitly from my conversation with
4 Chief Mullen.

5 Now, Caroline asked you whether you had
6 any e-mails or any direct memos or anything between
7 Chief Mullen and Mr. Brisbon. Okay. But who really
8 was the supervisor, Mr. Brisbon or Chief Mullen?

9 A The ultimate responsibility is the chief.

10 Q It's the chief, right? Okay.

11 And, so, if, in fact, Mr. Brisbon is
12 saying, I'm acting based on my conversations from
13 the chief, then these are events that even go back
14 as far as 2006. Was Chief Mullen the chief then?

15 A 2006 or 2007.

16 Q Okay. So even though you go to Clemson
17 and get a statement from Chief Mullen when, 2000
18 what, '18 or '19?

19 A I believe it was '19.

20 Q Why didn't you just ask Chief Mullen to
21 come here today to this hearing, because we've got a
22 man's police certificate on the line, and offer
23 testimony to the contrary of what Mr. Brisbon
24 offered to you all during your interview?

25 MS. CLEVELAND: Objection. He can't

1 answer as to what witness I did not choose. For
2 that matter, Mr. Gist could have brought Mr. --
3 Chief Mullen here on subpoena if that is what
4 Mr. Gist thought needed to be done.

5 HEARING OFFICER: I'm going to sustain the
6 objection. That's not really Captain Cretella's
7 call.

8 MR. GIST: I know it's not his call.

9 BY MR. GIST:

10 Q But is there anything else, as I asked you
11 earlier, that shows a prohibition by Chief Mullen to
12 Mr. Brisbon not to do this?

13 A No, sir.

14 MR. GIST: All right. Thank you.

15 BY MS. CLEVELAND:

16 Q Two questions. Then I promise I'll be
17 quiet. Does the department have a coordinator that
18 does this for free, administers jobs?

19 A They -- so the coordinator is paid by --
20 they're a City employee, but we don't charge people
21 to coordinate the jobs.

22 Q So Ms. -- Ms. McCormick could have called
23 that City employee and gotten all those done for
24 free?

25 A Yes, ma'am.

1 Q At the time, the same time, George Brisbon
2 is telling her, the police department says you have
3 to pay me this.

4 A Yes, ma'am.

5 Q And didn't he, in fact, have to ask
6 special permission to administer her job? That's
7 States 13, I think.

8 A Yes, ma'am.

9 Q And so he asked permission to do what she
10 could get for free and then told her she had to pay
11 for it; is that correct?

12 A Yes, ma'am.

13 MS. CLEVELAND: Thank you.

14 BY MR. GIST:

15 Q Was there anything wrong with him asking
16 permission?

17 A He has -- he has to ask for permission.

18 MR. GIST: Thank you.

19 MS. CLEVELAND: Housekeeping.

20 HEARING OFFICER: Yes.

21 MS. CLEVELAND: I do -- I marked all the
22 exhibits. I do not know that I formally entered
23 them all into exhibits. Have they all been entered
24 as --

25 HEARING OFFICER: I guess, Mr. Gist,

1 obviously, we have a lot of exhibits. Do you have
2 any objection? We can go down the line and talk
3 about each one of them, but do you have any
4 objections to putting them in as part of the record?

5 MS. CLEVELAND: He object to the one.

6 HEARING OFFICER: Yeah. I have -- I have
7 the --

8 MR. GIST: I don't have any objections to
9 any exhibits entered into the record except the
10 affidavit of Linda McCormick.

11 HEARING OFFICER: Okay.

12 MR. GIST: And my objection is based upon
13 authenticity. And I do not believe it should be --
14 it should be entered.

15 HEARING OFFICER: Okay.

16 MS. CLEVELAND: And our response would be
17 that, it's not being entered as a sworn affidavit.
18 We are simply asking -- we're entering it to show
19 what Captain Cretella and his colleagues attempted
20 to do and the lengths they went to, to get
21 information in this case and document the
22 information they were given.

23 MR. GIST: And my response to that, again,
24 is that, if that be the case, and she's saying that
25 again on the basis of relevancy, under the Rules of

1 Evidence in this state, it should not come in.

2 HEARING OFFICER: Okay.

3 MS. CLEVELAND: Relevancy?

4 HEARING OFFICER: So -- so let me try to
5 understand this. You're asserting that the -- that
6 we're not putting it in for the actual content of
7 the statement.

8 MS. CLEVELAND: I think that he's trying
9 to say that it should not come in under Rule 803 as
10 hearsay. But --

11 MR. GIST: No. No. I'm saying it
12 shouldn't come in under Rule 803 as hearsay. I'm
13 also saying it shouldn't come in on the basis of
14 authentication as a business record or as any
15 document to be considered by the hearing officer in
16 this hearing. It is not a sworn statement.

17 HEARING OFFICER: Okay. Ms. Cleveland.

18 MS. CLEVELAND: It was offered as not so
19 much for the truth of the document as evidence of
20 the information that IA -- excuse me -- Professional
21 Standards Office, had available to them at the time
22 and the lengths to which they went to try to confirm
23 what the facts were so that they could make a
24 decision based -- a well informed decision as
25 possible.

1 MR. GIST: Yeah. It should not come in
2 under 408. It should not come in. And, again, I
3 state my objection to that.

4 HEARING OFFICER: Okay. I think there is
5 potentially an issue with the authentication of it
6 as -- as the testimony revealed, we, you know, can't
7 necessarily say that this is actually her signature.
8 I mean, she's not here to testify to it. This was
9 not a document that was made in front of the -- in
10 the witness' presence. He received it through --
11 through some means. I'm not sure we were
12 necessarily clear on that either.

13 Go ahead.

14 MS. CLEVELAND: Rule 408 has to -- has to
15 deal with entering rules to compromise. It is not
16 in any way relevant.

17 HEARING OFFICER: I -- I understand. And
18 I think the --

19 MS. CLEVELAND: We have the --

20 HEARING OFFICER: I'm just trying to
21 clarify the argument that's --

22 MS. CLEVELAND: Right. We -- we have the
23 sworn testimony of the evidence that he spoke of
24 the -- excuse me, of the witness, that he spoke with
25 the lady who gave the statement. He has the -- we

1 have the sworn testimony that she told him those
2 things, or told Sergeant Mixon those things in
3 telephone and e-mail conversations. And he -- we
4 have his sworn testimony that this is the oral
5 information that he had and had been considering all
6 along.

7 MR. GIST: Your Honor, that is a backdoor
8 attempt to -- to evade the authenticity of the
9 document. It's clearly, clearly in violation of the
10 Rules of Evidence. You cannot have him to attest.
11 Why didn't she swear the document. Most
12 importantly, if this was so important, why didn't
13 they bring her as a witness under the best evidence
14 rule.

15 Again, my objection is so noted. And I
16 ask that you -- that you agree with my objection.

17 HEARING OFFICER: Okay. Ms. Cleveland,
18 anything further?

19 MS. CLEVELAND: To the extent that it
20 cannot be entered as that exhibit, I would proffer
21 it for the benefit of the hearing officer and the
22 training committee council for whatever weight they
23 see appropriate.

24 MR. GIST: And, again, my objection is, it
25 has no weight under the Rules of Evidence as it

1 relates to a business record or authenticity or
2 relevancy.

3 HEARING OFFICER: Well, weight is not
4 really going to be an admissibility question.
5 Weight more talks about -- you know, essentially, as
6 the finder of fact, and eventually council is the
7 finder of fact, how much -- how -- how convincing I
8 find these particular statements.

9 So as far as the weight affecting the
10 objections that you lodged, I think they're
11 essentially two separate questions at this point
12 still. That, you know, whatever weight is assigned
13 to it is contingent upon admissibility.

14 What -- what I'll do is, we will take it
15 as a proffered document. I will give you both the
16 chance to brief the admission issue as to why or why
17 shouldn't this document be admitted onto the record.

18 Once I've had a chance to review those --
19 those arguments, I think that will be a -- given the
20 diversity of the arguments we're receiving at this
21 point, I think that that would be the -- probably
22 the safest way of going about doing this and take it
23 as a formal ruling in the --

24 MR. GIST: I have no problem with briefing
25 it and providing that to you.

1 HEARING OFFICER: Okay. I appreciate
2 your -- your assistance on this.

3 MS. CLEVELAND: That sounds very
4 reasonable. What kind of timeframe would you like
5 that in?

6 HEARING OFFICER: As the -- I guess, as
7 the -- the objection is being lodged by
8 Mr. Brisbon's representative, if you want to have
9 yours in -- I mean, I leave it up to you guys. We
10 generally get the transcripts for these about
11 two weeks after the hearing, two -- two to
12 three weeks after the hearing.

13 MR. GIST: That's fine. No problem. So
14 in 30 days?

15 HEARING OFFICER: 30 days from today?

16 MR. GIST: I'll follow your guidance.

17 HEARING OFFICER: Okay. I'm -- I'm just
18 wanting to make sure that I'm not giving you guys
19 too --

20 MR. GIST: You get -- you get the
21 transcripts about two weeks after this hearing.

22 HEARING OFFICER: Yes.

23 MR. GIST: So what I'm simply saying is
24 that two weeks after this hearing, I would like to
25 have at least 14 days --

1 HEARING OFFICER: Okay.

2 MR. GIST: -- to -- to brief -- to brief
3 it.

4 HEARING OFFICER: Okay. I think that's
5 reasonable. So we'll have that in 30 days after
6 today's hearing. I will send everyone the
7 transcript.

8 And then, Ms. Cleveland, how -- how much
9 would you feel is a reasonable time to respond to
10 that brief?

11 MS. CLEVELAND: Maybe 15 days. Is that
12 too -- I can make it ten if you think 15 is too
13 long. I don't want to hold your process up.

14 HEARING OFFICER: I -- I understand. We
15 can -- we can do 15, two weeks after we receive, and
16 then we'll write the second briefing.

17 MR. GIST: Thank you.

18 HEARING OFFICER: All right. Mr. Gist,
19 just back to what we were initially discussing. I
20 have your objection to the affidavit noted.
21 Obviously, we sustained the objection to what was
22 originally marked as State's Exhibit 5. Are there
23 any additional of these documents that were
24 presented by the Department, any additional
25 objections you'd like to lodge at this time?

1 MR. GIST: No, sir.

2 HEARING OFFICER: Okay.

3 MR. GIST: It's Exhibit No. 12.

4 HEARING OFFICER: 12. Yes, sir.

5 MS. CLEVELAND: So are we good on all of
6 Exhibits 1 through --

7 HEARING OFFICER: So it's -- it's 1
8 through 16, with 5 not being admitted.

9 MS. CLEVELAND: Okay. And 4 --

10 HEARING OFFICER: I can go down --

11 MS. CLEVELAND: That's okay. 4 was the
12 one that I had written on.

13 HEARING OFFICER: Oh, excuse me. You're
14 right. It's 4. Yeah, 4 is the one that --

15 MR. GIST: Exhibit 4 and Exhibit 12, the
16 statement of Linda McCormick.

17 MS. CLEVELAND: Yeah. 4 simply would have
18 saved us 30 minutes.

19 HEARING OFFICER: Yeah. I understand.
20 But, I guess, at this point, even putting State's 4
21 on would be cumulative to -- to the testimony and to
22 the other two documents that were presented.

23 Mr. Gist, any additional matters?

24 MR. GIST: No, sir.

25 HEARING OFFICER: Okay. I guess,

1 Mr. Gist, do you intend to call Captain Cretella as
2 a witness as part of your case in chief?

3 MR. GIST: No.

4 HEARING OFFICER: No.

5 Do you anticipate re-calling
6 Captain Cretella?

7 MS. CLEVELAND: I do not. I have only one
8 more witness.

9 HEARING OFFICER: All right.
10 Captain Cretella, thank you for your time today.

11 THE WITNESS: Thank you.

12 HEARING OFFICER: You are excused as a
13 witness.

14 (Off-the-record discussion.)

15 (A short break transpired.)

16 Charles Hawkins, being first duly sworn,
17 testified as follows:

18 BY MR. GIST:

19 Q Could you state your name for the record?

20 A Charles Hawkins.

21 Q And, Mr. Hawkins, first of all, I
22 appreciate under the circumstances you're going
23 through, your appearing here on behalf of
24 Mr. Brisbon. Is it Charles Hawkins?

25 A That's it.

1 Q And, Mr. Hawkins, where do you live?

2 A I live on James Island. Do you want my
3 address?

4 Q James Island?

5 A Yes, sir. In Charleston.

6 Q In Charleston. Okay.

7 And where do you work currently?

8 A I don't work at all.

9 Q Are you retired?

10 A Retired.

11 Q Okay. And from where did you retire?

12 A Charleston Police Department.

13 Q And at your retirement -- well, first of
14 all, how long did you work for the Charleston Police
15 Department?

16 A Thirty-five years.

17 Q Thirty-five years?

18 A Yes, sir.

19 Q And did you -- what position did you
20 initially start off at?

21 A Patrol officer.

22 Q What position did you retire?

23 A I was a lieutenant in charge of special
24 events.

25 Q What is that within the department?

1 What's that function?

2 A All the special events, off-duty jobs,
3 things like that. We -- came through our office.
4 So we would staff them, you know, find officers
5 to -- if it was off-duty, we could find -- the
6 majority of it was off-duty. We would find officers
7 to staff it.

8 Q Okay. And when did you start working in
9 the -- well, is the -- when did the office of
10 special events come into existence?

11 A It came into existence under
12 Chief Reynolds. I can't remember what year it was.
13 I had been in there about a year. So, you know. I
14 left in '20. So around '18, '19.

15 Q 2018, 2019?

16 A Yeah.

17 Q Okay. And prior to 2018 and 2019, was
18 there such an office or a department called
19 department or office of special events?

20 A Not that I was aware of.

21 Q Tell me what you did in the -- so are
22 you -- so you're an 8:30 to 5:00 or 9:00 to 5:00?

23 A Yeah. I was about 8:30. 8:00 to 4:00.
24 7:30, 8:00 to 4:00.

25 Q So you worked eight hours a day --

1 A Eight hours a day.

2 Q -- in this office of special events?

3 A Yes.

4 Q And as a result of working in that office,
5 what did your duties entail?

6 A We would prepare operation plans, staffing
7 for special events. And then we also would handle
8 all the off-duty jobs. Like if somebody was having
9 a wedding or an event. Like the Apple Store needed
10 security or things like that.

11 But we also staffed like the -- the runs.
12 Those special events that needed police officers.
13 The president came to town. We would staff those as
14 well, and assign officers to it.

15 Q Okay. So that was your full-time job.

16 A That was my full-time job.

17 Q Okay. So you did not get an
18 administrative fee once the office of special events
19 came in. Did it -- did it -- did you -- did it
20 require you to also work off-duty?

21 A Yeah. I would -- I would work off-duty as
22 part of the assignment that we set up. As an
23 example, if I -- let's say, for example, there was
24 something -- if I was working 8:00 to 4:00, and
25 there was an event that started at 5:00, and it

1 required me to be there as a commander or something
2 like that, then I would work that, and I would get
3 paid by that event for those four, five, six hours.

4 If the event started at 3:00, and I was
5 working until 4:30, then I wouldn't get paid for
6 that one hour that I was working unless I took leave
7 or something like that, you know, because I couldn't
8 be in two statuses at the same time.

9 Q And what kind of leave would you take?

10 A I would never really take leave for that
11 kind of stuff.

12 Q What kind of leave would be available?

13 A Oh. I take annual leave. You know, if I
14 took an annual leave or something like that. That
15 would be -- you know, if -- if -- if I had comp
16 time, because I had worked over something the day
17 before, I could use that. But I really didn't do
18 much of that.

19 Q Well, you're just simply saying comp time.
20 Would comp time be the same as administrative leave?

21 A I guess you could call it that.

22 Q Let me -- let me ask you this. So prior
23 to 2018, 2019, this office never existed called
24 special events.

25 A Yeah.

1 Q And, so, prior to that time, to your
2 knowledge, if you have any, just tell me if you
3 don't, you didn't -- there was no office that
4 actually coordinated special events, managed
5 administrative --

6 A No.

7 Q -- aspects of special events that actually
8 secured off-duty officers to work special events?

9 A No.

10 Q Tell me what your understanding of what
11 was really going on at the City of Charleston prior
12 to the establishment of the office of special
13 events. How was it -- how was the off-duty work
14 assignment, to your knowledge, if you have --

15 A I didn't work -- I didn't work a lot of --
16 I didn't work, I won't say any, but I very rarely
17 worked off-duty, very rarely. Like for years, I
18 didn't even work off-duty.

19 And what I knew about it then was that
20 certain people had certain jobs. As an example,
21 somebody would go to, let's say, an apartment
22 complex. Somebody at an apartment complex -- the
23 apartment complex needed officers. So they would go
24 to that officer, and that officer would say, hey, I
25 can manage the job for you. And, you know, they

1 would put out a list or find the officer. So
2 everybody had their own -- had their own stuff, you
3 know, their own thing.

4 Q So was there any uniform -- to your
5 knowledge, from what you saw and from what you
6 heard, was there any uniform procedure that was
7 actually followed in terms of securing officers for
8 special events?

9 A The department had a policy for off-duty
10 work. And I think that that policy -- from what I
11 knew at the time, that policy was what you read if
12 you were going to be in charge of a job. So there
13 was really no office.

14 As an example, if the Criminal Justice
15 Academy came to me and says, hey, you work for the
16 police department. We need five officers. Well,
17 now I'm in charge of that job. I'd look in the
18 rules and regulations and see what the pay rate was
19 and what the rules were so that I would, you know,
20 go by those rules.

21 Q Okay. And, if, in fact -- how difficult
22 is it to get people, because you say you rarely
23 worked in special events. How difficult is it to
24 get people to work special events? Once they worked
25 their shift or worked the week, now they've got to

1 work a special event. How difficult is that to get
2 people, to schedule people?

3 A Well -- well, that would depend --

4 MS. CLEVELAND: Can you put your question
5 in a timeframe? Is it before he was in that
6 position or while he was in that position?

7 MR. GIST: I'm asking him as it relates
8 to --

9 BY MR. GIST:

10 Q Well, during the time -- the time that
11 you -- before you became an employee in the office
12 of special events, you testified you worked very
13 rarely in special events off duty.

14 A Yeah.

15 Q Okay. So I want to narrow my time span
16 down to, when you became a lieutenant in special
17 events, how difficult was it to get people to
18 volunteer to come back and work off duty?

19 A That would depend on the event.

20 Q Okay.

21 A Okay. That would depend on the event. As
22 an example, a big run like the firemen's run or
23 something, you might have 30 slots. So you might
24 get 20 people that are off duty to sign up for it.
25 Then you've got to kind of go around and maybe

1 find -- hey, man, we need somebody to work, or you'd
2 send an e-mail out saying we need some people to
3 work. I'll do it. That's what you would -- that's
4 what I would do, anyway, you know.

5 I mean, it was always -- you always -- you
6 always trying to find people, especially for the big
7 events. If you've got something where you only need
8 three or four people, that was normally pretty easy.

9 You know, and then it depended on, you
10 know, if it was in the holidays or -- you know, like
11 I say, it depended on the size of the event, when it
12 was.

13 You know, as an example, we had -- the
14 presidential debates were here one time. And that
15 was on a Tuesday. But on Monday and Wednesday, CNN
16 had some town hall set up. So all those had to be
17 staffed. So I was constantly calling, trying to
18 fill those positions. That would be a -- and if I
19 couldn't fill them, I'd work them, you know, some of
20 them. Because you had to -- you know, those are
21 some you had to have people there because of the
22 political influences of it.

23 But it was always -- you know, it was
24 hard, you know, in those type jobs. Now, trying to
25 find a movie theater job or something or -- you

1 know, we only need four or five people, that would
2 be easier.

3 Q Okay. So --

4 A And then -- and then sometimes some of
5 them would just go empty.

6 Q Okay. So you primarily would have that
7 responsibility. But at that point in 2018, 2019,
8 you were a paid City employee.

9 A Yeah, I was.

10 Q That was part of your job duties.

11 A You mean while I was in the --

12 Q Office of special events.

13 A Yeah. Yeah.

14 Q That was your job duty.

15 A Yeah, that was my job duty, to find -- to
16 set it up, to find people. Yeah, that was my job.

17 Q Okay. And, so, as a consequence, prior to
18 2018, no such special events department existed.

19 A Not that I know of.

20 Q Why did Chief Reynolds put it into place?

21 A I don't know what all happened before I
22 got there. I just know that the department was
23 making some changes, they were moving people, and I
24 got tasked with going there. And I think one of the
25 reasons was -- well, they told me. Because I had no

1 involvement with off-duty work at all. So they
2 wanted a fresh person in there, so they put me in
3 that job.

4 Q Okay. Where did your paycheck come from
5 while you were in that job?

6 A The City.

7 MR. GIST: Let's go off the record for a
8 second.

9 (Off-the-record discussion.)

10 BY MR. GIST:

11 Q What was your rank -- your last rank was
12 lieutenant?

13 A Yes.

14 Q Okay. Lieutenant Hawkins, with respect to
15 the office of special events, would have been your
16 supervisor?

17 A Captain Searson was my supervisor.

18 Q And then who would have been the captain's
19 supervisor?

20 A Was it maybe Elder or somebody.

21 Q What was the rank?

22 A Deputy chief.

23 Q Deputy chief.

24 A Yeah.

25 Q And then the chief?

1 A And then the chief.

2 Q Do you know Captain Brisbon?

3 A I know him.

4 Q Okay. How do you know him?

5 A I worked with him.

6 Q Okay. And in what capacity?

7 A We worked together, I guess, throughout
8 our careers. He was -- he -- he was my supervisor,
9 I think, when I was in the tac squad one time many
10 years ago. But just working together. That's how I
11 know him.

12 Q Do have any doubt about his integrity?

13 A I don't.

14 Q Has he ever lied to you?

15 A Never lied to me.

16 Q With respect to Captain Brisbon, just what
17 do you know about him? Has he always been the kind
18 of person with you that's been upfront?

19 A He's always been upfront with me. I never
20 had any issue with Captain Brisbon. I can't say
21 anything negative. You know, he never -- you know.

22 Q Have you had any disciplinary action at
23 the City of Charleston?

24 A Oh, I have.

25 Q Okay. What did that involve?

1 A Oh, shucks. Let me remember. I think I
2 took a car home. I took a car to -- I think I drove
3 a car when I wasn't supposed to once. Oh, shucks.
4 What else. It's hard to remember.

5 Q Okay. Well, have you ever been suspended
6 or recommended for termination from the City of
7 Charleston?

8 A No, I never have.

9 Q And did you serve under Chief Mullen also?

10 A I did. You know, I think I got suspended
11 one time for -- I think when I had that car.

12 Q Okay.

13 A I think I got -- I think I got a day off
14 or something. That was -- that was early in my
15 career.

16 Q Okay. How was the department ran -- just
17 answer if you do know this, based on what you saw,
18 what you experienced. How was the department ran
19 under Chief Mullen versus the way it was ran under
20 Chief Reynolds?

21 A With respect to off-duty work?

22 Q No. With respect to organization and
23 function and administrative procedures.

24 A I would think that Chief Mullen, he got
25 involved in a lot of stuff a lot more. He -- he was

1 always -- he was always questioning like -- you
2 know, you had to have operations plans all the time,
3 and you had to know where officers were and what
4 they were doing and, you know, what they were going
5 to be doing while they were on the assignment that
6 you gave them. And, you know, it almost got to the
7 point one time where he wanted to know where -- like
8 where people were at a certain time at a certain
9 place. Things like that. He was more like.

10 Q Was he a micromanager?

11 A Oh, yeah, he was. He -- he was a lot more
12 than -- than Reynolds is. Much more.

13 Q Any -- any doubt in your mind as far as
14 that he was a lot more stricter than -- than
15 Reynolds?

16 A No. No doubt in my mind.

17 Q Would you characterize Chief Mullen as
18 being someone that was more, as you say, directly
19 involved, knowing where everybody was? How about
20 with off-duty officers?

21 A I don't know. Like I said, because I
22 didn't -- I didn't work much off duty when I was --
23 I didn't work hardly any, you know, when I was --
24 before I really got that job. I -- I really wasn't
25 familiar with the off-duty stuff that much.

1 Q Okay. Well, that's -- that's fine. But,
2 now, in terms of Chief Mullen, though, any doubt in
3 your mind that if somebody was doing something
4 improper or wrong that Chief Mullen wouldn't have
5 stopped -- stepped up and took action against them?

6 A He would have done that. Yes. I ain't
7 got no doubt there.

8 Q Now, Reynolds. Chief Reynolds. How do
9 you describe him?

10 A I think Chief Reynolds was more, I guess,
11 laissez-faire. He kind of depended on the -- the
12 supervisors to do more. That was my impression of
13 him. You know, he kind of let me do -- he kind of
14 expected me -- when I was in the teams, I was team
15 commander. He kind of let me run the team, and he
16 didn't -- he didn't interfere with me much.

17 Q He let you do what you want to do?

18 A He did. He let me do what I wanted to do.
19 He let me do what, you know, probably should have
20 been done. You know what I'm saying.

21 Q He gave you broad discretion?

22 A He did. To know -- to know what I was
23 supposed to be doing. He -- he...

24 Q Have you ever heard of anyone during your
25 tenure with George at the City of Charleston Police

1 Department and your acquaintance with
2 George Brisbon, did you ever hear of anyone make any
3 allegation that he was a fraudster?

4 A No.

5 Q That he misled people and didn't tell them
6 the truth?

7 A No.

8 Q Now, what units did you work with Brisbon
9 on?

10 A When I was in -- I think when I was in the
11 tact squad, I think he was my supervisor then.

12 Q Are you saying tactical?

13 A The tactical unit. We did surveillance
14 and things like that. Yeah, because he was -- I
15 think -- I think at that point, we came under the --
16 we worked a lot with the detective office. I
17 think -- because this was many years ago. And I
18 remember they would always call wanting my unit to
19 do things.

20 And I remember, because I had to go to
21 George. And say, you know, the detectives are
22 calling and wanting us to do this and do that. It
23 was more some management stuff. You know, sometimes
24 they would want me to do stuff that they should
25 probably be doing. So he would get involved and

1 say, you know, that's not their job, that's -- you
2 know, that's y'all's job, things like that.

3 But, you know, I think that's the one time
4 in my career when I worked directly with George.
5 Like I said, I had 35 years, so. You know, and that
6 was back when I was like a corporal, a sergeant.
7 You know, I was probably about a corporal back then.
8 So that was a long time ago. So I'm trying to
9 remember.

10 Q Was George Brisbon in special events when
11 you with the department actually got established in
12 2018? Was he a part of that department after it
13 became a full living, breathing entity within the --
14 within the police department?

15 A When they created special events?

16 Q Yeah.

17 A That was my job then.

18 Q So George was not there?

19 A He was not there. He wasn't associated
20 with that. I think he was still in the department,
21 but he wasn't associated with -- you know. Because
22 I think he was in the detective office then.

23 Q So he moved from --

24 A He was still in the detective office while
25 I was in the special events office.

1 Q So did you ever assign him to any special
2 events when you took over special events?

3 A No. No. No. I didn't assign him because
4 you can't work -- I couldn't assign George to events
5 because he outranked me.

6 Q Okay.

7 A You see, I couldn't set up a job or -- or
8 be on a job assign him because he outranked me. But
9 if there was like a job where -- like a concert that
10 required a captain or something, then I would give
11 that to them and, you know, I would -- I would put
12 that list out. They would sign up on it, and then
13 they would -- you know.

14 Q Just being -- just off duty.

15 A Yeah, for off duty.

16 MR. GIST: Okay. No further questions.

17 - - - - -

18 EXAMINATION

19 BY MS. CLEVELAND:

20 Q I have a few. I believe that you said,
21 Lieutenant Hawkins, that -- I'm sorry. Was it
22 lieutenant?

23 A Yeah.

24 Q Lieutenant Hawkins, that you thought you
25 took the -- the special events job some time in 2018

1 and 2019. If I saw a record that indicated it was
2 May 18th of 2019, do you have any reason to think
3 that's not correct?

4 A No.

5 Q Okay.

6 A I'm trying to remember, you know. Because
7 I know I was in -- I know I retired in March of '20,
8 and I had been there about a year.

9 Q Okay.

10 A So.

11 Q So -- so May 18th, '19, or thereabouts,
12 was when you first started to learn about off-duty
13 jobs; is that correct?

14 A Yeah.

15 Q And I think that you said before the
16 special events coordination job that you filled was
17 created, there was no other unit or group that did
18 that, those services, of putting together the jobs.

19 A Yeah. Not that I knew about.

20 Q All right.

21 A Because, like I said, I wasn't involved in
22 off-duty work, and I didn't -- you know.

23 Q What's been handed to you,
24 Lieutenant Hawkins, are two policies, State 1 and
25 State 2. They are the same policy, or similar

1 policy, but there are two dates.

2 A Okay.

3 Q State 1 is the one revised as of
4 June of 2010, and then State 15 is the same policy
5 as it was revised in October of 2018.

6 A Okay.

7 Q And I want to start with State 15, because
8 that would have been around the time that -- that
9 you were becoming involved. And if you look, your
10 job is discussed -- I'm sorry -- at 50.4.

11 A Okay.

12 Q It says, the special events office or
13 designee, and that would have been you, right?

14 A Yes.

15 Q Will serve the following functions related
16 to off-duty employment. You're going to serve as
17 the department's liaison, facilitate communications
18 between officers and employers seeking to hire them.
19 Does that sound right?

20 A Uh-huh.

21 Q And then if there's an emergency situation
22 and you're not around, the command duty officer will
23 do it in your place.

24 Two, request forms for employers to advise
25 employment opportunities will be made available to

1 prospective employers during your tenure.

2 It says, three, you'll also post
3 employment opportunities for officers to sign up for
4 possible off-duty employment. And I'm shortening
5 these.

6 Four, returning the list of prospective
7 employers.

8 And I'd like to turn now back to State 1,
9 and look at 50.3. It says, department facilitation.
10 The professional standards office will serve the
11 following functions related to off-duty employment.
12 One, serve the department's -- serve as the
13 department's liaison, facilitate communications
14 between officers desiring to work any off-duty
15 police-related employment opportunity and employer
16 seeking to hire them for services.

17 That's the same thing as your first duty,
18 right?

19 A Yes.

20 Q All right. And then --

21 MR. GIST: Object to the form.

22 HEARING OFFICER: Sorry?

23 MR. GIST: Object to the form.

24 BY MS. CLEVELAND:

25 Q Okay. And then, A, it says, in case of

1 emergencies, the PSO isn't available, the command
2 duty officer will take over. That's the same as
3 yours, correct?

4 A Yeah. Yeah.

5 Q And then, number two, request forms for
6 employers to advise employment opportunities.
7 That's the same as yours, correct?

8 A Uh-huh.

9 Q And, three, post the employment
10 opportunities for officers. That's exactly the same
11 as your job description, correct?

12 A Uh-huh.

13 Q And, four, again, the same?

14 A Uh-huh.

15 Q In fact, it -- it appears that they were
16 doing all these duties, just in another unit before,
17 doesn't it?

18 A Correct. And -- and, like I said, I
19 didn't work the off-duty stuff, but there was still
20 officers that had jobs that -- they may have been in
21 this office, but they were handling them. That's
22 what I know about it. And that's why when this took
23 place, everybody in the department that had jobs had
24 to come to me. Because although you had this, there
25 were still officers out there with jobs that were --

1 you know, that were their own and --

2 Q And they were administering the job.

3 A They were administering the jobs, yeah.

4 Q State's 13. Are you familiar with that
5 form?

6 A Uh-huh.

7 Q And can you tell me what it is?

8 A This was the form that when you -- when
9 you had a job, you had to, I guess, fill this out,
10 and you had to turn that in. Let me see.

11 Q Take your time.

12 A Yeah. When you -- if you had a job --
13 okay. Let me make sure I get this right. Like
14 professional standards office had theirs. But if
15 you had something else, then you filled this out,
16 and it went through all these people, and then they
17 approved it, and then you kept that. You had that.

18 Q And that particular one is filled out by
19 George Brisbon asking to administer the
20 Thomas Bennett House; is that correct?

21 A Uh-huh.

22 Q And, so, by doing, he's asking permission
23 to do that, correct?

24 A Yes.

25 Q And by doing that, he's asking to take it

1 away from professional standards and allow him to be
2 the administrator of that job?

3 A Yes.

4 Q Okay.

5 A Now -- yeah. Because when I -- when I
6 took over, all of these had to be given to me after
7 they were approved with this. They had to be given
8 to me, and I had to keep them on file. Then I had
9 to go ahead and make up the rosters and all that
10 stuff. Because so many people had so many jobs.
11 You didn't know who was -- that's how it was.

12 Q Okay. And -- and when an officer like
13 George Brisbon took on -- or Captain Brisbon, pardon
14 me, took on administering a job like that, was there
15 any department rule requiring him to charge the
16 third-party business for his service time?

17 A I didn't know of any rule.

18 Q Do you know of any now?

19 A I don't know of any now. I -- I never
20 knew of any rule -- you know, I'll tell you this. I
21 didn't know of any rule -- I didn't know of any rule
22 charging a business extra to manage a job. I didn't
23 know of any of that.

24 Q All right.

25 A Okay. I found out, you know, that was

1 going on when I got in this job. That's why I had
2 to then make sure all of this was done. I had to
3 make sure all of this was followed. Had to make
4 some changes to this, as well, when I got in the
5 job. Because it was -- and, I'll tell you,
6 Caroline, when I got in there -- because there were
7 rules, but there were no rules until you got caught
8 with something. Then -- and that's the truth of it,
9 you know.

10 Q So you're saying rules existed but were
11 not being followed?

12 A Rules existed and not being followed and
13 not being checked to see if there was any rules.

14 Q All right.

15 A So everybody kind of did what they wanted
16 to, as long as they were looking, going by some of
17 this. And then what happened -- well, this is from
18 when I took over, what I started finding out. For
19 \$5, people with legal forms would do, they would
20 call -- and I'm just using as an example. Well,
21 this job only pays \$35. We can't get it filled. So
22 let's raise the rate, which it says here, you're
23 only supposed to charge a certain amount. Let's
24 raise the rate. If -- if you call --

25 Q You, who, people, a police officer, a

1 citizen?

2 A A police -- a police officer who -- whose
3 ever name was on here.

4 Q Like George Brisbon.

5 A Like George Brisbon or -- or any other --
6 several other officers who were doing --

7 Q Were raising their rates.

8 A Were raising their rates. Okay. Were
9 raising their rates, but have the person, the
10 Thomas Bennett House -- I'm just using that as an
11 example -- have them call and say, hey, man, we need
12 to start paying more so we can get it filled.
13 Because the officer really came and told them,
14 that's what you need to do so that we could all make
15 a little bit more money and work it. That's what
16 was happening.

17 Q And it's wrong for an officer to try to
18 negotiate a higher rate like that?

19 A Yes, it was. It was wrong for them to do
20 that. This was the rate for the off-duty work.
21 Okay.

22 Q Got you.

23 A But what I'm telling you, Caroline, is
24 that in my experience, there was so much going on,
25 and it was so out of control. It had gotten so big.

1 And people turned a blind ear to it, because they
2 were all making money. And if you had people who
3 were -- who were -- if you had people who were lower
4 in rank, they're not going to say anything, because
5 I work for these people. These people sign my
6 evaluations and things like that.

7 So I spent a lot of time cleaning up all
8 of this to make it jive with this to make it right.
9 That's what was happening.

10 And what I'm saying is this, is that,
11 there were rules, but there were no rules. Okay.

12 Q So are you saying that in 2018 and '19
13 when these things came to light, I believe, with
14 Corporal Johnson and George Brisbon, that you became
15 aware there was more and more and more stuff going
16 on?

17 A Yeah. Now --

18 Q Do you think it would have been reasonable
19 at that point to launch a much broader investigation
20 and figure out what everybody is doing, instead of
21 just George and Clyde?

22 A I would say yes, okay.

23 Q Okay.

24 A And I will tell you, I know, because some
25 of the stuff that I found out was going on that I

1 turned over, they did do some stuff with it later
2 on.

3 And, I'll tell you -- and, like I say --
4 let me make something clear with y'all here. My
5 role here is not adversarial. Okay. I'm just here
6 to tell you what I experienced while I was in the
7 job. Okay.

8 Q That's all we want.

9 A That's all -- you know, I'm not on
10 anybody's side or anything. There was so much going
11 on with these off-duty jobs. Even while I was
12 trying to fix stuff, people would still do stuff to
13 circumvent, to try to make more, to try to get
14 extra. Okay. I've turned in stuff. You know,
15 they've suspended people. They've done some of that
16 since then.

17 But it was so broad going on. I don't
18 know what happened with George or what happened with
19 Clyde, because I never talked to anybody about it
20 while those investigations were going on. I
21 couldn't. I was just told, we put you in this job.
22 You've got nothing to do with off-duty work. Here's
23 the rules. Let's make it -- let's fix it moving
24 forward. And that was my deal.

25 MS. CLEVELAND: All right. I think that's

1 all that I have.

2 MR. GIST: All right. Just coming back.

3 Re-direct.

4 BY MR. GIST:

5 Q Let's look at when you became -- look at
6 Exhibit No. 13. When you became assigned to the
7 special events unit, was that in May of 2019?

8 A I guess around then. I'd have to look,
9 you know, because I -- you know, I just got a call
10 yesterday to come up here, and I didn't research all
11 them dates, but...

12 Q But if we can conclude her calculations,
13 you started in May of 2019.

14 A Yeah. I was -- yeah.

15 Q This event here involving the
16 Thomas Bennett House was on March 1st of 2019,
17 correct?

18 A Yeah. That's what it says.

19 Q So you have no direct knowledge of
20 anything about the Thomas Bennett House, would you?

21 A Yeah. I don't have any direct knowledge
22 about a lot of these jobs except that this was given
23 to me.

24 Q I'm just asking you --

25 A No, I don't.

1 Q You weren't even in special events on
2 March 1st of 2019.

3 A I guess not. You know, like I say, I had
4 been there about a year, so -- because I left
5 March 20th of '20.

6 Q Right. So let me ask you --

7 A It may be a day or something, you know.

8 Q I understand that. But in May of 2019 is
9 when you first got assigned to special events.

10 A I believe so. Like I say, I don't have
11 that date in front of me.

12 Q Let's go back, though. Your testimony
13 here is that prior to you being assigned to special
14 events, everybody was doing their own thing. Is
15 that a good way of putting it?

16 A They were.

17 MS. CLEVELAND: Objection.

18 HEARING OFFICER: Okay. What's your
19 objection?

20 MS. CLEVELAND: He said that after he took
21 on that event -- that position, that's what he
22 found, but he had no true knowledge before he took
23 the position. The question was opposite. You asked
24 before he took on the position.

25 MR. GIST: Well, before --

1 HEARING OFFICER: I guess --

2 MR. GIST: Let me clarify my question.

3 HEARING OFFICER: Yeah. If you want to
4 try to re-ask it.

5 BY MR. GIST:

6 Q Sir, after you took over your job in May
7 of 2019 --

8 A Yes.

9 Q -- you found that the policy and people
10 doing these special events was all over the place?

11 A Yes.

12 Q And was there any -- was there any really
13 coordination, administration, or adherence to order
14 number 50, which deals with -- Exhibit No. 1 that
15 she showed you?

16 A This job -- this -- I think, as I
17 remember, the professional standards office, Sonya,
18 who is a civilian, worked in there at the time. And
19 I think she was the person that managed this portion
20 of it. To say -- when she managed it, what she did
21 was, she just collected information, because she's
22 civilian. And then you've got sworn officers as
23 well.

24 Q Okay.

25 A So they really didn't interact like that.

1 She had no authority that -- I believe, because I
2 never heard or -- or seen it, to really question
3 or -- or -- or, you know, investigate what somebody
4 was doing.

5 As an example, this Thomas Bennett House.
6 If I got this, okay, in my office, I would just
7 assume, unless something happened, that George was
8 running this and doing whatever he was supposed to
9 be doing. Okay. So I wouldn't know, because just
10 because this says Thomas Bennett House, it's in my
11 office, and -- and if there's a list of something
12 with names on it, their working it and -- you know,
13 he may be -- he may be assigning people to it or --
14 or he would be sending it -- once I was there, he
15 would -- he would make up a list, give that list to
16 me, and I would have people on the SignUp Genius
17 would go ahead and sign up for that job.

18 So I don't know what was going on with it
19 and --

20 Q Right.

21 A -- who was getting paid and who -- I
22 wouldn't know any of that.

23 Q Right. But at the end of the day, you
24 were not there in March 1st of 2019. You didn't
25 come to work there. So I want to make sure, because

1 Ms. Cleveland kept trying to make a comparison
2 between the office of -- office of professional
3 standards and your office. Are the two offices
4 different?

5 A Yes, they're different.

6 Q Okay. And was the main reason for you and
7 your office coming in as an entity, was to bring
8 control over the chaos?

9 A Yes. Exactly.

10 Q Now, I want to ask you this, though. Once
11 you took over that office, you did, in fact, have
12 files and documents that you could have easily
13 accessed at any point.

14 A Yes.

15 Q Both before May 1st of 2019 and after
16 May 1st of 2019.

17 A Yes.

18 Q Did you ever see anything in your
19 recollection as the special events coordinator or
20 officer, lieutenant, assigned to that office, that
21 brought to your attention that George Brisbon did
22 anything that was in violation of policy?

23 A None at all.

24 MR. GIST: No further questions.

25 HEARING OFFICER: Ms. Cleveland, anything?

1 BY MS. CLEVELAND:

2 Q You said they brought you in to organize
3 the chaos. Again, would part of organizing the
4 chaos be figuring out -- getting your arms around
5 what the problems were?

6 A That was it.

7 Q And, so, would it have been a good idea to
8 kind of have a little extended investigation of all
9 officers working in the off-duty jobs to figure out
10 who was doing what?

11 A Well, what I did was -- yes, if you found
12 out there was an issue. I mean, I wasn't just
13 randomly picking people, go check this guy, go check
14 this guy. If something came up and I had to look at
15 it, well, the first thing I would do is, I would
16 call and say, hey, this job is paying this or doing
17 this or -- or -- or whatever. I would call this
18 person at the Thomas Bennett House. Tell me what
19 your understanding is and, you know -- and that --
20 that type thing.

21 Because the other thing that happened was,
22 some jobs, what they -- what they would do is, where
23 it says the -- the staff duty officer -- if a job
24 came up and the staff duty officer needed somebody
25 to fill it, they would call -- they would call --