STATE OF SOUTH CAROLINA
In The Court of Appeals

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

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

Omar Brown, Appellant,

v.

South Carolina Criminal Justice Academy, Respondent.
Appellate Case No. 2025-001354

FINAL BRIEF OF RESPONDENT

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STATEMENT OF THE CASE

On October 31, 2023, the North Charleston Police Department (Department) submitted an allegation of misconduct against Appellant to the South Carolina Criminal Justice Academy (Academy). ROA p. 151 Appellant timely requested a contested case hearing, and the hearing was held on February 20, 2024. ROA pp. 170 & p. 24 The Hearing Officer issued her Findings and Recommendations on May 14, 2024. ROA p. 14 Appellant filed a Motion in Opposition to the Hearing Officer's Findings and Recommendation on June 4, 2024, and the Department responded on June 26, 2024. ROA pp. 187 and 190. On July 24, 2024, the Law Enforcement Training Council (LETC) met. After reviewing and discussing the case, and listening to oral arguments, LETC voted Appellant committed misconduct and imposed a sanction permanently denying Appellant's certification as a law enforcement officer. ROA pp. 204-226. The LETC issued its Final Agency Decision on November 12, 2024. ROA p. 3

Appellant filed this appeal on December 13, 2024, and the Notice of Assignment was filed December 20, 2024. ROA pp. 12 and 2. Adam Ruffin represented Appellant on his appeal to the ALC and Undersigned Counsel represented the Agency. The ALC affirmed the Agency's decision and denied Appellant's motion for rehearing.

STANDARD OF REVIEW

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

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

a) in violation of constitutional or statutory provisions;
b) in excess of the statutory authority of the agency;
c) made upon unlawful procedure;
d) affected by other error of law;
e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or

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

S.C. Code Ann. § l-23-380(5); *see also Todd's lce Cream, Inc. v. S.C. Employment Sec. Comm'n*, 315 S.E.2d 373, 375 (Ct. App. 1984); *S.C. Dep't of Corr. V. Mitchell*, 377 S.C. 256, 258, 659 S.E.2d 233, 234 (Ct. App. 2008) (noting S.C. Code Ann. §1-23-610 is the standard of review for when the court of appeals reviews ALC's decisions on an appeal from an administrative agency).

The standard to be applied by the reviewing court is that of substantial evidence. A decision is supported by substantial evidence when the record allows reasonable minds to reach the same conclusion as the agency. *Friends of the Earth v. Pub. Serv. Comm'n of SC*., 387 S.C. 360, 366, 692 S.E.2d 910, 913 (2010). The fact that the record, when considered as a whole, presents the possibility of drawing two inconsistent conclusions from the evidence does not prevent the

agency's findings from being supported by substantial evidence. *Waters v. S.C. Land Res. Conservation Comm'n*, 321 S.C. 219, 226, 467 S.E.2d 913, 977 (1996). The evidence should not be "viewed blindly from one side of the case." *Myers v. S.C. Dept. of HHS*, 418 S.C. 608, 616, 795 S.E.2d 301, 305 (Ct. App. 2016)

When applying the substantial evidence rule, the factual findings of the administrative agency are presumed to be correct. *Rodney v. Michelin Tire Co.*, 320 S.C. 515, 519, 466 S.E.2d 357, 359 (1996). Additionally, in applying the substantial evidence rule, when "determining whether the record contains substantial evidence to support an administrative agency's findings, [the appellate court] cannot substitute its judgment on the weight of the evidence for that of the agency." *Myers*, 418 S.C. at 615 – 616, 795 S.E.2d at 305. "[A] reviewing court will not overturn a finding of fact by an administrative agency 'unless there is no reasonable probability that the facts could be as related by a witness upon whose testimony the finding was based.'" *Sea Pines Ass'n for Prot. of Wildlife, Inc. v. S.C. Dep't of Natural Res.*, 345 S.C. 594, 603-04, 550 S.E.2d 287, 292 (2001) (quoting *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 136, 276 S.E.2d 304, 307 (1981)). Finally, the party challenging an agency's action has the burden of proving convincingly that the agency's decision is unsupported by substantial evidence. *Waters*, 321 S.C. at 226, 467 S.E.2d at 917.

STATEMENT OF FACTS

On August 8, 2023, Appellant and Michael Sanchez, police officers with North Charleston Police Department were dispatched to a call about a mother attempting to kidnap her daughter from the child's grandmother who had custody of the child. The mother had a history of mental health issues and neglecting her child. ROA pp. 40-41, ll. 1-4.

Appellant arrived at the incident location first, made contact with the mother and child, and placed the child in his patrol car to separate the child from the mother. ROA p. 6; State's Ex. 1B, 0:00-2:00. Sanchez arrived and spoke with the mother while Appellant spoke with the grandmother. ROA. p. 41, ll. 13-18; State's Ex.s 1A & 1B. The mother was visibly upset while speaking with Sanchez. State's Ex. 1A, 0:00-3:30. The grandmother sat on her front porch. State's Ex. 1B, 2:00-3:30.

Both officers told the mother she would need to resolve the custody dispute in family court. State's Ex. 1A, 3:30-4:30; State's Ex. 1B, 5:00-5:45. At the grandmother's request, Appellant retrieved the mother's belongings from the house and attempted to hand them to her. State's Ex. 1A, 4:45; State's Ex. 1B, 3:30-3:40 & 6:10-6:25. The mother walked past Appellant and Sanchez and tried to enter the porch where the grandmother sat. Appellant grabbed the mother's arm to stop her from entering the porch. State's Ex. 1A, 4:45-4:55, State's Ex. 1B, 6:25-6:32. Sanchez testified that he and Appellant thought the mother was going to assault the grandmother because she was "charging very aggressively up the stairs" towards the grandmother. ROA p. 42, ll. 8-10. Sanchez moved in and grabbed the mother's other arm. The mother pushed Appellant in the chest area, causing him to step back several steps. State's Ex. 1A, 4:45- 4:55; State's Ex. 1B, 6:32 – 6:34. Sanchez attempted to grab the mother's other arm, but she spun around and knocked Appellant against the wall of the house. State's Ex. 1A, 4:55-5:03; State's Ex. 1B, 6:34 – 6:42. Appellant and

the mother faced each other when Appellant reached for her neck area. Appellant grabbed the back of her neck to force her to the ground. Sanchez still had one of the mother's arms controlled. State's Ex. 1B, 6:42 - 7:15. Sanchez testified that Appellant was holding the mother's head and pinning it "to essentially the dirt" as Sanchez tried to get the suspect handcuffed. ROA p. 43, ll. 19 – 25. Once the mother was successfully handcuffed, Appellant started pulling her to her feet by her wrists. Sanchez grabbed her upper arms to help pull her to her feet. Appellant yelled at the mother and Sanchez can be heard telling Appellant he has her. State's Ex. 1A, 5:03 -5:55; State's Ex. 1B, 7:15 – 7:32.

After the arrest, Sanchez reported the incident to his supervisor, Diego Lizarazo. Lizarazo initially told Sanchez he "thought that there was really nothing arising out of [the] incident," but Sanchez told Lizarazo to "look at the video and make a separate assessment." ROA p. 45, ll. 2-22. Sanchez testified he heard Lizarazo ask Appellant if he needed to go see a doctor and heard Appellant tell Lizarazo no. ROA p. 47, ll. 3-16. On cross examination, Sanchez admitted he filled out a victim sheet stating the mother assaulted him even though the suspect had not assaulted him. ROA p. 53, l. 17 – p. 55, l. 11. Sanchez confirmed EMS was never called for the suspect even though she claimed she had been choked. ROA p. 59, l. 4 – p. 60, l. 11.

Lizarazo testified he received a call on August 8, 2023, that Appellant and Sanchez were in a fight with a suspect but got her in custody and were okay. ROA p. 67, l. 22 – p. 68, l. 25. Later, Sanchez told him he should look at the video and Lizarazo went and spoke with Appellant. ROA p. 69, ll. 1 -11. Lizarazo testified that Appellant showed him a scratch on his hand but said he was fine. Appellant mentioned he thought she may have bitten his leg and Lizarazo asked Appellant if he needed EMS or medical attention, but Appellant said no. Lizarazo saw Appellant reach into his pocket then check his hand and say he was fine. Lizarazo suggested Appellant go in

the restroom to make sure the bite had not broken the skin, but Appellant said no he was alright. He then sat with Appellant for the next thirty minutes filling out reports. ROA p. 69, l. 12 – p. 71, l. 20. Later that evening Lizarazo's supervisor called him and told Lizarazo Appellant notified him he was at the hospital bleeding profusely from his leg and was severely injured. ROA p. 73, l. 15 – p. 74, l. 6. Lizarazo informed his supervisor that he offered Appellant medical treatment and Appellant declined. The supervisor stated that Appellant stated Lizarazo did not offer medical treatment. ROA p. 74, l. 7 – p. 75, l. 2.

Jeremy Ledford conducted the internal affairs investigation of the arrest. ROA p. 107, l. 18- p. 108, l. 11. He reviewed the body-camera videos, and interviewed Appellant, Sanchez, and Lizarazo. ROA p. 109, ll. 3 -14. Ledford testified that based on his review of the videos, he believed Appellant placed his hands around the suspect's throat. ROA p. 109, l. 14 – p. 110, l. 19. When Ledford interviewed Appellant, Appellant denied Lizarazo offered him medical treatment. ROA p. 115, l. 5 – p. 116, l. 8.

During the contested case hearing, the Department sought to introduce the video-recorded internal affairs interview with Appellant. ROA p. 111, ll. 16- 24. Appellant objected because the Department had not turned over the video prior to the hearing. After the Department rested its case, Appellant asked that the recorded interviews of Sanchez and Lizarazo be provided by the department and admitted into evidence. ROA p. 131, ll. 5 -22. Appellant stated he had requested the videos and other evidence through a Freedom of Information Act (FOIA) request and a subpoena during a previous hearing with the S.C. Department of Employment and Workforce (SCDEW), but the Department did not provide the documents. The Hearing Officer clarified if Appellant subpoenaed the evidence for the contested case hearing and appellant clarified he had not. Appellant acknowledged the Academy sent him a form subpoena he could use, but that he did

not use it. ROA p. 112, l. 2- p. 113, l. 1. After hearing from Appellant and the department, the Hearing officer allowed Appellant's video recorded interview to be introduced. ROA p. 114, ll. 3 -7; State's Ex. 1C. Later in the proceeding, the Hearing Officer allowed Appellant to recall Sanchez and Lizarazo if needed but did not require the department to produce their recorded interviews and statements. ROA p. 134, ll. 4 -12.

Also, during the contested case hearing, Appellant asked Sanchez if he ever lied under oath or if he had ever deceived a judge to get an affidavit. Sanchez responded, "no" to both questions. Appellant asked if Sanchez was facing a federal complaint that alleged he lied under oath. Sanchez answered yes. Sanchez also testified he disagreed with the allegation. Sanchez denied filling out an affidavit that was untrue. Appellant asked if he had phone records when he wrote the affidavit and Sanchez responded that he had some phone records. Finally, Appellant asked if Sanchez had the phone records that he told the judge he had, and Sanchez stated "no." Appellant never asked Sanchez about a deposition in the federal case admitting to creating a false affidavit. ROA at p. 61, l. 21 – p. 62, l. 15. Appellant sought to introduce a document he claimed showed that Sanchez admitted to filing a false affidavit. It was not clear what the document was, and Appellant did not proffer it for the record. The Hearing Officer denied Appellant's request to introduce the document but allowed Appellant to question Sanchez about it. ROA p. 64, ll. 15-17.

ARGUMENT

1. The ALC properly ruled Appellant's procedural due process rights were not violated. Appellant was afforded constitutionally adequate procedures and chose not to utilize them.

The Administrative Law Court's ruling was not "controlled by its misplaced comparison of criminal and civil due process rights." Apl Brf. p. 16 ll. 12-13. Due Process requires confrontation and cross-examination of one whose word deprives a person of his or her livelihood; and disclosure of the evidence used to prove the State's case so that an individual has an opportunity to show it is untrue. *Brown v. S.C. State Bd. of Educ.*, 301 S.C. 326, 391 S.E.2d 866 (1990). The Court ruled that disclosure of evidence "means that the State must give a license holder notice of the evidence which it intends to use rather than to supply the license holder with physical copies of all it possesses." ROA p. 296. In *Brown v. S.C. State Bd. of Educ.*, the South Carolina Supreme Court found several regulations were unconstitutional for violating procedural due process because they required the State Board of Education to accept the determination of any testing company which invalidated a test score and automatically invalidated any teaching certificate based on that test score. The regulation did not allow the effected teacher to have a hearing or have an opportunity to respond. While the Board gave Brown a hearing as a favor, at the hearing the only evidence presented was the testing company's notification that Brown's test score was canceled. There was no evidence or witnesses to support why the test score was canceled. It was held that due process requires "notice and the opportunity for a hearing appropriate to the nature of the case." *Id*. at 329. "[T]he hearing appellant was granted did not comport with procedural due process since the Board did not disclose any evidence

substantiating cancellation for the NTE scores in order to allow appellant the opportunity to contest the allegations against her." *Id*. at 329, 868 (emphasis added).

The Court's discussion of criminal and civil due process was merely an example of how Appellant's characterization of procedural due process rights was overreaching. While Appellant equivocated, the Court saw that Appellant 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. Considering the Department did not intend to introduce the recorded interviews of Sanchez and Lizarazo, it appears Appellant is advocating that the Department should automatically provide all possible evidence in a case whether they intend to use it or not and whether the Appellant requested it through the appropriate procedures or not. This is more protection than due process requires in a criminal proceeding and is more protection than has ever been required by the courts or either the U.S. or S.C. Constitutions. As the Court clarified in its Order Denying Rehearing, Appellant misunderstood the comparison the Court made. "The Court did not mean to suggest that Appellant was in any way entitled to the due process protections which are constitutionally required in a criminal proceeding. The Court specifically noted that while some states treat license revocation proceedings as quasi-criminal in nature, *e.g., Wills v. Composite State Board of Medical Examiners*, 384 S.E.2d 636, 639 at n. 3 (Ga. 1989) ("[i]n Georgia, medical license revocations are in the nature of criminal proceedings") (internal quotations and citations omitted), South Carolina does not do so. *See Anonymous (M-156-90) v. State Bd. of Med. Exam'rs*, 329 S.C. 371, 375-78, 496 S.E.2d 17, 19- 20 (1998) (approving use of preponderance of evidence standard in administrative license revocation proceedings rather than the stricter clear and convincing standard required when fraud or quasi-criminal conduct is involved)." ROA

p. 321. Appellant sought to impose procedural due process requirements like those required in criminal proceedings and the Court rejected that South Carolina requires such broad rights in administrative hearings. Therefore, the Court's decision was not based on criminal proceedings, but on the correct understanding of procedural due process rights in administrative proceedings.

Even if the Administrative Law Court's analogy to criminal proceedings was incorrect, the Court additionally found that Appellant's procedural due process rights were not violated because proper procedures were available to Appellant and he chose not to utilize them. Under S.C. Reg. Ann. 37-104 (2018), any party to a contested case hearing may engage in discovery pursuant to that section of the regulations and the Administrative Procedures Act which includes the ability to subpoena witnesses and documents. To succeed on a procedural due process claim, the appellant must show "(1) a cognizable liberty or property interest; (2) the deprivation of that interest by some form of state action; and (3) that the procedures employed were constitutionally inadequate." *Kendall v. Balcerzak*, 650 F.3d 515, 528 (4th Cir. 2011) (citing *Iota Xi Chapter of Sigma Chi Fraternity v. Patterson*, 566 F.3d 138, 145 (4th Cir.2009)) Appellant's argument fails on the third element.

Appellant was notified of his right to subpoena witnesses and documents and was provided with a subpoena form by Respondent. He was also notified what to do to enforce a subpoena. ROA. p. 171-176 He acknowledged he received the subpoena form and knew it was a subpoena form. ROA. p. 112 l. 18-21 As a law enforcement officer he 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 (SCDEW), yet he told the hearing officer he did not serve any subpoenas in this contested case hearing because "I didn't know how to do that." ROA. p. 112 ll. 24 – p. 113 ll. 6 While a pro se litigant, Appellant is

required to abide by the same procedural rules as attorneys. "[W]e have never suggested that procedural rules in ordinary civil litigation should be interpreted so as to excuse mistakes by those who proceed without counsel." *McNeil v. U.S.*, 508 U.S. 106, 113, 113 S.Ct. 1980, 1984 (1993). Appellant was provided due process procedures and chose not to use them.

In *Stinney v. Sumter School Dist. 17*, 391 S.C. 547, 707 S.E.2d 391 (2011), the South Carolina Supreme Court ruled that there was not a procedural due process violation where the statute afforded notice, the opportunity to be heard, the right to be represented by counsel, and the right to present evidence and question witnesses. The Stinney's two sons were expelled from school due to a fight they were involved in. The Stinneys filed suit alleging the school district's actions or inactions violated their sons' due process rights. Because the record showed the Stinneys were provided with the process established in the statute, their failure to use those rights did not create a procedural due process violation. "The record shows the Stinneys were provided with the process established in the statute. The Stinneys chose not to be represented by counsel during the initial hearing, and the fact that they did not present evidence or exercise their statutory right to question witnesses does not create a procedural due process violation." *Id*. at 551-552. Appellant was properly notified of his right to subpoena the video-recorded interviews and statements but chose not to do so. His choice not to subpoena these documents for the contested case hearing does not create a procedural due process violation.

Appellant argues that he did request the evidence, but in another proceeding.[1] He argues since he requested it from the same Department in other proceedings, any other requests would be futile, but this ignores that there is a procedure to enforce administrative subpoenas. The

[1] Appellant verbally indicated he requested the potential evidence in a hearing before the South Carolina Department of Employment and Workforce and under the Freedom of Information Act. ROA p. 113. Appellant never pursued those requests before the Administrative Law Court and did not present any documentation to the Hearing Officer for those requests to made part of the record. ALC Final Order p. 9 footnote 12.

Fourth Circuit has held that a plaintiff typically will not prevail on a procedural due process claim unless the plaintiff has taken advantage of the processes that are available to them. The only way this type of claim would still be viable is if the plaintiff can adequately show those processes are unavailable or patently inadequate. *Strickland v. Moritz*, 149 F.4th 378 (4th Cir. 2025). Pursuant to S.C. Code Ann. §1-23-600(F) a party to the proceeding may seek enforcement of or relief from an agency subpoena before the Administrative Law Court. While it is unknown what Appellant was notified of in the other proceedings, in this case Respondent specifically instructed him as to his right to subpoena witnesses to testify and to produce evidence. He was also specifically informed he could enforce subpoenas by filing with the South Carolina Administrative Law Court. ROA p. 172. A copy of the administrative subpoena was provided to Appellant for his use in this proceeding. In this subpoena, it outlines the steps to take when the Department failed to comply. ROA pp. 174-176. Appellant has not presented any information or proof that these procedures were unavailable to him or patently inadequate.

Appellant cites *Brown v. S.C. State Bd. of Educ.*, 301 S.C. 326, 391 S.E.2d 866 (1990) and *Spartanburg v. Parris*, 251 S.C. 187, 161 S.E.2d 228 (1968) to support his position; however, neither case addresses this issue. In *Brown*, the Board of Education alternatively argued that because Brown did not use the appeal process with the testing company that she could not claim a due process violation from the Board's procedures. The Court did not hold that Brown was not required to use the procedures provided, but instead held based on the record, the testing company's procedures did not provide for a hearing where she could confront her accusers. In *Brown*, the procedures provided were patently inadequate and thus her procedural due process claim was upheld. *Id.* at 329-330, 868. In *Spartanburg v. Parris*, 251 S.C. 187, 161 S.E.2d 228 (1968), the South Carolina Supreme Court held Parris's procedural due process rights were

violated because the key evidence against the officer was an affidavit. The Court reasoned that the witness should have been called to testify in person so Parris could cross-examine him. Whether or not Parris took advantage of the procedures available to him was not an issue that was addressed. Whether the procedures were unavailable or patently inadequate was not an issue in the case. In this case, Sanchez and Lizarazo were present and Appellant was given the opportunity to cross-examine them. If Appellant wished to have the witnesses' prior statements to confront them with, he needed to take advantage of the procedures provided. Those procedures were available and adequate to ensure the Department would comply.

2. The ALC did not err in ruling the Hearing Officer properly excluded extrinsic evidence of a witness's prior statement.

The ALC reviewed the record and ruled that Appellant was attempting to impeach Sanchez by use of a prior bad act. ROA p. 324. Further, the Court held that Appellant failed to make an offer of proof as is required by Rule 103, SCRE and that even if an error was made, the error was harmless because the evidence in question was cumulative to other evidence already in the record. Later the Court clarified that it could not adequately rule on the issue of prejudice because the Appellant failed to make a valid offer of proof to base its determination on. ROA pp. 323-324. Respondent fully agrees with and adopts the ALC's ruling and reasoning on Rule 103, SCRE and prejudice. ROA pp. 299-300.

Rule 613(b) of the South Carolina Rules of Evidence states "[e]xtrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is advised of the substance of the statement, the time and place it was allegedly made, and the person to whom it was made, and is given the opportunity to explain or deny the statement." Under the rule, a proper foundation must be laid before admitting a prior inconsistent statement. "It is mandatory that a witness be permitted to admit, deny, or explain a prior inconsistent statement." *State v. McLeod*, 363 S.C. 73, 81, 606 S.E.2d 215, 219 (Ct. App. 2004) In *McLeod*, the defense wished to impeach an officer when he denied entering into an agreement with a criminal informant. The defense wished to introduce a prior statement where the officer admitted to another officer that he had entered into an agreement with the criminal informant. When the officer was questioned he was asked if he remembered a conversation that took place in the solicitor's office. The impeachment witness testified that the conversation took place on the second floor of the law enforcement center and gave his own interpretation of the officer's statement. The Court of Appeals ruled the trial judge

did not abuse his discretion by excluding the testimony due to a failure to provide sufficient foundation under Rule 613(b). *Id*. at 80-81.

During the contested case hearing, Appellant asked Sanchez if he ever lied under oath or if he had ever deceived a judge to get an affidavit. Sanchez responded, "no" to both questions. Next, Appellant asked if Sanchez was facing a federal complaint that alleged he lied under oath. Sanchez answered yes. Sanchez also testified he disagreed with the allegation. Sanchez denied filling out an affidavit that was untrue. Then Appellant asked if he had phone records when he wrote the affidavit and Sanchez responded that he had some phone records. Finally, Appellant asked if Sanchez had the phone records that he told the judge he had and Sanchez stated "no." ROA. at p. 61, l. 21 – p. 62, l. 15. Appellant did not mention Sanchez's deposition in the federal case until he moved to admit it. He never brought up the prior statement with Sanchez clearly. While one with personal knowledge might be able to assume the substance of the statement from Appellant's previous questions, he did not directly bring up Sanchez's deposition with him. Appellant did not provide the time and place of the deposition or the person to whom it was made. He also never gave Sanchez the opportunity to admit, explain or deny the statement. The Hearing Officer and opposing counsel were both confused by what Appellant was striving to admit because Appellant failed to provide the necessary foundation. ROA. p. 63, l. 2 – p. 64, l. 17 Therefore it was appropriate for the Hearing Officer to exclude Sanchez's prior statement.

Appellant also argued that Rule 608(c) of the South Carolina Rules of Evidence required the admission of Sanchez's prior statement. Rule 608(c) states that evidence of "bias, prejudice, or any motive to misrepresent may be shown to impeach the witness either by examination of the witness or by evidence otherwise adduced." SCRE, Rule 608(c). Sanchez's prior statement in a completely different case, wholly unconnected with Appellant or Appellant's misconduct is not

evidence of bias, prejudice, or motive to misrepresent in the contested case hearing. Actual bias is defined as genuine prejudice that a judge, juror, witness, or other person has against some person or relevant subject. *Actual Bias*, *Black's Law Dictionary* 198 (11th ed. 2019). Prejudiced is defined as "harboring or manifesting unreasonable preconceptions or predilection against or, less commonly, in favor of someone or something; esp., tending to be opposed to someone or something without good cause or before acquiring sufficient information or knowledge" Prejudiced, *Black's Law Dictionary* 1428 (11th ed. 2019). Here, Appellant argued to admit a deposition[2] from a federal civil lawsuit about a completely different matter. Appellant did not argue the statement referred to him or suggested Sanchez disliked Appellant or had preconceived opinions that would influence the case. Instead, Appellant argued to admit the statement because it "calls [Sanchez's] credibility into question." ROA p. 65, l. 1. Rule 608(c) allows evidence that challenges the credibility of the witness in relation to a particular case, not generally. In addition, Rule 608(c) must be read in conjunction with the rest of the rule. Rule 608(b) allows specific instances of conduct such as lying to a judge in an affidavit for the purpose of attacking or supporting the witness's credibility but may not be proven by extrinsic evidence. A plain reading of the language indicates Rule 608(b) governs evidence to attack credibility generally, while Rule 608(c) governs evidence to attack the witness's credibility in the specific case. The alternative creates a conflict within the rule where extrinsic evidence is expressly not allowed under subsection b but allowed under subsection c as "evidence otherwise adduced." Rule 608(c) does not apply in this instance. The Hearing Officer correctly allowed Appellant to bring up the specific

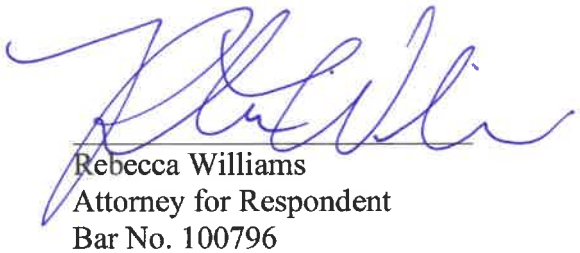
[2] The record was unclear on whether the document Appellant intended to admit was a complaint, a deposition, or an affidavit. For ease, Respondent refers to the document as a deposition here.

instance of conduct but did not allow Appellant to try to prove that specific instance with extrinsic evidence as is required by Rule 608(b).

CONCLUSION

For the reasons stated above, Respondent asks this Court to affirm the final decision issued by the Law Enforcement Training Council and affirm the ALC's ruling on that decision. If this Court finds in favor of Appellant, Respondent asks that the case be remanded for a new contested case hearing.

Respectfully Submitted,



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