

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

Shirley C. Robinson, Administrative Law Judge

Docket Number: 12-ALJ-04-0481-AP

Appellate Case No. 2013-002190

BRYAN DANIELS, 253205

APPELLANT,

VS.

SOUTH CAROLINA DEPARTMENT OF
CORRECTIONS (SCDC),

RESPONDENT.

INITIAL
BRIEF OF APPELLANT

Brian Daniels, 253205
RCI, SB-5, POB 2039
Ridgeland, S.C. 29936

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SC Court of Appeals

STATEMENT OF ISSUES ON APPEAL

- I. HAS APPELLANT BEEN DENIED DUE PROCESS OF LAW WHERE HE WAS NOT ALLOWED TO PRESENT WITNESS(ES) IN HIS DEFENSE?
- II. WAS THERE SUFFICIENT EVIDENCE TO CONVICT APPELLANT OF 807?

STATEMENT OF THE CASE

Brian Daniels was assigned to Evans Correctional Institution on 9-24-11 at approximately 9:00 p.m., which it was reported at approximately 10:30 p.m. when he was charged with an 801 Assault and/or Battery upon an employee because appellant was active in establishing a defense for the 801. There was a 10-4-11 incident report written by the alleged victim (employee, B. Brogdon, LPN). Daniels' 801 infraction was brought for a disciplinary hearing (DH) on 10-12-11 and on 10-14-11 where he was represented by counsel substitute [Hutson] (R. p. and p.).

The disciplinary hearing officer [DHO] questioned the state employee (B. Brogdon) about injury (R. p.) and she responded, "I didn't receive any injuries" (R. p.) So DHO "downgraded to an 807". (R. p.) When the witness (C. Specht) was not available on 10-12-11, the final portion of the hearing was continued to 10-14-11. Witness [LPN] Specht gave testimony on 10-14-11 and Daniels was found guilty of 807 and sanctioned accordingly therewith "60 days loss of goodtime". (R. p.)

He filed a timely step I grievance which was denied on 11-4-11, he filed a timely step II (grievance appeal); it was denied on 5-7-12. (R. p.). Daniels filed a timely appeal to the Administrative Law Court [ALC] and Judge Robinson issued 9-9-13 Order which denied appellant's appeal and he filed a timely appeal to this Court.

ARGUMENT(S)

1. APPELLANT HAS BEEN DENIED DUE PROCESS OF LAW WHERE HE WAS NOT ALLOWED TO PRESENT WITNESS(ES) IN HIS DEFENSE

Appellant was denied due process of law where he was not allowed to present witness(es) in person; the 9-9-13 "Order" states, "However, nothing in the Record reveals that the Appellant ever requested that this officer or

any other witness be present at the hearing to give testimony on his behalf." (R. p.) The 10-4-11 incident report notes "general info": it contains language, "This nurse has been approached by numerous I/M's on multiple occasions in medical asking about the incident and stating Daniels haws had other I/M's write statements". (R. P.) Appellant was allowed to present or read the statement(s) of his witness(es) who gave statement(s) to aid his defense with regards to the 807 infraction. (R. p.) Specifically, he read the 9-28-11 statement of Teshama D. Greer which stated:

"Sgt. Donna Kelly was the officiating officer that particular night and I was speaking with her.

Appellant Daniels stressed during the DH "that Sergeant Kelly was monitoring Pill Line during this whole time".* (R. p.) LPN B. Brogdon gave information over the "telephone", "I don't know who this Officer Kelly is, because he was not the one that was running my Pill Line that night, it was office (inaudible) and Lieutenant Watson was notified as soon as it happened". (R. p.) Daniels asked witness Specht, "why didn't y'all inform the officer that was standing right there?" She stated, "we closed the pill window, because ... we were done with it." (R. p.) When she was questioned further, "do you recall which officer was working the pill line that night?" (R. p.) She responded, "I don't."

This was a better response than state employee Brogdon; because counsel substitute was representing appellant; he could not actually summon the relevant witness(es) and officer(s). Howard v. SCDC, 733 S.E.2d 211, 220-221 (2012). Howard which is a progeny of Al-Shabazz v. State, 527 S.E.2d 742 (2000) points, "'inmate does not have a constitutional right to confront and cross-examine witnesses who testify against him, although prison officials have the discretion to grant that right in appropriate cases'" at 221. Therefore, DHO abused its discretion for South Carolina has rule, "It is an equal abuse of discretion to refuse to exercise discretionary authority when it is warranted as it is to exercise the discretion improperly." State v. Smith, 280 S.E.2d 200, 202 (1981)

More, this Court should note that witness(es) Teshama D. Greer and Marcel Ervin submitted RTSM, one of which was submitted to the DHO which ALC

*One could easily check the prison log book for who was working that evening.

erred for failing to acknowledge.

2. THERE WAS INSUFFICIENT EVIDENCE TO CONVICT DANIELS OF THE 807

There was insufficient evidence to convict Daniels of the 807 where he was initially charged with an Assault and/or Battery of State employee 801 so he was subjected to due process violation by the DHO. The 9-9-13 Order of ALC set forth, "the Court sits in an appellate capacity. Consequently, the review in inmate grievance case is limited to the record presented." (R. p.) It was on 9-30-11 Macel Ervin (234413) who was assigned to F3B13S mentioned,

"I go to 9:00 pm pill line every night and I was present the night of this incident.

I didn't see anything of this nature nor did I see anything that would've suggested that an assault could've taken place."

(R. p.)

Furthermore, inmate witness Teshama Greer, 272048, stated, "I was in line at the 9 pm pill line and I observed Nurse Bregden giving inmate Brian Daniels his medication. He did not touch her." (R. p.). This suggests Greer was behind appellant so why would LPN Specht (RN2) aver, "we closed the pill window we were done." (R. p.). The elements of the 801 were not made out by the preponderance of the credible or "some" evidence rule(s). Moreover, Timothy Hester (306478) gave a voluntary statement, setting forth:

Q:

On 9-24-11 at 9:00 pm pill line I was standing behind inmate Brian Daniels when he received ...

(R. p.)

The DHO noted insufficient evidence for an 801 but failed to acknowledge the absence of evidence for an 807. Moore v. Plaster, 266 F.3d 928, 931 (CA8 2001).

CONCLUSION

Appellant Brian Daniels urges this Court to grant his appeal herein.

This 22 day of November 2013.

Brian Daniels 253205
Brian Daniels, 253205
RCY, SB-5, POB 2039
Ridgeland, S.C. 29936

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has caused true and correct copies of the 'Initial Brief of Appellant and Designation of Matter to be mailed, post-age prepaid, to respondent's attorney, Christopher D. Florian, General Counsel SDC, POB 21787, Columbia, S.C. 29221-1787 this 24th day of November 2013.

s/ Brian Dani 253205

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