

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

PETITION FOR REHEARING

On July 8, 2026, this Court affirmed the Administrative Law Court's ruling that Mr. Brown's due process rights were not violated by the Department's refusal to disclose evidence to him and that the Hearing Officer properly excluded evidence of a witness' prior inconsistent statement. *Brown v. SCCJA*, Op. No. 2026-UP-346 (S.C. Ct. App. Filed July 8, 2026). Pursuant to Rule 221 (a), SCACR, Petitioner respectfully requests this Court rehear the matter considering the significant points overlooked and/or misapprehended by this Court discussed below.

Due Process

This Court concluded that Mr. Brown "failed to properly subpoena the interviews for the hearing despite having this procedure available to him." *Brown*, 2. This Court further concluded that even if Mr. Brown had properly subpoenaed the evidence, his rights were not prejudiced because "[t]he Department did not introduce the witnesses' interviews at the hearing, Brown had

knowledge of what happened and what was said in his own interview, and Brown was permitted to cross-examine the witnesses and call them during his case-in-chief.” *Id.*

Respectfully, this Court’s reasoning follows the same logical flaws of the ALC. Mr. Brown informed the Hearing Officer that he had requested the written statements and video-recorded interviews of Sanchez and Lizarazo prior to the hearing and the Department refused to turn them 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).

This Court, like the ALC, appears to have determined that because Mr. Brown requested the evidence against him in an earlier proceeding, that his requests were insufficient. However, Mr. Brown’s requests were made to, and refused by, the same Department—the North Charleston Police Department. Any additional request in this case by Mr. Brown for the same information the Department had already refused to provide him with would have been futile. Despite Mr. Brown having requested copies of the written statements and video-recorded interviews of Sanchez and Lizarazo, the Department failed to disclose any of the evidence it would use against Mr. Brown prior to his hearing taking place. While the Department introduced Mr. Brown’s recorded interview, it withheld the interviews of Sanchez and Lizarazo.

The credibility of Sanchez and Lizarazo were critical in this case, especially in regards to the allegation that Mr. Brown lied about being offered medical treatment. On that allegation, this case was purely their word against Mr. Brown’s. As a result, a complete picture of Sanchez’s and

Lizarazo's credibility was essential. But Mr. Brown could not adequately cross examine Sanchez and Lizarazo without having been given their previously recorded interviews and written statements that were conducted as part of the internal investigation. The Department's refusal to provide Mr. Brown with this evidence substantially prejudiced his ability to effectively mount a defense and resulted in a fundamental denial of his right to due process.

Accordingly, Mr. Brown respectfully requests this Court grant this petition for rehearing and hold that the Department's refusal to disclose evidence to him violated his due process rights depriving him of a fair hearing. *See Brown v. S.C. State Bd. of Educ.*, 301 S.C. 326, 329, 391 S.E.2d 866, 867 (1990) ("Procedural due process often requires confrontation and cross-examination of one whose word deprives a person of his or her livelihood . . . Moreover, 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").

Prior Inconsistent Statement

This Court concluded that the evidence of Sanchez's prior inconsistent statement was inadmissible under both Rules 608(b) and 613(b) of the South Carolina Rules of Evidence. Rule 608(b) excludes extrinsic evidence of "specific instances of conduct" whereas Rule 613(b) allows extrinsic evidence of "prior inconsistent statements." Thus, the Rules address different types of evidence—Rule 608 speaks to conduct, but Rule 613 speaks to statements. Here, Mr. Brown sought to introduce a prior inconsistent statement by Sanchez. Accordingly, this issue is more properly viewed under Rule 613(b) which allows for the admission of extrinsic evidence of a prior inconsistent statement when the witness has been "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." If the witness denies making the statement or does

not admit to making the statement, the extrinsic evidence of the statement is admissible. Rule 613(b), SCRE.

In this case, Mr. Brown directly mentioned the federal lawsuit currently pending against Sanchez and confronted Sanchez about statements he 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. Thus, the substance of the evidence was apparent from the context which constituted a sufficient offer of proof. 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).

Mr. Brown respectfully requests this Court grant this petition for rehearing and hold that the Hearing Officer erred in excluded Sanchez's prior inconsistent statement.

Respectfully submitted,

s/Adam Ruffin

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Attorney for Omar Brown

This 23rd day of July 2026.

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PROOF OF SERVICE

Pursuant to Rule 262(c)(3), SCACR, undersigned counsel hereby certifies that a true copy of the petition for rehearing in the above-referenced case has been served upon Rebecca Williams at her primary e-mail address listed in the Attorney Information System (AIS), this 23rd day of July 2026.

s/Adam Ruffin

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