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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Robert L. Reibold, Administrative Law Judge

ALC Case No. 24-ALJ-30-0425-AP

Omar Brown, Appellant,

v.

South Carolina Criminal Justice Academy, Respondent.

Appellate Case No. 2025-001354

FINAL REPLY BRIEF OF APPELLANT

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ARGUMENTS IN REPLY

1.

The constitutional right to due process in administrative hearings requires an Agency to disclose the evidence it intends to use against an individual. In addition, Mr. Brown requested copies of the evidence that was in the possession of the Department and the Department repeatedly refused to turn the evidence over which violated Mr. Brown's due process rights.

Scope of Due Process Rights in Administrative Hearings

As an initial matter, the Agency has now adopted the ALC's interpretation of Mr. Brown's argument as advocating for more due process rights than criminal defendants. The Agency maintains that Mr. Brown "promoted a version of procedural due process that would create an affirmative duty on state agencies to disclose any evidence they intended to use in an administrative hearing prior to the hearing regardless of discovery procedures." BOR at 10. Of course, that is exactly the rule our Supreme Court set forth in *Brown v. S.C. State Bd. of Educ.*, 301 S.C. 326, 391 S.E.2d 866 (1990).

"[D]ue process requires an opportunity to confront and cross-examine adverse witnesses," and "the evidence used to prove the State's case *must be disclosed to the individual* so that he or she has an opportunity to show it is untrue." *Brown*, 301 S.C. at 329, 391 S.E.2d at 867 (emphasis added). *See also* S.C. Const. art. I, § 22 (providing a constitutional right to due process *in administrative proceedings*). In striking down the regulation at issue in *Brown*, the Court held that even though the individual was granted a hearing as "a favor," that hearing "did not comport with procedural due process since the [Agency] did not disclose any evidence substantiating [its case] in order to allow [the individual] the opportunity to contest the allegations against her." *Id*. at 329, 391 S.E.2d at 869. Notwithstanding this clear language from our Supreme Court, the ALC and the

Agency continue to insist that individuals in administrative hearings are not entitled to the disclosure of the evidence that will be used against them.

The Agency also attempts to sidestep the disclosure obligations under *Brown* by arguing that due process in administrative hearings does not require the disclosure of evidence which *it does not intend to use* at the hearing. BOR at 10. However, the evidence that the Department intended to use, and did use, was the live testimony of Sanchez and Lizarazo. What it refused to disclose to Mr. Brown was these witnesses' prior recorded statements. This deprived Mr. Brown of the opportunity to challenge the truthfulness of their testimony, i.e., the evidence against him.

The Agency seeks to have its cake and eat it too by arguing that the unfavorable evidence in its possession does not have to be disclosed to the individual because it does not plan to introduce that unfavorable evidence at the administrative hearing. But when the evidence the Agency does seek to introduce is the live testimony of witnesses who previously gave recorded statements, the Agency cannot hide those recorded statements by claiming they did not intend to introduce the statements themselves. Allowing such a result would be wholly inconsistent with our Supreme Court's mandate in *Brown*.

Prior Requests for Evidence

The Agency also maintains that Mr. Brown was notified of his right to subpoena witnesses and documents, provided a subpoena form, and informed how to enforce a subpoena to obtain discovery in his case but simply chose not to. The Agency argues that Mr. Brown "is familiar with subpoenas and in fact served a subpoena on the Department in a different administrative hearing with the South Carolina Department of Employment and Workforce." BOR, 11-12. However, the Agency ignores the fact that the Department refused to comply with Mr. Brown's subpoena and repeatedly denied his requests to turn over the evidence it intended to use against him.

When Mr. Brown objected to the introduction of his recorded interview, he informed the Hearing Officer of the reason for his objection:

> [T]hroughout this entire process, they have refused to turn any of that evidence over. I never had a chance to review it and/or the other subjects' interviews.
>
> And something that – I mean, obviously they've been hiding it this long. It's been sent, the request for Freedom of Information Act was – request was sent. And it was denied.
>
> The subpoena for the Department of Workforce said that – and they sent a copy of something just to them. I have never been provided with the videos that I've requested. I was only given a dash cam video of the patrol car, which has no – it just shows a street, no audio or anything.

(R. p. 112, ll. 2 – 21). And although he initially responded that he didn't know how to subpoena the records in this case when asked by the Hearing Officer, he clarified that he had already subpoenaed them, and the Department failed to turn over the records. Specifically, Mr. Brown told the Hearing Officer: "[D]uring the Employment Security Commission hearing, they had a subpoena process, and I elected to do that and ask for the documentation and so forth, which they've still failed to provide and refused to provide." (R. p. 113, ll. 2 – 6).

Additionally, the response by the Department to Mr. Brown's objection was not that he could have requested the documents but failed to do so. Instead, Counsel for the Department argued that Mr. Brown's recorded interview should be admitted because Mr. Brown was present for that interview and would not be surprised by its content. (R. p. 113, ll. 8 – 17).

As to the written statements and video-recorded interviews of Sanchez and Lizarazo, Mr. Brown informed the Hearing Officer that he had requested that evidence as well and the Department had refused to turn it over. When the hearing officer asked Mr. Brown if he requested that information "any time before this proceeding," Mr. Brown responded "[y]es ma'am." (R. p.

132, l. 22 – p. 133, l. 2). Mr. Brown explained: "[M]y original request, which this has gone over some months. There was a City hearing, and that – it was denied for that hearing. There was a video of the City hearing, and that was denied." Mr. Brown informed the Hearing Officer that the Department had engaged in "a process of denial." (R. p. 133, l. 18 – 134, l. 3).

Again, the Department did not argue to the Hearing Officer that Mr. Brown had failed to request this information prior to the hearing, because he had requested it. Instead, Counsel for the Department argued that "we did not put [the statements or videos] into evidence" and that "Mr. Brown conducted a very thorough cross-examination of both [Sanchez and Lizarazo]." Counsel for the Department further stated that he was "not inclined to go out and get those previous statements and admit them." Counsel suggested that Mr. Brown be allowed to recall Sanchez and Lizarazo—still without the benefit of being provided with their previously recorded statements and interviews which Mr. Brown had repeatedly requested. (R. p. 131, l. 23 – 132, l. 5).

At the hearing before the Agency, Mr. Brown again pointed out that he had requested the statements and recorded interviews of Sanchez and Lizarazo both through FOIA requests and subpoenas and the Department refused to turn them over. (R. p. 209, ll. 2 – 12). In response, Counsel for the Department once again did not claim that Mr. Brown hadn't requested this information. Instead, Counsel simply argued that Mr. Brown had committed the alleged misconduct. (R. p. 212, l. 6 – p. 214, l. 6).

Respectfully, the Agency's argument on appeal that Mr. Brown never requested the evidence the Department had against him is not supported by the Record. That explains why the Department did not make this argument to the Hearing Officer or to the Council. Mr. Brown submitted FOIA requests and subpoenas to the Department for this information and the Department repeatedly refused to give it to him.

The Agency relies primarily on *Stinney v. Sumter Sch. Dist. 17*, 391 S.C. 547, 707 S.E.2d 397 (2011) to support its argument that Mr. Brown's alleged failure to utilize the discovery tools available to him is fatal to his due process claim. BOR at 12. However, *Stinney* is easily distinguishable from the facts in this case. In *Stinney*, the parents chose not to present evidence and not to question any witnesses at their expulsion hearing. The issue in *Stinney* had nothing to do with the refusal to disclose the evidence against them prior to the hearing. Instead, the Supreme Court only said that the Stinneys' choice not to be represented by counsel and not to present evidence even when those options were available did not amount to a due process violation. *Id*. at 551-52, 707 S.E.2d at 399.

Stinney is very different from the situation here. Mr. Brown, while not represented by counsel, is not complaining that he was denied an attorney. He's also not complaining that he was denied the ability to present witnesses or to cross examine the witnesses against him. His claim is that he was not provided with the evidence against him so that he could *effectively* cross examine the witnesses. The Department's failure to disclose the evidence was a due process violation, just as our Supreme Court recognized in *Brown v. S.C. State Bd. of Educ.*, 301 S.C. 326, 391 S.E.2d 866 (1990) (reversing Agency decision where Agency failed to disclose evidence it intended to use against a teacher).

Mr. Brown made adequate requests for the evidence that was in the possession of the Department and the Department's repeated refusals to disclose its evidence to Mr. Brown violated his due process rights. This Court should reverse and remand for a new hearing.

2.

Sanchez was sufficiently advised of his prior inconsistent statement and denied making it and therefore, the prior inconsistent statement was admissible.

The Agency argues that Mr. Brown did not sufficiently advise Sanchez of his prior inconsistent statement prior to moving to introduce it. Specifically, the Agency argues that Mr. Brown did not directly mention Sanchez's deposition, did not provide the time, place, or who the statement was made to, and did not give Sanchez the opportunity to admit, explain, or deny the statement. BOR at 16. The Agency's argument is unavailing.

When questioning Sanchez, Mr. Brown directly mentioned the federal lawsuit currently pending against Sanchez and confronted Sanchez about statements he had made in conjunction with that case. (R. p. 62, l. 21 – p. 63, l. 16). It was clear that Mr. Brown was asking Sanchez about claims he made regarding obtaining a search warrant in connection with a federal lawsuit against him and Sanchez's answers indicate that he knew precisely what Mr. Brown was referring to. As such, Sanchez was sufficiently advised of the prior inconsistent statement and was given a fair opportunity to admit, explain, or deny making it. *See State v. Bixby*, 388 S.C. 528, 551, 698 S.E.2d 572, 584 (2010) (finding the trial court did not err in allowing extrinsic evidence of a prior inconsistent statement where the series of questions asked of the witness identified the substance of the statement and the time, place, and to whom it was made).

CONCLUSION

For the reasons argued in Mr. Brown's opening brief, and this reply brief, this Court should reverse the final decision by the Agency and the ALC's affirmance of that decision and remand this case for a new administrative hearing.

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This 5th day of January 2026.