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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
Volume 3

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1 CAPTAIN BRISBON: See like right here there's a wedding
2 on a Friday, I mean on Saturday, then on a Friday, then on a
3 Saturday. And then like here, Saturday and a Sunday; then a
4 Saturday and a Friday; and it backs up to Friday and a
5 Saturday. So like I said.

6 SERGEANT MIXON: Okay, so the issue that kind of
7 arises is you're really just sending out an email saying this
8 was kind of all predetermined. I'll just send you the names,
9 you plug in the invoice and everybody gets paid.

10 CAPTAIN BRISBON: Exactly. So it's not - like I said,
11 I might send them a list. At the first of the year they said
12 you know send me who's going to work. And like I said,
13 sometimes I can't do it sometimes two or three months in
14 advance. So maybe I'll be able to do it by the month. And
15 then there'll be times when either I can't do it or the
16 officer that I originally had scheduled to do it can't do it.
17 And then if he can't do it and I can't find somebody else to
18 do it then I'll have to do it. So it's just - it just
19 fluctuates.

20 SERGEANT MIXON: Okay. So let's look at the two.
21 We'll look at the other ones just so I'm kind of clear on
22 these. The Tennis concert. You're getting - the times you
23 actually work; and I guess in addition to the hours you're
24 adding for scheduling the events.

25

1 CAPTAIN BRISBON: Scheduling and IAPs and invoices and
2 stuff like that.

3 SERGEANT MIXON: I understand - well I'm sorry. Let
4 me back up real quick. So with the Thomas Bennett House I
5 understand you kind of negotiated the fee for managing that on
6 your own. That was not an authorized thing by the Department?

7 CAPTAIN BRISBON: Beginning with the cruise ships, the
8 Chief at the time, Mullen, was explicit with me. He said you
9 got a bunch of off-duties. I don't want you managing on City
10 time. He said manage them on your personal time. And
11 whatever hours or whatever you need to manage them, you bill
12 them to that particular organization. So starting with the
13 cruise ships they were once every - originally only every
14 Saturday. And then Norwegian wanted more visits so then it
15 became the time of them scheduling also having cruise ships
16 during the week.

17 So at that time there was no - only thing the Department
18 had was a board, a sheet, and you had it out there. And then
19 people would come and sign up. And then most of the times I
20 would not have enough people to sign up, so then I'd get the
21 roster. I'd go home and I'd start calling people; hey, can
22 you work, can you work, can you work? And then I've got forms
23 that go back I think from to 2006, 2007; and clearly on the
24 bottom in red it would say administrative hours for this week,
25 and as it goes on.

1 SERGEANT MIXON: But the cruise ship was a negotiated
2 contract between the City and the Port Authority.

3 CAPTAIN BRISBON: Correct. And like I said, the Chief
4 wanted me - he said I want you to do this on your own time.
5 So then when the concerts came up it was the same thing. I
6 said hey Chief - because initially they didn't do concerts up
7 there. Maybe they might have one a year. But then when they
8 got to the point of having 12, 13, 14 concerts a year; had a
9 meeting with [Inaudible] and the Chief says you do it the same
10 way you do the concerts. I don't want you spending all of
11 this time managing this on duty. You do it off duty on your
12 time.

13 SERGEANT MIXON: Okay. And you felt he was explicit
14 that you could add the hours for managing this thing on the
15 off-duty time.

16 CAPTAIN BRISBON: Exactly. And then again with the
17 movies; because often the request was late or at the last
18 minute. They'll call you at night saying hey, we ain't
19 shooting in North Charleston; we're shooting over here; we
20 need to push the time back from starting at 8:00 to 12:00.
21 And then I have to get on the phone and say okay, tomorrow
22 instead of coming at this time you need to come in at this
23 time. And again this is something that I took explicitly from
24 my conversation with Chief Mullen.

25

1 SERGEANT MIXON: Okay. So you had the original
2 conversation about the Port Authority.
3 CAPTAIN BRISBON: The Port Authority.
4 SERGEANT MIXON: With the Port Authority I get it;
5 that's under contract; that was an agreement.
6 CAPTAIN BRISBON: That's not - I don't even think that
7 part of it was in the agreement. The only thing that they had
8 was that I would get - that the hours - I'm sorry. That the
9 rate - because they wanted to make sure that they could get
10 officers - that the rate was more; that they actually paid to
11 use our vehicles and stuff like workman's comp and all of that
12 stuff. I can remember specifically if the language stated
13 about the administrative fee. But this was a direct
14 conversation I had with Mullen.
15 SERGEANT MIXON: So between the concert and the Film
16 Industry it kind of seems like those have been the longest
17 running for you. Which one did you start working first, the
18 Film Industry or the Port Authority?
19 CAPTAIN BRISBON: I would say - I mean I've been
20 working the Film Industry since '84 with north and south.
21 SERGEANT MIXON: So probably been doing the Film
22 Industry long before the Port Authority?
23 CAPTAIN BRISBON: Oh yeah.
24 SERGEANT MIXON: Have you always been charging extra
25 hours and getting paid the higher rate with the Film Industry?

1 CAPTAIN BRISBON: I would say no, because I mean back
2 then in '84 you might get one movie every four or five years.
3 There was no - and at that time I wasn't running it. I didn't
4 start running it until Lieutenant Connelly retired and - god I
5 don't even remember when that is.

6 SERGEANT MIXON: When you took it over did you
7 negotiate the higher rate at that point?

8 CAPTAIN BRISBON: The higher rate has always been in
9 effect. That was something that was established by the guys
10 that were on the [Inaudible 00:17:47] Film Commission. And
11 that rate was set - I don't know whether it was Connelly or
12 before he started or before I started, but that was something
13 that was set.

14 SERGEANT MIXON: So when you took it over that \$47.50
15 came to you?

16 CAPTAIN BRISBON: No. It just went up as the off-duty
17 rate increased.

18 SERGEANT MIXON: But policy doesn't indicate any
19 additional charges for managing off-duties?

20 CAPTAIN BRISBON: Like I said, in this Department there
21 are policies, there are procedures, whatever you want to call
22 it. There are a lot of things that we do that ain't in
23 policies. And like I said, when I first started I used to
24 track - especially with the cruise ships I used to track my
25 time. Because they said you're constant and when you're

1 working the cruise ships if you need to be there you need to
2 take leave or comp time or whatever.

3 And then I would say from 2007 until I stopped in 2014 or
4 '15, either of those years, I might have missed ten cruise
5 ships total. And so I used to do a list of how many overtime
6 hours I had, how I accumulated them, because I needed to track
7 this. And then I used to subtract the hours as I worked the
8 cruise ships. And then I would submit it weekly to Deputy
9 Chief Eldon. He goes nah; you ain't got to do all that crap;
10 we know what you're doing; just handled it.

11 So I mean policies change from time to time. But like I
12 said this was a direct - directly from Chief Mullen and that's
13 what I followed. The policy could have - whatever it was back
14 then could have changed to whatever it is now. And when Chief
15 Reynolds first got here - I think he had been here a couple of
16 months and we had our first meeting over at the MEOP, of how
17 he wanted things done. Out of all the Captains - he met with
18 the other five Captains; I didn't meet with him. And then all
19 of a sudden I guess towards the end of the discussion he asked
20 me something about off-duty and I went wait a minute; you've
21 talked to all of these guys; you've got Power Points; and then
22 out of the blue you ask me about off-duties.

23 So afterwards I approached him. I said you confused me;
24 I don't know where we going here. And Captain Searson was
25 there and he said oh, okay; well everybody said that you know

1 what's going on with off-duties. And I explained to him the
2 same thing that I just explained to you. And then Captain
3 Searson - then he asked Captain Searson; well how do you
4 handle it? And Captain Searson says well I do all of my stuff
5 on duty. And he says well okay; I like the way Captain
6 Searson's doing it. But he says we're going to have a big
7 committee, more to come, and we'll discuss it that way. And I
8 told him exactly back then - which he came in like April so
9 this might have been June, July - I explained to him that this
10 is what I do. I'm compensated because my time - this is
11 something that Chief Mullen told me to do and I do all of this
12 on my own time, after hours. And again he says okay; well I
13 like the way Captain Searson's doing it but more to come.
14 We're going to get into off-duties and how it's managed and
15 all that.

16 So this is not something that should be a surprise to
17 him, because I told him from the jump; this is what I've been
18 doing. This is what I do and this is what I've been
19 authorized to do.

20 SERGEANT MIXON: So for - I kind of hate talking about
21 the cruise ship because there was a contract involved in that
22 between the City. So since we're dealing with a higher rate
23 for the Film Industry I kind of want to focus on that one. So
24 for the Film Industry, when you sign up to work what position
25 or post are you working for the Film Industry?

1 CAPTAIN BRISBON: If - most of the time I would say
2 it's three or more officers most of the time.

3 SERGEANT MIXON: But I'm talking about for you. If
4 you sign up and work and you go to where the filming is taking
5 place, what position are you - what positions do you normally
6 take? Are you standing back supervising the guys that are
7 doing the road blockings and security?

8 CAPTAIN BRISBON: 90% of the time I'm supervising.

9 SERGEANT MIXON: You're supervising.

10 CAPTAIN BRISBON: Right; most of the time I'm
11 supervising.

12 SERGEANT MIXON: And again you're doing this film
13 industry time on your off-duty personal time.

14 CAPTAIN BRISBON: Right.

15 SERGEANT MIXON: So technically you could while you're
16 supervising make your phone calls, do your calls, get
17 scheduling for the next film thing coming up while you're
18 already working as the supervisor.

19 CAPTAIN BRISBON: Generally no; yes and no. Because
20 especially when you're talking about blocking streets; that's
21 not something that you can say hey, tomorrow I'm blocking the
22 street. You've got to - they got to apply for permits through
23 T&T, through Special Events - and that takes time. What may
24 happen is they may say okay; if I'm working today, say at
25 about an hour or two before the end of the day, they realize

1 that okay, tomorrow - we run a little bit late today. And in
2 some instances depending on your job there they either need an
3 8, a 10 or a 12-hour I guess recall. Or if you worked X
4 amount of hours then you've got to have then you've got to
5 have like either 8, 10 or 12-hour rest period or break period
6 before you come back; or you're now into double time or triple
7 time or whatever the case may be.

8 SERGEANT MIXON: You're talking about for the crew.

9 CAPTAIN BRISBON: I'm talking about for the crew. So
10 say people are supposed to work until 10:00 at night. They
11 might say well we went a little bit late; we might have to go
12 until 11:00 or 12:00. We were scheduled to come in until
13 10:00 - we were scheduled to come in at 10:00 the next morning
14 because we were scheduled to be done at 10:00 tonight. So now
15 we have to what they call push/call. They have to back the
16 time up. In that case I would get on the phone and say okay;
17 tomorrow instead of coming in at X amount of time, you need to
18 come in at X amount of time. If I'm there then there's no
19 additional charge because I'm doing it while I'm there. I'm
20 talking about times when if I'm not there and they call me and
21 say hey; we've got a push/call time tomorrow. Or we're not
22 going to North Charleston; can you find some officers to come
23 in tomorrow at X amount of time. Or something happened; if
24 all of a sudden they cancel the scene. Okay, we're not coming
25 in the City tomorrow; can you cancel the officers? Or if it's

1 too late then what I have to do is okay, we're still going to
2 pay the officers because it's in 8 or 12 hours and we don't
3 want to be in a situation where we hire officers and we keep
4 canceling and then now nobody wants to sign up. So on those
5 particular times I would have to call the officers, cancel him
6 but tell him; okay tomorrow at whatever time you still need to
7 see me. Fill out a time sheet so you still get paid.

8 So like I said, most of the time if I'm there and I have,
9 to do something it's because the next days' time has been
10 pushed or whatever the case like that. But it's not like I'm
11 there and they say okay, we got to do this tomorrow and now I
12 got to make some other arrangement. Most of the time, I would
13 say generally 100% of the time when I'm notified of a setup
14 it's because the Special Events Committee or whoever has to
15 approve the next set of filming dates. And generally that is
16 anywhere from 72 to 96 or 120 hour turnaround. Because it has
17 to go through Special Events, it has to go through T&T, stuff
18 like that.

19 SERGEANT MIXON: So how do you notify whatever film
20 you're working with who's working and what hours they work?
21 How do you do that?

22 CAPTAIN BRISBON: His time sheet.

23 SERGEANT MIXON: They have time sheets? Is that
24 something that's provided to you and you file with the Film
25

1 Industry? So if I signed up to work the Film Industry and you
2 coordinated, how do I log my hours?

3 CAPTAIN BRISBON: Time sheet.

4 SERGEANT MIXON: Who gets that time sheet?

5 CAPTAIN BRISBON: They do.

6 SERGEANT MIXON: So I go to the location that I'm
7 supposed to be at and they have it for me and I fill it out?

8 CAPTAIN BRISBON: Um-hmm.

9 SERGEANT MIXON: Do you ever see the time sheet?

10 CAPTAIN BRISBON: Yes. Because 9 times out of 10 it
11 has what's called Start Paperwork, which is probably about
12 that thick. And it requires a bunch of signatures, requires a
13 bunch of information. And so as officers sign up, I generally
14 know who has worked before and who hasn't. So once the
15 paperwork gets filled out, then they turn the paperwork in to
16 me. Or at the end of the day I'll get someone; I'll say hey,
17 collect the Start Paperwork. Because a lot of times if I turn
18 it directly over to them then they're calling me back saying
19 hey, this isn't correct; I don't have a signature here; they
20 didn't fill out this part; whatever.

21 So once the packet is filled out, at the end of the day
22 if I didn't work somebody will collect it, they'll get it to
23 me, and on my own time I'll sit there and go through it and
24 make sure all the I's are dotted, T's are crossed, signatures

25

1 in the right places, everything. And then I'll take the
2 package and I'll turn it over to them.

3 SERGEANT MIXON: Okay. Do you make copies of the
4 package for yourself?

5 CAPTAIN BRISBON: No.

6 SERGEANT MIXON: Do you keep copies?

7 CAPTAIN BRISBON: No, because most or all of it has
8 either social security numbers, birth dates, a lot of personal
9 information; so I don't keep the package.

10 SERGEANT MIXON: So they get a time sheet that's there
11 at the scene, set, whatever the place is, the location; the
12 officer fills it out; somebody goes around or you go around
13 and collect it, and then you give it directly to the
14 coordinator?

15 CAPTAIN BRISBON: The locations manager.

16 SERGEANT MIXON: Locations manager, okay. So is there
17 a higher rate paid to the officers who work for the Film
18 Industry as well? Or are you the only one collecting the
19 higher rate?

20 CAPTAIN BRISBON: The rate for officers is \$40 an hour.

21 SERGEANT MIXON: \$40 an hour.

22 CAPTAIN BRISBON: Correct.

23 SERGEANT MIXON: And how is that determined?

24 CAPTAIN BRISBON: Again that was set by the Film
25 Industry a long time ago.

1 SERGEANT MIXON: So was there ever any conversations
2 or discussions about increasing the rate between you, Chief
3 Mullen or any executive staff about increasing the rate?

4 CAPTAIN BRISBON: As the off-duty rate increased the
5 rate increased. So it's not like it was this. Say it was -
6 because it was always \$10 more than what the off-duty rate
7 was, even when I started back before I even took over. It was
8 \$10 more than what the off-duty rate was because like I said,
9 a lot of times at the last minute we have to get people and we
10 wanted to be able that officers would jump in the boat first
11 to sign up for our jobs. This was something that was set by
12 the Film Commission. And then like I said, as our rate
13 increased by \$5 then the movie rate would increase by \$5.

14 SERGEANT MIXON: And that's different than what policy
15 says right now.

16 CAPTAIN BRISBON: Again, policy says a lot of things.
17 But the practice of the Police Department at that time was
18 this is what we do.

19 SERGEANT MIXON: So we've had - I've gone and looked.
20 We've had a couple of revisions of the off-duty policy in the
21 last 15 years. Any reason why none of that was written into
22 the policy to reflect any of that? To say that hey, with the
23 Film Industry we're going to get \$5 more dollars an hour, or
24 anything along those lines? Or that it's okay for you to
25 charge an administrative fee?

1 CAPTAIN BRISBON: I mean there were times when there
2 were policies in there in reference to traffic; whether it be
3 escorts or when you did traffic-related duties. And I want to
4 say it might have been when Mullen first got here, or it might
5 have been Griebner; I could have sworn that it was in the
6 policy. I mean if you went back to standardized when - I'm
7 talking about when you actually had to officially type these
8 policies and stuff like that. I remember - I think I can
9 remember when it was there. I'm not 100% but I can remember
10 something along those lines. But again -

11 SERGEANT MIXON: But even before that. I mean we had
12 the policy back then. Let's say I give you the fact that it
13 was written; because we don't have it electronically but we
14 know when Chief Mullen came in, I mean he specifically re-
15 wrote the policy because of a prior PSO investigation into
16 double dipping. So he specifically wrote the current - pretty
17 much what's in the current policy now of a standardized rate
18 for across the board, with no exceptions.

19 CAPTAIN BRISBON: Nope, that wasn't what was explained
20 to me. I, again this was a standard rate by the Film
21 Commission; it was something I communicated. I mean it's not
22 a secret. I've communicated this my entire time. When we
23 started getting vendors to come in here and offer to I guess
24 manage our off-duties. In committee meetings I've stated
25 exactly what I do; the difference in the rates. And the guy

1 says yeah, our computer system is able to handle monthly
2 rates. This is not something I hid. This is not something
3 that I just created.

4 SERGEANT MIXON: Well I'm just trying to figure out
5 how would anybody - I mean I get it, the not secret part. But
6 I mean I've never worked off-duties before. Actually I take
7 that back. I worked one off-duty my entire time here so far.
8 So what you're telling me is something that I would never have
9 known. I mean if I went on to look I would have looked in the
10 policy and the policy would have said one thing, but
11 apparently we've got - there's something different going on.
12 So how do we - I mean how would somebody like me reconcile
13 that? Or somebody from the outside? Why are you getting paid
14 a higher rate when policy says this?

15 CAPTAIN BRISBON: Again, this is what was established
16 by Chief Mullen. And again I specifically asked him and he
17 said look; he said I don't want you managing this on City
18 time. You manage it on your off time. And that's exactly
19 what I did.

20 SERGEANT MIXON: So I have kind of a difference that I
21 have to kind of reconcile; because I reached out to Chief
22 Mullen. I asked him about the off-duty policy, and in his
23 email back to me he talks about you working the off-duties and
24 the numerous other officers that he's authorized to work off-
25 duties. But he says during these conversations he doesn't

1 recall any discussions about adding hours to pay for being a
2 POC.

3 CAPTAIN BRISBON: That's not correct. That's not
4 correct.

5 SERGEANT MIXON: As a matter of fact in reference to
6 the Film Industry he says that there was a conversation; he
7 says "I was aware that Captain Brisbon was the POC for off-
8 duty for these activities. I did not approve any rates other
9 than what was outlined in our policy for these activities."
10 And I'm assuming he's saying at the time. "Fairness and
11 consistency was the reason for the policy was developed and
12 having different rates for different venues would be
13 inconsistent with our goal." He says "If I recall correctly
14 that was \$35 for individuals working in supervisory capacity
15 and \$25 for others; with a differential if the event was on a
16 holiday; which the policy allows for a higher rate for a
17 holiday. There were requests over the years to increase the
18 hourly rate in general. However, we elected not to increase
19 the amount because of the cost to those sponsoring events and
20 the stipulation that officers' work off-duty be paid a minimum
21 of four hours regardless of the time they actually worked."

22 So he's saying that there were no authorizations for
23 higher rates other than what was in policy; nor were people
24 authorized to add hours and charge to be the POCs or manage
25 those.

1 CAPTAIN BRISBON: That's incorrect; not by what he told
2 me. And that's exactly what he told me.

3 SERGEANT MIXON: So that's what I'm asking. I
4 understand you guys had the conversation about the cruise
5 ship. Was there an additional conversation about the Film
6 Industry?

7 CAPTAIN BRISBON: Yes sir. Because I went to him and I
8 told him exactly what transpired and he said you manage it the
9 same way. He says I want you to manage the off-duty on your
10 own time.

11 SERGEANT MIXON: So I'll be honest with you. Why are
12 you the only one charging an administrative fee? Nobody else,
13 none of the other 30 officers who manage off-duties charge
14 administrative fees.

15 CAPTAIN BRISBON: Sir, like I said. I go back to the
16 initial conversation. I sat down with him in reference to the
17 cruise ships. This was what he established, and I went back
18 to him specifically. He said manage it the same way you
19 manage the cruise ships; on your own time.

20 SERGEANT MIXON: But I mean again, the other 30
21 officers who manage off-duties, nobody else is charging
22 administrative fees. If this was a standard practice for
23 everybody, how come everybody else isn't doing it?

24 CAPTAIN BRISBON: Sir. I don't know what everybody
25 else is doing. I went strictly by what I was told. And

1 because again, it started with an MOU with the Port. And then
2 on the Film Industry because of its nature, that it involves
3 so many other City entities; whether it be Special Events
4 Committee, whether it be traffic and transportation, all these
5 other City entities, it had to be managed. And like I said,
6 even to the point where on certain nights when they filmed
7 late I had to be there. It was my responsibility to be there
8 to cut them off, make sure that they're done at a specific
9 time, whatever the case may be. And again, this is not
10 something that I just all of a sudden created.

11 SERGEANT MIXON: But I mean I'm not trying to throw -
12 I kind of see a little bit of the spot you're in. The problem
13 that I have is that you're managing the off-duty with a police
14 function. You're paid a salary rate to work however many
15 hours you work to fill whatever those needs are. But on top
16 of that you're being compensated for managing a function that
17 you're using police resources for.

18 CAPTAIN BRISBON: What do you mean "police resources"?

19 SERGEANT MIXON: The officers using their cars,
20 getting officers to work the off-duties.

21 CAPTAIN BRISBON: I'm doing that on my time, on my
22 personal time, at home. I'm using my phone. So I don't
23 understand where you're saying that I'm using police
24 resources. I'm not using - I mean I don't understand when you
25 say I'm using police resources.

1 SERGEANT MIXON: Well I guess what I'm trying to
2 figure out is how do we reconcile the administrative fee. You
3 are saying by the fact that you are doing these on pretty much
4 your own time.

5 CAPTAIN BRISBON: Correct, and that's what I was told
6 to do.

7 SERGEANT MIXON: Okay. And those were separate
8 conversations from the Port Authority contract?

9 CAPTAIN BRISBON: Like I said, I went to the Chief and
10 I says we're now doing X amount of concerts and all this stuff
11 now. How do you want me to manage this? He says you do it
12 the same way you do the cruise ships. And that's what I did.

13 SERGEANT MIXON: So why are we - why is he giving you
14 special permission to charge additional rates, additional
15 hours? I mean again we don't have any other officers doing
16 that. It's not set in policy that officers can do that.

17 CAPTAIN BRISBON: Sir, I don't - I'm not going to
18 speculate. I don't know. The only thing I can say is what I
19 was told. It's not like I went around saying okay, are you
20 charging a fee; are you charging a fee; are you charging a
21 fee? No. I did what I was told. Because it eats up so much
22 of my personal time in order to do this. That's what I did.

23 SERGEANT MIXON: There are other officers out there
24 eating up their personal time to manage the off-duties as
25 well.

1 CAPTAIN BRISBON: Sir, like I said. I don't know about
2 them; I don't know what they do; I don't know if they do what
3 I do. In reference to IAPs, in reference to tracking all
4 these officers' paperwork, getting officers hired. I mean
5 you're talking - what you're talking about is an officer maybe
6 scheduling one or two officers every day for a month. What
7 I'm talking about is scheduling anywhere - when the cruise
8 ships first started there used to be about 25 officers. So I
9 would have to hire 25 officers on a particular one day for a
10 cruise ship.

11 SERGEANT MIXON: I'm not disagreeing with you.

12 CAPTAIN BRISBON: I'm talking about hiring anywhere
13 from 25-30 officers to work one concert. I'm talking about
14 trying to hire -

15 SERGEANT MIXON: But nothing says you have to manage
16 that. You could have turned it down and said no, I don't want
17 to do that.

18 CAPTAIN BRISBON: Well like I said -

19 SERGEANT MIXON: But you're getting an extra rate to
20 do that.

21 CAPTAIN BRISBON: Sir. When the cruise ships started -

22 SERGEANT MIXON: We're going to have to disregard the
23 cruise ships. I get the cruise ships because that's a
24 contract that was negotiated between the Port Authority and
25 the City. But these other ones; I'm trying to figure out how

1 do we wrap in the Film Industry, the Thomas Bennett House and
2 the concerts after that based on what is in policy and what
3 Chief Mullen has responded back to say. I mean we have -

4 CAPTAIN BRISBON: Like I said, I went to him and I
5 specifically asked him. And his exact words to me was you do
6 it the same way you do the cruise ships. Point blank. Point
7 blank.

8 SERGEANT MIXON: Did you ask -

9 LIEUTENANT CRETELLA: Could I interject real quick?
10 Because I think we're just going round and round. Reference
11 this Bennett House thing real quick. So just to be clear, so
12 you never - for the \$150, this is the invoice that they
13 provided to CPD, is that correct Sergeant Mixon? This is not
14 the invoice that you provided Captain Brisbon?

15 CAPTAIN BRISBON: No.

16 LIEUTENANT CRETELLA: So you did not charge them the
17 \$150. You just charged them the \$25 a month.

18 CAPTAIN BRISBON: For the times that I did not work.
19 For the times - like if I had to get someone else to work it
20 it was \$25.

21 LIEUTENANT CRETELLA: Okay, so the month of February
22 you would have just charged them \$25.

23 CAPTAIN BRISBON: Correct.

24 LIEUTENANT CRETELLA: And the month of May you would
25 have just charged them \$25.

1 CAPTAIN BRISBON: Correct.

2 LIEUTENANT CRETELLA: All right; I just wanted to be
3 clear on that; that it wasn't this monthly fee.

4 CAPTAIN BRISBON: Correct.

5 LIEUTENANT CRETELLA: Okay.

6 CAPTAIN BRISBON: Again sir, I did what I was told. I
7 don't operate that way. I was specific and that I made sure,
8 because I'm well aware of this double dipping standard and all
9 that, that everything I did for these duties were on my own
10 time, as I was instructed. Whether the Chief don't remember,
11 this is a conversation that I had with him. I saw him; I said
12 hey, we're having this substantial increase in the amount of
13 concerts we're having. He says you manage it the same way you
14 manage the cruise ships. That's what I was told.

15 SERGEANT MIXON: So this little section here says
16 concerning authorization to work off-duty assignments;
17 [Inaudible 00:44:58] "Captain Brisbon to work off-duty
18 assignments on his own time. I authorized hundreds of
19 officers each year to work off-duty during their own time.
20 All those authorizations were based on policy directives that
21 were in place to govern off-duty assignments. The only
22 deviation was the Port Authority."

23 Again that's why I'm kind of conceding the Port Authority
24 that was based on the contract reached by the Port and the
25

1 City. So he's again saying that extra hours or higher rates
2 were not part of the intent of what's in the policy.

3 CAPTAIN BRISBON: That's it. That's the conversation I
4 had with him. And I made it explicit. I went to him

5 SERGEANT MIXON: I agree with Lieutenant Cretella. I
6 think we're just kind of getting back into things that we
7 don't really have.

8 LIEUTENANT CRETELLA: I think we're just spinning
9 wheels.

10 SERGEANT MIXON: Because we don't really have - this
11 is you said one thing; Chief Mullen said another and I don't
12 have any way of reconciling that. Other than the fact of
13 going back to - again the only person charging administrative
14 fees for anything is you. And you're saying that's based off
15 a conversation with Chief Mullen. So I don't have anything
16 else sir.

17 CAPTAIN BRISBON: Okay.

18 SERGEANT MIXON: Captain Brisbon, do you have anything
19 else that you want to put on record?

20 CAPTAIN BRISBON: No.

21 SERGEANT MIXON: Okay, I'm going to end the recording
22 and the time is 3:50 p.m.

23

24

25

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

George Brisbon,

Appellant,

vs.

South Carolina Criminal Justice Academy,

Respondent.

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

INITIAL BRIEF OF APPELLANT

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May 9, 2024

TABLE OF CONTENTS

STATEMENT OF ISSUES ON APPEAL.....	3
STATEMENT OF THE CASE.....	4
STANDARD OF REVIEW.....	6
ARGUMENT	7
CONCLUSION.....	9

STATEMENT OF ISSUES ON APPEAL

1. Did the hearing officer err by admitting the unsworn statement of Linda McCormick into evidence over the objections of counsel?

STATEMENT OF THE CASE

This case arises from an administrative hearing before the South Carolina Criminal Justice Academy (“Respondents”), in which the Charleston Police Department sought the revocation of George Brisbon’s (“Appellant”) law enforcement officer licensure, on the grounds that he had committed misconduct by misrepresenting department information to third parties.¹

Appellant began his career with the Charleston Police Department in May of 1984, as a patrol officer. (R. at 14). Appellant held numerous positions within the Department, until he attained the rank of Captain. *Id.* As Captain of the Special Operations Bureau, Appellant was responsible for managing off-duty jobs with the Department.

Appellant contends that he first began working with the City’s Port Authority, during which time he was allowed to charge an administrative fee, as part of his duty to find officers for the jobs available. He would also be paid at a higher rate per hour than other off-duty work with the Department. Appellant further contends that when he inquired with then Chief Mullen as to how he should handle other off-duty assignments, he was told to handle them “just like the port” including the administrative fees. Appellant staffed and worked several off-duty jobs, including jobs with the movie industry, the Port Authority, the Daniel Island Tennis Center, and the Thomas Bennett House.

During the course of a discussion with the Charleston County School District regarding the placement of more officers in schools, the Department learned that Corporal Clyde Johnson charged an administrative fee to staff those jobs. During the investigation into Corporal Johnson, the Department learned that Appellant likewise charged a fee. As a result, an investigation into Appellant was initiated.

The investigation was spearheaded by Captain Anthony Cretella, who also investigated Corporal Johnson. Captain Cretella maintains he was gathering evidence for the South Carolina Law Enforcement

¹ S.C. Code Ann.

Division (“SLED”). Ultimately, SLED did not find Appellant guilty of any criminal action. However, as a result of Captain Cretella’s investigation, Appellant’s employment with the Department was terminated. Thereafter, the Department sought to file an allegation of misconduct against Appellant.

Appellant timely requested a contested case hearing, and the hearing before respondents was held on February 28, 2023. During the hearing, the Department sought to introduce a total of sixteen exhibits, notably State’s Exhibit #11 and State’s Exhibit #12.² State’s Exhibit #11 is the unsworn, emailed statement of former Chief Greg Mullen, and State’s Exhibit #12 is the unsworn statement of Linda McCormick, which despite its lack of notarization, is referred to as an affidavit in the record. Although Appellant’s counsel objected to these exhibits, they were admitted over objections of counsel.

During the course of the contested case hearing, these exhibits, particularly State’s Exhibit #12, caused contention among the parties. Ultimately, the hearing officer allowed the parties two weeks to submit briefs regarding the admissibility of State’s Exhibit #12, which was found by the hearing officer to be properly authenticated, and to be admissible under the public records exception to the hearsay rule.

A final agency decision was entered on January 29, 2024. Regarding the analysis and findings of the situation, the agency found the State’s Exhibit #12 to be admissible, and likewise found that Appellant had committed misconduct. As a sanction, the Agency found that Appellant should be permanently denied a law enforcement license.

Thereafter, Appellant timely filed his appeal of this decision to the South Carolina Administrative Law Court on February 29, 2024.

² For the purposes of the hearing, the Department’s exhibits are labeled “State’s Exhibit.” State’s Exhibit #5, which included handwritten notes of Department’s counsel, was not admitted.

STANDARD OF REVIEW

“The South Carolina Criminal Justice Academy is governed by the Law Enforcement Training Council.” *Adams v. S.C. Criminal Justice Acad.* (South Carolina Administrative Law Court, 2020) The Council may "certify and train qualified candidates and applicants for law enforcement officers and provide for suspension, revocation, or restriction of the certification, in accordance with regulations promulgated by the council." S.C. Code Ann. § 23-23-80(6) (Supp. 2018). The Court has jurisdiction to hear appeals of the Council's decisions pursuant to § 1-23-600(D). S.C. Code Ann. § 1-23-600 (Supp. 2018).

The Administrative Law Court acts in an appellate capacity, and is not an independent fact-finder. The review is limited to the record. When acting in an appellate capacity, the Court must apply the following:

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.

S.C. Code Ann. §§ 1-23-380 and 600 (Supp. 2018).

ARGUMENT

A. The Hearing Officer Erred By Admitting The Unsworn Statement of Linda McCormick Because The Statement Was Not Properly Authenticated.

First, the hearing officer erred by admitting State's Exhibit #12 into evidence because the writing was not properly authenticated. Generally, SCRE 901, much like its federal counterpart, requires "authentication or identification as a condition precedent to admissibility." SCRE 901(a). Here, we have an unsworn "affidavit" of Lisa McCormick, which Captain Cretella testifies he received as part of the investigation into Appellant. As shown below, this document was erroneously admitted into evidence by the hearing officer.

In *Williams v. Milling-Nelson Motors*, the Supreme Court, much as here, dealt with whether a letter, purportedly signed by the Plaintiff's wife, Mrs. Williams, had been erroneously entered into evidence by the lower court because it was not properly identified. The court noted the letter "carried no witnesses and none were presented to testify to the genuineness of the signature thereto, or execution thereof..." *Williams v. Milling-Nelson Motors*, 209 S.C. 407, 409; 40 S.E.2d 633 (S.C. 1946). The court stated as follows:

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.

Id. (citing 20 Am.Jur., p. 776, Evidence No. 922).

Here, like in *Williams*, Captain Cretella testifies he did not witness the writing of the alleged "affidavit." There are no witnesses able to testify regarding the authenticity of the document, as Ms. McCormick herself was not present at Appellant's contested case hearing. Additionally, the document, which purports to be an affidavit, is not signed by a notary, further lacking witnesses as outlined in the authentication requirements by the Supreme Court.

Because there are no witnesses to the document, Ms. McCormick was not present to testify to the authenticity of the document, and no notary witnessed Ms. McCormick's signature, the hearing officer

erred in determining the document was authenticated under Rule 901(a) SCRE, and this evidence should be excluded.

B. The Hearing Officer Erred By Admitting The Unsworn Statement of Linda McCormick Because It Did Not Meet The Public Records Exception For Hearsay.

Second, the hearing officer erred by admitting the unsworn affidavit of Linda McCormick, and ruling that it was admissible under the public records hearsay exception. Generally, hearsay is not permitted. SCRE 802. 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.” SCRE 801.

Many exceptions exist to the hearsay rule. The exception at issue in the instant case is the public records exception. The public records exception is as follows:

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 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.

SCRE 803(8). Here, Respondent’s argue that because Linda McCormick’s statement was taken as part of the investigation into appellant, it should fall under the public records exception to the rule. For the reasons below, Appellant argues the statement should not be admitted.

First, allowing such an unsworn “affidavit” into the record is inimical to the very purpose of the public records exception. Public records are meant to be relied upon, just as one might rely upon a regular business record—the rule itself is clear that opinions are not to be included. *See Fowler v. Nationwide Mut. Fire Ins. Co.*, 410 S.C. 403, 764 S.E.2d 249 (S.C. App. 2014) (finding a report involving a firefighter’s non-expert opinion of where the fire started to be inadmissible as a public record). Further,

the public has a right to rely upon information freely available to it. In *Hooper v. Ebenezer Sr. Services*, the court reaffirmed this, stating the Plaintiff “was entitled to rely on the public records...” *Hooper v. Ebenezer Sr. Services*, 687 S.E.2d 29,34; 386 S.C. 108 (S.C. 2009).

Here, Ms. McCormick’s statement is not the sort of public record the rule anticipates the public can rely on. First, it is not a document setting forth “the activities of the office or agency,” but rather a statement collected solely at the behest of the department’s legal team, not taken in the routine order of operations. Second, the statement is not a matter “observed pursuant to a duty imposed by law,” as Captain Cretella testifies he did not witness Ms. McCormick sign the statement. These are not matters conducted or observed by the agency, and therefore should not fall within the public records exception to the hearsay rule.

CONCLUSION

As shown herein, the Administrative Law Court should reverse the agency’s decision, because it was clearly erroneous, and a misapplication of the South Carolina Rules of Evidence. Ms. McCormick’s statement is neither authenticated nor admissible under the Public Records exception to the Hearsay rule, and should not have been admitted.

Respectfully submitted,

s/Donald Gist

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STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
George Brisbon,)
)
v.)
)
Charleston Police Department.)
)

I. INTRODUCTION AND BACKGROUND

In accordance with Hearing Officer Plunkett’s request for briefs prior to the February 28, 2023 Recertification Hearing, Captain George Brisbon (Brisbon”), by and through his undersigned attorneys, hereby submits this Brief in Support of the Exclusion of Exhibit 12.

On Friday December 2, 2022, Captain Brisbon requested to have a hearing for his recertification at the South Carolina Criminal Justice Academy. The hearing for this matter took place on February 28, 2023. During the hearing, Captain Anthony Cretella (hereinafter “Captain Cretella”) gave testimony about his internal investigation of the alleged misconduct of Captain Brisbon. When giving his testimony, Captain Cretella was asked by the Charleston County Police Department’s counsel (hereinafter “the Department” and “Department’s counsel”) to identify a document which has been marked as Exhibit 12. This exhibit includes the alleged statement written by Linda McCormick, two invoices, and emails between Linda McCcrmick and Captain Brisbon. We object to Exhibit 12 as it has not been properly authenticated and is hearsay under Federal Rules of Evidence.

484 of 584

**A. The Document Marked as Exhibit 12 Has Not Been Properly
Authenticated.**

Rule 901 of the Federal Rules of Evidence states that the foundational requirement of authentication or identification is satisfied when evidence is sufficient to support a finding that the matter in question is what its proponent claims. South Carolina Rule 901 mirrors the federal rule for authentication of evidence. Physical evidence, such as a document, may be authenticated by: (1) testimony of witness with knowledge, (2) nonexpert opinion on handwriting, (3) comparison by trier or expert witness, (4) distinctive characteristics and the like, (5) voice identification, (6) telephone conversations, (7) public records or reports, (8) ancient documents, (9) evidence describing a process or system, and (10) any other method provided by statute or rule. Rule 901, FRE.

Here, Captain Cretella lacks personal knowledge of the preparation of this document as required by Rule 901(b)(1). A written statement purported to be that of Linda McCormick, was presented as an affidavit despite its many flaws, to include not being sworn properly, no verification by a notary, and the lack of legal foundation. Captain Cretella, who investigated the accusation against Captain Brisbon, in fact, admits in his testimony that concerns about the authenticity of the statements are valid. He had been given the document pursuant to his investigation, but only after his legal team instructed him to have a statement written. Captain Cretella stated that he had not seen Linda McCormick sign or prepare the document. R. 103, l. 20-22. Additionally, Captain Cretella did not testify that he was familiar with the handwriting of Ms. McCormick. He does not know for a fact that the signature on the statement is Ms. McCormick's. There are no other documents with Linda McCormick's signature to compare with the signature on the document. The Department's counsel expects Hearing Officer Plunkett to rely on a statement that has no legal credibility, and that would not be admissible as evidence. Further, Ms.

McCormick could have simply been called as a witness to not only authenticate the documents but to provide her firsthand, personal knowledge of the accusations against Captain Brisbon.

Under Rule 11(c) of the Federal Rules of Evidence an affidavit must be sworn to or affirmed by a person authorized to administer oaths. Exhibit 12 is referred to as an affidavit numerous times. However, there is no language included in the document stating that it was written under oath or affirmed to be sworn. Thus, Exhibit 12's authenticity, veracity, and effect are in question and should render it inadmissible as well as the testimony stemming from the exhibit.

Furthermore, Exhibit 12 includes what are purported to be business records that were allegedly kept by Linda McCormick at her place of business. These business records were not properly authenticated as required by Rule 803 of the Federal Rules of Evidence. Rule 803 states that records kept in the course of a regularly conducted business records may be authenticated by the testimony of the records custodian or other qualified witness. Rule 803(6), FRE. Captain Cretella would not have been qualified to properly authenticate the documents as he is not the records custodian and more than likely would not be privy to the creation of such documents. Because these invoices were not authenticated, questions arise as to the validity of these documents, whether it is commonplace for the records to be drafted, or if this was Ms. McCormick's own doing.

Captain Cretella's testimony did not authenticate the document as provided by Federal Rule 109. Therefore, Exhibit 12 should not be considered, as it has not been properly authenticated and the statement is not sworn to properly to be considered an affidavit.

B. The Document Marked as Exhibit 12 Should be Excluded as it is Hearsay.

Hearsay is an out-of-court statement offered in evidence to prove the truth of the matter asserted. Rule 801(c), FRE. An out-of-court statement is any statement (oral or written) except one

made by a witness while testifying at trial. Rule 801(a), FRE. "Hearsay is not admissible" unless an exception applies, or "as provided by...other rules... or by statute." Rule 802, FRE.

Not only does the Department's counsel attempt to have Hearing Officer Plunkett accept Exhibit 12 as a valid statement without being authenticated, sworn, or affirmed, counsel also attempts to inject this document which would not legally be admissible because it is hearsay. The statement itself, the included attachments, and all testimony referencing the statement should be excluded. Exhibit 12 includes the statement allegedly written by Linda McCormick which was taken outside of the hearing while the officers were investigating Captain Brisbon. The statement was emailed to Captain Cretella or a member of his investigation team along with the emails between Linda McCormick and Captain Brisbon. Captain Cretella also admitted that someone requested that Linda McCormick write the statement after she was informed that Captain Brisbon was under investigation.

Department's counsel may argue that this exhibit was being introduced for other purposes to circumvent the hearsay violation; however, this argument is invalidated when, instead of using the exhibit's existence on the surface to make their claims, counsel delve into the content of the exhibit and relied upon the statement, and attachments to assert their accusations. The statement is also being offered erroneously to prove the truth of the matter asserted. The Department asserts that Captain Brisbon operated outside of policy when accepting payment for his services. Exhibit 12 is offered to prove their argument; making the statement hearsay. Captain Cretella when asked about how Linda McCormick came to write the statement, he said that the legal team had informed him, and other investigators, that this was the best way to present discussions between Linda McCormick and Captain Brisbon. R. 101, I. 2-5.

Furthermore, the statement also does not meet any of the exceptions¹ to hearsay. Linda McCormick did not appear at the hearing and there were no reasons given under the hearsay exceptions for an unavailable declarant² as to why she was not present. The document does not fit under any of the other exceptions where the availability of the witness is immaterial. By the Department's counsel not requesting Ms. McCormick to be available for the hearing, they failed to allow Captain Brisbon his right to confront and cross-examine a witness whom the Department has relied heavily on in their decision to terminate Captain Brisbon.

Despite counsel's contentions, we also argue that the document should also not be proffered for Hearing Officer Plunkett's consideration in his decision. The document still offers proof of the police department's assertion that Captain Brisbon acted outside of policy when receiving money from vendors for his services. The proffered document would still contain hearsay which is substantially prejudicial to Captain Brisbon. Even if Department's counsel states the exhibit is offered only for the purpose of showing how much investigation was conducted, the testimony relied upon statements of fact that are inadmissible, substantially prejudicial, and unauthenticated.

R. 129, l. 18-25.

¹ Rule 803 states that the hearsay exceptions are: (1) statements describing or explaining an event or condition being witnessed by the declarant or immediately thereafter, (2) excited utterances, (3) statements of the declarant's then existing mental, emotional, or physical condition, (4) statements for purposes of medical diagnosis or treatment, (5) recorded recollection, (6) records of regularly conducted activity, (7) statement explaining the absence of entry in records kept in accordance with the provisions of subsection (6), (8) public records and reports, (9) records of vital statistics, (10) absence of public record or entry, (11) records of religious organizations, (12) marriage, baptismal, and similar certificates, (13) family records, (14) records of documents affecting an interest in property, (16) statements in ancient documents, (17) market reports, commercial publications, (18) learned treatises, (19) statements of reputation concerning personal or family history, (20) statements regarding reputation concerning boundaries or general history, (21) statements regarding reputation as to character, (22) judgment of previous conviction, and (23) judgment as to personal, family or general history or boundaries.

² When the Declarant is Unavailable: (1) former testimony given in a prior trial, hearing or lawful deposition where the opposing party had an opportunity to direct, cross-, or redirect examination; (2) statement under the belief of imminent death; (3) statement against the declarant's interest backed with corroborating circumstances; (4) statement of personal or family history; and (6) statement offered against a party that wrongfully caused the declarant's unavailability. Rule 804, FRE.

IV. CONCLUSION

The document marked as Exhibit 12 should be excluded from consideration in Captain Brisbon's hearing as it was not properly authenticated and is hearsay under the South Carolina Rules of Evidence.

Respectfully Submitted,

s/Donald Gist

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April 6, 2023

SOUTH CAROLINA CRIMINAL JUSTICE ACADEMY

IN THE MATTER OF THE LAW)
ENFORCEMENT CERTIFICATION) LETC Case No.: 2020-CJA-02-08
OF GEORGE BRISBON)

STATE'S RESPONSE TO BRISBON'S BRIEF SEEKING EXCLUSION OF STATE'S EXHIBIT 12

I. PROCEDURAL HISTORY

A hearing convened February 28, 2023, before Hearing Office Timothy Plunkett to hear the contested case for recertification filed by George Brisbon. In the course of that hearing, the prosecuting department, City of Charleston Police Department (hereinafter "CPD") offered sixteen exhibits to be entered into evidence. All but one of those exhibits (the one being State's Exhibit 12 – written statement of Linda McCormack) were entered into the record without objection. *Transcript* at p. 127, l. 25 – p. 128, l. 10 (Attorney Gist confirming "I don't have any objection to any exhibits entered into the record except the affidavit of Linda McCormack.")

The record reflects that Brisbon's objections were two-fold: (1) lack of authentication of the document; and (2) violation of the rule of evidence prohibiting admission of hearsay. A discussion was held between the parties and Hearing Officer after which CPD made a proffer of the evidence (State's Exhibit 12), and the Hearing Officer granted the parties an opportunity to formally brief their arguments as to the admissibility of the evidence. *Transcript* at p. 128 – 135.

Brisbon's brief seeking of exclusion of State's Exhibit 12 was filed with the Hearing Officer and served on CPD on or about April 6, 2023. CPD offers this response to same.

II. LEGAL AUTHORITIES AND ARGUMENT

Brisbon's brief relies almost entirely on the Federal Rules of Evidence. While CPD agrees that the South Carolina Rules of Evidence relevant to this matter are substantively similar to the corresponding federal rules, that is pertinent only in cases where there exists no definitive South Carolina case law interpreting or applying the specific aspect of the South Carolina rule or law in question. Under those circumstances, the South Carolina courts have sometimes turned to federal law interpreting or applying substantively similar federal rules.¹ However, the proper starting place is with the applicable South Carolina Rules of Evidence and existing South Carolina case law interpreting same. As set forth below, that law supports the admissibility of the evidence in question.

A. Authentication of the Document Pursuant to Rule 901 SCRE

"A party offering evidence must meet the requirement of authentication as a condition precedent to admissibility. 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." *Berry v. Spang*, 433 S.C. 1, 10-11, 855 S.E.2d 309, 314-15 (Ct. App. 2021) (*cert. denied*) (internal citations and quotation marks omitted). *See also, Deep Keel, LLC v. Atlantic Private Equity Group, LLC*, 413 S.C. 58, 64, 773 S.E. 2d 607,

¹ *See, Maybank v. BB&T Corp.*, 416 S.C. 541, 787 S.E.2d 498 (2016) (noting "the language of Rule 12(h)(1) is substantially similar to the Federal Rules of Civil Procedure" and acknowledging that, in construing South Carolina Rules of Civil Procedure, "our Court looks for guidance to cases interpreting the federal rules." *See also, State v. Wills*, 409 S.C. 183, 762 S.E.2d 3, 13 (2014) Beatty, J, dissenting ("In the absence of definitive case law in our state and federal jurisdiction, I have looked to other federal jurisdictions for guidance" on Rule 410, SCRE).

610 (Ct. App. 2015). The trial court has broad discretion in determining the admissibility of evidence absent abuse of discretion or error of law. *Id.*

The evidence at issue in the present case is a written statement signed by Ms. Linda McCormack (“McCormack”), who was employed as the manager of the Governor Thomas Bennett House (“the Bennett House”). Attached to and referenced in McCormack’s two-paged written statement are: (1) two pages of her company’s billing records showing amounts paid to Brisbon, including administrative fees not related to hours actually worked by him at the Bennett House; and (2) three pages of an email chain by and between McCormack and Brisbon revealing details about the “require[d] ... monthly coordination fee” Brisbon was charging her. In the interest of creating a complete record, this brief looks at each of the attachments and the written statement itself independently.

1. Billing records attached to the McCormack statement are sufficiently authenticated.

As to the two pages of company billing records, they became part of the CPD internal investigation file prior to the receipt of McCormack’s written statement, and they were disclosed to and discussed with Brisbon during his interviews. Of perhaps greater significance, those two pages of billing records were entered into evidence in the record of this case without objection from Brisbon. *See, State’s Exhibit 9.* There is no credible argument that those two pages of Exhibit 12 are not admissible.

2. Email chain attached to the McCormack written statement is sufficiently authenticated.

Regarding the three-page email chain, South Carolina law treats authentication of email similar to authentication of text messages, and other similar messaging formats. *State v. Benton*, 435 S.C. 250, 865 S.E.2d 919 (SC App. 2021). Although ownership of the device or address is

not conclusive in and of itself,² it can be viewed in conjunction with other circumstantial evidence to meet the low burden of authenticating evidence. Illustrative examples of what that other circumstantial evidence might be can be found in Rule 901 SCRE at subsection (b)(4). That section mentions “appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances.” In the instant case, the contents and substance of the email string offer compelling proof that they are authentic communications between Brisbon and McCormack. They discuss matters such as event dates, Brisbon’s scheduling conflicts, names of other officers he will have working, and other information likely known (or important) only to McCormack and Brisbon. They also directly address the fees. *State v Benton* at 263 (circumstantial evidence relating to the content of such messages may serve as sufficient authentication to meet the low bar Rule 901 (b)(4) sets).

Another factor the court can consider is “whether the parties conventionally communicated by [email] messages.” *State v. Benton* at 262. In the present case, Brisbon testified during his internal investigation interview that his normal mode of communication with McCormack was email or phone. *See State’s Exhibit 16*, at p. 5, l. 14 – p. 6, l. 2. Moreover, the three pages of email chain show the email addresses of both Brisbon and McCormack which match those shown on other email exchanges elsewhere on other State’s Exhibits entered into the record. *See State’s Exhibit 2* (showing both Brisbon’s personal and work email addresses); *see also State’s Exhibit 10* (showing McCormack’s email address). These circumstances combined clearly are more than sufficient to meet the low burden of Rule 901 authentication.

² The underlying theory being that some third party could access the device or address. This is less of a concern with Brisbon’s CPD email address since additional safety measures are in place such as required passwords which must be periodically changed.

3. The two-page McCormack written statement is sufficiently authenticated.

Regarding the two-page signed statement to which the above-discussed documents were attached, it also more than meets the authentication requirements of Rule 901 SCRE. Using, again, the methods discussed in 901(b)(4), a careful comparison of the contents and substance of the written statement from McCormack shows them to be consistent with other evidence already authenticated and entered into the record without objection. State's witness Cpt. Cretella ("Cretella"), who was the senior officer investigating the allegations against Brisbon, testified as to some of the oral information McCormack gave the investigators. For example, Cretella testified that McCormack told the internal investigators that Brisbon approached her after he took over as the administrator of the Bennett House job and told her that she would now be charged an administrative fee. *Transcript* at p. 64, l. 1 – p. 66., l. 3. Cretella testified that McCormack told the investigators that the fee was not her idea and was suggested by Brisbon. This evidence already in the record mirrors some of the representations in the McCormack statement. Cretella testified that McCormack also provided the investigators with the 2 pages of billing records directly referenced in and attached to the two-page written statement. *Transcript* at p. 66, l. 19 – p. 67, l. 9. *See also, State's Exhibit 9.* This and other evidence/testimony already in the record when compared to the proffered Exhibit 12 as permitted under Rule 901(b)(4), especially in light of the circumstantial evidence discussed above, is more than sufficient to carry the low burden of authentication under Rule 901, SCRE.

"The court [in this instance, the Hearing Official] 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. Once the trial court determines the prima facie showing has been met, the evidence is admitted, and the jury [in this instance, the

Training Council] decides whether to accept the evidence as genuine and, if so, what weight it carries.” *State v. Benton*, at 262 (internal citations and quotation marks omitted).

Having shown that the written statement and its two exhibits each independently satisfy the authentication standards of Rule 901 SCRE so as to meet the condition precedent for admissibility, CPD now turns to Brisbon’s argument that, even if admissible under 901 SCRE, State’s Exhibit 12 should be excluded pursuant to Rule 802 SCRE as inadmissible hearsay.

B. State’s Exhibit 12: (1) does not constitute hearsay under Rule 801, SCRE; or, (2) in the alternative, it is admissible as an exception to the hearsay rule pursuant to Rule 803 (8), SCRD; or (3) because Brisbon opened the door.

1. State’s Exhibit 12 does not constitute hearsay under Rule 801 SCRE.

“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) (emphasis added). In the current case, the internal investigators sought out McCormack because Brisbon admitted that he had been charging her an administrative fee, but he was evasive about the details. He had kept no records, and represented that he had no idea how much he had been paid under the fee arrangement. *See State’s Exhibit 16.* In an attempt to locate business records or banking records that might lead to additional information, the investigators contacted McCormack and received billing records (entered in the record as State’s Exhibit 9) and oral information about the fee arrangement. The written statement subsequently obtained from McCormack was obtained to further document those investigative steps and efforts to obtain relevant information. The McCormack statement is being offered as evidence of those steps and the direction and extent of the investigation, and CPD’s diligence in performing a thorough investigation. It is *not* to prove the truth of McCormack’s statements. Thus it is not hearsay and is admissible evidence under South Carolina law. *See State v. Thompson*, 352 S.C. 552, 559,

575 S.E.2d 77, 81 (Ct. App. 2003) (finding that police officer's testimony was not entered for the truth of the matter asserted, but "rather to explain and outline the *officer's investigation* and their reasons for [the next step in the investigation]") (emphasis added).

CPD argues that the McCormack statement in its entirety does not constitute hearsay for the reason discussed above. However, in the event that the two-page written statement is excluded, the email chain attached to it should be admitted independently. The email chain attached to the statement is expressly excluded from the definition of hearsay by Rule 801(d)(2) SCRE. That section provides that evidence is not hearsay where "the statement is offered against a party ... and is the party's own statement in either an individual or a representative capacity." The emails in that chain attached to the McCormack statement are Brisbon's own individual statements on the subject of the investigation and are admissible against him, even if the McCormack statement to which they are attached is not.

2. In the alternative, Exhibit 12 is admissible as an exception to the hearsay rule

Rule 803 SCRE identifies twenty-three categories of hearsay exceptions under which documents and records "are not excluded by the hearsay rule, even though the declarant is available as a witness." The McCormack statement is excepted under 803 (8) because, once the written statement was received by CPD and entered into its internal records, it became a public record and/or report. Pursuant to Rule 803 (8), "[r]ecords, 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 rule. CPD has a legal obligation to "police" its own officers for compliance with laws and other rules, and, where an officer is separated from service, CPD has a legal obligation to report the circumstances to CJA. Those

facts place the public documents and records in the investigative record – including the McCormack statement – squarely within this exception to the hearsay rule.

3. **Even if Exhibit 12 constitutes hearsay and does not fall under an exception to the hearsay rule, it is admissible because Brisbon opened the door to the testimony and evidence.**

Long before Brisbon objected to State's Exhibit 12, (*Transcript* at p. 128), he had listened to direct examination of Cretella by CPD and made no objection as Cretella testified extensively about oral statements made by McCormack, email from McCormack, and the written statement marked as State's Exhibit 12. Arguably, Brisbon waived any objection to the McCormack written statement by not objecting at that point. Thereafter, his own attorney cross examined Cretella at length about the McCormack evidence including the written statement (*Transcript* at p. 100 *et seq.*) Even if he had not previously waived the objection, Brisbon opened the door when he subsequently reopened the subject by his own questioning. Having done so, he is not entitled now to have the evidence excluded.

III. CONCLUSION

The burden to authenticate evidence under Rule 901, SCRE, is low, and the circumstances described above more than satisfy that condition precedent to admissibility. Moreover, the McCormack statement does not constitute hearsay because it has not been offered to prove the truth of the statement, but, rather, to show the scope and direction of the internal investigation. In the alternative, the evidence is admissible either as a Rule 803 (8) exception to the hearsay rule, or because Brisbon either waived any objections by permitting Cretella to testify about the statement during CPD's direct examination or subsequently opened the door to the testimony and evidence by availing himself of it during his cross examination of Cretella.

For these reasons and based on the legal authorities herein, CPD asks that this Tribunal exercise its discretionary authority to deny Brisbon's motion to exclude State's Exhibit 12.

Respectfully submitted,

s/ Caroline Wrenn Cleveland

Caroline Wrenn Cleveland (Federal ID #5478)

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ATTORNEY FOR PROSECUTING DEPARTMENT
CITY OF CHARLESTON POLICE DEPARTMENT

Charleston, South Carolina
April 27, 2023

South Carolina Criminal Justice Academy

IN THE MATTER OF THE LAW	)	
ENFORCEMENT CERTIFICATION	)	LETC CASE NO. 2020-CJA-02-08
OF GEORGE BRISBON	)	

MOTION IN OPPOSITION TO HEARING OFFICER'S RECOMMENDATION

COMES NOW Respondent George Brisbon by and through his undersigned counsel, and moves for reconsideration of the findings of the Hearing Officer on June 9, 2023. In support of his Motion, Plaintiff will show as follows:

1. The above-referenced contested case was heard on February 28, 2023.
2. The Hearing Officer erroneously found that Respondent had committed misconduct as defined in S.C. Code Ann. § 23-23-150 (3) (h).
3. The Hearing Officer erroneously admitted evidence into the record, notably, the statement of McCormick, despite the obvious prejudice to Plaintiff and the availability of McCormick for testimony.
4. Misconduct as alleged by the Department has not been proven by a preponderance of the evidence.
5. The Law Enforcement Training Council should disregard the recommendations of the Hearing Officer.

WHEREFORE Respondent respectfully requests this administrative body reconsider the Findings and Recommendations of the Hearing Officer on June 9, 2023.

[SIGNATURE BLOCK ON THE FOLLOWING PAGE]

Respectfully Submitted,

s/Donald Gist

Donald Gist (13098)

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June 29, 2023

Transcript of Recorded
Law Enforcement Training Council Meeting

- - - - -

Date Recorded: October 30, 2023

- - - - -

Transcribed by: Audrey S. Beebe,
Southern Reporting, Inc.

ORIGINAL

APPEARANCES

Law Enforcement Training Council Members:

Present in Person: Chief Mark Keel, SLED,
Chair

Jodi Gallman, Acting Director South Carolina Department
of Probation, Parole, and Pardon Services

Robert Boyles, Director South Carolina
Department of Natural Resources

Robert Woods, Director South Carolina
Department of Public Safety

Via Videoconference: Lee Foster, Sheriff of Newberry
County,

Co-Chair

Barry Faile, Sheriff of Lancaster County

John Thomas, Director of North Augusta
Department of Public Safety

Chief Deputy Attorney General Jeffrey Young, Proxy for
Attorney General Wilson

SCCJA Staff:

Director Jackie Swindler

James M. Fennell, Esq., General Counsel

Opel Bunn, Executive Assistant to the Director

Lauren Fennell, Accreditation and Standards Manager

Debbie Bryant, Human Resources Director

Justin Miller, IT Manager

Vincent Lee, IT

Major Florence McCants

Christopher Brumlow, Investigator

Lauren Wright, Finance Director

John Yarborough

APPEARANCES (Continued)

Others Present: Jarrod Bruder, SC Sheriff's Association

Deputy Chief Jim Stewart, Richland County
Sheriff's Department

Joanna McDuffie, Esq., Richland County
Sheriff's Department

Donald Gist, Esq.

George Brisbon

Caroline Cleveland, Esq., Charleston Police Department

Ryan Hicks, Esq.

Rudolph Johnson

Kenneth Davis, Esq., Allendale Police Department

Chief Lawrence Wiggins, Allendale Police Department

Carlton Bourne, Esq., North Charleston Police Department

INDEX

Call to Order	5
Approval of Agenda	6
Approval of Meeting Minutes	6

Misconduct Cases:

Hearing 2020-CJA-02-08, George Brisbon, Charleston
Police Department

Mr. Fennell:	7
Mr. Gist, for Mr. Brisbon:	8
Ms. Cleveland, for Charleston Police Department:	16
Mr. Gist, for Mr. Brisbon:	22
Motion:	26
Vote:	27

Hearing 2023-CJA-04-03, Rudolph Johnson, Allendale
Police Department

Mr. Fennell:	27
Mr. Hicks, for Mr. Johnson:	28
Mr. Davis, for Allendale Police Department:	37
Mr. Hicks, for Mr. Johnson:	42
Motion:	47
Discussion:	47
Vote:	49
Motion:	50
Vote:	50

Hearing 2021-CJA-09-02, Brandon Floyd, Lake City Police
Department (Prosecutorial Discretion)

Mr. Fennell:	50
Motion:	51
Vote:	51

Hearing 2023-CJA-06-08, Myles Thompson, Greenville
County Sheriff's Office (Prosecutorial Discretion)

Mr. Fennell:	52
Mr. Hicks, for Mr. Thompson:	52
Motion:	52
Vote:	53

2023-CJA-05-10, Thelma Lewis, North Charleston Police
Department (Prosecutorial Discretion)

Mr. Fennell:	53
Mr. Bourne, for North Charleston Police Department:	54
Motion:	54
Vote:	54

Financial Update	55
------------------	----

Capital Project Update	55
------------------------	----

Director's Comments	57
---------------------	----

Adjournment	64
-------------	----

1

RECORDED MEETING

2

MS. BUNN: . . . Keel?

3

CHIEF KEEL: Here.

4

MS. BUNN: Sheriff Foster?

5

SHERIFF FOSTER: I'm -- I'm here.

6

MS. BUNN: Attorney General Wilson?

7

CHIEF DEPUTY ATTORNEY GENERAL YOUNG: Jeff Young here

8

for the Attorney General.

9

MS. BUNN: Directory Stirling? Director Gallman?

10

DIRECTOR GALLMAN: Here.

11

MS. BUNN: Director Boyles?

12

DIRECTOR BOYLES: Here.

13

MS. BUNN: Director Woods?

14

DIRECTOR WOODS: Here.

15

MS. BUNN: Director Thomas?

16

DIRECTOR THOMAS: Here.

17

MS. BUNN: Sheriff Faile?

18

SHERIFF FAILE: Here.

19

MS. BUNN: Chief Cornett? Captain Gallam?

20

DIRECTOR SWINDLER: Heard from Director Stirling and

21

Captain Gallam that they had a conflict. Director

22

Stirling may come on. Captain Gallam has a

23

training, and I did not hear from . . .

24

CHIEF KEEL: Do we have a quorum?

25

DIRECTOR SWINDLER: We have a quorum.

1 CHIEF KEEL: All right. I'll entertain a motion to
2 adopt the agenda for today.

3 DIRECTOR BOYLES: Chief, I move to adopt the agenda as
4 submitted.

5 CHIEF KEEL: Got a motion to adopt the agenda as
6 submitted. Do I hear a second?

7 DIRECTOR WOODS: Second.

8 CHIEF KEEL: Any changes, any amendments that --
9 additions that we need to make to the agenda?
10 Hearing none, all those in favor of accepting the
11 agenda as submitted, signify by saying "aye."

12 (Multiple voices respond "aye.")

13 CHIEF KEEL: Any opposed, like sign?

14 (No response is heard.)

15 CHIEF KEEL: Ayes have it. Next, we have the minutes
16 for the September -- September 18th, 2023, meeting.
17 I hope you've had an opportunity to review those
18 and look at those. And I'll entertain a motion to
19 approve those minutes.

20 DIRECTOR BOYLES: Chief, I move that we adopt the
21 minutes as submitted.

22 CHIEF KEEL: We've got a motion to adopt the minutes as
23 submitted for the September the 18th, 2023,
24 meeting. Do I hear a second?

25 DIRECTOR WOODS: Second.

1 CHIEF KEEL: Got a second. Is there any further
2 discussion with regard to the minutes? Any
3 amendments that need to be made to the minutes from
4 the September 18th, 2023, meeting? Hearing none,
5 all those in favor of approving the minutes as
6 submitted signify by saying "aye."

7 (Multiple voices respond "aye.")

8 CHIEF KEEL: Any opposed, like sign?

9 (No response is heard.)

10 CHIEF KEEL: Ayes have it. We'll go right to the
11 director's report. Mr. Fennell?

12 MR. FENNELL: Thank you, Chief. May it please the
13 council. First case George Brisbon,
14 2020-CJA-02-08. Charleston Police Department filed
15 an allegation of misconduct against Mr. Brisbon.
16 Here on behalf of Mr. Brisbon is Mr. Gist. Here on
17 behalf of the Agency is Ms. Cleveland. The hearing
18 officer recommended that the allegations had been
19 proven by a preponderance of the evidence and for
20 Council to impose the necessary sanction. Mr. Gist
21 will have ten minutes for argument. Ms. Cleveland
22 will then have ten. Then Mr. Gist will have the
23 remaining clean-up.

24 CHIEF KEEL: Okay. Mr. Gist, we'll be happy to hear
25 from you.

1 MR. GIST: Thank you, sir. Do I need to come to the
2 podium?

3 CHIEF KEEL: Certainly, if you don't mind.

4 MR. GIST: Appreciate it. Good morning, each of you.

5 CHIEF KEEL: Morning.

6 MR. GIST: I am Donald Gist, and I represent Captain
7 Brisbon. This is a matter before the Council with
8 respect to Captain Brisbon and his conduct as it
9 relates to off-duty work that he primarily was in
10 charge of and appointed to by the Charleston City
11 Police Department.

12 Captain Brisbon has been with the -- with law
13 enforcement for 35 years. I'm not here today to go
14 directly to -- and I can certainly do that at the
15 point of my -- my last opportunity to speak to you--
16 all, but Captain Brisbon primarily worked and he
17 was a diligent employee of the City of Charleston
18 Police Department. Captain Brisbon worked under
19 the supervision of Chief Mullen, Chief Mullen and
20 the Charleston Police Department.

21 And I have the policies and procedures here
22 for off-duty work, primarily, and it gives a pretty
23 vivid detail of what laws and what is the
24 responsibility for people when they're doing off-
25 duty work. It's cited primarily, and it was

1 effective, and I'd ask the Council to please take
2 notice of this -- take administrative and judicial
3 notice of the fact that this policy came into place
4 in February the 8th of 2008. Chief Brisbon was
5 terminated February the 13th of 2020. This a
6 policy that had been a longstanding policy that
7 primarily, in sync, gave the duty officer who's
8 responsible for scheduling events and scheduling
9 officers -- it gave him broad discretion with
10 respect to how he would go about scheduling those
11 events using police officers.

12 Now, we understand and we know that whenever
13 there are special events, you never shed the total
14 code or responsibility of being a police officer.
15 We know that, one, there is -- that the officers
16 show up in uniform; we know that, two, that police
17 vehicles are used; we know that, three, that these
18 officers, even off-duty, are acting with the full
19 authority of state law as far as carrying out the
20 administrative duties and police duties and
21 responsibilities for one reason: to protect the
22 general public, to make sure that safety officers
23 are there to protect the safety of the people who
24 are holding the event as well as the invited guests
25 of that event.

1 Chief Mullens did that -- I mean, Chief --
2 Captain Brisbon did this for a long period of time.
3 He did it specifically with the authorization of
4 Chief Mullen. Now, over the time period from Chief
5 Mullens to Chief Reynolds, Mr. Brisbon was pretty
6 much left to his own discretion as to how he would
7 staff -- how he would staff officers for duties.

8 A lot of this was voluntarily. Is -- in the
9 policy, Policy Number 50, Off-Duty Employment, in
10 50.1 it says that the City of Charleston does not
11 require an officer to work a special event. It is
12 a voluntary effort. Captain Brisbon's job was to
13 secure officers to work off-duty events.

14 There's a sense of contention from the
15 standpoint of the City of Charleston that Chief
16 Brisbon primarily -- or Captain Brisbon primarily
17 should not have been charging a fee in addition to
18 the normal shared fee that is paid to Chief -- I
19 mean to -- to Captain Brisbon as well as to the
20 officers as set forth in the policy. Well, if you
21 look at the policy -- and the policy basically is
22 State's Exhibit Number 15. The policy's very
23 vague. It does not say in the policy that he
24 should or could not charge a fee, off-duty, for him
25 arranging for the officers to be at these events.

1 It was an -- it was a task -- it was a task that he
2 had to perform. It was a duty he had to perform
3 off-duty. He was not paid by the City of
4 Charleston Police Department whenever he was in
5 this off-duty arrangement.

6 If Captain Brisbon worked the event himself,
7 then Captain Brisbon would charge his normal fee of
8 \$40. If he had officers there with them, he would
9 charge the fee of the event set for the officers.
10 But at no point did he ever make an issue of trying
11 to take advantage of anyone with respect to the
12 fee.

13 That was a issue, not with Chief Mullens
14 because Chief -- I mean Officer -- Captain Brisbon
15 did this for years upon years upon years. Nobody
16 ever gave him any clear direction, but there was no
17 issue as to him charging this fee until there was a
18 change of chiefs of police. But even then, there
19 was no clear directive as to whether he could or
20 should not continue to charge a surcharge fee for
21 his time.

22 First of all, as we all understand and know
23 that he is a captain in the police department. He
24 works his normal 37 1/2 hours or emergencies that
25 he's got to work along the lines of duty that's

1 required of him. But when he's trying to collect
2 and get officers to staff these events, he was
3 told, "You can charge your fee that you want to
4 charge."

5 We went to a hearing on this matter. First of
6 all, let me say that there was a SLED
7 investigation. I don't know if you have that in
8 your report because it was done by -- I think by
9 video or audio. There was no finding that Captain
10 Brisbon did anything that rose to the level of
11 misconduct.

12 In addition to that, Captain Brisbon was
13 following what he considered his best discretionary
14 judgment in terms of securing events. There was
15 never an occasion -- if we were here today where
16 there were events scheduled, money was collected,
17 and officers did not show up for that event, then
18 that would put the City of Charleston in a very
19 dire situation as well as put in -- the people who
20 were holding the event unprotected and unsafe.
21 Every event he held -- every event that he
22 conducted and he coordinated was covered by
23 officers, every event.

24 Our position here today is that, even if --
25 and the -- and the -- you know, the hearing officer

1 allowed some things that we consider in the record
2 to be basically unacceptable. First of all,
3 there's an unsworn statement from a lady by the
4 name of Linda McCormick. I objected to that
5 unsworn statement. Basically, I objected to it
6 under that it was hearsay. And I went -- I
7 objected to it under the South Carolina hearsay
8 rules 80 -- 801(c). There's -- we operate in the
9 state under what's called the "best evidence rule."
10 Linda McCormick was never brought to the
11 administrative hearing so I could question her,
12 where I could cross-examine her. But rather a
13 unsworn statement was put in that basically should
14 not have come in. We don't even know if Linda
15 McCormick wrote the statement or just signed the
16 statement. But she was not there.

17 In addition to that, the SLED report never
18 finds anything that rises to the level of
19 wrongdoing on the part of my client, Captain
20 Brisbon.

21 Well, let's take worst-case scenario. Worst-
22 case scenario, let's say that, in fact, he did do
23 some things that were not necessarily correct, but
24 it does not constitute misconduct. It does not
25 constitute the revocation of a 35-year-old

1 (verbatim) senior police officer from the City of
2 Charleston of his license.

3 Our position is that we think the hearing
4 officer made some mistakes below. I don't want to
5 go, necessarily, into all of that. But I also
6 believe that, when we go back and look at the case
7 law, "Stave v. Alexander" and some of the other
8 cases that pretty much go to the heart of the
9 question. But we're here today for two things:
10 One, to let you know a little bit about Captain
11 Brisbon and, two, to ask that you consider all of
12 the relevant evidence, and even if you find that he
13 did, in fact, make -- make some error in judgment,
14 that that error in judgment, he's long-time paid
15 for it.

16 He was terminated on February the 13th of
17 2020. He has not worked as a police officer since
18 that time. If any punishment has been imposed,
19 it's been -- it's been imposed by time; it's been
20 imposed also by the fact that he, today, wants to
21 continue to serve as a police officer, continue to
22 serve. But he's not -- he was terminated from the
23 City of Charleston, so he's never going back to the
24 City of Charleston, but he wants his opportunity to
25 continue to serve as a law enforcement officer in

1 this state. We do not believe that this
2 misconduct, if it's found misconduct, rises to the
3 level of a revocation of his police certification.
4 I thank you-all very much.

5 CHIEF KEEL: Thank you, Mr. Gist. Anybody have any
6 questions for Ms. Gist at this time?

7 MR. FENNEL: Chief, Director Boyles.

8 DIRECTOR BOYLES: Mr. Gist, thank you for your
9 statement. Just a question for you or perhaps for
10 Ms. Cleveland, under the Fair Labor Standards Act,
11 is your client -- was your client considered exempt
12 or non-exempt under the Fair Labor Standards Act
13 while he was employed in that capacity as captain?

14 MR. GIST: Some of you who may know me know I served as
15 the deputy commissioner for the South Carolina
16 Department of Labor for 18 years. He was an exempt
17 employee. He was an exempt employee. Thank you.

18 DIRECTOR BOYLES: Thank you.

19 CHIEF KEEL: Any other questions for Mr. Gist at this
20 time? Sheriff Foster? Did you have a question?

21 SHERIFF FOSTER: That was not. I was asking him to --

22 CHIEF KEEL: Okay.

23 SHERIFF FOSTER: -- move back over in front of the
24 camera. That was all.

25 CHIEF KEEL: Okay.

1 MR. GIST: Thank you, sir.

2 SHERIFF FOSTER: I apologize.

3 CHIEF KEEL: It's all right.

4 MR. GIST: It's okay. Thank you, Sheriff.

5 CHIEF KEEL: Any other questions at this time?

6 SHERIFF FOSTER: Sorry, Mr. Gist.

7 MR. GIST: It's okay.

8 CHIEF KEEL: Okay. We'll -- Ms. Cleveland, we'll be
9 happy to hear from you. Thank you, Mr. Gist.

10 MS. CLEVELAND: Good morning, gentlemen. Thank you for
11 having me. I know that you've all read the fairly
12 detailed findings and report of your hearing
13 officer, so I'm going to jump right to what are the
14 most hotly contested issues in this -- this
15 contested case.

16 Mr. Brisbon was found to have -- by the
17 Department, found to have made misrepresentations
18 relating to his employment, and -- and several
19 specifics. One, he was misrepresenting to citizens
20 who were using police officers off-duty at events
21 what the rates were for that. He was also
22 misrepresenting additional times -- admin time to
23 get ready for -- to work these events that wasn't
24 actually working at the events. And during the
25 investigation, he represented that Chief Mullen had

1 allowed him -- given him express permission to go
2 outside policy to do it in this manner. Chief
3 Mullen later denied that, and both the Department
4 and your hearing officer found that more credible.

5 The big issue that has been put out by
6 Mr. Gist already has to do with Ms. Linda
7 McCormick's written statement. It was not sworn.
8 He is correct, but we believe it is a -- an
9 exception to the hearsay rule because it's a public
10 record and because it -- it was substantially
11 conformed not only to Captain Cretella's testimony
12 but also to Mr. Brisbon's as well. But the big
13 brouhaha about that statement, I think, leads us
14 away from what might even be more important.

15 The insinuation by contesting the statement is
16 that, if you took it out, you wouldn't have cause
17 -- we wouldn't have met our case. That isn't true
18 at all. In fact, that made -- that's by far not
19 the most -- in my opinion -- damning evidence in
20 this case. I think some of the most unfavorable
21 evidence comes from Mr. Brisbon himself.

22 There was an e-mail from Ms. -- to Riley --
23 I'm sorry. It was her first name. I apologize. I
24 do not know her last name. She worked in the film
25 industry, and you can tell from the e-mail

1 exchange, she's been asking him, "Why are you
2 charging more than anybody else is charging me?"
3 And he goes on to tell her that, oh, he's -- he's
4 not supposed to be charging her that; he's supposed
5 to be charging her more because, as a captain,
6 he's worth \$50 an hour. So he's cutting her a
7 break by -- by giving her the difference between
8 that and the remitted rate.

9 And then, to support his argument, he goes on
10 and actually cuts and pastes the CPD policy saying
11 that -- what sounds like he could do that. He then
12 cuts out the last line that says expressly, "No
13 police officer" -- no police officer -- "shall work
14 for any less money than this rate or any more."
15 And the fact that he cut that out doesn't just show
16 that he broke the rule; it shows he knew he was
17 breaking that rule and he wanted to hide that from
18 her. I think that's some of the strongest evidence
19 in this case.

20 Another piece of strong evidence in this case
21 came from the concert series. They had a series of
22 concerts out on Daniel Island. One of them was
23 Hootie and the Blowfish. It was a two-night event;
24 it was for charity. They -- concerts both nights.
25 And -- and Captain Brisbon, at the time, was in

1 charge of getting the -- the people to -- the
2 officers to come and work the off-duty nights. You
3 don't have to do a lot of begging to get people to
4 come to a Hootie and the Blowfish concert, to start
5 with. But not -- the officer -- the next highest
6 paid officer that night for working both nights was
7 \$420. Everybody else was paid less, except for
8 Captain Brisbon who paid himself \$1520. The
9 difference, he said, was making phone calls and
10 getting people to come to -- to work and set up.
11 And he -- the -- the days on which he said he did
12 the work, it would had to have crossed over his
13 work time.

14 Finally, I want to point to a statement made
15 by Mr. Brisbon, or then Captain Brisbon, to Captain
16 Cretella during the -- the internal investigation.
17 During this part of the investigation, they had
18 brought forward to him the allegations of the
19 Bennett House, that he had been charging them an
20 unauthorized administrative fee and other fees, as
21 well. And -- and she even brought forth invoices
22 and billing records and -- and receipts for -- or
23 not receipts, but records of the money that she had
24 paid them, and it was far more than what he said.
25 Even when Captain Brisbon admitted that he was

1 charging them, he -- he only admitted to charging
2 them -- I think it was \$25 for the nights he did
3 not work himself. But he, in fact, was charging
4 them a \$150 flat fee every month.

5 So when Captain Cretella confronted him with
6 this, then Captain Brisbon said, "Well, I never
7 authorized that. I never agreed to accept that
8 money. I never told her it was okay to pay me
9 that." So the -- the next line of questioning was
10 as to whether -- well, if -- if you didn't think
11 you were supposed to get it, why did you keep it?
12 The answer there was, "I never checked to see if I
13 was paid correctly. I -- I just trusted it to be
14 right. Just put it in the bank and never -- never
15 saw it. Didn't -- didn't think another thing about
16 it."

17 So then the question became -- and this is the
18 one that I think is so significant -- "Well, now
19 that you know, Captain Brisbon, that you got money
20 that you weren't entitled to and that you weren't
21 supposed to have and that this lady wants it back,
22 are you willing to pay it back?"

23 It didn't take him anytime to say, "She made a
24 mistake. That's hers. It's my money. I should
25 keep. It's not -- it wasn't my mistake." That

1 tells you a lot, or it certainly tells me a lot.
2 He wasn't going to stop then, even with his job on
3 the line, even with his hand in the cookie jar, he
4 thought it was fine for him to go on. And I don't
5 think he would've stopped since.

6 Mr. Gist made a couple of points that I want
7 to counter. He offered that the -- that SLED made
8 some sort of finding that Mr. Brisbon did not
9 engage in any misconduct. I think SLED's finding
10 was, in fact, that they did not have sufficient
11 evidence for which to bring criminal charges.
12 Those are two very different standards, not that
13 any of you don't know the difference there.

14 He also claimed that there was broad
15 discretion in the policy, and there was some
16 discretion in the policy, but that doesn't mean
17 there was no rule -- there were no express rules in
18 the policy. And one of the express rules was,
19 "This is the rate that officers must charge. You
20 cannot charge more, and you cannot charge less."
21 He clearly broke that rule.

22 We would ask that you adopt the finding of
23 your hearing officer that, in fact, Mr. Brisbon did
24 violate the policy and did engage in misconduct via
25 misrepresentation about matters relating to his

1 employment. Thank you.

2 CHIEF KEEL: Any questions for Ms. Cleveland at this
3 time? Any member of Council have any question of
4 Ms. Cleveland at this time? Thank you,
5 Ms. Cleveland.

6 MS. CLEVELAND: Thank you.

7 CHIEF KEEL: I'll entertain a motion. Okay. You've got
8 five minutes rebuttal, Mr. Gist. I'm sorry.
9 Apologize, Mr. Gist.

10 MR. GIST: Thank you, sir. Thank you.

11 CHIEF KEEL: You have five minutes.

12 MR. GIST: Thank you, Chief. It's not going to take me
13 five minutes. When I got up here, I said
14 specifically that -- "and as SLED concluded in its
15 investigation." In the scope of the investigation
16 from SLED, they looked at all of the factors. SLED
17 looked at all of the factors involving this
18 distinguished police officer and found nothing that
19 rose to the level of either criminal misconduct,
20 nor did they find anything that rose to the level
21 of civil misconduct. But let's take another look
22 at what Ms. Cleveland said in conjunction with what
23 I said.

24 One, I deal with dates and numbers. February
25 2008 a policy is adopted. It says, "This is what

1 police officers who are in charge of off-duty work
2 must do." Second of all, February the 13th of 2020
3 -- 2020, this policy is still in place. This
4 policy is very clear. There is no question other
5 than the real facts in this case. The Department
6 did not have any amendments to their policy that
7 was adopted in February of 2008, but most
8 importantly, I live by their policy for my client.

9 I would like for you to look at the policy
10 that was adopted by the City of Charleston Police
11 Department. And all of this -- well, he charged
12 more money than what he should've charged. He
13 basically should not have been charging -- he
14 charged his hourly rate of \$40 an hour.

15 More specifically, though, I ask that you go
16 to the section in the policy -- and we rest our
17 case on that -- the section in the policy is 50.9 -
18 - 5-0-point-9 -- "Compensation." And I will read
19 that for you: "Employees working off-duty will be
20 compensated for services rendered only in the form
21 of checks drawn on the business organization's bank
22 account." The business organization's bank
23 account. "If an individual sponsors the event, a
24 check drawn in that person's account will be
25 acceptable. Under no conditions will an officer

1 work an off-duty job for cash." Now, Ms. Cleveland
2 said my man -- which I take very much objection to
3 -- that he stuck his hand in the cookie jar. He
4 never took cash money from anybody. He was always
5 compensated according to the policy.

6 But I want you to look at one more section of
7 that policy, and I'll rest our case. There's no
8 reason this man should have his license or be --
9 even be disciplined. But I'll abide by your
10 disciplinary policies other than revocation of his
11 license. But look at this one --

12 CHIEF KEEL: Mr. Gist, you said that was 50.9, but
13 that's 50.7, is it not?

14 MR. GIST: General Order Number 50.

15 CHIEF KEEL: Okay. But it's 50.7 is "Compensation,"
16 correct?

17 MR. GIST: I'm looking at one that says 50.9 here,
18 Chief. The one I have here has got "General Order
19 Number 50," 50.8 is restricted work sites, and 50.9
20 is compensation. I'll be glad to give it to
21 Mr. Brumlow for him to send to you-all to look at.

22 CHIEF KEEL: Okay. Go ahead.

23 MR. GIST: (Inaudible.)

24 CHIEF KEEL: It's the same -- it's the same language --

25 MR. GIST: Yes, sir.

1 CHIEF KEEL: -- same language that you just read.

2 MR. GIST: Yes, sir. That's 50 --

3 CHIEF KEEL: It says 50.7.

4 MR. GIST: Yes, sir. Well, we'll call it 50.7, Chief.

5 No problem.

6 CHIEF KEEL: No. That's all right. No, sir. Go ahead.

7 MR. GIST: Yes, sir. But look at the last paragraph,

8 "Additionally, payment arrangement, collection, and

9 terms that are associated with such matters are the

10 responsibility of the officers employed by the

11 employer and not the Department." And basically

12 it's the responsibility of the officers employed by

13 the employer. City of Charleston may have set the

14 rates early out, but it's left up to the employer

15 -- in this case, whether it's Ms. Linda McCormick

16 or whomever -- it's left up to the employer to set

17 the rates. Now, Ms. Cleveland talked about -- and

18 we're blessed to have all these special events

19 going on in Charleston with movie theaters. But

20 the movie industry pays a higher fee than they

21 would pay for -- for security because, one, you got

22 a lot of people that are in those movies, both

23 stand-ins as well as actors. But this policy it

24 speaks for itself. It is the responsibility of the

25 officers by -- employed by the employer, not the

1 Department. My man never charged anything -- if
2 anything, she's correct, he charged the movie film
3 people less money than what they wanted to pay him.

4 I thank you-all for your time. I ask that you
5 consider the evidence, and please under no
6 circumstances -- I ask that you not revoke
7 longstanding 35-year-old (verbatim) officer's
8 certification. Thank you.

9 CHIEF KEEL: Thank you, Mr. Gist. Anybody have any
10 questions for Mr. Gist. Anybody have any question
11 of Mr. Gist? Okay. All right. Thank you, sir.

12 MR. GIST: Yes, sir.

13 CHIEF KEEL: I'll entertain a motion.

14 SHERIFF FAILE: Chief, I make a motion that we adopt the
15 recommendation of the hearing officer with
16 permanent denial.

17 CHIEF KEEL: I've got a motion to adopt the hearing
18 officer's recommendation and to have permanent
19 denial of eligibility for certification as a law
20 enforcement officer. Do I have a second?

21 DIRECTOR THOMAS: Second.

22 CHIEF KEEL: Got a second from Chief Thomas. Any
23 further discussion? Any further discussion? Any
24 question? Any further discussion or questions?
25 Yes? Did I hear somebody? Any further discussion

1 or question? Hearing none I call for the question

2 -- roll-call vote.

3 MS. BUNN: Chief Keel?

4 CHIEF KEEL: I'm -- abstain as a there's a conflict with
5 the SLED investigation.

6 MS. BUNN: Sheriff Foster?

7 SHERIFF FOSTER: Aye.

8 MS. BUNN: Director Gallman?

9 DIRECTOR GALLMAN: Nay.

10 MS. BUNN: Director Boyles?

11 DIRECTOR BOYLES: Aye.

12 MS. BUNN: Director Woods?

13 DIRECTOR WOODS: Aye.

14 MS. BUNN: Sheriff Faile?

15 SHERIFF FAILE: Aye.

16 MS. BUNN: Director Thomas?

17 DIRECTOR THOMAS: Aye.

18 CHIEF KEEL: Any -- all right. Next case.

19 MR. FENNELL: Rudoph Johnson, 2023-CJA-04-03. Allendale

20 Police Department filed an allegation against

21 Mr. Johnson. Mr. Hicks is here on behalf of the

22 officer. Mr. Davis is here on behalf of the

23 Agency. The hearing officer found the Agency had

24 proven its case by the preponderance of the

25 evidence and for Council to impose such sanction as

1 it deems appropriate. Mr. Hicks will have ten
2 minutes followed by Mr. Davis with ten minutes, and
3 then followed by Mr. Hicks with five minutes.

4 CHIEF KEEL: Hicks -- well, hold on one second.

5 DIRECTOR BOYLES: Chief, just as an abundance of
6 caution, there is a representative of the
7 Department of Natural Resources mentioned in this
8 investigation. As such, I will be recusing.

9 CHIEF KEEL: Okay. And I obviously will be recusing as
10 well -- or abstaining from voting because of the
11 SLED investigation.

12 Mr. Hicks --

13 MR. HICKS: Good morning, Chief.

14 CHIEF KEEL: -- be happy to hear from you.

15 MR. HICKS: Good morning --

16 CHIEF KEEL: Good morning.

17 CHIEF KEEL: -- everybody. I know I'm -- I'm here all
18 the time, and I'll -- I'll try my best to abide by
19 my ten minutes. And I filed a memo in opp in
20 response to this recommendation. Hopefully, y'all
21 have had the opportunity to review that. I believe
22 it fairly well outlays my positions kind of
23 throughout this matter. But I do want to touch on
24 a few things specifically within the time allotted,
25 and I want to start with the actual recommendation

1 itself.

2 I made a note of this in -- in the opening of
3 my motion in opp. But, quite candidly, this was
4 raised at the hearing as well. There are -- there
5 are portions of the PCS, gentlemen, that are overly
6 broad. As y'all know, and I'm here all the time,
7 you know, the requirement for these PCS's is that
8 they provide specific notice of the allegations,
9 that way the officer can be prepared to respond to
10 the specific allegations in what they're being
11 accused of misconduct. And in this instance, this
12 PCS used quite generic terms. I quoted them, but
13 it said, "Multiple issues at various times." And
14 it said, "Misrepresentation of facts on multiple
15 occasions." And then it goes on to only kind of
16 identify very few specificities, and -- and I'm
17 going to touch on those, but I -- I raise that
18 concern quite candidly in my opening because that
19 is almost impossible to prepare for when you say
20 "multiple issues at various times."

21 Let's just throw the kitchen sink at it, you
22 know, and see what happens or, you know, better
23 yet, the old adage, you know: Throw it up on the
24 wall and see what sticks. And -- and, in fact,
25 that kind of came to a head -- and -- and again,

1 I've made note of this kind of in the early parts
2 of this hearing. It can be found on Pages --
3 beginning on Page 50 -- it goes from 50 to 53 of
4 the transcript where yet another objection came up
5 because somehow we got to talking about events in
6 December, months prior to this -- this termination.
7 And I objected. And -- and I'll submit to you that
8 the attorney for the Department essentially
9 conceded that there were only two issues before
10 here. The one being what I'm going to call "the
11 SLED investigation" and the other one that's going
12 to be what I'll call the "NAPA incident." You can
13 find that on Page 51. The hearing officer
14 reiterated on Page 53 that those were the only to
15 instances that were really properly before the
16 hearing officer at this -- this hearing some months
17 back.

18 Yet, when we got to the recommendation on
19 Page 9 in the analysis by Ms. Williams, who was the
20 hearing officer, she then comes up with three
21 allegations that are now properly before her for
22 evaluation, the first one being what I'm now going
23 to call -- it's the new one; it's the "job one."
24 And that -- or the -- excuse me -- the NAPA
25 incident was the first one. She said -- she said,

1 first, Mr. Johnson set up a meeting with Sheriff
2 Freeman; that's the NAPA incident. The second one
3 is -- is the new one, and it says that Mr. Johnson
4 applied to Allendale Sheriff's Office and then lied
5 about it. That was new. It was certainly not
6 found in the discussions on Page 51 to 53. And
7 then the third one, which was the SLED
8 investigation where she says that what she's
9 evaluating is whether or not Mr. Johnson discussed
10 the SLED and then lied about it.

11 And I'll kind of touch first on the -- on the
12 first one which was the NAPA incident. And, to her
13 credit, Ms. Williams found that there was not a
14 preponderance of the evidence regarding this NAPA
15 incident. I won't belabor that unless you need to
16 hear it, but essentially what was being accused is
17 that Mr. Johnson -- who is here if y'all have any
18 questions. I don't know if you can see him. He's
19 kind of off camera. Had taken a -- a new officer
20 who was still doing ride-alongs to meet the sheriff
21 over in Allendale, and that the sheriff purportedly
22 offered him a job and that Mr. Johnson was trying
23 to -- to make that happen.

24 And that's just simply inaccurate. The
25 sheriff testified. He said there was no job

1 offered. Heyward, the officer in question,
2 actually said that he was interested in a job but
3 also acknowledged that he was never interviewed, he
4 was never offered a job, nothing of that -- of that
5 sort. You can see that that testimony from -- from
6 Officer Heyward, who was the -- the gentleman kind
7 of at subject of that, and the sheriff, and it's
8 simply nothing there. And -- and the hearing
9 officer did dispose of that.

10 The second allegation that came up again was
11 this job offer or this -- excuse me -- allegation
12 that they were trying to hide Mr. Johnson going to
13 the sheriff's department on this job application,
14 if you will. Again, that was not originally really
15 discussed in the -- in the hearing. In fact,
16 again, the hearing officer said the only thing we
17 were looking at was the NAPA incident and the SLED
18 incident. Yet the hearing officer somehow
19 concludes that, not only is it squarely within her
20 purview, but there was preponderance of the
21 evidence, and what she -- she said is that,
22 essentially, both Sheriff Freeman and Mr. Johnson
23 were attempting to conceal Mr. Johnson's potential
24 move. I submit to you that's not at all accurate.
25 In fact, there sheriff said that he had

1 specifically told Mr. Johnson that he would not
2 consider him. Mr. Johnson would absolutely have to
3 be gone. He never interviewed Mr. Johnson for a
4 position, nor was he ever offered a position.

5 He did submit an application. But the
6 question to Mr. Johnson was not: Did you submit an
7 application? And you got to ask the right question
8 to get a right answer. It's very well that
9 Mr. Johnson could've submitted an application -- I
10 put this in the footnote -- but decided that the
11 job would ultimately not be for him for whatever
12 personal reason there may -- there may be.

13 I will tell you -- and I made note of this in
14 my -- my memo -- it's quite questionable why a
15 department has any right to know that an at-will
16 employee may or may not be seeking a job somewhere
17 else. I'm hard-pressed to think that an officer's
18 obligated to tell a current employer that he may or
19 may not be seeking a job at another place. There's
20 no contract there. You all are familiar with --
21 with at-will employment. You all run major
22 agencies or major departments, and to mandate that
23 he disclose that is problematic both on its face,
24 but because of what happened here. And -- and I
25 hope you've seen this. And it was marked as our

1 Exhibit 2.

2 Because when this came to light, Chief Wiggins
3 actually goes to the sheriff department and turns
4 on his body cam and confronts Sheriff Freeman
5 publicly. I hope y'all saw that video. It is
6 deeply disturbing. I have stood here many, many,
7 many a times and I've never seen anything like
8 this. It was Exhibit 2. We introduced it. Quite
9 curiously, the hearing officer didn't even make
10 reference to it in her recommendation, other than
11 saying it was a marked exhibit.

12 But it would stand all the more reason that --
13 that they -- he shouldn't have told Mr. Wiggins.
14 Now, we maintain that he didn't lie at all. But --
15 but it was all the more reason that he shouldn't
16 have told Chief Wiggins because look what happened.
17 You had a -- a chief in this state go to the front
18 of the sheriff's department, turn on his
19 department-issued body cam, and confront a sheriff,
20 an elected official. It's deeply, deeply
21 concerning.

22 But nonetheless, I don't believe there's
23 anything there. In fact, the hearing officer tried
24 to use some kind of curious language when she says,
25 on Page 11, "Without any contradictory evidence to

1 refute Chief Wiggins' memory of this conversation
2 with Mr. Johnson on April 11th, the weight of the
3 evidence is slightly in the Department's favor on
4 this issue." I'd submit to you that "slightly in
5 favor" is not preponderance of the evidence,
6 gentlemen. It's simply not. Those are
7 inconsistent statements.

8 The last one is -- is regarding this SLED
9 investigation. I -- I -- hopefully you can read
10 that. It's kind of a convoluted mess, I'll be
11 honest with you. The hearing officer even pointed
12 out the -- the witness inconsistencies through the
13 testimony and the statements in this matter was
14 baffling. There were several kind of resets or
15 changes or -- or redoing.

16 The -- the short answer -- or the short
17 explanation of this situation was this: SLED shows
18 up to Allendale Police Department on a given day.
19 They are looking into another officer at Allendale
20 PD about some sirens and some bulletproof vests.
21 Chief Wiggins is not even there because he's in
22 Columbia meeting with one of his officers off-duty
23 on this quasi-investigation that he had ensued
24 against Mr. Johnson on unrelated matters. SLED
25 wants to look at some of these items. They call

1 Chief Wiggins.

2 He initially says that he did not speak with
3 them. He then later changed his testimony and
4 admitted that he had spoken with SLED. I don't
5 think that'll be disputed, but if it is I'll gladly
6 point you into the record where it can be found.
7 Has a conversation and then comes back to
8 Allendale.

9 The allegation is that Mr. Johnson then tells
10 a subordinate officer who then somehow disseminates
11 it to a supervisor, who then tells Chief Wiggins in
12 this convoluted circle mess. I think there's a
13 couple things that y'all should note there and a
14 couple things that are deeply concerning. And I
15 made a note of this at the end of my -- my motion
16 in opp.

17 Chief Wiggins had directed his subordinates to
18 record conversations with Mr. Johnson. A chief in
19 your state had told his officers to record their
20 conversations with his deputy chief. And somehow
21 this recording goes on -- the hearing officer
22 addresses it. Mr. Johnson never says anything
23 specific about the investigation. He only said
24 that SLED was there and that there was an
25 investigation. Another officer, the supervisor,

1 Ms. Evans acknowledged that it was public knowledge
2 than investigation was going on.

3 So I say all that -- I'm -- I'm out of time,
4 and I'll touch base in -- in my rebuttal that it
5 was a known investigation. Everybody was aware of
6 it, and to say that he was trying to hide something
7 is just factually incorrect.

8 CHIEF KEEL: Thank you, Mr. Hicks. Anybody have any
9 questions for Mr. Hicks at this point? Thank you,
10 Mr. Hicks.

11 MR. HICKS: Thank you, sir.

12 CHIEF KEEL: Be happy to hear from Mr. Davis.

13 MR. DAVIS: Good morning.

14 CHIEF KEEL: Good morning.

15 MR. DAVIS: I'm Kenneth Davis, and I'm here with Chief
16 Lawrence Wiggins from the Town of Allendale Police
17 Department. And we're -- we're here in support of
18 the finding of the hearing officer. The hearing
19 officer properly found by a preponderance of the
20 evidence that Officer Johnson committed misconduct
21 by giving false, misleading statements to a law
22 enforcement officer.

23 The record is pretty clear, SLED Agent Jeff
24 Fay came to the Town of Allendale officer --
25 Allendale Police Department. Chief Wiggins was

1 away from the office. Mr. Johnson was the deputy
2 chief and the next in command in the absence of the
3 chief. Mr. Fay communicated the existence of an
4 investigation of another Town of Allendale police
5 officer arising out of his time spent with the
6 sheriff's department. And for -- for reasons known
7 to most of you, investigations that they're ongoing
8 are generally kept confidential, and information is
9 given out on a need-to-know basis.

10 For reasons known only to Mr. Johnson, he
11 disclosed his discussion or the nature of his
12 discussion with the SLED Officer -- Investigator
13 Fay to a subordinate officer in the Town of
14 Allendale Police Department by the name of Darius
15 Heyward. Heyward then had some communication with
16 Chief Wiggins indicating that "Deputy Chief Johnson
17 told me that SLED is investigating Officer JE,"
18 being the initials.

19 Later that day, Subordinate Officer Heyward
20 talks to another officer, Toni Evans, and then
21 tells Toni Evans that he had learned of an
22 investigation into this -- into -- into Officer JE
23 from Deputy Chief Johnson. It turns out that the
24 chief had arrived back into the town. Deputy Chief
25 Evans (as spoken) was in the process of going back

1 into the Department then because he left. The
2 chief hear Heyward telling her about the disclosure
3 made by Deputy Chief Johnson regarding the
4 investigation of Officer JE.

5 Later that day -- Chief Wiggins is a former
6 SLED investigator -- officer. He understands the
7 nature and the reasons why you keep investigations
8 confidential until such time as you shouldn't. Of
9 course, he was concerned about Johnson's ability to
10 serve in that role as deputy chief because it -- it
11 requires a lot of discretion, a lot of judgment.
12 So he then questioned Johnson about whether he
13 spoke to anybody else about the disclosure made by
14 Officer Fay. And Johnson was given the -- it's a
15 recorded conversation. Johnson was given the
16 opportunity to say, "Yes, I did tell it," which --
17 which would've been possibly -- may not have looked
18 favorably upon him, but it would've been the truth.
19 But instead, Johnson told something that was not
20 the truth. He stated that he did not tell anybody
21 about the investigation.

22 And going back a little before Wiggins talked
23 to Johnson, Wiggins talked to SLED Investigator
24 Fay, and Fay indicated that he had never talked to
25 anybody else in Allendale other than Johnson. So

1 factually this lines up as Fay told Johnson about
2 the investigation. Johnson told Heyward. Heyward
3 told Evans. Evans and Heyward both told Wiggins
4 that, "Hey, Johnson told us about this
5 investigation." Wiggins talked to Fay to confirm,
6 in fact, there was an investigation by the -- when
7 he returned to the town. And then Wiggins, having
8 concern about the judgment and discretion and what
9 it could do to a Department, he gave a Johnson to
10 came -- you know, to tell him the truth about what
11 happened. And Johnson chose not to tell the truth.

12 And so we believe that that behavior
13 constitutes misconduct of a false, misleading,
14 incomplete, untruthful, or incorrect statement made
15 to a law enforcement officer.

16 And, secondly, with regards to the NAPA
17 investigation and the -- what Mr. Hicks framed as
18 the "third allegation," the -- the third allegation
19 was kind of intertwined with the NAPA matter,
20 meaning that it was the chief's belief that the
21 meeting was set up with the sheriff's office,
22 possibly because Johnson was going -- you know, was
23 making arrangements to go to the sheriff's
24 department, and then he was taking along this other
25 officer, possibly to present another officer for

1 the sheriff to hire. And, of course, the hearing
2 officer found that there was not sufficient
3 evidence in the record to support the finding of
4 the motive for setting up the meeting. But, again,
5 the hearing officer did find that the chief
6 directly questioned Johnson about whether he was
7 seeking employment with the sheriff's department,
8 and Johnson told him no.

9 You know, Johnson had a number of things he
10 could've done at the time. He could've said, you
11 know, that "I believe this is an inappropriate
12 question." He could've, you know, asserted any --
13 any number of rights that Mr. Hicks said he now
14 has, he could've asserted any of those rights, but
15 he did not. He just simply, again, was untruthful
16 in talking to another law enforcement officer.

17 But -- but, again, looking at the finding from
18 the hearing officer, the greatest weight, I think,
19 should be placed on the SLED investigation in that
20 I think it's pretty clear -- there's a recording in
21 the record in which Johnson is overheard telling
22 Chief Wiggins that he did not tell anybody. So for
23 that reason, we ask the Council to uphold the
24 finding of the hearing officer, and we ask that the
25 Council impose a sanction from suspension for a

1 period of time to certification with probation or
2 certification under conditions that you-all deem
3 appropriate. So I thank you for your time.

4 CHIEF KEEL: Thank you, Mr. Davis. Any questions for
5 Mr. Davis at this point? Any questions of
6 Mr. Davis? Okay. Thank you, Mr. Davis.

7 MR. DAVIS: Thank you.

8 CHIEF KEEL: Mr. Hicks?

9 MR. HICKS: Briefly, Chief. Thank you. And -- and I
10 guess what I want to try to do very quickly is I
11 want to flesh out this SLED phone call situation
12 just very, very briefly. And what we're dealing
13 with is, on that morning, SLED arrives at the
14 Allendale Police Department. Chief Wiggins is not
15 there. He's in Columbia meeting with this Officer
16 Heyward. And Mr. Johnson and SLED -- it's in the
17 record -- then call Chief Wiggins. They have a
18 conversation with him. Chief Wiggins initially
19 denied it. He then recanted and said, no, he had
20 spoke with them.

21 Later that afternoon, it can be found at
22 State's Exhibit 1, Officer Heyward begins recording
23 a conversation with Mr. Johnson. That recording is
24 in State's Exhibit 1. The hearing officer makes
25 her, kind of, analysis of it on Page 8 of her

1 recommendation. And -- and he makes two comments.
2 He says that SLED was already up there, and he
3 says, "Don't say nothing."

4 The hearing officer clearly states, though,
5 and this is what she says and I'll quote, "However
6 besides the mention of an investigation,
7 Mr. Johnson does not give any details of the
8 investigation. There is no mention of the
9 bulletproof vest or other items of interest. There
10 is no mention of what the investigation involves
11 except that it is focused on Jim Evans."

12 So that afternoon Mr. Johnson is on the phone
13 with Mr. Heyward who's a new, young officer.
14 Mr. Heyward is recording that conversation because
15 his chief, Chief Wiggins, had told him to do so.
16 And Ms. Evans, who is the other supervisor -- I
17 believe she may have been a -- she was either a
18 captain or a sergeant -- is apparently on a
19 separate line with Chief Heyward. So what she --
20 or with Officer Heyward. So what you have is
21 Officer Heyward on the phone with Mr. Johnson and
22 then Officer Heyward on another phone at the same
23 time with Ms. Evans.

24 And Ms. Evans is listening in on the
25 conversation between Heyward and Johnson. She's

1 playing it on speaker phone, and because she knows
2 the chief is there, she is walking around the
3 department with her phone on speaker phone so that
4 everybody can now hear the conversation between
5 Johnson and Heyward. They've made it public on
6 their own agenda -- in fact, she said she wanted
7 the chief to overhear it so Ms. Evans was playing
8 it publicly.

9 Now, what's curious about this is Mr. Heyward
10 says he was not on the phone with Ms. Evans during
11 that conversation. But Ms. Evans was adamant that
12 she was on the phone with Mr. Heyward.

13 Chief Wiggins is actually meeting with the
14 SLED agent at that time. And -- and that's
15 important because then what happens is that Chief
16 Wiggins then calls Mr. Johnson, and that's State's
17 Exhibit 2. You can hear that recording. It's
18 somewhat brief.

19 But I do want to point something out in that,
20 and let's just call it for what it is. We're here
21 on misconduct, and I made notice -- note of this in
22 the final page of my -- my brief on Page 10. And
23 -- and quite candidly, 23-23-150 is y'all's
24 misconduct statute, and as I articulated there,
25 Chief Wiggins is the -- the senior ranking officer

1 there, so unless he's going to report himself for
2 misconduct, I don't think anybody is. So for the
3 first time in all my years I'm going to make note
4 of this because I think the Council should look at
5 this.

6 Chief Wiggins in that phone call, State's
7 Exhibit 2, tells Mr. Johnson that he still needed
8 to get with SLED. Yet he's lying in that instance
9 to Mr. Johnson because he had already met with
10 SLED. That's what spurned this whole thing. So
11 he's actively lying to Mr. Johnson in State's
12 Exhibit 2 by saying he still needs to get with
13 SLED, but he's already met with SLED.

14 But I don't think that's -- it may be relevant
15 for Mr. Wiggins -- or Chief Wiggins' licensure.
16 It's not relevant for Mr. Johnson's because, as
17 Ms. Evans aptly pointed out, this investigation of
18 the Sergeant Jim Evans -- there was two Evans there
19 -- was already public knowledge. As Mr. Davis
20 pointed out, Allendale Sheriff's Office is who
21 actually had reported this to SLED. So it was
22 public knowledge within the town.

23 This investigation when these SLED agents are
24 the office on this particular day, it's a weekday.
25 It's during the day. They were going through

1 vehicles. They were in the police department for
2 everybody to see. It was no hidden knowledge that
3 this investigation was going on. So to say that
4 there's preponderance of evidence that this
5 gentleman lied is just inaccurate.

6 The last thing, and I find it curious that now
7 they're going to say that the NAPA allegation and
8 Mr. Johnson's application are -- are intertwined.
9 The dates don't even match up. The -- the NAPA
10 meeting had been on March the 30th. Mr. Johnson
11 brought a notice of resignation, I believe it was,
12 April the 2nd, a couple days later. He never
13 tendered this application to the sheriff. The
14 sheriff recalled it being either the 9th or the
15 10th. Mr. Wiggins, though, notes and says it was
16 the 11th, the same day that this conversation
17 happened. So we just say that there -- there's no
18 basis here on this fishing expedition.

19 This recommendation should be rejected and
20 Mr. Johnson should have his certification
21 reinstated.

22 CHIEF KEEL: Okay. Any questions for Mr. Hicks? Any
23 questions by the Council for Mr. Hicks? Hearing
24 none, I'll entertain a motion. Members of Council,
25 I'll entertain a motion. Sheriff Foster?

1 SHERIFF FOSTER: Pardon me. I'll make a motion that we
2 accept the hearing officer's recommendation, but I
3 want to have a discussion after that -- after the
4 motion.

5 CHIEF KEEL: All right. We've got a motion to accept
6 the hearing officer's recommendation. Do I have a
7 second?

8 DIRECTOR GALLMAN: Second.

9 CHIEF KEEL: We've got a second. Okay. Discussion.
10 Any discussion or questions?

11 SHERIFF FOSTER: I've got a question.

12 CHIEF KEEL: Sheriff Foster.

13 SHERIFF FOSTER: Seemed to be a awful lot of people
14 videorecording or audiotaping in this. Why -- I'm
15 a little bit confused on this. Why did the chief
16 put the sheriff on the body camera? I don't know
17 who this is directed to.

18 CHIEF KEEL: Hicks -- Hicks, you want to try to answer
19 that? Or Mr. Davis? Which one?

20 MR. HICKS: Our position is -- and --

21 MR. DAVIS: Yeah. Sheriff, he couldn't say what the
22 chief is here to say for himself.

23 MR. HICKS: He can't testify either. It's in the
24 record. I mean, the -- the audio speaks for
25 itself. Watch the video. I mean, he goes over

1 there and asks him about trying to hire
2 Mr. Johnson. It's a several-minute video. It
3 starts when he pulls up and -- and ends when he
4 gets in his vehicle and leaves.

5 SHERIFF FOSTER: Yeah. I --

6 MR. HICKS: He can't testify here today. I mean, I can
7 speak to what the record says, and the record would
8 be what the video shows.

9 SHERIFF FOSTER: Yeah. I -- I get that, but why -- why
10 did he decide to -- to put that on a videotape?
11 Why'd he put it on a body a camera?

12 CHIEF KEEL: Sheriff, I don't -- I don't know that
13 anybody can answer that question other than
14 Mr. Wiggins.

15 SHERIFF FOSTER: I -- I don't believe they --

16 CHIEF KEEL: And Mr. Wiggins has already -- like I say,
17 I -- I don't think at this point -- that whatever
18 was in the hearing is all that we can -- all we can
19 look at. We can't look at anything further than
20 that.

21 SHERIFF FOSTER: All right. Thank you.

22 MR. DAVIS: Mr. Chair, can I clarify one thing?

23 CHIEF KEEL: You can.

24 MR. DAVIS: There was no finding made in the -- in the
25 report regarding the body cam, so I don't think

1 that's really what we're here for today.

2 CHIEF KEEL: That's right.

3 MR. DAVIS: There was no finding made of misconduct on
4 that basis.

5 SHERIFF FOSTER: It was testimony given though, but
6 that's okay. Thank you.

7 CHIEF KEEL: Any other questions? comments? Any other
8 questions or comments? Any other questions for
9 Mr. Hicks or Mr. Davis? Hearing none, we got a
10 motion and second to accept hearing officer's
11 recommendation. We'll have to have another motion
12 with regards to penalty if -- if it prevails -- if
13 the motion prevails. I'll call for the question.
14 Roll-call vote.

15 MS. BUNN: Chief Keel and Director Boyles are recused?

16 CHIEF KEEL: Yes.

17 MS. BUNN: Sheriff Foster?

18 SHERIFF FOSTER: I vote aye.

19 MS. BUNN: Director Gallman?

20 DIRECTOR GALLMAN: (Inaudible.)

21 MS. BUNN: Director Woods?

22 DIRECTOR WOODS: Aye.

23 MS. BUNN: Sheriff Faile?

24 SHERIFF FAILE: Aye.

25 MS. BUNN: Director Thomas?

1 DIRECTOR THOMAS: Aye.

2 CHIEF KEEL: Okay. So the -- the motion passes. So now
3 we need a motion with regards to the penalty here.

4 I'll entertain a motion there.

5 DIRECTOR WOODS: I make a motion for permanent denial.

6 CHIEF KEEL: I got a motion from Director Woods for
7 permanent denial of eligibility of certification.

8 SHERIFF FOSTER: I second.

9 CHIEF KEEL: Do I have a second? Sheriff Foster
10 seconds. Any further discussion? Roll-call vote.

11 MS. BUNN: Sheriff Foster?

12 SHERIFF FOSTER: Aye.

13 MS. BUNN: Director Gallman?

14 DIRECTOR GALLMAN: Aye.

15 MS. BUNN: Director Woods?

16 DIRECTOR WOODS: Aye.

17 MS. BUNN: Sheriff Faile?

18 SHERIFF FAILE: Aye.

19 MS. BUNN: Director Thomas?

20 DIRECTOR THOMAS: Aye.

21 CHIEF KEEL: And just again note for record Director
22 Boyles and myself both abstain, not vote. Next
23 case.

24 MR. FENNEL: Brandon Floyd, 2021-CJA-09-02. The Lake
25 City Police Department filed an allegation of

1 misconduct against Mr. Floyd. They invoked
2 prosecutorial discretion and did not prosecute the
3 case. The hearing officer recommended that the
4 order be closed and all -- all evidence pertaining
5 to this to be expunged within 30 days. No parties
6 are present.

7 CHIEF KEEL: Okay. I'll entertain a motion.

8 DIRECTOR BOYLES: Chief, move that we adopt the hearing
9 officer recommendation.

10 CHIEF KEEL: Got a motion to adopt the hearing officer's
11 recommendation. Do I have a second?

12 DIRECTOR WOODS: Second.

13 CHIEF KEEL: Got a second. Any discussion? Hearing
14 none, roll-call vote.

15 MS. BUNN: Chief Keel?

16 CHIEF KEEL: Aye.

17 MS. BUNN: Sheriff Foster?

18 SHERIFF FOSTER: Aye.

19 MS. BUNN: Director Gallman?

20 DIRECTOR GALLMAN: Aye.

21 MS. BUNN: Director Boyles?

22 DIRECTOR BOYLES: Aye.

23 MS. BUNN: Director Woods?

24 DIRECTOR WOODS: Aye.

25 MS. BUNN: Sheriff Faile?

1 SHERIFF FAILE: Aye.

2 MS. BUNN: Director Thomas?

3 DIRECTOR THOMAS: Aye.

4 CHIEF KEEL: Next case.

5 MR. FENNELL: Myles Thompson, 2023-CJA-06-08.

6 Greenville County Sheriff's Office filed an
7 allegation of misconduct against Mr. Thompson.

8 They invoked prosecutorial discretion. The hearing
9 officer recommended that the case be closed, that
10 all evidence be expunged pursuant to the statute.

11 Mr. Hicks is here on behalf of the officer. There
12 is no one present on behalf of the Agency.

13 CHIEF KEEL: Mr. Hicks, be happy to hear from you.

14 MR. HICKS: Chief, I'll be shorter than my last one, I
15 suppose. I don't have anything to add here. This
16 was an allegation that was made by Greenville
17 County. They've since indicated their right to
18 prosecutorial discretion. I would ask that you
19 adopt the hearing officer's recommendation and
20 dismiss this charge and -- and expunge the records
21 within the 30 days and reinstate his certification.

22 CHIEF KEEL: Okay. Do I have a motion?

23 DIRECTOR BOYLES: Chief, I move that we adopt the
24 hearing officer's recommendation.

25 CHIEF KEEL: Got a motion to adopt the hearing officer's

1 recommendation. Do I have a second?

2 DIRECTOR WOODS: Second.

3 CHIEF KEEL: Got a second. Any discussion? Hearing no
4 discussion, roll -- a roll-call vote.

5 MS. BUNN: Chief Keel?

6 CHIEF KEEL: Aye.

7 MS. BUNN: Sheriff Foster?

8 SHERIFF FOSTER: Aye.

9 MS. BUNN: Director Gallman?

10 DIRECTOR GALLMAN: Aye.

11 MS. BUNN: Director Boyles?

12 DIRECTOR BOYLES: Aye.

13 MS. BUNN: Director Woods?

14 DIRECTOR WOODS: Aye.

15 MS. BUNN: Sheriff Faile?

16 SHERIFF FAILE: Aye.

17 MS. BUNN: Director Thomas?

18 DIRECTOR THOMAS: Aye.

19 CHIEF KEEL: Next case.

20 MR. FENNEL: Thelma Lewis, 2023-CJA-05-10. North

21 Charleston Police Department filed an allegation

22 against Mr. Lewis. They invoked prosecutorial

23 discretion. Mr. Bourne is here on behalf of the

24 Agency. No one is here on behalf of the officer.

25 Hearing officer recommended that the matter be

1 closed and for all material be expunged within 30
2 days.

3 CHIEF KEEL: Bourne, we'll be happy to hear from you.

4 MR. BOURNE: We concur with the hearing officer's
5 recommendation.

6 CHIEF KEEL: Okay. All right. I'll entertain a motion.

7 DIRECTOR BOYLES: Chief, I move we adopt the hearing
8 officer's recommendation.

9 CHIEF KEEL: Got a motion to adopt the hearing officer's
10 recommendation. Do I have a second?

11 DIRECTOR WOODS: Second.

12 CHIEF KEEL: Got a second. Any further discussion?

13 Hearing none, roll-call vote.

14 MS. BUNN: Chief Keel?

15 CHIEF KEEL: Aye.

16 MS. BUNN: Sheriff Foster?

17 SHERIFF FOSTER: Aye.

18 MS. BUNN: Director Gallman?

19 DIRECTOR GALLMAN: Aye.

20 MS. BUNN: Director Boyles?

21 DIRECTOR BOYLES: Aye.

22 MS. BUNN: Director Woods?

23 DIRECTOR WOODS: Aye.

24 MS. BUNN: Sheriff Faile?

25 SHERIFF FAILE: Aye.

1 MS. BUNN: Director Thomas?

2 DIRECTOR THOMAS: Aye.

3 CHIEF KEEL: All right. That concludes our cases for
4 today. Ready for a financial update. Ms. Wright.
5 Okay.

6 MS. WRIGHT: I'm Lauren Wright, Finance Director. So we
7 just finished out our first quarter for FY '24.
8 We're happy to say that court fines and fees have
9 made a slight resurgence, so we're up 16 percent
10 over the same time last year, which is great.

11 We're up -- we've been in expenditures as well
12 because of the law enforcement and the statewide
13 pay plan increase. A lot of our things are other
14 funded so that eats up a good bit of our fines and
15 fees revenue, but we're still in a really good
16 shape. If you guys have any questions or
17 information that you would like, please feel free
18 to reach out and contact to me. I'm happy to talk
19 to any of you at any time about it.

20 CHIEF KEEL: Okay. Any questions with regards to
21 financial report? Questions? All right.

22 Next the capital projects update.

23 MR. YARBOROUGH: Good morning.

24 CHIEF KEEL: Morning.

25 MR. YARBOROUGH: Finally, we have some good news on the

1 target systems. As of September 19th, they needed
2 six more weeks to get this project off and running.
3 As of last week, Friday, talking to them, their
4 projected completion is the end of November. So
5 hopefully we won't run into any hiccups there. So
6 end of November, we should have all the target
7 systems updated that we're working on at this time.

8 The generator bid was awarded to Burriss
9 Electrical. Right now we're just waiting on
10 signing the contract. They've already signed it.
11 Then we'll get a schedule of when they project to
12 do, whatever, the pad, ordering, working with
13 Dominion to get the switches in, all of those
14 things. But luckily everything is coming in
15 looking good. On budget on all the major projects
16 so far.

17 The West Annex dorm renovation is complete,
18 and we're utilizing those rooms. Right now we're
19 working on Phase 2, which is the West dorm rooms
20 where we're going to renovate the bathrooms.
21 That'll be going out to bid as soon as we get all
22 the paperwork necessary through the contractor -- I
23 mean the engineer/architect and downtown putting
24 that bid packet together, and we'll get that bid
25 out and hopefully -- hopefully, that will come in

1 under bid. But everything is going up right now,
2 all the plumbing and all the other materials.

3 But our plan right now was West Annex,
4 completed. Next is the West. Once that's
5 completed, we'll go with the North, and then we'll
6 go with the East. Once that's all done, all dorms
7 will be completed and up and running good. And
8 we'll see what else comes up, right, Chief?

9 CHIEF KEEL: Uh-huh. All right.

10 MR. YARBOROUGH: (Inaudible.)

11 CHIEF KEEL: Any -- anybody got any questions regarding
12 the capital projects update?

13 DIRECTOR SWINDLER: Each of those what we do is we'll
14 shut it down and -- and so that'll limit some
15 space. And then it takes about six months. And so
16 that'll be down, so then we'll be down and so we do
17 it in phases like that so we don't just close all
18 of it because it -- it takes a good while to tear
19 down. I want to tell you about --

20 CHIEF KEEL: One thing is: How are you going to manage
21 the range being closed? Are y'all able to manage
22 that?

23 DIRECTOR SWINDLER: We are. That's not a big project.
24 That's just individual like one, two, threes.
25 Those things, we'll close one while they replace

1 the mechanical parts of that, and the others will
2 still be running. And we'll do one.

3 That has been a ordeal waiting on those parts.
4 The generator -- what's interesting is the size of
5 a generator and have to find it, and -- and so what
6 they're trying to do is do that. So we've been
7 trying to get things ahead as to -- if they can
8 order because a lot of these things are ordered, as
9 y'all know, in projects a long time out. So
10 anyway, hopefully. Y'all know how that is.

11 CHIEF KEEL: All right. Director, any other comments
12 you've got?

13 DIRECTOR SWINDLER: Just -- just a few things. Going to
14 take a little bit of time. I'll tell you, we've
15 had quite a number of -- of hires over the last
16 quarter. Some you've already heard or met. Of
17 course, Ms. Opel Bunn, who is here today, has been
18 with us for a few months as the director's office
19 administrative assistant -- executive assistant.
20 Lavonda Bryson is in basic training as
21 administrative assistant. Arqui Valenti is in
22 facilities. Brittany Storey and Brittney Foster,
23 two Brittanies, are in food services in the
24 kitchen. Dennis Woods came to us from North
25 Charleston as an instructor with mobile training.

1 Chris Shirley came to us on the range from Irmo.
2 Brett Ringer came as the supervisor for the mobile
3 training team. He also came from Irmo Police
4 Department. Courtney Finley came to standards
5 under accreditation as a program coordinator. And
6 Caleb Thomas is our newest hire. He's an
7 instructor in behavioral science.

8 We're also interviewing quite a number of
9 other positions right now. Our wonderful
10 investigator, as you see sitting in the back of the
11 room there, from Mr. Fennell, has -- has asked and
12 applied and was selected to move over as an
13 instructor in one of the units. And so he'll be
14 phasing out as the investigator. We're
15 interviewing -- or taking applications in that.
16 We'll be interviewing. But he will still carry
17 those duties until we are able to get somebody to
18 come do that.

19 Obviously, very critical in what he does
20 managing these misconduct hearings and gathering
21 all that, but he -- he was already doing a little
22 instructing but wants to do more. And so I think
23 he wants to see more positive days of instructing
24 students instead of everything that he sees are --
25 are misconduct things. So --

1 CHIEF KEEL: We'll he's done a great job.

2 DIRECTOR SWINDLER: He has. He has.

3 CHIEF KEEL: I commend you on the job you've done.

4 Again, I -- I know it's not -- it's not a most
5 pleasant job.

6 DIRECTOR SWINDLER: Right.

7 CHIEF KEEL: It's like a internal affairs job.

8 DIRECTOR SWINDLER: That's exactly what I would
9 compare --

10 CHIEF KEEL: Nobody --

11 DIRECTOR SWINDLER: Yeah.

12 CHIEF KEEL: Nobody enjoys doing those, but again you've
13 done a great job, and we appreciate what you've
14 done thus far.

15 DIRECTOR SWINDLER: We had some separations, obviously,
16 that freed up some of these: Lindsey Hall,
17 administrative assistant, left. Mark Thomas
18 retired as -- in IT. Kevin McWiggin (phonetic)
19 left and went to the attorney general's office.
20 Lauren Creech left the MTU, the mobile training
21 team, and went home. Jonathan Cox left behavioral
22 science, and Scott Frankline also retired out of
23 that unit. That's why we have some positions we're
24 interviewing right now.

25 I will tell you we've had quite a number of --

1 of applicants from around the country. We've made
2 a couple of hires over the last few weeks, made
3 some officers -- one from the Secret Service there
4 at the Capitol in Washington, of course; one from
5 the New York City Police Department, a very gifted
6 investigator. So we've made some hires like that
7 of some people from around the country with a lot
8 of experience, which certainly helps us in
9 instruction to have people who have the right
10 education and experience and things such as that.
11 So we've been doing well with that.

12 In your packets, we gave you the tentative
13 schedule for next year. That -- that is what we
14 will try to operate on. As you know, we've had to
15 change one or two this year because of some things
16 that came up, generally because of things at the
17 State House where some of you were required to be.
18 That will be our tentative schedule (inaudible)
19 right now.

20 Give you one more kind of little report that
21 we are advertising and accepting applications for
22 the leadership through the university school of
23 law, and the Training Council is coordinating
24 taking applicants for the next cohort -- second
25 cohort which will start in January. But the first

1 cohort that did leadership is -- is -- will be
2 coming from back from the second class that they
3 will take in December. And again, I tell you we
4 had very good reviews on that. But we'll be
5 starting another one which will be the leadership
6 one that the first people took, the new cohort will
7 take in -- in January. So --

8 CHIEF KEEL: You know what that deadline is on that
9 submission?

10 DIRECTOR SWINDLER: Not off the top of my head. I'm
11 sorry.

12 CHIEF KEEL: Okay.

13 DIRECTOR SWINDLER: I don't know that. I can look and
14 I'll tell you the -- the deadline for receiving
15 those applications.

16 CHIEF KEEL: All right.

17 DIRECTOR SWINDLER: If -- if people had applied before
18 for the first one, they would get first
19 consideration --

20 CHIEF KEEL: Okay.

21 DIRECTOR SWINDLER: -- for the -- for the second, but
22 they're already in there where they'll get
23 consideration for that. That has -- that has gone
24 well with that.

25 I can't think of anything else. We're steady

1 doing classes, of course, every -- every two weeks.
2 When they come on Wednesday and do their cumulative
3 and PAT, they normally get a report date of either
4 that Sunday or the next. So it's back still to
5 kind of under two weeks -- two weeks. And so we're
6 -- the field, obviously, very pleased, you know,
7 with that.

8 We've had some instructors, like I tell you,
9 who've come in who had some good expertise on other
10 things in their life, and so they've requested and
11 have written some lesson plans for some new -- new
12 topics, more advanced classes. So we've added
13 quite a number of advanced classes that have really
14 been well received throughout the field and stuff.
15 And so as we interview these people and we see that
16 they have that, we -- we start letting them not
17 only teach what we already have in place but start
18 looking at writing some -- some additional classes.
19 So we've been doing well with that.

20 That's all I have to report, unless y'all have
21 any questions for me.

22 CHIEF KEEL: Anybody questions got any questions for
23 Director Swindler? Any questions? I'll entertain
24 a motion to adjourn

25 DIRECTOR WOODS: Motion to adjourn.

1 CHIEF KEEL: Got a motion. Do we have a second?

2 DIRECTOR BOYLES: Second.

3 CHIEF KEEL: Got a second. Any discussions? All those
4 in favor signify by saying "aye."

5 (Multiple voices respond "Aye.")

6 CHIEF KEEL: Thank y'all very much.

7 (End of recording.)

8 (*This transcript may contain quoted material.

9 Such material is reproduced as read or quoted

10 by the speaker.)

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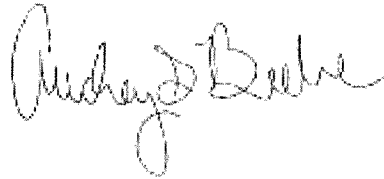
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STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON) TRANSCRIPTION CERTIFICATE

I, Audrey S. Beebe, a notary public for the State of South Carolina, do hereby certify that I transcribed preceding pages from a recording, and that I was not present at the time the recording was made.

I further certify that I am not a relative nor an employee of any of the parties hereto, nor of any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action.

In witness thereof, I have hereunto affixed my signature.



Audrey S. Beebe

Date: 4/1/2024

Notary Public of South Carolina
My commission expires September 27, 2026



South Carolina Criminal Justice Academy

SOUTH CAROLINA
LAW ENFORCEMENT TRAINING COUNCIL
MEETING MINUTES
Monday, October 30, 2023
10:00 a.m.

A meeting of the South Carolina Law Enforcement Training Council (LETC) was held at the South Carolina Criminal Justice Academy on Monday, October 30, 2023. This meeting was advertised in accordance with the South Carolina Freedom of Information Act.

CALL TO ORDER

Agenda Item 1

Chief Mark Keel, Chair of the Law Enforcement Training Council, called the meeting to order at 10:01 a.m. Chief Keel called for a roll call of the Council members. The roll was called by Opel Bunn.

Members present for this meeting in-person were Chief Mark Keel, (Chairman), State Law Enforcement Division (SLED); Acting Director Jodi Gallman, S.C. Department of Probation, Parole, and Pardon Services; Director Robert Boyles, S.C. Department of Natural Resources and Director Robert Woods, S.C. Department of Public Safety.

Members present via video/conference call were Sheriff Lee Foster (Co-Chair), Newberry County Sheriff's Office; Director John Thomas, North August Department of Public Safety and Sheriff Barry Faile, Lancaster County Sheriff's Office.

Attorney General Alan Wilson, S.C. Attorney General's Office was absent from this meeting but was represented by proxy, Chief Deputy Attorney General Jeff Young. Director Bryan Stirling, S.C. Department of Corrections; Chief Kevin Cornett, Isle of Palms Police Department and Captain Nick Gallam, Aiken County Detention Center were also absent from this meeting.

Guest attendees present in-person or via Webex were Jarrod Bruder, S.C. Sheriffs Association; Deputy Chief Jim Stewart, Richland County Sheriff's Department; Joanna McDuffie, Esquire, Richland County Sheriff's Department; Donald Gist, Esquire; Caroline Cleveland, Esquire, Charleston Police Department; Ryan Hicks, Esquire; Kenneth Davis, Esquire, Allendale Police Department; Chief Lawrence Wiggins, Allendale Police Department; and Carlton Bourne, Esquire, North Charleston Police Department.

SC Criminal Justice Academy attendees were Director Jackie Swindler; Opel Bunn, Executive Assistant; James Fennell, General Counsel; Lauren Fennell, Accreditation and Standards Manager; Debbie Bryant, Human Resources Director; Justin Miller, IT Manager; Vincent Lee, IT; Major Florence McCants; and Christopher Brumlow, Investigator.



South Carolina Criminal Justice Academy

APPROVAL OF AGENDA

A motion to adopt the agenda was made by Director Boyles. Director Woods seconded the motion. Council voted unanimously to adopt the agenda as presented.

APPROVAL FOR MEETING MINUTES

A motion to approve the minutes of the September 18, 2023, meeting was made by Director Boyles and seconded by Director Woods. Council voted unanimously to accept the meeting minutes as recorded.

DIRECTOR'S REPORT

A. General Counsel Report

- Misconduct Cases

George Brisbon 2020-CJA-02-08 (Charleston Police Department)

Summary: Allegation(s) of misrepresentation of employment related information. **Request for Final Agency Decision.**

Hearing Officer Recommended that 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.

Mr. George Brisbon was present in this meeting.

Donald Gist, Esquire, was present to speak on behalf of Mr. Brisbon and answer questions from the Council if applicable.

Caroline Cleveland, Esquire, was present to speak on behalf of the Charleston Police Department and answer questions from the Council if applicable.

After hearing statements from all parties, Sheriff Faile made a motion to adopt the recommendation of the Hearing Officer and to permanently deny Mr. Brisbon's eligibility for law enforcement certification. Director Thomas seconded the motion.



South Carolina Criminal Justice Academy

With a vote of 5 (Yes) to 1 (No), the motion passed, and Council permanently denied Mr. Brisbon's eligibility for law enforcement certification. *Please note that Chief Keel recused himself from the voting process in this case.*

Rudolph Johnson 2023-CJA-04-03 (Allendale Police Department)

Summary: Allegation(s) of 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. **Request for Final Agency Decision.**

Hearing Officer Recommended that Council:

- A. Issue its final agency decision, pursuant to S.C. Code Ann. Regs. 37-107 D. finding that the allegation of misconduct filed against Rudolph Johnson by the Allendale 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 its authority set forth at S.C. Code Ann. Regs. 37-108 A.

Mr. Rudolph Johnson was present to speak on his behalf and answer questions from the Council if applicable.

Ryan Hicks, Esquire, was present to speak on behalf of Mr. Johnson and answer questions from the Council if applicable.

Kenneth Davis, Esquire, and Chief Lawrence Wiggins were present to speak on behalf of the Allendale Police Department and answer questions from the Council if applicable.

Council had a brief discussion after hearing statements from all parties. Upon completion of the discussion Sheriff Foster then made a motion to accept the recommendation of the Hearing Officer of the allegation of misconduct brought forth by the Allendale Police Department. Acting Director Gallman seconded the motion. Council voted unanimously to adopt the recommendation of the Hearing Officer of the allegation of misconduct brought forth by the Allendale Police Department.

Director Woods made an additional motion to permanently deny Mr. Johnson's eligibility for law enforcement certification. Sheriff Foster seconded the motion. Council voted unanimously to permanently deny Mr. Johnson's eligibility for law enforcement certification. *Please note that Director Boyles and Chief Keel recused themselves from the voting process in this case.*



South Carolina Criminal Justice Academy

Brandon Floyd (2021-CJA-09-02) (Lake City Police Department) (Prosecutorial Discretion)

Summary: Allegation(s) of willfully making 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. **Request for Final Agency Decision.**

The Hearing Officer Recommended that Council:

- A. Order that the contested case file in this matter be closed; and
- B. Order, pursuant to the requirements of S.C. Code Ann. § 23-23-150 (M), that the “Personnel Change in Status Report: Notification of Separation Due to Misconduct” filed by the Department in this matter be expunged, and that the certification file of the Officer be updated in the records of the Criminal Justice Academy to reflect no outstanding allegations of misconduct based on the allegations reported by the Department in this matter.

There was no representation for the officer nor the Department in this meeting.

Director Boyles made a motion to adopt the recommendation of the Hearing Officer to expunge the record of misconduct within thirty (30) days, and grant Mr. Floyd continued eligibility for law enforcement certification. Director Woods seconded the motion.

Council voted unanimously to adopt the recommendation of the Hearing Officer to expunge the record of misconduct within thirty (30) days, and grant Mr. Floyd continued eligibility for law enforcement certification.

Myles Thompson (2023-CJA-06-08) (Greenville Co. Sheriff’s Office) (Prosecutorial Discretion)

Summary: Allegation(s) of 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. **Request for Final Agency Decision.**

The Hearing Officer Recommended that Council

- A. Order that the contested case file in this matter be closed; and
- B. Order, pursuant to the requirements of S.C. Code Ann. § 23-23-150 (M), that the “Personnel Change in Status Report: Notification of Separation Due to Misconduct” filed



South Carolina Criminal Justice Academy

by the Department in this matter be expunged, and that the certification file of the Officer be updated in the records of the Criminal Justice Academy to reflect no outstanding allegations of misconduct based on the allegations reported by the Department in this matter.

Ryan Hicks, Esquire, was present to speak on behalf of Mr. Thompson and answer questions from the Council if applicable.

There was no representation for the Department in this meeting.

Director Boyles made a motion to adopt the recommendation of the Hearing Officer to expunge the record of misconduct within thirty (30) days, and grant Mr. Thompson continued eligibility for law enforcement certification. Director Woods seconded the motion.

Council voted unanimously to adopt the recommendation of the Hearing Officer to expunge the record of misconduct within thirty (30) days, and grant Mr. Thompson continued eligibility for law enforcement certification.

Thelma Lewis (2023-CJA-05-10) (North Charleston PD) (Prosecutorial Discretion)

Summary: Allegation(s) of 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. **Request for Final Agency Decision.**

The Hearing Officer Recommended that Council

- A. Order that the contested case file in this matter be closed; and
- B. Order, pursuant to the requirements of S.C. Code Ann. § 23-23-150 (M), that the "Personnel Change in Status Report: Notification of Separation Due to Misconduct" filed by the Department in this matter be expunged, and that the certification file of the Officer be updated in the records of the Criminal Justice Academy to reflect no outstanding allegations of misconduct based on the allegations reported by the Department in this matter.

There was no representation for the officer in this meeting.

Carlton Bourne, Esquire, was present to speak on behalf of the North Charleston Police Department and answer questions from the Council if applicable.



South Carolina Criminal Justice Academy

Director Boyles made a motion to adopt the recommendation of the Hearing Officer to expunge the record of misconduct within thirty (30) days, and grant Ms. Lewis continued eligibility for law enforcement certification. Director Woods seconded the motion.

Council voted unanimously to adopt the recommendation of the Hearing Officer to expunge the record of misconduct within thirty (30) days, and grant Ms. Lewis continued eligibility for law enforcement certification.

B. Financial Updates

Lauren Wright

As of the close of the first quarter of FY 2024 Court Fines and Fee revenues are up 16% over the same time last fiscal year. Expenditures are up 14% over the same period last year, largely due to the law enforcement pay plan and statewide increases that went into effect on July 1st. SCCJA revenue remains sufficient to cover agency expenses.

C. Capital Project Update

John Yarborough

Target Systems: still waiting on parts, estimate six weeks as of 9-19-23.

Generator: bid awarded to Burriss Electrical.

West annex dorm restrooms: work complete and rooms being used.

D. Director's Comments

Director Swindler

Director Swindler gave updates regarding vacant and filled Academy positions since the last quarter.

OLD BUSINESS

There was no unfinished business to discuss.

NEW BUSINESS

There was no new business to discuss.



South Carolina Criminal Justice Academy

CLOSING REMARKS/AJOURNMENT

Chief Keel inquired whether there were any more questions or comments from Council.

When there were no more remarks or comments, Director Woods made a motion to adjourn the meeting. Director Boyles seconded the motion.

The meeting was adjourned at 11:15 a.m.

Respectfully submitted by:

Opel C. Bunn

Opel C. Bunn

Brumlow, Christopher

From: Andrew J. Savage <Andy@savlaw.com>
Sent: Tuesday, February 18, 2020 8:28 AM
To: Brumlow, Christopher
Cc: Danita Kinlow; Heather C. Hill
Subject: Re: Clyde Johnson and George Brisbon Misconduct Allegations

Got it. Thank you.

Sent from my iPhone

On Feb 18, 2020, at 8:21 AM, Brumlow, Christopher <CBrumlow@sccja.sc.gov> wrote:

Good Morning Mr. Savage,

I have attached the misconduct allegations and all corresponding documents for Mr. Johnson and Mr. Brisbon. Please let me know if you have any questions!

Kindest Regards,

Chris

<image003.png>

Christopher B. Brumlow, IAAI-CFI, IAAI-FIT, IAAI-ECT
Investigator, Office of General Counsel
South Carolina Criminal Justice Academy
5400 Broad River Road
Columbia, South Carolina 29212
Office: (803)896-8323

CONFIDENTIALITY NOTICE: This message and any attachments may contain information that is protected from disclosure by federal and/or state law, or is otherwise privileged or confidential. This communication is intended only for the use of the individual or entity to whom it is addressed. If you are not the intended recipient or the employee or agent responsible for delivering this message to the recipient, you are hereby notified that any dissemination, distribution, or copying of this message is strictly prohibited and violations of applicable federal and/or state law may subject you to civil and/or criminal penalties.

If you have received this message in error, please notify the sender immediately by reply e-mail and delete this message and any attachments.

<Clyde Johnson.pdf>
<George Brisbon.pdf>



**SOUTH CAROLINA CRIMINAL JUSTICE ACADEMY
NOTICE OF CONTESTED CASE HEARING
VIA CERTIFIED MAIL / RETURN RECEIPT REQUESTED
VIA ELECTRONIC MAIL
shiazatindal.gistlawfirm@gmail.com
reynoldsl@charleston-sc.gov**

TO: Donald Gist, Esquire
As Attorney for George Brisbon
P.O. Box 30007
Columbia, SC 29230

Certified Mail Number: 7021 0950 0001 0809 3018

Luther T. Reynolds, Chief
Charleston Police Department
180 Lockwood Blvd
Charleston, SC 29403

Certified Mail Number: 7021 0950 0001 0809 3025

FROM: South Carolina Law Enforcement Training Council

RE: In the Matter of the Law Enforcement Certification of George Brisbon
LETC Case Number: 2020-CJA-02-08

Please be advised that a contested case hearing, in accordance with the requirements of South Carolina Code Ann. § 23-23-150 (D) and S.C. Code Ann. Regs. 37-101 A, has been scheduled before the attorney hearing officer designated below at the time and place indicated.

HEARING OFFICER: Timothy J. Plunkett
TIME AND DATE: 10:00 a.m. February 28, 2023
LOCATION: 5400 Broad River Road, Columbia, SC 29212

Upon arrival for the hearing, parties and witnesses should report to the Criminal Justice Academy ("Academy") receptionist desk and advise of their presence for a contested case hearing. If a party is unable to be present for the scheduled contested case hearing due to reasons of disability, hospitalization, or other condition affecting the party's physical ability to travel, the party, the party's attorney, or the party's personal designee must immediately notify the hearing officer in writing, either by postal correspondence to the address on this letterhead, or via electronic mail to the address listed for the hearing officer below, to request continuation of the scheduled hearing.

PURPOSE OF CONTESTED CASE HEARING

The purpose of the contested case hearing is to afford an opportunity, in accordance with the above referenced statutory and regulatory provisions, for the officer to contest the proposed withdrawal or denial of the officer's law enforcement certification by the Law Enforcement Training Council ("Council") based upon alleged certification misconduct on the part of the officer that has been reported to Council by the officer's previous employing law enforcement agency and which certification misconduct has been more

particularly described in the Allegation of Certification Misconduct previously served upon the officer by the Academy.

The law enforcement agency making the allegation of certification misconduct ("Agency") is required by S.C. Code Ann. Regs. 37-103 to prosecute the allegation and, in accordance with S.C. Code Ann. Regs. 37-105 K, will have the burden of proving by "preponderance of the evidence" that the officer has committed the misconduct alleged by the Agency. The hearing will be conducted in accordance with the provisions of S.C. Code Ann. § 1-23-320 and S.C. Code Ann. Regs. 37-105.

Both the officer and the Agency may subpoena witnesses to testify, or to produce evidence, at the contested case hearing. The subpoena form approved by the Council for use in contested case hearings is attached hereto. Both the officer and the Agency may seek enforcement of, or relief from, a subpoena by filing with the South Carolina Administrative Law Court, pursuant to S.C. Code Ann. § 1-23-600 (G). Use of the subpoena by either the officer or the Agency must comply with Rule 45 of the South Carolina Rules of Civil Procedure.

Initial notice of this proceeding has been sent to both parties via certified mail, return receipt requested to the mailing address on file for the officer for the officer, the mailing address on file for the Agency head and/or authorized Agency representative, and via email to the address on file for the officer, Agency head, and/or authorized Agency representative. Any subsequent communication regarding this matter will be handled via email to the email address on file for the officer, Agency head, and/or authorized Agency representative. Should either the mailing address or the email address for the officer, Agency head, or authorized Agency representative differ from that which is listed, both parties are hereby requested to immediately notify the Investigator for the Office of General Counsel of the South Carolina Criminal Justice Academy of this information so as to ensure this information is properly noted, so that all parties receive any and all correspondence related to this case. The Investigator for the Office of General Counsel may be reached at by telephone at (803) 896 8323 or via electronic mail at cbrumlow@sccja.sc.gov.

Both the officer and the agency may be represented at the contested hearing by an attorney retained at the agency's or officer's expense. If either party is represented by an attorney, and the contested hearing was not requested on the officer's behalf by the attorney, the attorney must provide a written notice of appearance to the hearing officer by no later than five (5) days in advance of the scheduled hearing. The notice of appearance may be provided by email to tjplunkett@sccja.sc.gov or cbrumlow@sccja.sc.gov

RESCHEDULING OF THE CONTESTED CASE HEARING

A request for rescheduling of a contested case hearing can only be approved by the assigned hearing officer. The hearing officer may be reached by telephone at (803) 896-7966 or (803) 896-8323 during regular business hours or via email at tjplunkett@sccja.sc.gov or cbrumlow@sccja.sc.gov

FAILURE TO APPEAR FOR THE CONTESTED CASE HEARING

If a representative of the Agency does not appear at the scheduled contested case hearing and has not requested a continuance of the hearing, a judgment by default will be rendered against the Agency and it will be deemed to have waived its right to present evidence of misconduct against the officer at a contested case hearing. Further, S.C. Code Ann. Regs. 37-103(A) states that "the Agency making the allegation of misconduct shall handle the prosecution of the claim during the contested case hearing as provided below." South Carolina Code Ann. § 23-23-150(B)(2) states: "reported incidences of misconduct shall be prosecuted by the reporting agency before the contested case hearing. The reporting agency shall maintain prosecutorial discretion up to the time of the contested case hearing. If the agency declines to prosecute the allegation or allegations of misconduct, the agency shall provide a written report to the council stating that the case is not being prosecuted."

S.C. Code Ann. § 23-23-100(A) states: "all public law enforcement agencies are required to comply with the provisions of this chapter and the regulations promulgated pursuant to this chapter." Failure to comply with the provisions of this chapter and regulations promulgated pursuant to this chapter may result in a civil penalty not to exceed one thousand dollars per day or other legal remedies as provided pursuant to S.C. Code Ann. § 23-23-100.

If the officer does not appear at the scheduled contested case hearing and has not requested a continuance of the hearing, a judgment by default will be rendered against the officer; the officer will be deemed to have waived the right to present evidence at the contested case hearing, and Council may immediately proceed to a determination as to the appropriate final agency action. If Council determines that the officer has committed certification misconduct, it may impose sanctions, pursuant to S.C. Code Ann. Regs. 37-108. Evidence presented by the hearing officer to Council incident to an officer's failure to appear for the contested case hearing is not required to conform to the South Carolina Rules of Evidence.

FOR THE LAW ENFORCEMENT TRAINING COUNCIL:

A handwritten signature in black ink, appearing to read 'Chris Brumlow', with a stylized flourish at the end.

Christopher B. Brumlow, Investigator
Office of General Counsel
South Carolina Criminal Justice Academy
cbrumlow@sccja.sc.gov

Date: December 7, 2022

STATE OF SOUTH CAROLINA
South Carolina Law Enforcement Training Council

**IN THE MATTER OF THE LAW ENFORCEMENT
CERTIFICATION OF**

)
)
)

ADMINISTRATIVE SUBPOENA
LETC Case Number:

TO:

☐ YOU ARE COMMANDED to appear at the place and time specified below to testify in the above case.

PLACE OF TESTIMONY: South Carolina Criminal Justice Academy 5400 Broad River Road Columbia, SC 29212	DATE AND TIME:
--	-----------------------

☐ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below:

DOCUMENTS OR OBJECTS TO BE PRODUCED:	
PLACE OF PRODUCTION:	DATE AND TIME:

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS PROCEEDING IS DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE HEARING OFFICER SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF. THE ORGANIZATION SHALL SET FORTH, FOR EACH PERSON SO DESIGNATED, THE MATTERS ON WHICH THE PERSON WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED SHALL TESTIFY AS TO MATTERS KNOWN, OR REASONABLY AVAILABLE, TO THE ORGANIZATION.

BY MY SIGNATURE BELOW, I CERTIFY THAT THIS SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), SCRCP, AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

Signature of Person Issuing Subpoena Date Printed Name

Address Telephone Email

☐ I am an attorney in good standing with the South Carolina Bar representing a party to this proceeding.

____ Attorney for Law Enforcement Agency

____ Attorney for Law Enforcement Officer

SC Bar Number: _____

☐ I am an unrepresented party to this proceeding.

PROOF OF SERVICE

SERVED: Date of Service: Location of Service:	FEES AND MILEAGE TO BE TENDERED TO WITNESS UPON DAILY ARRIVAL: ☐ YES ☐ NO AMOUNT \$
SERVED ON:	MANNER OF SERVICE:
SERVED BY:	TITLE OF SERVER:

DECLARATION OF SERVER

By my signature hereto, I certify that the foregoing information contained in this Proof of Service is true and correct.

Executed this ____ day of _____, 20____

Signature of Server

Address of Server

Rule 45, South Carolina Rules of Civil Procedures, Parts (b), (c), and (d):

(b) Service.

(1) A subpoena may be served by any person who is not a party and is not less than 18 years of age. Service of a subpoena upon a person named therein shall be made in the same manner prescribed for service of a summons and complaint in Rule 4(d) or (j). If the person's attendance is commanded, then that person shall, upon his arrival in accordance with the subpoena, be tendered fees for each day's attendance of \$25.00 and the mileage allowed by law for official travel of State officers and employees from his residence to the location commanded in the subpoena. When the subpoena is issued on behalf of the State of South Carolina or an officer or agency thereof, fees and mileage need not be tendered. Unless otherwise ordered by the court, prior notice in writing of any commanded production of documents and things or inspection of premises before trial shall be served on each party in the manner prescribed by Rule 5(b) at least 10 days before the time specified for compliance.

(2) Subject to the provisions of clause (ii) of subparagraph (c)(3)(A) of this rule, a subpoena may be served at any place within the State. Provided, however, that a subpoena to a person who is not a party or an officer, director or managing agent of a party, commanding attendance at a deposition or production or inspection shall issue from the court for the county in which the non-party resides or is employed or regularly transacts business in person and be served in that county.

(3) Proof of service when necessary shall be made by filing with the clerk of the court by which the subpoena is issued a statement of the date and manner of service and of the names of the persons served, certified by the person who made the service.

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued.

If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

(i) fails to allow reasonable time for compliance; or

(ii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or

(iii) requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena:

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1)(A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(6)(B). The court may specify conditions for the discovery.

(2)(A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, the receiving party must take reasonable steps to retrieve the information. The person who produced the information must preserve the information until the claim is resolved.

SCCJA Form S1- Revised (2018)



**SOUTH CAROLINA CRIMINAL JUSTICE ACADEMY
HEARING OFFICER CONTESTED CASE RECOMMENDATION
VIA ELECTRONIC MAIL ONLY**

dtommygist@yahoo.com
shiazatindal.gistlawfirm@gmail.com
ccleveland@clevelandlaborlaw.com
mulloyh@charleston-sc.gov

TO: Donald Gist, Esq.
As Attorney for George Brisbon
4400 North Main Street
Columbia, SC 29203

Caroline Cleveland
As Attorney for Charleston Police Dept.
171 Church Street, Suite 310
Charleston, SC 29401

FROM: Christopher B. Brumlow, Investigator
Office of General Counsel

DATE: June 9, 2023

RE: In the Matter of the Law Enforcement Certification of George Brisbon
LETC Case Number: 2020-CJA-02-08

The Hearing Officer Recommendation for the above referenced contested case heard on February 28, 2023, as well as the transcript of the hearing and all exhibits placed into the record at the hearing are available for download from the Criminal Justice Academy File Distribution Server at the file location stated in the email accompanying this cover letter.

FILING OF MOTION IN OPPOSITION

In accordance with S.C. Code Ann. § 23-23-150 (D), any motion in opposition to the Hearing Officer Recommendation must be filed within fifteen (15) working days of your receipt of the email accompanying this cover memo, as indicated by the date and time stamp on the email. The party filing the motion in opposition, the movant, must serve the opposing party with a copy of its motion, to include a properly executed Affidavit of Service, via email and copied to me on the same message at cbrumlow@sccja.sc.gov

FILING OF RESPONSE TO MOTION IN OPPOSITION

The opposing party is afforded the opportunity to file a response to the motion in opposition within ten (10) working days of its receipt of the motion in opposition, as calculated from the date and time stamp of the movant's email, as above referenced. Should the opposing party elect to file a response to the motion in opposition, a copy of the response, to include a properly executed Affidavit of Service, must be served on the movant via email and copied to me on the same message at cbrumlow@sccja.sc.gov.

Neither a motion in opposition nor a response to a motion in opposition should be served on the hearing officer who conducted the hearing. Any correspondence related to the same should be directed solely to me at cbrumlow@sccja.sc.gov and copied to the opposing party on the same message.



SOUTH CAROLINA CRIMINAL JUSTICE ACADEMY

**NOTICE OF MEETING
VIA ELECTRONIC MAIL ONLY**

dtommyvgist@yahoo.com
shiazatindal.gistlawfirm@gmail.com
ccleveland@clevelandlaborlaw.com
mulloyh@charleston-sc.gov

TO: Donald Gist, Esq.
As Attorney for George Brisbon
4400 North Main Street
Columbia, SC 29203

Caroline Cleveland
As Attorney for Charleston Police Dept.
171 Church Street, Suite 310
Charleston, SC 29401

FROM: South Carolina Law Enforcement Training Council

RE: In the Matter of the Law Enforcement Certification of George Brisbon
LETC Case Number: 2020-CJA-02-08

Please be advised that the South Carolina Law Enforcement Training Council will conduct a meeting at **10:00 a.m. October 30, 2023**, at the South Carolina Criminal Justice Academy located at 5400 Broad River Road, Columbia, South Carolina, 29210. The Law Enforcement Training Council will discuss the above referenced case and render a Final Agency Decision. Prior to this meeting, the Law Enforcement Training Council has been provided the Hearing Officer's Findings and Recommendations, the hearing transcript(s), exhibits, and Motions in Opposition and Support, in order to review the record. The Law Enforcement Training Council may allow each party the opportunity to present oral argument, which shall follow the procedure of Rule 218, SCACR. Based upon the Hearing Officer's Findings and Recommendations, transcript(s), exhibit(s), Motions in Support and Opposition (if applicable), oral arguments, and discussion, the Law Enforcement Training Council will vote on a final agency decision. Please note, either party may appear via remote communication technology. Please contact the Investigator for the Office of General Counsel to request a link.

RESCHEDULEING OF MEETING

If either party wishes to attend, but is unable, a request to have the case presented to the Law Enforcement Training Council at a future meeting can be made to the Investigator of the Office of General Counsel of the South Carolina Criminal Justice Academy who may be reached by telephone at (803) 896-8323 during regular business hours or via email at cbrumlow@sccja.sc.gov.

FOR THE LAW ENFORCEMENT TRAINING COUNCIL:

Christopher B. Brumlow, Investigator
Office of General Counsel

Date: October 18, 2023



**SOUTH CAROLINA CRIMINAL JUSTICE ACADEMY
LETTER SENDING FINAL AGENCY DECISION
VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED**

January 30, 2024

Donald Gist, Esquire
As Attorney for George Brisbon
4400 North Main Street
Columbia, SC 29203

Certified Mail Number: 9589 0710 5270 0285 6536 15

RE: In the Matter of the Law Enforcement Certification of George Brisbon
LETC Case Number: 2020-CJA-02-08

Dear Mr. Gist:

Enclosed please find the final agency decision in the above referenced case. You are entitled to appeal this decision to the Administrative Law Court if you choose. Any such appeal must be filed with the Administrative Law Court within thirty (30) days from receipt of the Final Agency Decision. Should you file an appeal, please forward any copies thereof to the attention of attorney Timothy Plunkett.

If you have any questions or concerns, please do not hesitate to contact Mr. Plunkett at (803) 896-7966.

Sincerely,

Madison Reynolds

Madison Reynolds
Certification and Compliance
Office of General Counsel

CC: Caroline Cleveland
As Attorney for Charleston Police Department
171 Church Street, Suite 310
Charleston, SC 29401

Certified Mail Number: 9589 0710 5270 0285 6536 22

RECEIVED

Sep 02 2025

SC Court of Appeals

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, Respondents.
City of Charleston

Certificate of Service

I, Donald Gist, certify that I have served the within Record on Appeal by hand delivery to:

South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

And mailing a copy via United States mail, postage prepaid, addressed to:

Rebecca S. Williams
South Carolina Criminal Justice Academy
5400 Broad River Road
Columbia, SC, 29212
Attorney for Respondent

I further certify that all parties required by Rule to be served have been served and that all redactions required by Rule 41.2, SCRCP have been performed.

This 2nd day of September, 2025

/s/Donald Gist,
Donald Gist
Attorney for Appellant
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