

IN THE STATE OF SOUTH CAROLINA  
COURT OF APPEALS

---

APPEAL FROM SOUTH CAROLINA ADMINISTRATIVE LAW COURT  
ADMINISTRATIVE LAW JUDGE CAROLYN C. MATTHEWS  
CASE NO. 12-ALJ-04-0798-IJ

---

APPELLATE CASE NO. 2013-002213

---

Michael JONES #237769 . . . . . APPELLANT  
v.  
SOUTH CAROLINA DEPARTMENT OF CORRECTIONS . . . . . RESPONDENT.

---

FINAL BRIEF OF APPELLANT

---

December 6<sup>th</sup> 2013  
Palzer, South Carolina

CHRISTOPHER D. FLORIAN  
SCDC DEPUTY DIRECTOR GENERAL COUNSEL  
P.O. BOX 21787  
COLUMBIA, SC 29221  
(803) 896-8555

Michael L. Jones # 237769  
PCI D-X # 21  
430 OAKLAWN RD  
Palzer, SC 29669  
MR. Michael L. Jones

RECEIVED

DEC 12 2013

SC Court of Appeals

# Table of Contents

CITATIONS OF AUTHORITY . . . . .	i
STATEMENT OF THE ISSUES ON APPEAL . . . . .	ii
STATEMENT OF THE CASE . . . . .	iii
STANDARD OF REVIEW . . . . .	1
ARGUMENT AND CITATIONS OF AUTHORITY . . . . .	2
I. <del>THE</del> DENIAL OF APPELLANT'S ONLY SPECIFICALLY REQUESTED SCOC EMPLOYEE WITNESS SATISFY DUE PROCESS TOUCHSTONE MINIMUM PROCEDURAL REQUIREMENT RIGHT TO CALL WITNESS? DID DENIAL OF SPECIFICALLY NON-INSTITUTIONAL HAZARDOUS REQUESTED DOCUMENTARY EVIDENCE SATISFY DUE PROCESS TOUCHSTONE MINIMUM PROCEDURAL REQUIREMENT RIGHT TO PRESENT EVIDENCE? DID THE DISCIPLINARY HEARING OFFICER'S FAILURE TO RECORD HIS REASONS IN SUPPORT OF WHY HE DENIED APPELLANT HIS ONLY SPECIFICALLY REQUESTED SCOC EMPLOYEE WITNESS AND EVIDENCE PRESENTMENT SATISFY TOUCHSTONE DUE PROCESS PROCEDURAL PROTECTION REQUIREMENT OF WRITTEN STATEMENT BY FACT FINDER AS TO REASON FOR WITNESS AND EVIDENCE DENIAL? . . . . .	2
II. DID THE USE OF UNPRODUCED, UNVERIFIED, ADAMANTLY DENIED AS FORGED CONFESSION STATEMENT SUBJECT APPELLANT TO COMPELLED INVOLUNTARY SELF-INCRIMINATION? DID THE DISCIPLINARY HEARING OFFICER IN ACTION TO PROVE VOLUNTARINESS ALONG WITH COUNSEL SUBSTITUTES IN ACTION TO VERIFY VOLUNTARINESS OF STATEMENT SATISFY VOLUNTARINESS TEST OF MINIMUM DUE PROCESS REQUIREMENT? . . . . .	8
CONCLUSION . . . . .	14
CERTIFICATE OF SERVICE . . . . .	15
CERTIFICATE OF COUNSEL . . . . .	16

CITATIONS OF AUTHORITY

AL-SHARAZZ V. STATE, 527 S.E. 2d 742 (2000) . . . . . 2, 8

BROWN V. BRAXTON, 373 F.3d 501 (4th Cir. 2004) . . . . . 5

COTNOIR V. UNIVERSITY OF SYSTEMS, 35 F.3d 6 . . . . . 2

EDWARDS V. BALISOK, 117 S.Ct. 1584 (1997) . . . . . 7

ENG V. COUGHLIN, 858 F.2d 888 (2nd Cir. 1988) . . . . . 3

FOX V. COUGHLIN, 893 F.2d 475 (2nd Cir. 1990) . . . . . 6

GREEN V. CATOE, 220 F.3d 220 (C.A. 4 (S.C.) 2000) . . . . . 2

HOWARD V. SCOC, 733 S.E.2d 211 (2012) . . . . . 2

JACKSON V. DENNO, 378 U.S. 368 (1964) . . . . . 14

KEELER V. PCA, 782 F.SUPP. 42 (D.S.C. 1992) . . . . . 5

LANDRY V. F.D.I.C., 204 F.3d 1125 (D.C. Cir. 2000) . . . . . 14

McKUNE V. LILE, 122 S.Ct. 2017 (2002) . . . . . 8

Mitchell v. U.S., 119 S.Ct. 1307 (1998) . . . . . 9

MALLOY V. HOGAN, 378 U.S. 1 (1964) . . . . . 11

NIX V. EVATT, 850 F.SUPP. 455 (D.S.C. 1994) . . . . . 3

PEE V. AVM, INC., 543 S.E.2d 232 (S.C. APP. 2001) . . . . . 1, 7

Ponte v. REAL, 105 S.Ct. 2192 (1985) . . . . . 7

ROSS V. MEDICAL UNIVERSITY OF SOUTH CAROLINA . . . . . 2

SOUTH CAROLINA CONSTITUTION, ARTICLE 1 SECTION 12 . . . . . 11

STATE V. BACCUS, 625 S.E.2d 216 (2006) . . . . . 1

STATE V. CREECH, 441 S.E.2d 635 (Ct. APP. 1993) . . . . . 11

STATE V. COMPTON, 623 S.E.2d 661 (Ct. APP. 2005) . . . . . 12

STATE V. KENNEDY, 479 S.E.2d 838 (Ct. APP. 1976) . . . . . 12

STATE V. KENNERLY, 503 S.E.2d 214 (Ct. APP. 1998) . . . . . 7, 14

STATE V. LEDFORD, 567 S.E.2d 904 (Ct. APP. 2002) . . . . . 12

STATE V. LYLES, 665 S.E.2d 201 (Ct. APP. 2008) . . . . . 1, 5-6, 7, 9

STATE V. MIDDLETON, 339 S.E.2d 692 (1986) . . . . . 12

CITATIONS OF AUTHORITY CONTINUED

STATE V. MILLER, 652 S.E.2d 444 (S.C. APP. 2007) . . . . . 1, 11-13

STATE V. MOSES, 702 S.E.2d 395 (S.C. APP. 2010) . . . . . 10

STATE V. NEELEY, 244 S.E.2d 522 (1978) . . . . . 12

STATE V. PROSLAR, 613 S.E.2d 381 (CT. APP. 2005) . . . . . 1

STATE V. SALTZ, 551 S.E.2d 240 (2001) . . . . . 1

RUSH V. PATTERSON, 2011 WL 7063648 (D.S.C. 2011) . . . . . 2

TURNER V. SAFLEY, 107 S.Ct. 2254 (1987) . . . . . 6

WOLFF V. McDONNELL, 94 S.Ct. 2963 (1974) . . . . . 2, 6

STATEMENT OF ISSUES ON APPEAL

I. DID DENIAL OF APPELLANT'S ONLY SPECIFICALLY REQUESTED SCDC EMPLOYEE WITNESS SATISFY DUE PROCESS TOUCHSTONE MINIMUM PROCEDURAL REQUIREMENT RIGHT TO CALL WITNESS? DID DENIAL OF SPECIFICALLY NON-INSTITUTIONAL HAZARDOUS REQUESTED DOCUMENTARY EVIDENCE SATISFY DUE PROCESS TOUCHSTONE MINIMUM PROCEDURAL REQUIREMENT RIGHT TO PRESENT EVIDENCE? ~~Did~~ <sup>Id</sup> THE DISCIPLINARY HEARING OFFICER'S FAILURE TO RECORD HIS REASONS ~~IN~~ SUPPORT OF WHY HE DENIED APPELLANT HIS ONLY SPECIFICALLY REQUESTED SCDC EMPLOYEE WITNESS AND EVIDENCE PRESENTMENT SATISFY TOUCHSTONE DUE PROCESS PROCEDURAL PROTECTION REQUIREMENT OF WRITTEN STATEMENT BY FACT FINDER AS TO REASON FOR WITNESS AND EVIDENCE DENIAL?

II. DID THE USE OF UNPRODUCED, UNVERIFIED, ADAMANTLY DENIED AS FORGED CONFESSION STATEMENT SUBJECT APPELLANT TO COMPELLED INVOLUNTARY SELF-INCRIMINATION? DID THE DISCIPLINARY HEARING OFFICER IN ACTION TO PROVE VOLUNTARINESS ~~ALONG~~ WITH COUNSEL SUBSTITUTE'S IN ACTION TO VERIFY VOLUNTARINESS OF STATEMENT SATISFY VOLUNTARINESS TEST OF MINIMUM DUE PROCESS REQUIREMENT?

## STATEMENT OF CASE

THIS MATTER COMES BEFORE THIS HONORABLE COURT PURSUANT TO THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS (SCDC) DISCIPLINARY HEARING PROCEDURE DUE PROCESS VIOLATIONS AND SELF-INCRIMINATION COMPELSION APPEAL OF MICHAEL JONES (APPELLANT), AN INMATE (IIM) INCARCERATED WITHIN SCDC. APPELLANT WAS CONVICTED OF DISCIPLINARY RULE VIOLATION CODE (898) POSSESSION OF ANY CELLPHONE OR OTHER TYPE OF COMMUNICATION DEVICE, SCDC POLICY PROCEDURE OP-22.14 "IIM DISCIPLINARY SYSTEM". APPELLANT LOST 450 DAYS OF GOOD-TIME EARNED CREDITS DUE TO INADEQUATE PROCEDURAL PROCEDURES EMPLOYED LEADING TO THE DISCIPLINARY CONVICTION AND PENALTIES IMPOSED OF GOOD-TIME CREDIT LOSS AND 358 DAYS OF DISCIPLINARY DETENTION ISOLATION.

APPELLANT TIMELY FILED A STEP 1 INSTITUTIONAL GRIEVANCE APPEAL ON JULY 9<sup>th</sup>, 2012, CHALLENGING THE PROCEDURES EMPLOYED AT HIS DISCIPLINARY HEARING. THIS GRIEVANCE WAS ALLEGELY INVESTIGATED AND DENIED BY APPELLANT'S IIM GRIEVANCE COORDINATOR WHO WAS ALSO THE APPELLANT'S COUNSEL SUBSTITUTE AT THE DISCIPLINARY HEARING PROCEDURE. APPELLANT FILED HIS STEP 2 GRIEVANCE APPEAL ON NOVEMBER 8<sup>th</sup>, 2012, WHICH WAS DENIED MARCH 19<sup>th</sup>, 2013. APPELLANT FILED A NOTICE OF APPEAL IN THE ADMINISTRATIVE LAW COURT (ALC), PURSUANT TO AL SHABAZZ V. STATE, 527 SE 2d 742 (S.C. 2000).

THE ALC HONORABLE JUDGE CAROLYN C. MATTHEWS AFFIRMED SCDC'S FINAL DECISION, FINDING THE DISCIPLINARY HEARING COMPLETED WITH DUE PROCESS. THE ALC ERRONEOUSLY DETERMINED APPELLANT WAS GIVEN AN ADEQUATE OPPORTUNITY TO CALL HIS ~~SOLE~~ SCDC REQUESTED EMPLOYEE WITNESS AND PRESENT EVIDENCE FOR AN ADEQUATE DEFENSE ON HIS BEHALF. INASMUCH THE ALC FAILED TO MAKE A RULING WHETHER RESPONDENTS ENCREACHED UPON APPELLANT'S RIGHT TO REMAIN FREE FROM SELF-INCRIMINATION COMPELSION. THE ALC ALSO RULED APPELLANT'S DISCIPLINARY CONVICTION WAS SUPPORT BY SOME EVIDENCE.

APPELLANT NOW SEEKS REVIEW OF THE ALC'S DECISION. FOR THE REASON THAT FOLLOWS, APPELLANT RESPECTFULLY REQUEST THAT THE ALC'S DECISION BE REVERSED.

## Standard of Review

COURT OF APPEALS MUST NOT AFFIRM AGENCY'S FINDINGS IF THEY ARE NOT SUPPORTED BY SUBSTANTIVE EVIDENCE AND ARE CONTROLLED BY LEGAL ERROR. THE APPELLATE COURT MAY NOT SUBSTITUTE ITS JUDGMENT FOR THAT OF AN AGENCY AS TO THE WEIGHT OF THE EVIDENCE ON QUESTIONS OF FACT UNLESS THE AGENCY'S FINDINGS ARE CLEARLY ERRONEOUS IN VIEW OF THE RELIABLE, PROBATIVE, AND SUBSTANTIAL EVIDENCE ON THE RECORD. SUBSTANTIAL EVIDENCE IS NOT A MERE SCINTILLA OF EVIDENCE, BUT EVIDENCE WHICH, CONSIDERING THE RECORD AS A WHOLE, WOULD ALLOW REASONABLE MINDS TO REACH THE CONCLUSION THE AGENCY REACHED. PEE V. AVM, INC., 543 S.E.2d 232, 234 (S.C. APP. 2001).

THE APPELLATE COURT SITS TO REVIEW ERRORS OF LAW ONLY. STATE V. BACCUS, 625 S.E.2d 216, 220 (2006). Thus, AN APPELLATE COURT IS NOT BOUND BY FACTUAL FINDINGS THAT ARE CLEARLY ERRONEOUS. STATE V. PRESTAR, 613 S.E.2d 381, 385 (CT. APP. 2005). ERROR IS ONLY HARMLESS BEYOND A REASONABLE DOUBT WHERE IT DID NOT CONTRIBUTE TO THE VERDICT OBTAINED IF IT DOES NOT PREJUDICE THE DEFENDANT. AN ERROR IS NOT REVERSIBLE UNLESS IT IS MATERIAL AND PREJUDICIAL TO THE SUBSTANTIAL RIGHTS OF THE APPELLANT. IF GUILT HAS BEEN CONCLUSIVELY PROVEN BY INCOMPETENT EVIDENCE SUCH THAT ANOTHER RATIONAL CONCLUSION CAN BE REACHED, AN APPELLATE COURT SHOULD SET ASIDE CONVICTION BECAUSE OF ERRORS AFFECTING THE RESULTS. STATE V. LYLES, 605 S.E.2d 201, 204-205 (S.C. APP. 2008).

ON APPEAL, THE VOLUNTARINESS OF THE CONFESSION WILL NOT BE DISTURBED UNLESS SO ERRONEOUS AS TO CONSTITUTE AN ABUSE OF DISCRETION. APPELLATE COURT MAY REVERSE WHEN RULING IS CONTROLLED BY ERROR OF LAW. STATE V. MYERS, 596 S.E.2d 488, 492 (2004). THE ADMISSIBILITY OF A STATEMENT UPON PROOF OF ITS VOLUNTARINESS BY A PREPONDERANCE OF THE EVIDENCE. WHEN REVIEWING A RULING CONCERNING VOLUNTARINESS, THE APPELLATE COURT DOES NOT RE-EVALUATE THE FACTS BASED ON ITS OWN VIEW OF THE PREPONDERANCE OF THE EVIDENCE, BUT SIMPLY DETERMINES WHETHER THE RULING IS SUPPORTED BY ANY EVIDENCE. STATE V. MILLER, 652 S.E.2d 444 (S.C. APP. 2007) CITING STATE V. SALTZ, 551 S.E.2d 240, 252 (2001).

## ARGUMENT AND CITATIONS OF AUTHORITY

I. Did DENIAL OF APPELLANT'S ONLY SPECIFICALLY REQUESTED SCOC EMPLOYEE WITNESS SATISFY DUE PROCESS TOUCHSTONE MINIMUM PROCEDURAL REQUIREMENT RIGHT TO CALL WITNESS? Did DENIAL OF SPECIFICALLY NON-INSTITUTIONAL HAZARDOUS REQUESTED DOCUMENTARY EVIDENCE SATISFY DUE PROCESS TOUCHSTONE MINIMUM PROCEDURAL REQUIREMENT RIGHT TO PRESENT EVIDENCE? Did THE DISCIPLINARY HEARING OFFICER'S FAILURE TO RECORD HIS REASON IN SUPPORT OF WHY HE DENIED APPELLANT HIS ONLY SPECIFICALLY REQUESTED SCOC EMPLOYEE WITNESS AND EVIDENCE PRESENTMENT SATISFY TOUCHSTONE DUE PROCESS PROCEDURAL PROTECTION REQUIREMENT OF WRITTEN STATEMENT BY FACT FINDER AS TO REASON FOR WITNESS AND EVIDENCE DENIAL?

PRO SE ACTION, REQUIRES THE COURT TO LIBERALLY CONSTRUCT HIS PLEADINGS AND HOLD HIS PLEADINGS TO LESS STRINGENT STANDARDS THAN THOSE DRAFTED BY ATTORNEYS. RUSH V. PATTERSON, 2011 WL 7063648<sup>P.1</sup> (D.S.C.). PROCEDURAL DUE PROCESS IS GUARANTEE OF FAIR PROCEDURES. SEE ALSO: ROSS V. MEDICAL UNIVERSITY OF S.C., 192 S.E.2d 62 (S.C. 1997). CHAIR V. UNIVERSITY OF SYSTEMS, 35 F.3d 6<sup>A</sup>. THE REQUIREMENTS OF PROCEDURAL DUE PROCESS APPLY ONLY TO THE DEPRIVATION OF INTEREST ENCOMPASSED BY THE FOURTEENTH AMENDMENT PROTECTION OF LIBERTY AND PROPERTY. THE STATUTORY RIGHT TO SENTENCE RELATED CREDITS IS A PROTECTED LIBERTY INTEREST UNDER THE 14<sup>TH</sup> AMENDMENT. ENTITLING AN INMATE (I/M) TO DUE PROCESS TO ENSURE STATE CREATED RIGHT WAS NOT ARBITRARILY ABRAGATED. AL-SHABAZZ V. STATE, 527 S.E.2d 742, 756 (2000), HOWARD V. SCOC, 733 S.E.2d 211, (2012). [C]ONSIDERATION OF WHAT PROCEDURES DUE PROCESS MAY REQUIRE UNDER ANY GIVEN SET OF CIRCUMSTANCES MUST BEGIN WITH A DETERMINATION OF THE PRECISE NATURE OF THE GOVERNMENT FUNCTION INVOLVED AS WELL AS THE PRIVATE INTEREST THAT HAS BEEN AFFECTED BY GOVERNMENT ACTION. GREEN V. CATOE, 220 F.3d 220, 228 (2000) C.A. 4 (S.C.). THE COURTS MUST BALANCE THE DEMANDS OF THE DUE PROCESS CLAUSE AGAINST THE NEED TO MAINTAIN AN ORDERLY AND SAFE PRISON ENVIRONMENT, AND YET PROVIDE FAIR DISCIPLINARY JUSTICE. AL-SHABAZZ V. STATE, 527 S.E.2d AT 750-51 (2000). IN WOLFF V. McDONNELL 94 S.Ct. 2978-82 THE SUPREME COURT OUTLINED BEDROCK DUE PROCESS PROCEDURES TO BE ADHERED TO: 1) ADVANCE WRITTEN NOTICE OF THE CHARGE BE GIVEN TO THE I/M AT LEAST 24 HOURS BEFORE THE HEARING; 2) FACT FINDERS MUST PREPARE A WRITTEN STATEMENT OF THE EVIDENCE RELIED ON AND THE REASONS FOR THE DISCIPLINARY ACTION; 3) THE I/M SHOULD BE ALLOWED TO CALL WITNESSES AND PRESENT DOCUMENTARY EVIDENCE, PROVIDED THERE IS NO UNDUE HAZARD TO INSTITUTIONAL SAFETY OR CORRECTIONAL GOALS; 4) COUNSEL SUBSTITUTE (A FELLOW I/M OR A PRISON EMPLOYEE) SHOULD BE

Allowed to help illiterate I/Ms OR in complex cases an I/M cannot handle alone; 3) The person hearing the matter, whom may be prison officials or employees, must be impartial. In the ENG V. COUGHLIN, 858 F.2d 889 (2nd Cir. 1988), decision the court decided a prisoner who has been transferred between facilities has a right to substantive assistance in preparing a defense is a obligation imposed by the due process clause of the 14th amendment. Further, the assistance must be provided in good faith and in the best interest of the I/M. Id 891-892. SEE ALSO: NIX V. EVAM, 850 F.Supp. 455, 157 C.D.S.C. 1994).

THE SCOC POLICY / PROCEDURE OP-22.14, "I/M DISCIPLINARY SYSTEM" CONTROLLING STATE STATUTES ARE S.C. CODE OF LAWS, SECTIONS 24-1-140 AND 24-13-210. The POLICY / PROCEDURE PURPOSE "IS TO PROVIDE GUIDE LINES FOR THE ADMINISTRATION AND APPLICATION OF THE SCOC I/M DISCIPLINARY SYSTEM. THE ADMINISTRATION AND APPLICATION OF THE I/M DISCIPLINARY SYSTEM WILL BE COMPLETED IN COMPLIANCE WITH ALL APPLICABLE STATE AND FEDERAL STATUTES, RULES AND REGULATIONS, AND IN A MANNER THAT ENSURES I/Ms ARE AFFORDED ADEQUATE DUE PROCESS PROTECTION."

THE APPELLANT WAS SERVED ADVANCE WRITTEN NOTICE JUNE 8<sup>th</sup>, 2012 AT 10:10 PM BY SGT. JAMES JONES AND LT. WRIGHT OF LIEBER C.I. SMU, (EXHIBIT C AND D). THE APPELLANT WAS INFORMED BY SCOC FORM 19-29 (A) (EXHIBIT D), AND SMU LT. WRIGHT, HE WAS BEING TRANSFERRED TO PERRY. APPELLANT CELL PARTNER I/M BROCKMAN CLAIMED OWNERSHIP OF THE DISCIPLINARY RULE VIOLATION CELL PHONE TO ~~CHARGE~~ ADVANCE WRITTEN NOTICE SERVING PRISON OFFICIAL LT. WRIGHT. THE APPELLANT MARKED ON HIS SCOC FORM 19-69 HE NEEDED HIS ACCUSER PRESENT AND COUNSEL SUBSTITUTE DUE TO INSTITUTIONAL TRANSFER AND SPECIAL MANAGEMENT UNIT (SMU) ISOLATED CONFINEMENT. (EXHIBIT C).

SCOC POLICY / PROCEDURE OP-22.14 SECTION (8) COUNSEL SUBSTITUTES (8.1) STATES "I/Ms WILL BE ASSIGNED A COUNSEL SUBSTITUTE AT LEAST (24) HOURS PRIOR TO A HEARING IN THE FOLLOWING CASES: (NOTE: THERE IS NO REQUIREMENT I/M BE INTERVIEWED BY THE COUNSEL SUBSTITUTE (24) HOURS PRIOR TO THE HEARING.)" (8.1.4): STATES "WHEN CONFINED TO A SEGREGATION STATUS PENDING THE HEARING." (8.1.5): STATES "WHEN A WITNESS REQUESTED BY THE ACCUSED I/M IS UNABLE TO ATTEND A DISCIPLINARY HEARING BECAUSE EITHER THE REQUESTED WITNESS OR THE ACCUSED I/M HAS BEEN TRANSFERRED TO ANOTHER INSTITUTION."

THE APPELLANT WAS TRANSFERRED TO PERRY C.I. JUNE 11<sup>th</sup>, 2012. ON JUNE 13<sup>th</sup>, 2012 THE APPELLANT IN ACCORDANCE WITH SCOC POLICY / PROCEDURE OP-22.14 SUBMITTED SCOC FORM 19-11 REQUEST TO STAFF MEMBER REQUESTING APPOINTED COUNSEL SUBSTITUTE (C/S) TO OBTAIN VITAL DEFENSE INFORMATION FROM HIS ONLY REQUESTED SPECIFIC SCOC EMPLOYEE WITNESS LIEBER SMU LT. WRIGHT AND DOCUMENTARY EVIDENCE ON HIS BEHALF OF ONE SPECIFIC SCOC COMPUTER PRINTOUT

ZERO PHONE VIOLATIONS VERSUS ILM BROCKMAN, (EXHIBIT B), TO PERRY'S DISCIPLINARY HEARING RECORDER AND PRESIDING DISCIPLINARY HEARING OFFICER (D.H.O.).

SCOC POLICY/PROCEDURE OP-22.14 SECT (8.2) COUNSEL SUBSTITUTE RESPONSIBILITIES: "PRIOR TO THE DISCIPLINARY HEARING, THE COUNSEL SUBSTITUTE HAS THE FOLLOWING RESPONSIBILITIES IN PREPARING FOR THE HEARING:" (8.2.2) STATES: "OBTAIN THE ACCUSED ILM'S STATEMENT AS TO EXACTLY WHAT TOOK PLACE." (8.2.3) STATES: "OBTAIN THE NAMES OF ALL EMPLOYEES AND ILMs WHOM THE ACCUSED WISHES TO CALL AS WITNESSES." (8.2.4) STATES: "INTERVIEW RELEVANT WITNESSES PRIOR TO THE HEARING. FOR THOSE WITNESSES WHO WILL NOT BE ABLE TO APPEAR AT THE HEARING (E.G., AN ILM WHO HAS BEEN TRANSFERRED TO ANOTHER INSTITUTION), OBTAIN WRITTEN STATEMENTS THAT CAN BE GIVEN TO THE HEARING OFFICER AT THE HEARING (NOTE: ILM WILL BE REQUIRED TO USE SCOC FORM 19-11, 'REQUEST TO STAFF MEMBER,' LISTING THE NAMES OF ALL WITNESSES THEY WISH TO BE MADE AVAILABLE AT THEIR HEARING. THE FORM MUST BE ADDRESSED TO THE ILM'S COUNSEL SUBSTITUTE OR TO THE HEARING OFFICER IF NO COUNSEL SUBSTITUTE HAS BEEN ASSIGNED AND MUST BE RECEIVED NO LATER THAN 24 HOURS PRIOR TO THE HEARING.)" (8.2.5) STATES: "INFORM THE HEARING OFFICER OF THE NAMES OF ALL WITNESSES THE ILM HAS REQUESTED." (8.2.6) STATES: "OBTAIN ANY DOCUMENTARY EVIDENCE RELEVANT TO THE CASE THAT IS NOT ALREADY IN THE POSSESSION OF THE ACCUSED ILM." (10.1) STATES IN PART: "THE RECORDER WILL BE RESPONSIBLE FOR THE FOLLOWING: NOTIFY ACCUSERS/WITNESSES OF THEIR NEED TO BE AVAILABLE FOR THE HEARING:"

THE APPELLANT COMPLIED WITH ALL REQUIREMENTS OF SCOC POLICY/PROCEDURE OP 22.14 TO SECURE HIS BEDROCK CONSTITUTIONAL PROCEDURAL PROTECTION RIGHT TO CALL WITNESS AND PRESENT EVIDENCE ON HIS BEHALF. APPELLANT'S COUNSEL SUBSTITUTE NEVER OBTAINED HIS STATEMENT AND NEVER CONTACTED HIS SPECIFICALLY REQUESTED SCOC EMPLOYEE WITNESS NOR OBTAIN THE RELEVANT DOCUMENTARY EVIDENCE SPECIFICALLY REQUESTED BY THE APPELLANT.

SCOC POLICY/PROCEDURE OP-22.14 SECT. (15) PRESENTATION OF EVIDENCE AT THE HEARING: (15.2) STATES IN PART: "COUNSEL SUBSTITUTE MAY PRESENT DOCUMENTARY EVIDENCE." (15.3) STATES: "THE ILM MAY CALL WITNESSES UNLESS THE HEARING OFFICER DECIDES THAT THE TESTIMONY OF SUCH WITNESS IS REPETITIVE (THAT IS, WILL SIMPLY REPEAT THE TESTIMONY OF OTHER WITNESSES) IS NOT RELEVANT TO THE CASE, OR IS LIKELY TO JEOPARDIZE LIFE OR SAFETY OF PERSONS OR THE SECURITY AND ORDER OF THE INSTITUTION. IF WITNESSES ARE DENIED BY THE HEARING OFFICER, THE HEARING OFFICER MUST WRITE HIS/HER REASONS FOR THIS DENIAL ON SCOC FORM 19-69, 'DISCIPLINARY REPORT AND HEARING RECORD,' IN THE SPACE PROVIDED. IF AN EMPLOYEE HAS BEEN CALLED AS A

Witness and has information that is relevant to the case, then he/she is obligated to provide said information." (15.5) STATES IN PART RELEVANT: "THE COUNSEL SUBSTITUTE MAY QUESTION ALL ALL WITNESSES WHO APPEAR AT THE HEARING. THE HEARING OFFICER WILL ASK THE I/M'S COUNSEL SUBSTITUTE WHETHER THERE ARE ANY QUESTIONS FOR THE WITNESSES. WRITTEN STATEMENTS FROM WITNESSES OTHER THAN THE ACCUSING EMPLOYEE MAY BE PRESENTED AS EVIDENCE WHEN THE WITNESSES ARE UNABLE TO ATTEND THE HEARING. ANY WITNESS, INCLUDING THE ACCUSING EMPLOYEE, WHO IS UNABLE TO ATTEND THE HEARING MAY BE INTERVIEWED BY A SPEAKER TELEPHONE DURING THE HEARING AND THE ANSWERS OF THE WITNESS MUST BE RECORDED." (18.1) SCOC FORM 19-69, "DISCIPLINARY REPORT AND HEARING RECORD," WILL BE USED TO PROVIDE A WRITTEN RECORD OF THE HEARING.

THE RECORD WILL INCLUDE THE FOLLOWING INFORMATION: (18.1.2) "WHETHER ANY REQUESTED WITNESSES WERE EXCLUDED AND, IF SO, THE REASONS FOR THE EXCLUSION." (19.1.3) "WHETHER ANY DOCUMENTARY EVIDENCE WAS EXCLUDED AND, IF SO, THE REASONS FOR THE EXCLUSION." (9) HEARING OFFICER DUTIES: "THE HEARING OFFICER IS RESPONSIBLE FOR THE FOLLOWING:" (9.1) "IMPLEMENTING AND ADHERING TO ESTABLISHED GUIDELINES AS THEY RELATE TO THE HEARING PHASE OF THE DISCIPLINARY PROCESS:"

"[I]N THE EXERCISE OF THIS RIGHT [TO PRESENT A DEFENSE], THE ACCUSED, AS IS REQUIRED OF THE STATE, MUST COMPLY WITH ESTABLISHED RULES OF PROCEDURE AND EVIDENCE DESIGNED TO ASSURE BOTH FAIRNESS AND RELIABILITY IN THE ASCERTAINMENT OF GUILT OR INNOCENCE." STATE V. LYLES, (S.C. APP. 2008) 665 S.E. 2D 201, 208. THE APPELLANT COMPLIED WITH ALL REQUIREMENT PERTAINING TO HIS FAIR PLAY, THE RESPONDENT DID NOT ADHERE TO THE ESTABLISHED GUIDELINES OF SCOC POLICY/PROCEDURE OP-22.14 WHOSE PURPOSE IS TO IN THE APPELLANT RECEIVES ADEQUATE DUE PROCESS PROTECTION.

"FEW RIGHTS ARE MORE FUNDAMENTAL THAN THAT OF AN ACCUSED TO PRESENT WITNESSES IN HIS OWN DEFENSE." STATE V. LYLES, (S.C. APP. 2008) 665 S.E. 2D AT 208. AN I/M FACING DISCIPLINARY PROCEEDINGS HAS THE QUALIFIED DUE PROCESS RIGHT TO CALL WITNESSES AND PRESENT DOCUMENTARY EVIDENCE IN HIS DEFENSE WHEN PERMITTING HIM TO DO SO WILL NOT BE UNDULY HAZARDOUS TO INSTITUTION SAFETY OR CORRECTIONAL GOALS. BROWN V. BRAXTON, 373 F. 3d 505, (4th Cir. 2004); KEELER V. PEA, 782 F. SUPP. 42, 45 (D.S.C. 1992). "THE LIBERTY INTEREST AT STAKE IN THESE HEARINGS ARE, OF COURSE, OF SERIOUS MAGNITUDE, AND THE RIGHT TO CALL WITNESSES IS INTEGRAL TO ASSURING THE FAIRNESS AND ACCURACY OF THESE HEARINGS, RIGHT TO CALL WITNESSES AT PRISON DISCIPLINARY HEARING MAY NOT BE ABROGATED."

SIMPLY BECAUSE WITNESS TESTIMONY MIGHT LATER BE FOUND UNPERSUASIVE." WOLFF V. McDONNELL, 94 S. CT. 2963 (1974). "WHEN I/Ms ARE ALLOWED TO CALL WITNESSES AND PRESENT DOCUMENTARY EVIDENCE THE FAIRNESS AND ACCURACY OF DISCIPLINARY BOARD FINDINGS ARE SIGNIFICANTLY AFFECTED, NOT ONLY CAUSE WITNESSES ARE OFTEN CRUCIAL TO THE PRESENTATION OF A DEFENSE, BUT PARTICULARLY BECAUSE AND I/M OBVIOUSLY FACES A SEVERE CREDIBILITY PROBLEM WHEN TRYING TO DISPROVE THE CHARGE OF A PRISON GUARD. THE RIGHT TO PRESENT EVIDENCE IS BASIC TO A FAIR HEARING, BUT I/Ms RIGHT TO PRESENT WITNESSES IS NECESSARILY CIRCUMSCRIBED BY PENOLOGICAL INTEREST TO PROVIDE SWIFT DISCIPLINE IN INDIVIDUAL CASES..." WOLFF V. McDONNELL, 94 S. CT. 2963

THE APPELLANT REQUESTED ONLY ONE WITNESS WHOSE TESTIMONY WOULD NOT HAVE BEEN REPETITIVE. APPELLANT'S SPECIFICALLY REQUESTED WITNESS IS AN SCOC GOVERNMENTAL EMPLOYEE WHO'S TESTIMONY VERBAL OR WRITTEN WOULD HAVE ALTER THE OUTCOME OF THE HEARING AND WOULD NOT HAVE BEEN HAZARDOUS TO ANY INDIVIDUALS SAFETY OR INSTITUTIONAL CORRECTION GOAL. IN FACT IT WOULD HAVE SERVED INSTITUTIONAL GOOD PRACTICE. THE SCOC EMPLOYEE WITNESS WAS IN POSSESSION OF VITAL RELEVANT EVIDENCE OF I/M BROCKMAN'S ADMISSION OF CELL PHONE OWNERSHIP WHICH WOULD HAVE PROVED APPELLANT'S INNOCENCE. APPELLANT'S REQUESTED DOCUMENTARY EVIDENCE WOULD HAVE PROVEN THE APPELLANT'S INNOCENCE WHEN VIEW IN CONJUNCTION WITH SCOC EMPLOYEE WITNESS STATEMENT. NEITHER THE ONE SPECIFICALLY REQUESTED SCOC EMPLOYEE WITNESS OR SOLITARY DOCUMENTARY EVIDENCE INTERFERE WITH SWIFT DISCIPLINE OR ANY PENOLOGICAL OBJECTIVE. THE DENIAL OF SCOC EMPLOYEE WITNESS AND DOCUMENTARY EVIDENCE VALID, RATIONAL CONNECTION BETWEEN THE PRISON REGULATION AND LEGITIMATE GOVERNMENTAL INTEREST WHERE THE SCOC POLICY/PROCEDURE REQUIRES COMPLIANCE WITH IT PRESCRIBED GUIDELINES. TURNER V. SAFEEY, 107 S. CT. 2254, 2261-62 (1987). EVIDENCE IS RELEVANT IF IT HAS A DIRECT BEARING UPON AND TENDS TO ESTABLISH OR MAKE MORE OR LESS PROBABLE THE MATTER IN CONTROVERSY. STATE V. LYLES, (S.C. APP. 2008) 665 S.E. 2D AT 206.

THE DENIAL OF WITNESS AND EVIDENCE IS REQUIRED TO PROVIDED A REASON AS TO WHY. THE DISCIPLINARY RECORD IS SILENT, (EXHIBIT C), AS WELL AS DISCIPLINARY PROCEEDING TRANSCRIPT RECORD NO VALID REASON FOR DENIAL HAS BEEN GIVEN. "PRISON AUTHORITIES MAY NOT REFUSE TO INTERVIEW AN INMATE'S REQUESTED WITNESS WITHOUT ASSIGNING A VALID REASON. THE BURDEN IS NOT UPON THE I/M TO PROVE THE OFFICIAL'S CONDUCT WAS ARBITRARY AND CAPRICIOUS, BUT UPON THE OFFICIAL TO PROVE THE RATIONALITY OF HIS POSITION." FOX V. COUGHLIN, 893 F. 2D 475, 478 (2<sup>ND</sup> CIR. 1990). PRISON AUTHORITIES ARE UNDER

A CONSTITUTIONAL OBLIGATION TO PROVIDE AN I/M WITH A FAIR PROCEDURAL HEARING. IN ADDITION, AN I/M DUE PROCESS RIGHTS ARE VIOLATED WHEN A PRISON HEARING OFFICER REFUSES TO INTERVIEW WITNESSES WITHOUT ASSIGNING A REASON LOGICALLY RELATED TO PREVENTION OF UNLAWFUL HAZARDS TO INSTITUTIONAL SAFETY OR CORRECTIONAL GOALS. Ponte v. Real, 105 S.Ct. 2172, (1985). <sup>2195-2197</sup>

APPELLANT NOTIFIED THE HEARING OFFICER HE REQUESTED SCOC EMPLOYEE SPECIFIC WITNESS LT. WRIGHT AND SPECIFIC DOCUMENTARY EVIDENCE WHICH WAS RELEVANT EVIDENCE ONCE UPON SCOC FORM 19-11 "REQUEST TO STAFFMEMBER", (EXHIBIT B), AND AGAIN AT THE DISCIPLINARY HEARING PROCEDURE, (TRANSCRIPT P. 4). "EXCLUSION OF ALL WITNESS TESTIMONY IN DEFENSE OF PRISONER AT DISCIPLINARY HEARING THAT RESULTS IN DEPRIVATION OF GOOD-TIME CREDITS IS AN OBVIOUS PROCEDURAL DEFECT, AND COURTS RE-INSTATE GOOD-TIME CREDITS, ABSENT A NEW HEARING, WHEN IT IS ESTABLISHED." EDWARDS V. BALISOK, 117 S.Ct. 1584, 1588 (1997).

THE DENIAL OF SCOC OBLIGATED EMPLOYEE WITNESS AND PRESENTMENT OF DOCUMENTARY EVIDENCE WITHOUT VALID REASON BEING ASSIGNED LEAVES THE SUBSTANTIVE EVIDENCE OF THE RECORD AS A WHOLE INCOMPETENT. EVIDENCE IS INCOMPETENT IF IT COULD CREATE DANGERS SUCH AS PREJUDICE, CONFUSION OF THE ISSUES, TENDENCY TO MISLEAD." STATE V. LYLES, (S.C. APP. 2008) 665 S.E. 2d AT 206. THE SCOC ACCUSING EMPLOYEE DID NOT KNOW WHOSE PHONE IT WAS SO HE CHARGED BOTH APPELLANT AND I/M BROCKMAN, (EXHIBIT D), THE ACCUSING EMPLOYEE NEVER ASKED EITHER APPELLANT OR I/M BROCKMAN WHOSE PHONE IT WAS, (TRANSCRIPT P. 6), APPELLANT'S REQUESTED SCOC EMPLOYEE WITNESS ~~AND~~ AND DOCUMENTARY EVIDENCE WAS RELEVANT BECAUSE THEY BOTH HAD A DIRECT BEARING UPON AND TENDED TO ESTABLISH APPELLANT'S INNOCENCE AS MORE PROBABLE IN THE MATTER IN CONTROVERSY. FOR THESE CONSTITUTIONAL VIOLATIONS AND ERRORS OF LAW AND FACTUAL FINDING FOUNDED IN INCOMPETENT EVIDENCE THE APPELLATE COURT SHOULD SET ASIDE CONVICTION BECAUSE OF ERRORS AFFECTING THE RESULT. PEE V. A.V.M., INC., 543 S.E. 2d <sup>234</sup> 232, (S.C. APP. 2001); STATE V. LYLES, 665 S.E. 2d AT 204-205 (S.C. APP. 2008). ONCE THERE IS A DISCOVERY VIOLATION THE COURT WILL REVERSE WHERE THE DEFENDANT HAS SUFFERED PREJUDICE AS A RESULT OF THE VIOLATION. STATE V. KENNERLY, 503 S.E. 2d 214, 220 (Ct. APP. 1998).

II. Did THE USE OF UNPRODUCED, UNVERIFIED, ADAMANTLY DENIED AS FORGED CONFESSION SUBJECT APPELLANT TO COMPELLED INVOLUNTARY SELF-INCRIMINATION? Did THE DISCIPLINARY HEARING OFFICER IN ACTION TO PROVE VOLUNTARINESS, ALONG WITH COUNSEL SUBSTITUTE IN ACTION TO VERIFY VOLUNTARINESS OF STATEMENT SATISFY VOLUNTARINESS TEST OF MINIMUM DUE PROCESS REQUIREMENT?

"ETIHOUGH HIS RIGHTS MAYBE DIMINISHED BY THE NEEDS AND EXIGENCIES OF THE INSTITUTIONAL ENVIRONMENT, A PRISONER IS NOT WHOLLY STRIPPED OF CONSTITUTIONAL PROTECTIONS WHEN HE IS IMPRISONED FOR CRIME. THERE IS NO IRON CURTAIN DRAWN BETWEEN THE CONSTITUTION AND THE PRISONS OF THIS COUNTY." AL-SHABAZZ V. STATE, 527 S.E.2D 742, 754; QUOTING WOLFE V. McDONNEL 94 S.Ct. AT 2974. "PRIVILEGE AGAINST SELF-INCRIMINATION DOES NOT TERMINATE AT JAIL HOUSE DOOR, BUT FACT OF VALID CONVICTION AND ENSUING RESTRICTIONS ON LIBERTY ARE ESSENTIAL TO FIFTH AMENDMENT ANALYSIS; BROAD RANGE OF CHOICES THAT MIGHT INFRINGE CONSTITUTIONAL RIGHTS IN FREE SOCIETY FALL WITHIN EXPECTED CONDITIONS OF CONFINEMENT OF THOSE WHO HAVE SUFFERED LAWFUL CONVICTION. PRIVILEGE AGAINST COMPELLED SELF-INCRIMINATION IS VIOLATED IF ADVERSE CONSEQUENCES I/M FACES CONSTITUTE ATYPICAL AND SIGNIFICANT HARDSHIP IN RELATION TO ORDINARY INCIDENTS OF PRISON LIFE. ADVERSE CONSEQUENCES FACED BY A STATE PRISONER AFFECTING HIS ELIGIBILITY FOR GOOD-TIME CREDITS AND SUBSTANTIAL LOSS THERE OF WERE SO SEVERE AS TO AMOUNT TO COMPELLED SELF-INCRIMINATION. MCKUNE V. LILE, 122 S.Ct. 2017, (2002).

THE APPELLANT WAS APPEARING BEFORE A DISCIPLINARY HEARING PROCEDURE IN REGARD OF DISCIPLINARY RULE VIOLATION CODE (898): POSSESSION OF A CELL PHONE OR AN COMMUNICATIONS DEVICE. DISCIPLINARY RULE VIOLATION CODE (898) IS A LEVEL ONE RULE INFRACTION THAT A CONVICTION OF MAY RESULT IN THE LOSS OF UNLIMITED GOOD-TIME ACURED CREDITS. SCOC POLICY/PROCEDURE OP-22.14 SECTION (17.2). THE UNLIMITED LOSS OF ACURED GOOD-TIME CREDITS TRIGGER MINIMAL PROCEDURAL DUE PROCESS PROTECTION AFFORDED BY WOLFE. AL-SHABAZZ V. STATE, 527 S.E.2D 742, 750 (S.C. 2000).

"ANY EFFORT BY THE STATE TO COMPEL [THE DEFENDANT] TO TESTIFY AGAINST HIS WILL AT THE SENTENCING HEARING CLEARLY WOULD CONTRAVENE THE 5<sup>TH</sup> AMENDMENT." "THE ESSENCE OF THIS BASIC CONSTITUTIONAL PRIVILEGE IS THE REQUIREMENT THAT THE STATE WHICH PROPOSES

TO CONVICT AND PUNISH AN INDIVIDUAL PRODUCE THE EVIDENCE AGAINST HIM BY INDEPENDANT LABOR OF ITS OFFICERS, NOT BY SIMPLE, CRUEL, EXPEDIENT OF FORCING IT FROM HIS OWN HIS OWN LIPS." Mitchell V. UNITED STATES, 119 S.Ct. 1307, <sup>1313-1314</sup> (1999).

THE APPELLANT INFORMED THE HEARING OFFICER AND APPOINTED COUNSEL SUBSTITUTE he did <sup>NOT</sup> write a CONFESSION STATEMENT. (TRANSCRIPT P. 5). THE APPELLANT FURTHER MORE ALERTED THE HEARING OFFICER AND COUNSEL SUBSTITUTE 13 DAYS PRIOR TO THE DISCIPLINARY HEARING PROCEDURE THAT ILM BROCKMAN HAD WROTE A CONFESSION STATEMENT IN ACCORDANCE WITH SCOC POLICY/PROCEDURE PROCEDURAL GUIDELINE OP 22.14 SECTION (8.2.4). (EXHIBIT B). THE APPELLANT INFORMED THE HEARING OFFICER HE WAS UNDER THE IMPRESSION ILM BROCKMAN WROTE A STATEMENT NOT APPELLANT. (TRANSCRIPT P. 4). THE APPELLANT WITH RELEVANT DOCUMENTARY EVIDENCE ~~SUBMITTED SCOC FORM 19-11 FOR SPECIFIC WITNESS AND EVIDENCE HAVING NO KNOWLEDGE OF A STATEMENT ATTRIBUTED TO HIM~~ (EXHIBIT B), THEN AGAIN AT THE HEARING, (TRANSCRIPT P. 4), THEN VERBALLY DENIED WRITING ANY STATEMENT AT THE HEARINGS BEGINING, (TRANSCRIPT P. 5), PROVING THE INVOLUNTARINESS OF STATEMENT ATTRIBUTED TO HIM.

"EITHER IN THE EXERCISE OF THIS RIGHT [TO PRESENT A DEFENSE], THE ACCUSED, AS IS REQUIRED OF THE STATE, MUST COMPLY WITH ESTABLISHED RULES OF PROCEDURE AND EVIDENCE DESIGNED TO ASSURE BOTH FAIRNESS AND RELIABILITY IN ASCERTAINMENT OF GUILT OR INNOCENCE." STATE V. LYLES, 605 S.E.2D 201, 208 (S.C. APP. 2008).

"EITHER THOUGH HIS RIGHTS MAY BE DIMINISHED... A PRISONER IS NOT WHOLLY STRIPPED OF CONSTITUTIONAL PROTECTIONS..." WOLFF V. McDONNELL, 94 S.Ct. AT 2974. THE SCOC FOR THIS PURPOSE OF SAFEGUARDING APPELLANT STATE-CREATED LIBERTY INTEREST GOOD-TIME CREDITS IMPLEMENT SCOC POLICY/PROCEDURE OP-22.14 "ILM DISCIPLINARY SYSTEM" WHICH IS GOVERNED THE S.C. CODE OF LAWS, SECTIONS 24-1-140, AND 24-13-210. THIS POLICY/PROCEDURE PURPOSE IS TO PROVIDE GUIDELINES FOR THE ADMINISTRATION AND APPLICATION OF THE SCOC ILM DISCIPLINARY SYSTEM, WHICH "WILL BE IN COMPLIANCE WITH ALL APPLICABLE STATE AND FEDERAL STATUTES, RULES AND REGULATIONS, AND IN A MANNER THAT ENSURES ILMs ARE AFFORDED ADEQUATE DUE PROCESS PROTECTION." OP-22.12 POLICY STATEMENT.

APPELLANT COMPLIED WITH ALL SCOC POLICY/PROCEDURE OP-22.14 GUIDELINE REQUIREMENTS TO ENSURE HE WOULD BE ABLE TO PRESENT AN ADEQUATE DEFENSE ON HIS BEHALF. THE SCOC AGENCY EMPLOYEES DID NOT AFFORD APPELLANT HIS MANDATORY UNMISTAKABLY CLEAR LANGUAGE

POLICY AFFORDED PREDICATE REQUISITES. APPELLANT'S COUNSEL SUBSTITUTE NEVER ASKED APPELLANT DID HE WRITE STATEMENT PURSUANT TO OP-22.14 SECTION (8.2.2). THE HEARING OFFICER VIEWING THAT THE APPELLANT DENIED STATEMENT AS HIS (TRANSCRIPT P.5), DID NOT EMPLOY SCDP POLICY/PROCEDURE SECTIONS (15.7) (15.7.2). OP-22.14 SECT (15.7) STATES IN RELEVANT PART: "IF, ON THE OTHER HAND, THE ACCUSED I/M PRESENTS NON-FRIVOLOUS EVIDENCE WHICH, IF TRUE, WOULD CONTRADICT THE FACTS ALLEGED IN THE STAFF MEMBER'S REPORT, THE HEARING OFFICER MUST TAKE AT LEAST ONE OF THE FOLLOWING STEPS AT THE HEARING PRIOR TO THE FINAL DISPOSITION OF THE CASE:" (15.7.1) "QUESTION THE CHARGING EMPLOYEE," WHICH IN THIS INSTANCE IS INADEQUATE PROCEDURE WHERE THE CHARGING EMPLOYEE KNEW NOTHING ABOUT VALID VOLUNTARINESS OF STATEMENT. THE CHARGING EMPLOYEE ONLY KNEW A CELLPHONE WAS FOUND, (EXHIBIT D), BUT NOT WHOSE PHONE IT WAS. SO HE CHARGED BOTH CELL OCCUPIANTS APPELLANT AND I/M BRUCKMAN, (~~EXHIBIT~~ <sup>TRANSCRIPT</sup> P.6) <sup>EXHIBIT D</sup> (15.7.2) "EXAMINE ADDITIONAL DOCUMENTARY EVIDENCE (BEYOND INVESTIGATION REPORTS AND/OR WRITTEN STATEMENTS BY THE CHARGING OFFICIAL OR WITNESS); OR (15.7.3) "QUESTION OTHER WITNESSES." APPELLANT WAS DENIED HIS SCDP REQUESTED <sup>EMPLOYEE</sup> WITNESS AND DOCUMENTARY EVIDENCE THAT POSED NO THREAT TO INSTITUTIONAL SECURITY WITH NO VALID REASON BEING ASSIGNED, (EXHIBIT C), ~~AND~~ <sup>AND</sup> THE APPELLANT NOTIFIED. THE HEARING OFFICER WAS IN CONTRADICTION OF HIS WRITING A STATEMENT VOLUNTARILY. (EXHIBIT B, TRANSCRIPT P.4-5). THIS STATEMENT WAS VERIFIED BY NO AS BEING VOLUNTARY. (EXHIBIT A).

"DEFENDANT HAS THE RIGHT TO OBJECT TO THE USE OF THE CONFESSION AND HAVE A FAIR HEARING AND A RELIABLE DETERMINATION ON THE ISSUE OF VOLUNTARINESS." STATE V. MOSES, 702 S.E.2d 395, <sup>400</sup> (S.C. APP. 2010). "A STATEMENT... IS INADMISSIBLE UNLESS THE SUSPECT WAS ADVISED OF AND VOLUNTARILY WAIVED HIS RIGHTS." STATE V. MILLER, 652 S.E.2d 444, 449 (S.C. APP. 2007). "A STATEMENT IS NOT ADMISSIBLE UNLESS IT WAS VOLUNTARILY ~~MADE~~ MADE." Id 449 (SEE: STATE V. COMPTON <sup>623</sup> S.E.2d 661, 666 (CT. APP. 2005)). "THE TEST OF ADMISSIBILITY OF A STATEMENT IS VOLUNTARINESS. THE VOLUNTARINESS REQUIREMENT IS IN ADDITION TO THE INTELLIGENT WAIVER MANDATE." Id 449 (SEE: STATE V. MIDDLETON, 339 S.E.2d 692, 694 (1986)) ("IN ORDER TO SECURE THE ADMISSION OF A DEFENDANT'S STATEMENT, THE STATE MUST AFFIRMATIVELY SHOW THE STATEMENT WAS VOLUNTARY AND TAKEN IN COMPLIANCE

with MIRANDA.") (CITATIONS OMITTED). "THE REQUIREMENT THAT ONLY VOLUNTARY STATEMENTS BE ADMITTED IS BASED ON THE 5<sup>TH</sup> AMENDMENT'S RIGHT AGAINST SELF-INCRIMINATION, AND WAS INCORPORATED AND MADE APPLICABLE TO THE STATES THROUGH THE 14<sup>TH</sup> AMENDMENT. MALLOY V. HOGAN, 378 U.S. 1, 6 (1964) (SEE: ARTICLE 1, SECTION 12, OF THE SOUTH CAROLINA CONSTITUTION "NOR SHALL ANY PERSON BE COMPELLED IN ANY CASE TO BE A WITNESS AGAINST HIMSELF").

VOLUNTARINESS OF A STATEMENT IS MADE BY A FACT-FINDER IN SOUTH CAROLINA WHO MAKES THIS INITIAL DETERMINATION OF VOLUNTARINESS AS REQUIRED BY JACKSON V. DENNO, 378 U.S. 368 (1964); STATE V. MILLER, 652 S.E. 2d AT 450. A DEFENDANT IN CRIMINAL CASE IS ENTITLED TO AN INDEPENDANT EVIDENTIARY HEARING TO DETERMINE THE VOLUNTARINESS OF THE STATEMENT MADE BY THE DEFENDANT. "WHENEVER EVIDENCE IS INTRODUCED THAT <sup>STATEMENT</sup> WAS ALLEGEDLY OBTAINED BY CONDUCT VIOLATIVE OF A DEFENDANT'S CONSTITUTIONAL RIGHT, THE DEFENDANT IS ENTITLED TO HAVE THE JUDGE CONDUCT AN EVIDENTIARY HEARING... TO ESTABLISH CIRCUMSTANCES <sup>under</sup> WHICH IT WAS GAINED" STATE V. MILLER, 652 S.E. 2d AT 450. QUOTING STATE V. CREECH, 441 S.E. 2d 635, 639 (Ct. APP. 1993).

THE APPELLANT IS AWARE THOUGH PRIVILEGE AGAINST SELF-INCRIMINATION DOES NOT TERMINATE AT PRISON DOOR, HIS IS BY FACT OF VALID CONVICTION SUBJECT TO CERTAIN RESTRICTIONS ON LIBERTY ESSENTIAL TO 5<sup>TH</sup> AMENDMENT. THE APPELLANT AS A STATE PRISONER FACING UNLIMITED ADVERSE CONSEQUENCES AFFECTING HIS STATE-CREATED LIBERTY INTEREST TO A SUBSTANTIAL LOSS TRIGGERED PROCEDURAL DUE PROCESS PROTECTION REQUIRING A VOLUNTARINESS DETERMINATION BY THE HEARING OFFICER. THOUGH AN EVIDENTIARY HEARING ON A SCALE EQUAL TO FREE CITIZENS <sup>IS NOT APPLICABLE</sup> THE VOLUNTARINESS DETERMINATION COULD HAVE BEEN EQUALLY SATISFIED BY SCOC POLICY/PROCEDURE OP-22.14 SECT. (15.7.2) (15.7.3) PROCEDURAL EMPLOYMENT, WHERE THE STATEMENT WAS NEVER VERIFIED, (EXHIBIT A), NOT PRESENT AT THE HEARING PROCEDURE, (TRANSCRIPT P. 5), AND THE APPELLANT CLEARLY STATED HE DID NOT SIGN ANY STATEMENT, (TRANSCRIPT P. 5). THE DENIAL OF QUESTIONING THE APPELLANT'S NO VALID REASON GIVE WITNESS SCOC EMPLOYEE LT. WRIGHT, DENIAL OF EXAMINING ADDITIONAL DOCUMENTARY EVIDENCE, PROCEDURAL PROTECTIONS IN PLACE TO PROVIDE APPELLANT ADEQUATE DUE PROCESS MINIMUM FAIR TO SATISFY THE STANDARD

## OF PROOF APPLICABLE TO VOLUNTARINESS.

THE STANDARD OF PROOF APPLICABLE TO VOLUNTARINESS MANIFEST ITSELF AS: "[T]he burden is on the State to prove by a preponderance of the evidence that his rights were voluntarily waived." STATE V. NEELEY, 244 S.E.2d 522, 526 (1978); "[T]HE PROSECUTION MUST PROVE . . . BY A PREPONDERANCE OF THE EVIDENCE THAT THE [STATEMENT] WAS VOLUNTARY." STATE V. MIDDLETON ACCORDING TO STATE V. KENNEDY, 479 S.E.2d 838 (Ct. App. 1996); QUOTED IN STATE V. MILLER, 652 S.E.2d AT 450 (S.C. APP. 2007). A PREPONDERANCE OF THE EVIDENCE: UNVERIFIED STATEMENT (EXHIBIT A), UNPRODUCED AT THE HEARING STATEMENT (TRANSCRIPT P. 5), ACCUSING OFFICER MUSTER UNSURE OF WHOSE PHONE IT WAS, (EXHIBIT D AND TRANSCRIPT P. 6), ACCUSING OFFICER KNEW NOTHING ABOUT STATEMENT, APPELLANT CLEARLY DENIED WRITING ANY STATEMENT, (EXHIBIT B, TRANSCRIPT P. 4-5) VIEWED IN THIS LIGHT DISPROVES ANY ELEMENT OF VOLUNTARINESS ON APPELLANT'S BEHALF. "WHERE THERE IS CONFLICTING EVIDENCE AS TO WHETHER [A] DEFENDANT'S STATEMENT IS VOLUNTARY, IT IS, IN THE FIRST INSTANCE THE PROVINCE OF THE TRIAL COURT TO DETERMINE THIS FACTUAL ISSUE BY THE PREPONDERANCE OF THE EVIDENCE." STATE V. MILLER, AT 451. THE HEARING OFFICER FAILED TO SATISFY THIS STANDARD OF PROOF APPLICABLE TO VOLUNTARINESS USING SCOC POLICY/PROCEDURE CP-22.14 PROCEDURAL STATE-CREATED LIBERTY-INTEREST SAFEGUARDS SECTIONS (15.7.2) AND (15.7.3) WHICH WOULD HAVE SATISFIED DUE PROCESS PROCEDURAL MINIMAL REQUIRED.

THE STATEMENT VOLUNTARINESS FAILS TOTALITY OF THE CIRCUMSTANCES TEST. "THE TEST OF VOLUNTARINESS IS 'WHETHER A DEFENDANT'S WILL WAS OVERBORN' BY THE CIRCUMSTANCES - BOTH CHARACTERISTICS OF THE ACCUSED AND THE DETAILS OF THE INTERROGATION." STATE V. MILLER, AT 451 (SEE: STATE V. COMPTON, 623 S.E.2d 661, 666 (Ct. App. 2005)) ("THE TEST FOR DETERMINING THE ADMISSIBILITY OF A STATEMENT IS WHETHER IT WAS KNOWINGLY, INTELLIGENTLY, VOLUNTARILY GIVEN UNDER THE TOTALITY OF THE CIRCUMSTANCES."). "THE TRIAL JUDGE'S DETERMINATION OF THE VOLUNTARINESS OF A STATEMENT MUST BE MADE ON THE BASIS OF THE TOTALITY OF THE CIRCUMSTANCES, INCLUDING THE BACKGROUND, EXPERIENCE, AND CONDUCT OF THE ACCUSED." STATE V. LEDFORD, 367 S.E.2d 904, 906 (Ct. App. 2002) QUOTED IN STATE V. MILLER, AT 451.

THE APPELLANT'S WILL WAS OVERBORNE BY THE CIRCUMSTANCES SURROUNDING THE GIVEN STATEMENT. APPELLANT REQUESTED A SPECIFIC SCOC GOVERNMENTAL AGENCY EMPLOYEE LT. NIGHT WHO WAS IN POSSESSION OF RELEVANT EVIDENCE THAT CONFLICTED STATEMENT, (EXHIBIT B, TRANSCRIPT P. 4), APPELLANT WAS DENIED THIS WITNESS WITHOUT VALID REASON BEING ASSIGNED BECAUSE THERE WAS NO VALID REASON. APPELLANT REQUESTED SPECIFIC NON-THREATENING NON-HAZARDOUS TO INSTITUTION SAFETY AND GOALS BACKGROUND DOCUMENTARY EVIDENCE OF HIS ZERO CELL CONVICTIONS VERSUS ILM BROCKMAN NUMEROUS CELL PHONE CONVICTIONS, (EXHIBIT B), APPELLANT WAS ALSO DENIED THIS RELEVANT EVIDENCE. APPELLANT UPON LEARNING OF A STATEMENT ATTRIBUTED TO HIM IMMEDIATELY DENIED HE WROTE ANY STATEMENT, (TRANSCRIPT P. 4-5). NO ONE ASKED APPELLANT DID HE WRITE STATEMENT AS REQUIRED BY SCOC POLICY/PROCEDURE OP-22.14 SECTIONS (8.2.2.) (9.1). THE APPELLANT HAD BEEN TRANSFERRED TO ANOTHER INSTITUTION AND AT TOTAL MERCY OF HIS APPOINTED COUNSEL SUBSTITUTE AND HEARING OFFICER WHO IN THE FACE OF ALL THE CONTRADICTING EVIDENCE, WITNESS DENIAL, EVIDENCE DENIAL, AND UNPRECEDENT AT THE HEARING STATEMENT, (TRANSCRIPT P. 5), DID NOT AT A MINIMUM AS REQUIRED BY STANDARD OF PROOF OF VOLUNTARINESS USE SCOC POLICY/PROCEDURE OP-22.14 PROCEDURAL SAFEGUARD SECTION (15.7.2) OR (15.7.3) WHICH WOULD HAVE EASILY REMEDIATED THE VOLUNTARINESS QUESTION IN REGARD OF STATEMENT. THE HEARING OFFICER HAS APPROXIMATELY 8 YEARS EXPERIENCE AS A DISCIPLINARY HEARING OFFICER AND IS WELL VERSED IN SCOC POLICY/PROCEDURE OP-22.14, "ILM DISCIPLINARY SYSTEM" GUIDE LINES AND PURPOSE AND IS SUPPOSE TO GIVE APPELLANT THE ELEMENT OF MINIMAL FUNDAMENTAL FAIRNESS, (TRANSCRIPT P. 1). THE HEARING OFFICER AND COUNSEL SUBSTITUTE COERCED APPELLANT'S COURSE OF ACTION FORCIBLY IMPOSING AN ADAMANTLY DENIED AS FORGED STATEMENT UPON APPELLANT AS A VOLUNTARILY GIVEN STATEMENT. (EXHIBIT <sup>A</sup>B, TRANSCRIPT P. 4-5).

COERCIVE AGENCY ACTIVITY IS NECESSARY PREDICATE TO FINDING A STATEMENT IS NOT VOLUNTARY. COERCION IS DETERMINED FROM THE PERSPECTIVE OF THE SUSPECT. STATE V. MILLER, AT 452 "IT IS NOW INESCAPABLY CLEAR THAT THE <sup>5th Amendment</sup> FORBIDS THE USE OF INVOLUNTARY [STATEMENTS] NOT ONLY BECAUSE OF THE PROBABLE UNRELIABILITY OF THE [STATEMENT] THAT ARE OBTAINED IN A MANNER DEEMED COERCIVE, BUT ALSO BECAUSE OF THE STRONGLY FELT ATTITUDE OF OUR SOCIETY THAT IMPORTANT HUMAN VALUES ARE SACRIFICED WHERE AN AGENCY OF THE GOVERNMENT, IN THE

COURSE OF SECURING A CONVICTION, WRINGS A [STATEMENT] OUT OF AN ACCUSED AGAINST HIS WILL" AND BECAUSE OF "THE DEEP-ROOTED FEELING THAT THE POLICE MUST OBEY THE LAW WHILE ENFORCING THE LAW; THAT IN THE END LIFE AND LIBERTY CAN BE AS MUCH ENDANGERED FROM ILLEGAL METHODS USED TO CONVICT THOSE THOUGHT TO BE CRIMINALS AS FROM THE ACTUAL CRIMINALS THEMSELVES."

JACKSON V. DENNO, 378 U.S. 368, 385-86 (1964).

"IT IS NOW AXIOMATIC... THAT A DEFENDANT IS DEPRIVED OF DUE PROCESS OF LAW IF HIS CONVICTION IS FOUNDED, IN PART OR IN WHOLE, UPON AN INVOLUNTARILY [STATEMENT], WITHOUT REGARD FOR THE TRUTH OR FALSITY OF THE [STATEMENT]... EVEN THOUGH THERE IS AMPLE EVIDENCE ASIDE FROM THE [STATEMENT] TO SUPPORT THE CONVICTION." JACKSON V. DENNO, 378 U.S. AT 376.

THE HEARING OFFICER IN HIS SCOC POLICY/PROCEDURE OP-22.14 SECT (16.1) STANDARD OF GUILT REQUIREMENT USED INVOLUNTARY STATEMENT AS A BASIS <sup>FOR</sup> FOUNDING GUILT UPON APPELLANT'S (EXHIBIT C, TRANSCRIPT P. 8), AND THERE IS NO AMPLE EVIDENCE TO SUPPORT THE CONVICTION FROM THE STATEMENT CAUSE THE EVIDENCE IS INCOMPETENT. IT IS WELL ESTABLISHED THAT THE SUBSTANTIAL EVIDENCE RULE REQUIRES CONSIDERATION OF THE EVIDENCE ON BOTH SIDES. EVIDENCE THAT IS SUBSTANTIAL VIEWED IN ISOLATION MAY BECOME INSUBSTANTIAL WHEN CONTRADICTORY EVIDENCE IS TAKEN IN TO ACCOUNT. LANDRY V. F. D. I. C., 204 F.3d 1125, 1141 (D.C. CIR. 2000). APPELLANT HAD NO SIDE IN THIS DISCIPLINARY HEARING PROCEDURE THAT AFFECTED HIS STATE-CREATED LIBERTY INTEREST GOOD-TIME CREDITS, AND ONCE THERE IS A DISCOVERY VIOLATION AND INVOLUNTARY STATEMENT USE THE COURT WILL REVERSE WHERE THE DEFENDANT HAS SUFFERED PREJUDICE AS A RESULT OF THE VIOLATION. STATE V. KENNERLY, 503 S.E.2d 214, 220 (CF. APP. 1998).

### CONCLUSION

WHEREFORE, THE ABOVE ARGUMENT AND SUPPORTING LEGAL AUTHORITY THE COURT SHOULD HONOR THE APPELLANT'S RESPECTFULLY REQUESTED RELIEF AND REVERSE AND VACATE ALL LOWER RULINGS AND CONVICTION.

DECEMBER 6<sup>th</sup>, 2013

PELZER, SOUTH CAROLINA

RESPECTFULLY SUBMITTED,

MR. MICHAEL L. JONES # 2377169

PCI D-X # 21

430 OAKLAWN RD.

PELZER, SOUTH CAROLINA 29669

In The STATE OF SOUTH CAROLINA  
COURT OF APPEALS

APPEAL FROM SOUTH CAROLINA ADMINISTRATIVE LAW COURT  
ADMINISTRATIVE LAW JUDGE CAROLYN C. MATTHEWS  
CASE NO. 12-ALT-04-0798-IJ

APPELLATE CASE NO. 2013-002231

Michael Jones, #237769, . . . . . APPELLANT  
v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS . . . . . Respondent.

CERTIFICATE OF SERVICE

I, CERTIFY THAT APPELLANT DID SERVE A COPY OF APPELLANT'S FINAL BRIEF  
UPON CHRISTOPHER D. FLORIAN DEPUTY DIRECTOR OF SCDC GENERAL COUNSEL  
(RESPONDENT) THIS 6<sup>th</sup> DAY OF DECEMBER, 2013 USING U.S. POSTAL MAILING  
SYSTEM.

EXECUTED AT PERRY C.I.  
DECEMBER, 2013  
PELZER, SOUTH CAROLINA

MR. Michael Jones #237769  
MR. MICHAEL L. JONES #237769  
PCI-D-X# 21  
430 OAKLAND Rd.  
Pelzer, SC 29669

RECEIVED

DEC 12 2013

SC Court of Appeals

In The State of South Carolina  
COURT OF APPEALS

APPEAL FROM ADMINISTRATIVE LAW COURT  
ADMINISTRATIVE LAW JUDGE CAROLYN C. MATTHEWS  
CASE NO. 12-015-04-0798-IJ

APPELLATE CASE NO. 2013-00223

Michael Jones #237769 . . . . . APPELLANT

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS . . . . . RESPONDENT

CERTIFICATE OF COUNSEL

I, CERTIFY THAT THE APPELLANT'S FINAL BRIEF IS IN COMPLIANCE WITH  
RULE 211(b) OF SC<sup>JP</sup>ACR.

EXECUTED AT PERRY C-I.

DECEMBER 16<sup>th</sup> 2013

Pelzer, South Carolina

Mr. Michael L. Jones #237769

MR. Michael L. Jones #237769

PCI D-X# 21

430 OAKLAWN RD.

Pelzer, SC 29669

**RECEIVED**

DEC 12 2013

SC Court of Appeals