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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

RECORD ON APPEAL

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THE FOLLOWING EXHIBITS ARE ON FILE FOR THIS COURT’S REVIEW:

State’s Exhibit 1A (body camera video from Officer Sanchez); State’s Exhibit 1B (body camera video from Mr. Brown); State’s Exhibit 1C (video interview of Mr. Brown)

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Omar Brown,	)	Docket No. 24-ALJ-30-0425-AP
	)	
Appellant,	)	
vs.	)	
	)	
South Carolina Criminal Justice Academy,	)	
	)	
Respondent.	)	
_____	)	

RECORD ON APPEAL

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January 31, 2025

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Omar Brown,

Appellant(s),
v.

South Carolina Criminal Justice Academy,

Respondent(s).

Docket No.24-ALJ-30-0425-AP

**NOTICE OF ASSIGNMENT
(Appeal)**

Judge Assigned: **Honorable Judge Robert L. Reibold**

Date Assigned: 12/20/2024

In accordance with S.C. Code Ann. § 1-23-570 (2005), the above Administrative Law Judge, has been assigned to preside in this appeal. The Administrative Law Judge may be contacted by mail at 1205 Pendleton Street, Suite 224, Columbia, South Carolina 29201, and by telephone at (803) 734-0550. Pursuant to SCALC Rule 4A, all future filings must be filed directly with the above assigned Judge and shall include the docket number.

The parties are required to meet the following deadlines, unless otherwise ordered by the assigned Administrative Law Judge:

Record on Appeal	Due within forty-five (45) days of the date of this Notice (to be filed by the agency)
Appellant's Brief	Due within thirty (30) days after the Record on Appeal is filed
Respondent's Brief	Due within thirty (30) days after the Appellant's Brief is filed
Reply Brief	Due within ten (10) days after the Respondent's Brief is filed

The parties are directed to the relevant provisions of the Rules of Procedure regarding these deadlines and other requirements applicable to the appeal process. Rules of Procedure governing matters before the Court may be obtained from the Clerk of Court or on the Court's website, www.scalc.net.

Ralph King Anderson, III
Chief Administrative Law Judge



STATE OF SOUTH CAROLINA

Before the South Carolina Law Enforcement Training Council

In the Matter of the Law Enforcement	)	Docket Number 2023-CJA-10-21
Certification of Omar Brown	)	
	)	
	)	FINAL AGENCY DECISION
	)	

Omar Brown ("Officer"), in response to allegations of certification misconduct reported by the North Charleston Police Department ("Department") to the South Carolina Criminal Justice Academy ("Academy"), pursuant to the requirements of S.C. Code Ann. § 23-23-150 (B)(1), timely requested a contested case hearing to address the allegations of misconduct filed against him. Notice of the contested case hearing was communicated to the Officer and the Department, in accordance with the requirements of S.C. Code Ann. § 23-23-150 (D).

On July 24, 2024, the South Carolina Law Enforcement Training Council met to, among other things, discuss this case, listen to oral arguments, and take a vote. Prior to July 24, 2024, the Training Council reviewed the transcript, exhibits, motions, and Hearing Officer's Recommendation. On July, 2024, the Training Council voted that Officer did engage in misconduct and voted that Officer is permanently denied a law enforcement certification in South Carolina.¹

STATEMENT OF THE CASE

A. Documentary Evidence

The following documentation was accepted into evidence at the February 20, 2024, hearing and made part of the record:

Council Exhibit Number 1: Notice of Certification Misconduct Allegation; Personnel Change in Status Report (Notification of Separation Due to Misconduct); Request for Contested Case Hearing; Notice of Contested Case Hearing;

State's Exhibit Number 1A: Body Cam Video-Officer Sanchez

State's Exhibit Number 1B: Body Cam Video- Officer Brown

State's Exhibit Number 1C: Interview with Omar Brown

¹ Chief Keel, Sheriff Foster, Director Boyles, Director Woods, Director Stirling, Director Gallman, Sheriff Faile, Chief Holbrook, Chief Cornett, and Captain Gallam voted that the officer engaged in misconduct and is permanently denied. Attorney General Wilson was not present.

Respondent's Exhibit Number 1: Victim Information Sheet
Respondent's Exhibit Number 2: Victim's Information Sheet
Respondent's Exhibit Number 3: Booking Report
Respondent's Exhibit Number 4: Phone Records
Respondent's Exhibit Number 5: BlueTeam Chain Routings

State's Exhibit 1A:

Officer Sanchez's body camera footage shows the interaction between Brown and a female subject. Sanchez is speaking with the subject about what she should do, and the subject appears to listen to the information. (0:04:15-0:04:36) Brown attempts to give the subject her items and subject moves past Brown towards the porch where the complainant is seated. (0:04:40-0:04:45) The complainant is heard "don't come on the porch." (0:04:46-0:04:47) Brown grabs the subject's arm to stop her from getting on the porch and is shoved back by the subject. (0:04:47-0:04:55) Sanchez is able to grab the subject and then the view shifts to Brown being swung into the side of the house. (0:04:56-0:04:59) Brown is able to force subject to the ground while Sanchez handcuffs the subject. (0:05:05-0:05:36) Brown tries to get the subject to roll over and when that is unsuccessful pulls subject up by the link in the handcuffs and Sanchez's hand reaches out to grab under her arm. (0:05:43-0:05:47).

State's Exhibit 1B:

Officer Brown's video shows his interaction with the subject and complainant. Complainant wants the subject to leave, and Brown is handed subject's items. (0:06:05-0:06:12) Brown attempts to hand the items to the subject but subject refuses it. (0:06:20- 0:06:23) Subject moves around Brown and tries to go on the porch and Brown pulls her back and is shoved back by subject. (0:06:24-0:06:34) Sanchez is able to restrain the subject and Brown's hands move toward the subject's throat. (0:06:34-0:06:38) Brown forces the subject to the ground and Sanchez is able to handcuff the subject. (0:06:43-0:07:11) Brown attempts to get the subject to roll over and Sanchez is heard saying multiple times "I got her." (0:07:22-0:07: 26) Brown pulls the subject by the handcuff link to get her to her feet. (0:07:24-0:07:28)

State's Exhibit Number 1C:

Ledford interviewed Brown regarding his injuries from the altercation and the use of force during the incident. Brown was asked multiple times if anyone, including Lizarazo, offered him any medical attention. Brown denies any medical attention was offered by Sgt. Lizarazo. (0:08:22-0:08:24) (0:08:42-0:08:56) Brown maintained no medical assistance and Sgt. Lizarazo showed "zero interest" in his injuries. (0:56:54-0:58:27) At one point, Ledford asks Brown specific questions about Brown's interaction with Sgt. Lizarazo.

Ledford: So, he did not ask you, how severe was the injury on your leg?

Brown: No, sir

Ledford: He didn't ask you if your leg was bleeding?

Brown: No, sir.

Ledford: He didn't ask you to go to the bathroom and pull down your pants to check your leg?

Brown: 100% no sir. Absolutely no sir.

(0:59:20-0:59:40).

Brown acknowledges he went for subjects' upper body and neck area but did so to get to the back of her neck to force her down. (0:14:33-0:14:47) (0:15:37-0:15:43) When Sanchez has one of her arms detained, she is not exhibiting any force in that moment but is still yelling and cursing at Brown. (0:15:40-0:16:31)

Respondent's Exhibit Number 1:

Officer Sanchez's victim information sheet involving the subject.

Respondent's Exhibit Number 2:

Brown's victim information sheet involving the subject.

Respondent's Exhibit Number 3:

NCPD booking report shown subject showing two charges of Assault and Battery in the 3rd degree.

Respondent's Exhibit Number 4:

Brown's phone records showing incoming and outgoing calls from August 8th- August 10th.

Multiple incoming calls from Sgt. Lizarazo and outgoing calls to Sgt. Lizarazo from Brown.

Respondent's Exhibit Number 5: BlueTeam Chain Routings:

Shows the history and the request for an investigation into the team.

B. Testimonial Evidence

The following testimony was accepted into evidence at the February 20, 2024, hearing and made part of the record:

1. Testimony of Michael A. Sanchez
2. Testimony of Diego Lizarazo
3. Testimony of Jeremy Ledford

Testimony of Michael A. Sanchez:

Sanchez has been with the City of North Charleston for 12 years as a police officer and was with another agency for 6 years before joining North Charleston. Sanchez went through the South Carolina Criminal Justice Academy and received instructor training on various topics including defensive tactics. The defensive tactics course teaches techniques when dealing with an aggressive prisoner or detainee, whether it be active or passive defense. Sanchez was the lead instructor for the defensive tactics program at the department and maintained the defensive tactics curriculum and made sure everyone stayed proficient. On August 8, 2023, Sanchez was with patrol and he and Omar Brown (Brown) were on the same team. Sanchez and Brown responded to a call about a child custody dispute. The grandmother (complainant) had custody of the child and the mother (subject) wanted to take the child from her. The subject had a “long-standing mental health risk and neglectful.” When Sanchez arrived, Brown had already located the child and separated the parties. Sanchez talked with the subject to see if he could calm her down because she was still agitated. This allowed Brown to speak with the complainant. (Transcript, pp. 15-19)

Brown attempted to hand the subject her belongings that were inside the house when she became irate again and charged toward the porch where the complainant was sitting in what he believed was an attempt to assault the complainant. Brown attempted to get a hold of the subject, and the subject struck him in the chest causing him to stagger backwards. Sanchez was able to grab her arm and was attempting to handcuff her. She was not moving, and her right arm was behind her back and Sanchez was in control. Sanchez attempted to put the other arm behind her back when Brown grabbed her. It looked like Brown went for the subject’s throat and neck area. The subject was able to spin Brown off her causing Sanchez to lose his grip. Brown pinned her to the ground while Sanchez handcuffed her. Brown yanked the subject to her feet by the handcuffs. (Transcript, pp. 19-22)

Sanchez was present when Brown and Sergeant Lizarazo discussed the incident. Sgt. Lizarazo asked Brown if he was okay and if he was sure he did not need to see a doctor. Brown responded he was fine. Sanchez’s body camera footage was accepted into the record as State’s Exhibit 1A. As Sanchez escorted the subject to the car, the subject said Brown was choking her. Brown also had a body worn camera that captured the incident, and it was accepted into the record as State’s Exhibit 1B. (Transcript, pp. 22-30)

Testimony of Diego Lizarazo:

Sergeant Diego Lizarazo (Sgt. Lizarazo) is employed with the North Charleston Police Department and has been there for approximately 14 years. Sgt. Lizarazo was Brown's supervisor at the time of the incident. Sgt. Lizarazo knew about the incident because of what was heard over the radio. Sanchez told Sgt. Lizarazo he may "want to look at the video." Sgt. Lizarazo also spoke with Brown and was told it was just a crazy lady and everything is good. Brown showed him a scratch on his hand and Sgt. Lizarazo asked Brown if everyone was good. Sgt. Lizarazo continued to ask Brown what happened, and Brown said the lady bit him. Sgt. Lizarazo asked the location of the bite, asked him if he needed medical attention, and suggested he go to the bathroom to make sure the lady did not break the skin. He stayed with Brown an additional 30 minutes to finish reports. Brown did not indicate he had to use force on the use of force form. (Transcript, pp. 44- 50)

Later that evening, Sgt. Lizarazo receives a call from the lieutenant about Brown's injuries and indicates Brown was severely injured. The lieutenant tells him Brown said he was never offered medical attention. Sgt. Lizarazo views the footage from Brown's and Sanchez's camera. The video shows Brown is pushed after he tries to stop the subject from accessing the porch. Brown approaches the subject and goes for her neck area, but Sanchez already had the subject in his control. After the subject is restrained, Brown picks her up by the handcuffs and the subject is screaming. (Transcript, pp. 50-57)

Testimony of Jeremy Ledford:

Sergeant Jeremy Ledford (Ledford) is the investigator with the North Charleston Police Department and has been with the Department for 18 years. He is currently assigned to Internal Affairs and was tasked with investigating Brown. As part of the investigation, Ledford watched the body camera footage of Sanchez and Brown and scheduled an interview with Brown, which was recorded. The recording was accepted into evidence as State's Exhibit 1C, Interview with Officer Brown. Ledford asked Brown multiple times throughout the interview if he was offered medical attention by Sgt. Lizarazo and denied anyone offered him medical attention. Ledford also spoke with Sanchez and Sgt. Lizarazo, and both stated medical attention was offered to Brown. Ledford also interviewed Brown about the Use of Force. Brown stated he did not cut off airflow to the suspect but attempted to get his hands behind the suspect's neck to force her to the ground. (Transcript, pp. 85-97)

V. ANALYSIS

The Department was required to prove, by the preponderance of evidence, that Officer engaged in misconduct, as defined in S.C. Code Ann. § 23-23-150, based upon, "[w]illfully making false, misleading,

incomplete, deceitful, or incorrect statements to a law enforcement officer, a law enforcement agency, or a representative of the agency, except when required by departmental policy or by the laws of this State” and “[t]he wilful use of excessive force in an objectively unreasonable manner.” To prove its allegation against Officer, the evidence presented by the Department must have been such that, after consideration of the entire record in this matter, one could reasonably conclude Officer intentionally provided a false statement to a law enforcement officer in violation of 23-23-150. The Department must also show Officer used excessive force in an unreasonable manner in violation of 23-1-250(B).

“Preponderance of evidence” is evidence which convinces the fact finder as to its truth. [See, e.g., *Pascoe v. Wilson*, 416 S.C. 628, 640, 788 S.E.2d 686, 693 (2016) citing *Gorecki v. Gorecki*, 387 S.C. 626, 633, 693, S.E.2d 419, 422 (Ct. App. 2010).] Further, a showing of a preponderance of the evidence means, “[t]he greater weight of the evidence, not necessarily established by the greater number of witnesses testifying to a fact but by evidence that has the most convincing force; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other. . . stronger evidence, however slight the edge may be.” [See, “preponderance of evidence”, *Black’s Law Dictionary*, (11th ed. 2019).]

To “misrepresent” may be defined as “to give a false or misleading representation of usually with an intent to deceive or be unfair.” (See, “misrepresent”, *Merriam-Webster Dictionary* online at <https://www.merriam-webster.com/dictionary/misrepresent>) Accordingly, misrepresented information is information which is provided for a false or misleading purpose, usually allied with an intent to deceive the recipient. A “misleading” statement is one that is “deceptive.” (See, <https://www.dictionary.com/browse/misleading>) Similarly, a “deceitful” statement, is one that is “intended to deceive” or is “misleading.” (See, <https://www.dictionary.com/browse/deceitful>) An incomplete statement is one that is “lacking some part.” (See, <https://www.dictionary.com/browse/incomplete>) The term “willful” may be defined as follows:

willful adj. (13c) Voluntary and intentional, but not necessarily malicious. A voluntary act becomes willful, in law, only when it involves conscious wrong or evil purpose on the part of the actor, or at least inexcusable carelessness, whether the act is right or wrong... (See, *Black’s Law Dictionary* (10 ed. 2014))

The Department has met its burden of proving by preponderance of the evidence Officer committed misconduct under South Carolina section 23-23-150.

The Department alleged Officer told a false statement to another law enforcement officer. When Officer and Sanchez arrived at the police station, Officer had some injuries. Officer claimed his supervisor, Lizarazo, never offered him medical attention. However, Lizarazo and Sanchez both stated medical

attention was offered to Officer. Lizarazo even testified he told Officer to check his leg in the bathroom to see if any skin was broken. Officer told Sgt. Lizarazo's superiors; he was not offered medical attention. Officer repeated his statements to Investigator Ledford who is a law enforcement officer. Therefore, Officer intentionally provided a false statement.

Next, the Department alleged Officer violated section 23-1-250(B) by engaging in excessive force which is objectively unreasonable when he moved to grab suspect's neck and yanked the suspect off the ground by the handcuffs when she was handcuffed behind her back. Section 23-1-250(B) must be read and interpreted in combination with section 23-23-150. Section 23-1-250(B) states the willful use of excessive force in an objectively unreasonable manner may be considered misconduct. Since physical abuse must be more than excessive force, misconduct under section 23-1-250(B) should be interpreted to be a lesser level of force than physical abuse. There is no definition for what constitutes objectively unreasonable force in the laws of this State; however, it follows that if something is objectively unreasonable it is the opposite of something that is objectively reasonable. Therefore, an officer's use of force that is found not to be objectively reasonable is objectively unreasonable.

After reviewing all the testimony and State's Exhibits 1A and 1B, the evidence supports Officer used excessive force in an objectively unreasonable manner in this instance. The long-standing test in this area of police conduct is asking whether an officer's use of force was objectively reasonable when the totality of the circumstances involved are considered.² Here, officers responded to a call about a potential kidnapping, upon arrival the suspect is visibly irritated, and the complainant does not want the subject on the property. When Officer attempts to give the subject her items she is visibly upset and moves past the officer in an attempt to approach the complainant on the porch as the complainant states "don't come over here." Officer grabs the subject to prevent her from potentially assaulting the complainant and is shoved in the process. When Officer recovers, Sanchez already has the subject and is in the process of handcuffing her. Subject does not appear to be moving toward Officer nor resisting Sanchez's attempt to handcuff her. Officer then goes for subject's neck to attempt a takedown. In Waterman v. Batton, 393 F.3d 471, 481 (4th Cir. 2005), the Fourth Circuit held force justified at the beginning of an encounter is not justified even seconds later if the justification for the initial force has been eliminated. Based on the totality of circumstances, the moment Sanchez had the subject in his control and subject was no longer showing physical aggression the need for the high level of force was over. Sanchez was in control of the subject and while the subject was verbally combative with Officer, she did

² See, *Graham v. Connor*, 490 U.S. 386, 109 S.Ct. 1865 (1989)

not make any threatening movements towards Sanchez or Officer nor was she resisting Sanchez's efforts to detain her. Therefore, Officer engaged in the use of excessive force in an unreasonable manner which may qualify as misconduct under 23-1-250(B).

FINDINGS OF FACT

Based on the Hearing Officer's Recommendation, Hearing Transcripts, Hearing Exhibits, motions, oral arguments, and all factors offered by the Officer in mitigation we find as a fact:

1. The allegations of misconduct against Officer, as reported in the Personnel Change in Status Report (Notification of Separation Due to Misconduct) to the Criminal Justice Academy (Academy) by the Department, are supported by the evidence adduced at the contested case hearing;
2. The Department has met its burden of showing by a preponderance of the evidence that Officer committed misconduct as was reported to the Academy by the Department.
3. The allegation of misconduct against Officer set forth in the Personnel Change in Status Report by the Department should be deemed substantiated by the evidence adduced at hearing.

CONCLUSIONS OF LAW

Based on the Hearing Officer's Recommendation, Hearing Transcripts, Hearing Exhibits, motions, oral arguments, and all factors offered by the Officer in mitigation we conclude as a matter of law:

1. Pursuant to S.C. Code Ann. § 23-23-80 (6), the South Carolina Law Enforcement Training Council ("Council") is authorized, inter alia, to "provide for suspension, revocation, or restriction" of law enforcement certification in accordance with the regulations promulgated by the Council;
2. Pursuant to S.C. Code Ann. Regs. 37-025, Council may deny law enforcement certification "based on evidence satisfactory to the Council that the candidate has engaged in misconduct";
3. A review of the record in this matter discloses a preponderance of the evidence Officer committed misconduct, as defined in S.C. Code Ann. § 23-23-150 (A)(3)(e), by engaging in "willfully made false, misleading, incomplete, deceitful, or incorrect statements to a law enforcement officer except when required by departmental policy or by the laws of the State";
4. The misconduct allegation reported by the Department have been proven by a preponderance of the evidence and, pursuant to the provisions of S.C. Code Ann. Regs. 37-107, Council may conclude that, based on the evidence adduced at the contested case hearing and applicable statutes and regulations, Officer has committed misconduct; and

5. Pursuant to S.C. Code Ann. Regs. 37-025, satisfactory evidence exists to support Council's denial of Officer's eligibility for certification as a law enforcement officer in the State of South Carolina.

SANCTION

THEREFORE, IT IS ORDERED: Mr. Brown is permanently denied a law enforcement certification in South Carolina.

AND IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read 'Mark A. Keel', is written over a horizontal line.

Mark A. Keel, Chairman Law Enforcement Training Council
Chief of SLED
On Behalf of the Law Enforcement Training Council

November 12, 2024

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Omar Brown,)
(Your Name))
)
Appellant,)
)
v.)
)
South Carolina Criminal Justice Academy,)
(Agency Name))
)
Respondent(s).)
_____)

DOCKET NO. -ALJ- - -AP
(To be completed by the Court)

NOTICE OF APPEAL

Notice is hereby given that Omar Brown (your name), does hereby appeal the final decision of the South Carolina Criminal Justice Academy (agency name), dated November 14, 2024 and received November 26, 2024, a copy of which is attached.

In accordance with SCALC Rule 33(B), please provide a **general** statement of the grounds for appeal below:

Fact: The NC Police Dept. failed to turn over discovery evidence as requested (in violation of rules of evidence) vital to defence, fair hearing. The Police Dept., intentionally submitted false statements to the SCCJA to prejudice the case

The hearing officer errored in excluding evidence favorable to defense. in addition, disregarding facts presented in the hearing. As an officer of the court failed to report criminal conduct discovered during the hearing (by prosecution)

Officer Sanchez was insted listed as creible witness in report to LETC. This error further tipped scales of justice against the defendant. LETC violated its rules and allowed prosecution unfair testimony during the hearing. LETC decision should be overturned

Also attached is the request for transcript to the agency dated December 13, 2024.

Filing Fee (See SCALC Rule 71) is being submitted today to the Court via:

☐ Check ☒ Money Order ☐ Cash ☐ Waiver Form/Affidavit

[Signature]
Your Signature or Signature of Attorney

December 13, 2024
Date

P.O. Box 442

Goose Creek, SC 29445

Mailing Address

City, State, Zip code

843-345-4997

***Email Address**

Phone Number

*By providing your e-mail address, you consent to receive court orders and notices via electronic transmission

Request for Transcript of Record

I, Omar Brown, request the Transcript of the Record for the
case Law Enforcement Certification of Omar Brown,
Docket No. 2023-CJA-10-21. The hearing in this matter was held on
July 24, 2024 before the Honorable LETC.

I understand that I am responsible for all costs associated with the preparation of this
transcript pursuant to Rule 32 of the Rules of Procedure for the Administrative Law Court.


Signed

Omar Brown
P.O. Box 442
Goose Creek, SC 29445
Address
December 13, 2024
Dated

STATE OF SOUTH CAROLINA

Before the South Carolina Law Enforcement Training Council

In the Matter of the Law Enforcement
Certification of Omar Brown

) Docket Number 2023-CJA-10-21
)
)

)
) North Charleston Police Department
)

FINDINGS AND RECOMMENDATIONS OF HEARING OFFICER (Contested Case)

Hearing Officer: Imani D. Byas

Hearing Date: February 20, 2024

Hearing Reporter: Robin Dunn, Southern Reporting, Inc.

Appearances

For Officer: Pro Se

For Department: Carlton Bourne Esq.

I. JURISDICTION AND AUTHORITY FOR HEARING

The undersigned, a member in good standing of the South Carolina Bar employed as an attorney by the South Carolina Criminal Justice Academy, was duly appointed by the South Carolina Law Enforcement Training Council ("Council"), pursuant to S.C. Code Ann. § 23-23-80 (10), to sit as hearing officer for the contested case hearing in this matter, in accordance with S.C. Code Ann. § 23-23-150 (D).

Omar Brown ("Officer"), in response to allegations of certification misconduct reported by the North Charleston Police Department ("Department") to the South Carolina Criminal Justice Academy ("Academy"), pursuant to the requirements of S.C. Code Ann. § 23-23-150 (B)(1), timely requested a contested case hearing to address the allegations of misconduct filed against him. Notice of the contested case hearing was communicated to the Officer and the Department, in accordance with the requirements of S.C. Code Ann. § 23-23-150 (D).

II. ALLEGATIONS OF MISCONDUCT

The Personnel Change in Status Report (Notification of Separation Due to Misconduct) dated October 31, 2023 provided to the Academy by the Department alleged that Officer had committed misconduct, as specified in S.C. Code Ann. § 23-23-150, by having willfully made false, misleading, incomplete, deceitful, or incorrect statements to a law enforcement officer except when required by departmental policy or by the laws of the State. Department also alleged Officer violated section 23-1-250(B) which states the willful use of excessive force in an objectively unreasonable manner may be considered misconduct.

The allegation states in part, during an incident Officer grasped a suspect around the throat and tried to get her to the ground. Later, Officer pulls suspect off the ground by her wrists while she is handcuffed. Officer

also stated during an interview with a law enforcement officer his supervisor never checked on him or offered medical attention after the incident. Officer's statements about the use of force encounter were also untruthful.

III. DOCUMENTARY AND TESTIMONIAL EVIDENCE

A. Documentary Evidence

The following documentation was accepted into evidence at the February 20, 2024, hearing and made part of the record:

Council Exhibit Number 1: Notice of Certification Misconduct Allegation; Personnel Change in Status Report (Notification of Separation Due to Misconduct); Request for Contested Case Hearing; Notice of Contested Case Hearing;

State's Exhibit Number 1A: Body Cam Video-Officer Sanchez

State's Exhibit Number 1B: Body Cam Video- Officer Brown

State's Exhibit Number 1C: Interview with Omar Brown

Respondent's Exhibit Number 1: Victim Information Sheet

Respondent's Exhibit Number 2: Victim's Information Sheet

Respondent's Exhibit Number 3: Booking Report

Respondent's Exhibit Number 4: Phone Records

Respondent's Exhibit Number 5: BlueTeam Chain Routings

State's Exhibit 1A:

Officer Sanchez's body camera footage shows the interaction between Brown and a female subject. Sanchez is speaking with the subject about what she should do, and the subject appears to listen to the information. (0:04:15-0:04:36) Brown attempts to give the subject her items and subject moves past Brown towards the porch where the complainant is seated. (0:04:40-0:04:45) The complainant is heard "don't come on the porch." (0:04:46-0:04:47) Brown grabs the subject's arm to stop her from getting on the porch and is shoved back by the subject. (0:04:47-0:04:55) Sanchez is able to grab the subject and then the view shifts to Brown being swung into the side of the house. (0:04:56-0:04:59) Brown is able to force subject to the ground while Sanchez handcuffs the subject. (0:05:05-0:05:36) Brown tries to get the subject to roll over and when that is unsuccessful pulls subject up by the link in the handcuffs and Sanchez's hand reaches out to grab under her arm. (0:05:43-0:05:47).

State's Exhibit 1B:

Officer Brown's video shows his interaction with the subject and complainant. Complainant wants the subject to leave, and Brown is handed subject's items. (0:06:05-0:06:12) Brown attempts to hand the items to the subject but subject refuses it. (0:06:20- 0:06:23) Subject moves around Brown and tries to go on the porch and Brown pulls her back and is shoved back by subject. (0:06:24-0:06:34) Sanchez is able to restrain the subject and Brown's hands move toward the subject's throat. (0:06:34-0:06:38) Brown forces the subject to the ground and Sanchez is able to handcuff the subject. (0:06:43-0:07:11) Brown attempts to get the subject to roll over and

Sanchez is heard saying multiple times “I got her.” (0:07:22-0:07: 26) Brown pulls the subject by the handcuff link to get her to her feet. (0:07:24-0:07:28)

State's Exhibit Number 1C:

Ledford interviewed Brown regarding his injuries from the altercation and the use of force during the incident. Brown was asked multiple times if anyone, including Lizarazo, offered him any medical attention. Brown denies any medical attention was offered by Sgt. Lizarazo. (0:08:22-0:08:24) (0:08:42-0:08:56) Brown maintained no medical assistance and Sgt. Lizarazo showed “zero interest” in his injuries. (0:56:54-0:58:27) At one point, Ledford asks Brown specific questions about Brown’s interaction with Sgt. Lizarazo.

Ledford: So, he did not ask you, how severe was the injury on your leg?

Brown: No, sir

Ledford: He didn’t ask you if your leg was bleeding?

Brown: No, sir.

Ledford: He didn’t ask you to go to the bathroom and pull down your pants to check your leg?

Brown: 100% no sir. Absolutely no sir.

(0:59:20-0:59:40).

Brown acknowledges he went for subjects’ upper body and neck area but did so to get to the back of her neck to force her down. (0:14:33-0:14:47) (0:15:37-0:15:43) When Sanchez has one of her arms detained, she is not exhibiting any force in that moment but is still yelling and cursing at Brown. (0:15:40-0:16:31)

Respondent’s Exhibit Number 1:

Officer Sanchez’s victim information sheet involving the subject.

Respondent’s Exhibit Number 2:

Brown’s victim information sheet involving the subject.

Respondent’s Exhibit Number 3:

NCPD booking report shown subject showing two charges of Assault and Battery in the 3rd degree.

Respondent’s Exhibit Number 4:

Brown’s phone records showing incoming and outgoing calls from August 8th- August 10th.

Multiple incoming calls from Sgt. Lizarazo and outgoing calls to Sgt. Lizarazo from Brown.

Respondent’s Exhibit Number 5: BlueTeam Chain Routings:

Shows the history and the request for an investigation into the team.

B. Testimonial Evidence

The following testimony was accepted into evidence at the February 20, 2024, hearing and made part of the record:

1. Testimony of Michael A. Sanchez
2. Testimony of Diego Lizarazo
3. Testimony of Jeremy Ledford

Testimony of Michael A. Sanchez:

Sanchez has been with the City of North Charleston for 12 years as a police officer and was with another agency for 6 years before joining North Charleston. Sanchez went through the South Carolina Criminal Justice Academy and received instructor training on various topics including defensive tactics. The defensive tactics course teaches techniques when dealing with an aggressive prisoner or detainee, whether it be active or passive defense. Sanchez was the lead instructor for the defensive tactics program at the department and maintained the defensive tactics curriculum and made sure everyone stayed proficient. On August 8, 2023, Sanchez was with patrol and he and Omar Brown (Brown) were on the same team. Sanchez and Brown responded to a call about a child custody dispute. The grandmother (complainant) had custody of the child and the mother (subject) wanted to take the child from her. The subject had a “long-standing mental health risk and neglectful.” When Sanchez arrived, Brown had already located the child and separated the parties. Sanchez talked with the subject to see if he could calm her down because she was still agitated. This allowed Brown to speak with the complainant. (Transcript, pp. 15-19)

Brown attempted to hand the subject her belongings that were inside the house when she became irate again and charged toward the porch where the complainant was sitting in what he believed was an attempt to assault the complainant. Brown attempted to get a hold of the subject, and the subject struck him in the chest causing him to stagger backwards. Sanchez was able to grab her arm and was attempting to handcuff her. She was not moving, and her right arm was behind her back and Sanchez was in control. Sanchez attempted to put the other arm behind her back when Brown grabbed her. It looked like Brown went for the subject’s throat and neck area. The subject was able to spin Brown off her causing Sanchez to lose his grip. Brown pinned her to the ground while Sanchez handcuffed her. Brown yanked the subject to her feet by the handcuffs. (Transcript, pp. 19-22)

Sanchez was present when Brown and Sergeant Lizarazo discussed the incident. Sgt. Lizarazo asked Brown if he was okay and if he was sure he did not need to see a doctor. Brown responded he was fine. Sanchez’s body camera footage was accepted into the record as State’s Exhibit 1A. As Sanchez escorted the subject to the car, the subject said Brown was choking her. Brown also had a body worn camera that captured the incident, and it was accepted into the record as State’s Exhibit 1B. (Transcript, pp. 22-30)

Testimony of Diego Lizarazo:

Sergeant Diego Lizarazo (Sgt. Lizarazo) is employed with the North Charleston Police Department and has been there for approximately 14 years. Sgt. Lizarazo was Brown's supervisor at the time of the incident. Sgt. Lizarazo knew about the incident because of what was heard over the radio. Sanchez told Sgt. Lizarazo he may "want to look at the video." Sgt. Lizarazo also spoke with Brown and was told it was just a crazy lady and everything is good. Brown showed him a scratch on his hand and Sgt. Lizarazo asked Brown if everyone was good. Sgt. Lizarazo continued to ask Brown what happened, and Brown said the lady bit him. Sgt. Lizarazo asked the location of the bite, asked him if he needed medical attention, and suggested he go to the bathroom to make sure the lady did not break the skin. He stayed with Brown an additional 30 minutes to finish reports. Brown did not indicate he had to use force on the use of force form. (Transcript, pp. 44- 50)

Later that evening, Sgt. Lizarazo receives a call from the lieutenant about Brown's injuries and indicates Brown was severely injured. The lieutenant tells him Brown said he was never offered medical attention. Sgt. Lizarazo views the footage from Brown's and Sanchez's camera. The video shows Brown is pushed after he tries to stop the subject from accessing the porch. Brown approaches the subject and goes for her neck area, but Sanchez already had the subject in his control. After the subject is restrained, Brown picks her up by the handcuffs and the subject is screaming. (Transcript, pp. 50-57)

Testimony of Jeremy Ledford:

Sergeant Jeremy Ledford (Ledford) is the investigator with the North Charleston Police Department and has been with the Department for 18 years. He is currently assigned to Internal Affairs and was tasked with investigating Brown. As part of the investigation, Ledford watched the body camera footage of Sanchez and Brown and scheduled an interview with Brown, which was recorded. The recording was accepted into evidence as State's Exhibit 1C, Interview with Officer Brown. Ledford asked Brown multiple times throughout the interview if he was offered medical attention by Sgt. Lizarazo and denied anyone offered him medical attention. Ledford also spoke with Sanchez and Sgt. Lizarazo, and both stated medical attention was offered to Brown. Ledford also interviewed Brown about the Use of Force. Brown stated he did not cut off airflow to the suspect but attempted to get his hands behind the suspect's neck to force her to the ground. (Transcript, pp. 85-97)

V. ANALYSIS

The Department was required to prove, by the preponderance of evidence, that Officer engaged in misconduct, as defined in S.C. Code Ann. § 23-23-150, based upon, "[w]illfully making false, misleading, incomplete, deceitful, or incorrect statements to a law enforcement officer, a law enforcement agency, or a representative of the agency, except when required by departmental policy or by the laws of this State" and "[t]he wilful use of excessive force in an objectively unreasonable manner." To prove its allegation against Officer, the evidence presented by the Department must have been such that, after consideration of the entire record in this

matter, one could reasonably conclude Officer intentionally provided a false statement to a law enforcement officer in violation of 23-23-150. The Department must also show Officer used excessive force in an unreasonable manner in violation of 23-1-250(B).

“Preponderance of evidence” is evidence which convinces the fact finder as to its truth. [See, e.g., *Pascoe v. Wilson*, 416 S.C. 628, 640, 788 S.E.2d 686, 693 (2016) citing *Gorecki v. Gorecki*, 387 S.C. 626, 633, 693, S.E.2d 419, 422 (Ct. App. 2010).] Further, a showing of a preponderance of the evidence means, “[t]he greater weight of the evidence, not necessarily established by the greater number of witnesses testifying to a fact but by evidence that has the most convincing force; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other. . . stronger evidence, however slight the edge may be.” [See, “preponderance of evidence”, *Black’s Law Dictionary*, (11th ed. 2019).]

To “misrepresent” may be defined as “to give a false or misleading representation of usually with an intent to deceive or be unfair.” (See, “misrepresent”, *Merriam-Webster Dictionary* online at <https://www.merriam-webster.com/dictionary/misrepresent>) Accordingly, misrepresented information is information which is provided for a false or misleading purpose, usually allied with an intent to deceive the recipient. A “misleading” statement is one that is “deceptive.” (See, <https://www.dictionary.com/browse/misleading>) Similarly, a “deceitful” statement, is one that is “intended to deceive” or is “misleading.” (See, <https://www.dictionary.com/browse/deceitful>) An incomplete statement is one that is “lacking some part.” (See, <https://www.dictionary.com/browse/incomplete>) The term “willful” may be defined as follows:

willful adj. (13c) Voluntary and intentional, but not necessarily malicious. A voluntary act becomes willful, in law, only when it involves conscious wrong or evil purpose on the part of the actor, or at least inexcusable carelessness, whether the act is right or wrong... (See, *Black’s Law Dictionary* (10 ed. 2014)) The Department has met its burden of proving by preponderance of the evidence Officer committed misconduct under South Carolina section 23-23-150.

The Department alleged Officer told a false statement to another law enforcement officer. When Officer and Sanchez arrived at the police station, Officer had some injuries. Officer claimed his supervisor, Lizarazo, never offered him medical attention. However, Lizarazo and Sanchez both stated medical attention was offered to Officer. Lizarazo even testified he told Officer to check his leg in the bathroom to see if any skin was broken. Officer told Sgt. Lizarazo’s superiors; he was not offered medical attention. Officer repeated his statements to Investigator Ledford who is a law enforcement officer. Therefore, Officer intentionally provided a false statement.

Next, the Department alleged Officer violated section 23-1-250(B) by engaging in excessive force which is objectively unreasonable when he moved to grab suspect’s neck and yanked the suspect off the ground by the handcuffs when she was handcuffed behind her back. Section 23-1-250(B) must be read and interpreted in combination with section 23-23-150. Section 23-1-250(B) states the willful use of excessive force in an

objectively unreasonable manner may be considered misconduct. Since physical abuse must be more than excessive force, misconduct under section 23-1-250(B) should be interpreted to be a lesser level of force than physical abuse. There is no definition for what constitutes objectively unreasonable force in the laws of this State; however, it follows that if something is objectively unreasonable it is the opposite of something that is objectively reasonable. Therefore, an officer's use of force that is found not to be objectively reasonable is objectively unreasonable.

After reviewing all the testimony and State's Exhibits 1A and 1B, the evidence supports Officer used excessive force in an objectively unreasonable manner in this instance. The long-standing test in this area of police conduct is asking whether an officer's use of force was objectively reasonable when the totality of the circumstances involved are considered.¹ Here, officers responded to a call about a potential kidnapping, upon arrival the suspect is visibly irritated, and the complainant does not want the subject on the property. When Officer attempts to give the subject her items she is visibly upset and moves past the officer in an attempt to approach the complainant on the porch as the complainant states "don't come over here." Officer grabs the subject to prevent her from potentially assaulting the complainant and is shoved in the process. When Officer recovers, Sanchez already has the subject and is in the process of handcuffing her. Subject does not appear to be moving toward Officer nor resisting Sanchez's attempt to handcuff her. Officer then goes for subject's neck to attempt a takedown. In Waterman v. Batton, 393 F.3d 471, 481 (4th Cir. 2005), the Fourth Circuit held force justified at the beginning of an encounter is not justified even seconds later if the justification for the initial force has been eliminated. Based on the totality of circumstances, the moment Sanchez had the subject in his control and subject was no longer showing physical aggression the need for the high level of force was over. Sanchez was in control of the subject and while the subject was verbally combative with Officer, she did not make any threatening movements towards Sanchez or Officer nor was she resisting Sanchez's efforts to detain her. Therefore, Officer engaged in the use of excessive force in an unreasonable manner which may qualify as misconduct under 23-1-250(B).

RECOMMENDED FINDINGS OF FACT

I recommend the following findings of fact:

1. The allegation of misconduct against Officer in the Notification of Separation Due to Misconduct to the Academy by the Department, is supported by the evidence adduced at the contested case hearing on February 20, 2024;
2. The Department has met its burden of showing by a "preponderance of evidence" that Officer engaged in misconduct by having "willfully made false, misleading, incomplete, deceitful, or incorrect

¹ See, *Graham v. Connor*, 490 U.S. 386, 109 S.Ct. 1865 (1989)

statements to a law enforcement officer except when required by departmental policy or by the laws of the State” as was alleged and reported to the Academy by the Department, as was alleged in the Personnel Change in Status Report (Notification of Separation Due to Misconduct) provided by the Department to the Academy;

3. The Department has met its burden of showing by a “preponderance of evidence” that Officer engaged in misconduct through the excessive use of force in an unreasonable manner, as was alleged in the Personnel Change in Status Report (Notification of Separation Due to Misconduct) provided by the Department to the Academy; and
4. The allegation of misconduct against Officer set forth in the Personnel Change in Status Report (Notification of Separation Due to Misconduct) by the Department should be deemed proven by the preponderance of evidence adduced at the contested case hearing held on February 20, 2024.

RECOMMENDED CONCLUSIONS OF LAW

I recommend the following conclusions of law:

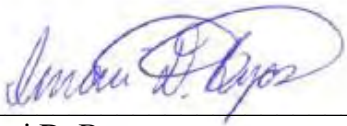
1. Pursuant to S.C. Code Ann. § 23-23-80 (6), the South Carolina Law Enforcement Training Council (“Council”) is authorized, *inter alia*, to “provide for suspension, revocation, or restriction” of law enforcement certification in accordance with the regulations promulgated by the Council;
2. Pursuant to S.C. Code Ann. Regs. 37-025, Council may deny law enforcement certification “based on evidence satisfactory to the Council that the candidate has engaged in misconduct”;
3. A review of the record in this matter discloses that there exists preponderance of evidence that Officer committed misconduct, as defined in S.C. Code Ann. § 23-23-150 (A) (3) (e), by having “willfully made false, misleading, incomplete, deceitful, or incorrect statements to a law enforcement officer except when required by departmental policy or by the laws of the State” as was alleged and reported to the Academy by the Department;
4. A review of the record in this matter discloses that there exists preponderance of evidence that Officer committed misconduct, as defined in S.C. Code Ann. § 23-1-250(B) by engaging in excessive use of force in an unreasonable manner” as was alleged and reported to the Academy by the Department;
5. The misconduct allegation reported by the Department has been proven by the preponderance of evidence and, pursuant to the provisions of S.C. Code Ann. Regs. 37-107, Council may conclude that, based on the evidence adduced at the contested case hearing and applicable statutes and regulations, Officer has committed misconduct.

RECOMMENDED DISPOSITION

Based on the evidence adduced at the contested case hearing of February 20, 2024, it is recommended that the South Carolina Law Enforcement Training Council:

- A. Issue its final agency decision, pursuant to S.C. Code Ann. Regs. 37-107 D. finding that the allegation of misconduct filed against Officer by the Department has been proven by the preponderance of evidence; and
- B. Impose a below sanction as the Council in its discretion deems appropriate pursuant to its authority set forth at S.C. Code Ann. Regs. 37-108 A(1-5)
 - 1. Permanent denial and/or revocation (withdrawal) of certification
 - 2. Denial and/or revocation (withdrawal) of certification for a specified amount of time;
 - 3. Certification granted with probation;
 - 4. Certification granted with any additional requirements deemed just and proper by the Council; and/or
 - 5. Public Reprimand

I SO FIND AND RECOMMEND:



Imani D. Byas
Contested Case Hearing Officer
Date: May 14, 2024



**SOUTH CAROLINA CRIMINAL JUSTICE ACADEMY
REQUEST FOR CONTESTED CASE HEARING**

Office of General Counsel
South Carolina Criminal Justice Academy
5400 Broad River Road
Columbia, South Carolina 29212
cbrumlow@sccja.sc.gov

I, Omar Brown, hereby:



Request a Contested Case Hearing

Please provide the following contact information to assist with prompt scheduling of the hearing and to ensure you receive any related correspondence regarding this matter:

Mailing Address: P.O. Box 442
Goose Creek SC 29445
Phone Number: 843-345-4997 Home/Cell
E-Mail Address: _____

I understand that I am entitled to have an Attorney represent me at the Contested Case Hearing and during all proceedings from this point forward. I further understand that if I hire an Attorney to represent me in these proceedings that Attorney should send written notification of their representation of me to the South Carolina Criminal Justice Academy. Finally, I understand that my request for a contested case hearing must be served on the Academy within three (3) years after receipt of the written notice advising me of my right to a contested case hearing. If I fail to request a contested case, I understand that I will have waived my right to having one. Additionally, the Law Enforcement Training Council will proceed to enter a final agency decision, against me, to deny me a law enforcement certification for specified time period, up to permanent denial.

Respectfully,


Signature

OMAR BROWN
Print Name

12-03-23
Date

3886-2090
Academy ID or last 4 of SSN

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SOUTH CAROLINA CRIMINAL JUSTICE ACADEMY
LETC CASE NUMBER: 2023-CJA-10-21

IN THE MATTER OF THE LAW ENFORCEMENT
CERTIFICATION OF OMAR BROWN

Transcript of Hearing

DATE: Tuesday, February 20, 2024
TIME: 10:00 a.m.
LOCATION: South Carolina Criminal Justice
Academy
5400 Broad River Road
Columbia, South Carolina
REPORTED BY: Robin Dunn
South Carolina Court Reporter

ORIGINAL

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APPEARANCES:

Presiding: Hearing Officer Imani Byas
South Carolina Criminal Justice Academy
Columbia, South Carolina, 29212

Omar Brown
P.O. Box 442
Goose Creek, South Carolina, 29445

For North Charleston Police Department
Carlton Bourne, Esquire
2500 City Hall Lane
North Charleston, South Carolina, 29406

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1 PROCEEDINGS

2 HEARING OFFICER: Good morning. My name is
3 Imani Byas. I'm an attorney employed by the
4 South Carolina Criminal Justice Academy, and was
5 designated by the South Carolina Law Enforcement
6 Training Council in accordance with South Carolina Code
7 Section 23-23-80 to sit as the hearing officer for
8 today's contested case hearing.

9 The hearing today is a certification
10 contested case hearing for Omar Brown. Mr. Brown
11 timely requested today's hearing after being
12 notified by the Criminal Justice Academy that an
13 allegation of misconduct had been filed against him
14 by the North Charleston Police Department. This
15 allegation could affect Mr. Brown's ability to be
16 certified as a law enforcement officer in the
17 State of South Carolina.

18 The purpose of today's hearing is to
19 receive evidence that will allow the Law Enforcement
20 Training Council to render its final agency decision
21 as to whether Mr. Brown is eligible for
22 certification as a law enforcement officer in the
23 State of South Carolina.

24 The case number for today's hearing is
25 2023-CJA-10-21.

1 Mr. Omar Brown represents himself at
2 today's hearing.

3 MR. BROWN: Yes, ma'am.

4 HEARING OFFICER: And the North Charleston
5 Police Department is represented at today's hearing by
6 Mr. Carlton Bourne, an attorney in good standing with
7 the South Carolina Bar.

8 Anything said during the proceeding will
9 be recorded by the court report so that a transcript
10 may be provided to the Law Enforcement Training
11 Council for its review.

12 My role in today's proceeding is as a
13 neutral hearing officer. I have been provided prior
14 to the hearing today a copy of the personnel change
15 in status report, which includes the allegation of
16 misconduct made by the North Charleston Police
17 Department against Mr. Brown, as well as
18 documentation previously provided to Mr. Brown by
19 the Criminal Justice Academy advising him of the
20 misconduct allegation and of the availability of a
21 contested case hearing regarding the allegation.

22 Those documents provide the jurisdictional
23 basis for today's hearing in accordance with
24 Articles I and V of the Criminal Justice Academy
25 Regulations. In accordance with Rule 201 of the

1 South Carolina Rules of Evidence, I will take
2 judicial notice of these documents.

3 That just means that those documents are
4 establishing why we can be here today.

5 I will preside over all procedural aspects
6 of the hearing, ruling on the admissibility of
7 evidence offered by either party and on any
8 objections raised thereto.

9 Because today's hearing has been convened
10 solely to address the specific misconduct allegation
11 made against Mr. Brown by the North Charleston
12 Police Department, any offer of evidence that is
13 extraneous to that allegation will not be
14 entertained.

15 Because this is a contested case within
16 the meaning of the South Carolina Administrative
17 Procedures Act, the South Carolina Rules of Evidence
18 as applicable to proceedings before the Court of
19 Common Pleas will apply to today's hearing, as will
20 the provisions of South Carolina Code Section
21 1-23-330 regarding the evidentiary aspects of
22 contested case hearings.

23 In accordance with the requirements of
24 Regulation 37-105H of Criminal Justice Academy
25 Regulations, evidence offered by the

1 North Charleston Police Department and accepted into
2 evidence will be labeled as a States exhibit and
3 numbered sequentially.

4 And evidence offered by Mr. Brown and
5 accepted into evidence will be labeled as a
6 Respondents exhibit and also numbered sequentially.

7 Evidence entered pursuant to judicial
8 notice will be labeled as a council exhibit.

9 The burden in this contested case rests
10 entirely upon the North Charleston Police Department
11 to prove the allegation of misconduct it has made
12 against Mr. Brown.

13 There is no requirement that Mr. Brown
14 prove that he did not commit the act set forth in
15 the allegation of misconduct. He is presumed at the
16 outset of the hearing not to have committed the
17 alleged misconduct, and that presumption remains
18 until such time as the North Charleston Police
19 Department has met its burden of proof.

20 The procedural order for today's hearing
21 will be as follows. An opening statement on behalf
22 of the department, opening statement on behalf of
23 the officer, or deferral of that opening statement
24 until after the presentation of the case in chief by
25 the department.

1 Presentation of case in chief on behalf of
2 the department, presentation of case in chief on
3 behalf of officer, rebuttal evidence, if any, on
4 behalf of the department, surrebuttal evidence, if
5 any, on behalf of the officer.

6 A closing argument on behalf of the
7 department, and closing argument on behalf of the
8 officer.

9 Each party will have an opportunity to
10 call witnesses and to present evidence. Any person
11 who is called to testify will be required to take an
12 oath to tell the truth. The oath requirement will
13 also apply to Mr. Brown should he testify today.

14 The party calling the witness will conduct
15 a direct examination of the witness. The opposing
16 party will then have the opportunity to
17 cross-examine the witness. Limited redirect and
18 re-cross-examination may be permitted.

19 As hearing officer, I may also elect to
20 ask questions of any witness, to include Mr. Brown,
21 should he provide testimony during the proceeding.

22 After the conclusion of today's hearing, I
23 will draft and provide to the Law Enforcement
24 Training Council my recommendations based on the
25 findings of fact and conclusions of law I deem to be

1 supported by the evidence received at today's
2 hearing. I may also include a recommendation to the
3 Training Council as to appropriate sanction pursuant
4 to Regulation 37-108.

5 My recommendations are not binding on the
6 Training Council, and in making its final agency
7 decision regarding this case, the council is not
8 obligated to accept the recommendations, and it may
9 elect to disregard them. A copy of my findings and
10 recommendations will also be provided to both
11 parties.

12 Either party will have the opportunity in
13 accordance with South Carolina Code
14 Section 23-23-150E to file a motion in opposition to
15 the findings and recommendations within 15 working
16 days of their receipt.

17 The opposing party will have the
18 opportunity in accordance with the same statutory
19 provision to file a response to the motion in
20 opposition within ten days of receipt of the motion
21 in opposition.

22 If both parties agree to receive the
23 recommendations via e-mail, the filing deadlines for
24 both the aforementioned motions will begin to run
25 from the date and time that the e-mail notification

1 is sent by me based on the message timestamp
2 identified by my Outlook e-mail server. A copy will
3 still be sent via mail to the parties.

4 The Training Council may elect to schedule
5 oral arguments on any motion in opposition and any
6 response to the motion in opposition if it deems
7 such argument necessary and will separately notify
8 the parties of the time and location for
9 presentation of any such oral argument.

10 After receiving that documentation and
11 becoming familiar with the facts of this case, the
12 Training Council will vote and issue its final
13 agency decision in writing as to whether Mr. Brown
14 is eligible to be certified as a law enforcement
15 officer in the State of South Carolina.

16 The final agency decision will be provided
17 in writing to both parties by the Training Council
18 as required by South Carolina Code
19 Section 23-23-150E.

20 Should Council's final agency decision be
21 adverse to Mr. Brown, and should he wish to appeal
22 that decision, he may do so in accordance with the
23 procedures set forth in the South Carolina
24 Administrative Procedures Act at South Carolina Code
25 Sections 1-23-380, and 1-23-600D.

1 Should Council's final agency decision be
2 that the allegations of misconduct brought against
3 Mr. Brown have not been proven, all records related
4 to the misconduct allegations will be expunged by
5 the Council within 30 days of the issuance of the
6 final agency decision as required by South Carolina
7 Code Section 23-23-150E.

8 The North Charleston Police Department and
9 Mr. Brown by respectively reporting the allegations
10 of misconduct and by requesting today's contested
11 case hearing, as well as by their presence today,
12 are deemed to have stipulated that today's hearing
13 will be conducted in accordance with the
14 requirements of the South Carolina Administrative
15 Procedures Act as it relates to contested case
16 hearings as set forth in Title I Chapter 23,
17 Article III, of the South Carolina Code of Laws.

18 We will now address the delivery for the
19 findings and recommendations and whether both
20 parties wish to agree to receive my recommendations
21 via electronic mail in lieu of receipt by certified
22 mail return receipt requested as permitted by
23 South Carolina Code Section 23-23-150E.

24 So, I'm still going to send my
25 recommendations via certified mail, but if you would

1 like to receive a copy by e-mail, I can do that as
2 well.

3 So, Mr. Brown.

4 MR. BROWN: I'll wait for the certified mail.
5 That's fine.

6 HEARING OFFICER: Okay.

7 MR. BROWN: Yes, ma'am.

8 HEARING OFFICER: So, since he's declined to
9 received it by e-mail, then both parties will just
10 receive my recommendations via certified mail.

11 MR. BOURNE: May we elect to receive by
12 e-mail, too?

13 HEARING OFFICER: Okay. May I -- may I have
14 your e-mail again?

15 MR. BOURNE: Sure. Cbourne, B-O-U-R-N-E,
16 @northcharleston.org.

17 HEARING OFFICER: Thank you.

18 MR. BOURNE: Thank you.

19 HEARING OFFICER: All right. Finally, the
20 personnel change in status report, the misconduct form
21 which includes the allegations of misconduct reported
22 to the Criminal Justice Academy by the North Charleston
23 Police Department against Mr. Brown, and the
24 documentation provided to Mr. Brown by the Criminal
25 Justice Academy advising of the allegations of

1 misconduct and of the availability of a contested case
2 hearing will be judicially noticed pursuant to my
3 discretion under Rule 201C of the South Carolina Rules
4 of Evidence as records supporting the convening of
5 today's hearing, and will be marked as Council Exhibit
6 No. 1 and made a part of today's record.

7 Council Exhibit No. 1, Personnel
8 Change in Status Report.

9 HEARING OFFICER: Also, I just want to make
10 sure everybody understands. Because I'm going to have
11 to send it my certified mail, so, any deadlines are
12 going to run from receipt of it via certified mail,
13 even if I do send it by e-mail.

14 MR. BOURNE: Yes, ma'am.

15 HEARING OFFICER: Okay. All right. So,
16 before we commence, any party object to the proceeding
17 today?

18 MR. BOURNE: No.

19 MR. BROWN: No.

20 HEARING OFFICER: All right. Are there any
21 preliminary matters that either side would like to
22 bring up?

23 MR. BOURNE: Would the hearing officer like
24 the witnesses to be sequestered?

25 HEARING OFFICER: Yes.

1 MR. BOURNE: Okay.

2 HEARING OFFICER: We can sequester them after
3 opening statements.

4 All right. So, at this time, would the
5 department like to make an opening statement?

6 MR. BOURNE: We will waive opening statement.

7 HEARING OFFICER: Waive opening statements.

8 Mr. Brown, would you like to make an
9 opening statement?

10 MR. BROWN: You said I could defer it until
11 after they present?

12 HEARING OFFICER: After their case in chief,
13 correct.

14 MR. BROWN: Yes, ma'am. I'll wait until that
15 time.

16 HEARING OFFICER: All right. So, at this
17 time, we'll go ahead and sequester the witnesses,
18 except the first witness.

19 MR. BOURNE: Officer Sanchez.

20 (Off-the-record discussion.)

21 Michael Sanchez, being first duly sworn,
22 testified as follows:

23

24

25

1

- - - - -

2

EXAMINATION

3

BY MR. BOURNE:

4

Q State your name for the record.

5

A Michael A. Sanchez.

6

Q And what's your current occupation?

7

A Police officer with the City of

8

North Charleston.

9

Q And how long have you been a police

10

officer with the City of North Charleston?

11

A Twelve years with North Charleston.

12

Q And what did you do prior to that?

13

A I was a police officer with the City of

14

(unintelligible.)

15

Q For how long?

16

A For six years.

17

Q Okay. So, to be a police officer with

18

those two agencies, did you receive certain

19

training?

20

A Yes, I did.

21

Q Will you outline for the hearing officer

22

what that was?

23

A I was trained here by the Criminal Justice

24

Academy and certified as a basic law enforcement

25

officer, class one.

1 Q And -- and since that time, have you
2 received additional training?

3 A Yes. I've received multiple instructor
4 trainings, basic instructor, defensive tactics
5 instructor, speed measuring devices instructor. The
6 list kind of goes on.

7 Q What is instructor for defensive tactics?

8 A It teaches basically the -- the procedures
9 and the -- the techniques in order to combat any
10 kind of form of aggression and dealing with proper
11 procedural handling of a prisoner or a detainee that
12 you're dealing with, whether they're being active
13 aggressive or in passive defense.

14 Q Okay. And what -- what have been your
15 duties with the North Charleston Police Department
16 since you signed on?

17 A I did basic patrol for about a year and a
18 half at first, then went on to doing criminal
19 investigations for ten years, before returning back
20 to uniform patrol.

21 During that time, I was collaterally the
22 lead instructor for the defensive tactics program
23 for the majority of that time, helping produce a
24 curriculum and maintain everyone's level of
25 proficiency in training throughout the time that

1 they were in North Charleston.

2 Q What were your duties on August 8, 2023?

3 A I was a uniform police officer at that
4 time, working the road, answering calls for service
5 and dealing with the like.

6 Q And did you know Omar Brown during that
7 time?

8 A Yes. He was a coworker of mine at the
9 time.

10 Q Were y'all assigned on the same team?

11 A Yes. We were on the same team.

12 Q Okay. Did there come a time on August 8th
13 of last year where you were called to an incident
14 location in North Charleston over a child custody
15 dispute?

16 A Yes.

17 Q And describe for the hearing officer where
18 you went and what you found when you got there.

19 A Went to a call on Forseman Street, if I
20 recall, in reference to a mother claiming that she
21 wanted to take her daughter from her mother, the
22 grandmother of the child, essentially.

23 There had been an ongoing custody issue
24 between the mother and daughter over this -- this
25 other child, where DSS had placed the child in

1 protective custody of the grandmother. The mother
2 is a long-standing mental health risk and
3 neglectful. So, she had not had custody of the
4 child for some time. But every time she'd get out
5 of jail or the hospital, she would end up coming
6 back to the house to try to take the child. And at
7 some point in time she had, was to my understanding,
8 removed that child from the house.

9 As I was coming on scene, Officer Brown
10 had located the child and brought the child back to
11 the house and separated the parties to the best of
12 his ability.

13 I had walked up as the female was still
14 irate and arguing, so, I took her aside to talk her
15 down and see if I could work through the situation
16 while he continued to talk to the main complainant
17 up on the porch and get some more details as to what
18 was going on.

19 Q And did you have much success in, quote,
20 talking her down?

21 A At the time, it felt like we were at least
22 reaching a point where maybe she would just go ahead
23 and take the advice we had both rendered her of,
24 you've got a court hearing tomorrow for custody, so,
25 take up this issue with them. You need to pack up

1 your stuff and leave. It's time to go. And
2 everything was starting to resolve at that point.

3 Q And then did there come a time where she
4 attempted to go back onto the porch of the house?

5 A Yes. About the time that Officer Brown
6 was handing her a bag of her belongings, she became
7 irate and started to charge at the front porch where
8 her mother was. It was at that time that we thought
9 she was probably going to go assault her mother, as
10 she was charging very aggressively up the stairs.

11 Q And what -- who encountered her first, you
12 or Officer Brown?

13 A Officer Brown was the first to encounter
14 her.

15 Q And -- and tell the hearing officer what
16 happened.

17 A So, at that point, he attempted to get a
18 hold of her. She pushed away from him, punching him
19 essentially in the chest. It was kind of a
20 push/punch. As he was kind of below her on the
21 stairs having -- we both kind of reacted at the last
22 second. So, she was about three or four steps up,
23 and he was kind of trailing behind at that point.

24 Q And -- and what happened? Describe the
25 altercation.

1 A So, at that point, she strikes him in the
2 chest, which staggers him back for a moment. I was
3 able to go ahead and grab and -- and detain her for
4 a moment, taking one of her arms behind her back.

5 I was reaching back for my cuffs to go
6 ahead and handcuff her. She had pretty much stopped
7 moving. Her right arm was behind her back. I was
8 in control of that, was about to put the other one
9 on.

10 At that point, Officer Brown reached out
11 and grabbed hold of her. We went to the -- she spun
12 him off, which then pushed him into the side of
13 the -- the -- the home. That movement kind of made
14 me lose my grasp on her. I pursued her, trying to
15 get a hold of her.

16 He then grabbed her by the head, tried to
17 shove her towards the ground. I was still trying to
18 get a hold of the arm to, again, secure her.

19 We go down to the -- the ground, and he's
20 holding her head pinned to essentially the dirt, as
21 I'm starting to get her arm secured, get a handcuff
22 on, pulling the other one off. I get the other one
23 secured.

24 At which point, he's still trying to push
25 her into the ground. I told him that I had her

1 under control. Told he that -- that he wasn't done
2 with her. I yanked -- tried to yank her away.

3 Eventually, he let go, and I was able to
4 pull her off and then walk her to the car and get
5 her into my car and secured in the back of the car.

6 Q How did she get up off the ground?

7 A I think Officer Brown yanked her up,
8 pulled her up by the arms and up on to -- on to her
9 feet.

10 Q By the -- and her hands are handcuffed
11 behind her back during that time?

12 A Yes. Yes.

13 Q At any point did he put his hands around
14 her throat?

15 A It appeared that when -- when -- that very
16 first engagement when I was about to handcuff her
17 the first time, that he reached up for the throat,
18 neck area at that point in time.

19 Q And whenever she was on the ground and her
20 face was down in the dirt, did she indicate she was
21 having trouble breathing?

22 A I don't recall.

23 Q Okay. And whenever Officer Brown assisted
24 her up, did he grab her by the hands -- handcuffs
25 and lift her that way?

1 A Yes.

2 Q Okay. After all was said and done and you
3 got back to the station, did you talk to your
4 supervisor?

5 A Yes, I did.

6 Q Who's your supervisor?

7 A Diego Lizarazo.

8 Q And why did you talk to him?

9 A Well, I went ahead and was notifying him
10 at the time that my body-worn camera was now
11 downloading, and it was able to be reviewed for the
12 sake of that whole encounter, assuming that a
13 BlueTeam report or internal investigation report
14 would need to be filed for the use of force.

15 He then explained to me that he thought
16 that there was really nothing arising out of that
17 incident, that it was his understanding that it was
18 very mild, very easily detained kind of situation,
19 at which point I informed him that, I really do
20 think you need to look at it, if that's what you
21 think is going on. You should look at the video and
22 make a separate assessment.

23 Q From your training as a defensive tactics
24 instructor, did you have concern with
25 Officer Brown's actions?

1 A Yes.

2 Q And tell the hearing officer what your
3 concerns were.

4 A I -- I felt that from a tactical point of
5 view, if a person is now relatively detained, there
6 is no -- no need to reach for the throat, neck area.
7 The officer's priority should be for the other arm.
8 My -- I've got one arm detained. I should be having
9 somebody else support a secondary arm and helping me
10 handcuff this individual.

11 Our goal from the onset of any encounter
12 is to gain full control of the individual and
13 restrain them. So, there was no moment at which
14 point would warrant that kind of action.

15 Further, when we had her fully handcuffed,
16 the further shoving into the ground and -- and
17 pushing her into the dirt felt unnecessary and
18 excessive at that point.

19 And then the way -- the manner of lifting
20 her to her feet was completely against the way we
21 normally do the lifting of a prisoner from the
22 ground due to safety concerns in general for the
23 person's physical safety. That's not the way it's
24 taught. Usually you roll them onto their -- onto
25 their back, onto their butt, and support the arms,

1 support the head, and lift them under their own
2 weight, and they usually can stand up on their own.

3 Q Were you present after-the-fact with
4 Sergeant Lizarazo and Officer Brown when they
5 discussed some of the incident?

6 A Yes. I was in the squad room when we were
7 doing some of the report writing.

8 Q Did you hear Sergeant Lizarazo ask about
9 his medical condition or urge him to get medical
10 treatment, either one?

11 A There was a moment where he had come in
12 the room and asked -- asked him like, are you sure
13 you're okay? Are you sure you don't need to go see
14 a doctor right now or any -- anything right now?

15 And he said, no. I'm -- I'm good. It's
16 nothing. It's fine.

17 Q Okay. The body cam that you wore. Was
18 that active, and did it correctly record?

19 A Yes.

20 Q And have you previously reviewed it?

21 A Yes.

22 MR. BOURNE: And, Madam Hearing Officer, that
23 is in the computer, and we would call that 1A, State
24 1A, in the form of a flash drive. And, at this point,
25 we would ask permission to play that.

1 HEARING OFFICER: Okay. So, it's a flash
2 drive with -- it's just a recording?

3 MR. BOURNE: It's a recording. It's got
4 three separate entries on it. And -- and we'll call
5 this one 1A.

6 HEARING OFFICER: All right. Any objections,
7 Mr. Brown?

8 MR. BROWN: Well, does it have the entire
9 video, both his body -- Officer Sanchez body camera and
10 mine?

11 MR. BOURNE: That's 1B. 1A is
12 Officer Sanchez, 1B is Omar Brown's.

13 MR. BROWN: The entire video?

14 MR. BOURNE: I don't know.

15 HEARING OFFICER: So, do you need a moment to
16 play the video in front of him, because I can step out
17 if he hasn't -- if he hasn't seen video. If you want
18 to play it to see if it has -- because he's asking a
19 question.

20 MR. BOURNE: Okay. I think what we could do
21 is, we could play the beginning and then the end for
22 him, and then -- and then have an answer as to whether
23 that's the entire thing or not.

24 HEARING OFFICER: Okay. So, I can step out
25 while that happens.

1 (A short break transpired.)

2 HEARING OFFICER: So, Mr. Brown, any
3 objection to State's Exhibit 1A?

4 MR. BROWN: No, ma'am.

5 HEARING OFFICER: Okay. So, State's Exhibit
6 1A will be accepted into the record as Sanchez's
7 body-worn camera.

8 State's Exhibit 1A, Sanchez's
9 Body-worn camera.

10 MR. BOURNE: Yes, ma'am. Permission to play
11 that now.

12 (Video played.)

13 BY MR. BOURNE:

14 Q Officer Sanchez, is this your body camera?

15 A Yes.

16 Q And is this the beginning of your arrival
17 at the scene?

18 A Yes.

19 Q And will you outline for the hearing
20 officer what you're -- what we're looking at?

21 A Right now you're looking at the residence
22 that we were called to. This is the house on
23 Forseman. Officer Brown was there on the left, and
24 the female that we are -- that later becomes our
25 arrestee is the subject on the right.

1 (Video played.)

2 BY MR. BOURNE:

3 Q And, Officer Sanchez, do you continue to
4 talk to her for three or four seconds --

5 A Yeah.

6 Q -- three or four minutes until the
7 incident happens?

8 A Yes.

9 (Video played.)

10 BY MR. BOURNE:

11 Q Is that the incident in question?

12 A Yes. Yes.

13 Q All right. And -- and, if you would, just
14 explain to the hearing officer what you saw that was
15 concerning to you.

16 A Again, the -- it's hard to see at that
17 angle, but there's the point where I have her --
18 when she initially shoves him off, and I have her
19 pretty much held by -- by one hand, and she's not
20 doing anything, she's just standing there, at which
21 point he lunches at her, again, but not to grab hold
22 of the arm, which was what I was kind of expecting
23 him to do, was, come over and help me secure her.
24 Which is when she spins him off, pushes him into the
25 side of the building, and we go to the ground.

1 And then that final part where we've got
2 her handcuffed, and we're still continuing to push
3 her into the ground, seemingly for no reason, you
4 know, demanding that she roll over, but we've got
5 her already on her knees. We can just stand her up
6 from here and go. But we're going to keep pushing
7 her all the way into a prone out position and then
8 yank her up by her handcuffs. It didn't -- felt
9 unnecessary to go that far.

10 Q And at the end when she's getting in the
11 car, did she -- did she say that he was choking her?

12 A Yes.

13 Q Okay. And Officer Brown also had a body
14 cam at that time?

15 A Yes, he did.

16 Q And did it function as designed?

17 A Yes.

18 Q And did it record the incident?

19 A Yes.

20 MR. BOURNE: All right. And, now, at this
21 time, we'd ask to play 1B -- officer to admit 1B and
22 offer to play it.

23 HEARING OFFICER: Any objection, Mr. Brown?

24 MR. BROWN: No, ma'am.

25 HEARING OFFICER: So, State's Exhibit 1B is

1 accepted as Officer Brown's body worn camera?

2 MR. BOURNE: Yes, ma'am.

3 State's Exhibit 1B,

4 Officer Brown's Body Camera.

5 (Video played.)

6 BY MR. BOURNE:

7 Q Officer Sanchez, had you arrived at the
8 scene yet?

9 A According to what I just heard on the
10 radio, that would be about when I arrived.

11 Q Okay. So, Officer Brown encountered her
12 first, and she was down the road with the child?

13 A Yes.

14 Q And then he retrieved the child and
15 returned her to the house.

16 A Yes.

17 (Video played.)

18 BY MR. BOURNE:

19 Q Officer Sanchez, did that accurately
20 capture what happened?

21 A Yes.

22 Q Okay. Did you attempt to intervene
23 whenever you saw what you considered to be improper?

24 A Yes.

25 Q And -- and what did you do?

1 A I was trying to, one, tell him to just
2 stop, that I got her at this point, and try to pull
3 her up to her feet by the arm like kind of supposed
4 to do.

5 Q With regard to the use of force policy of
6 North Charleston or Academy training, do defensive
7 tactics allow the hands to be on the throat?

8 A No.

9 Q How about, do they allow lifting someone
10 up by the handcuffs?

11 A No.

12 MR. BOURNE: That's all I have.

13 HEARING OFFICER: Mr. Brown, do you have any
14 questions for this witness?

15 MR. BROWN: Yes, ma'am.

16 BY MR. BROWN:

17 Q Officer Sanchez, were you injured during
18 this altercation?

19 A Yes.

20 Q Were you struck by the suspect at all
21 during the altercation?

22 A No.

23 Q Were you pushed by her or kicked or hit?

24 A No.

25 Q So, you were not assaulted.

1 A No.

2 Q You filled out a victim information sheet
3 making yourself as a victim in your handwriting.
4 Are you familiar with that sheet?

5 A Yes.

6 MR. BROWN: So, I would like to have this
7 entered into the record.

8 BY MR. BROWN:

9 Q So, you filled out a victim information
10 sheet, but you said you weren't a victim.

11 A I was injured in the struggle with her.

12 Q Okay. You said you were not -- you said
13 you were not struck, pushed, or anything by the
14 suspect. That's what you just said.

15 A Yes.

16 Q Then why did you fill out a victim sheet
17 making herself a victim in which she was charged
18 with assaulting you?

19 A Because, initially, we were talking about
20 her doing a resisting arrest charge. And during
21 that struggle, I did end up getting a laceration to
22 the wrist, which I still have a scar -- or to the
23 hand, which I still have a scar from. And that
24 would have been an officer injury as a result of
25 resisting arrest.

1 Q Okay. She wasn't charged with resisting
2 arrested. You charged her with assaulting you when
3 you sit before this council and say she never
4 assaulted you.

5 A I did not charge her.

6 Q Okay. You filled out a victim sheet,
7 making yourself a victim of an assault, because it
8 clearly says assault. But, yet, you were not
9 assaulted. Is that what you're taught at the
10 Academy?

11 A I filled out a victim sheet.

12 Q Making -- you filled it out. You're an
13 officer. You filled out a victim information sheet
14 making yourself a victim of an assault, but, yet,
15 you sit here today and say you were never assaulted.

16 A I did --

17 Q Is that what you're --

18 HEARING OFFICER: Let him -- let him --

19 MR. BROWN: Yes, ma'am.

20 HEARING OFFICER: Like when you ask the
21 question, give him an opportunity to --

22 MR. BROWN: Yes.

23 THE WITNESS: So, yes. I did fill out the
24 sheet for you during the assault, because you wanted to
25 charge her with assault and battery. My argument at

1 the time was that it needed to be a resisting arrest
2 charge.

3 The counter to that argument was that she
4 was never told she was under arrest, at which point
5 you said we were charging her with assault and
6 battery for having injured both myself and yourself
7 at that time.

8 BY MR. BROWN:

9 Q And you filled out a victim information
10 sheet for me, because I, in fact, was assaulted.
11 Correct?

12 A Yes. That is what you told me to do, is,
13 fill out victim information sheets for both. That's
14 part of the booking process for booking somebody for
15 a charge. They have to have something -- she -- you
16 wanted to charge her with two counts of assault.
17 So, as we have always done procedurally, I fill
18 out -- help you fill out the paperwork for the
19 charges that you were going to bring forward.

20 Q So, you would fill out paperwork on a
21 false charge. Is that your standard procedure?

22 A No.

23 MR. BROWN: This is the booking sheet when he
24 was at the jail, and we can have that entered into the
25 record.

1 BY MR. BROWN:

2 Q So, at the jail where you had time to --

3 HEARING OFFICER: So, what -- what do we have
4 here?

5 MR. BROWN: That's the booking sheet from the
6 jail and the two victim sheets.

7 HEARING OFFICER: Starting -- starting with
8 the first sheet. So, is that a respondent's exhibit?

9 MR. BROWN: Yes, ma'am.

10 HEARING OFFICER: Do you have any objections?

11 MR. BOURNE: No objection.

12 HEARING OFFICER: All right. And then we
13 have another one. Is that B?

14 MR. BOURNE: That's B -- 2. And I have no
15 objection to that.

16 HEARING OFFICER: And then now you're asking
17 to enter that?

18 MR. BROWN: Yes, please.

19 MR. BOURNE: I just need to inquire as to, if
20 there's a foundation from this witness.

21 HEARING OFFICER: Okay. That's fine.

22 MR. BOURNE: If I may do that now?

23 HEARING OFFICER: Okay.

24 MR. BOURNE: Did you fill this out?

25 THE WITNESS: Let me see it. Yes.

1 MR. BOURNE: No objection.

2 HEARING OFFICER: No objection. All right.

3 So, that will be --

4 THE WITNESS: With the caveat -- because I
5 just looked at it. I filled it out except for the
6 charge.

7 MR. BOURNE: I don't object.

8 HEARING OFFICER: No objection. Okay. So,
9 accepted into the record as Respondent's Exhibit 1, 2,
10 and now 3.

11 Respondent's Exhibit No. 1,

12 Victim Information Sheet.

13 Respondent's Exhibit No. 2,

14 Victim Information Sheet.

15 Respondent's Exhibit No. 3,

16 Booking Report.

17 BY MR. BROWN:

18 Q Officer Sanchez, was this call dispatched
19 as a parental kidnapping -- or as a kidnapping?

20 A Something like that.

21 Q Which required the use of lights and
22 sirens and expedited call. Would that be correct?

23 A I believe so.

24 Q If a person was injured, would you call
25 for EMS if your prisoner was injured?

1 A If the prisoner was injured?

2 Q Yes.

3 A Yes.

4 Q Is it your departmental policy that you
5 would also call for EMS for an injured prisoner?

6 A Yes.

7 Q Do you assert or have you testified that
8 her head was repeatedly slammed into the ground?

9 A I said that it was pushed into the dirt.

10 Q Okay. So, you're saying it was never
11 slammed into the ground, because that's what was
12 said in your statement, if I'm correct, that her
13 head was repeatedly slammed into the ground, which
14 caused you pause for concern. Is that true, or is
15 it not true?

16 A I -- I don't know what my exact wording in
17 the statement was, but I know what I said here.

18 Q Okay. We'll find the statement.

19 So, did you call EMS for her?

20 A No.

21 Q If she was choked, would you have called
22 EMS?

23 A If she was saying that she had any
24 injuries --

25 Q If she was choked.

1 A No.

2 Q Okay. You would not call EMS, you said.

3 A If she just said she was choked, that
4 alone wasn't going to merit needing EMS.

5 Q Would the process of choking cut off the
6 airflow?

7 A Yeah.

8 Q Would it cut off the blood flow?

9 A Possibly.

10 Q Would that require EMS?

11 A If there was significant injury, yes.

12 Q Was the suspect ever calm and just
13 complying to every command you gave her?

14 A During the struggle, no.

15 Q Was she calm walking to the car?

16 A Not really.

17 Q Was she calm once you placed her in the
18 car?

19 A No.

20 Q So, it would be safe to say she was never
21 compliant with the directions. Would that be
22 correct?

23 A She was compliant, because she was still
24 walking and doing what I asked her to do, regardless
25 of whether she was being belligerent.

1 Q Did she stop -- did she stop a couple of
2 times, and then you had to say, come on, let's go?

3 A Yeah. But...

4 Q So, her head was not repeatedly slammed
5 into the ground.

6 MR. BOURNE: Objection. Asked and answered.

7 HEARING OFFICER: He answered the question.

8 BY MR. BROWN:

9 Q Okay. Did you ever remove your handcuffs
10 during the initial encounter?

11 A No.

12 Q Okay. So, when you were holding the one
13 arm after the initial assault, did you ever retrieve
14 your handcuffs at that point to begin handcuffing
15 her?

16 A I was in the process of retrieving them.

17 Q Did you reach back to get your handcuffs?

18 A Yes.

19 Q Did you ever take them out?

20 A Never got that far.

21 Q Okay. Have you ever lied under oath?

22 A No.

23 Q Have you ever, I guess, deceived a judge
24 to get an affidavit?

25 A No.

1 Q Were you -- are you facing a federal
2 complaint currently, with that being the charge?

3 A Yes.

4 Q So, did they erroneously charge you?

5 A Yes.

6 Q Okay. Did you fill out an affidavit for a
7 suspect that was not true?

8 A No.

9 Q Did you have the phone records when you
10 filled it out?

11 A Yes. I had some phone records at that
12 time.

13 Q Did you have the ones that you told a
14 judge you had?

15 A No.

16 MR. BROWN: I don't know if they will object,
17 but when it goes directly to credibility, I would like
18 to submit that case into evidence, which is currently
19 in federal court.

20 MR. BOURNE: Can I see it?

21 MR. BROWN: Yes, sir, I will.

22 His saying that he is credible as a
23 witness and makes an allegation that an officer did
24 something wrong, when, yet, he has multiple times
25 deceived a judge in other things, I just think it

1 calls his credibility into question.

2 HEARING OFFICER: Based on what you said, it
3 sounds like it's a pending charge that's happening.
4 So, it hasn't been --

5 MR. BROWN: It's one that he admitted to.

6 MR. BOURNE: Could I see it, please?

7 HEARING OFFICER: Yes. Yes. Please give --

8 MR. BROWN: Yes. I'm coming.

9 HEARING OFFICER: It's not a conviction that
10 we're talking about.

11 MR. BROWN: No, ma'am. It's not a conviction
12 yet, but he has admitted, understand, in deposition and
13 through his counsel that he did make false statements
14 on the affidavit.

15 MR. BOURNE: Madam Hearing Officer, it
16 appears to be a civil complaint --

17 HEARING OFFICER: Okay.

18 MR. BOURNE: -- that is pending, so, we would
19 object.

20 No -- no criminal charge and no -- no
21 finding by a court.

22 HEARING OFFICER: Okay. All right. You
23 mentioned an affidavit.

24 MR. BROWN: Yes, ma'am. An affidavit being a
25 sworn statement, in which case he filled out an

1 affidavit for a search warrant, sworn statement, that
2 was false.

3 HEARING OFFICER: Okay. But that's what the
4 civil proceeding is about?

5 MR. BROWN: Yes, ma'am.

6 HEARING OFFICER: Okay. So, it hasn't been a
7 resolution on that.

8 MR. BROWN: It hasn't been the final
9 disposition, but in the discovery phase, which he does
10 acknowledge that he did commit the offense of filing a
11 false affidavit.

12 HEARING OFFICER: Okay. So --

13 MR. BROWN: And I think that goes directly to
14 credibility.

15 HEARING OFFICER: Okay. So, I'm not going to
16 accept that into evidence. However, you can question
17 him about the situation that occurred there.

18 MR. BROWN: Okay.

19 HEARING OFFICER: Okay. Which, you've
20 already asked him questions about it.

21 MR. BROWN: Yes.

22 HEARING OFFICER: We can move on from that.

23 MR. BROWN: I have no further questions.

24 HEARING OFFICER: Any redirect?

25 BY MR. BOURNE:

1 Q You haven't been charge federally for any
2 crime, have you?

3 A No.

4 Q And this is pending litigation; is that
5 correct?

6 A Yes.

7 Q Were you deposed?

8 A Yes.

9 Q Okay. So, no judge has ruled on whether
10 you made an incorrect statement or a false
11 statement.

12 A That's right.

13 MR. BOURNE: Okay. That's all I have.
14 Nothing else.

15 HEARING OFFICER: Okay. Mr. Sanchez, so,
16 during your encounter with the woman, so, the subject,
17 I'll refer to her as that, you mentioned -- could you
18 please explain to me about her head being in the dirt?
19 Could you please go over that, please?

20 THE WITNESS: There's a portion of that fight
21 where she's kind of bent over. Her face is -- he's
22 holding her by the back of the neck, I think you can
23 see a portion of that, and pushing her down towards the
24 ground. Her face is basically in contact with the dirt
25 during that whole time.

1 And he's holding her there while we're
2 initially handcuffing. But during that whole
3 segment, he's pushing her in repeatedly while she's
4 just holding still essentially. She's pushing --
5 you know, pushing and pulling, but she's no longer
6 trying to rise back up. We have her in handcuffs,
7 and that's what I'm -- I'm indicating, that part of
8 the -- the struggle.

9 HEARING OFFICER: Okay. And prior to that
10 taking place, you said that she did like push, punch
11 him?

12 THE WITNESS: Yes.

13 HEARING OFFICER: Okay. And then that's when
14 pretty much you guys had struggled to her arrest her?

15 THE WITNESS: Yes.

16 HEARING OFFICER: All right. Whose handcuffs
17 was used to arrest her? Was it yours?

18 THE WITNESS: Mine, yes.

19 HEARING OFFICER: It was your handcuffs?

20 THE WITNESS: Yes.

21 HEARING OFFICER: All right. I don't have
22 any further questions.

23 Do you foresee having to recall this
24 witness?

25 MR. BOURNE: No, ma'am.

1 HEARING OFFICER: All right. So, at this
2 time, you are free to go, or you can just wait until
3 the rest of the proceeding is done. Thank you for your
4 time today.

5 MR. BOURNE: Call Sergeant Lizarazo.

6 Diego Lizarazo, being first duly sworn,
7 testified as follows:

8 BY MR. BOURNE:

9 Q Please state your name for the record.

10 A Diego Lizarazo.

11 Q And spell your name, please.

12 A First name is D-I-E-G-O. Last name is
13 L-I-Z-A-R-A-Z-O.

14 Q And where are you employed?

15 A North Charleston Police.

16 Q How long?

17 A November will be 14 years.

18 Q And what -- what is your rank?

19 A Sergeant.

20 Q And what are your current duties?

21 A I supervise south days, team 2.

22 Q In August of 2023, were those your duties
23 as well?

24 A Correct.

25 Q And was Officer Brown under your charge on

1 August 8th of 2023?

2 A Correct.

3 Q In your unit?

4 A Correct. Yes, sir.

5 Q Okay. Did you become aware of an incident
6 that arose after an arrest?

7 A I did.

8 Q Okay. And how did that come to your
9 attention?

10 A I was in the office with the lieutenant.
11 Transmissions across the radio were, the badge
12 number -- I don't remember the badge number at this
13 time. But it was 10-10, one in custody, we're 10-4.
14 Any time you hear 10-10, that's, we're fighting.
15 But since it was followed up by, we're 10-4, one in
16 custody, then dispatch --

17 Q 10-4 means what?

18 A I'm okay. We're -- we're okay.

19 Q Okay.

20 A Dispatch raised me on the radio and said
21 ADD, copy, my badge number is (unintelligible,)
22 acknowledge. I copied. I looked at the lieutenant,
23 he copied. I keyed up and said, you guys 10-4?

24 And then they replied and said, yes, sir,
25 we're 10-4.

1 Q Did Officer Sanchez come in and bring
2 anything to your attention?

3 A Yes.

4 Q What was that?

5 A Officer Sanchez told me -- I asked him,
6 you guys were good out there?

7 He said, yes, sir, I was. And he said,
8 you might want to look at that video.

9 Q Okay. Did you talk to Officer Brown that
10 day?

11 A Yes.

12 Q And tell the hearing officer what
13 happened, your interaction from when he returned to
14 the station until the end of the day.

15 A Sure. Yes, sir. He came into the
16 station. I was already at the station. This was
17 about 2:00 o'clock in the afternoon, I would say,
18 towards the end of our shift, shift change. And he
19 comes in, and I say, hey, you guys good?

20 And then he said, yes, sir, we're good.

21 And he -- he said pretty much, you know,
22 crazy lady out there, you know, whatnot.

23 And I said, all right. What happened with
24 the 10-10?

25 He said, no. We're good.

1 He showed me his hand. There was a
2 scratch on his hand. And then --

3 Q He who?

4 A Officer Brown.

5 Q Okay.

6 A Showed me his hand, and there was a
7 scratch on his hand. And I said, you guys good?

8 He said, yeah, we're fine.

9 He had about two or three reports that he
10 hadn't completed. So, we went into the computer
11 room, where he sat down, and I asked him, I said,
12 what happened, again.

13 He told me there was a lady that was --
14 became resisting. And he made the comment of, I
15 think she bit me.

16 And then I said, okay. Where did she bite
17 you?

18 And then he said, I think she bit me right
19 here on my leg.

20 And he pointed to his left leg.

21 And I said, all right.

22 The hand was a scratch. He said, she
23 scratched -- she scratched me on my hand and bit me
24 on my left leg.

25 And I said all right. Went in there, and

1 I said, do you need EMS?

2 Q Do you need what?

3 A EMS. And -- well, prior to that, I
4 said -- this is where I do my supervisor duties. Do
5 you need EMS? Do you need medical attention? Do
6 you need me to take you to the hospital?

7 And he said, no, I'm good.

8 And he reached in his pocket. And I said,
9 are you bleeding?

10 He reached in his pocket and came out with
11 his hand and looked at his hand, and he said, no.
12 I'm good. I'll be alright.

13 And I said, well, did it break the skin?
14 Why don't you go -- at least go into the bathroom
15 and see if it broke the skin.

16 And he said, no. I'll be alright. I'm
17 not too worried about it.

18 And I said, all right. No problem.

19 I sat down with him and helped him knock
20 out his reports for the next maybe 30 plus minutes.
21 He had, I think it was the arrest report and two
22 other reports that he needed to do. And I did the
23 top part of the reports while he worked on the
24 charges and the narratives.

25 Q Was one a use of force form?

1 A Correct.

2 Q Okay. And did he indicate that he had
3 used force?

4 A No. No, sir.

5 Q Okay. Please continue your story then.
6 After he finished the forms, what happened?

7 A So, he finished the forms. We do the
8 paperwork, approve the reports.

9 That's when Officer Sanchez -- we run into
10 each other. And -- because he split up.
11 Officer Brown came to the station to do the
12 paperwork. My interaction was with Officer Brown
13 before he was with Officer Sanchez, because
14 Officer Sanchez took the detainee to the County,
15 while Officer Brown came to the station to do
16 paperwork.

17 Once he finished the paperwork, we split
18 up. That's when I ran into Officer Sanchez. And
19 Officer Sanchez was like, you need to look at that.
20 You need to watch the video on that.

21 And I said, you alright?

22 He said, I'm good. He said, I'm good.

23 I think Officer Sanchez told me he had a
24 scratch on his hand as well from a brief struggle.
25 But then after that, I said all right. No problem.

1 I said, your body camera was on?

2 He said, yes, sir.

3 So, we brought Brown's body camera on.

4 So, I believe so. So.

5 Q Did you have any other interaction with
6 Officer Brown that day?

7 A Later -- way later on that evening.

8 Q Okay. So, after you finished the reports,
9 what did he do?

10 A So, I approved the reports. The packet
11 was done. He goes and drops off the paperwork.
12 Like, I sit back and do my supervisor duties, and I
13 close the day out by approving the reports that my
14 guys have and all that.

15 I'm at home. I want to say this was maybe
16 6:30 in the evening. I'm sitting down eating
17 dinner. And I get a call from the lieutenant. And
18 the lieutenant -- I answer the phone. I said, yes,
19 sir.

20 And then he said -- the lieutenant said,
21 hey, were you aware of a fight or something that
22 happened today with Brown where he got bit?

23 And I said, yes, sir, I was.

24 And then he said, what happened with that?

25 And then I said, he said he got bit on the

1 leg during, you know, a struggle with a female that
2 he ended up arresting.

3 And the lieutenant said, well, I just got
4 a call from Brown who says he's at the hospital in
5 the ER, and he's bleeding profusely from his leg.
6 He was severely injured.

7 I remember I stopped, pushed my dinner
8 away, and I said, all right. Well, I offered him
9 medical attention. I -- I offered EMS. I offered
10 if he needed me to take him to the hospital. I told
11 him to go in the bathroom and check his leg, check
12 his pants, take -- you know, put his pants down and
13 check his pants to see if he was bleeding. And
14 short of me taking him in the bathroom and pulling
15 his pants down, I did everything I could have done
16 at the moment. And everything to him was, I'm okay.
17 I'm fine.

18 I told the lieutenant, you know, he even
19 reached in his pocket, pulled his hand out, looked
20 at it, and didn't see any blood. And he said he was
21 fine.

22 And the lieutenant told me, well, he's
23 telling me that you never offered him any of that.

24 And then I said, well, I sat with him for
25 about 30 minutes, helping him knock out his

1 paperwork. So, we -- we -- we -- I was with him.
2 We interacted about it.

3 Q Did there come a time either that day or
4 later on where you attempted to get in touch with
5 Officer Brown and he didn't take your calls, refused
6 to call you back, that kind of thing?

7 A So, the day of the incident, that evening
8 I got the call from the lieutenant, which was what I
9 just described. Right before I hung up with the
10 lieutenant, I told the lieutenant, tomorrow, sir,
11 first thing in the morning after roll call, I want
12 to have a sit-down with Omar, you and I, because now
13 we're going into issues of him lying on me about
14 what I offered him, what I told him, and what he
15 said and didn't say.

16 And the lieutenant said, copy that.

17 The next day -- I didn't call Omar that
18 night at all. I learned that Omar had broken the
19 chain of command that evening by calling the major
20 and the major calling the lieutenant and the
21 lieutenant calling me when he was at the ER.

22 So, I told him, I said, these
23 miscommunications need to be addressed. He can't
24 jump the chain of command under these circumstances.
25 You know, he has to keep me in the loop. And we're

1 going to have that meeting the next morning.

2 Q Any chance you missed his call? Any
3 chance he sent you a text you didn't see?

4 A No, sir. The next morning, I sat with the
5 lieutenant. Omar was brought into the lieutenant's
6 office. And that's when Omar said that he was bit
7 in the hand and bit in the thigh, and that the
8 scratch on his hand was an actual bit mark.

9 I -- I know what bites look like. And I
10 think anybody would know what a bite looked like.
11 And this is a straight line down his hand. Nowhere
12 with -- were there teeth marks or was it oval-shaped
13 or circular shaped or anything to where it would
14 have indicated a bite.

15 So, the meeting kind of didn't go
16 anywhere. Omar got a little upset about it. And we
17 told Omar that day, I said, hey, we need to know
18 what happened, and if we offer you medical
19 assistance -- we have our protocols that we have to
20 follow, that we have to send you to our city doctor,
21 okay, especially if it's some type of exposure.

22 So, 9:00 o'clock you're going, I've got to
23 call Leslie Mitchum, let her know what's going on,
24 and she's going to decide what's going to happen.

25 Q And who is that?

1 A Leslie Mitchum is our risk manager --
2 risk -- risk management officer.

3 Q And what decision would she make or could
4 she make?

5 A Send him to the city doctor to be seen to
6 be treated for a potential on-the-job related
7 injury.

8 Q Did that happen?

9 A Correct. Yes, sir. So, about 9:00 a.m.,
10 I called Leslie. She told me, hey, send him
11 straight to Weissglass, which is our City doctor.

12 And I said, copy that.

13 He went to Weissglass. I called him, and
14 I said, hey, I need you to go to Weissglass.

15 Q Called Omar.

16 A Correct. Yes, sir. I called
17 Officer Brown, and I said, you need to go straight
18 to Weissglass and be seen with his hand and bite.

19 I took a picture earlier that morning of
20 his hand. And from there, he went to -- he went to
21 the doctor, Dr. Weissglass, and I went back to the
22 office, and I told him, I need all these videos to
23 be downloaded so that I can review them.

24 So, while he was with Dr. Weissglass, I'm
25 watching the video. I'm watching Officer Sanchez's

1 video, I'm watching Omar -- Officer Omar's video.

2 And that's -- in the video, we -- I'm able
3 to see the interaction, the -- between him and the
4 suspect and the complainant and Officer Sanchez,
5 support there as secondary. You can clearly tell
6 that Officer Brown was the primary officer, he was
7 the contact officer, and Officer Sanchez was
8 secondary.

9 And the female, the -- the mother tells
10 Officer Brown that she -- she doesn't want her
11 daughter, which was the suspect in this case, to go
12 up on the porch. Okay. But the female is upset.
13 She's being -- she is very disruptive and cursing at
14 the mom. And they're doing a good job mediating
15 that.

16 Well, the -- the female, I think, attempts
17 to go up the stairs to assault the mom or to let --
18 tell her last words, whatever it would have been.
19 And Officer Brown grabs her and blocks her from
20 going upstairs, because the mother says -- the
21 complainant says, hey, I don't want her in my house.

22 So, he stops her. She turns around and
23 pushes him. And you can see that on body camera
24 where he gets struck. He takes maybe a couple steps
25 back from when he's pushed back. And then he

1 engages her, grabs her. And on video, you can see
2 where he grabs her by the neck and pulls her away.

3 Q Did that cause you concern?

4 A Yes.

5 Q Why is that?

6 A She was -- after the assault on the second
7 part of the video, she had already -- she was
8 already compliant with Officer Sanchez. So, she
9 pushed him, and then immediately it's kind of -- you
10 can see Officer Sanchez step in to detain her and
11 restrain her, in which she is compliant. She has
12 one hand behind her back, and then the other hand is
13 coming back.

14 And that's when Officer Brown approaches
15 her again a second -- a second time after being
16 struck, grabs her by the neck, swings her around.
17 And in that swing maneuver where he's ripping her
18 out of Sanchez's control, she kind of tumbles around
19 it and ends up pushing him again for a second time,
20 where -- where I believe he lost his balance and
21 goes into some brush, and then lands on -- his back
22 lands on the wall of the house.

23 From there, he reengages again, grabs her,
24 puts her on the ground, pins her down, and there
25 were some words that were exchanged there about, you

1 know, her wanting to play games and he's not going
2 to play games and -- I believe along those -- that
3 content.

4 He grabs her, he restrains her, and then
5 he -- I believe Sanchez detains her then. When he's
6 on the ground, she's not resisting, but you can see
7 where he's pushing her down on -- on the ground.
8 And then Officer Sanchez is telling him, Omar, I got
9 it. Omar, I got her.

10 And then he yells at Officer Sanchez and
11 says, you're not the one that got hit or spit, I
12 think it was.

13 Q Did she get handcuffed?

14 A Yes.

15 Q Behind her back?

16 A Yes.

17 Q And then how did Officer Brown pick her
18 up?

19 A By the handcuffs. He was slinging her up
20 by the handcuffs. And she's -- you know, she's
21 screaming at this point.

22 Q Is that within policy or not?

23 A No.

24 Q Let's shift back to after you sent him to
25 Dr. Weissglass. Is that how you say it, Weissglass?

1 A Correct. Yes, sir.

2 Q Did you try to get in touch with him after
3 he saw Dr. Weissglass on August 9th?

4 A Yes, sir.

5 Q And, so, did you have any luck?

6 A No, sir. So, I called -- it was about
7 9:30-ish, between the time he went to
8 Dr. Weissglass, I believe. I'm not too certain on
9 the times. But I called him, because I needed to
10 fill out paperwork for the first aid report. And I
11 also needed to fill out paperwork for what I seen on
12 the video with the excessive use of force and all
13 that stuff.

14 And his personal data sheet where he fills
15 out with his name and personal information was
16 inaccurate. On his birthday part, he had only put
17 the month and the year, I believe. And on the
18 address part, he had put a PO Box. So, I called
19 him, one, to get a status on how he was and if he
20 was still there, and, two, to get that information
21 from him, because I needed to put that into the
22 system.

23 Q And did you reach -- initially, did you
24 reach him?

25 A No, sir.

1 Q Okay. What did you do?

2 A I believe I texted him, and then I called
3 him again. And it was by -- probably by the second
4 time -- second or third time that I called him, he
5 answered, my phone's been ringing all day with you.
6 What -- what -- how can I help you? What do you
7 want?

8 And then I said, well -- and I told him, I
9 said, well, two things. Are you still with
10 Dr. Weissglass?

11 And he said, yes, sir.

12 And then I said, the other thing is, if
13 you would have filled out your personal data sheet
14 correctly, I wouldn't be bothering you. And I said,
15 now, you're on duty. If I'm calling you to get a
16 status on you and you're not replying and all that,
17 we can have issues, you know. And I said, what's
18 your date of birth, and what's your -- the address.

19 And he -- he gave me that. And then that
20 was it. I hung up.

21 After I hung up, he followed up with a
22 text message completely challenging me, saying that
23 I'm not going to text him -- I'm not going to call
24 him and be rude to him and disrespectful and --
25 and -- and -- and then I texted back, and I said,

1 when you're done, come see me. And I didn't get a
2 call back. I didn't get a text back then.

3 From that moment on, I called him about
4 two or three more times, because at this point he
5 was not reachable. He wasn't anywhere. So, to try
6 to find the status of his condition, I went ahead
7 and called the City -- the -- the doctor's office.
8 And that's where I learned that he had already been
9 cleared and checked out, I believe, around
10 12:00 o'clock, around that time.

11 When I initially spoke to him -- and I'm
12 not sure of the times. I don't have it in front of
13 me. But when I had initially spoke to him, it was
14 already past that time that he was cleared, where he
15 told me that he was still there.

16 I spoke with the lieutenant about it, and
17 I told the lieutenant, hey, I can't get a hold of
18 Omar. We're coming up on almost 3:00 o'clock.
19 We're closing the day out. He went to the doctor to
20 get treated for the scratch and the potential bite
21 on his leg. And I haven't heard from him since. I
22 talked to him once about the whole address and the
23 whole date of birth situation. He was nasty about
24 it. But after that, I haven't heard from him.

25 So, then, I believe, the lieutenant

1 reached out to him, and they -- I'm not sure if it
2 was the first or second attempt, but they got in
3 contact. And the lieutenant just ended up -- he
4 ended up telling the lieutenant that the doctor told
5 him to go get treated somewhere -- or not treated,
6 but go -- go get some medicine somewhere, where he
7 had told us that morning when he went to the ER the
8 night before that he had to get some medicine or --
9 we didn't really know exactly what it was. He
10 wouldn't really tell us exactly what he was --

11 Q Is this while he's on duty?

12 A Correct.

13 Q And does -- you find out later he leaves
14 the jurisdiction?

15 A Yes. So, then, that same day when I'm
16 talking to the lieutenant, he ends up sending me a
17 text message with a picture from a Publix pharmacy
18 outside the jurisdiction. And that Publix had a
19 timestamp on it, I'm not sure, but that's how I was
20 able to determine that when he told me that was with
21 the doctor, he wasn't really with the doctor. He
22 was, in fact, outside the jurisdiction, based on
23 that receipt that he sent. But then after that, I
24 never heard from him. I never talked to him.

25 Q Anything else you think the hearing

1 officer should know?

2 A No, sir.

3 MR. BOURNE: Okay. That's all I have.

4 HEARING OFFICER: Mr. Lizarazo.

5 THE WITNESS: Yes. Yes, ma'am.

6 HEARING OFFICER: So, you had the opportunity
7 to talk with Mr. Brown, right?

8 THE WITNESS: At what point?

9 HEARING OFFICER: After the altercation, the
10 use of force.

11 THE WITNESS: We never talked about the use
12 of force.

13 HEARING OFFICER: Okay. But you did talk
14 about the injuries, though.

15 THE WITNESS: Yes.

16 HEARING OFFICER: Okay. Did he tell you when
17 he was bitten?

18 THE WITNESS: No, ma'am.

19 HEARING OFFICER: No?

20 THE WITNESS: No.

21 HEARING OFFICER: Okay. All right. And then
22 you also mentioned that Mr. Sanchez showed you an
23 injury?

24 THE WITNESS: Right.

25 HEARING OFFICER: Okay. And did he mention

1 how he sustained that injury?

2 THE WITNESS: In the struggle.

3 HEARING OFFICER: In the struggle.

4 THE WITNESS: It -- it would have been in the
5 struggle.

6 HEARING OFFICER: Okay.

7 THE WITNESS: But, no. He -- he never told
8 me when -- when he was bitten. When I reviewed the
9 body camera, nowhere near in that body camera was this
10 lady's mouth near that part of his leg where he said he
11 was bitten. His hand was never near her mouth, near
12 her face, near her -- you know, anywhere where he would
13 have gotten bit.

14 HEARING OFFICER: Okay. All right. And then
15 I just want to clarify some timelines here. So, you
16 said that he sent -- you sent him to the doctor around
17 9:00 o'clock?

18 THE WITNESS: Yes, ma'am. About 9:30, 9:40
19 possibly.

20 HEARING OFFICER: Okay. And then you called
21 him that afternoon?

22 THE WITNESS: Right. I called him about 12,
23 I think it was.

24 HEARING OFFICER: Around 12.

25 THE WITNESS: Right.

1 HEARING OFFICER: Okay.

2 THE WITNESS: About the date of birth and all
3 that stuff.

4 HEARING OFFICER: Okay. And then you were
5 able to contact him again at 3 -- around 3:00 o'clock?

6 THE WITNESS: He contacted me by sending me
7 that image, where he was at.

8 HEARING OFFICER: Okay. And it was a
9 receipt.

10 THE WITNESS: Correct.

11 HEARING OFFICER: Okay. And then based on
12 the times that you had the conversation, you're saying
13 the receipt showed that he was in a different location
14 than what he told you at around 12?

15 THE WITNESS: Correct.

16 HEARING OFFICER: Okay. I just wanted to
17 make sure.

18 THE WITNESS: And -- and based on the -- the
19 doctor's office, he had already checked out --

20 HEARING OFFICER: Okay.

21 THE WITNESS: -- I believe, by that time.

22 HEARING OFFICER: Do you have any questions?

23 MR. BROWN: Yes, ma'am.

24 BY MR. BROWN:

25 Q Officer Lizarazo, do you have a medical

1 degree?

2 A No.

3 Q You stated that you know what a bite looks
4 like. Isn't that correct? Didn't you just testify
5 that you know what a bite looked like?

6 A Correct.

7 Q So, in essence, you made a medical
8 decision that there was no bite injury; is that
9 correct?

10 A It didn't appear to be one. Correct.

11 Q But you know what one looks like, and you
12 determined this was not one. You made a medical
13 decision that there was no bite; is that correct?

14 A I wouldn't call it --

15 Q Yes or no, please.

16 A I wouldn't call it a medical decision. It
17 was an educated guess between a scratch and what a
18 bite would have looked like.

19 Q Were you talking on the telephone when
20 MPO Brown entered the South Bureau?

21 A Yes.

22 Q Did you put up one finger when MPO Brown
23 approached you to talk to you?

24 A Correct.

25 Q Did you see MPO Brown's left hand

1 bleeding?

2 A No.

3 Q You were sitting right next to him and you
4 didn't -- you just saw an open cut or scratch, as
5 you described it, with no blood?

6 A There -- well, there was a scratch, yeah.

7 Q Was that scratch open and bleeding?

8 A There -- all I know is that there was a
9 scratch. There was -- it wasn't -- you weren't
10 bleeding. It wasn't active bleeding at that moment.

11 Q You didn't see MPO Brown pouring alcohol
12 gel on it and cooling it with a tissue?

13 A I don't recall.

14 Q You were sitting right next to him.

15 Did you do a BlueTeam on the 8th?

16 MR. BOURNE: Can I ask the --

17 BY MR. BROWN:

18 Q Personal injury report on the 8th. That's
19 what I meant.

20 MR. BOURNE: Thank you.

21 THE WITNESS: It wasn't done that day when it
22 happened. It was done the next morning.

23 BY MR. BROWN:

24 Q Does your policy require you to do one?

25 A Correct.

1 Q So, you failed at doing your supervisor
2 duties, is that correct, by not completing one?

3 A On the same day, correct.

4 Q You said the suspect's hands were behind
5 her back. In the video, it doesn't show her hands
6 ever being behind her back until she was actually
7 cuffed.

8 A When -- when you're on top of her and you
9 have her hands pulled back --

10 Q Yeah. That's what -- so, prior to that,
11 her hands were never behind her back; is that
12 correct?

13 A I -- I -- I'd have to look at the video
14 again. But Officer Sanchez had control of one hand
15 before you grabbed her by the neck and pulled her
16 away from her -- from him.

17 Q You allege she was grabbed by the neck and
18 pulled away from him?

19 A Based on the video.

20 Q Must be two videos we're watching. Did
21 you ever offer EMS to MPO Brown while sitting in the
22 squad bay?

23 A Yes.

24 Q Is Officer Sanchez's hand on the suspect's
25 arm when she is picked up off the ground?

1 A I'm not sure.

2 Q Okay. Did Officer Sanchez indicate to you
3 that he was assaulted by the suspect?

4 A I don't recall.

5 Q You don't recall anything he may have
6 said. Did you read the report, the incident report?

7 A Briefly, yes.

8 Q Did you sign the booking package?

9 A Correct.

10 Q In that booking package, did it list
11 Officer Sanchez as having been assaulted?

12 A She was charged with two counts.

13 Q Did it list Officer Sanchez as having been
14 assaulted?

15 A I believe so.

16 Q Are you aware that Officer Sanchez now
17 says he was never assaulted?

18 A I'm not.

19 Q Is it common practice for your officers to
20 go across the Cosgrove Bridge to the park or to the
21 Wing Stop, to the Publix on a regular routine basis?

22 A I know they go over there to get some
23 lunch --

24 Q So, it's common for your officers to go
25 across the Cosgrove Bridge with your blessing and

1 knowledge, correct?

2 A Correct.

3 Q So, it wouldn't be unusual for an officer
4 to go across to the same Publix and walk to the
5 pharmacy, would it? Yes or no.

6 A Correct.

7 Q So, it's not a rare thing; is that
8 correct?

9 A Correct.

10 Q So, you weren't surprised when you saw the
11 receipt showing Officer Brown had gone right across
12 the Cosgrove Bridge to the Publix with the pharmacy
13 where the officers routinely go; is that correct?

14 A Correct.

15 Q How many times did you speak with
16 MPO Brown on August 9th, sir?

17 A Is that --

18 Q While -- during the Concentra.

19 A I believe it was one time over the phone.

20 Q When you sent Officer Brown to Concentra,
21 was he out with a wanted suspect?

22 A I know -- I don't know exactly what you
23 were with, but you were on a call for service.

24 Q Okay. Did you speak to Officer Brown on
25 August 9th at 7:00 a.m. via telephone?

1 A I don't recall. At 7:00 a.m.?

2 Q Yes, sir. Well, you didn't.

3 A I was in the lieutenant's office.

4 Q Did you speak again at 9:10 on the same
5 morning, August 9th?

6 A Correct.

7 Q Did you speak again at 9:11 on the same
8 morning?

9 A Possibly.

10 Q And then again, 9:18 and 9:21. Would that
11 be correct?

12 A Possibly.

13 Q And then again on August -- same,
14 August 9th at 12:04, which you testified somewhere
15 around 12:00 o'clock you spoke to Officer Brown.
16 Correct?

17 A Correct.

18 Q You said you never had anymore contact
19 with Officer Brown, yet, the phone records show you
20 spoke to Officer Brown at 1:10 that day, not at
21 3:00 o'clock. You spoke again at 1:11 p.m. on the
22 same day, and then called for a second call again at
23 1:11 on the same day.

24 A Okay.

25 Q So, is the testimony that you never spoke

1 to Officer Brown but one time after you got the date
2 of birth correct, or was the fact that you spoke to
3 Officer Brown multiple times during the Concentra on
4 that day, yes or no?

5 A Well, it depends, because, you know,
6 timestamps on phone calls can not be answered or
7 answered. Do you have a duration for those calls?

8 Q Timestamps on -- yes.

9 A There is -- that would document the fact
10 that I did make several phone calls in attempt to
11 get a hold of you that were not answered.

12 Q No. This says that you spoke for
13 two minutes --

14 MR. BOURNE: Objection to what it says. I'd
15 ask that he ask a question.

16 BY MR. BROWN:

17 Q A phone doesn't -- if you call someone and
18 they don't answer, it doesn't record.

19 A It does.

20 MR. BOURNE: I would ask that the -- that --

21 MR. BROWN: And we can --

22 HEARING OFFICER: He's making an objection.
23 So, I need to hear his objection.

24 MR. BOURNE: I only ask that the -- my
25 objection is, he's making a statement as opposed to

1 asking a question.

2 HEARING OFFICER: Okay. So, please make sure
3 that when you ask him a question, put it in the form of
4 a question. Okay?

5 MR. BROWN: Yes, ma'am.

6 BY MR. BROWN:

7 Q So, you did -- you did speak with
8 Officer Brown at least four or five times during the
9 Concentra visit; is that correct?

10 A Not correct. Like I said, timestamps on
11 calls only document that there was a call made.
12 Unless there's a duration for those calls that would
13 sustain how long the conversation was held for, then
14 I -- I know I made several calls to try to get a
15 hold of him, which were not answered. And they were
16 left alone, because, one, I assumed that he was
17 getting treated, or, two, he was busy.

18 But it wasn't until -- like I said, he
19 answered whatever phone call he had that's
20 documented on there, that he answered it with an
21 attitude and that he was still there. And, in fact,
22 it showed he was already released when -- whenever.

23 Q Are you aware that the record actually
24 reflects that Officer Brown called you four times?

25 A I am not. And if it did, I believe that I

1 was with the major at that moment, so.

2 Q It shows you talking to me.

3 MR. BOURNE: Objection as to --

4 HEARING OFFICER: Yeah. You've got to stick
5 with questions.

6 MR. BROWN: Yes, ma'am.

7 HEARING OFFICER: Can we strike that last
8 statement?

9 BY MR. BROWN:

10 Q Is it safe to say -- or would you agree
11 that based on the telephone records, there was no
12 long gap of noncommunication where you didn't know
13 where this officer was?

14 A I would disagree.

15 Q Okay. Do you know where MPO Brown when
16 you spoke to him on the telephone?

17 A According to what you said, you were in
18 Dr. Weissglass -- with Dr. Weissglass.

19 Q Do you know where MPO Brown was when you
20 called him?

21 A No.

22 Q So, honestly, you can't say he was not
23 still at the office, can you?

24 A Only based on what you told me.

25 Q So, if the officer tells you he's still at

1 Concentra, you don't know where that officer is
2 while you're standing there -- while he's standing
3 talking on the telephone, correct?

4 A Correct.

5 Q So, if you step outside the doctors
6 office, are you still at Concentra and not in the
7 office? I mean -- okay. And I don't --

8 HEARING OFFICER: Did you answer the
9 question?

10 THE WITNESS: No. So, in the parking lot of
11 Concentra is not being at Concentra, I would beg to
12 differ. You know, if a supervisor calls you and tells
13 you where you are, and whether you're in the office, in
14 the medical -- in the -- in the room where you're
15 getting treated or you're in the parking lot, that
16 would -- I wouldn't say that that's safe to assume that
17 you're still at the doctor.

18 BY MR. BROWN:

19 Q In your written statement -- you are
20 familiar with that, correct?

21 A With what?

22 Q Your written statement to the department,
23 to IA.

24 A Yes.

25 Q In your written statement, you said you

1 asked me if it broke the skin. If you're sitting
2 next to the officer, and you've testified you could
3 see that the skin was broken, and the hand at one
4 point was bleeding, why would you need to ask if it
5 broke the skin?

6 A At that moment, I wasn't referring to the
7 hand. I could see the hand, and it looked like a
8 very superficial scratch.

9 But I'm going to readdress. He said that
10 the hand injury was a scratch. And then he said
11 that the bite was on the leg. So, when I asked him
12 if it broke the skin, and that's when I told him, go
13 into the bathroom, pull your pants down, see if it
14 broke the skin, because a scratch on the hand is not
15 as severe as a bite. You know, a bite, we're
16 talking exposures, we're talking blood and all that
17 stuff, saliva, bodily fluids.

18 That's when he went into the pocket, came
19 out, and said, no, I'm good.

20 So, that was -- and as of right now, to
21 this -- to this moment, I still don't know what
22 happened to his leg. I have no -- no record, no
23 knowledge, no -- never saw anything that happened to
24 his leg.

25 Q Are you aware that the people at MEDCare

1 started treating MPO Brown for two bites?

2 A No.

3 Q Are you aware that Dr. Weissglass was
4 treating MPO Brown for two bites?

5 A No.

6 Q Are you aware that the treatment with
7 Dr. Weissglass, who is the City's doctor, just
8 released Officer Brown, I believe, sometime towards
9 the middle or end of January?

10 A No.

11 Q Would you agree that a professional doctor
12 knows what he's treating a patient for?

13 A Yes.

14 Q Would you agree if the doctor is treating
15 a patient for a bite, that patient was bit?

16 A Sure.

17 Q When you submitted your BlueTeam, or your
18 complaint form, you submitted that somewhere in
19 September, right? Correct?

20 A No. It was done -- it was done on the
21 9th.

22 Q You did it on August 9th?

23 A Correct.

24 Q Are you sure that was submitted on the
25 9th?

1 A Sir?

2 Q Are you sure that was submitted on the
3 9th?

4 A Yeah. I'm pretty sure it was submitted on
5 the 9th. August 9th, right? Yeah.

6 Q No, sir. This says August 14th.

7 You -- was there a reason -- I guess you
8 submitted it, it was rejected, submitted it,
9 rejected, submitted it, rejected. Was there a
10 reason for so many revisions of the complaint?

11 A That's the lieutenant and the major that
12 rejected it. I don't -- that's --

13 Q I understand. They rejected your initial
14 complaints, correct?

15 A When they reviewed it. Some of the things
16 that I believe I initially had on there were
17 redundant. So, I -- I needed to go take some things
18 out. Some of the things that -- that they reviewed,
19 they -- they reviewed it and kicked it back, and it
20 was fixed and re-forwarded.

21 Q Would you agree the complaint was fixed,
22 revised, until an acceptable complaint could be
23 found?

24 A Once I do the initial, I submit it. And
25 then from there, the lieutenant reviews it and the

1 major reviews it.

2 Q But it was sent back to you, correct?

3 A Correct.

4 Q Multiple times, correct?

5 A I believe only once.

6 Q No, sir. Multiple times, right?

7 MR. BOURNE: Objection.

8 BY MR. BROWN:

9 Q You said it was only sent back to you
10 once?

11 A From what I remember.

12 Q Are you familiar with one of the times it
13 was sent back to you where Lieutenant Sherwood, your
14 supervisor, advised you that the suspect was never
15 choked, that she was grabbed in what he described as
16 a head clinch, holding her down? Were you familiar
17 with that?

18 A No. I can't...

19 MR. BROWN: I have no further questions.

20 HEARING OFFICER: Any redirect?

21 MR. BOURNE: Just -- just one moment. I
22 don't have any additional questions.

23 HEARING OFFICER: Sergeant Lizarazo.

24 THE WITNESS: Perfect.

25 HEARING OFFICER: Okay. Just -- I just want

1 to go through this timeline again. All right. So, are
2 we still dealing with August 9th when he's sent to the
3 hospital?

4 THE WITNESS: I believe so. I think the --
5 the fight was August 8th. Correct?

6 MR. BROWN: Yes, ma'am.

7 THE WITNESS: The incident took place
8 August 8th. And then August 9th -- the incident took
9 place August 8th. He took himself to the hospital
10 August 8th. And then the next morning, we had that
11 meeting with the lieutenant where he was sent to our
12 City doctor.

13 HEARING OFFICER: Okay. And then there was a
14 mention about a bridge.

15 THE WITNESS: Correct.

16 HEARING OFFICER: The --

17 THE WITNESS: Cosgrove Bridge.

18 HEARING OFFICER: So, when you go across that
19 bridge, is that going outside of the jurisdiction?

20 THE WITNESS: Correct.

21 HEARING OFFICER: Okay. So, crossing that
22 bridge, and that's where this Publix was at.

23 THE WITNESS: Yeah.

24 HEARING OFFICER: Okay.

25 THE WITNESS: It -- it was -- it's further

1 in. Parkers is one of the gas stations as soon as you
2 cross the bridge. It's one of the first gas stations.
3 Some of my guys go there and get some lunch or
4 breakfast and then come back. We do patrol the
5 westbound part of that bridge, and then City patrols
6 the eastbound part of the bridge. So, yes, they do go
7 over there and -- and get stuff like that. Publix
8 would be further into the city, but, yes.

9 HEARING OFFICER: So, at the time that you
10 talked to him sometime that afternoon, you believed he
11 was still at the doctor?

12 THE WITNESS: Correct. Based on what he told
13 me, he was still at the doctor. And then based on what
14 the doctor's secretary said, he had already been
15 cleared.

16 HEARING OFFICER: Okay. So, you believe at
17 the time that you spoke with him, and he said he was at
18 the doctor, you believed he was really at the Publix?

19 THE WITNESS: No. I didn't come to -- so, if
20 I may look at my timestamps, I can maybe explain it
21 better. When I spoke with him and he said he was at
22 the doctor, I left it at that. I got what I needed,
23 and I left it at that.

24 After that when I tried to get a hold of
25 him again several occasions like he states on the

1 phone records, I never heard from him.

2 So, that's what I called the doctor, and I
3 said, hey, is my guy still there?

4 And they said, no. He has already been
5 released 12-ish, I believe it was.

6 So, when I put two and two together, based
7 on what he told me and based on when they're telling
8 me he was released, he is nowhere to be found,
9 because I never heard from him back until -- and,
10 mind you, I sent him a message saying, come see me
11 when you're done. I think the only thing I got
12 after that was that receipt that showed that he was
13 outside of the jurisdiction at the Publix.

14 And there was a communication between him
15 and the lieutenant that -- which I can't attest to.
16 But from there, he was -- from the moment he was at
17 the doctors until the next day, I didn't talk to
18 him, except for that one time about the date of
19 birth and the fact that he was still there.

20 HEARING OFFICER: I don't have any further
21 questions for this witness.

22 You would like to question him again?

23 MR. BROWN: Just one quick follow-up, or two
24 questions.

25 BY MR. BROWN:

1 Q Did the lieutenant advise you that,
2 according to him, he sent me home that day that
3 you're talking about that I never came back?

4 A Yes.

5 Q Would the lieutenant have the rank and the
6 authority to make a decision and have it followed?

7 A As far as you going home?

8 Q If he orders a subordinate to do
9 something, is that subordinate supposed to do what
10 he instructs them to do?

11 A Yeah. I knew he sent you home. At that
12 point, because he -- because I told him, I can't get
13 a hold of Brown. He's not calling me. He's not
14 texting. I don't know where he's at.

15 So, then that's when the lieutenant
16 stepped in. And then, like I said, there was a
17 communication between them. And from there,
18 subsequently, he was sent home by the lieutenant.

19 Q So, you would say following the
20 lieutenant's instructions is not being absent from
21 duty. It's following the commander's instructions.

22 A Between that timeframe where he was sent
23 to the doctor and the communication and up until
24 that moment he talked to the lieutenant, he was not
25 accounted for.

1 Q And one other last thing as follow-up.

2 You said you -- were you with the lieutenant during
3 the altercation between myself and Officer Sanchez
4 and the suspect?

5 A Correct.

6 Q And then you testified that the lieutenant
7 ask you, was MPO Brown in a fight, correct?

8 A No. It -- that there was -- that you guys
9 called a 10-10, which would be a fight. And then
10 after the 10-10, you followed up with, we're 10-4.
11 One in custody.

12 Q But you said the night the lieutenant
13 called you and told you that MPO Brown was going to
14 the hospital, he asked you if that officer was in a
15 fight. You just testified to that --

16 A Oh, yeah. Yeah. Later on that evening
17 when he called me, he said, are you aware that Brown
18 was involved in a fight, altercation, dispute, and
19 he was bit.

20 Q Let me ask you one last question. Why
21 would the lieutenant have to ask you if he was in a
22 fight when he was sitting right there during the
23 altercation and heard 10-10 on the radio the same as
24 you heard?

25 A That's a question for the lieutenant.

1 HEARING OFFICER: Mr. Bourne?

2 MR. BOURNE: No. I don't have any questions.

3 HEARING OFFICER: Do you foresee having to
4 recall this witness?

5 MR. BOURNE: Possibly.

6 HEARING OFFICER: Okay. Mr. Lizarazo, could
7 you just please have a seat over here?

8 THE WITNESS: Sure.

9 HEARING OFFICER: Do you have any other
10 witnesses?

11 MR. BOURNE: Yes. Sergeant Ledford.

12 HEARING OFFICER: Okay. Do you want to take
13 five?

14 MR. BOURNE: Yes, please.

15 HEARING OFFICER: All right. Let's take
16 five.

17 (A short break transpired.)

18 Jeremy Ledford, being first duly sworn,
19 testified as follows:

20 BY MR. BOURNE:

21 Q Please state your name for the record.

22 A Sergeant Jeremy Ledford.

23 Q And what do you do at the North Charleston
24 Police Department?

25 A I'm assigned as an investigator with the

1 Office of Professional Standards.

2 Q Okay. And how long have you been a police
3 officer with North Charleston?

4 A Just over 18 years.

5 Q And how long have you been with Internal
6 Affairs?

7 A Since August of last year. So, probably
8 about six months, seven months.

9 Q And were you assigned to be the assigned
10 officer on the Omar Brown investigation?

11 A Yes, I was.

12 Q All right. And outline for the hearing
13 officer how this came to your attention and what you
14 did.

15 A This was initially submitted by the
16 initial supervisor, Sergeant Lizarazo. So, it was
17 submitted electronically through our BlueTeam as --
18 for electronic tracking. They identified just
19 through their own supervisor investigation what they
20 saw. They submitted it through their chain of
21 command from the -- to the lieutenant, I believe up
22 to the bureau commander, ultimately to the deputy
23 chief.

24 When the deputy chief reviewed the case
25 and the facts that they observed, then they made the

1 decision to turn around and ask the Office of
2 Professional Standards to investigate the case.

3 Q And, so, as part of your investigation,
4 what did you do?

5 A Initially, we went ahead and reviewed all
6 body worn camera videos and in-car camera videos to
7 kind of get a timeline and see exactly what was
8 being alleged. We reviewed all the documentation
9 within the initial BlueTeam itself of the initial
10 electronic complaint that was submitted internally.
11 We set up interviews with Officer Sanchez. We set
12 up interviews with Sergeant Lizarazo. And,
13 ultimately, I set up an interview with
14 Officer Brown.

15 At the conclusion of all of those
16 interviews and watching all of the videos, we made
17 our ultimate recommendation of what violations were
18 sustained per policy or law and which ones were not,
19 and submitted that to the executive staff for
20 review.

21 Q All right. Sergeant Ledford, did you
22 watch the body cams of Officer Sanchez and
23 Officer Brown?

24 A Yes, sir.

25 Q And from policy violation standpoint, did

1 you see anything that troubled you?

2 A Yes, sir.

3 Q What?

4 A Initially, upon making contact at the
5 residence when -- when they decided to utilize
6 force, once the suspect was brought down off of the
7 stairs of the residence, she was able to shove
8 Officer Brown backwards.

9 From there, Officer Sanchez moves in and
10 is able to grasp control of the left wrist of the
11 suspect. She's still being argumentative, but she's
12 not being physically resistant any longer.

13 So, Officer Sanchez appears to be going in
14 to detain her. And at that time, Officer Brown
15 comes back and makes contact with the suspect,
16 placing his hands around her throat.

17 Ultimately, she spins, and he loses the
18 grasp, it appears, on the throat. She shoves him
19 backwards again.

20 During the detainment efforts, ultimately,
21 of getting her handcuffed, you can hear
22 Officer Sanchez telling Officer Brown, hey, I've got
23 it, in an attempt to intervene.

24 Once she is ultimately handcuffed and
25 he -- Officer Brown is telling her to stand up, get

1 up. He actually grabs a linking chain and pulls
2 directly up on those linking chains, putting that
3 pressure on her shoulders. She wasn't being given
4 any support when standing up during that time. So,
5 he was just pulling directly up on the linking
6 chain.

7 Q And is that a violation of policy?

8 A Yes, sir, it is.

9 Q Okay. And, also, grabbed around the
10 throat, is that a violation of policy?

11 A Yes, sir, it is.

12 Q And how about pushing the head down when
13 she's -- when she stops being resistant, is that a
14 violation of policy?

15 A Yes, sir.

16 Q Okay. After you viewed the videos and had
17 a discussion with Officer Sanchez and
18 Sergeant Lizarazo, did you interview Officer Brown?

19 A Yes, sir.

20 Q And was that a rather lengthy interview?

21 A Yes, sir.

22 Q And is that recorded?

23 A Yes, sir.

24 MR. BOURNE: And I would mark that as 1C.

25 MR. BROWN: And I would object.

1 HEARING OFFICER: All right. What basis?

2 MR. BROWN: Well, one, throughout this entire
3 process, they have refused to turn any of that evidence
4 over. I never had a chance to review it and/or the
5 other subjects' interviews.

6 And something that -- I mean, obviously,
7 they've been hiding it this long. It's been sent,
8 the request for Freedom of Information Act was --
9 request was sent. And it was denied.

10 The subpoena for the Department of
11 Workforce said that -- and they sent a copy of
12 something just to them. I have never been provided
13 with the videos that I've requested. I was only
14 given a dash cam video of the patrol car, which has
15 no -- it just shows a street, no audio or anything.

16 HEARING OFFICER: You subpoenaed a request
17 for records?

18 MR. BROWN: Previously, yes, ma'am. Not
19 under -- not with the subpoena that was sent here.
20 Like when they served this, they had a document in
21 there for subpoena. But, previously, yes, ma'am.

22 HEARING OFFICER: Okay. But you didn't --
23 you didn't subpoena any documents for this proceeding.

24 MR. BROWN: I didn't know how to -- I didn't
25 know how to do that. To this point, couldn't tell you

1 what I was supposed to do to get it done.

2 So, I -- during the Employment Security
3 Commission hearing, they had a subpoena process, and
4 I elected to do that and ask for the documentation
5 and so forth, which they've still failed to provide
6 and refused to provide.

7 HEARING OFFICER: Okay.

8 MR. BOURNE: I know nothing about that,
9 Madam Hearing Officer. My argument with regard to
10 admission of the interview is, Officer Brown was
11 present during the interview, so, he knows what went on
12 and what happened and what was said by all the parties.

13 So, if his objection is one of surprise, I
14 would say, there is no surprise, because he was
15 present and knew about it.

16 We've laid the proper foundation for it.
17 We think it should be admissible.

18 HEARING OFFICER: And was this interview done
19 as the -- I'm sorry -- and Mr. Ledford was
20 investigating?

21 MR. BOURNE: Yes.

22 HEARING OFFICER: So, it was part of the
23 investigation?

24 BY MR. BOURNE:

25 Q Sergeant Ledford, was this interview done

1 as part of your investigation?

2 A Yes, sir, it was.

3 HEARING OFFICER: Okay. So, I'm going to
4 allow it. So, I'm going to accept it into evidence.
5 So, State's Exhibit 1C, interview with Officer Brown.

6 State's Exhibit 1C, Interview
7 with Officer Brown.

8 BY MR. BOURNE:

9 Q Okay. Sergeant Ledford, did you take
10 notes of that interview?

11 A I did.

12 Q With timestamps?

13 A Yes, sir.

14 MR. BOURNE: Madam, I'm sorry to do this.
15 May I make a copy of this so I can provide it to
16 Mr. Brown?

17 HEARING OFFICER: Yes.

18 BY MR. BOURNE:

19 Q Sergeant Ledford, as part of your
20 interview with Mr. Brown, did you ask various
21 questions with regard to the incident?

22 A Yes, sir.

23 Q And was this recorded, and it fairly and
24 accurately captured the recording?

25 A Yes, sir.

1 Q Okay. And did you make notes with
2 timestamps of some of the, quote, high points or
3 relevant portions of the interview?

4 A Yes, sir.

5 Q All right. Let's -- let's talk about
6 that. What did Mr. Brown say about the incident
7 with regard to whether medical attention was offered
8 to him?

9 A He stated that Sergeant Lizarazo was
10 uncaring, seemed to not care about his injuries at
11 all. He did state that he never asked or sought
12 medical attention. However, I believe his
13 statements were, but it couldn't be said that the
14 supervisor didn't know about it because they were
15 sitting next to each other.

16 He was asked multiple times during the
17 interview if --

18 Q "He" being Mr. Brown?

19 A Sorry. Yeah. Mr. Brown was asked
20 multiple times during the interview if any medical
21 attention was ever offered, if he was offered to be
22 taken to the hospital, to go see the City doctor,
23 EMS to be called to check on his injuries.

24 He was asked multiple times during the
25 interview if anybody had ever offered him any

1 medical attention, specifically Sergeant Lizarazo,
2 and he denied each one of those questions that any
3 medical attention was ever offered to Officer Brown.

4 Q Okay. And when you interviewed
5 Officer Sanchez and Lizarazo, did they both
6 acknowledge that medical care had been offered to
7 Mr. Brown?

8 A Yes, sir.

9 Q Okay. Did you talk with Mr. Brown about
10 the use of force, specifically with her -- with his
11 hands around her throat?

12 A Yes, sir.

13 Q And what was discussed about that?

14 A We discussed in length about the situation
15 as a whole. We asked about the hands going on the
16 throat. He said that the hands were going up
17 initially to her upper body, her upper chest,
18 collarbone area, shoulder area.

19 We showed him pictures of the hands being
20 actually directed straight on at the suspect, thumbs
21 right at the front of the throat and around the
22 throat.

23 He said that at no time did he cut off any
24 airway, did he cut off any circulation while his
25 hands were placed there. And, ultimately, he was

1 attempting to get his hands behind the suspect's
2 head to the back of the neck to be able to force her
3 to the ground.

4 Q And ultimately was that done, got his
5 hands around the back of her neck and forced her to
6 the ground?

7 A Initially, no, sir. But ultimately
8 towards the end of the -- the scene, yes, sir.
9 They -- they did ultimately get to the back of her
10 neck to force her to the ground.

11 Q The item you mentioned earlier about the
12 handcuffs and Mr. Brown picking her up, did you
13 discuss that with him?

14 A Yes, sir, we did.

15 Q And did you indicate that was a violation
16 of policy?

17 A Yes, sir.

18 Q Okay. And did you talk about his
19 injuries?

20 A Yes, sir.

21 Q Did -- did Mr. Brown confirm around the
22 11:00 o'clock mark that he never asked for medical
23 attention from Sergeant Lizarazo?

24 A Yes, sir, he did.

25 Q What -- with regard to the interview, tell

1 the hearing officer what you found in a general
2 sense to be the violations in your investigation.

3 A Initially, when we were looking at the
4 entire incident, we looked at the use of force, the
5 use of force of the hands being applied to the
6 throat.

7 Then we also went into the force that was
8 being applied while she was on the ground from
9 testimony, other witnesses.

10 And then as far as also pulling her up by
11 her linking chains, we found the violation of use of
12 force to where he was utilizing excessive amount of
13 force on the suspect versus what was allowed by law
14 and by policy.

15 We went into -- during the interview
16 with -- with Officer Brown, he was stating -- he
17 would kind of gloss over the force that was actually
18 used and didn't really want to get into detail as to
19 what he wrote in his incident report as well. It
20 was kind of a gloss-over what really happened.

21 When we got into the specifics of the use
22 of force, he did say that he had the hands
23 ultimately around the throat. However, again, he
24 wasn't trying to cut off any airway or any
25 circulation.

1 We went to where he was -- had the suspect
2 on the ground and was forcing her face down into the
3 dirt. Even though that wasn't captured on body-worn
4 camera, it was identified from one of the witnesses
5 being done to where he was forcing her face into the
6 dirt.

7 The picking her up by the linking chain
8 once she was finally in custody, during the
9 interview, Officer Brown said that he actually
10 helped her up to her feet, that he believed he
11 helped her up by grabbing on of the arms and helping
12 her up like we're supposed to by policy, when the
13 videos show that clearly wasn't what took place.

14 And then when we went through the -- you
15 know, the injuries as well, he talked about how he
16 was scratched on the hand but bitten on the outer
17 left thigh area. And during the course of the
18 investigation, each one of those, how the injury
19 occurred or what -- what made the injury kind of
20 seemed to keep changing. He would tell someone,
21 well, I was bitten on the hand, and, you know, I was
22 scratched on my leg. And I was bitten on both my
23 hand and my leg. It just kept changing.

24 Ultimately, it appeared that the injuries
25 were not caused, because his body was never in any

1 position, especially his outer left leg area. It
2 was his -- the outer left thigh was behind the
3 midline, was never in any position to be bitten by
4 the suspect at all.

5 I mean, most likely during the review of
6 all the videos that we had, during the second push,
7 where the suspect pushed Officer Brown the second
8 time, he was pushed back into a good amount of
9 bushes. Those bushes had nice little, you know,
10 about pinky-width branches that came off of them.
11 And that most likely made the circular puncture that
12 he had on his outer left leg. And it was never a
13 bite per se.

14 MR. BOURNE: That's all I have.

15 HEARING OFFICER: Mr. Brown.

16 MR. BROWN: Yes, ma'am.

17 BY MR. BROWN:

18 Q Officer Ledford, was the suspect injured?

19 A I don't remember her claiming initially
20 any physical injuries. However, on the body-worn
21 cameras of -- of you and Officer Sanchez, when
22 Officer Sanchez escorted her back to the patrol
23 vehicle once she was detained, she was yelling
24 towards you, you were joking me. You were choking
25 me. You were choking me.

1 Q The question is, was the suspect injured,
2 yes or no?

3 A She was claiming being choked. I would
4 suspect that there would be an injury.

5 Q Okay. So, during your investigation, was
6 the suspect injured? Did you find the suspect was
7 injured, yes or no?

8 A We never interviewed her, so, no.

9 Q Okay. If your suspect was injured, would
10 your suspect then be required to go to the hospital?

11 A By policy, if a suspect is injured, then
12 we're required to seek medical attention.

13 Q Was your suspect transported to the
14 hospital?

15 A Your suspect was never transported to the
16 hospital.

17 Q Okay. Did MPO Sanchez transport the
18 suspect to the hospital?

19 A Not to my knowledge, no, sir.

20 Q Did MPO Sanchez call EMS for the suspect?

21 A No, sir.

22 Q During your investigation, did
23 Sergeant Lizarazo tell you that his officers were
24 frequently allowed to go across the Cosgrove Bridge,
25 particularly to Publix, Parkers, and those stores

1 right there, yes or no?

2 A I don't believe that question was ever
3 asked.

4 Q You don't believe it was ever asked?

5 A I don't believe we ever went into details
6 of asking where the officers could -- he allowed
7 officers to go.

8 Q In your investigation, did you come up
9 with sustaining that you said Officer Brown left his
10 area?

11 A Yes, sir.

12 Q Would that not be something that would go
13 directly to the sergeant asking him, are your
14 officers allowed to leave the area?

15 A I believe during the complaint review that
16 Sergeant Lizarazo stated that you left the area of
17 responsibility and that there was an undetermined
18 amount of time to where he couldn't get a hold of
19 you and you were outside of jurisdiction.

20 Q And did you ever ask Sergeant Lizarazo,
21 were the officers allowed to leave the area, yes or
22 no?

23 A No, sir. He claimed during his statement
24 that you had left your jurisdiction. So, that would
25 ultimately say that that wasn't allowed.

1 Q So, you sustained an allegation without
2 even asking the question; is that correct?

3 A I sustained an allegation based upon his
4 allegation that you left our jurisdiction, and our
5 policy states that you can't do that without
6 supervisor approval.

7 Q In your investigation, did you find --
8 based on your investigation, are you saying
9 MPO Brown was never bitten?

10 A From my investigation, it does not appear
11 that at least the -- the injury to the leg would
12 have been a bite. I couldn't tell you whether or
13 not the one on the hand was a bite or not.

14 Q But you just said that Officer Brown was
15 not bitten, because in your analysis, at no point
16 did you ever see a body part close enough to be
17 bitten.

18 A I never saw the outer left leg in any
19 position, since the way your hands were on her and
20 even during the takedown and her head was between
21 your legs, if there was any bite on your leg, it
22 would have been on the inner thigh, in that region.
23 But the outer back thigh that was photographed,
24 there was -- that -- that part of the body was never
25 in a position to be -- to be bitten.

1 Q What about the hand?

2 A From statements that you've made that your
3 hand was underneath her body while y'all were
4 detaining her and Officer Sanchez was applying the
5 handcuffs. Whether or not that was a bite or a
6 scratch, I cannot say.

7 Q But during your investigation, you alleged
8 that that was a false statement that MPO Brown was
9 bitten.

10 A The allegations were based upon the
11 constant changing of -- from your own assessment and
12 your telling other officers or different people,
13 bite here. No, I was -- I was -- I was scratched
14 here. I was not bitten here. I was -- so, by your
15 own changing of how the injuries occurred, we had
16 nothing to actually say.

17 MR. BROWN: I would say, ma'am, he can't
18 testify to what he alleged these other people were told
19 and said, because they're not here. And I would like
20 him to stick to the question that was asked.

21 HEARING OFFICER: So, your arguing --

22 MR. BROWN: This other stuff that he's now
23 rambling on about is not part of my question.

24 HEARING OFFICER: Okay.

25 MR. BROWN: It's not an answer.

1 HEARING OFFICER: Okay. Mr. Bourne.

2 MR. BOURNE: I believe he is trying to answer
3 the question that Mr. Brown asked based on all of the
4 knowledge he has. I don't think it's an improper
5 answer.

6 HEARING OFFICER: Okay.

7 MR. BOURNE: And we're not offering what he
8 heard from other people as the truth of the matter,
9 simply the conflict, the fact that other statements
10 were made is what led him to his opinion.

11 HEARING OFFICER: Okay. I'll allow it.

12 BY MR. BROWN:

13 Q Officer Ledford, do you have a medical
14 degree?

15 A No, sir, I do not.

16 Q Are you aware that the ER -- first ER
17 doctors treated MPO Brown for two bites?

18 A I believe during our interview, you were
19 asked how it was determined to be bites, and you
20 said that the doctors, I believe, at MEDCare
21 Express, not an actual ER, said that they were
22 bites.

23 Q Okay. Are you aware that the doctor began
24 treating MPO Brown for two bites, yes or no?

25 A Yes, sir.

1 Q Are you aware that the doctor, the City's
2 doctor, Concentra, up until somewhere around the mid
3 part of January, was still treating MPO Brown for
4 two bites?

5 A I know you were being treated, yes, sir.

6 Q Okay. Would you ask us to trust your
7 judgment with no medical degree or two separate
8 doctors?

9 A I'd have to go with the people who have
10 the medical degree and the medical expertise.

11 Q So, it would be reasonable to say
12 MPO Brown was bitten twice.

13 MR. BOURNE: Objection. Calls for a
14 conclusion.

15 Again -- again, the witness was basing his
16 answer on the conflicting statements, not
17 necessarily on what the ultimate finding was.

18 HEARING OFFICER: Okay.

19 MR. BROWN: But I believe his testimony was
20 that MPO Brown lying about having been bitten, when, in
21 fact, he now acknowledges two medical doctors treating
22 him for such.

23 HEARING OFFICER: Could you rephrase the
24 question?

25 BY MR. BROWN:

1 Q Is safe to say that the MPO Brown was
2 actually bitten if two doctors, independent doctors
3 of each other, were treating him for bites?

4 A I would say that would be safe.

5 Q Is it also safe to say that MPO Brown was
6 not lying about being bitten, given that medically
7 he was being treated by people who know what bites
8 look like?

9 A The only thing I can say as far as you
10 being treated for the bites is, again, the -- what
11 actually occurred, the story itself, kept changing.
12 Whether you were treated for bites determined by two
13 separate doctors, if that's what they confirmed them
14 to be, then that's what they confirmed them to be.

15 Q Did your investigation conclude that
16 MPO Brown was being dishonest when he said he was
17 bitten?

18 A I don't think that that allegation itself,
19 did we ever -- did I ever through our findings say
20 that you were lying about being bit or not being
21 bitten. It was the constant changing of the story
22 of how the injuries occurred itself. The dishonesty
23 portion, I believe, was going further down into the
24 fact that medical care was never offered.

25 Q Was your witness of the incident that you

1 just recently referred to, was that witness
2 MPO Sanchez?

3 A In reference to which part?

4 Q You said a witness observed her head being
5 slammed into the ground or shoved into the ground.
6 Was that witness -- you did not name the witness.
7 Was that witness named MPO Sanchez?

8 A Yes, it was.

9 Q Was MPO Sanchez your only witness?

10 A To the scene itself, yes, sir.

11 Q Was MPO Sanchez holding the suspect's arm
12 when she was assisted to her feet?

13 A She was -- after you started pulling up on
14 the lifting chain, he did step in and place his hand
15 there to assist in picking her up.

16 Q Was the suspect being told to roll over?

17 A I believe you did give her that command.

18 Q Does that indicate that the suspect was
19 not in a position to stand straight up for having to
20 roll over?

21 A I guess that would -- to me, that would
22 draw a conclusion on what y'all were trying to do
23 with your verbal commands at the time.

24 Q Was the jail ever notified that the
25 suspect was injured?

1 A I'm not sure. I didn't have access to
2 y'all's booking paperwork and the forms and
3 statements at Charleston County Detention Center of
4 whether or not y'all said y'all were -- she was
5 injured.

6 Q Did you ever follow up with the jail?

7 A To get copies of that paperwork, no, sir.

8 Q During your interview, did MPO Sanchez
9 indicate anything to you about him being injured?

10 A He didn't.

11 Q Did he say he was assaulted by the
12 suspect?

13 A I believe he did say that he was assaulted
14 during the altercation.

15 MR. BROWN: I have no further questions.

16 HEARING OFFICER: Okay. Mr. Bourne.

17 BY MR. BOURNE:

18 Q Who is responsible ultimately for
19 decisions about a suspect and medical treatment? Is
20 it the arresting officer?

21 A Yes, sir.

22 Q In this case, was Mr. Brown the arresting
23 officer?

24 A Yes, sir.

25 MR. BOURNE: That's all I have.

1 HEARING OFFICER: Okay. I don't have any
2 questions for this witness.

3 Do you foresee having to recall this
4 witness?

5 MR. BOURNE: No, ma'am.

6 HEARING OFFICER: All right. Mr. Ledford,
7 you're free to go, or you can just have a seat right
8 here.

9 MR. BOURNE: The Agency rests.

10 HEARING OFFICER: Agency rests. All right.

11 At this time, Mr. Brown, you can do your
12 opening statement or waive it. Because I believe
13 you said you wanted to waive it until they rested?

14 MR. BROWN: Yes, ma'am. With your
15 permission, I would like to just do the opening
16 statement, and counsel here has no objections for these
17 records being xeroxed, redact any other personal
18 information and submit it.

19 MR. BOURNE: I do want to review them. But I
20 did tell him I didn't have objection to the form in
21 which he wanted to submit.

22 HEARING OFFICER: Okay. Are those the phone
23 records?

24 MR. BOURNE: Phone records, right.

25 HEARING OFFICER: Okay. So, we can do that

1 near the end. Like you can review it, and then I can
2 go ahead and add that to the record.

3 So, you said you would like to do an
4 opening statement.

5 MR. BROWN: Yes, ma'am. And I don't know at
6 which point, but, for the record, I would like to have
7 the City provide you with the other interviews of the
8 other two subjects also, that you may get a clear
9 picture of everyone's interview.

10 HEARING OFFICER: Okay. So, I just want to
11 make sure I understand. You want them to provide me
12 with additional interviews.

13 MR. BROWN: Yes, ma'am.

14 HEARING OFFICER: That they don't have today.

15 MR. BROWN: Yes, ma'am. I'm not sure if they
16 have them today or not. But I would like for that to
17 be available to you during your review process and
18 entered into the record.

19 MR. BOURNE: Interviews of who?

20 MR. BROWN: Of Officer Sanchez and
21 Sergeant Lizarazo as they were being interviewed by the
22 investigation during the IA complaint.

23 MR. BOURNE: Well, we would -- we did not put
24 that into evidence, Madam Hearing Officer. And
25 Mr. Brown conducted a very thorough cross-examination

1 of both of them. So, I don't -- I'm not inclined to go
2 out and get those previous statements and admit them.
3 But nothing would prohibit cross-examination of those
4 witnesses, or even calling them during his case in
5 chief if he'd like to elicit something else from them.

6 HEARING OFFICER: Okay. Mr. Brown, are you
7 okay with calling them back up here and asking them
8 questions about the interview or any questions relating
9 to that?

10 MR. BROWN: I have never seen the interviews.
11 So, I cannot challenge anything they've said in the
12 interviews.

13 HEARING OFFICER: Okay. Question. Do these
14 interviews exist? That's the first question. Are
15 there any interviews out there, or is it a statement?
16 Because I'm confused about it. Is it a written
17 statement, or is there like an actual recorded
18 interview?

19 MR. BOURNE: I think -- I think there are
20 statements and recorded interviews.

21 HEARING OFFICER: Okay.

22 MR. BOURNE: But I don't have the recorded
23 interviews.

24 HEARING OFFICER: Okay. So, you don't
25 have -- and did you request that information any time

1 before this proceeding?

2 MR. BROWN: Yes, ma'am. Because he's saying
3 that he wants to just enter into the record the
4 investigating officer's written account of the
5 interview and not the actual video, because I thought
6 he was actually --

7 MR. BOURNE: I admitted the video but elected
8 not to play it.

9 HEARING OFFICER: Okay. That's the interview
10 between the officer and Mr. Brown.

11 MR. BOURNE: Correct.

12 HEARING OFFICER: Okay. So, what you're
13 saying, there's other videos that exist.

14 MR. BROWN: Yes, ma'am. There's videos that
15 exist. The same as the interview with myself, there's
16 an interview with Sergeant Lizarazo and Officer MPO
17 Sanchez.

18 HEARING OFFICER: But you didn't request any
19 of that footage or anything prior to this hearing. So,
20 like the subpoena.

21 MR. BROWN: Only on the original -- my
22 original request, which this has gone over some months.
23 There was a City hearing, and that -- it was denied for
24 that hearing. There was a video of the City hearing,
25 and that was denied.

1 HEARING OFFICER: Okay.

2 MR. BROWN: So, it's just been a process of
3 denial.

4 HEARING OFFICER: All right. And, so, the
5 two people that are interviewed is Mr. Sanchez and
6 Mr. Lizarazo?

7 MR. BROWN: Yes, ma'am.

8 HEARING OFFICER: Okay. So, what you can do,
9 you can call them up if you want to question them
10 again. I'll allow that. But I'm not going to compel
11 them to, you know, bring that video forth, just because
12 we're already at this proceeding.

13 MR. BROWN: Okay.

14 HEARING OFFICER: Okay. So, with that, could
15 you please go back to the witness room --

16 MR. BROWN: I'm not going to call them.

17 HEARING OFFICER: You're not?

18 MR. BROWN: No, ma'am. I'm going to, with
19 your permission, do the opening statement and not
20 recall them. I believe enough factual truth has come
21 out before Your Honor that that would not be necessary.

22 HEARING OFFICER: Okay. And if you change
23 your mind, you can -- you know, if you feel like you
24 need to recall them whenever, you can. Okay?

25 MR. BROWN: Yes.

1 HEARING OFFICER: Yes.

2 MR. BOURNE: Madam Hearing Officer, one
3 request I would make is that Mr. Brown limit the
4 opening statement to facts already presented or facts
5 he expects to present during his hearing and not a
6 testimony-type statement.

7 HEARING OFFICER: All right. Okay. So,
8 Mr. Brown, the way opening statements work, you're not
9 necessarily arguing a point during opening statements.
10 You're just giving a summary of what you think is going
11 to come out if you choose to testify or call any
12 witnesses. Okay? So, that's what you're going to
13 stick to.

14 So, stay away from saying, you know,
15 things like, I did this and things of that nature,
16 because then you're like testifying. All right.
17 Because if you have to testify, you have to be under
18 oath. Does that make sense?

19 MR. BROWN: Yes, ma'am.

20 HEARING OFFICER: Okay. So, would you like
21 to proceed?

22 MR. BROWN: Yes, ma'am.

23 HEARING OFFICER: All right.

24 MR. BROWN: One, thank you for this hearing
25 here today.

1 I believe the record will reflect -- or it
2 does reflect that at no time was physical force
3 used. In order to have excessive force, one would
4 first have to exert force. It was no strikes, baton
5 strikes, OC, taser, or any weapons used. No kicks,
6 punches, or hits.

7 Basing an entire case on one person's
8 allegations that excessive force was used, you know,
9 I think the truth will come out.

10 And, you know, I just note that, for the
11 record, we would be able to prove or have -- or
12 shown that multiple times the record was changed to
13 get a narrative that fit for a complaint to be filed
14 and move forward.

15 Suspect wasn't taken to the hospital,
16 wasn't injured, any of those protocols.

17 And it was not illegal to go across the
18 Cosgrove Bridge or anything.

19 So, I mean, I -- you know, I just pray
20 that the facts are, you know, heard and observed.
21 Thank you.

22 HEARING OFFICER: Do you plan to call any
23 witnesses?

24 MR. BROWN: No, ma'am.

25 HEARING OFFICER: Are you choosing to

1 testify?

2 MR. BROWN: No, ma'am. I think enough truth
3 has come out that I'm comfortable with what has been
4 presented.

5 HEARING OFFICER: Okay.

6 MR. BROWN: And the videos entered into
7 evidence. We'll copy the phone logs, and I'll enter
8 those, which shows multiple calls on both the 8th and
9 the 9th, so.

10 HEARING OFFICER: Okay. So, at this time, we
11 can go ahead and enter those records once Mr. Bourne
12 has had an opportunity to look at them.

13 MR. BROWN: Okay. Let me real quick write on
14 there so you'll know whose phone number that is.

15 MR. BOURNE: No. No. Wait a minute.
16 Can't -- unless you testify --

17 MR. BROWN: I've got to be able to tell her
18 that it's the sergeant's phone number.

19 HEARING OFFICER: Okay. Go ahead.

20 MR. BOURNE: My object would be, he can admit
21 the records as they are, but he can't add editorial
22 comment, because that changes the basis for the
23 admission. He is providing testimony without being
24 confronted -- without being cross examined.

25 HEARING OFFICER: Okay.

1 MR. BOURNE: So -- so, I have no objection to
2 the records as they are, but I do object to them being
3 amended.

4 HEARING OFFICER: Okay. So, I'm going to
5 sustain that. So, do you know what that means?

6 MR. BROWN: No. But I will just give it to
7 you. I mean, if they want to call the phone numbers,
8 that's the phone numbers. And this paper here counsel
9 said they had no objection to.

10 HEARING OFFICER: Okay. So, are these two
11 separate documents?

12 MR. BOURNE: They are.

13 MR. BROWN: Yes, ma'am.

14 HEARING OFFICER: Okay.

15 MR. BOURNE: And I do not object to either
16 one.

17 HEARING OFFICER: Okay. So --

18 MR. BOURNE: One is the phone record and the
19 other is internal document about the -- the -- what's
20 it called -- the complaint.

21 HEARING OFFICER: Okay. So, these are
22 together.

23 MR. BOURNE: Yes.

24 HEARING OFFICER: Okay. Sir?

25 MR. BROWN: Oh. Yes, ma'am.

1 HEARING OFFICER: Okay. So, I believe this
2 would be Respondent's Exhibit 4, and then this is going
3 to be Respondent's Exhibit 5.

4 MR. BOURNE: No objection.

5 Respondent's Exhibit No. 4,
6 Phone Records.

7 Respondent's Exhibit No. 5,
8 BlueTeam Chain Routings.

9 HEARING OFFICER: So, do you rest at this
10 time, Mr. Brown?

11 MR. BROWN: Yes, ma'am.

12 HEARING OFFICER: Okay. So, the next step is
13 to move on to closing arguments. Do you need time to
14 come up with a closing argument, or are you ready to
15 proceed?

16 MR. BROWN: No, ma'am. I'm -- I'm ready.
17 So, will they go first?

18 HEARING OFFICER: Yes. All right.

19 MR. BOURNE: Madam Hearing Officer, thank you
20 for your patience in going through this. It's kind of
21 a tedious matter.

22 But we submit that the best evidence is
23 the video that the hearing officer has seen.

24 Was there excessive force used. That's
25 the question. Clearly there was. I think the video

1 is clear that he does, in fact, grab the suspect
2 around the throat at one point. Mr. Brown does, in
3 fact, push her head into the dirt.

4 In fact, if you listen carefully, you can
5 hear that the suspect has difficulty talking,
6 difficulty breathing a little bit there toward one
7 point, until he relaxes.

8 It's clear that he yanks her up through
9 the chain of the handcuffs, which is, as you heard
10 from multiple witnesses, clearly against policy.

11 So, was there excessive force, yes.

12 Was there insubordination. Well, there
13 was conflicting testimony as to whether Mr. Brown
14 responded to Sergeant Lizarazo or not. But it's
15 clear that he left the jurisdiction without
16 permission.

17 He did go to the Publix after he told
18 Sergeant Lizarazo he was still at the doctors being
19 treated. He did go to Publix, which is outside of
20 the City of North Charleston's jurisdiction, without
21 getting permission. Could have been very easy for
22 him to get permission to be there.

23 He also was dishonest in that he told
24 internal affairs on multiple occasions that
25 Sergeant Lizarazo did not offer him medical care.

1 You heard from Sergeant Lizarazo that he did. You
2 heard from Officer Sanchez that he heard him offer
3 medical care.

4 So, those are the three problems we hang
5 our hat on, Your Honor. Clearly, the excessive
6 force, the insubordination, and the dishonesty.

7 That's all. Thank you.

8 HEARING OFFICER: Thank you. Mr. Brown.

9 MR. BROWN: Yes, ma'am. Thank you for the
10 time to be heard.

11 The video shows no kicks, no strikes, no
12 punches. When in the one plus principle, all of
13 those would have been available to me, having been
14 assaulted, with a suspect who attacks while two
15 officers in uniform are right there within reach of
16 her.

17 Suspect, as testified, was never
18 compliant, remained combative, both verbally and
19 physically.

20 At no time does the video show the suspect
21 being choked. The testifying officers never gave
22 her medical attention for a choking, which -- which
23 would be negligent on our part, or their part, if
24 they didn't and she was actually choked. They never
25 called EMS for this suspect. She was never injured

1 in any way. The only person injured myself, who
2 ultimately had to go to the hospital and be treated
3 as a result.

4 As -- as the sergeant testified, the
5 officers are always allowed without seeking
6 permission to go across to the Publix area, whether
7 you're getting food, or in this case, a
8 prescription. Nothing out of the ordinary, nothing
9 that a reasonable officer wouldn't say, well, we go
10 across here all day every day, go across and take
11 care of that.

12 I believe it shows clearly that I stayed
13 in line with the medical treatment of what the
14 doctor said, because the doctor advised to start
15 using that particular medicine right away. And
16 having gone to the doctor, I submitted to the
17 doctor's instructions.

18 Sergeant Lizarazo admitted that he never
19 did his job in that he didn't do a first injury
20 report, because as I stated in my interview, there
21 was no interest in doing it, because he did not sit
22 down and write one out and say that I can see a
23 blood mark or blood stain or open cut on the
24 officer's hand who was indicated that he was bit,
25 which he testified to that, yes, he was advised that

1 I was bit.

2 I believe that substantiates that when I
3 said he had no interest, he didn't, because he
4 didn't even bother to follow the department's
5 protocol of doing the first injury report.

6 The suspect was never yanked. In the
7 video, you can hear her being told to go down, down
8 to the ground, which is also taught at the Academy,
9 and is communicating to the other officer, our
10 intention at this point is to take this suspect down
11 to the ground. We're not going to stand here and
12 fight toe to toe. That's not working. She's
13 already delivered multiple strikes. She's already
14 poised to continue. She is not trying to be
15 compliant in any way.

16 And an officer who's functioning out of
17 defensive tactics would hear that nonverbal command,
18 which is taught at the Academy, and we both start
19 taking her to the ground, which would be the next
20 employing move.

21 She's attempted to assault the mother by
22 going back on the porch. We have a duty and an
23 obligation to stop her from doing that. We cannot
24 allow injury while we're there to other people.
25 That's the purpose of us being there.

1 The department, as you will listen to the
2 video, you'll see the sergeant investigating makes
3 the false allegations that -- and it was sent to the
4 Academy, that I used an "N" word, which the video,
5 when we listen to it, that was never done. It also
6 says that I cursed the mother out. And the video
7 clearly shows, that we've just seen, that was never
8 done.

9 It was a biased investigation in that in
10 made false allegations just to make the story seem
11 to be plausible. And I would just hope that those
12 considerations would be taken into account during
13 your decision-making process.

14 Thank you.

15 HEARING OFFICER: Thank you.

16 There is one issue I want to bring up.
17 So, one of the videos, I believe the minor face is
18 shown.

19 MR. BOURNE: Oh, yes.

20 HEARING OFFICER: Okay. So, anyone have any
21 objection to me redacting that, redacting the minor's
22 face?

23 MR. BOURNE: No.

24 HEARING OFFICER: Okay. So, that's the one
25 issue that I wanted to bring. So, it will be modified

1 a little bit, because the minor face can't show.

2 MR. BOURNE: That would be
3 Sergeant Brown's -- Officer Brown's video that had
4 that.

5 HEARING OFFICER: Okay. Because you do want
6 that beginning portion to be part of the evidence,
7 correct?

8 MR. BOURNE: I don't have any -- I don't have
9 any objection to that beginning portion being
10 excised --

11 HEARING OFFICER: Okay.

12 MR. BOURNE: -- because I don't think it's
13 relevant to the point that she is put in the car, and
14 then from there forward, if -- if the hearing officer
15 would accept that.

16 HEARING OFFICER: Okay. Do you know what
17 portion of the video I'm talking about?

18 MR. BROWN: I would -- I would ask that you
19 just obscure her face --

20 HEARING OFFICER: Okay.

21 MR. BROWN: -- because the audio also shows
22 the demeanor of MPO Brown, and I think that's
23 critically important.

24 HEARING OFFICER: Okay. All right. So, no
25 objection to me altering the video in that manner.

1 MR. BOURNE: No objection.

2 HEARING OFFICER: Okay. So, are there any
3 other matters that need to be taken up?

4 MR. BOURNE: No.

5 HEARING OFFICER: No. All right.

6 So, if not, this concludes today's
7 proceeding. Thank you, everyone, for your
8 attendance today.

9 (The hearing concluded at
10 approximately 12:42 p.m.)

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CERTIFICATE OF REPORTER

I, Robin Dunn, Court Reporter and Notary Public
for the State of South Carolina at Large, do hereby
certify:

That the foregoing hearing was taken before me
on the date and at the time and location stated on Page 1
of this transcript; that the deponent was duly sworn to
testify to the truth, the whole truth and nothing but the
truth; that the testimony of the deponent and all
objections made at the time of the examination were
recorded by me and were thereafter transcribed; that the
foregoing deposition as typed is a true, accurate and
complete record of the testimony of the deponent and of
all objections made at the time of the examination to the
best of my ability.

I further certify that I am neither related to
nor counsel for any party to the cause pending or
interested in the events thereof.

Witness my hand, I have hereunto affixed my
official seal this 6th day of March, 2024, Lexington,
South Carolina.



Robin Dunn, Court Reporter
Notary Public
State of South Carolina at Large.
My Commission expires:
February 16, 2033



**SOUTH CAROLINA CRIMINAL JUSTICE ACADEMY
NOTICE OF CERTIFICATION MISCONDUCT ALLEGATION**

November 7, 2023

Omar Brown
1140 Thurgood Road
Goose Creek, SC 29445

2023-CJA-10-21

Via Hand Delivery Only

RE: Allegation of certification misconduct and right to contested case hearing

Mr. Brown:

On October 31, 2023, the North Charleston Police Department filed an allegation of certification misconduct against you. Specifically, [w]illfully making false, misleading, incomplete, deceitful, or incorrect statements to a law enforcement officer, a law enforcement agency, or a representative of the agency, except when required by departmental policy or by the laws of this State; the wilful use of excessive force in an objectively unreasonable manner. You cannot be employed as a law enforcement officer or as a telecommunications operator; have the authority of a law enforcement officer; perform any duties of a law enforcement officer, including those duties involving the control and direction of member of the public, detainees, or prisoners; or exercise the power of arrest, while this allegation of misconduct is pending.

A person against whom an allegation of misconduct has been received by the academy may request a contested case hearing. The request must be made within three years after receipt of the allegation of misconduct and the service of the allegation on the officer, whichever is later. **A person who fails to request a contested case hearing within the time allowed shall be deemed to have waived his right to a contested case hearing. The Law Enforcement Training Council shall proceed to enter a final agency decision to deny the person his law enforcement certification or telecommunications certification for a specified time period, up to a permanent denial.** Hearings must be scheduled and conducted expeditiously and efficiently, consistent with the needs and rights of the parties to obtain a fair hearing and a complete record. The academy shall schedule a contested hearing within sixty days of receiving a request for a hearing, however, a continuance may be granted for cause. S.C. Code Section 23-23-150 (D) (emphasis added).

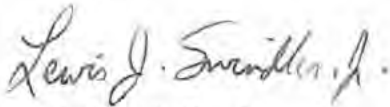


If you wish to dispute the allegations of certification misconduct, you must file the Request for Contested Case Hearing form, which is enclosed. Please note, if you have pending criminal charges, you are not entitled to a hearing until such time the charges have been adjudicated. If you were subject to a criminal investigation at the time of separation from the above-mentioned law enforcement agency, a declination letter from the prosecutorial authority must be provided prior to being entitled to a hearing.

Once said charges have been adjudicated and/or you are no longer the subject of a criminal investigation, a certified copy of the disposition sheet from the court of jurisdiction, or a copy of the declination letter from the prosecutorial authority must be provided to the the Office of General Counsel of the South Carolina Criminal Justice Academy for review. Upon receipt, review, and verification of the provided documentation, you will be entitled to a hearing and you may submit the provided request form.

Please be advised that you are entitled to have an attorney represent you at this hearing. Should you hire an attorney to represent you, please have the attorney send a notice of appearance to the Office of General Counsel for the South Carolina Criminal Justice Academy, 5400 Broad River Road, Columbia, South Carolina 29212.

Sincerely,



Lewis J. Swindler, Jr.
Director

I have received the allegation of certification misconduct and my right to a contested case hearing. I acknowledge that I have three (3) years to request a contested case hearing. If I do not request the contested case hearing within three (3) years, I understand that I will have waived my right to having one. Additionally, the Law Enforcement Training Council will proceed to enter a final agency decision, against me, to deny me a law enforcement certification for specified time period, up to permanent denial. Finally, I acknowledge that I cannot be employed as a law enforcement officer or telecommunications operator until this allegation of misconduct is favorably resolved.

Print Name

Witness

Signature

Witness Signature

Date

Date



**SOUTH CAROLINA CRIMINAL JUSTICE ACADEMY
REQUEST FOR CONTESTED CASE HEARING**

Office of General Counsel
South Carolina Criminal Justice Academy
5400 Broad River Road
Columbia, South Carolina 29212
cbrumlow@sccja.sc.gov

I, _____, hereby:

☐ Request a Contested Case Hearing

Please provide the following contact information to assist with prompt scheduling of the hearing and to ensure you receive any related correspondence regarding this matter:

Mailing Address: _____

Phone Number: _____ Home/Cell

E-Mail Address: _____

I understand that I am entitled to have an Attorney represent me at the Contested Case Hearing and during all proceedings from this point forward. I further understand that if I hire an Attorney to represent me in these proceedings that Attorney should send written notification of their representation of me to the South Carolina Criminal Justice Academy. Finally, I understand that my request for a contested case hearing must be served on the Academy within three (3) years after receipt of the written notice advising me of my right to a contested case hearing. If I fail to request a contested case, I understand that I will have waived my right to having one. Additionally, the Law Enforcement Training Council will proceed to enter a final agency decision, against me, to deny me a law enforcement certification for specified time period, up to permanent denial.

Respectfully,

Signature

Date

Print Name

Academy ID or last 4 of SSN



PCS: Separation Due to Misconduct

Employing Agency Information (Contact for more information)

This form **MUST** be completed within 15 days of the discovery of any event of misconduct which is determined to be "FOUNDED" by the agency or department. The Misconduct Report Form, Separation Supplement, and all documentation related to the misconduct must be forwarded to the Criminal Justice Academy's Certification Unit.

For any separation involving misconduct as defined in S.C. Code Section 23-23-150, completion of this form is **REQUIRED**.

Agency Information

Today's Date
10/31/2023

Reporting Agency
North Charleston Police Dept.

Name
Jeremy Wayne Dalton

Agency Email
daltonj@northcharleston.org

Agency Phone Number
(843) 666-3673

Officer Information

Name
Omar Brown

Academy ID
3886-2090

Certification Type
Class 1 LE

Phone Number
(843) 345-4997

Officer's Current Home Address
P.O. Box 442, Goose Creek, South Carolina 29445

Separation Information

Date of Separation **CONFIRM Date of Separation**
10/31/2023

Separation Action
Termination INVOLVING MISCONDUCT as defined in S.C. Code Section 23-23-150 and/or S.C. Code of

Please indicate the nature of the misconduct below:

Willfully making false, misleading, incomplete, deceitful, or incorrect statements to a law enforcement officer, a law enforcement agency, or a representative of the agency, except when required by departmental policy or by the laws of this State;
the wilful use of excessive force in an objectively unreasonable manner

Reason for Separation

Do not use generic terminology such as conduct unbecoming, failed to meet agency standards, violation of agency operating procedures, etc. Be specific. Detailed information describing act(s) of misconduct is necessary for efficient processing.

The below information is **REQUIRED** for all separations due to misconduct:

Type description of alleged misconduct:**SUMMARY OF INCIDENT:**

On August 8th, 2023, MPO Omar Brown and MPO Michael Sanchez responded to an incident location in reference to a dispute over child custody. During the incident, officers arrested a female suspect on-scene after she became verbally and physically resistant. MPO Omar Brown stated that the suspect bit him on the hand and left leg. Upon completion of the incident, Sgt Lizarazo followed-up on the injury to MPO Omar Brown. The Office of Professional Standards was requested to investigate the complaint on September 15th, 2023, due to the initial blue team internal complaint submitted by Sgt Lizarazo (Officer Brown's supervisor).

ALLEGATION(S) FROM CHAIN OF COMMAND:

Absent from Duty, Insubordination, Excessive Force, Conduct Towards Community, Chain of Command.

MPO Brown and MPO Sanchez during the incident allow the suspect to go back to the front porch of the residence and start arguing with the grandmother. As the suspect opens the screen door to the porch, MPO Brown grasps the suspect's left arm with his left hand, while he is still holding the bag of clothes in his right hand. The suspect turns and faces MPO Brown and pushes him back, forcing MPO Brown backwards several feet. Currently, MPO Sanchez gets behind the suspect and grabs her left wrist while the suspect's right arm is down at her side. The suspect is still yelling at MPO Brown, however, she transitioned from Level 4 behavior to Level 3 resistance while MPO Sanchez had control of her arm.

MPO Brown immediately drops the bag of clothes and is observed with both of his hands going immediately to the suspect's throat, grasping her around the throat.

MPO Brown is immediately noted to state to the suspect, "Let me tell you something nigga." MPO Brown uses this grasp around the suspect's throat to shove or attempt to maneuver her to the ground. The suspect spins, breaking the grasp of MPO Brown's hands from around her throat and the suspect again pushes MPO Brown backwards into the front bushes of the residence where he fell back on his left side. MPO Brown and MPO Sanchez then attempt to detain her while she continues to grasp the iron railing to the porch with her left hand. MPO Sanchez is attempting to detain her from behind, while MPO Brown then places his right hand across the back of her head and appears to be shoving it in a downward motion to take her to the ground. MPO Brown is then heard stating, "Let me tell you something, you want to fucking swing, fight and act stupid, get down to the ground, go to the ground or I will tase you." MPO Brown's BWC goes out of view from being close to the suspect and then reappears with the suspect already on the ground with MPO Sanchez attempting to apply mechanical restraints. The suspect is

observed telling MPO Brown to stop, "Damn, stupid, stop." Its observed once mechanical restraints were applied by MPO Sanchez, that MPO Brown continues to keep forcing the suspects head to the ground and says, "Yeah, you're stupid."

MPO Brown then releases his hand from the suspect's head and neck and tells her to rollover. When the suspect starts to yell again at MPO Brown he yells back, "Shut up and rollover." You can hear in the background MPO Sanchez telling MPO Brown that "I got her," in attempts to deescalate the situation.

MPO Brown then yells at the suspect to get up on her feet now and grabs the handcuffs/wrist area and pulls upward on them forcing the suspect's arms to extend out from her. MPO Brown continues to yell at the suspect, "Get up."

The suspect is observed in a standing position while MPO Sanchez again tells MPO Brown that he has her at which time MPO Brown releases his grasp on the handcuffs.

MPO Sanchez starts to walk away with the suspect while MPO Brown states, "Until she can't kick, I'm the one bleeding." Suspect turns around while MPO Sanchez is attempting to escort her to the patrol car and says something to MPO Brown and he immediately responds, "Shut up, you are going to jail, you should have left when you had the chance." MPO Sanchez continues to tell the suspect to "come on" while he is attempting to escort her out of the yard and towards the marked units.

Suspect asks MPO Brown who the fuck you think you are talking to.

MPO Sanchez continues to tell the suspect to "stop, stop" her behavior as he escorts her away.

MPO Sanchez is at the street away from the residence, alongside a marked crown Victoria when the suspect is heard stating, "Man, you choking me and you choking me, choking me for what?"

During the interviews of Officer Sanchez after Garrity and Misconduct forms were signed and acknowledged, he advised that he grasped the suspect's arms to start the detention efforts because she stopped what she was doing. He stated that Brown then just lunged at her and grabbed her around the neck and shoulders. He stated that Brown grabbed her and pulled her downward. He said that he had control of one arm, and she spun and pushed Brown against the wall of the house. He stated that she then resisted more by holding onto the banister with her left arm while he had control of her right arm. He said Brown then grabbed her and forced her to the ground. He said that at some point he was able to handcuff her while she was in that position. He stated that Brown continued to shove at her head and cursing her out because of her behavior. He stated that Brown continued to slam her head into the ground even when he stated that he had her repeatedly.

- Officer Sanchez stated that he informed Sgt. Lizarazo that he needed to review the video because there was a use of force issue he needed to review.

- He was asked again that he continued to push her face into the dirt after she was handcuffed. Officer Sanchez said yes.

Sgt. Lizarazo was interviewed after Garrity and Misconduct was signed and acknowledged.

He stated that after Brown arrived at the South Bureau, he asked what happened. He advised that Brown stated something to the effect of this crazy bitch out there acting crazy. He stated that he asked Brown if he was injured, and Brown replied that he believed he was bitten on the leg and that he then showed him his hand that had a small laceration upon it.

I asked him what did he do from there since there were injuries. He responded that asked Brown if he was good, if he needed to go to the hospital, did he need EMS. He stated that Brown reached into his left from pocket, pulled his hand back out and said that he was good. He asked Brown if the skin was broken. He

stated that he told Brown to go into the bathroom, pull his pants down and check to see if the skin had been broken. He stated that Brown responded, he was ok and would be ok, that this was the least of his worries.

He stated that he assisted Brown with reports from there for about the next 30 mins, without Brown complaining of anything.

He was asked if he read the report after it was completed. He stated that yes, he did and it was very vague.

I inquired if after Sanchez came back to South if spoke with him? He stated yes that Sanchez told him that he needed to look at the video when he gets a chance.

- He was asked about when did he hear about Brown going to the hospital? He stated that he received a call from Lt. Sherwood asking him if he knew that Brown was bitten at work. He stated that he told the Lt. that he was aware of it. Lt. responded stating that Brown was calling him from the ER stating that he is bleeding from his leg and that he told you and that you didn't care much about what he told you and that he brushed him off. He stated that he started to laugh and told the Lt. that he sat with him, he asked him all the questions and short of pulling his pants down, he did everything he could and that he never brought any further information up. He stated that Lt. Sherwood told him that apparently, he called the Major.

- Sgt. Lizarazo stated that he was trying to get in touch with him while he was at Concentra (medical) trying to get information that was not listed on his paperwork in his personnel file. He stated that he called Brown several times and that Brown answered with an attitude about what he wanted. He stated that he informed Brown of the issues with his paperwork and being accountable. He stated that after Brown gave him his date of birth, that he told Brown that was all he needed and hung up. That is when Brown sent him a message stating that he (Sgt) would not call him and be disrespectful and hang up on him.

(Text messages in file) I asked if during the conversation that he stated that he was still at Concentra. He follows up with text messages immediately telling him to meet south when he was done and then asked later if he was in-service, and that Brown never responded. He stated that he called Lt. between the two messages and told him what was going on. He stated that Lt. informed him to call Concentra and see what was going on. He stated that he then called Concentra and was told that he was released at 1218.

I asked if he had any other conversations with him and then he never responded after that. He said he did send him a picture of his receipt from the pharmacy that showed him in West Ashley. He said that after he sent the receipt and that he spoke with the Lt. and told him that he appeared in West Ashley. He stated that the Lt. told him that he just spoke with him (Brown) and sent him home.

MPO Omar Brown was interviewed after Garrity and Misconduct was signed and acknowledged.

He stated that he retrieved her (suspect's) belongings, and she would not accept them and then attempted to go into the house. He stated that he stopped her and was physically struck and ultimately taken to the ground and cuffed, then charged with two counts of assault. He continued stating that he went to the station and tried to tell the sarge what happened and that he was on the phone. He said that after he started paperwork sarge came in and sat down next to him. He stated that blood was on his hand and that he was wiping it periodically with tissue and alcohol gel. He said Sgt asked him what happened and typed his top half to the report and went about his business.

- He was asked what he told him what happened. He said that he was bitten twice by a lady and the nature of the call and looked at his hand and asked where else he got bit. He stated that he told him his leg and that was it.

- He was asked if Sgt Lizarazo told him to go to the bathroom and check his leg. He stated, "No Sir."

- He was asked if Sgt Lizarazo offered any first aid, medical attention, anything, and he stated again, No.

- He was asked what happened after the end of shift and everyone headed out. He stated that he

called the Lt and that he was tied up with something and would call him back. He stated this was somewhere around the time they left. He stated that he tried him again and that Lt. was still busy, so he called and was chatting with the Major. He stated that he informed the Major of the injuries and that he was hurting, and that the Lt. was tied up. He stated that the Major told him to call the Lt back and tell him what he told me and told the Lt. he was on the way to the hospital to get checked out. He stated that Lt. asked if the Sgt did a first injury report, and he informed the Lt. no not that he knew of. He stated that the Lt. said, God Dammit, ok, go get checked out and he would speak with the Sgt and go from there.

- He was asked where he went for treatment, and he said the urgent care on Dorchester Road. It was determined that he went to MedCare Xpress.

- He was asked what the doctors said. He said they gave him medications, cleaned it up and to follow-up with his doctor. He stated that they gave him some medicine and prescriptions. He was asked if the medicines were filled. He stated that they were not filled that night.

- He said the following day he was sent to Concentra, and they gave him more prescriptions and some more recommendations and he filled his prescriptions at Publix off Cosgrove Ave. (Charleston City, West Ashley).

- He was asked that when the suspect tried to enter the house during the call for service, she turned around and struck him or pushed him. He confirmed he was assaulted.

- He was asked what happened after she pushed him? He stated that ultimately after trying to get her in cuffs led to another physical altercation. He was then informed of the positioning of himself and others at this point in the incident and asked what he immediately did. He stated that Sanchez was holding one arm and that he went to grab her to take her to the ground. He was asked where he grabbed her. He started up in the top area while motioning to the area of the collar bones. He then said that ultimately his hands went behind her neck in an effort to force her to the ground. He was asked that after he went back at her, what level of force was she displaying while Sanchez is attempting to detain her. He stated that his hands go to the top part of her shoulder and then around the back of her neck and attempt to take her to the ground.

- He was asked what level of force the suspect was displaying after Sanchez had her arm and was attempting to detain her? He started to go into that Sanchez had not detained her and was stopped with the same question of what level of force was she displaying there. He stated in this particular photograph, "None."

He stated she was just verbally cussing. He was again asked what level of force she was displaying on the use of force continuum that would then give him the right to go hands on. He was then walked through the use of force levels showing that when the suspect pushed him, she was at a level 4. After he was pushed back and Sanchez is detaining her, that he then lunges back at her, and his hands go straight to her throat. He stated that the hand immediately slides to the back of her neck, she was never choked down on and that his hands go to the back and she is pushed down. He continued stating that at no point was she standing there being choked. It was brought to his attention no one said anything about being choked and then he was asked what level of force it is when you place your hands on someone's throat. He started placing hands on the upper part of the body and was then corrected again focusing on the hands on the throat and again asked what level of force it is ok for an officer to place hands on someone's throat. He started to respond with, "when in a fight" and was stopped and again asked the question about what level of force is it when a police officer places their hands on someone's throat. He again answered that when gaining compliance and touching parts of their body there is no restrictive policies if you will unless you are applying force, which I am not applying a choking force, I am grabbing a part of the body, hands immediately slide to behind her to force her upper body down.

- He was asked that our policy has no descriptive information within it that says when you can place your hands on a suspect's throat. He responds, "Not that he is aware of." He was told that he doesn't know his policies at all, while he throws his hands up in the air.

- He was asked if he remembered what was said to her or done after Sanchez applied the second handcuff, or how she was escorted up from the ground. He stated that "I assisted her getting up." He was asked what he meant by assisted. He stated, "helped her get up". He was asked how. He stated that "one arm was holding onto her arm getting up, I would have to look at the video." He was informed that the video showed that he pulled upwards on the linking chain forcing her to stand and that there was no assistance. He responded, "from her kneeling down, um, straight back, she was assisted in getting up, she was not picked up, not lifted up by her cuffs and her arm, not to my knowledge she wasn't." During this time he was shown a picture from his BWC showing his hands on the linking chain.

- He was asked about once he arrived back at the station and knocked out the paperwork. He was asked if he had reviewed the incident report that he wrote. He stated that he read it this morning. He was asked what level of force is required by policy to be documented in an incident report. He responded, "At no point did I strike her", he was stopped and informed that was not the question asked. He was asked again, what level of force is required for an incident report to be documented. He responded, "I don't know."

- He was asked about if after he informed Sgt Lizarazo of the incident while back at the bureau, that he looked at your hand and he didn't say anything about or offer any medical attention? He replied, "No Sir." He was asked not to tell you to go to the bathroom and check your leg? He replied, "No Sir." That while they were sitting next to each other working on reports if at any point in time did, he place his hand in his pocket to check and see if he was bleeding and said no, I'm good? He replied, "No he never, said anything about check your leg, he never said anything about check your hand I put alcohol on it on my own."

He was asked if while at South Sanchez ever asked him about his injuries? He said, "Not that I recall, he went and processed the lady at the jail." He was asked again, and he said, "Not to my knowledge." He was asked that he didn't make a statement to Sanchez to the effect of, "It's no worse than I have had before and if it gets worse, I will go to the ER later?" He replied, "not to my knowledge, no Sir." He was asked if he remembered telling Sgt Lizarazo I have other things to worry about when he asked him to go to the bathroom and check your leg? He replied, "No that's not true, he never said that." He continued, "he didn't show any interest any interest and I will put that on the record, he never showed any interest, I need to do an injury report, let me take a picture of your hand when he clearly had the opportunity to take a picture while sitting right there, and I don't know if he has a picture of my hand, he had zero interest."

- He was asked again, if Lizarazo asked him how severe was the injury to the leg, he replied, "No Sir."

- He was asked again, if Lizarazo asked him if his leg was bleeding, he replied, "No Sir."

- He was asked again, if Lizarazo asked him to go to the bathroom to check his leg, he replied, "100 percent No Sir, absolutely not Sir."

- He continued stating that Lizarazo showed no interest in the injuries, he informed him of the incident, he helped with paperwork and only interested in going home.

- He was asked if a meeting happened with Sgt Lizarazo and Lt. Sherwood after roll call to discuss the incident? He replied, "did he call me in the office and let me look at your leg, take a picture of your leg." He was asked again that after roll call he did not have a meeting with anyone else, "Not to my knowledge, I got a call on my phone telling me to go to Concentra ASAP."

- He again was asked that after roll call was over, he did not meet with Lt. Sherwood and Sgt Lizarazo in the Lt's office. He replied, after thinking for a few moments, "at some point in time the Lt. did meet with the two of us together in his office." It was stated immediately following that is what we keep asking him and he keeps telling us no.

- He was asked if he was directed to go to Concentra and does he remember what time he was told to go and what time he arrived there? He stated that he had a prisoner and went to the wrong Concentra and that he had to go to Goer Drive location. He was asked while he was at Concentra did Sgt Lizarazo call him trying to get information?

He was asked if he remembered what time he left Concentra? He stated no he didn't. He stated that he remembered the Lt. calling him asking where he was and that he told him that he was getting his prescription filled just off Cosgrove. He was reminded of a phone call that he had with Sgt Lizarazo and to explain it. He replied, "at some point he calls me which he has done more than once, he was yelling and using profanities, that I told him and even texted him that he would not call me and use profanities and hang up." He was asked directly what Sgt Lizarazo said during that phone call? He replied, "Don't really know everything word for word, but um, he had a few F's and this and that and more than once I have texted him." He was confronted with the difference between language used and language directed at him. He was asked again what was said by his Sgt, "He said that he cursed directly at me, and that he couldn't tell me everything that was said word for word, and remember texting him um, and um, I can't remember the whole text directly, um, um, you know, that that was a problem or whatever."

- During this time, he explains that when during the phone call with Sgt Lizarazo that he did tell him he was still at Concentra and that the reason for the almost hour time gap between when the discharge time of him from Concentra and when he left was because of paperwork being messed up and no prescription being called in. He said that after he left Concentra, he went to get his prescription filled. He was asked why immediately following the phone call with his Sgt that Lizarazo sent him two text messages saying to meet at south when done and then asked him if he was in-service that both went unanswered by him? You leave your jurisdiction, and don't communicate with your supervisor and go get your prescription in West Ashley? He stated that he was not familiar with the text messages and that the guys he works for would say he doesn't always check his phone. He was confronted by the times of the messages and that they were sent immediately following one another. He was asked why he didn't respond to your supervisor and communicate with him and tell him that he was now going to get prescriptions filled? He was informed how important communication is with his Sgt because of the role of the Sgt and that they are responsible for him if something occurs. He replied, that when he is sent to the doctor and a prescription is issued, I go to fill them.

MPO Omar Brown was found sustained on violating several sections within A-26; Code of Conduct policy which include Dishonesty, Insubordination, and Excessive Use of Force. MPO Brown used Level 6 force (Deadly Force) on a Level 3 verbally resistant subject by grasping his hands to her throat and after the subject was handcuffed, he continued to force her face into the dirt when she was not resisting.

MPO Brown failed to follow the supervisors' directives on reporting to the Bureau upon completion of his treatment at Concentra and refused to answer his calls due to him failing to keep his supervisor informed. Lastly, MPO Brown's statements made during his interview in which he stated Sgt Lizarazo never checked on or offered medical attention for his injuries was not factual and untruthful. Sgt Lizarazo offered medical attention which was witnessed by MPO Sanchez. Further statements during the interview about force use, comments made to the suspect were found not factual and untruthful and were noted during video review. Other minor violations noted during review of this incident: Absent from duty without prior authorization from supervisor, failing to utilize chain of command, and delayed BWC activation on-scene.

Criminal Charges Filed?

No

Pending Criminal Investigation?

No

Pending Criminal Charges?

No

ACCESS MRN FORM: [Fillable MRN Form](#)

Upload MRN

Brown, Omar MRN_Fillable.pdf

Pursuant to S.C. Code 23-23-150(F), does the submission of this allegation exceed the time allowed by statute?

No

Electronic Signature (Agency Head or Authorized Designee)

Agency Head or Authorized Designee Signature

Agency Head or Authorized Designee Academy ID

4781-2973

Jeremy W. Dalton

STATE OF SOUTH CAROLINA)

COUNTY OF BERKELEY)

AFFIDAVIT OF SERVICE or NON-SERVICE

Case No: 2023-CJA-10-21

Hearing Date:

SOUTH CAROLINA CRIMINAL JUSTICE
ACADEMY AND NORTH CHARLESTON
POLICE DEPARTMENT

Plaintiff (s)

vs.

OMAR BROWN

Defendant (s)

The undersigned, Deputy PFC HOPE BROWN, says on oath that he/she served the following:

- | | |
|--|---|
| ☐ Affidavit | ☐ Order |
| ☐ Complaint | ☐ Order of Continuance |
| ☐ Family Court Coversheet | ☐ Financial Declaration |
| ☐ Court Information Sheet | ☐ Petition for Order of Protection |
| ☐ Juvenile Summons/Petition | ☐ Summons |
| ☐ Motion and Affidavit for Emergency Hearing | ☐ Notice of Hearing |
| ☒ Other- NOTICE OF CERTIFICATION MISCONDUCT ALLEGATION, REQUEST FOR CONTESTED CASE HEARING, SEPARATION DUE TO MISCONDUCT | |

By delivering the same to:

- ☒ Defendant/Plaintiff Brown, Omar, personally.
- ☐ _____, personally.
- (Note relation to defendant) a person of discretion residing at defendant's address.
- ☐ _____ the _____
- (Person served is corporate defendant) (title/office held)

And leaving with him/her one (1) copy of the same at 1140 THURGOOD RD, GOOSE CREEK, SC 29445
on the 14th day of November, 2023 at 3:10 AM/PM and that deponent knows the person so served
to be the defendant mentioned and described in the pleadings served, and that deponent is not a party to nor interested in the action.

Non-Service Information

Attempted Service at _____
On _____ at _____ am/pm

Not served for the following reasons:

Signed

H. Brown
PFC HOPE BROWN

Sworn to me this

14th day of November, 2023

Jessica B. Anderson
Notary Public for State of South Carolina

My Commission Expires: October 12, 2023

Civil Paper Service Receipt

Berkeley County Sheriffs Office
223 North Live Oak Drive
Moncks Corner, SC 29461
(843) 719-4668

Return To:

SOUTH CAROLINA CRIMINAL JUSTICE ACADEMY ATTN: C. BRUMLOW
5400 BROAD RIVER RD
Columbia, SC 29212

Civil Number: CV-202303217	Incident Number:	Date Issued:	Date Returned: 11/14/2023	Court Location: COLUMBIA SC
Date Received: 11/07/2023	Civil Type: Notice of Certification Misconduct Allegation			

Plaintiff(s)

Plaintiff Name: SOUTH CAROLINA CRIMINAL JUSTICE ACADEMY	Plaintiff Address:	Phone Number:
Plaintiff Name: NORTH CHARLESTON POLICE DEPARTMENT	Plaintiff Address:	Phone Number:

Defendant(s)

Defendant Name: Brown, Omar	Defendant Address: 1140 THURGOOD RD, Goose Creek, SC 29445	Phone Number:
Employer:	Employer Address:	Phone Number:

Payment Information

Sheriff Fee:	Receipt Number:	Check Number:	Date Fee Paid:	Return Amount:	Check Number:
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Service Information

Date Served: 11/14/2023	Serving Officer: 7546 - Corporal Hope Brown	Served To: Brown, Omar
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Service Notes

REQUEST FOR CONTESTED CASE HEARING
SEPARATION DUE TO MISCONDUCT

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)

AFFIDAVIT OF SERVICE or NON-SERVICE

Case No: 2023-CJA-10-21

Hearing Date:

SOUTH CAROLINA CRIMINAL JUSTICE
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POLICE DEPARTMENT
Plaintiff (s)

vs.

OMAR BROWN
Defendant (s)

The undersigned, Deputy PFC HOPE BROWN, says on oath that he/she served the following:

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|--|---|
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| ☐ Complaint | ☐ Order of Continuance |
| ☐ Family Court Coversheet | ☐ Financial Declaration |
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| ☒ Other- NOTICE OF CERTIFICATION MISCONDUCT ALLEGATION, REQUEST FOR CONTESTED CASE HEARING, SEPARATION DUE TO MISCONDUCT | |

By delivering the same to:

- ☒ Defendant/Plaintiff Brown, Omar, personally.
☐ _____, personally.
(Note relation to defendant) a person of discretion residing at defendant's address.
☐ _____ the _____
(Person served is corporate defendant) (title/office held)

And leaving with him/her one (1) copy of the same at 1140 THURGOOD RD, GOOSE CREEK, SC 29445
on the 14th day of November, 2023 at 3:10 AM/PM and that deponent knows the person so served
to be the defendant mentioned and described in the pleadings served, and that deponent is not a party to nor interested in the action.

Non-Service Information

Attempted Service at _____
On _____ at _____ am/pm

Not served for the following reasons:

Signed

H. Brown
PFC HOPE BROWN

Sworn to me this

14th day of November, 2023
Janice B. Anderson
Notary Public for State of South Carolina
My Commission Expires: October 12, 2023



PCS: Separation Due to Misconduct

Employing Agency Information (Contact for more information)

This form **MUST** be completed within 15 days of the discovery of any event of misconduct which is determined to be "FOUNDED" by the agency or department. The Misconduct Report Form, Separation Supplement, and all documentation related to the misconduct must be forwarded to the Criminal Justice Academy's Certification Unit.

For any separation involving misconduct as defined in S.C. Code Section 23-23-150, completion of this form is **REQUIRED**.

Agency Information

Today's Date
10/31/2023

Reporting Agency
North Charleston Police Dept.

Name
Jeremy Wayne Dalton

Agency Email
daltonj@northcharleston.org

Agency Phone Number
(843) 666-3673

Officer Information

Name
Omar Brown

Academy ID
3886-2090

Certification Type
Class 1 LE

Phone Number
(843) 345-4997

Officer's Current Home Address
P.O. Box 442, Goose Creek, South Carolina 29445

Separation Information

Date of Separation **CONFIRM Date of Separation**
10/31/2023

Separation Action
Termination INVOLVING MISCONDUCT as defined in S.C. Code Section 23-23-150 and/or S.C. Code of

Please indicate the nature of the misconduct below:

Willfully making false, misleading, incomplete, deceitful, or incorrect statements to a law enforcement officer, a law enforcement agency, or a representative of the agency, except when required by departmental policy or by the laws of this State;
the wilful use of excessive force in an objectively unreasonable manner

Reason for Separation

Do not use generic terminology such as conduct unbecoming, failed to meet agency standards, violation of agency operating procedures, etc. Be specific. Detailed information describing act(s) of misconduct is necessary for efficient processing.

The below information is **REQUIRED** for all separations due to misconduct:

Type description of alleged misconduct:**SUMMARY OF INCIDENT:**

On August 8th, 2023, MPO Omar Brown and MPO Michael Sanchez responded to an incident location in reference to a dispute over child custody. During the incident, officers arrested a female suspect on-scene after she became verbally and physically resistant. MPO Omar Brown stated that the suspect bit him on the hand and left leg. Upon completion of the incident, Sgt Lizarazo followed-up on the injury to MPO Omar Brown. The Office of Professional Standards was requested to investigate the complaint on September 15th, 2023, due to the initial blue team internal complaint submitted by Sgt Lizarazo (Officer Brown's supervisor).

ALLEGATION(S) FROM CHAIN OF COMMAND:

Absent from Duty, Insubordination, Excessive Force, Conduct Towards Community, Chain of Command.

MPO Brown and MPO Sanchez during the incident allow the suspect to go back to the front porch of the residence and start arguing with the grandmother. As the suspect opens the screen door to the porch, MPO Brown grasps the suspect's left arm with his left hand, while he is still holding the bag of clothes in his right hand. The suspect turns and faces MPO Brown and pushes him back, forcing MPO Brown backwards several feet. Currently, MPO Sanchez gets behind the suspect and grabs her left wrist while the suspect's right arm is down at her side. The suspect is still yelling at MPO Brown, however, she transitioned from Level 4 behavior to Level 3 resistance while MPO Sanchez had control of her arm.

MPO Brown immediately drops the bag of clothes and is observed with both of his hands going immediately to the suspect's throat, grasping her around the throat.

MPO Brown is immediately noted to state to the suspect, "Let me tell you something nigga." MPO Brown uses this grasp around the suspect's throat to shove or attempt to maneuver her to the ground. The suspect spins, breaking the grasp of MPO Brown's hands from around her throat and the suspect again pushes MPO Brown backwards into the front bushes of the residence where he fell back on his left side. MPO Brown and MPO Sanchez then attempt to detain her while she continues to grasp the iron railing to the porch with her left hand. MPO Sanchez is attempting to detain her from behind, while MPO Brown then places his right hand across the back of her head and appears to be shoving it in a downward motion to take her to the ground. MPO Brown is then heard stating, "Let me tell you something, you want to fucking swing, fight and act stupid, get down to the ground, go to the ground or I will tase you." MPO Brown's BWC goes out of view from being close to the suspect and then reappears with the suspect already on the ground with MPO Sanchez attempting to apply mechanical restraints. The suspect is

observed telling MPO Brown to stop, "Damn, stupid, stop." It's observed once mechanical restraints were applied by MPO Sanchez, that MPO Brown continues to keep forcing the suspect's head to the ground and says, "Yeah, you're stupid."

MPO Brown then releases his hand from the suspect's head and neck and tells her to rollover. When the suspect starts to yell again at MPO Brown he yells back, "Shut up and rollover." You can hear in the background MPO Sanchez telling MPO Brown that "I got her," in attempts to deescalate the situation.

MPO Brown then yells at the suspect to get up on her feet now and grabs the handcuffs/wrist area and pulls upward on them forcing the suspect's arms to extend out from her. MPO Brown continues to yell at the suspect, "Get up."

The suspect is observed in a standing position while MPO Sanchez again tells MPO Brown that he has her at which time MPO Brown releases his grasp on the handcuffs.

MPO Sanchez starts to walk away with the suspect while MPO Brown states, "Until she can't kick, I'm the one bleeding." Suspect turns around while MPO Sanchez is attempting to escort her to the patrol car and says something to MPO Brown and he immediately responds, "Shut up, you are going to jail, you should have left when you had the chance." MPO Sanchez continues to tell the suspect to "come on" while he is attempting to escort her out of the yard and towards the marked units.

Suspect asks MPO Brown who the fuck you think you are talking to.

MPO Sanchez continues to tell the suspect to "stop, stop" her behavior as he escorts her away.

MPO Sanchez is at the street away from the residence, alongside a marked crown Victoria when the suspect is heard stating, "Man, you choking me and you choking me, choking me for what?"

During the interviews of Officer Sanchez after Garrity and Misconduct forms were signed and acknowledged, he advised that he grasped the suspect's arms to start the detention efforts because she stopped what she was doing. He stated that Brown then just lunged at her and grabbed her around the neck and shoulders. He stated that Brown grabbed her and pulled her downward. He said that he had control of one arm, and she spun and pushed Brown against the wall of the house. He stated that she then resisted more by holding onto the banister with her left arm while he had control of her right arm. He said Brown then grabbed her and forced her to the ground. He said that at some point he was able to handcuff her while she was in that position. He stated that Brown continued to shove at her head and cursing her out because of her behavior. He stated that Brown continued to slam her head into the ground even when he stated that he had her repeatedly.

- Officer Sanchez stated that he informed Sgt. Lizarazo that he needed to review the video because there was a use of force issue he needed to review.

- He was asked again that he continued to push her face into the dirt after she was handcuffed. Officer Sanchez said yes.

Sgt. Lizarazo was interviewed after Garrity and Misconduct was signed and acknowledged.

He stated that after Brown arrived at the South Bureau, he asked what happened. He advised that Brown stated something to the effect of this crazy bitch out there acting crazy. He stated that he asked Brown if he was injured, and Brown replied that he believed he was bitten on the leg and that he then showed him his hand that had a small laceration upon it.

I asked him what did he do from there since there were injuries. He responded that he asked Brown if he was good, if he needed to go to the hospital, did he need EMS. He stated that Brown reached into his left front pocket, pulled his hand back out and said that he was good. He asked Brown if the skin was broken. He

stated that he told Brown to go into the bathroom, pull his pants down and check to see if the skin had been broken. He stated that Brown responded, he was ok and would be ok, that this was the least of his worries.

He stated that he assisted Brown with reports from there for about the next 30 mins, without Brown complaining of anything.

He was asked if he read the report after it was completed. He stated that yes, he did and it was very vague.

I inquired if after Sanchez came back to South if spoke with him? He stated yes that Sanchez told him that he needed to look at the video when he gets a chance.

- He was asked about when did he hear about Brown going to the hospital? He stated that he received a call from Lt. Sherwood asking him if he knew that Brown was bitten at work. He stated that he told the Lt. that he was aware of it. Lt. responded stating that Brown was calling him from the ER stating that he is bleeding from his leg and that he told you and that you didn't care much about what he told you and that he brushed him off. He stated that he started to laugh and told the Lt. that he sat with him, he asked him all the questions and short of pulling his pants down, he did everything he could and that he never brought any further information up. He stated that Lt. Sherwood told him that apparently, he called the Major.

- Sgt. Lizarazo stated that he was trying to get in touch with him while he was at Concentra (medical) trying to get information that was not listed on his paperwork in his personnel file. He stated that he called Brown several times and that Brown answered with an attitude about what he wanted. He stated that he informed Brown of the issues with his paperwork and being accountable. He stated that after Brown gave him his date of birth, that he told Brown that was all he needed and hung up. That is when Brown sent him a message stating that he (Sgt) would not call him and be disrespectful and hang up on him.

(Text messages in file) I asked if during the conversation that he stated that he was still at Concentra. He follows up with text messages immediately telling him to meet south when he was done and then asked later if he was in-service, and that Brown never responded. He stated that he called Lt. between the two messages and told him what was going on. He stated that Lt. informed him to call Concentra and see what was going on. He stated that he then called Concentra and was told that he was released at 1218.

I asked if he had any other conversations with him and then he never responded after that. He said he did send him a picture of his receipt from the pharmacy that showed him in West Ashley. He said that after he sent the receipt and that he spoke with the Lt. and told him that he appeared in West Ashley. He stated that the Lt. told him that he just spoke with him (Brown) and sent him home.

MPO Omar Brown was interviewed after Garrity and Misconduct was signed and acknowledged.

He stated that he retrieved her (suspect's) belongings, and she would not accept them and then attempted to go into the house. He stated that he stopped her and was physically struck and ultimately taken to the ground and cuffed, then charged with two counts of assault. He continued stating that he went to the station and tried to tell the sarge what happened and that he was on the phone. He said that after he started paperwork sarge came in and sat down next to him. He stated that blood was on his hand and that he was wiping it periodically with tissue and alcohol gel. He said Sgt asked him what happened and typed his top half to the report and went about his business.

- He was asked what he told him what happened. He said that he was bitten twice by a lady and the nature of the call and looked at his hand and asked where else he got bit. He stated that he told him his leg and that was it.

- He was asked if Sgt Lizarazo told him to go to the bathroom and check his leg. He stated, "No Sir."

- He was asked if Sgt Lizarazo offered any first aid, medical attention, anything, and he stated again, No.

- He was asked what happened after the end of shift and everyone headed out. He stated that he

called the Lt and that he was tied up with something and would call him back. He stated this was somewhere around the time they left. He stated that he tried him again and that Lt. was still busy, so he called and was chatting with the Major. He stated that he informed the Major of the injuries and that he was hurting, and that the Lt. was tied up. He stated that the Major told him to call the Lt back and tell him what he told me and told the Lt. he was on the way to the hospital to get checked out. He stated that Lt. asked if the Sgt did a first injury report, and he informed the Lt. no not that he knew of. He stated that the Lt. said, God Dammit, ok, go get checked out and he would speak with the Sgt and go from there.

- He was asked where he went for treatment, and he said the urgent care on Dorchester Road. It was determined that he went to MedCare Xpress.

- He was asked what the doctors said. He said they gave him medications, cleaned it up and to follow-up with his doctor. He stated that they gave him some medicine and prescriptions. He was asked if the medicines were filled. He stated that they were not filled that night.

- He said the following day he was sent to Concentra, and they gave him more prescriptions and some more recommendations and he filled his prescriptions at Publix off Cosgrove Ave. (Charleston City, West Ashley).

- He was asked that when the suspect tried to enter the house during the call for service, she turned around and struck him or pushed him. He confirmed he was assaulted.

- He was asked what happened after she pushed him? He stated that ultimately after trying to get her in cuffs led to another physical altercation. He was then informed of the positioning of himself and others at this point in the incident and asked what he immediately did. He stated that Sanchez was holding one arm and that he went to grab her to take her to the ground. He was asked where he grabbed her. He started up in the top area while motioning to the area of the collar bones. He then said that ultimately his hands went behind her neck in an effort to force her to the ground. He was asked that after he went back at her, what level of force was she displaying while Sanchez is attempting to detain her. He stated that his hands go to the top part of her shoulder and then around the back of her neck and attempt to take her to the ground.

- He was asked what level of force the suspect was displaying after Sanchez had her arm and was attempting to detain her? He started to go into that Sanchez had not detained her and was stopped with the same question of what level of force was she displaying there. He stated in this particular photograph, "None."

He stated she was just verbally cussing. He was again asked what level of force she was displaying on the use of force continuum that would then give him the right to go hands on. He was then walked through the use of force levels showing that when the suspect pushed him, she was at a level 4. After he was pushed back and Sanchez is detaining her, that he then lunges back at her, and his hands go straight to her throat. He stated that the hand immediately slides to the back of her neck, she was never choked down on and that his hands go to the back and she is pushed down. He continued stating that at no point was she standing there being choked. It was brought to his attention no one said anything about being choked and then he was asked what level of force it is when you place your hands on someone's throat. He started placing hands on the upper part of the body and was then corrected again focusing on the hands on the throat and again asked what level of force it is ok for an officer to place hands on someone's throat. He started to respond with, "when in a fight" and was stopped and again asked the question about what level of force is it when a police officer places their hands on someone's throat. He again answered that when gaining compliance and touching parts of their body there is no restrictive policies if you will unless you are applying force, which I am not applying a choking force, I am grabbing a part of the body, hands immediately slide to behind her to force her upper body down.

- He was asked that our policy has no descriptive information within it that says when you can place your hands on a suspect's throat. He responds, "Not that he is aware of." He was told that he doesn't know his policies at all, while he throws his hands up in the air.

- He was asked if he remembered what was said to her or done after Sanchez applied the second handcuff, or how she was escorted up from the ground. He stated that "I assisted her getting up." He was asked what he meant by assisted. He stated, "helped her get up". He was asked how. He stated that "one arm was holding onto her arm getting up, I would have to look at the video." He was informed that the video showed that he pulled upwards on the linking chain forcing her to stand and that there was no assistance. He responded, "from her kneeling down, um, straight back, she was assisted in getting up, she was not picked up, not lifted up by her cuffs and her arm, not to my knowledge she wasn't." During this time he was shown a picture from his BWC showing his hands on the linking chain.

- He was asked about once he arrived back at the station and knocked out the paperwork. He was asked if he had reviewed the incident report that he wrote. He stated that he read it this morning. He was asked what level of force is required by policy to be documented in an incident report. He responded, "At no point did I strike her", he was stopped and informed that was not the question asked. He was asked again, what level of force is required for an incident report to be documented. He responded, "I don't know."

- He was asked about if after he informed Sgt Lizarazo of the incident while back at the bureau, that he looked at your hand and he didn't say anything about or offered any medical attention? He replied, "No Sir." He was asked not to tell you to go to the bathroom and check your leg? He replied, "No Sir." That while they were sitting next to each other working on reports if at any point in time did, he placed his hand in his pocket to check and see if he was bleeding and said no, I'm good? He replied, "No he never, said anything about check your leg, he never said anything about check your hand I put alcohol on it on my own."

He was asked if while at South Sanchez ever asked him about his injuries? He said, "Not that I recall, he went and processed the lady at the jail." He was asked again, and he said, "Not to my knowledge." He was asked that he didn't make a statement to Sanchez to the effect of, "It's no worse than I have had before and if it gets worse, I will go to the ER later?" He replied, "not to my knowledge, no Sir." He was asked if he remembered telling Sgt Lizarazo I have other things to worry about when he asked him to go to the bathroom and check your leg? He replied, "No that's not true, he never said that." He continued, "he didn't show any interest any interest and I will put that on the record, he never showed any interest, I need to do an injury report, let me take a picture of your hand when he clearly had the opportunity to take a picture while sitting right there, and I don't know if he has a picture of my hand, he had zero interest."

- He was asked again, if Lizarazo asked him how severe was the injury to the leg, he replied, "No Sir."

- He was asked again, if Lizarazo asked him if his leg was bleeding, he replied, "No Sir."

- He was asked again, if Lizarazo asked him to go to the bathroom to check his leg, he replied, "100 percent No Sir, absolutely not Sir."

- He continued stating that Lizarazo showed no interest in the injuries, he informed him of the incident, he helped with paperwork and only interested in going home.

- He was asked if a meeting happened with Sgt Lizarazo and Lt. Sherwood after roll call to discuss the incident? He replied, "did he call me in the office and let me look at your leg, take a picture of your leg." He was asked again that after roll call he did not have a meeting with anyone else, "Not to my knowledge, I got a call on my phone telling me to go to Concentra ASAP."

- He again was asked that after roll call was over, he did not meet with Lt. Sherwood and Sgt Lizarazo in the Lt's office. He replied, after thinking for a few moments, "at some point in time the Lt. did meet with the two of us together in his office." It was stated immediately following that is what we keep asking him and he keeps telling us no.

- He was asked if he was directed to go to Concentra and does he remember what time he was told to go and what time he arrived there? He stated that he had a prisoner and went to the wrong Concentra and that he had to go to Goer Drive location. He was asked while he was at Concentra did Sgt Lizarazo call him trying to get information?

He was asked if he remembered what time he left Concentra? He stated no he didn't. He stated that he remembered the Lt. calling him asking where he was and that he told him that he was getting his prescription filled just off Cosgrove. He was reminded of a phone call that he had with Sgt Lizarazo and to explain it. He replied, "at some point he calls me which he has done more than once, he was yelling and using profanities, that I told him and even texted him that he would not call me and use profanities and hang up." He was asked directly what Sgt Lizarazo said during that phone call? He replied, "Don't really know everything word for word, but um, he had a few F's and this and that and more than once I have texted him." He was confronted with the difference between language used and language directed at him. He was asked again what was said by his Sgt, "He said that he cursed directly at me, and that he couldn't tell me everything that was said word for word, and remember texting him um, and um, I can't remember the whole text directly, um, um, you know, that that was a problem or whatever."

- During this time, he explains that when during the phone call with Sgt Lizarazo that he did tell him he was still at Concentra and that the reason for the almost hour time gap between when the discharge time of him from Concentra and when he left was because of paperwork being messed up and no prescription being called in. He said that after he left Concentra, he went to get his prescription filled. He was asked why immediately following the phone call with his Sgt that Lizarazo sent him two text messages saying to meet at south when done and then asked him if he was in-service that both went unanswered by him? You leave your jurisdiction, and don't communicate with your supervisor and go get your prescription in West Ashley? He stated that he was not familiar with the text messages and that the guys he works for would say he doesn't always check his phone. He was confronted by the times of the messages and that they were sent immediately following one another. He was asked why he didn't respond to your supervisor and communicate with him and tell him that he was now going to get prescriptions filled? He was informed how important communication is with his Sgt because of the role of the Sgt and that they are responsible for him if something occurs. He replied, that when he is sent to the doctor and a prescription is issued, I go to fill them.

MPO Omar Brown was found sustained on violating several sections within A-26; Code of Conduct policy which include Dishonesty, Insubordination, and Excessive Use of Force. MPO Brown used Level 6 force (Deadly Force) on a Level 3 verbally resistant subject by grasping his hands to her throat and after the subject was handcuffed, he continued to force her face into the dirt when she was not resisting.

MPO Brown failed to follow the supervisors' directives on reporting to the Bureau upon completion of his treatment at Concentra and refused to answer his calls due to him failing to keep his supervisor informed. Lastly, MPO Brown's statements made during his interview in which he stated Sgt Lizarazo never checked on or offered medical attention for his injuries was not factual and untruthful. Sgt Lizarazo offered medical attention which was witnessed by MPO Sanchez. Further statements during the interview about force use, comments made to the suspect were found not factual and untruthful and were noted during video review. Other minor violations noted during review of this incident: Absent from duty without prior authorization from supervisor, failing to utilize chain of command, and delayed BWC activation on-scene.

Criminal Charges Filed?

No

Pending Criminal Investigation?

No

Pending Criminal Charges?

No

ACCESS MRN FORM: [Fillable MRN Form](#)

Upload MRN

Brown, Omar MRN_Fillable.pdf

Pursuant to S.C. Code 23-23-150(F), does the submission of this allegation exceed the time allowed by statute?

No

Electronic Signature (Agency Head or Authorized Designee)

Agency Head or Authorized Designee Signature

Agency Head or Authorized Designee Academy ID

4781-2973

Jeremy W. Dalton



**SOUTH CAROLINA CRIMINAL JUSTICE ACADEMY
REQUEST FOR CONTESTED CASE HEARING**

Office of General Counsel
South Carolina Criminal Justice Academy
5400 Broad River Road
Columbia, South Carolina 29212
cbrumlow@sccja.sc.gov

I, Omar Brown, hereby:

☒ Request a Contested Case Hearing

Please provide the following contact information to assist with prompt scheduling of the hearing and to ensure you receive any related correspondence regarding this matter:

Mailing Address: P.O. Box 442
Goose Creek SC 29445
Phone Number: 843-345-4997 Home/Cell
E-Mail Address: _____

I understand that I am entitled to have an Attorney represent me at the Contested Case Hearing and during all proceedings from this point forward. I further understand that if I hire an Attorney to represent me in these proceedings that Attorney should send written notification of their representation of me to the South Carolina Criminal Justice Academy. Finally, I understand that my request for a contested case hearing must be served on the Academy within three (3) years after receipt of the written notice advising me of my right to a contested case hearing. If I fail to request a contested case, I understand that I will have waived my right to having one. Additionally, the Law Enforcement Training Council will proceed to enter a final agency decision, against me, to deny me a law enforcement certification for specified time period, up to permanent denial.

Respectfully,

[Signature]
Signature

Omar Brown
Print Name

12-03-23
Date

3886-2090
Academy ID or last 4 of SSN



NOTICE OF CONTESTED CASE HEARING
VIA CERTIFIED MAIL / RETURN RECEIPT REQUESTED

TO: Omar Brown
P.O. Box 442
Goose Creek, SC 29445
Certified Mail Number: 9589 0710 5270 0740 0866 06

George Gomes, Chief
North Charleston Police Department
2500 City Hall Lane
North Charleston, SC 29406

Certified Mail Number: 9589 0710 5270 0740 0866 13

FROM: South Carolina Law Enforcement Training Council

RE: In the Matter of the Law Enforcement Certification of Omar Brown
LETC Case Number: 2023-CJA-10-21

Please be advised that a contested case hearing, in accordance with the requirements of South Carolina Code Ann. § 23-23-150 (D) and S.C. Code Ann. Regs. 37-101 A, has been scheduled before the attorney hearing officer designated below at the time and place indicated.

HEARING OFFICER: Rebecca Williams

TIME AND DATE: 10:00 a.m. (EST) February 20, 2024

LOCATION: 5400 Broad River Road, Columbia, SC 29212

Upon arrival for the hearing, parties and witnesses should report to the Criminal Justice Academy ("Academy") receptionist desk and advise of their presence for a contested case hearing. If a party is unable to be present for the scheduled contested case hearing due to reasons of disability, hospitalization, or other condition affecting the party's physical ability to travel, the party, the party's attorney, or the party's personal designee must immediately notify the hearing officer in writing, either by postal correspondence to the address on this letterhead, or via electronic mail to the address listed for the hearing officer below, to request continuation of the scheduled hearing.

PURPOSE OF CONTESTED CASE HEARING

The purpose of the contested case hearing is to afford an opportunity, in accordance with the above referenced statutory and regulatory provisions, for the officer to contest the proposed withdrawal or denial of the officer's law enforcement certification by the Law Enforcement Training Council ("Council") based upon alleged certification misconduct on the part of the officer that has been reported to Council by the officer's previous employing law enforcement

agency and which certification misconduct has been more particularly described in the Allegation of Certification Misconduct previously served upon the officer by the Academy.

The law enforcement agency making the allegation of certification misconduct ("Agency") is required by S.C. Code Ann. Regs. 37-103 to prosecute the allegation and, in accordance with S.C. Code Ann. Regs. 37-105 K, will have the burden of proving by "substantial evidence" that the officer has committed the misconduct alleged by the Agency. The hearing will be conducted in accordance with the provisions of S.C. Code Ann. § 1-23-320 and S.C. Code Ann. Regs. 37-105.

Both the officer and the Agency may subpoena witnesses to testify, or to produce evidence, at the contested case hearing. The subpoena form approved by the Council for use in contested case hearings is attached hereto. Both the officer and the Agency may seek enforcement of, or relief from, a subpoena by filing with the South Carolina Administrative Law Court, pursuant to S.C. Code Ann. § 1-23-600 (G). Use of the subpoena by either the officer or the Agency must comply with Rule 45 of the South Carolina Rules of Civil Procedure.

An officer may be represented at the contested hearing by an attorney retained at the officer's expense. If the officer is represented by an attorney, and the contested hearing was not requested on the officer's behalf by the attorney, the attorney must provide a written notice of appearance to the hearing officer by no later than five (5) days in advance of the scheduled hearing. The notice of appearance may be provided by email to RWilliams@sccja.sc.gov or via postal mail as follows:

S.C. Criminal Justice Academy
ATTN: Contested Case Hearing Officer
5400 Broad River Road
Columbia, SC 29212

RESCHEDULING OF THE CONTESTED CASE HEARING

A request for rescheduling of a contested case hearing can be only be approved by the assigned hearing officer. The hearing officer may be reached by telephone at (803) 896-7128 during regular business hours or via email at RWilliams@sccja.sc.gov.

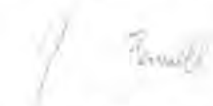
FAILURE TO APPEAR FOR THE CONTESTED CASE HEARING

If a representative of the Agency does not appear at the scheduled contested case hearing and has not requested a continuance of the hearing, a judgment by default will be rendered against the Agency and it will be deemed to have waived its right to present evidence of misconduct against the officer at a contested case hearing.

If the officer does not appear at the scheduled contested case hearing and has not requested a continuance of the hearing, a judgment by default will be rendered against the officer; the officer will be deemed to have waived the right to present evidence at the contested case hearing, and Council may immediately proceed to a determination as to the appropriate final agency action.

If Council determines that the officer has committed certification misconduct, it may impose sanctions, pursuant to S.C. Code Ann. Regs. 37-108. Evidence presented by the hearing officer to Council incident to an officer's failure to appear for the contested case hearing is not required to conform to the South Carolina Rules of Evidence.

FOR THE LAW ENFORCEMENT TRAINING COUNCIL:



James M. Fennell
General Counsel
South Carolina Criminal Justice Academy
jfennell@sccja.sc.gov

Date: 12/15/2023

STATE OF SOUTH CAROLINA
South Carolina Law Enforcement Training Council

**IN THE MATTER OF THE LAW ENFORCEMENT
CERTIFICATION OF**

)
)
)

ADMINISTRATIVE SUBPOENA
LETC Case Number:

TO:

☐ YOU ARE COMMANDED to appear at the place and time specified below to testify in the above case.

PLACE OF TESTIMONY: South Carolina Criminal Justice Academy 5400 Broad River Road Columbia, SC 29212	DATE AND TIME:
--	-----------------------

☐ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below:

DOCUMENTS OR OBJECTS TO BE PRODUCED:	
PLACE OF PRODUCTION:	DATE AND TIME:

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS PROCEEDING IS DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE HEARING OFFICER SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF. THE ORGANIZATION SHALL SET FORTH, FOR EACH PERSON SO DESIGNATED, THE MATTERS ON WHICH THE PERSON WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED SHALL TESTIFY AS TO MATTERS KNOWN, OR REASONABLY AVAILABLE, TO THE ORGANIZATION.

BY MY SIGNATURE BELOW, I CERTIFY THAT THIS SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), SCRCP, AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

Signature of Person Issuing Subpoena

Date

Printed Name

Address

Telephone

Email

☐ I am an attorney in good standing with the South Carolina Bar representing a party to this proceeding.

____ Attorney for Law Enforcement Agency

____ Attorney for Law Enforcement Officer

SC Bar Number: _____

☐ I am an unrepresented party to this proceeding.

PROOF OF SERVICE

SERVED: Date of Service: Location of Service:	FEES AND MILEAGE TO BE TENDERED TO WITNESS UPON DAILY ARRIVAL: ☐ YES ☐ NO AMOUNT \$
SERVED ON:	MANNER OF SERVICE:
SERVED BY:	TITLE OF SERVER:

DECLARATION OF SERVER

By my signature hereto, I certify that the foregoing information contained in this Proof of Service is true and correct.

Executed this ____ day of _____, 20____

Signature of Server

Address of Server

Rule 45, South Carolina Rules of Civil Procedures, Parts (b), (c), and (d):

(b) Service.

(1) A subpoena may be served by any person who is not a party and is not less than 18 years of age. Service of a subpoena upon a person named therein shall be made in the same manner prescribed for service of a summons and complaint in Rule 4(d) or (j). If the person's attendance is commanded, then that person shall, upon his arrival in accordance with the subpoena, be tendered fees for each day's attendance of \$25.00 and the mileage allowed by law for official travel of State officers and employees from his residence to the location commanded in the subpoena. When the subpoena is issued on behalf of the State of South Carolina or an officer or agency thereof, fees and mileage need not be tendered. Unless otherwise ordered by the court, prior notice in writing of any commanded production of documents and things or inspection of premises before trial shall be served on each party in the manner prescribed by Rule 5(b) at least 10 days before the time specified for compliance.

(2) Subject to the provisions of clause (ii) of subparagraph (c)(3)(A) of this rule, a subpoena may be served at any place within the State. Provided, however, that a subpoena to a person who is not a party or an officer, director or managing agent of a party, commanding attendance at a deposition or production or inspection shall issue from the court for the county in which the non-party resides or is employed or regularly transacts business in person and be served in that county.

(3) Proof of service when necessary shall be made by filing with the clerk of the court by which the subpoena is issued a statement of the date and manner of service and of the names of the persons served, certified by the person who made the service.

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

(i) fails to allow reasonable time for compliance; or

(ii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or

(iii) requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena:

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1)(A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

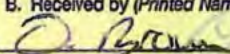
(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(6)(B). The court may specify conditions for the discovery.

(2)(A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, the receiving party must take reasonable steps to retrieve the information. The person who produced the information must preserve the information until the claim is resolved.

HR 2023-CJA-10-21

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
■ Complete items 1, 2, and 3. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits.		A. Signature X  ☐ Agent ☐ Addressee	
1. Article Addressed to: Omar Brown P.O. Box 442 Goose Creek, SC 29445		B. Received by (Printed Name)  C. Date of Delivery JAN - 2 2024	
2. Article Number (Transfer from service label) 89 0710 5270 0740 0866 06		D. Is delivery address different from Item 1? ☐ Yes ☐ No If YES, enter delivery address below:	
3. Service Type ☐ Adult Signature ☐ Adult Signature Restricted Delivery ☒ Certified Mail® ☐ Certified Mail Restricted Delivery ☐ Collect on Delivery ☐ Collect on Delivery Restricted Delivery ☐ Insured Mail ☐ Insured Mail Restricted Delivery (over \$500)		☐ Priority Mail Express® ☐ Registered Mail™ ☐ Registered Mail Restricted Delivery ☐ Signature Confirmation™ ☐ Signature Confirmation Restricted Delivery	

PS Form 3811, July 2020 PSN 7530-02-000-9053 Domestic Return Receipt

From: [Macisco, Tina M](#)
Sent: Friday, December 15, 2023 1:45 PM
To: kgsllcone@protonmail.com; ggomes@northcharleston.org
Cc: [Williams, Rebecca S.](#); [Southern Scheduling](#); [Plunkett, Timothy J.](#)
Subject: Notice of Contested Case Hearing (Omar Brown) (2023-CJA-10-21)
Attachments: Omar Brown (2023-CJA-10-21) Notice of Contested Case Hearing and Subpoena Form.pdf

Good afternoon ,

A contested case hearing in the above referenced matter has been scheduled for 10:00 a.m. February 20, 2024, at Building 10 of the South Carolina Criminal Justice Academy. Notice of this proceeding is attached herein. Hard copies are forthcoming via certified mail, return receipt requested. Please let me know if you have any questions.

THANK YOU,

TINA M. MACISCO
Administrative Assistant
Certification and Compliance Unit
803-896-7737

The Academy will be closed to students December 25, 2023 to January 5, 2024.
All students will be advised to report back to their agencies during this time period

South Carolina Criminal Justice Academy

5400 Broad River Road
Columbia, SC 29212
<https://sccja.sc.gov/>





State of South Carolina
County of Charleston
CRIME VICTIM INFORMATION

PLEASE PRINT ENTIRE FORM CLEARLY AND MAKE SURE BOTTOM COPY IS LEGIBLE (ONE FORM PER VICTIM)

DEFENDANT/JUVENILE INFORMATION

CHECK (✓) COURT WHERE CHARGES WILL BE HEARD			☐ General Sessions	☒ Summary Court	☐ Family Court
ACCUSED'S LAST NAME: Jackson		ACCUSED'S FIRST NAME: Dejean		MIDDLE INITIAL: C	
CHARGE(S): Assault + Battery 3rd					
TICKET/ARREST WARRANT(S):		DATE OF ARREST: 8/18/23		OCAS: 2023-021451	
ARRESTING OFFICER: J Brown		BADGE NUMBER: 205		POLICE AGENCY: NCPS	

VICTIM INFORMATION

VICTIM'S LAST NAME: Sander		VICTIM'S FIRST NAME: Michael			
STREET ADDRESS: 2509 City Hall		CITY/STATE: N. Charleston, SC		ZIP CODE: 29406	
MAILING ADDRESS IF DIFFERENT FROM ABOVE:		CITY/STATE:			
TELEPHONE NUMBERS OF VICTIM	HOME: 843-554-5710	WORK:	PAGER:	MOBILE:	
VICTIM NOTIFICATION IS () REQUESTED OR () DECLINED UPON DEFENDANT'S RELEASE FROM THE CHARLESTON COUNTY DETENTION CENTER.					

ALTERNATE CONTACT INFORMATION OR IF VICTIM IS DECEASED, MENTALLY ILL OR A MINOR CHILD

LAST NAME OF ALTERNATE CONTACT:		FIRST NAME:		RELATIONSHIP:	
STREET ADDRESS:		CITY/STATE:		ZIP CODE:	
MAILING ADDRESS IF DIFFERENT FROM ABOVE:		CITY/STATE:		ZIP CODE:	
TELEPHONE NUMBERS OF ALTERNATE CONTACT	HOME:	WORK:	PAGER:	MOBILE:	

PERSON COMPLETING ABOVE INFORMATION

NAME OF OFFICER: M. Sander	AGENCY: NCPS	BADGE NUMBER: 148
SIGNATURE OF OFFICER: [Signature]		DATE: 8/18/23

CERTIFICATION TO COURT (Completed by Arresting/Appearing Officer)

The victim/alternate contact was notified of the bond hearing to be held on

8/18/23 (DATE) at 10:00 (TIME) by Sander (OFFICER)

- ☐ Will be present for bond hearing
☒ Will NOT be present for bond hearing
☐ Unable to contact victim

Comments:

Signature of Officer: [Signature]

Date: [Signature] Phone#: _____

If more than one victim - PAGE ____ OF ____

CCSO-147 10/15/07

WHITE - Family/Bond/Summary Court

YELLOW - Detention

GOLD - Law Enforcement Agency

GREEN - Victim





State of South Carolina
County of Charleston
CRIME VICTIM INFORMATION

PLEASE PRINT ENTIRE FORM CLEARLY AND MAKE SURE BOTTOM COPY IS LEGIBLE (ONE FORM PER VICTIM)

DEFENDANT/JUVENILE INFORMATION

CHECK ☒ COURT WHERE CHARGES WILL BE HEARD			☐ General Sessions	☒ Summary Court	☐ Family Court
ACCUSED'S LAST NAME: <u>Jackson</u>		ACCUSED'S FIRST NAME: <u>Dejora</u>		MIDDLE INITIAL: <u>C</u>	
CHARGE(S): <u>Assault + Battery 3rd</u>					
TICKET/ARREST WARRANTS#		DATE OF ARREST: <u>8/8/2023</u>		DCAP# <u>7023021457</u>	
ARRESTING OFFICER: <u>A. Brown</u>		BADGE NUMBER: <u>265</u>		POLICE AGENCY: <u>NCPD</u>	

VICTIM INFORMATION

VICTIM'S LAST NAME: <u>Brown</u>		VICTIM'S FIRST NAME: <u>Omar</u>			
STREET ADDRESS: <u>2500 City Hall Ln</u>		CITY/STATE: <u>N. Charleston, SC</u>		ZIP CODE: <u>29406</u>	
MAILING ADDRESS IF DIFFERENT FROM ABOVE		CITY/STATE			
TELEPHONE NUMBERS OF VICTIMS	HOME: <u>803-554-5702</u>	WORK	PAGER	MOBILE	
VICTIM NOTIFICATION IS () REQUESTED OR (☒) DECLINED UPON DEFENDANT'S RELEASE FROM THE CHARLESTON COUNTY DETENTION CENTER.					

ALTERNATE CONTACT INFORMATION OR IF VICTIM IS DECEASED, MENTALLY ILL OR A MINOR CHILD

LAST NAME OF ALTERNATE CONTACT		FIRST NAME		RELATIONSHIP	
STREET ADDRESS		CITY/STATE		ZIP CODE	
MAILING ADDRESS IF DIFFERENT FROM ABOVE		CITY/STATE		ZIP CODE	
TELEPHONE NUMBERS OF ALTERNATE CONTACT	HOME	WORK	PAGER	MOBILE	

PERSON COMPLETING ABOVE INFORMATION

NAME OF OFFICER: <u>M. Sanchez</u>	AGENCY: <u>NCPD</u>	BADGE NUMBER: <u>1413</u>
SIGNATURE OF OFFICER: <u>[Signature]</u>	DATE: <u>8/10/23</u>	

CERTIFICATION TO COURT (Completed by Arresting/Appearing Officer)

The victim/alternate contact was notified of the bond hearing to be held on

8/8/23 (DATE) at 1351 (TIME) by Sanchez (OFFICER)

- ☐ Will be present for bond hearing
☐ Will NOT be present for bond hearing
☐ Unable to contact victim

Comments:

Signature of Officer: [Signature]

Date: 8/8/23

Phone#:

If more than one victim - PAGE ____ OF ____

CCSO-147 10/15/07



CASE NUMBER:

2023021457

181

Talk activity (cont.)

Omar Brown

843-345-4997

iPhone 14 Pro Max

Date	Time	Number	Origination	Destination	Min.	Airtime Charges	LD/Other Charges	Total
Aug 8	8:19 AM	843-7[REDACTED]	North Char, SC	Charleston, SC	1	--	--	--
Aug 8	9:41 AM	843-7[REDACTED]	Charleston, SC	Charleston, SC	7	--	--	--
Aug 8	9:47 AM	843-7[REDACTED]	Charleston, SC	Charleston, SC	40	--	--	--
Aug 8	10:30 AM	678-3[REDACTED]	N Charlest, SC	Atlanta NE, GA	38	--	--	--
Aug 8	11:20 AM	843-7[REDACTED]	North Char, SC	Charleston, SC	22	--	--	--
Aug 8	11:56 AM	843-7[REDACTED]	Charleston, SC	Incoming, CL	3	--	--	--
Aug 8	11:58 AM	843-532-2371	Charleston, SC	Charleston, SC	1	--	--	--
Aug 8	12:04 PM	843-7[REDACTED]	Charleston, SC	Charleston, SC	8	--	--	--
Aug 8	12:58 PM	843-7[REDACTED]	Charleston, SC	Charleston, SC	1	--	--	--
Aug 8	12:59 PM	843-7[REDACTED]	Charleston, SC	Charleston, SC	5	--	--	--
Aug 8	1:07 PM	843-7[REDACTED]	Charleston, SC	Charleston, SC	4	--	--	--
Aug 8	1:14 PM	843-7[REDACTED]	Charleston, SC	VM Deposit, CL	1	--	--	--
Aug 8	1:16 PM	843-7[REDACTED]	Charleston, SC	Incoming, CL	4	--	--	--
Aug 8	1:58 PM	843-6[REDACTED]	North Char, SC	Pageland, SC	1	--	--	--
Aug 8	1:58 PM	843-330-0087	North Char, SC	Charleston, SC	2	--	--	--
Aug 8	4:36 PM	843-7[REDACTED]	Charleston, SC	Charleston, SC	27	--	--	--
Aug 8	5:04 PM	843-847-0845	North Char, SC	Charleston, SC	18	--	--	--
Aug 8	5:22 PM	843-7[REDACTED]	Goose Cree, SC	Charleston, SC	15	--	--	--
Aug 8	5:25 PM	843-3[REDACTED]	Goose Cree, SC	Incoming, CL	1	--	--	--
Aug 8	5:37 PM	843-3[REDACTED]	Goose Cree, SC	Charleston, SC	18	--	--	--
Aug 8	5:55 PM	843-330-0087	Goose Cree, SC	VM Deposit, CL	1	--	--	--
Aug 8	5:56 PM	843-822-1076	Goose Cree, SC	Charleston, SC	2	--	--	--
Aug 8	5:58 PM	843-330-0087	Goose Cree, SC	VM Deposit, CL	1	--	--	--
Aug 8	6:10 PM	843-3[REDACTED]	Goose Cree, SC	Bluffton, SC	4	--	--	--
Aug 8	6:17 PM	843-330-0087	Goose Cree, SC	Incoming, CL	3	--	--	--
Aug 8	6:22 PM	843-330-0087	Goose Cree, SC	Incoming, CL	3	--	--	--
Aug 8	6:24 PM	843-3[REDACTED]	Goose Cree, SC	Charleston, SC	43	--	--	--
Aug 8	6:46 PM	917-9[REDACTED]	Goose Cree, SC	Incoming, CL	15	--	--	--
Aug 8	8:03 PM	843-3[REDACTED]	North Char, SC	Charleston, SC	24	--	--	--
Aug 8	8:31 PM	843-3[REDACTED]	North Char, SC	Charleston, SC	5	--	--	--
Aug 8	8:36 PM	843-3[REDACTED]	North Char, SC	Charleston, SC	1	--	--	--
Aug 8	8:50 PM	843-3[REDACTED]	Goose Cree, SC	Incoming, CL	3	--	--	--
Aug 8	8:54 PM	843-3[REDACTED]	Goose Cree, SC	Charleston, SC	20	--	--	--
Aug 8	10:05 PM	843-3[REDACTED]	Goose Cree, SC	Bluffton, SC	5	--	--	--
Aug 9	7:00 AM	843-532-2371	N Charlest, SC	Incoming, CL	1	--	--	--
Aug 9	7:49 AM	843-330-0087	N Charlest, SC	Charleston, SC	8	--	--	--
Aug 9	8:13 AM	843-7[REDACTED]	North Char, SC	VM Deposit, CL	1	--	--	--
Aug 9	9:10 AM	843-532-2371	North Char, SC	Charleston, SC	1	--	--	--
Aug 9	9:11 AM	843-532-2371	North Char, SC	Charleston, SC	2	--	--	--
Aug 9	9:14 AM	843-7[REDACTED]	North Char, SC	Charleston, SC	1	--	--	--
Aug 9	9:18 AM	843-532-2371	North Char, SC	Incoming, CL	1	--	--	--
Aug 9	9:29 AM	843-532-2371	North Char, SC	Charleston, SC	1	--	--	--
Aug 9	9:37 AM	843-3[REDACTED]	North Char, SC	Charleston, SC	10	--	--	--
Aug 9	9:57 AM	843-5[REDACTED]	N Charlest, SC	Incoming, CL	1	--	--	--
Aug 9	9:59 AM	843-5[REDACTED]	N Charlest, SC	Charleston, SC	21	--	--	--





Account: 526643514-00001

Invoice: 8551672037

Billing period: Aug 4 - Sep 3, 2023

Talk activity (cont.)

Omar Brown

843-345-4997

iPhone 14 Pro Max

Date	Time	Number	Origination	Destination	Min.	Airtime Charges	LD/Other Charges	Total
Aug 9	11:25 AM	843-700-0000	N Charlest, SC	Charleston, SC	8	--	--	--
Aug 9	12:03 PM	843-532-2371	N Charlest, SC	Charleston, SC	1	--	--	--
Aug 9	12:04 PM	843-532-2371	N Charlest, SC	Charleston, SC	2	--	--	--
Aug 9	12:36 PM	843-300-0000	N Charlest, SC	Incoming, CL	1	--	--	--
Aug 9	12:54 PM	843-900-0000	N Charlest, SC	Charleston, SC	1	--	--	--
Aug 9	12:56 PM	843-300-0000	N Charlest, SC	Charleston, SC	1	--	--	--
Aug 9	12:56 PM	843-300-0000	N Charlest, SC	Incoming, CL	6	--	--	--
Aug 9	1:10 PM	843-532-2371	North Char, SC	Charleston, SC	2	--	--	--
Aug 9	1:11 PM	843-532-2371	North Char, SC	Charleston, SC	1	--	--	--
Aug 9	1:11 PM	843-532-2371	North Char, SC	Charleston, SC	1	--	--	--
Aug 9	1:13 PM	843-700-0000	North Char, SC	Charleston, SC	7	--	--	--
Aug 9	1:49 PM	843-900-0000	Charleston, SC	Charleston, SC	6	--	--	--
Aug 9	1:55 PM	843-500-0000	Charleston, SC	Charleston, SC	3	--	--	--
Aug 9	2:00 PM	843-700-0000	Charleston, SC	Charleston, SC	2	--	--	--
Aug 9	2:04 PM	843-700-0000	Charleston, SC	Incoming, CL	2	--	--	--
Aug 9	2:09 PM	843-700-0000	Charleston, SC	Charleston, SC	1	--	--	--
Aug 9	2:26 PM	843-330-0087	Charleston, SC	Incoming, CL	6	--	--	--
Aug 9	2:46 PM	843-700-0000	Charleston, SC	Charleston, SC	13	--	--	--
Aug 9	2:59 PM	800-000-0000	North Char, SC	Incoming, CL	2	--	--	--
Aug 9	3:02 PM	843-700-0000	North Char, SC	Charleston, SC	33	--	--	--
Aug 9	3:41 PM	843-700-0000	Goose Cree, SC	Charleston, SC	1	--	--	--
Aug 9	4:13 PM	843-700-0000	Goose Cree, SC	Incoming, CL	73	--	--	--
Aug 9	5:40 PM	843-700-0000	Goose Cree, SC	Charleston, SC	1	--	--	--
Aug 9	5:53 PM	843-700-0000	Goose Cree, SC	Charleston, SC	1	--	--	--
Aug 9	5:56 PM	843-700-0000	Goose Cree, SC	Incoming, CL	39	--	--	--
Aug 9	6:41 PM	843-700-0000	North Char, SC	Incoming, CL	5	--	--	--
Aug 9	6:45 PM	843-700-0000	Goose Cree, SC	Charleston, SC	4	--	--	--
Aug 9	6:48 PM	843-700-0000	Goose Cree, SC	Charleston, SC	16	--	--	--
Aug 9	7:07 PM	917-000-0000	Summervill, SC	Incoming, CL	5	--	--	--
Aug 9	8:07 PM	843-700-0000	Summervill, SC	Incoming, CL	30	--	--	--
Aug 9	8:37 PM	678-000-0000	Summervill, SC	Atlanta NE, GA	1	--	--	--
Aug 9	8:37 PM	678-000-0000	Summervill, SC	Atlanta NE, GA	8	--	--	--
Aug 9	9:08 PM	571-000-0000	Bowman, SC	Engleside, VA	14	--	--	--
Aug 9	9:21 PM	843-700-0000	Orangeburg, SC	Charleston, SC	1	--	--	--
Aug 9	9:31 PM	843-700-0000	Saint Matt, SC	Charleston, SC	120	--	--	--
Aug 10	8:11 AM	678-000-0000	Buford, GA	Atlanta NE, GA	9	--	--	--
Aug 10	8:57 AM	678-000-0000	Buford, GA	Incoming, CL	2	--	--	--
Aug 10	9:14 AM	678-000-0000	Buford, GA	Atlanta NE, GA	1	--	--	--
Aug 10	11:13 AM	843-700-0000	Winder, GA	Charleston, SC	11	--	--	--
Aug 10	11:24 AM	800-000-0000	Bethlehem, GA	Incoming, CL	1	--	--	--
Aug 10	12:31 PM	843-700-0000	Doraville, GA	Incoming, CL	1	--	--	--
Aug 10	4:14 PM	843-700-0000	Atlanta, GA	Incoming, CL	8	--	--	--
Aug 10	4:23 PM	843-700-0000	Atlanta, GA	Incoming, CL	1	--	--	--
Aug 10	5:06 PM	843-700-0000	Swansee, GA	Incoming, CL	11	--	--	--
Aug 10	5:21 PM	843-700-0000	Buford, GA	Charleston, SC	19	--	--	--

Technique(s) used:**Disposition(s)****Force/violence:****BlueTeam chain routings****Aug 14, 2023 16:39: Sent from Sergeant Diego Lizarazo [5777-0220/] to Sherwood, Joseph Lieutenant [0619-6973/]**

Instructions:

Please review Internal Complaint on MPO Omar Brown regarding Insubordination, dishonesty and Failing to follow Chain of Command, leaving his are of responsibility . Several policy violations

Reviewed by Lieutenant Joseph Sherwood [0619-6973/] on Aug 19, 2023 at 07:27

Decision: Not approved

Chain Approval Reason

Reviewer comment:

need the video and text messages attached

Aug 19, 2023 07:27: Sent from Lieutenant Joseph Sherwood [0619-6973/] to Lizarazo, Diego Sergeant [5777-0220/]

Instructions:

need the video and text messages attached also please re-read the narrative for grammar errors

Reviewed by Sergeant Diego Lizarazo [5777-0220/] on Aug 20, 2023 at 17:13

Decision:

Reviewer comment:

[Forwarded by Sergeant Diego Lizarazo]

Aug 20, 2023 17:13: Sent from Sergeant Diego Lizarazo [5777-0220/] to Sherwood, Joseph Lieutenant [0619-6973/]

Instructions:

Corrections made

Reviewed by Lieutenant Joseph Sherwood [0619-6973/] on Aug 26, 2023 at 14:27

Decision: Approved

Reviewer comment:

I have review this incident. I agree that Officer Brown was being some what miss leading with where and what he was doing during his work hours. I have spoken to this team about insubordination and how the chain of command works on two occasions.

I don't think any of this would have been an issue if Officer Brown would have simply kept his direct supervisor informed of his activities and could have prevented most of this.

In saying this I did send Officer Brown home after I contacted him because I did not think he was in his right state of mind for work at the moment nor would an inquiry at the moment be beneficial since there was more investigation to his whereabouts needed to be preformed.

Aug 26, 2023 14:27: Sent from Lieutenant Joseph Sherwood [0619-6973/] to Hill, James Major [5210-3487/]

Instructions:

For your review Major Hill. Just FYI I met with this team and had an hour long meeting and clearly outlining my expectations from each officer. I advised them if they are having an issue with Sgt. Lizarazo they can then reach out to me directly. To date I have not received any complaints and the team seems to be running smoother. I will be scheduling another meeting toward the end of the month to check on things with this team.

Reviewed by Major James Hill [5210-3487/] on Aug 31, 2023 at 10:25

Decision: Not approved

Chain Approval Reason



Reviewer comment:

Lt Sherwood make corrections we discussed

Aug 31, 2023 10:25: Sent from Major James Hill [5210-3487/] to Sherwood, Joseph Lieutenant [0619-6973/]

Instructions:

Lt Sherwood make corrections we discussed

Reviewed by Lieutenant Joseph Sherwood [0619-6973/] on Aug 31, 2023 at 10:58

Decision: Not approved

Chain Approval Reason

Reviewer comment:

make changes discussed

Aug 31, 2023 10:58: Sent from Lieutenant Joseph Sherwood [0619-6973/] to Lizarazo, Diego Sergeant [5777-0220/]

Instructions:

make changes discussed

Reviewed by Sergeant Diego Lizarazo [5777-0220/] on Sep 07, 2023 at 10:12

Decision:

Reviewer comment:

[Forwarded by Sergeant Diego Lizarazo]

Sep 07, 2023 10:12: Sent from Sergeant Diego Lizarazo [5777-0220/] to Sherwood, Joseph Lieutenant [0619-6973/]

Instructions:

Corrections have been made sir.

Reviewed by Lieutenant Joseph Sherwood [0619-6973/] on Sep 12, 2023 at 07:42

Decision: Approved

Reviewer comment:

After reviewing this incident, I do believe that Officer Brown escalated the situation. If he would have just let Officer Sanchez place her in handcuffs this incident would never have happened. I watched the video and it does look like Officer Brown grabs the suspect by the neck but not in a choking manor but in more of a head clinch to pull her down.

In reference to Officer Brown's insubordination Sgt. Lizarazo has spoke to me in past on how to handle this issue with Officer Brown. I believe this incident in total needs further investigation into the truthfulness of Officer Brown and the attitude toward his direct supervisor.

Sep 12, 2023 07:42: Sent from Lieutenant Joseph Sherwood [0619-6973/] to Hill, James Major [5210-3487/]

Instructions:

For your review Major Hill, Corrections were made.

Reviewed by Major James Hill [5210-3487/] on Sep 12, 2023 at 12:26

Decision: Approved

Reviewer comment:

I have reviewed the file and videos. Forward for review.

Sep 12, 2023 12:26: Sent from Major James Hill [5210-3487/] to Perry, Scott Deputy Chief [4923-9985/]

Instructions:

Deputy Chief I have reviewed the file and agree that the policy violations are valid. Officer Brown has had internal complaints in the past.

Reviewed by Deputy Chief Scott Perry [4923-9985/] on Sep 15, 2023 at 13:58

Decision: Approved

Reviewer comment:

Reviewed 09/15/2023

I respectfully request that you issue an IA number and investigate this blue team. It appears there has been an ongoing issue with Sgt. Lizarazo and Officer Brown which could be an issue between a young supervisor and an older officer with more years on the job. I am going to have Major Hill mediate the tension to see if he can find a common ground after the investigation.

DC Perry

Entered via BlueTeam by: Sergeant Diego Lizarazo [5777-0220/] on Aug 14, 2023 at 16:29

South Carolina Criminal Justice Training Council of
the State of South Carolina, County of Richland

City of North Charleston, SC

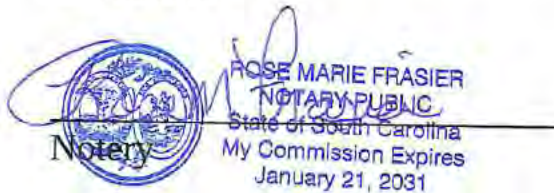
Docket # 2023-CJA-10-21

Affidavit In Opposition
to contested case/ hearing officer
Findings and Recommendations

-against-

Certification of Officer Omar Brown

State of South Carolina, County of
Charleston



Omar Brown June 4, 2024

Omar Brown

being duly sworn, deposes and says:

1) I am the defendant in this proceeding. I make this affidavit in opposition to the contested case hearing and recommendations by Imani D Byas, hearing officer.

I am requesting relief and full restoration of the Certification of Officer Omar Brown, due to the City of North Charleston not having proven its allegations by a Preponderance of the Evidence as required. Additionally I believe that the evidence presented in the contested hearing proves the allegation's to be false and without merit.

2) I believe the Training Council should reject the contested case hearing officer's recommendations because of the following facts and presentations during the hearing on February 20, 2024 (published on March 14, 2024/ released):

* The North Charleston Police Department has failed and rejected multiple request to turn over all video and written documentation concerning the allegations (and are

required to have done so) in a deliberate and calculated way. I have attempted to gain the information via Freedom of Information Act Request and Subpoena, without success.

* The City of North Charleston (Police Department) presented its contested case of the allegations under oath to the Employment Hearing Commission (DEW) and a finding of NO WRONG DOING was the results of the hearing. Unemployment benefits were granted. During the testimony it was revealed under cross examination that no Physical Force (strikes, kicks, hits, punches, oc, baton or other weapons were used). It was further brought out in testimony that the video did not show any deadly force used and that MPO Officer Brown was the only one needing medical attention. THIS SHOWS THE UTMOST RESTRAINT ON THE PART OF THE DEFENDANT (BROWN). The testimony also revealed that at no time was the suspect injured, seen being choked, having her head repeatedly slammed into the ground as falsely reported by MPO Sanchez (video shows no dirt, grass or signs of proof her face was slammed into the ground). The South Carolina Criminal Justice Academy had taught, the standard is not what happen on Monday, but what occurred during the incident and a reasonable person would believe. The commission was a test of reasonable standards.

*The investigator Leadford falsely added two allegations sent in the complaint to the South Carolina Criminal Justice Academy (a law enforcement body)

The false accusation “the use of the word Nigga” towards the suspect proven false/ very dishonest (creative writing in the worse way) video proves that this is not true.

The false accusation “don’t fuck with the child” towards the complaint. I advised the complainant not to “fuss” with the child who was upset and afraid (she witness her mother attack a police officer after kidnapping her).

The hearing officer dismissed and did not take into account two facts that go directly towards credibility of Officer Sanchez

The fact presented during the hearing about his current deposition for a federal trial, that he is accused of FALSIFYING an AFFIDAVIT to a judge (LYING), that he admitted during the deposition HE COMMITTED the offense as charged in the lawsuit. Page 39 Lines 6 – Line 15

He also admitted that he falsely charged the suspect with assault. During his testimony he stated that she never assaulted him (LYING). This is a crime to falsely arrest someone for a crime they did not commit. Additionally, he submitted an affidavit against the suspect, he says never did anything to him. Page 30 Line 20 – Line 1 (Page 31), Page 31 Lines 12 – Line 15, Page 32 Lines 6 - 16

the Evidence as required. Additionally I believe that the evidence presented in the contested hearing proves the allegation's to be false and without merit.

Sent:

To Imani D. Byas, Hearing officer
Office of General Counsel via E-Mail Idbyas@sccja.sc.gov
and Certified Mail to
5400 Broad River Road
Columbia, SC 29212

Carlton Bourne, Esquire (N. Charleston City Attorney)
via E-mail Cbourne@northcharleston.org
and Certified Mail

2500 City Hall Lane
North Charleston, SC 29406

STATE OF SOUTH CAROLINA
Before the South Carolina Law Enforcement Training Council

**In the Matter of Law Enforcement
Certification of Omar Brown**

Docket #2023-CJA-10-21

**CITY OF NORTH CHARLESTON’S RESPONSE
TO BROWN’S MOTION IN OPPOSITION**

Comes Now the City of North Charleston, and submits this Response to Omar Brown’s Motion in Opposition to the Hearing Officer’s Findings and Recommendations, and states as follows:

Background

Omar Brown was terminated from his employment with North Charleston Police Department for misconduct, based on his willful use of excessive force and his willful making of false or misleading statements to law enforcement officers. Additionally, the agency submitted a Personnel Change in Status Report to the Criminal Justice Academy, providing notice of his separation due to misconduct. A contested hearing was held where three witnesses provided testimony, and the agency submitted two body camera recordings and a recording of Brown’s interview with Internal Affairs. After this evidence was presented, and Brown cross examined the witnesses and presented his argument, the Hearing Officer made a finding that Mr. Brown had indeed, committed misconduct. The Hearing Officer found that the officer “intentionally provided a false statement,” and “used

excessive force in an objectively unreasonable manner.” Brown then filed this Motion in Opposition to the Hearing Officer’s Recommendation, claiming that the allegations presented by the agency were “false and without merit.”

Agency’s Response

The hearing established the following facts:

Officer Michael Sanchez, a veteran police officer of 18 years, and Omar Brown, were called to the scene of a child custody dispute between the mother (the subject) and grandmother of the child at issue. The grandmother had custody of the child, and the subject, who was agitated, was at the grandmother’s house attempting to take the child. Brown arrived at the scene first and had separated the two parties. Brown spoke to the grandmother, while Sanchez spoke with the subject, in an effort to calm her down. Brown gathered the subject’s items from the grandmother and the subject attempted to charge toward the porch where the grandmother was sitting. Brown attempted to grab the subject but she pushed him, causing him to stagger backward. At this time, Sanchez grabbed the subject’s arm and was attempting to handcuff her when Brown attempted to grab her around the throat and neck. Brown pinned her to the ground and Sanchez handcuffed her. Brown then yanked the subject to her feet by the handcuffs. This action by Brown was of concern to Officer Sanchez, who was a lead instructor on defensive tactics for North Charleston Police; so much so, that Sanchez reported it to his supervisor upon his arrival

back at the police station. Both of the officers' actions were captured on their body cameras and introduced at the hearing for the Hearing Officer to view.

When the two officers arrived back at the police station, Sanchez told his supervisor, SGT Lizarazo that he "may want to look at the tape." SGT Lizarazo asked Brown if he needed medical attention and Brown declined, which Sanchez heard. Lizarazo stayed with Brown for an additional 30 minutes. Brown did not indicate in his report that he had to use force. Later that evening, Lizarazo received a call from his lieutenant who indicated that Brown was "severely injured" and that Brown has claimed he was never offered medical attention.

SGT Jeremy Ledford of Internal Affairs, conducted an investigation where he viewed the body cam footage, interviewed Sanchez and Lizarazo, and conducted a recorded interview of Brown. During the interview, Brown denied multiple times being offered medical attention, which was contrary to what both Sanchez and Lizarazo said.

There is no dispute that Brown jerked the subject up by the handcuffs after she was pushed to the ground. The video evidence indicates that Brown put his hands on the subject's neck and the Hearing Officer found that Brown "went for the subject's throat and neck area."

Summary

The Hearing Officer found, and the evidence supports, that Brown lost his temper and exerted unreasonable force on the subject – both by grabbing her around the throat and yanking her up from the ground by the handcuffs secured behind her back. He the made a false statement when he claimed that he was not offered medical treatment.

In summary, the City of North Charleston urges this Law Enforcement Training Council to adopt the Findings and Conclusions of the Hearing Officer and issue its final decision that Mr. Brown committed misconduct and impose such sanctions as the Council deems appropriate.

Respectfully Submitted,

Carlton R. Bourne

Carlton R. Bourne

Attorney at Law

On Behalf of the City of North Charleston

June 26, 2024

Affidavit of Service

I hereby affirm that I have served Omar Brown with a copy of this Response by email, this 26th day of June, 2024.

Carlton R. Bourne

Carlton R. Bourne

Attorney at Law

On behalf of the City of North Charleston

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Transcript of Recorded
July 2024 Quarterly
Law Enforcement Training Council Meeting

- - - - -

Date Recorded: July 24, 2024

- - - - -

Transcribed by: Dorcas O. Hill,
Southern Reporting, Inc.

ORIGINAL

1 APPEARANCES

2 Law Enforcement Training Council Members:

3 Present in Person: Chief Mark Keel, SLED, Chair

4 Lee Foster, Sheriff of Newberry County, Co-Chair

5 Robert Boyles, Director South Carolina
Department of Natural Resources

6 Robert Woods, Director South Carolina
Department of Public Safety

8 Bryan Stirling, Director South Carolina
Department of Corrections

9 Jodi Gallman, Acting Director South Carolina Department
10 of Probation, Parole, and Pardon Services

11 Kevin Cornett, Chief Isle of Palms Police Department

12 Barry Faile, Sheriff of Lancaster County

13 Nick Gallam, Captain Aiken County Detention Center

14 William H. "Skip" Holbrook, Chief Columbia Police Department

15 Jeff Young, proxy for South Carolina
Attorney General Alan Wilson

16 SCCJA Staff: Director Jackie Swindler

17 Opel Bunn, Executive Assistant to the Director
James M. Fennell, Esq., General Counsel

18 Lauren Fennell, Accreditation and Standards Manager
Madison Reynolds, Certification

19 John Yarborough, Facilities Operation Manager
Lauren Wright, Finance Manager

20 Justin Miller, IT Manager
Briana Jirowetz, IT

21 Jared Lee, IT
Major Florence McCants, Administrative Operations

22 Rebecca Williams, Esq.
Scott Deckard, Investigator

23 Bob Bianco, Evaluator
Mike O'Connell, Evaluator

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APPEARANCES (Continued)

Others Present in person or via Webex:

Sally Foster,
South Carolina Sheriff's Association

Joanna McDuffie, Esq.
Richland County Sheriff's Department

Omar Brown

Charlton Bourne, Esq.,
North Charleston Police Department

Sergeant Jeremy Ledford,
North Charleston Police Department

Natassiah Brown

Marcus Gore, Esq.,
South Carolina Department of Public Safety

Quinton Joyner

Satterrica Thompson

Brian West

Holyoka Williams

John Steadman, Esq.
South Carolina Department of Corrections

Glen Walters, Esq.

Ray Crawford

Mayor Ronnie Pernell,
Town of Blackville

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1 RECORDED MEETING

2 MS. BUNN: Chief Keel?

3 CHIEF KEEL: Here.

4 MS. BUNN: Sheriff Foster?

5 SHERIFF FOSTER: Here.

6 MS. BUNN: Attorney General Wilson?

7 MR. YOUNG: Jeff Young for Attorney General Wilson,
8 who's on military duty today.

9 MS. BUNN: Director Stirling?

10 DIRECTOR STIRLING: Here.

11 MS. BUNN: Director Gallman?

12 DIRECTOR GALLMAN: Here.

13 MS. BUNN: Director Boyles?

14 DIRECTOR BOYLES: Here.

15 MS. BUNN: Director Woods?

16 DIRECTOR WOODS: Here.

17 MS. BUNN: Sheriff Faile?

18 SHERIFF FAILE: Here.

19 MS. BUNN: Chief Cornett?

20 CHIEF CORNETT: Here.

21 MS. BUNN: Captain Gallam?

22 CAPTAIN GALLAM: Here.

23 MS. BUNN: Chief Holbrook?

24 CHIEF HOLBROOK: Here.

25 MS. BUNN: Director Jackie Swindler is in attendance for

1 the Academy.

2 CHIEF KEEL: All right. Next I'll entertain a motion
3 for adoption of the agenda for today.

4 DIRECTOR BOYLES: Move adoption of agenda as submitted.

5 SHERIFF FAILE: Second.

6 CHIEF KEEL: Got a -- got motion; got a second. Is
7 there any discussion? Any changes? Hearing none,
8 all in favor of approving the agenda as submitted
9 signify by saying aye.

10 (Multiple voices respond "aye.")

11 CHIEF KEEL: Any opposed, like sign?

12 (No response is heard.)

13 CHIEF KEEL: The ayes have it. Next I'm going to ask
14 that -- I'll entertain a motion to approve the June
15 17th, 2024, meeting minutes. I hope everybody's
16 had an opportunity to review those, and I'll
17 entertain a motion to approve them.

18 DIRECTOR STIRLING: So moved.

19 CHIEF KEEL: Got a motion to approve. Do I have a
20 second?

21 CHIEF HOLBROOK: Second.

22 CHIEF KEEL: Got a second, Chief Holbrook. Is there any
23 discussion? Any amendments or changes need to be
24 made to the minutes for the June 17th, 2024,
25 meeting? Hearing none, call for the question. All

1 in favor of approving the minutes as presented
2 signify by saying aye.

3 (Multiple voices respond "aye.")

4 CHIEF KEEL: Any opposed, like sign?

5 (No response is heard.)

6 CHIEF KEEL: The ayes have it, and we'll move right to
7 the director's report. And I think we're going to
8 take something maybe a little bit out of order.

9 MR. FENNELL: Yes, sir.

10 CHIEF KEEL: But if you'll call -- call the first case.

11 MR. FENNELL: Thank you, Chief. May it please the
12 Council. First case, Omar Brown, 2023, CJA-10-21.
13 North Charleston Police Department filed allegation
14 against Mr. Brown. The hearing officer issued a
15 recommendation that the allegations have been
16 proven by the preponderance of the evidence and for
17 Council to impose a sanction it deems appropriate.

18 Mr. Brown is here pro se. Mr. Bourne is here
19 on behalf of the agency. Mr. Brown will have ten
20 minutes. Mr. Bourne will then have ten minutes,
21 and Mr. Brown will have five minutes in reply.

22 CHIEF KEEL: Okay. Mr. Brown, we'll be happy to hear
23 from you.

24 MR. BROWN: Thank you very much.

25 CHIEF KEEL: Yes, sir.

1 MR. BROWN: Good morning. May my words here today be
2 pleasing to God and to members of this Council. My
3 name is Omar Brown, and I was employed as a police
4 officer with the City of North Charleston since, I
5 believe, 2022. I attended the South Carolina
6 Criminal Justice Academy originally in the 1990s.
7 And I have worked various details since then.

8 On August the 8th, I was dispatched on a call
9 in reference to a parental kidnapping. And in law
10 enforcement, we take a parental kidnapping just as
11 serious as we take any other violent crime.
12 Suspect and the child was located and recovered.

13 While in the presence of two officers, the
14 suspect physically assaulted myself. If a suspect
15 will physically assault an officer in the presence
16 of two officers while in uniform, that is not
17 exactly the most ideal situation. However, despite
18 being assaulted, I never struck, hit, punched,
19 kicked the suspect. I never used any of the
20 intermediate weapons afforded to me. I believe
21 that shows the upmost restraint with respect to my
22 belief in the use of force. It also, I believe,
23 shows plenty in the character of my belief in the
24 treatment of suspects regardless of what they have
25 done.

1 As a result of the call, I was bit twice, once
2 in the hand and once in the leg. I was the only
3 person from the incident that ultimately had to be
4 hospitalized and receive medical treatment.

5 The hearing officer finds that the case has
6 been proven beyond reasonable doubt and
7 preponderance of the evidence. I don't know how a
8 person could be considered credible when they are
9 currently in the midst of a federal lawsuit for
10 falsifying an affidavit. I believe that the
11 Criminal Justice Academy has taught us that
12 integrity, honesty, and ethics is a requirement as
13 an officer and something to be held dear, as well
14 as the rights of the individual persons.

15 And Officer Sanchez, who's currently facing
16 that lawsuit was an alleged key witness who
17 corroborated, in his words, that I was offered
18 medical attention, which is now a new thing that
19 I'm said to have been dishonest about, when in the
20 very testimony, Sergeant Lizarazo acknowledges that
21 at no time was Officer Sanchez in the room while I
22 was completing the reports while he and I were
23 talking. So how could he be found as a credible
24 witness if his own sergeant says he was not there
25 when he testified he was in the room? Beyond a

1 reasonable doubt, if your own sergeant disagrees, I
2 think that should've been taking into
3 consideration.

4 I also found it rather shocking that the same
5 officer who is the key witness against me admitted
6 during the hearing, in front of the hearing
7 officer, that he filed false charges against the
8 very suspect who was arrested. He charged her with
9 assault, yet he admits that he was never assaulted.
10 We are not in the business of charging suspects
11 with crimes they didn't commit. And if you will
12 say that someone while in this meeting committed a
13 crime on paper, he filled out the victim sheet, he
14 prosecuted the lady. For his part of her -- him
15 saying he -- she -- he assaulted her, she was given
16 28 or 29 days. And those things, I said back in my
17 motion of opposition, Page 30, Lines 20; Line 1,
18 Page 31. I mean this -- you can't -- in my view,
19 the Council is trying to end corruption. If you
20 commit a violation against a suspect and have the
21 nerve and the audacity to admit it in front of the
22 Council, I find that hard to understand.

23 I also found -- which in the paperwork sent to
24 the Academy, I was accused of leaving the area
25 without permission, yet in the hearing, the

1 sergeant admits that his entire team has his
2 permission to leave the area and go across the
3 Cosgrove bridge at any time. Why would you submit
4 a false charge and then, in front of the Council,
5 admit that they had permission?

6 I am not seeking any special favors or
7 anything. I am only seeking justice. Why would an
8 investigating sergeant admit that he never even
9 questioned the sergeant about that charge? He just
10 sustained it and sent it to the Academy. The
11 simple question that I asked was, "Does your person
12 have permission?" And the sergeant says, "Yes."
13 That would've invalidated that charge.

14 But I also, as I looked at what was said to
15 the Academy, became shocked and horrified that I
16 was said to have used the "n" word in speaking to
17 the suspect. The video clearly shows that never
18 happened. Why would an investigating serg use
19 creative writing to send such vulgar language to
20 this committee when the video shows it never
21 occurred?

22 Additionally, why would you say I cussed the
23 victim out when I merely told her, "Don't fuss with
24 the child," because the child was crying and
25 scared. She didn't know what was going on. Why

1 would you embellish a report? Why would you lie to
2 a law enforcement office or agency? Because the
3 video -- which I was denied access to the videos
4 despite Freedom of Information requests and
5 subpoenas and other things. But why would you, if
6 it's in recording and you knew it didn't exist,
7 falsely send it to taint the reputation of a man?
8 What is your purpose? What benefit can you gain
9 from that? We are in the business of law
10 enforcement. We are not in the business of
11 utilizing tools such as this to cause injury and
12 harm to people unnecessarily and unjustifiably.

13 Why would you file a charge as a supervisor to
14 say you had no communications with an officer for
15 approximately three to four hours when the phone
16 records which were presented during the contested
17 hearing showed that you spoke to that officer
18 approximately seven times? One thing about smart
19 phones is they won't lie. The phone record speaks
20 clearly for itself and was submitted during the
21 hearing.

22 The complaint that was initially filed was
23 revised approximately ten to fifteen times, and it
24 took almost a month for a narrative to be written
25 to start the investigation from the beginning. I

1 don't know what the background of the persons on
2 the other side of the screen is, but I would
3 imagine if you had a valid charge and a valid
4 complaint, it should not take nearly a month of
5 revisions and rewrites to finally say, "This is
6 good."

7 When you have a situation such as a fight in
8 this case, the Academy teaches that it's not what
9 happens on Monday; it's what happened when the
10 individuals were in the situation. And to attempt
11 to take one snapshot out of a video, one frame, and
12 say, "You touched a person here as you were trying
13 to get them to ground them," to me is disingenuous,
14 where the video clearly shows the suspect was not
15 choked. It also shows that the allegations were
16 false when it was said that I repeatedly slammed
17 her head into the ground. Why publish and make
18 such charges if the video shows her head was never
19 repeatedly slammed in the ground? When she stood
20 up, she had no dirt on her face. She had no blood
21 on her face. She had nothing.

22 Ultimately, after filing for unemployment
23 after being terminated, a hearing was held with the
24 Employment Commission. And despite not being given
25 any evidence to defend myself, I presented the

1 truth, and the truth sustained itself. The
2 Commission found that I had done no wrongdoing.
3 The Commission found, even in questioning the
4 persons from the city, that there was no excessive
5 force, that there was no willful intent to cause
6 injury or do harm, and that the suspect was never
7 even given any medical attention because she did
8 not require any. And if a body of non-law
9 enforcement persons can come to this conclusion, I
10 find it hard to understand why I stand here today.

11 I've always been a compassionate officer.
12 I've always been an officer that let the letter of
13 the law be my guide. And I am merely appealing to
14 you to consider the facts and understand that if an
15 officer is in a fight and he's not punching,
16 kicking, or using any physical means that are at
17 his disposal, he is showing the utmost amount of
18 restraint despite receiving injury to himself.

19 And with that, I will close until the last
20 five minutes, with your permission, unless you have
21 questions, which I would be more than happy to
22 answer.

23 CHIEF KEEL: Anybody have any questions for Mr. Brown at
24 this time? Anyone have any questions for Mr.
25 Brown? Mr. Brown, we'll -- we'll hear from North

1 Charleston, and then we'll have you back up --

2 MR. BROWN: Yes, sir.

3 CHIEF KEEL: -- for rebuttal.

4 MR. BROWN: Thank you.

5 CHIEF KEEL: Mr. Bourne.

6 MR. BOURNE: Thank you, Chief Keel, members of the
7 Council. I, along with Sergeant Ledford, of the
8 North Charleston Police Department are here today
9 to tell you that Mr. Brown who had been employed
10 with North Charleston for a little under two years
11 when this happened, did something very human but
12 that as a law enforcement officer, he cannot do.
13 And that is he lost his cool. He lost his cool and
14 he got mad at the -- at the subject, and he took it
15 out on her.

16 She had pushed him. He staggered backward,
17 almost falling into some bushes, and when he got
18 up, he was angry, and he took it out on her. He --
19 the hearing officer viewed the tape, as did Mr.
20 Brown, the body camera that he wore, the body
21 camera that Officer Sanchez wore. The hearing
22 officer found that viewing the totality of the
23 circumstances, Mr. Brown had acted with
24 unreasonable force. He jerked her up by the
25 handcuffs, which were secured behind her back,

1 after she had been subdued, after she had been
2 cuffed by Officer Sanchez. He also grabbed her
3 around the neck, and -- the hearing officer says,
4 and he went for her throat.

5 The hearing officer, after reviewing all this,
6 listening to the two witnesses, viewing both body
7 cams, hearing from Mr. Brown, decided that, yes, he
8 had used unreasonable force. Additionally, she
9 found that he had made a false statement because he
10 maintained that he was never asked about whether he
11 needed medical treatment. But the internal affairs
12 officer questioned both officers, Sanchez and
13 Lizarazo, who both said, yes, he was offered
14 medical treatment. Lizarazo said on multiple times
15 he was offered medical treatment, he was inquired
16 about his health. Lizarazo gave details to the
17 internal affairs officer about how he had offered
18 Mr. Brown an opportunity to go into the bathroom,
19 check his leg, check the bite, see if he needed to
20 go to the doctor.

21 And as far as Mr. Brown being hospitalized,
22 this is the first we're hearing of this. He went
23 to a med unit, an in-and-out doc-in-a-box across
24 the river for a visit, but I have no knowledge of
25 him being hospitalized.

1 So it's simply a case of excessive use of
2 force and then trying to shift the blame away from
3 you by making a false statement against a
4 supervisor. That's what this case is about.

5 If you have any questions, I'll try -- try to
6 answer them.

7 CHIEF KEEL: Anybody have any questions for Mr. Osborne
8 (verbatim)? Anyone have any questions for Mr.
9 Osborne?

10 MR. BOURNE: Thank you.

11 CHIEF KEEL: Chief Holbrook.

12 CHIEF HOLBROOK: So he used -- he said "unreasonable,"
13 and then right here at the end, he said
14 "excessive." Just for the -- for our purposes, is
15 there a distinction?

16 CHIEF KEEL: Jim?

17 MR. FENNELL: No, sir, Chief. Anytime Miranda is
18 violated where it's unreasonable force, it is
19 excessive force.

20 CHIEF KEEL: Okay. Any -- any questions? Mr. Brown,
21 we'd be glad to hear rebuttal.

22 MR. BROWN: Thank you. This incident, of course, was
23 not a snapshot in time, but if you can see this
24 photo, this is what I saw from the officer's
25 advantage seconds before moving to ground the

1 suspect, a suspect who's already attacked an
2 officer and already struck more than once is then a
3 prisoner. And I had an obligation initially to
4 prevent her from causing injury, which was
5 acknowledged during the contested hearing, from her
6 causing injury by trying to go back into the house
7 and fight with the elderly lady that called.

8 I was never offered medical attention, and the
9 sergeant went on to admit in his contested case
10 hearing that he failed to do his job on that day.
11 He further admits that he didn't even do a first
12 injury report, despite knowing there were injuries.
13 I don't believe if you are in a hurry to go home
14 and fail to do a first injury report and admit that
15 you didn't do your job, that you exactly was
16 concerned about that officer.

17 Also, he corroborated my written statement
18 when I said he was talking on the phone when I
19 entered the station and held up a finger like,
20 "Don't bother me," because he was laughing and
21 joking with someone on the phone. He corroborated
22 that during his contested case hearing.

23 For a witness to be credible, they cannot have
24 been proven to have lied, such as this one has
25 admitted. And I don't believe the intent of this

1 Council is to cause harm and split hairs saying,
2 you know, "He said you were given medical
3 attention." The hearing officer cites that as
4 being untruthful and what I am now charged with
5 here today. However, the person who's
6 corroborating it is an admitted liar, on -- on
7 paper, on record. And that can't be changed
8 because I didn't write the papers or the record.
9 And it seems to be a continuous pattern. Since
10 he's already charged in one federal case, and now
11 to have admitted that he committed another crime by
12 falsely charging this subject with assaulting him.
13 He filled out a victim information sheet. He
14 filled out a booking sheet. He transported that
15 subject to the jail. Those things can't be erased.
16 And her freedom was wrongfully taken from her for
17 those days that she served as a result of his
18 charge.

19 I am only asking for a chance at justice, and
20 that rests in your hands. And I only pray that,
21 you know, God's grace and mercy allows you to see
22 that. Thank you.

23 CHIEF KEEL: Anybody have any questions for Mr. Brown?

24 Anyone have any questions for Mr. Brown? I'll
25 entertain a motion.

1 SHERIFF FAILE: He mentioned earlier about --

2 CHIEF KEEL: Sheriff Faile.

3 SHERIFF FAILE: He mentioned earlier about a subpoena

4 and trying to get some records or video footage.

5 Was that done through the hearing officer?

6 MR. FENNELL: Direct that toward Mr. Bourne, please,

7 Sheriff.

8 SHERIFF FAILE: The subpoena you tried to get served or

9 the footage you tried to receive through a

10 subpoena, was that done through the hearing

11 officer?

12 MR. BROWN: No, sir. That was done through the

13 Employment Security Commission and then also

14 through a direct Freedom of Information Act with

15 the department.

16 CHIEF KEEL: Any other questions? Any other questions?

17 I'll entertain a motion.

18 DIRECTOR STIRLING: I have a question. This is Bryan

19 Stirling.

20 MR. BROWN: Yes.

21 CHIEF KEEL: Director Stirling.

22 DIRECTOR STIRLING: Exhibit B, I mean, it appears she

23 was under control and everything, but you grabbed

24 her neck at the 6.38 point. You go for her neck to

25 take her down. Can you help me understand that?

1 MR. BROWN: Yes, sir. That's a snapshot of a video,
2 which I was going -- and Lieutenant Sherwood
3 acknowledges this even in his internal writing to
4 the department. I did not choke the lady or grab
5 her in the neck to choke her. I merely grabbed her
6 in the upper body. My hands immediately locked
7 behind her head in an effort to ground her.

8 (Electronic interference.)

9 MR. BROWN: Sir?

10 DIRECTOR STIRLING: I didn't say anything. I think that
11 was a video snafu here.

12 MR. BROWN: Yes, sir. So at no time did I place two
13 hands around her throat and choke her. And the
14 photo that I showed you gives you the snapshot into
15 this officer's view, vision, and, through my eyes,
16 what was transpiring. And I believe that snapshot
17 shows that she was not in compliance, as the
18 officer even testified in the contested case
19 hearing, that at no time was she cooperative, no
20 time was she non-combative, and at no time did he
21 attempt to handcuff her. She was still a loose
22 prisoner, with him holding onto one arm. We are
23 trained -- at least we were trained at the Academy
24 that we don't stand up and just wrestle with people
25 toe to toe or anything. Try to ground them, secure

1 them, mitigate the situation. And that's what I
2 was attempting to do.

3 CHIEF KEEL: Any other questions? Any other questions?

4 CHIEF HOLBROOK: My I ask something?

5 CHIEF KEEL: Yes, sir. Chief Holbrook.

6 CHIEF HOLBROOK: So the -- so the hearing officer
7 concluded the unreasonable or excessive force and
8 untruthfulness?

9 UNKNOWN SPEAKER: He did.

10 MR. FENNEL: Yes.

11 CHIEF KEEL: Do we have a motion?

12 MR. BROWN: This it? Yes. She sustained it, but look
13 at the basis in which she sustained it. She said
14 because it was corroborated by the other officer,
15 Sanchez, who I said and showed he's the one that
16 falsely charged the lady. And also the sergeant
17 said he wasn't even in the room, so how could he
18 sustain or substantiate that this actually
19 transpired and took place?

20 SHERIFF FOSTER: I got a question, Chief.

21 CHIEF KEEL: Sheriff Foster.

22 SHERIFF FOSTER: Mr. Brown, you said that -- said that
23 you had been before what commission? The Labor
24 Commission or just --

25 MR. BROWN: No, sir. The Unemployment Security

1 Commission. When I applied for the unemployment,
2 the City of Charleston -- I mean North Charleston
3 sent in a thing saying that I was terminated for
4 just cause. And, therefore, it moved to a hearing,
5 and in that hearing, the returned verdict was no
6 wrongdoing, and I was allowed to have my
7 unemployment. And they looked at the same --

8 SHERIFF FOSTER: (Inaudible.)

9 MR. BROWN: Yes, sir. And they looked at the -- the --
10 whatever the level -- they went up to the next
11 level. They looked at the same video. They
12 listened to all the testimony, and that was their
13 finding.

14 DIRECTOR STIRLING: I -- Chief, I have a question.

15 CHIEF KEEL: Yes, sir.

16 DIRECTOR STIRLING: I have the same question I asked for
17 the city, about the 6.38 mark in Exhibit B, about
18 going for the neck. If someone here could answer
19 that.

20 CHIEF KEEL: Mr. Osbourne (verbatim).

21 MR. BOURNE: Yeah. Charlie Bourne on behalf of the
22 city. Yes, the -- the hearing officer said the
23 video showed that he grabbed her around the neck
24 and was moving toward the throat. That's what the
25 hearing officer found. The video shows he is

1 grabbing her around the neck, and the hearing
2 officer said that it looks like he was moving
3 toward the throat, so yes.

4 And, also, let me clear up one other thing.
5 The Unemployment Commission is not the same body
6 that decides whether he -- that he appealed to with
7 the City of North Charleston to decide whether it
8 was, in fact, substantiated or not. The body with
9 the City of North Charleston decided that it was
10 substantiated, and he did not get his job back.
11 This is only for unemployment benefits.

12 Any other questions that I might can answer?

13 CHIEF KEEL: (Inaudible.)

14 DIRECTOR STIRLING: Yes. One question. It appears from
15 the video that when he was picking her up at the
16 7.27 mark, he picked her up by the handcuffs, and
17 the other officer was kind of, from what I could
18 see, trying to stop him from doing that. Is that
19 your interpretation of what happened?

20 MR. BOURNE: That is. The -- the other officer was a
21 defensive tactics instructor, and it bothered him
22 then, and it bothered him when he got back to the
23 station. Because he told Sergeant Lizarazo, "You
24 might want to look at the tape." Because that
25 concerned him. He jerked -- Mr. Brown jerked her

1 up by the handcuffs which were behind her back.

2 DIRECTOR STIRLING: Thank you.

3 MR. BOURNE: All right. That's all.

4 MR. BROWN: If you look, sir, at that video, you will
5 see that she was not jerked up by the handcuffs.
6 At one point, my hand was on one side of her arm,
7 and then I held in her hand area where the
8 handcuffs are, both of those, after telling her to
9 turn over, to stand her up. And the other officer
10 -- which I imagine you're looking at a still shot
11 -- he reached down with both hands and started
12 pulling her forward as I was holding her hands and
13 her arms as she stood up, and she stands up on her
14 own feet. She's not immediately snatched up into
15 the air. And that's why I say a still shot can
16 show one second in time but not the actual events.
17 I would have shuttered thinking if during this
18 altercation, your hand hit a person on the breast
19 or touched their behind as they're rumbling around
20 with you, that someone would take that still shot
21 and then say, "Hey, you sexually assaulted the
22 individual." That's not what -- you have to take
23 the totality of the video, and I think the
24 Employment Commission took the totality of the
25 video as well as this sworn testimony and --

1 UNKNOWN SPEAKER: I watched the --

2 MR. BROWN: Yes, sir.

3 UNKNOWN SPEAKER: I watched the video.

4 MR. BROWN: Yes, sir.

5 UNKNOWN SPEAKER: I watched the video. It was not a

6 still shot.

7 MR. BROWN: Yes, sir.

8 CHIEF KEEL: Any other -- any other questions?

9 SHERIFF FAILE: Chief, I make a motion to adopt the

10 hearing officer's recommendation.

11 CHIEF KEEL: We got a motion to adopt the hearing

12 officer's recommendation.

13 SHERIFF FOSTER: I second.

14 CHIEF KEEL: We have a second -- and we got a second.

15 Is there any further discussion? Any further

16 discussion? I know we got to -- we're going --

17 we're going to have to talk about, you know, what

18 the sanction is. But we'll -- we'll do that after

19 we vote on this motion. So we got a -- we got a

20 motion to adopt the hearing officer's

21 recommendation, find misconduct. Do we have a

22 second? We got a second. Roll call vote.

23 MS. BUNN: Chief Keel?

24 CHIEF KEEL: Aye.

25 MS. BUNN: Sheriff Foster?

1 SHERIFF FOSTER: Aye.

2 MS. BUNN: Director Stirling?

3 DIRECTOR STIRLING: Aye.

4 MS. BUNN: Director Gallman?

5 DIRECTOR GALLMAN: Aye.

6 MS. BUNN: Director Boyles?

7 DIRECTOR BOYLES: Aye.

8 MS. BUNN: Director Woods?

9 DIRECTOR WOODS: Aye.

10 MS. BUNN: Sheriff Faile?

11 SHERIFF FAILE: Aye.

12 MS. BUNN: Chief Cornett?

13 CHIEF CORNETT: Aye.

14 MS. BUNN: Captain Gallam?

15 CAPTAIN GALLAM: Aye.

16 MS. BUNN: Chief Holbrook?

17 CHIEF HOLBROOK: Aye.

18 CHIEF KEEL: Okay. We need a motion now on a sanction

19 with regards the motion found of misconduct.

20 DIRECTOR WOODS: Well, the basis of the misconduct

21 finding is untruthfulness as well as excessive use

22 of force.

23 CHIEF KEEL: Correct.

24 DIRECTOR WOODS: So based on the -- on the past

25 precedence of the Council, it would be permanently

1 deny certification.

2 CHIEF KEEL: Okay. Is that a motion?

3 DIRECTOR WOODS: That is a motion.

4 CHIEF KEEL: All right. So we got a motion to

5 permanently deny eligibility for certification of

6 law enforcement officer. Do I hear a second?

7 DIRECTOR BOYLES: Second.

8 CHIEF KEEL: I got a second, Director Boyles. Again,

9 any discussion? Roll call vote.

10 MS. BUNN: Chief Keel?

11 CHIEF KEEL: Aye.

12 MS. BUNN: Sheriff Foster?

13 SHERIFF FOSTER: Aye.

14 MS. BUNN: Director Stirling?

15 DIRECTOR STIRLING: Aye.

16 MS. BUNN: Director Gallman?

17 DIRECTOR GALLMAN: Aye.

18 MS. BUNN: Director Boyles?

19 DIRECTOR BOYLES: Aye.

20 MS. BUNN: Director Woods?

21 DIRECTOR WOODS: Aye.

22 MS. BUNN: Sheriff Faile?

23 SHERIFF FAILE: Aye.

24 MS. BUNN: Chief Cornett?

25 CHIEF CORNETT: Aye.

1 MS. BUNN: Captain Gallam?

2 CAPTAIN GALLAM: Aye.

3 MS. BUNN: Chief Holbrook?

4 CHIEF HOLBROOK: Aye.

5 CHIEF KEEL: Next case.

6 MR. FENNELL: I'd like bring forward Brian West, Case
7 2023-CJA-12-07. North Charleston Police Department
8 filed an allegation against Mr. West. The hearing
9 officer recommended that the allegations have been
10 proven by the preponderance of the evidence and for
11 Council to impose the appropriate sanction. Mr.
12 West is here pro se. Mr. Bourne is here on behalf
13 of the agency. Mr. West will have ten minutes, Mr.
14 Bourne will have ten minutes, then Mr. West will
15 have five minute in rebuttal.

16 CHIEF KEEL: Mr. West, we'll be happy to hear from you.

17 MR. WEST: Okay. Good morning, Chief Keel, Mr. Young,
18 Directors, Sheriffs, Chiefs of the South Carolina
19 Law Enforcement Training Council. I come to you
20 today here. I am humble. I am asking forgiveness
21 for an error, answering a question incorrectly. I
22 committed a policy violation with the City of North
23 Charleston. This stems from an off-duty I was in
24 charge of for about a year. It's a maritime
25 security off-duty, where we position officers on

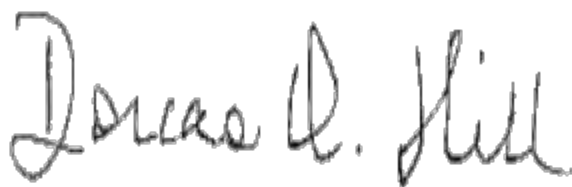
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TRANSCRIPTION CERTIFICATE

I, Dorcas O. Hill, do hereby certify that I
transcribed the preceding pages from a recording, and
that I was not present at the time the recording was
made.

I further certify that I am not a relative nor an
employee of any of the parties hereto, nor of any
attorney or counsel employed by the parties hereto, nor
interested in the outcome of this action.

In witness thereof, I have hereunto affixed my
signature.



Date: 9/10/2024

Dorcas O. Hill

SOUTH CAROLINA
LAW ENFORCEMENT TRAINING COUNCIL
MEETING MINUTES
Wednesday, July 24, 2024
10:00 a.m.

A meeting of the South Carolina Law Enforcement Training Council (LETC) was held at the South Carolina Criminal Justice Academy on Wednesday, July 24, 2024. This meeting was advertised in accordance with the South Carolina Freedom of Information Act.

CALL TO ORDER

Agenda Item 1

Chief Mark Keel, Chair of the Law Enforcement Training Council, called the meeting to order at 10:07 a.m. Chief Keel called for a roll call of the Council members. The roll was called by Opel Bunn.

Members present for this meeting in-person were Chief Mark Keel, (Chairman), State Law Enforcement Division (SLED); Sheriff Lee Foster (Co-Chair), Newberry County Sheriff's Office; Director Robert Boyles, S.C. Department of Natural Resources; Director Robert Woods, S.C. Department of Public Safety; Director Bryan Stirling, S.C. Department of Corrections; Acting Director Jodi Gallman, S.C. Department of Probation, Parole, and Pardon Services; Chief Kevin Cornett, Isle of Palms Police Department; Sheriff Barry Faile, Lancaster County Sheriff's Office; Captain Nick Gallam, Aiken County Detention Center; and Chief William Holbrook, Columbia Police Department.

Attorney General Alan Wilson, S.C. Attorney General's Office was absent from this meeting but represented by proxy, Jeff Young.

Guest attendees present in-person or via Webex were Sally Foster, S.C. Sheriffs Association; Joanna McDuffie, Esquire, Richland County Sheriff's Department; Omar Brown; Charlton Bourne, Esquire, North Charleston Police Department; Sargeant Jeremy Ledford, North Charleston Police Department; Natassiah Brown; Marcus Gore, Esquire, S.C. Department of Public Safety; Quinton Joyner; Saterrica Thompson; Brian West; Holyoka Williams; John Steadman, Esquire, S.C. Department of Corrections; Glen Walters, Esquire; Ray Crawford; and Mayor Ronnie Pernell, Town of Blackville.

SC Criminal Justice Academy attendees were Director Jackie Swindler; Opel Bunn, Executive Assistant; James Fennell, General Counsel; Lauren Fennell, Accreditation and Standards Manager; Madison Reynolds, Certification; John Yarborough, Facilities Operation Manager; Lauren Wright, Finance Manager; Justin Miller, IT Manager; Briana Jirowetz, IT; Jared Lee, IT; Major Florence

McCants, Administrative Operations; Rebecca Williams, Esquire; Scott Deckard, Investigator; Bob Bianco, Evaluator; and Mike O'Connell, Evaluator.

APPROVAL OF AGENDA

Agenda Item 2

A motion to adopt the agenda was made by Director Boyles. Sheriff Faile seconded the motion. Council voted unanimously to adopt the agenda as presented.

APPROVAL FOR MEETING MINUTES

Agenda Item 3

A motion to approve the minutes of the June 17, 2024, meeting was made by Director Stirling and seconded by Chief Holbrook. Council voted unanimously to accept the meeting minutes as recorded.

DIRECTOR'S REPORT

Agenda Item 4

A. General Counsel Report

- Misconduct Cases

Omar Brown (2023-CJA-10-21) (North Charleston Police Department)

Summary: Allegation of willfully making false, misleading, incomplete, deceitful, or incorrect statements to a law enforcement officer, a law enforcement agency, or a representative of the agency, except when required by departmental policy or by the laws of this State. Allegation of willful use of excessive force in an objectively unreasonable manner. **Request for Final Agency Decision.**

The Hearing Officer Recommended that Council:

- A. Issue its final agency decision, pursuant to S.C. Code Ann. Regs. 37-107 D. finding that the allegation of misconduct filed against Omar Brown by the North Charleston Police Department has been proven by the preponderance of evidence; and
- B. Impose a below sanction as the Law Enforcement Training Council in its discretion deems appropriate pursuant to its authority set forth at S.C. Code Ann. Regs. 37-108 A (1-5)

1. Permanent denial and/or revocation (withdrawal) of certification
2. Denial and/or revocation (withdrawal) of certification for a specified amount of time;
3. Certification granted with probation;
4. Certification granted with any additional requirements deemed just and proper by the Council; and/or
5. Public Reprimand

Omar Brown was present and spoke on his behalf and to answer questions from Council if applicable.

Carlton Bourne, Esquire, was present and spoke on behalf of the North Charleston Police Department and to answer questions from Council if applicable.

After hearing statements from all parties, Sheriff Faile made a motion to adopt the recommendation of the Hearing Officer, finding misconduct. Sheriff Foster seconded the motion.

Council voted unanimously to adopt the recommendation of the Hearing Officer, finding misconduct.

Council had a brief discussion regarding the sanction. Upon completion of the discussion, Director Woods made a motion to permanently deny Omar Brown's law enforcement certification. Director Boyles seconded the motion.

Council voted unanimously to permanently deny Omar Brown's eligibility for law enforcement certification.

Natassiah Brown (2023-CJA-12-08) (Dorchester County Detention Center)

Summary: Allegation of engaging in the unlawful use of a controlled substance. **Request for Final Agency Decision.**

The Hearing Officer Recommended that Council:

- A. Issue its final agency decision, pursuant to S.C. Code Ann. Regs. 37-107 D., finding that the allegation of misconduct reported against Natassiah Brown by the Dorchester County Detention Center have been proven by preponderance of the evidence; and
- B. Impose such sanction as the Law Enforcement Training Council in its discretion deems appropriate pursuant to its authority set forth at S.C. Code Ann. Regs. 37-108 A.
 1. Permanent denial and/or revocation (withdrawal) of certification

CLOSING REMARKS/AJOURNMENT

Agenda Item 7

Chief Keel inquired whether there were any more questions or comments from Council. When there were no more remarks or comments, Sheriff Foster made a motion to adjourn the meeting. Sheriff Faile seconded the motion.

The meeting was adjourned at 12:54 p.m.

Respectfully submitted by:

Opel C. Bunn

Opel C. Bunn

STATE OF SOUTH CAROLINA)

COUNTY OF BERKELEY)

AFFIDAVIT OF SERVICE or NON-SERVICE

Case No: 2023-CJA-10-21

Hearing Date:

SOUTH CAROLINA CRIMINAL JUSTICE
ACADEMY AND NORTH CHARLESTON
POLICE DEPARTMENT

Plaintiff(s)

vs.

OMAR BROWN

Defendant (s)

The undersigned, Deputy PFC HOPE BROWN, says on oath that he/she served the following:

- () Affidavit () Order
() Complaint () Order of Continuance
() Family Court Coversheet () Financial Declaration
() Court Information Sheet () Petition for Order of Protection
() Juvenile Summons/Petition () Summons
() Motion and Affidavit for Emergency Hearing () Notice of Hearing
(X) Other- NOTICE OF CERTIFICATION MISCONDUCT ALLEGATION, REQUEST FOR CONTESTED CASE HEARING,
SEPARATION DUE TO MISCONDUCT

By delivering the same to:

☒ Defendant/Plaintiff Brown, Omar, personally.

() _____, personally.

(Note relation to defendant) a person of discretion residing at defendant's address.

() _____ the _____

(Person served is corporate defendant) (title/office held)

And leaving with him/her one (1) copy of the same at 1140 THURGOOD RD, GOOSE CREEK, SC 29445
on the 14th day of November, 2023 at 3:10 AM/PM and that deponent knows the person so served
to be the defendant mentioned and described in the pleadings served, and that deponent is not a party to nor interested in the action.

Non-Service Information

Attempted Service at _____

On _____ at _____ am/pm

Not served for the following reasons:

Signed

H. Brown
PFC HOPE BROWN

Sworn to me this

14th day of November, 2023

Junica B Andum

Notary Public for State of South Carolina

My Commission Expires: October 12, 2023



NOTICE OF CONTESTED CASE HEARING
VIA CERTIFIED MAIL / RETURN RECEIPT REQUESTED

TO: Omar Brown
P.O. Box 442
Goose Creek, SC 29445
Certified Mail Number: 9589 0710 5270 0740 0866 06

George Gomes, Chief
North Charleston Police Department
2500 City Hall Lane
North Charleston, SC 29406

Certified Mail Number: 9589 0710 5270 0740 0866 13

FROM: South Carolina Law Enforcement Training Council

RE: In the Matter of the Law Enforcement Certification of Omar Brown
LETC Case Number: 2023-CJA-10-21

Please be advised that a contested case hearing, in accordance with the requirements of South Carolina Code Ann. § 23-23-150 (D) and S.C. Code Ann. Regs. 37-101 A, has been scheduled before the attorney hearing officer designated below at the time and place indicated.

HEARING OFFICER: Rebecca Williams

TIME AND DATE: 10:00 a.m. (EST) February 20, 2024

LOCATION: 5400 Broad River Road, Columbia, SC 29212

Upon arrival for the hearing, parties and witnesses should report to the Criminal Justice Academy ("Academy") receptionist desk and advise of their presence for a contested case hearing. If a party is unable to be present for the scheduled contested case hearing due to reasons of disability, hospitalization, or other condition affecting the party's physical ability to travel, the party, the party's attorney, or the party's personal designee must immediately notify the hearing officer in writing, either by postal correspondence to the address on this letterhead, or via electronic mail to the address listed for the hearing officer below, to request continuation of the scheduled hearing.

PURPOSE OF CONTESTED CASE HEARING

The purpose of the contested case hearing is to afford an opportunity, in accordance with the above referenced statutory and regulatory provisions, for the officer to contest the proposed withdrawal or denial of the officer's law enforcement certification by the Law Enforcement Training Council ("Council") based upon alleged certification misconduct on the part of the officer that has been reported to Council by the officer's previous employing law enforcement

agency and which certification misconduct has been more particularly described in the Allegation of Certification Misconduct previously served upon the officer by the Academy.

The law enforcement agency making the allegation of certification misconduct (“Agency”) is required by S.C. Code Ann. Regs. 37-103 to prosecute the allegation and, in accordance with S.C. Code Ann. Regs. 37-105 K, will have the burden of proving by “substantial evidence” that the officer has committed the misconduct alleged by the Agency. The hearing will be conducted in accordance with the provisions of S.C. Code Ann. § 1-23-320 and S.C. Code Ann. Regs. 37-105.

Both the officer and the Agency may subpoena witnesses to testify, or to produce evidence, at the contested case hearing. The subpoena form approved by the Council for use in contested case hearings is attached hereto. Both the officer and the Agency may seek enforcement of, or relief from, a subpoena by filing with the South Carolina Administrative Law Court, pursuant to S.C. Code Ann. § 1-23-600 (G). Use of the subpoena by either the officer or the Agency must comply with Rule 45 of the South Carolina Rules of Civil Procedure.

An officer may be represented at the contested hearing by an attorney retained at the officer’s expense. If the officer is represented by an attorney, and the contested hearing was not requested on the officer’s behalf by the attorney, the attorney must provide a written notice of appearance to the hearing officer by no later than five (5) days in advance of the scheduled hearing. The notice of appearance may be provided by email to RWilliams@sccja.sc.gov or via postal mail as follows:

S.C. Criminal Justice Academy
ATTN: Contested Case Hearing Officer
5400 Broad River Road
Columbia, SC 29212

RESCHEDULING OF THE CONTESTED CASE HEARING

A request for rescheduling of a contested case hearing can be only be approved by the assigned hearing officer. The hearing officer may be reached by telephone at (803) 896-7128 during regular business hours or via email at RWilliams@sccja.sc.gov.

FAILURE TO APPEAR FOR THE CONTESTED CASE HEARING

If a representative of the Agency does not appear at the scheduled contested case hearing and has not requested a continuance of the hearing, a judgment by default will be rendered against the Agency and it will be deemed to have waived its right to present evidence of misconduct against the officer at a contested case hearing.

If the officer does not appear at the scheduled contested case hearing and has not requested a continuance of the hearing, a judgment by default will be rendered against the officer; the officer will be deemed to have waived the right to present evidence at the contested case hearing, and Council may immediately proceed to a determination as to the appropriate final agency action.

If Council determines that the officer has committed certification misconduct, it may impose sanctions, pursuant to S.C. Code Ann. Regs. 37-108. Evidence presented by the hearing officer to Council incident to an officer's failure to appear for the contested case hearing is not required to conform to the South Carolina Rules of Evidence.

FOR THE LAW ENFORCEMENT TRAINING COUNCIL:

A handwritten signature in blue ink, appearing to read "J Fennell".

James M. Fennell
General Counsel
South Carolina Criminal Justice Academy
jfennell@sccja.sc.gov

Date: 12/15/2023

STATE OF SOUTH CAROLINA
South Carolina Law Enforcement Training Council

**IN THE MATTER OF THE LAW ENFORCEMENT
CERTIFICATION OF**

)
)
)

ADMINISTRATIVE SUBPOENA
LETC Case Number:

TO:

☐ YOU ARE COMMANDED to appear at the place and time specified below to testify in the above case.

PLACE OF TESTIMONY: South Carolina Criminal Justice Academy 5400 Broad River Road Columbia, SC 29212	DATE AND TIME:
--	-----------------------

☐ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below:

DOCUMENTS OR OBJECTS TO BE PRODUCED:	
PLACE OF PRODUCTION:	DATE AND TIME:

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS PROCEEDING IS DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE HEARING OFFICER SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF. THE ORGANIZATION SHALL SET FORTH, FOR EACH PERSON SO DESIGNATED, THE MATTERS ON WHICH THE PERSON WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED SHALL TESTIFY AS TO MATTERS KNOWN, OR REASONABLY AVAILABLE, TO THE ORGANIZATION.

BY MY SIGNATURE BELOW, I CERTIFY THAT THIS SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), SCRPC, AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

Signature of Person Issuing Subpoena

Date

Printed Name

Address

Telephone

Email

☐ I am an attorney in good standing with the South Carolina Bar representing a party to this proceeding.

____ Attorney for Law Enforcement Agency

____ Attorney for Law Enforcement Officer

SC Bar Number: _____

☐ I am an unrepresented party to this proceeding.

PROOF OF SERVICE

SERVED: Date of Service: Location of Service:	FEES AND MILEAGE TO BE TENDERED TO WITNESS UPON DAILY ARRIVAL: ☐ YES ☐ NO AMOUNT \$
SERVED ON:	MANNER OF SERVICE:
SERVED BY:	TITLE OF SERVER:

DECLARATION OF SERVER

By my signature hereto, I certify that the foregoing information contained in this Proof of Service is true and correct.

Executed this ____ day of _____, 20____

Signature of Server

Address of Server

Rule 45, South Carolina Rules of Civil Procedures, Parts (b), (c), and (d):

(b) Service.

(1) A subpoena may be served by any person who is not a party and is not less than 18 years of age. Service of a subpoena upon a person named therein shall be made in the same manner prescribed for service of a summons and complaint in Rule 4(d) or (j). If the person's attendance is commanded, then that person shall, upon his arrival in accordance with the subpoena, be tendered fees for each day's attendance of \$25.00 and the mileage allowed by law for official travel of State officers and employees from his residence to the location commanded in the subpoena. When the subpoena is issued on behalf of the State of South Carolina or an officer or agency thereof, fees and mileage need not be tendered. Unless otherwise ordered by the court, prior notice in writing of any commanded production of documents and things or inspection of premises before trial shall be served on each party in the manner prescribed by Rule 5(b) at least 10 days before the time specified for compliance.

(2) Subject to the provisions of clause (ii) of subparagraph (c)(3)(A) of this rule, a subpoena may be served at any place within the State. Provided, however, that a subpoena to a person who is not a party or an officer, director or managing agent of a party, commanding attendance at a deposition or production or inspection shall issue from the court for the county in which the non-party resides or is employed or regularly transacts business in person and be served in that county.

(3) Proof of service when necessary shall be made by filing with the clerk of the court by which the subpoena is issued a statement of the date and manner of service and of the names of the persons served, certified by the person who made the service.

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

(i) fails to allow reasonable time for compliance; or

(ii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or

(iii) requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena:

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1)(A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(6)(B). The court may specify conditions for the discovery.

(2)(A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, the receiving party must take reasonable steps to retrieve the information. The person who produced the information must preserve the information until the claim is resolved.



**SOUTH CAROLINA CRIMINAL JUSTICE ACADEMY
HEARING OFFICER CONTESTED CASE RECOMMENDATION
VIA CERTIFIED MAIL / RETURN RECEIPT REQUESTED AND ELECTRONIC MAIL**

Kqslc@protonmail.com
charlieb2003@aol.com

TO: Omar Brown
1140 Thurgood Road
Goose Creek, SC 29445
Certified Mail Number: 9589 0710 5270 0285 9668 45

Carlton Bourne, Esquire
As Attorney for North Charleston Police Department
2500 City Hall Lane
N. Charleston, SC 29406
Certified Mail Number: 9589 0710 5270 0324 9535 46

FROM: Imani D. Byas, Hearing Officer
Office of General Counsel

DATE: May 14, 2024

RE: In the Matter of the Law Enforcement Certification of Omar Brown
LETC Case Number: 2023-CJA-10-21

Please find enclosed the Hearing Officer Findings and Recommendation for the above referenced contested case hearing heard on February 20, 2024, as well as the transcript of the hearing and all exhibits placed into the record at the hearing are available for download from the Criminal Justice Academy File Distribution Server at the file location stated in the email accompanying this cover letter.

FILING OF MOTION IN OPPOSITION

In accordance with S.C. Code Ann. § 23-23-150 (D), any motion in opposition to the Hearing Officer Recommendation must be filed within fifteen (15) working days of your receipt of the email accompanying this cover memo, as indicated by the date and time stamp on the email. The party filing the motion in opposition, the movant, must serve the opposing party with a copy of its motion, to include a properly executed Affidavit of Service, via email and copied to me on the same message at Idbyas@sccja.sc.gov.

FILING OF RESPONSE TO MOTION IN OPPOSITION

The opposing party is afforded the opportunity to file a response to the motion in opposition within ten (10) working days of its receipt of the motion in opposition, as calculated from the date and time stamp of the movant's email, as above referenced. Should the opposing party elect to file a response to the motion in opposition, a copy of the response, to include a properly executed Affidavit of Service, must be served on the movant via email and copied to me on the same message at Idbyas@sccja.sc.gov.

Enclosures: a/s



**SOUTH CAROLINA CRIMINAL JUSTICE ACADEMY
NOTICE OF MEETING**

VIA ELECTRONIC MAIL AND CERTIFIED MAIL

Kqslc@protonmail.com

charlieb2003@aol.com

TO: Omar Brown
1140 Thurgood Road
Goose Creek, SC 29445

Certified Mail Number: 9589 0710 5270 0285 6548 96

Carlton Bourne, Esquire
As Attorney for North Charleston Police Department
3821 Hanoverian Drive
Mt. Pleasant, SC 29429

Certified Mail Number: 9589 0710 5270 0285 6549 19

FROM: South Carolina Law Enforcement Training Council

RE: In the Matter of the Law Enforcement Certification of Omar Brown
LETC Case Number: 2023-CJA-10-21

Please be advised that the South Carolina Law Enforcement Training Council will conduct a meeting at **10:00 a.m. July 24, 2024, at the South Carolina Criminal Justice Academy located at 5400 Broad River Road, Columbia, South Carolina, 29210. If you plan on attending in person, please arrive no later than 9:45am to sign in.** The Law Enforcement Training Council will discuss the above referenced case and render a Final Agency Decision. Prior to this meeting, the Law Enforcement Training Council has been provided the Hearing Officer's Findings and Recommendations, the hearing transcript(s), exhibits, and Motions in Opposition and Support, in order to review the record. The Law Enforcement Training Council may allow each party the opportunity to present oral argument, which shall follow the procedure of Rule 218, SCACR. Based upon the Hearing Officer's Findings and Recommendations, transcript(s), exhibit(s), Motions in Support and Opposition (if applicable), oral arguments, and discussion, the Law Enforcement Training Council will vote on a final agency decision. Please note, should either party choose to appear via remote communication technology, please contact the Investigator for the Office of General Counsel, and a link to access the meeting will be provided.

RESCHEDULEING OF MEETING

If either party wishes to attend, but is unable, a request to have the case presented to the Law Enforcement Training Council at a future meeting can be made to the Office of General Counsel of the South Carolina Criminal Justice Academy who may be reached by telephone at (803) 896-8768 during regular business hours or via email at mcreynolds@sccja.sc.gov.

FOR THE LAW ENFORCEMENT TRAINING COUNCIL:

Madison Reynolds
Office of General Counsel

Date: June 25, 2024



**SOUTH CAROLINA CRIMINAL JUSTICE ACADEMY
LETTER SENDING FINAL AGENCY DECISION
VIA CERTIFIED MAIL / RETURN RECEIPT REQUESTED**

November 14, 2024

Omar Brown
1140 Thurgood Road
Goose Creek, SC 29445

Certified Mail Number: 9589 0710 5270 1603 9816 63

RE: In the Matter of the Law Enforcement Certification of Omar Brown
LETC Case Number: 2023-CJA-10-21

Dear Mr. Brown:

Enclosed please find the final agency decision in the above referenced case. You are entitled to appeal this decision to the Administrative Law Court if you choose. Any such appeal must be filed with the Administrative Law Court within thirty (30) days from receipt of the Final Agency Decision. Should you file an appeal, please forward any copies thereof to the attention of attorney Rebecca Williams.

If you have any questions or concerns, please do not hesitate contact Ms. Williams at (803) 896-7128.

Sincerely,

Madison C. Reynolds
Certification and Compliance
Office of General Counsel

CC: Carlton Bourne, Esquire
As Attorney for North Charleston Police Department
3821 Hanoverian Drive
Mt. Pleasant, SC 29429

Certified Mail Number: 9589 0710 5270 1603 9816 70

South Carolina Criminal Justice Academy
5400 Broad River Road
Columbia, South Carolina 29212

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Omar Brown,	)	Docket No. 24-ALJ-30-0425-AP
	)	
Appellant,	)	
	)	
vs.	)	
	)	
South Carolina Criminal Justice Academy,	)	
	)	
Respondent.	)	

BRIEF OF APPELLANT

Adam Sinclair Ruffin
Attorney for Omar Brown
SC Bar No. 101350
1320 Main Street, Suite 300
Columbia, SC 29201
(803) 470-5629
adam@ruffinappeals.com

Rebecca S. Williams
Attorney for South Carolina Criminal Justice Academy
SC Bar No. 100796
5400 Broad River Road
Columbia, SC 29212
(803) 896-7128
RWillias@sccja.sc.gov

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Mr. Brown's due process rights were violated by the Department's refusal to provide him with the evidence it intended to use against him prior to his contested case hearing including the body-camera videos, the written statements by the witnesses, or the video-recorded interviews of himself, Sanchez, and Lizarazo that were conducted as part of the Department's internal investigation. 8

2.

The Hearing Officer erred in prohibiting Mr. Brown from introducing evidence of Sanchez's prior inconsistent statement because Sanchez denied making the statement and his credibility was central to the case. 14

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STATEMENT OF ISSUES ON APPEAL

1.

Whether Mr. Brown's due process rights were violated by the Department's refusal to provide him with the evidence it intended to use against him prior to his contested case hearing including the body-camera videos, the written statements by the witnesses, or the video-recorded interviews of himself, Sanchez, and Lizarazo that were conducted as part of the Department's internal investigation?

2.

Whether the Hearing Officer erred in prohibiting Mr. Brown from introducing evidence of Sanchez's prior inconsistent statement where Sanchez denied making the statement and his credibility was central to the case?

STATEMENT OF THE CASE

This is an appeal from a final decision by the South Carolina Criminal Justice Academy (Agency) permanently denying Omar Brown a law enforcement certification. R. 4.

Omar Brown was accused of misconduct by the North Charleston Police Department (Department) and requested a contested case hearing. R. p. 4. An initial hearing was conducted by a Hearing Officer with the Agency on February 20, 2024. R. pp. 25 – 148. Mr. Brown represented himself and the Department was represented by Carlton Bourne. R. p. 26. The Hearing Officer recommended that the Agency find that Mr. Brown engaged in misconduct. R. pp. 15 – 23.

The South Carolina Law Enforcement Training Council (Council) met on July 24, 2024, to determine whether to adopt the Hearing Officer's recommendation. The Council determined that the Department had proven by a preponderance of the evidence that Mr. Brown lied about being offered medical treatment following an arrest he made of a suspect, and that he impermissibly used a chokehold on the suspect. On November 12, 2024, the Council issued its final decision permanently denying Mr. Brown a law enforcement certification in South Carolina. R. pp. 9 – 12.

Mr. Brown received the decision on November 26, 2024, and filed his notice of appeal with this Court on December 13, 2024. R. p. 13.

STATEMENT OF FACTS

Mr. Brown first became a police officer after attending the Criminal Justice Academy in the 1990s and has worked as a police officer ever since. He began working as a police officer for the North Charleston Police Department beginning in 2022. R. p. 206, ll. 1 – 7.

On August 8, 2023, Mr. Brown was on patrol with another officer named Michael Sanchez. R. p. 41, ll. 2 – 16. Mr. Brown and Sanchez responded to a call about a mother (suspect) attempting to kidnap her daughter from the child's grandmother who had custody of the child. Sanchez recalled that there was an ongoing custody dispute that involved DSS placing the child with the grandmother. R. p. 41, l. 12 – p. 42, l. 1. The suspect had a long history of mental health issues and neglecting her child. R. p. 42, ll. 1 – 4. Sanchez testified: “[E]very time she’d get out of jail or the hospital, she would end up coming back to the house to try to take the child.” R. p. 42, ll. 3 – 8.

Mr. Brown arrived on scene first, located the child and moved her to safety, and separated the suspect and the grandmother. R. p. 7; State’s Ex. 1B, 0:00 – 2:00. When Sanchez arrived, he spoke to the suspect while Mr. Brown spoke with the grandmother. R. p. 7; State’s Ex.s 1A & 1B. The suspect was visibly upset while describing her dispute with grandmother about custody of her child to Sanchez. State’s Ex. 1A, 0:00 – 3:30. The grandmother was sitting on her front porch and explained the custody dispute from her perspective to Mr. Brown. State’s Ex. 1B, 2:00 – 3:30.

Mr. Brown and Sanchez both told the suspect that the custody dispute would need to be resolved in family court. State’s Ex. 1A, 3:30 – 4:30; State’s Ex. 1B, 5:00 – 5:45. At grandmother’s request, Mr. Brown retrieved the suspect’s belongings from the house and attempted to hand them to the suspect. State’s Ex. 1A, 4:45; State’s Ex. 1B, 3:30 – 3:40 & 6:10 – 6:25. The suspect walked past both Mr. Brown and Sanchez and tried to enter the porch where the grandmother was seated.

Mr. Brown grabbed the suspect's arm to stop her from assaulting the grandmother. State's Ex. 1A, 4:45 – 4:55; State's Ex. 1B, 6:25 – 6:32.

Sanchez testified that he and Mr. Brown both thought the suspect was going to assault the grandmother because she was "charging very aggressively up the stairs" onto the porch where the grandmother was seated. R. p. 42, l. 19 – p. 43, l. 10. The suspect turned around and pushed Mr. Brown in the chest, causing him to stagger backwards several feet. State's Ex. 1A, 4:45 – 4:55; State's Ex. 1B, 6:32 – 6:34. Sanchez attempted to grab the suspect's arms and get them behind her, but she spun free and threw Mr. Brown against the wall of the house. State's Ex. 1A, 4:55 – 5:03; State's Ex. 1B, 6:34 – 6:42.

Mr. Brown and Sanchez wrestled the suspect to the ground to get her under control. Mr. Brown placed his hand on the back of the suspect's neck to bring her to the ground so that he and Sanchez could get her handcuffed. State's Ex. 1B, 6:42 – 7:15. Sanchez testified that Mr. Brown grabbed the suspect by the head and tried to shove her to the ground while Sanchez tried to "secure her." R. p. 44, ll. 1 – 18. Sanchez said that Mr. Brown was holding the suspect's head and pinning it "to essentially the dirt" as Sanchez tried to get the suspect handcuffed. R. p. 44, ll. 19 – 25. Sanchez testified that "when [he] was about to handcuff [the suspect] for the first time, [Mr. Brown] reached up for the throat, neck area at that point in time." R. p. 45, ll. 13 – 18. Sanchez did not say that Mr. Brown used a chokehold on the suspect.

Once the suspect was successfully handcuffed, Sanchez and Mr. Brown both pulled her to her feet. Mr. Brown pulled the suspect up by her wrists while Sanchez simultaneously pulled the suspect by her arms. State's Ex. 1A, 5:03 – 5:55; State's Ex. 1B, 7:15 – 7:32. Sanchez then placed the suspect into the back of his patrol car where she continued to be irate. State's Ex. 1A, 5:55 – 6:35. Mr. Brown safely returned the child to her grandmother. State's Ex. 1B, 8:30 – 9:00.

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 insisted that Lizarazo “should look at the video and make a separate assessment.” R. p. 46, ll. 2 – 22. Sanchez testified that he heard Lizarazo ask Mr. Brown if he needed to go see a doctor because of the incident and that he heard Mr. Brown tell him no. R. p. 48, ll. 3 – 16. On cross examination, Sanchez admitted that he filled out a victim sheet naming himself as the victim of an assault by the suspect even though the suspect had not assaulted him. R. p. 54, l. 17 – p. 56, l. 11. Sanchez also admitted that EMS was never called for the suspect even though she claimed she had been choked. R. p. 60, l. 4 – 61, l. 11.

Lizarazo testified that he received a call on August 8, 2023, that Mr. Brown and Sanchez were in a fight with a suspect but got her in custody and were okay. R. p. 68, l. 22 – p. 69, l. 25. Afterwards, Sanchez told Lizarazo that he “might want to look at that video,” and Lizarazo went and spoke with Mr. Brown about the arrest. R. p. 70, ll. 1 – 11. According to Lizarazo, Mr. Brown showed Lizarazo a scratch on his hand but said that he was fine. R. p. 70, l. 12 – p. 71, l. 8. Lizarazo testified that Mr. Brown made a comment that he thought the suspect had bitten him on his leg. R. p. 71, ll. 13 – 24. Lizarazo said that he asked Mr. Brown if he needed EMS or medical attention and Mr. Brown said no. R. p. 71, l. 25 – 72, l. 18.

Lizarazo said that later that night he received a call from his supervisor stating that Mr. Brown had called Lizarazo’s supervisor and said that he was in the hospital bleeding profusely from his leg and was severely injured. R. p. 74, l. 15 – p. 75, l. 6. Lizarazo told his supervisor that he offered Mr. Brown medical treatment and Mr. Brown declined. Lizarazo claimed that his supervisor told him that Mr. Brown said Lizarazo did not offer medical treatment. R. p. 75, ll. 7 –

23. Lizarazo told his supervisor that he would have a “sit-down” with Mr. Brown because Mr. Brown was lying about Lizarazo. R. p. 76, ll. 3 – 16.

The following day, Lizarazo and his supervisor spoke with Mr. Brown and Mr. Brown told them that he had been bitten on his leg and hand during the altercation. Lizarazo claimed that the marks on Mr. Brown’s body did not appear to be bite marks to him. R. p. 77, ll. 4 – 14. Lizarazo told Mr. Brown to go see their city doctor. R. p. 77, l. 15 – p. 78, l. 18. After Mr. Brown went to the doctor, Lizarazo said he tried to get in touch with Mr. Brown. Lizarazo said he tried contacting Mr. Brown, but that it wasn’t until the second or third call that Mr. Brown answered. According to Lizarazo, Mr. Brown said he was still at the doctor. R. p. 82, l. 2 – p. 83, l. 20.

Lizarazo said that after he spoke with Mr. Brown, Mr. Brown texted him saying that Lizarazo was being rude and disrespectful. Lizarazo claimed that he tried to contact Mr. Brown multiple times after that but that Mr. Brown was not reachable. R. p. 83, l. 21 – p. 84, l. 6. Lizarazo said he called the city doctor who indicated that Mr. Brown had been checked out of their office at noon. R. p. 84, ll. 6 – 10. Lizarazo said that he later found out that the doctor had prescribed Mr. Brown medicine and Mr. Brown had gone to the Publix just across the Ashley River from North Charleston to pick up the medicine. R. p. 84, l. 11 – p. 85, l. 24.

On cross examination, Lizarazo admitted that he allowed his officers to cross the river on a regular basis and that it was common practice. R. p. 92, l. 19 – p. 93, l. 14. Lizarazo continued to deny having spoken to Mr. Brown multiple times the day following the incident even though Mr. Brown introduced phone records showing that they had in fact spoken multiple times. R. p. 96, l. 7 – 97, l. 14; R. pp. 183 – 184. Lizarazo also admitted that his supervisor had authorized Mr. Brown to go home that day after he was treated by the doctor. R. p. 106, ll. 1 – 18.

Jeremy Ledford was the Sergeant who conducted the internal investigation of the arrest. R. p. 108, l. 18 – 109, l. 11. Ledford reviewed the body-camera videos, and interviewed Mr. Brown, Sanchez, and Lizarazo. R. p. 110, ll. 3 – 14. Ledford testified that based on his review of the body camera videos, he believed that Mr. Brown placed his hands around the suspect's throat. R. p. 110, l. 14 – p. 111, l. 19. Ledford also testified that when he interviewed Mr. Brown, Mr. Brown denied being offered medical treatment for his injuries by Lizarazo. R. p. 116, l. 5 – p. 117, l. 8. Mr. Brown also told Ledford that he never used a chokehold on the suspect but that his hands moved towards the suspect's upper chest area when he was attempting to get his hands behind the suspect to force her to the ground. R. p. 117, l. 14 – 118, l. 10. This is consistent with what is seen on the body camera videos which shows Mr. Brown with his hand on the back of the suspect's neck holding her still so that he and Sanchez could get the suspect in handcuffs. State's Ex. 1A, 5:10 – 5:30; State's Ex. 1B, 6:35 – 7:10. Additionally, Ledford admitted that Mr. Brown was treated by the city doctor for two bites to his body and that it would be safe to say that he was being treated for bites because he was actually bitten. R. p. 126, l. 16 – p. 128, l. 4.

The Department fired Mr. Brown citing the events from the arrest and subsequent investigation as the reasons for his termination. R. pp. 149 – 159. This was despite the fact that Lizarazo's supervisor, Lieutenant Joseph Sherwood indicated that after his review of the video he believed that "it does look like Officer Brown grabs the suspect by the neck but not in a choking manor but in more of a head clinch to pull her down." R. p. 186. The separation letter also falsely accused Mr. Brown of using a racial slur towards the suspect, a claim that is clearly refuted by the body camera videos. R. p. 153; State's Ex. 1A, 4:50 – 5:05; State's Ex. 1B, 6:30 – 6:45.

ARGUMENT

1.

Mr. Brown's due process rights were violated by the Department's refusal to provide him with the evidence it intended to use against him prior to his contested case hearing including the body-camera videos, the written statements by the witnesses, or the video-recorded interviews of himself, Sanchez, and Lizarazo that were conducted as part of the Department's internal investigation.

Relevant Facts

During the contested case hearing, the Department sought to introduce the video-recorded interview of Mr. Brown. R. p. 112, ll. 16 – 24. Mr. Brown objected because the Department had never turned over the video to him prior to the hearing even though he had requested it multiple times. R. p. 112, l. 25 – 113, l. 15. Counsel for the Department responded that because the interview was of Mr. Brown, there would be “no surprise” to Mr. Brown because he was present for his own interview. R. p. 114, ll. 8 – 15. The Hearing Officer allowed the video to be introduced. R. p. 115, ll. 3 – 7; State's Ex. 1C.

After the Department rested its case before the Hearing Officer, Mr. Brown asked the Hearing Officer to be provided with the recorded interviews of Sanchez and Lizarazo that were conducted during the internal investigation. R. p. 132, ll. 5 – 22. Counsel for the Department responded that Mr. Brown had cross examined Sanchez and Lizarazo thoroughly and was “not inclined to go out and get those previous statements and admit them.” Counsel said that “nothing would prohibit cross examination of those witnesses, or even calling them during his case in chief if [Mr. Brown would] like to elicit something else from them.” R. p. 132, l. 23 – p. 133, l. 5.

The Hearing Officer asked Mr. Brown if he was okay with recalling Sanchez or Lizarazo to ask them about their previous interviews. Mr. Brown told the Hearing Officer: “I have never seen the interviews. So, I cannot challenge anything they’ve said in the interviews.” R. p. 133, ll. 6 – 12. The Hearing Officer then asked Counsel for the Department if these recorded interviews even existed, and Counsel confirmed that both “statements and recorded interviews” of Sanchez and Lizarazo existed. R. p. 133, ll. 13 – 20.

The Hearing Officer said she would allow Mr. Brown to call Sanchez or Lizarazo back to the witness stand but that she was “not going to compel them to, you know, bring that video forth, just because we’re already at this proceeding.” R. p. 135, ll. 4 – 12. Mr. Brown did not call them back to the stand because, as he had already pointed out, without having seen the videos or statements, he was unable to ask them questions about what they had said in their prior interviews.

After the Hearing Officer submitted her recommendation, Mr. Brown filed an affidavit in opposition to her findings and recommendations. R. p. 188. Mr. Brown specifically referenced the Department’s failure to turn over the videos and written documents in relation to his case to him after he requested them multiple times. R. pp. 188 – 189. Mr. Brown also argued at his hearing before the Council that the Department had failed to turn over the videos of Sanchez and Lizarazo’s interviews to him. R. p. 210, ll. 2 – 12. In his notice of appeal to this Court, Mr. Brown noted that the Department had failed to turn over discovery that he requested from them which was vital to his defense and a fair hearing. R. p. 13.

Discussion

Mr. Brown’s due process rights were violated because he was denied a fair opportunity to challenge the evidence against him by the Department’s failure to turn over any of the evidence it intended to use against him at his contested case hearing.

“Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty or property interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment of the United States Constitution.” *Robert K. v. City of Camden Planning Comm’n*, 376 S.C. 165, 171, 656 S.E.2d 346, 350 (2008). Article I, section 22 of the South Carolina Constitution specifically provides the right of due process in administrative proceedings: “No person shall be finally bound by a judicial or quasi-judicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard.” S.C. Const. art. I, § 22. This section of our Constitution further provides the right against a deprivation of liberty or property “unless by a mode of procedure prescribed by the General Assembly, and he shall have in all such instances the right to judicial review.” *Id.*

“The fundamental requirements of due process include notice, an opportunity to be heard in a meaningful way, and judicial review.” *Robert K.*, 376 S.C. at 171, 656 S.E.2d at 350. The Supreme Court of the United States has noted that “due process is flexible and calls for such procedural protections as the particular situation demands.” *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972). “[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 of the private interest that has been affected by governmental action.” *Cafeteria & Rest. Workers Union v. McElroy*, 367 U.S. 886, 895 (1961); *see also Mathews v. Eldridge*, 424 U.S. 319, 335 (1976) (noting that in determining what process is due, courts should consider “the private interest that will be affected,” “the risk of an erroneous deprivation of such interest,” and “the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail”).

“Where important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses.” *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.” *Id.* “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.” *Id.*

“Procedural due process insists upon fair play.” *John M. McIntyre & Silver Oak Land Mgmt., LLC v. Sec. Comm’r of S.C.*, 425 S.C. 439, 449, 823 S.E.2d 193, 198 (Ct. App. 2018). “The right to cross examine witnesses in quasi-judicial or adjudicatory proceedings is a right of fundamental importance which, in regard to serious matters, exists even in the absence of express statutory provision, as a requirement of due process of law or the right to a hearing, and no one may be deprived of such right even in an area in which the Constitution would permit it if there is no explicit authorization therefor.” *Spartanburg v. Parris*, 251 S.C. 187, 191, 161 S.E.2d 228, 229 (1968) (quoting 2 Am. Jur. 234, Administrative Law, Sec. 424).

“The right to hold specific employment and the right to follow a chosen profession free from unreasonable governmental interference come within the liberty and property interests protected by the Due Process Clause.” *Brown v. S.C. State Bd. of Educ.*, 301 S.C. 326, 329, 391 S.E.2d 866, 867 (1990). “The liberty interest at stake is the individual’s freedom to practice his or her chosen profession; the property interest is the specific employment.” *Id.* “When the State seeks to revoke or deny a professional license, these interests are implicated, and procedural due process requirements must be met.” *Id.*

In this case, Mr. Brown unquestionably had a right to due process before his law enforcement certification could be permanently revoked. And while he was given a hearing, the

Department failed to disclose the evidence it would use against him prior to the hearing taking place. Specifically, the Department refused to turn over the body-camera videos, or the written statements and recorded interviews of Mr. Brown, Sanchez, and Lizarazo. While the Department introduced Mr. Brown's recorded interview, it withheld the interviews of Sanchez and Lizarazo.

The credibility of Sanchez and Lizarazo were absolutely 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.

In *Brown v. S.C. State Bd. of Educ.*, the South Carolina Supreme Court reversed the Board of Education's decision to invalidate a teacher's teaching certificate. 301 S.C. 326, 327, 391 S.E.2d 866, 866 (1990). The teacher's certification was revoked based on her test scores on a licensing exam having been canceled. *Id.* at 328, 391 S.E.2d at 867. The Supreme Court found that the teacher's due process rights were violated because the Board did not disclose the evidence substantiating their claim that the teacher's exam scores had been canceled. *Id.* at 329, 391 S.E.2d at 868. As was the case in *Brown v. S.C. State Bd. of Educ.*, in this case, Mr. Brown's due process rights were violated by the failure of the Department to disclose the evidence against him prior to the hearing.

In *Spartanburg v. Parris*, our Supreme Court considered whether an officer who was fired had his due process rights violated where an affidavit against him was used at a hearing instead of

live testimony which would have permitted him to cross examine the affiant. 251 S.C. 187, 189-90, 161 S.E.2d 228, 228-29 (1968). The Court noted that due process rights in such a situation “include a reasonable opportunity to cross examine the important witnesses against a party when their credibility is challenged.” *Id.* at 190, 161 S.E.2d at 229. The Court found that because the most substantial allegations against the officer came from the non-testifying affiant, the denial of the officer’s right to cross examine the witness required that the case be remanded for a new hearing. *Id.* at 191, 161 S.E.2d at 230.

Additionally, in *Kelsey v. S.C. Dep’t of Prob.*, the South Carolina Court of Appeals reversed a parole denial and remanded for a new hearing because the inmate was not given his file prior to the hearing so that he could adequately present his case. 441 S.C. 373, 378, 893 S.E.2d 588, 591 (Ct. App. 2023). And although the Court’s decision in *Kelsey* was based primarily on the specific regulation regarding parole hearings, the Court noted that some states require the disclosure of an inmate’s file prior to their parole hearing moving forward on the grounds that it is necessary to preserve the inmate’s right to due process. *Id.* at 378, 893 S.E.2d at 591.

Although Mr. Brown had a hearing and was allowed to cross examine Sanchez and Lizarazo, his right to cross examination was hollow in light of the Department’s refusal to disclose what Sanchez and Lizarazo had previously said during the internal investigation. As Mr. Brown pointed out to the Hearing Officer: “I have never seen the interviews. So, I cannot challenge anything they’ve said in the interviews.” R. p. 133, ll. 6 – 12. The Hearing Officer’s offer to allow Mr. Brown to ask them about their internal investigation interviews was meaningless when Mr. Brown had never seen the interviews and had nothing to base any cross examination questions on. As such, this Court should reverse the Agency decision and remand this case for a new hearing after the Department discloses the evidence it intended to use against Mr. Brown.

The Hearing Officer erred in prohibiting Mr. Brown from introducing evidence of Sanchez's prior inconsistent statement because Sanchez denied making the statement and his credibility was central to the case.

Relevant Facts

During the contested case hearing before the Hearing Officer, Sanchez was asked whether he had ever lied under oath or if he had ever deceived a judge in a sworn affidavit in order to get a warrant. Sanchez denied having done either. R. p. 62, ll. 21 – 25. Sanchez admitted that there was a lawsuit pending against him in federal court where those allegations were made against him but that they were not true. R. p. 63, ll. 1 – 15.

Mr. Brown sought to introduce evidence of Sanchez's prior inconsistent statement which was made in federal court where Sanchez had admitted to making false statements in affidavits. R. p. 63, l. 21 – p. 64, l. 16. Counsel for the Department objected because the lawsuit was still pending. R. p. 64, ll. 18 – 21. Mr. Brown reiterated that Sanchez had admitted to filling out a false affidavit which was inconsistent with what Sanchez had just testified to. Mr. Brown pointed out that this evidence significantly undermined Sanchez's credibility as a witness. R. p. 64, l. 24 – p. 65, l. 14. The Hearing Officer refused to allow Mr. Brown to admit the evidence but said that Mr. Brown could question Sanchez about it. R. p. 65, ll. 15 – 17.

After the Hearing Officer issued her recommendations, Officer Brown filed his affidavit in opposition. Mr. Brown specifically objected on the grounds that he was not permitted to introduce evidence of Sanchez's prior inconsistent statements where he admitted in federal court that he had lied in an affidavit that he submitted to a judge in order to obtain a warrant. R. p. 189. In his notice

of appeal to this Court, Mr. Brown noted that the Hearing Officer had erroneously excluded favorable evidence that he offered at his contested case hearing. R. p. 13.

Discussion

The South Carolina Rules of Evidence provides that “[a]ll relevant evidence is admissible.” Rule 402, SCRE; *State v. Jenkins*, 436 S.C. 362, 391, 872 S.E.2d 620, 635 (2022). “‘Relevant evidence’ means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Rule 401, SCRE. “Proof of bias is almost always relevant because the jury, as finder of fact and weigher of credibility, has historically been entitled to assess all evidence which might bear on the accuracy and truth of a witness’ testimony.” *State v. Pipkin*, 359 S.C. 322, 327, 597 S.E.2d 831, 833 (Ct. App. 2004) (quoting *U.S. v. Abel*, 469 U.S. 45, 52 (1984)).

Rule 608(c) of the South Carolina Rules of Evidence provides that “[b]ias, prejudice or any motive to misrepresent may be shown to impeach the witness either by examination of the witness or by evidence otherwise adduced.” This Rule makes clear that “anything having a legitimate tendency to throw light on the accuracy, truthfulness, and sincerity of a witness may be shown and considered in determining the credit to be accorded his testimony.” *State v. Sims*, 348 S.C. 16, 25-26, 558 S.E.2d 518, 523 (2002) (quoting *State v. Jones*, 343 S.C. 562, 541 S.E.2d 813 (2001)). “A trial court may not exclude evidence of bias because the court believes the witness is not biased, nor evidence of credibility because it thinks the witness has not been untruthful.” *Whitfield v. Schimpf*, Op. No. 28250 (S.C. Sup. Ct. filed Jan. 8, 2025) (Howard Adv. Sh. No. 2 at 32).

Furthermore, Rule 613(b) of the South Carolina Rules of Evidence 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), SCORE.

Witness credibility was the most important aspect of this case, especially on the question of whether Mr. Brown lied about being offered medical treatment. The body camera videos corroborated Mr. Brown’s statement that he never used a chokehold of any kind on the suspect. While Mr. Brown’s body camera video shows his hands moving towards the suspect’s neck, it never shows Mr. Brown use a chokehold against the suspect. Instead, it shows Mr. Brown holding his hand on the back of the suspect’s neck to restrain her while he and Sanchez got the suspect into handcuffs. Just as Lizarazo’s supervisor noted: “it does look like Officer Brown grabs the suspect by the neck but not in a choking manor but in more of a head clinch to pull her down.” R. p. 186.

Without proving that Mr. Brown used a chokehold against the suspect, the Department was required to show he engaged in some other kind of misconduct to justify firing him. What the Department relied on was the claim that Lizarazo had offered Mr. Brown medical treatment which Mr. Brown denied. Because this allegation was purely Mr. Brown’s word against Sanchez’s and Lizarazo’s, it was essential that all evidence tending to diminish their credibility be allowed into evidence. Mr. Brown could not adequately attack Sanchez’s credibility without being permitted to introduce his prior inconsistent statement. During his cross examination, Sanchez denied having made a false statement in an affidavit to a judge in an effort to obtain a warrant. In response, Mr. Brown sought to introduce evidence that Sanchez had admitted to doing exactly that in federal court filings. The Hearing Officer’s refusal to accept that evidence and consider it in evaluating Sanchez’s credibility was error and prejudiced Mr. Brown’s ability to adequately impugn

Sanchez's veracity. The Hearing Officer erred in refusing to allow the introduction of Sanchez's prior inconsistent statement and this Court should reverse and remand for a new hearing.

CONCLUSION

By reason of the foregoing arguments, this Court should reverse the final decision by the Agency and remand this case for a new hearing.

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This 3rd day of March 2025.

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Omar Brown,	)	Docket No. 24-ALJ-30-0425-AP
	)	
Appellant,	)	
vs.	)	
	)	
South Carolina Criminal Justice Academy,	)	
	)	
Respondent.	)	
_____	)	

RESPONDENT'S BRIEF

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March 24, 2025

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STATEMENT OF ISSUES ON APPEAL

1. WHETHER APPELLANT'S PROCEDURAL DUE PROCESS RIGHTS WERE VIOLATED WHEN HE FAILED TO UTILIZE DISCOVERY PROCEDURES TO OBTAIN DEPARTMENT EVIDENCE BEFORE THE CONTESTED CASE HEARING?
2. WHETHER THE HEARING OFFICER PROPERLY EXCLUDED EXTRINSIC EVIDENCE OF A WITNESS'S PRIOR STATEMENT?

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). R. p. 152 Appellant timely requested a contested case hearing, and the hearing was held on February 20, 2024. R. pp. 171 & p. 25 The Hearing Officer issued her Findings and Recommendations on May 14, 2024. R. p. 25 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. R. pp. 188 and 194. 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. R. p.4 The LETC issued its Final Agency Decision on November 12, 2024. R. p. 12 Appellant filed this appeal on December 13, 2024, and the Notice of Assignment was filed December 20, 2024. R. pp. 13 and 3.

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. (R. pp. 41-42, 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. R. p. 7; State's Ex. 1B, 0:00-2:00. Sanchez arrived and spoke with the mother while appellant spoke with the grandmother. R. p. 7; 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 was sitting 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 was seated. 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" onto the porch where the grandmother was seated. R. p. 42, l. 19 - p. 43, l. 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 were facing 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. R. p. 44, ll. 19 – 25. Once the mother was successfully handcuffed, appellant started pulling her to her feet by her wrists. Sanchez then 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." R. p. 46, ll. 2-22. Sanchez testified he heard Lizarazo ask appellant if he needed to go see a doctor and heard appellant tell Lizarazo no. R. p. 48, 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. R. p. 54, l. 17 – p. 56, l. 11. Sanchez confirmed EMS was never called for the suspect even though she claimed she had been choked. R. p. 60, l. 4 – p. 61, 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. R. p. 68, l. 22 – p. 69, l. 25. Later, Sanchez told him he should look at the video and Lizarazo went and spoke with appellant. R. p. 70, ll. 1 -11. Lizarazo testified 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. R. p. 70, l. 12 – p. 72, l. 20. Later that evening Lizarazo’s supervisor called him and told him appellant notified him he was at the hospital bleeding profusely from his leg and was severely injured. R. p. 74, l. 15 – p. 75, 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. R. p. 75, l. 7 – p. 76, l. 2.

Jeremy Ledford conducted the internal affairs investigation of the arrest. R. p. 108, l. 18-109, l. 11. He reviewed the body-camera videos, and interviewed appellant, Sanchez, and Lizarazo. R. p. 110, ll. 3 -14. Ledford testified that based on his review of the videos, he believed appellant placed his hands around the suspect’s throat. R. p. 110, l. 14 – p. 111, l. 19. When Ledford interviewed appellant, appellant denied Lizarazo offered him medical treatment. R. p. 116, l. 5 – p. 117, l. 8.

During the contested case hearing, the Department sought to introduce the video-recorded internal affairs interview with appellant. R. p. 112, 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. R. p. 132, 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. R. p. 113, l. 2- p. 114, l. 1. After hearing from appellant and the department, the Hearing

officer allowed appellant's video recorded interview to be introduced. R. p. 115, 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. R. p. 135, 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. R. at p. 62, l. 21 – p. 63, l. 15

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. § 1-23-600 (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. § 1-23-380(5); see also Todd's Ice Cream, Inc. v. S.C. Employment Sec. Comm'n, 315 S.E.2d 373, 375 (Ct. App. 1984).

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.

ARGUMENT

- 1. Appellant’s procedural due process rights were not violated. Appellant was afforded constitutionally adequate procedures and chose not to utilize them.**

The LETC is authorized to provide for “suspension, revocation, or restriction” of a law enforcement officer’s certification, “in accordance with regulations promulgated by the council.” S.C. Code Ann. §23-23-80(6)(2018). 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 the Academy. He was also notified what to do to enforce a subpoena. R. p. 172-177 He acknowledged he received the subpoena form and knew it was a subpoena form. R. p. 113 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.” R. p. 113 ll. 24 – p. 114 ll. 6) 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.

2. The Hearing Officer properly excluded extrinsic evidence of a witness’s prior statement.

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. 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.” R. at p. 62, l. 21 – p. 63, 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. 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. Even the hearing officer and opposing counsel were confused by what Appellant was striving to admit because Appellant failed to provide the necessary foundation. R. p. 64, l. 2 – p. 65, l. 17 Therefore it was appropriate for the Hearing Officer to exclude Sanchez’s prior statement.

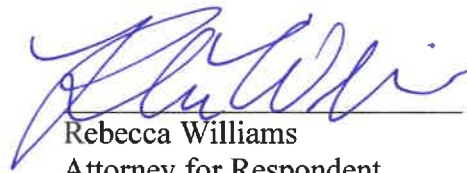
Appellant also argues that Rule 608(c) of the South Carolina Rules of Evidence requires the admission of Sanchez’s prior statement. Rule 608(c) states that evidence of “bias, prejudice, or any motive to misrepresent may be shown to impeach the witness either by examination of the witness or by evidence 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. According to the Oxford English Dictionary, bias is a “tendency to favour or dislike a person or thing, especially as a result of a preconceived opinion.” “*Bias*,” Oxford English Dictionary (3rd ed. 2025), [[bias - Quick search results | Oxford English Dictionary](#)], Accessed March 13, 2025. Prejudice is defined

as a “preconceived opinion not based on reason or actual experience.” “*Prejudice*,” Oxford English Dictionary (3rd ed. 2025), [[prejudice - Quick search results | Oxford English Dictionary](#)], Accessed March 13, 2025. Here, appellant argued to admit a deposition from a federal civil lawsuit about a completely different matter. Appellant did not argue the statement refers to him or suggests Sanchez dislikes appellant or has preconceived opinions that would influence the case. Instead, appellant argued to admit the statement because it “calls [Sanchez’s] credibility into question.” (R. p. 66, 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 allowed appellant to bring up the specific 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, Respondent asks this Court to affirm the Final Agency Decision issued by the Law Enforcement Training Council. 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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March 24, 2025

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Omar Brown,	)	Docket No. 24-ALJ-30-0425-AP
	)	
Appellant,	)	
	)	
vs.	)	
	)	
South Carolina Criminal Justice Academy,	)	
	)	
Respondent.	)	

REPLY BRIEF OF APPELLANT

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ARGUMENTS IN REPLY

1.

Mr. Brown requested copies of the evidence that would be used against him from the North Charleston Police Department and the Department refused to turn them over which violated Mr. Brown's due process rights.

The Agency 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 maintains 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, 9. 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. 113, 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. 114, 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. 114, 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. 133, l. 22 – p. 134, 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. 134, l. 18 – 135, 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. 132, l. 23 – 133, 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. 210, 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. 213, l. 6 – p. 215, 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's claim on appeal, which was never made by the Department below and was never ruled on, should be rejected by this Court. *See* SCALC Rule 36G (“[t]he [ALJ] will not consider any fact which does not appear in the Record”); *see also Brown v. S.C. Dep't of Health & Envtl. Control*, 348 S.C. 507, 519, 560 S.E.2d 410, 417 (2002) (“issues not raised to and ruled on by the agency are not preserved for judicial consideration”); *Kiawah Resort Assocs. v. S.C. Tax Comm'n*, 318 S.C. 502, 505, 458 S.E.2d 542, 544 (1995) (the ALC sitting as an appellate court “has a limited scope of review, and cannot ordinarily consider issues that were not raised to and ruled on by the administrative agency”); *Cook v. S.C. Dep't of Highways & Pub. Transp.*, 309 S.C. 179, 183, 420 S.E.2d 847, 849 (1992) (an issue not ruled on by the agency is not preserved for appellate review).

The Agency relies heavily on our Supreme Court's decision in *Stinney v. Sumter Sch. Dist.* 17, 391 S.C. 547, 707 S.E.2d 397 (2011). *Stinney* is easily distinguishable from the facts in this case though. 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).

The Department's repeated refusal to disclose its evidence to Mr. Brown violated his due process rights and 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, 11. 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. 63, l. 21 – p. 64, 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

By reason of the arguments made in Mr. Brown's opening brief, and this reply brief, this Court should reverse the final decision by the Agency and remand this case for a new hearing.

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Attorney for Omar Brown

This 2nd day of April 2025.

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Omar Brown,	)	Docket No. 24-ALJ-30-0425-AP
	)	
Appellant,	)	
	)	
vs.	)	
	)	
South Carolina Criminal Justice Academy,	)	
	)	
Respondent.	)	

PROOF OF SERVICE

I, Adam Ruffin, certify that on April 2, 2025, I have filed and served an original and one copy of the Reply Brief of Appellant by depositing them in the U.S. Mail with sufficient first class postage attached and addressed to:

The Honorable Robert L. Reibold
Administrative Law Judge
1205 Pendleton Street, Suite 224
Columbia, SC 29201

I further certify that on April 2, 2025, I have served a copy of the Reply Brief of Appellant by depositing in the U.S. mail with sufficient first class postage attached and addressed to:

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**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Omar Brown,

Appellant,

v.

South Carolina Criminal Justice Academy,

Respondent.

Docket No. 24-ALJ-30-0425-AP

FINAL ORDER AND DECISION

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court (“ALC” or “Court”) upon the appeal of Omar Brown (“Appellant”) from a final agency decision issued by the Law Enforcement Training Council (“LETC or Council”) of the South Carolina Criminal Justice Academy (“SCCJA” or “Respondent”) to permanently deny Appellant a law enforcement certification. This Court has jurisdiction pursuant to S.C. Code Ann. Section 1-23-600(D) (Supp. 2024); *see also* S.C. Code Ann. § 1-23-505(2) (Supp. 2024). After careful consideration, the Court affirms the final decision of the LETC.

FACTUAL BACKGROUND

In August of 2023, Appellant and Michael Sanchez, both police officers with City of North Charleston Police Department (Department), responded to a call about a mother attempting to kidnap her daughter from the child’s grandmother who had custody of the child. Upon his arrival, Appellant secured the child and began conversations with the grandmother on the porch while Officer Sanchez spoke to the mother. The grandmother requested that the mother leave and that Appellant retrieve mother’s possessions from the house and return them to the mother outside. When trying to return those items, the mother walked past the officers and tried to enter the porch. The officers thought she was going to assault the grandmother so each officer reached to grab the mother’s arms. The mother then pushed the Appellant in the chest and spun knocking Appellant against the house. While Officer Sanchez attempted to maintain and recover his grip on the mother’s wrist, Appellant reached for the mother’s neck and grabbed the back of her neck to force her to the ground. According to Officer Sanchez, Appellant then held the mother’s head to the ground while and after Officer Sanchez placed her in handcuffs. Appellant then started pulling



the mother, who was kneeling, to her feet by her wrists before Officer Sanchez grabbed her upper arms to assist. Appellant yelled at the mother while Officer Sanchez told him “I got her.”

Following this arrest, Officer Sanchez reported the incident to his supervisor, Diego Lizarazo, both downplaying the situation but also advising him to review body-camera videos. Officer Sanchez filled out a victim sheet stating the mother assaulted him even though she had not done so.¹ Appellant showed Officer Lizarazo a scratch on his hand and mentioned he thought the mother might have bitten Appellant on his leg. Officers Sanchez and Lizarazo both recalled Officer Lizarazo asking Appellant if he needed medical care and being told by Appellant that he did not. Officer Lizarazo then sat with Appellant for thirty minutes filling out forms. Later that evening, Officer Lizarazo’s supervisor informed him that Appellant was at the hospital with a severe wound on his leg and that Appellant said Officer Lizarazo did not offer Appellant medical treatment. Officer Lizarazo asserted to his supervisor that Appellant was lying about not being offered medical care.

An internal affairs investigation of the above incidents was conducted by Officer Jeremy Ledford. After reviewing body-camera videos and interviewing Appellant and Officers Lizarazo and Sanchez, he concluded Appellant placed his hands around the mother’s throat. Additionally, Appellant again denied Officer Lizarazo offered medical treatment.

PROCEDURAL HISTORY

The Department terminated Appellant’s employment and submitted a PCS² of Separation Due to Misconduct form for Appellant to the Respondent on October 31, 2023. The form alleged that Appellant committed misconduct by:

Willfully making false, misleading, incomplete, deceitful, or incorrect statements to a law enforcement officer, a law enforcement agency, or a representative of the agency, except when required by departmental policy or by the laws of this State; the wilful use of excessive force in an objectively unreasonable manner

Additionally, the form indicated no criminal investigation or charges were pending or filed. On November 14, 2023, Appellant was served with the Respondent’s Notice of Certification Misconduct Allegation and, on December 3, 2023, he requested a contested case hearing. On

¹ Officer Sanchez testified he was injured in the struggle and that the form was completed in anticipation of a charge for resisting arrest. [R. 55]

² “PCS” is a human resources term referring to “personnel change in status.”

December 15, 2023, the Respondent mailed Appellant and Department a Notice of Contested Case Hearing which was held on February 20, 2024. That notice succinctly outlined the contested case process and explained “[t]he hearing will be conducted in accordance with the provisions of SC. Code Ann. § 1-23-320 and S.C. Code Ann. Regs. 37-105.”³

In the contested case hearing the Department attempted to introduce a video of an interview taken of Appellant by internal affairs (State’s Exhibit 1C). Appellant objected to the admission of the video because he had not been provided of a copy of the video as well as copies of the videos of interviews of the other officers questioned by internal affairs.⁴ [R. 113] When questioned by the Hearing Officer about his requests for the video and other potential evidence, Appellant indicated he had attempted to obtain these items outside of this proceeding in other venues and had not attempted to subpoena any documents within the contested case.⁵ The Hearing Officer ultimately admitted the video as an exhibit.⁶

The Department called Officer Sanchez to testify during the presentation of its case. Appellant, while cross examining Officer Sanchez, pursued a line of questioning about Officer Sanchez’s honesty before courts in other matters and specifically whether he had ever presented a false affidavit to a judge. [R. 62 – 65]. Officer Sanchez denied doing so but acknowledged a federal civil suit was pending against him in which an allegation to that effect had been made. [R. 62-64]. Appellant sought to introduce an unspecified document⁷ related to that suit and the Department objected because the matter was still pending. The Hearing Officer did not accept the document

³ Section 1-23-320(C) and (D) provide for the taking of depositions and issuance of subpoenas. Section 1-23-320(G) establishes that the record in a contested case may include offers of proof.

⁴ Earlier in the contested case hearing, the Department introduced body-camera videos for Appellant and Officer Sanchez (State’s Exhibits 1B and 1A, respectively). Appellant expressly indicated he had no objection to the introduction of those videos. [R. 50 & 52]

⁵ Appellant referenced a Freedom of Information Act request and a subpoena in a proceeding involving the South Carolina Department of Employment and Workforce. Appellant affirmed the same before the LETC when asked about his efforts to obtain potential evidentiary materials. [R. 218]

⁶ After the Department rested, Appellant asked the Department to provide the Hearing Officer with the internal affairs interviews of Officers Sanchez and Lizarazo. [R. 132]. The Hearing Officer confirmed that Appellant had not asked for the video(s) in this contested case proceeding. Appellant instead indicated he had asked for them in a different collateral proceeding. The Hearing Officer did not require the Department to submit the additional videos but did offer Appellant the opportunity to recall both officers who had been interviewed to the stand and Appellant declined to do so. [R. 135].

⁷ In the contested case hearing, Appellant indicated he “would like to submit that case into evidence” and Department Counsel comments, “it appears to be a civil complaint.” [R. 63-64] In his Opposition to Contested Case / Hearing Officer Findings and Recommendations, Appellant describes the document as a “current deposition.” [R. 189]. At other times, Appellant references an affidavit.

as evidence and Appellant did not make a formal offer of proof to have the document provisionally included in the record.

On May 14, 2024, the Hearing Officer sent her Findings and Recommendation and the hearing transcript and exhibits to the parties. The Hearing Officer recommended that the LETC find Appellant had engaged in misconduct.

Appellant filed a motion in opposition to the Findings and Recommendations on June 4, 2024.⁸ The Department filed a response on June 26, 2024. On June 25, 2024, the parties were notified that the LETC would meet to render a Final Agency Decision in Appellant's case and vote on a Final Agency Decision. On July 24, 2024, the LETC met to discuss Appellant's case and vote on a Final Agency Decision. After considering the recommendation, hearing transcript, exhibits, and all comments, the LETC unanimously voted to find misconduct on two grounds and to permanently deny Appellant a law enforcement certification. Specifically, the LETC determined the Department had proven by a preponderance of the evidence that Appellant lied about being offered medical treatment and impermissibly used excessive force in an unreasonable manner. The Final Agency Decision was signed November 12, 2024, and a letter notifying the parties of the Final Agency Decision was sent on November 14, 2024.

Appellant filed a Notice of Appeal on December 13, 2024. The Notice of Assignment was filed on December 20, 2024. On January 31, 2025, Respondent filed the Record of Appeal. Appellant filed his brief on March 3, 2025 and Respondent filed its brief on March 24, 2025. Finally, Appellant filed a Reply brief on April 2, 2025.

ISSUES ON APPEAL

Appellant's brief raises two issues on appeal:

1. Whether Mr. Brown's due process rights were violated by the Department's refusal to provide him with the evidence it intended to use against him prior to his contested case hearing including the body-camera videos, the written statements by the witnesses, or the video-recorded interviews of himself, Sanchez and Lizarazo that were conducted as part of the Department's internal investigation?
2. Whether the Hearing Officer erred in prohibiting Mr. Brown from introducing evidence of Sanchez's prior inconsistent statement because Sanchez denied making the statement and his credibility was central to the case?

⁸ Appellant titled his opposition "Affidavit In Opposition to contested case / hearing officer Findings and Recommendations."

STANDARD OF REVIEW

The Respondent is an “agency” under the Administrative Procedures Act (APA). *See* S.C. Code Ann. §§ 1-23-310(2), -505(2), -600(A) and (E)(Supp. 2024). Accordingly, the APA’s standard of review governs appeals from decisions of the Respondent. *See id.* §§ 1-23-380 & -600(E) (Supp. 2024). The standard used by appellate bodies to review agency decisions is provided by Section 1-23-380(5) of the South Carolina Code. That section states:

The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision 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.

§ 1-23-380(5); *see also* § 1-23-600(E) (directing administrative law judges to conduct appellate review in the same manner prescribed in § 1-23-380).

A decision is supported by “substantial evidence”⁹ when the record as a whole allows reasonable minds to reach the same conclusion as the agency. *Friends of the Earth v. Pub Serv. Comm’n of S.C.*, 387 S.C. 360, 366, 692 S.E.2d 910, 913 (2010). The fact that the record 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, 917 (1996). In applying the substantial evidence rule, “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)). When the evidence conflicts on an issue, the court’s

⁹ This use of substantial evidence is in the context of an appellate standard of review.

substantial evidence standard of review defers to the findings of the fact-finder. *Risher v. S.C. Dep't of Health & Envtl. Control*, 393 S.C. 198, 210, 712 S.E.2d 428, 435 (2011).

DISCUSSION

Appellant seeks to overturn the decision of the LETC because, according to Appellant, his due process rights were violated because he was refused access to certain evidence prior to the hearing and because he was not permitted to introduce certain evidence at the hearing. After a thorough review of the record below, the arguments of the parties and the relevant legal authorities, the Court finds no basis to alter the final decision of the LETC and accordingly affirms for the reasons explained below.

I. Access to Evidence

Appellant asserts the Department failed “to turn over any of the evidence it intended to use against him at his contested case hearing” and, as a consequence, he was deprived of a “fair opportunity to challenge the evidence against him” thereby violating his due process rights. The Respondent counters that Appellant had discovery tools available in this proceeding that satisfy due process but he did not utilize those to request the potential evidence in this matter. As explained below, the Court concludes that Appellant’s due process rights were not violated.

As a threshold matter, the Court agrees with Appellant that when the State seeks to revoke or deny a professional license, liberty and property interests protected by the Fourteenth Amendment are implicated. *Brown v. S.C. State Bd. of Educ.*, 301 S.C. 326, 329, 391 S.E.2d 866, 867 (1990). Procedural due process protections must therefore be provided. *Id.* The South Carolina Supreme Court has held that these due process protections include: (1) confrontation and cross-examination of one whose word deprives a person of his or her livelihood; and (2) disclosure of the evidence used to prove the State's case so that an individual has an opportunity to show it is untrue. *Id.*

Appellant appears to argue that both of these requirements were violated. He argues that his due process right to confront and cross-examine witnesses was effectively denied or impaired because, although he was permitted to examine his accusers, he was denied access to material which may have allowed him to more effectively cross-examine these witnesses. He also argues that, as a matter of due process, Respondent was required to provide him with copies of the taped interviews prior to the hearing. Respondent counters that Appellant was not in fact denied access

to the materials sought because the applicable regulations provided him with a method for procuring the materials and Respondent simply failed to do so.

The Court questions Appellant's characterization of the rights afforded to him in an administrative proceeding for revocation of a law enforcement certificate. Some states do characterize such proceedings as "quasi-criminal" and afford license holders protections similar to those afforded to criminal defendants. *E.g., Wills v. Composite State Bd. of Med. Exam'r*, 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 seem to have adopted this framework. *See Anonymous (M-156-90) v. State Bd. of Medical Examiners*, 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).

Additionally, the standard to which Appellant attempts to hold Respondent is greater than the standard to which the State must adhere in criminal proceedings. Relying on *Brown*, Respondent argues that due process required Respondent to produce to Appellant all evidence which it intended to use to prove its case. This level of production is not required in criminal cases. Under the South Carolina Rules of Criminal Procedure, the State is required to produce specified information such as a statement made by the defendant, the defendant's prior record, and reports of examinations and tests only "[u]pon request of the defendant." Rule 5(a), SCRCrimP. Prior statements made by prosecution witnesses are typically withheld until *after* the witness has testified on direct examination and even then are supplied only when a defendant moves the court for production. Rule 5(a)(2), SCRCrimP.

Given that the South Carolina Rules of Criminal Procedure require less disclosure in criminal cases¹⁰ than Appellant contends was due in this administrative proceeding, the Court concludes that the South Carolina Supreme Court's statement in *Brown* that due process requires disclosure of the evidence used to prove the State's case 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 evidence it possesses. *See, e.g., Bowman Transp., Inc. v. Ark.-Best Freight*

¹⁰ The record reflects that no criminal investigation or charges were pending or filed against Appellant related to the facts underlying this appeal. Thus, this proceeding is not a criminal proceeding in whole, part, or as a companion action.

Sys., Inc., 419 U.S. 281, 288 n.4 (1974) (“the Due Process Clause forbids an agency to use evidence in a way that forecloses an opportunity to offer a contrary presentation”); *DeBuff v. Montana Dep't of Nat. Res. & Conservation*, 482 P.3d 1183, 1193 (Mont. 2021) (the requirement of due process mandates that applicants be put on notice that particular evidence may be used against them); *see also* S.C. Code Ann. § 1-23-320 (entitled “Notice and hearing in contested cases” and requiring that an agency include in its notice of a contested case both a statement of the particular statutes and rules involved in the hearing as well as a short and plain statement of the matters asserted).¹¹

Alternatively, the Court agrees with Respondent that Appellant’s failure to use the discovery tools provided by statute and regulation are fatal to his due process claims. The LETC is statutorily authorized to issue regulations governing its proceedings. S.C. Code Ann. § 23-23-80(5) and (6)(2018) (authorizing the LETC to make regulations for the administration of the statute and applying regulations to certification actions). Regulations it issued allow discovery in contested cases and specifically provide:

37-104. Discovery.

A. Any party to a contested case hearing requested pursuant to R.37-101 may engage in discovery only as allowed by this section or the Administrative Procedures Act.

B. Discovery shall be conducted pursuant to Rules 26-37, SCRPC, except:

1. Requests for Admission pursuant to Rule 36, SCRPC are not allowed;

2. Interrogatories pursuant to Rule 33, SCRPC shall be limited to twenty-five (25) interrogatories. In determining the number of interrogatories subparts shall be included, but the standard interrogatories contained in Rule 33(b), SCRPC shall not be included;

3. Physical and mental examinations pursuant to Rule 35, SCRPC do not need to meet the \$100,000 amount in controversy;

¹¹ Because Respondent did not attempt to use or introduce the recorded interviews of its testifying witnesses at the hearing, the failure to provide such statements in advance of the hearing would not violate *Brown* even if the Court were to accept Appellant’s construction of that case.

4. No more than three (3) depositions may be taken by either party unless the parties consent, with specificity, in writing, to the taking of additional depositions.

C. All discovery must be concluded at least thirty (30) days prior to the contested case hearing provided for in R.37-105.

S.C. Reg. Ann 37-104 (Supp. 2024).

While Appellant contends that he made requests for materials using channels outside the context of this contested case proceeding,¹² it is clear from the record that Appellant failed to use the means of discovery available to him within the contested case proceeding. When pressed by the Hearing Officer and LETC, he clarified that his requests for information were not made in the context of this proceeding. Examples of these include:

- Appellant did not attempt to subpoena any documents “for this proceeding” but did so in the SCDEW matter. [R. 113-14; 134-35]
- “The subpoena you tried to get served or the footage you tried to receive through a subpoena, was that done through the hearing officer? No, sir. That was done through the Employment Security Commission and then also through a direct Freedom of Information Act with the department.” [R. 218]

Moreover, the record contains no discovery requests issued by Appellant nor does Appellant argue that he used discovery in this case. Appellant’s failure to utilize the discovery tools available to him to obtain the evidence he complains was withheld is fatal to his due process claim. *Zaman v. S.C. State Bd. of Med. Exam’r*, 305 S.C. 281, 285, 408 S.E.2d 213, 215 (1991) (“[o]ne cannot complain of a due process violation if he has recourse to a constitutionally sufficient administrative procedure but merely declines or fails to take advantage of it”).

¹² Appellant indicates requests for potential evidence were made in a proceeding with the South Carolina Department of Employment and Workforce and also under the Freedom of Information Act. [R.pp. 113] Those are not matters before this Court on appeal and this Order has no bearing on those or future requests or associated remedies available to Appellant. Furthermore, documentation of the requests is not included in the record and the Court is limited to consideration of the record before it. S.C. Code Ann. § 1-23-380(4) (“The review must be conducted by the court and must be confined to the record.”).

II. Admissibility of Sanchez Lawsuit Evidence

Appellant next argues that the decision below is tainted because the Hearing Officer did not admit certain documentary evidence concerning the credibility of Officer Sanchez which forms the basis of a pending lawsuit in federal court against Officer Sanchez. Both Appellant and the Respondent argue their respective positions in the context of the Rules of Evidence. Appellant argues that documents pertaining to the lawsuit should have been admitted into evidence by the hearing officer for two reasons: (1) the documents were admissible under Rule 608(c), SCRE, as evidence of bias; and (2) the documents were admissible under Rule 613, SCRE as prior inconsistent statements. In response, SCCJA contends that the evidence sought to be admitted is not evidence of bias and that Appellant failed to lay a proper foundation for the admissibility of a prior inconsistent statement.

Appellants arguments, however, are not properly before the Court. The record is clear that following the hearing officer's decision to refuse to allow "the case" to be submitted as evidence, Appellant made no formal offer of proof, and, as a result, the documents he complains were excluded are not part of the record on appeal. An offer of proof is a necessity for appellate review. *See State v. Cabbagestalk*, 281 S.C. 35, 36, 314 S.E.2d 10, 11 (1984) ("Failure to make an offer of proof precludes the appellant from raising the issue on appeal."); *Terwilliger v. Terwilliger*, 298 S.C. 144, 150, 378 S.E.2d 609, 613 (Ct. App. 1989) ("Without a proffer we can glean no error from the exclusion of the evidence.").

Even if the Court were to consider Appellant's statement to the hearing officer immediately before the hearing officer's ruling as an offer of proof, Appellant's arguments remain improper. Rule 103 of the South Carolina Rules of Evidence provides in pertinent part that:

Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and . . .

(2) *Offer of Proof*. In case the ruling is one excluding evidence, the substance of the evidence and the specific evidentiary basis supporting admission were made known to the court by offer or were apparent from the context.

Rule 103(a), SCRE (emphasis in original). A satisfactory offer of proof therefore requires that: (1) the substance of the evidence; and (2) "the specific evidentiary basis supporting admission" be made known to the court or were apparent from the context.

Appellant's description of the substance of the evidence was poor. As noted above, at times the documents are described as a complaint in a federal action, a deposition, and an affidavit. Moreover, information about the content of the documents, including any specific statements attributed to Officer Sanchez is lacking. From the context of the questions asked of Officer Sanchez immediately prior to Appellant's attempt to admit the federal court documents, it appears that Appellant contends that Officer Sanchez lied in affidavit submitted to a judge to obtain a search warrant. The lie in question appears to be that Officer Sanchez represented in the affidavit that he possessed or reviewed certain records which he did not have at the time the affidavit was signed.

Even if Appellant's questions and his colloquy with the hearing officer taken together can be considered to be a sufficient description of the substance of the evidence to satisfy Rule 103, it is clear that Appellant has not met the second requirement of an offer of proof with respect to the grounds now asserted on appeal. Appellant's counsel asserts on appeal that documents from the federal court case were admissible on the issue of bias under Rule 608(c), SCRE, and as prior inconsistent statements under Rule 613, SCRE. However, neither of these bases for admission were advanced to the hearing officer. Appellant obviously did not state that the evidence was admissible under any specific rule of evidence in his discussion with the hearing officer. He also made no mention of bias¹³ or inconsistent statements.¹⁴

Rather, the evidentiary basis identified by Appellant to the hearing officer was that Officer Sanchez had deceived a judge on multiple occasions, and these actions called his credibility into question. He emphasized that Officer Sanchez had committed the offense of filing a false affidavit, which, Appellant believed, "goes directly to credibility." Accordingly, the evidentiary basis which

¹³ Were the Court permitted to address Appellant's argument that the federal court documents are admissible to show bias, the Court would reject it. Assuming Officer Sanchez misled a judge in an affidavit filed to obtain a search warrant in another case, that fact does not establish a basis on which Officer Sanchez would be biased against or hostile to Appellant.

¹⁴ Were the Court permitted to address Appellant's argument that the federal court documents are admissible as a prior inconsistent statement, the Court would reject it. Appellant appeared to attempt to introduce a variety of documents from the federal "case." Certainly not all of the content of these documents could be considered a prior inconsistent statement. Statements made in a complaint or documents filed by other parties would not suffice. The affidavit described by Appellant as one *containing* a false statement rather than one containing a statement which is inconsistent with a specific statement made by Officer Sanchez in the hearing. A statement in a deposition could conceivably be inconsistent with something Officer Sanchez stated during Appellant's hearing but the entire deposition likely could not. Additionally and importantly, Appellant did not identify any statement made by Officer Sanchez at the hearing which he felt was inconsistent with a statement made in the federal action. Moreover, Officer Sanchez actually admitted to the hearing officer that he did not possess all of the documents he had previously told a judge he had. This statement is *consistent* with what Appellant appears to contend was stated by Officer Sanchez in the federal case.

Appellant actually made known to the hearing officer was that Officer Sanchez's alleged specific instances of misconduct should make him less likely to be believed on the witness stand.

This argument is governed by Rule 608(b), SCRE. That rule states:

(b) Specific Instances of Conduct. Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness' credibility, other than conviction of crime as provided in Rule 609, may not be proved by extrinsic evidence. They may, however, in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness (1) concerning the witness' character for truthfulness or untruthfulness, or (2) concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.

Rule 608(b), SCRE. It specifically provides extrinsic evidence of specific instances of misconduct “may not be proven by extrinsic evidence.” Rather, they may only be asked about on cross-examination if permitted by the hearing officer.¹⁵

Because the offer of proof made, if indeed one was made, did not specify bias or prior inconsistent statements as a basis for admission of the federal court documents, those grounds may not now be considered by the Court. *See* 21 Fed. Prac. & Proc. Evid. § 5040.1 (2d ed.) (April 2025 update) (Rule 103 offers of proof “must have both ‘target specificity’ and ‘ground specificity’ . . . [a]s was true with an objection overruled for the objector, when the objection is sustained, the proponent can only assert on appeal those grounds that were advanced in the trial court. Hence, the offer of proof should include all the grounds that the proponent thinks may be needed on appeal”); *Hampton v. Braddy*, 270 S.W.3d 61, 66 (Tenn. Ct. App. 2007) (“[t]he Trial Court’s statements in granting the motion in limine do provide some information as to what the excluded evidence might have been. Likewise, the motion in limine and counsels’ arguments on the motion provide some clue as to what this evidence might have been. However, these clues as to what the excluded evidence might have been do not rise to the level of an offer of proof containing the substance of the evidence and the specific evidentiary basis supporting the admission of this evidence. Given this, this issue has been waived”).

¹⁵ The hearing officer correctly followed Rule 608(b). Appellant was permitted to ask and did ask Officer Sanchez questions about the specific instances of misconduct in question but was not permitted to introduce extrinsic evidence of the same. That the hearing officer followed the requirements of Rule 608(b) in response to Appellant’s argument for admission confirms that the hearing officer, as well as the Court, perceived Appellant’s argument as on involving specific instances of misconduct.

Additionally and in any event, to warrant reversal for the exclusion of evidence, a party must show *both* that the court's evidentiary ruling was erroneous *and* that it was prejudicial. *Elledge v. Richland/Lexington Sch. Dist.* 5, 341 S.C. 473, 477, 534 S.E.2d 289, 290 (Ct. App. 2000), *aff'd*, 352 S.C. 179, 573 S.E.2d 789 (2002). The Court simply cannot determine whether the excluded evidence would likely have changed the outcome of the hearing because it is unable to review the evidence in question. *See Palmer v. Hoffman*, 318 U.S. 109, 116 (1943) (court could not conclude that an evidentiary ruling was prejudicial without knowing contents of excluded document); *U.S. v. Rayco, Inc.*, 616 F.2d 462, 464 (10th Cir. 1980) (where party never made an offer of proof in the trial court, appellate court was unable to determine if exclusion of it for failure to list it in the pretrial order resulted in manifest injustice such that pretrial order should have been amended); *Lainhart v. State*, 916 N.E.2d 924, 944 (Ind. Ct. App. 2009) (appellate court "cannot review the propriety of evidentiary rulings if we are not furnished with the evidence in dispute"); *Terwilliger*, 298 S.C. at 150, 378 S.E.2d at 613 ("Without a proffer we can glean no error from the exclusion of the evidence").¹⁶

In conclusion, the Court is constrained to affirm the decision of the LETC.¹⁷

ORDER

IT IS HEREBY ORDERED that the decision below is **AFFIRMED**.

AND IT IS SO ORDERED.



The Honorable Robert L. Reibold
Administrative Law Judge

May 5, 2025
Columbia, South Carolina

¹⁶ In all likelihood, the excluded evidence was *not* prejudicial. Office Sanchez admitted to the hearing officer that he had not possessed documents which he told a judge he did possess. In other words, even in the absence of the admitted documents, the hearing officer was informed that Officer Sanchez may have submitted an affidavit containing a false statement to a judge. Therefore, the documentary evidence of the same which Appellant sought to introduce was cumulative.

¹⁷ The Court has thoroughly reviewed the record in this case and the arguments of the parties. The factual discrepancies highlighted by Appellant, along with his other arguments, were not overlooked. However, when serving an appellate role, this Court has limited authority to disturb decisions made below as explained above.

CERTIFICATE OF SERVICE

I, Jared Thompson, hereby certify that I have on this date served this order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).



Jared Thompson
Judicial Law Clerk

May 5, 2025
Columbia, South Carolina

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Omar Brown,	)	Docket No. 24-ALJ-30-0425-AP
	)	
Appellant,	)	
	)	
vs.	)	
	)	
South Carolina Criminal Justice Academy,	)	
	)	
Respondent.	)	
_____	)	

MOTION FOR REHEARING

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PROCEDURAL BACKGROUND

This is an appeal from a final agency decision by the South Carolina Law Enforcement Training Council, which is the governing body of the South Carolina Criminal Justice Academy, permanently denying Omar Brown a law enforcement certification. On May 5, 2025, this Court affirmed the Agency's decision. Pursuant to Rule 40(B) of the South Carolina Administrative Law Court Rules, Mr. Brown respectfully requests this Court rehear the matter considering the significant points overlooked and/or misapprehended by this Court discussed below.

ARGUMENT FOR REHEARING

In its due process analysis, this Court construed Mr. Brown's argument as suggesting that he is entitled to a higher level of due process than that required in criminal cases. This Court pointed to Rule 5(a)(2) of the Rules of Criminal Procedure in stating that "[p]rior statements made by prosecution witnesses are typically withheld until *after* the witness has testified on direct examination and even then are supplied only when a defendant moves the court for production." Final Order, 7. Respectfully, this is not what "typically" happens in criminal cases.¹

Although this Court correctly quoted the language from Rule 5, it did not engage with the robust body of case law analyzing the due process rights of criminal defendants regarding their access to evidence against them. Perhaps the Court did not consider this body of case law because the Agency has never made the argument the Court now adopts. And as such, Mr. Brown has never had occasion to refute it. However, since this Court has drawn a comparison in this case to criminal cases, it might want to consider seminal cases like *Brady v. Maryland* where the Supreme Court of the United States held that "suppression by the prosecution of evidence favorable to an accused

¹ Undersigned spent the first nine years of his legal career practicing exclusively criminal defense and never had a prosecutor withhold a witness' prior statement until after that witness had testified at trial.

upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.” 373 U.S. 83, 87 (1963). This Court may also wish to consider *United States v. Bagley* which made clear that “[i]mpeachment evidence . . . as well as exculpatory evidence, falls within the *Brady* rule.” 473 U.S. 667, 676 (1985) (citing *Giglio v. United States*, 405 U.S. 150, 154 (1972)). See also *Pennsylvania v. Ritchie*, 480 U.S. 39, 60 (1987) (requiring prosecution to submit evidence to the trial judge for in camera review so that a determination can be made as to whether the withheld evidence may be material to the defense).

Our own Supreme Court has applied *Brady* and its progeny to due process questions in criminal appeals about the withholding of evidence by the prosecution. For instance, in *State v. Bryant*, our Supreme Court remanded a case and required the prosecution to disclose withheld evidence to the trial judge so that the trial judge could determine whether the withheld evidence was material to the defense, and if so, require that it be disclosed to the defendants. 307 S.C. 458, 461-62, 415 S.E.2d 806, 808-09 (1992). See also *State v. Brown*, 441 S.C. 464, 476, 894 S.E.2d 525, 531 (2023) (finding that it was reversible error for the prosecution to refuse to disclose plea negotiations it had with a co-defendant who testified against the defendant at trial).

Furthermore, the evidence in Mr. Brown’s case was *never* disclosed. Even after Sanchez and Lizarazo had testified, the Department still refused to turn over their prior statements. Even if this Court were to adopt the standard from Rule 5 of the Rules of Criminal Procedure, the Department would have had to turn over the prior statements after Sanchez and Lizarazo testified. Mr. Brown pointed out to the Hearing Officer that although he could recall them to the stand, because he had not been provided with their prior statements he would have no way of impeaching them. See *Sheppard v. State*, 357 S.C. 646, 660, 594 S.E.2d 462, 470 (2004) (finding that because the defendant was given the witness’ prior statement “in time for cross-examination, there is not a

reasonable probability the outcome of the trial would have been different had the statements been disclosed prior to trial”).

Criminal and administrative cases are “apples and oranges,” not ripe for comparison. However, since the Court has raised this comparison, undersigned hastens to point out that civil litigants are in fact entitled to much more discovery rights than criminal defendants. For instance, requests to admit, interrogatories, and depositions are all allowed in civil and administrative cases while they are generally prohibited in criminal cases. *Compare* Rules 26-37, SCRCP and S.C. Reg. 37-104 *with* Rule 5, SCRCrim.P; *see also* *State v. Miller*, 289 S.C. 316, 317, 345 S.E.2d 489, 490 (1986) (“There is no right to discovery in a criminal case unless permitted by statute or court rule”).

This Court mistakenly relied on Rule 5 of the Rules of Criminal Procedure to narrowly construe the Supreme Court’s decision in *Brown v. S.C. State Bd. of Educ.*, 301 S.C. 326, 391 S.E.2d 866 (1990). The Court in *Brown* did not mince words when it said that “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). Even if the Department did not have to disclose Sanchez and Lizarazo’s statements prior to the hearing, certainly it was required to disclose them after they testified, and Mr. Brown requested to be provided with the evidence so that he could adequately cross-examine them.

This Court also found that Mr. Brown failed to utilize the discovery tools made available to him and that this failure is fatal to his due process claim. Respectfully, this Court appears to have not adequately considered the fact that Mr. Brown did request the evidence against him, but the Department refused to comply with his requests. This Court found that because these requests were made in an earlier proceeding, they were not properly before the Court in this case. However, those 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 after he requested it would have been futile.

Furthermore, the Department never claimed Mr. Brown failed to request the evidence it used against him. The Agency made this argument for the first time on appeal—a point this Court did not acknowledge in its order. *See* SCALC Rule 36(G) (“[t]he [ALJ] will not consider any fact which does not appear in the Record”); *see also Brown v. S.C. Dep’t of Health & Envtl. Control*, 348 S.C. 507, 519, 560 S.E.2d 410, 417 (2002) (“issues not raised to and ruled on by the agency are not preserved for judicial consideration”); *Kiawah Resort Assocs. v. S.C. Tax Comm’n*, 318 S.C. 502, 505, 458 S.E.2d 542, 544 (1995) (the ALC sitting as an appellate court “has a limited scope of review, and cannot ordinarily consider issues that were not raised to and ruled on by the administrative agency”); *Cook v. S.C. Dep’t of Highways & Pub. Transp.*, 309 S.C. 179, 183, 420 S.E.2d 847, 849 (1992) (an issue not ruled on by the agency is not preserved for appellate review).

Next, this Court found that Mr. Brown’s argument regarding the admissibility of Sanchez’s prior inconsistent statement was not properly before this Court because Mr. Brown made no formal offer of proof. This Court noted that Rule 103 of the South Carolina Rules of Evidence requires that where evidence is excluded, “[e]rror may not be predicated” upon the exclusion unless “the substance of the evidence and the specific evidentiary basis supporting admission were made known to the court by offer or were apparent from the context.” Rule 103, SCRE. However, this Court misconstrues the offer of proof that was made by Mr. Brown.

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. 63, l. 21 – p. 64, 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.

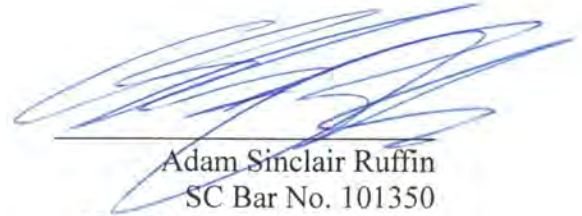
This Court further found that Mr. Brown did not make the evidentiary basis for admissibility of Sanchez's prior inconsistent statement known to the hearing officer. Respectfully, the Record in this case indicates that Mr. Brown was seeking to introduce evidence of a prior inconsistent statement. This is expressly allowed by Rule 613(b) of the South Carolina Rules of Evidence which provides that extrinsic evidence of a prior inconsistent statement is admissible 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. 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).

Finally, this Court found that Mr. Brown failed to show prejudice in the exclusion of Sanchez's prior inconsistent statement. However, witness credibility was the most important aspect of this case. The body camera videos corroborated Mr. Brown's statement that he never used a chokehold of any kind on the suspect. Without proving that Mr. Brown used a chokehold against the suspect, the Department was required to show he engaged in some other kind of misconduct to justify firing him. What the Department relied on was the claim that Lizarazo had offered Mr. Brown medical treatment which Mr. Brown denied. Because this allegation was purely Mr.

Brown's word against Sanchez's and Lizarazo's, it was essential that all evidence tending to diminish their credibility be allowed into evidence. Mr. Brown could not adequately attack Sanchez's credibility without being permitted to introduce his prior inconsistent statement. Accordingly, the Hearing Officer's exclusion of the prior inconsistent statement prejudiced Mr. Brown's ability to adequately impugn Sanchez's veracity.

CONCLUSION

Based on the foregoing arguments, Mr. Brown respectfully requests this Court grant his motion for rehearing and reissue its decision.



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Attorney for Omar Brown

This 14th day of May 2025.

Omar Brown,	)	Docket No. 24-ALJ-30-0425-AP
	)	
Appellant,	)	
	)	
vs.	)	
	)	
South Carolina Criminal Justice Academy,	)	
	)	
Respondent.	)	
	)	

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Omar Brown,	)	Docket No. 24-ALJ-30-0425-AP
	)	
Appellant,	)	
vs.	)	
	)	
South Carolina Criminal Justice Academy,	)	
	)	
Respondent.	)	
	)	

RESPONSE TO MOTION FOR REHEARING

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May 23, 2025

PROCEDURAL BACKGROUND

This is an appeal from a final agency decision by the South Carolina Law Enforcement Training Council (LETC), which governs the South Carolina Criminal Justice Academy (Respondent). On May 5, 2025, this Court affirmed the Agency's decision. Respondent agrees with the Court's Final Order and Decision in this matter and opposes Appellant's motion for rehearing for the following reasons.

ARGUMENT AGAINST REHEARING

I. Access to Evidence

The Court properly reviewed and ruled on what was required for due process given the nature of administrative hearings. The Court disagreed with Appellant's interpretation of *Brown v. S.C. State Bd. Of Educ.*, 301 S.C. 326, 391 S.E.2d 866 (1990). The Court's reference to criminal rules was illustrative of why it disagreed with Appellant's interpretation of due process law. It is unnecessary to further delve into criminal law when as the Court noted South Carolina does not adopt a "quasi-criminal" characterization for professional licensure. See *Anonymous (M-156-90) v. State Bd. of Medical Examiners*, 329 S.C. 371, 496 S.E.2d 17 (1998). However, a review of *Brady* and its progeny shows that those proactive disclosures were still limited to evidence that was favorable to the defendant and do not require a prosecutor to hand over its entire file to the defendant. Where the evidence was favorable to the defendant the defendant still had to prove the evidence was material to the case and probably would have affected the

outcome. *U.S. v. Bagley*, 473 U.S. 667, 105 S.Ct. 3375 (1985). The Court addressed the prejudice issue in its Final Order and Decision¹.

During the administrative hearing in *Brown v. S.C. State Bd. Of Educ.*, 301 S.C. 326, 391 S.E.2d 866 (1990), “the only evidence produced *at the hearing* to support invalidation of appellant’s teaching certificate was the notification from ETS that her NTE scores had been canceled.” *Id.* at 328 (emphasis added). The due process violation was that they failed to present any evidence to substantiate the cancellation of the NTE scores. Because of that, the appellant was not given an opportunity to contest the allegations against her in the hearing. Respondent supports the Court’s interpretation of *Brown*, and that disclosure of evidence means the State must give the officer notice of the evidence it intends to use.

Additionally, the Court correctly ruled Appellant failed to utilize the due process procedures available to him in this case. Appellant argues that since the North Charleston Police Department (Department) allegedly failed to provide information to Appellant in previous hearings then it was pointless for him to follow the lawful procedures for this hearing. Appellant seems to argue that if a party feels a lawful procedure is futile then they should not have to follow it. Respondent knows of no law that supports this assertion, and Appellant does not provide law to support that assertion. Therefore, there is nothing new for this Court to consider.

Appellant argues that Respondent cannot argue Appellant failed to use the required discovery procedures afforded to him because the Department’s attorney did not bring this argument up in the contested case hearing. SCALC Rule 36(G) states “The Administrative Law

¹ ALC Final Order and Decision at page 13 “Additionally and in any event, to warrant reversal for the exclusion of evidence, a party must show both that the court’s evidentiary ruling was erroneous and that it was prejudicial. Also see footnote 16.

Judge will not consider any fact which does not appear in the record.” Both the hearing officer and the Law Enforcement Training Council (LETC) specifically questioned Appellant about whether he used the discovery procedures available to him. They were clearly considering this information when making their decisions in this case. R. at pp. 113-114; 134-135; and 218. The general rule is that an issue is not preserved for appellant review when the lower court did not rule on the issue. *Talley v. South Carolina Higher Educ. Tuition Grants Committee*, 289 S.C. 483, 347 S.E.2d 99 (1986) Here, appellant brought up he subpoenaed information from the Department in other proceedings, but he did not use the discovery procedures afforded to him for the contested case hearing. In addressing Appellant’s objection, the hearing officer specifically asked about whether Appellant subpoenaed the information using the Academy provided subpoena form and Appellant confirmed he had not. After the hearing officer clarified this information, the Department’s attorney informed the hearing officer that he knew nothing about Appellant’s alleged requests for information in other venues. (R. at pp. 112-114) The hearing officer brought up the issue and the hearing officer did rule on the issue when she admitted the evidence over Appellant’s objection. The LETC also specifically brought up the issue and questioned Appellant about it as well. Therefore, the issue is part of the record and preserved for appeal. Further, Appellant made this argument in Appellant’s Reply brief which the Court considered before making its Final Order and Decision.

II. Admissibility of Sanchez Lawsuit Evidence

Respondent supports the Court’s ruling on this issue. Appellant failed to satisfy the requirements of Rule 103, SCRE and Rule 613, SCRE. The hearing officer properly excluded the evidence under Rule 608(b), SCRE. Appellant argues it believes there was an appropriate offer of proof because Sanchez appeared to know what Appellant was asking him about; however,

Rule 103 is in place so the Court may have sufficient evidence to decide on the issue. Appellant identified the document as “the case,” a pending “conviction,” and a “deposition.” The Department’s attorney asks to look at the document and describes it to the hearing officer as a pending “civil complaint.” R. at p. 64. It does not appear the hearing officer reviewed the document and Appellant never offered to show it to the hearing officer.

Appellant again argues the document should have been admitted under Rule 613(b), SCRE; however, Appellant does not list what the alleged inconsistent statement was supposed to be in the Motion for Rehearing.² Appellant does not add anything additional for the Court to consider which was not already argued in the original appeal.

Finally, Appellant argues it did show prejudice in this case. After reviewing the entire record, the LETC voted and found Appellant willfully made false statements when he told command staff that his supervisor did not offer him medical treatment after the altercation. They also voted and found that Appellant committed misconduct by willfully using excessive force in an objectively unreasonable manner. Appellant seems to incorrectly state that willful use of excessive force in an objectively unreasonable manner was not proven and focuses on prejudice as to the misconduct based on a false statement. The hearing officer and the LETC were looking at the totality of the circumstances to determine if Appellant’s actions rose to excessive force in an objectively unreasonable manner.³ They found Appellant committed misconduct in this manner. The body worn camera footage was admitted without objection in this case and showed the incident. Director Stirling specifically asked Appellant about his actions in the video.

² The Court mentioned that Appellant did not identify the inconsistent statement in either of Appellant’s briefs. See footnote 14.

³ Indeed, both the hearing officer and LETC found misconduct based on willful use of excessive force in an objectively unreasonable manner.

Director Stirling then asked the Department about the video footage. Stirling affirmed that he watched the full video and was not relying on a “still shot.” R. at pp. 218-220; 221-224. Even if Appellant was able to prove prejudice as to the false statement misconduct allegation, Appellant cannot and does not argue prejudice as to the excessive force misconduct allegation. Prejudice as to both misconduct findings would be needed to justify remand for a new hearing.

CONCLUSION

Based on the foregoing arguments, Respondent respectfully requests this Court deny Appellant’s Motion for Rehearing.

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This 23rd day of May 2025.

Omar Brown,	)	
	)	Docket No. 24-ALJ-30-0425-AP
Appellant,	)	
vs.	)	
	)	CERTIFICATE OF SERVICE
South Carolina Criminal Justice Academy,	)	
	)	
Respondent.	)	
	)	

The Honorable Robert L. Reibold
Administrative Law Judge
Administrative Law Court
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**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Omar Brown,

Appellant,

v.

South Carolina Criminal Justice Academy,

Respondent.

Docket No. 24-ALJ-30-0425-AP

**ORDER DENYING MOTION FOR
REHEARING**

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court (“ALC” or “Court”) upon the appeal of Omar Brown (“Appellant”) from a final agency decision issued by the Law Enforcement Training Council (“LETC or Council”) of the South Carolina Criminal Justice Academy (“SCCJA” or “Respondent”) to permanently deny Appellant a law enforcement certification. This Court has jurisdiction pursuant to S.C. Code Ann. Section 1-23-600(D) (Supp. 2024); *see also* S.C. Code Ann. § 1-23-505(2) (Supp. 2024). After careful consideration, the Court entered an order affirming the Council’s decision on May 5, 2025. Appellant filed a Petition for Rehearing on May 14, 2025. Respondent filed a response to the motion on May 23, 2025.

HISTORY

The factual background and procedural history are set forth in detail in the Court’s prior order and are incorporated herein by reference.

STANDARD OF DECISION

A motion for rehearing is authorized by SCALC Rule 40(B). This rule is based on its counterpart in the South Carolina Appellate Court Rules. The appellate court rules in turn provide that a motion or petition for rehearing “shall state with particularity the points supposed to have been overlooked or misapprehended by the court.” Rule 221(a), SCACR. Accordingly, to prevail on a petition for rehearing, an appellant must demonstrate the Court overlooked or misapprehended their argument. *Kennedy v. S.C. Ret. Sys.*, 349 S.C. 531, 532, 564 S.E.2d 322, 322 (2001). “The purpose of a petition for rehearing is not to present points which lawyers for the losing parties have overlooked or misapprehended, nor is it the purpose of the petition for rehearing to have the case tried in the appellate court a second time.” Jean H. Toal, Shahin Vafai & Robert Muckenfuss,



Appellate Practice in South Carolina 309 (1999) (citing *Arnold v. Carolina Power & Light Co.*, 168 S.C. 163, 167 S.E. 234 (1933)). The Court should therefore not consider new evidence or arguments when deciding whether to grant the petition for rehearing. *Kennedy*, 349 S.C. at 532, 564 S.E.2d at 322.

DISCUSSION

The Petition for Rehearing submitted by Appellant's counsel contains no headings or summary of the arguments it contains. After reviewing the Petition, it appears that counsel for Appellant raises the following arguments:

1. The Court misunderstands practice in criminal cases in South Carolina and is incorrect to suggest that production of witness statements occurs following the testimony of a witness;
2. Witness statements and discovery are contemplated by *Brady v. Maryland*¹ and *United States v. Bagley*² in criminal cases, and should have been permitted in the administrative proceeding under review;
3. The Court mistakenly relied upon Rule 5, SCRCrimP to narrowly construe *Brown v. State Board of Education*³;
4. The Court's conclusion that Appellant cannot maintain a due process claim because he failed to properly request the documents is incorrect because Appellant did ask for the materials;
5. Even if the Court's conclusion regarding the failure to request materials is correct, the Court should not have drawn this conclusion because it was not argued by the Respondent below;
6. The Court incorrectly concluded that Appellant failed to make the evidentiary basis for admissibility of the materials sought because it was clear Appellant sought to introduce them as a prior inconsistent statement; and
7. The Court's conclusion that Appellant was not prejudiced is incorrect because credibility was critically important.

The Court will address each of these arguments below.

¹ 373 U.S. 83 (1963).

² 473 U.S. 667 (1985).

³ 301 S.C. 326, 391 S.E.2d 866 (1990).

I. Practice in Criminal Courts

Appellant's counsel takes issue with the Court's characterization of practice in criminal court in South Carolina. Upon review, it does appear that the Court's language was too loose, and the Court should not have used language which suggests a general practice among solicitors in South Carolina with respect to production of witness statements. This error, however, does not alter the outcome of the case. As discussed more fully below and in the Court's prior order, the Court's conclusion that Appellant seeks to impose criminal procedural requirements in a civil administrative proceeding remains valid.

II. Witness Statements under *Brady v. Maryland* and *United States v. Bagley*

Appellant next argues that because the Court made a comparison between the hearing below and criminal cases, the Court should consider that *Brady* and *Bagley* hold that a due process violation occurs when evidence, including impeachment evidence, is suppressed by a prosecutor irrespective of the good faith or bad faith of the prosecution. Appellant notes that, in this case, the witness statements were never produced, even after the witnesses had testified, which would violate Rule 5 of the South Carolina Rules of Criminal Procedure. This rule provides that the State is required to produce specified information such as a statement made by the defendant, the defendant's prior record, and reports of examinations and tests only "[u]pon request of the defendant." Rule 5(a), SCRCrimP. Prior statements made by prosecution witnesses are not required to be produced under this rule until *after* the witness has testified on direct examination and even then only when a defendant moves the court for production. Rule 5(a)(2), SCRCrimP.

In the Court's view, this argument rests upon a misunderstanding of the comparison made by the Court in its prior Order. 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). As a result, participants in administrative license

proceedings are not entitled to the full panoply of procedural rights which a criminal defendant might enjoy in South Carolina.

What the Court did intend to convey is that: (1) Appellant seeks to impose procedural requirements which are required in criminal proceedings upon the Respondent in a civil administrative proceeding; and (2) the Court rejects this proposition. The Constitutions of the United States and of South Carolina require certain due process protections in criminal proceedings which are not required in civil proceedings. To accept Appellant's argument would be to ignore the distinction between criminal cases and the civil administrative proceeding underlying this appeal.

III. *Brown v. State Board of Education*

In *Brown*, the South Carolina Supreme Court held that due process requires disclosure of the evidence used to prove the State's case so that an individual has an opportunity to show it is untrue. *Id.*, 301 S.C. at 329, 391 S.E.2d at 867. Appellant construes this holding to require Respondent *produce* to Appellant all evidence which it intended to use to prove its case. The Court concluded that Appellant's construction of *Brown* was too broad and that what is required by *Brown* is not physical production of all evidence but rather the provision of notice of what evidence it intends to use.

The Court's conclusion was once again based in part upon a comparison with requirements in criminal proceedings in which greater procedural requirements are imposed than in administrative proceedings. In criminal proceedings, whether under Rule 5, SCRCrimP, or *Brady*, the State is not required to produce *all* of the evidence upon which it intends to rely but rather is required to produce only exculpatory evidence and impeachment evidence. If the Court were to read *Brown* to require that *all* evidence be disclosed, as Appellant suggests, participants in administrative license revocation proceedings would receive greater production than do criminal defendants.

The Court is not persuaded that its construction of *Brown* was erroneous.

IV. *Request for Materials*

In its prior Order, the Court alternatively held that Appellant's failure to use the discovery tools provided by statute and regulation are fatal to his due process claims. Appellant argues that this holding was in error for two reasons. First, Appellant contends that the Court failed to consider that Appellant did ask for the materials he sought. Second, he argues that the Court should not

have considered this argument because it was raised for the first time by the Respondent upon appeal. The Court will address both arguments below.

While the Court acknowledges that the record indicates Appellant requested certain documents from the police department in the course of collateral proceedings other than the license revocation proceeding currently on review,⁴ these requests are insufficient. Our state supreme court held in *Zaman v. S.C. State Board of Medical Examiners*, that “[o]ne cannot complain of a due process violation if he has recourse to a constitutionally sufficient administrative procedure but merely declines or fails to take advantage of it.” 305 S.C. 281, 285, 408 S.E.2d 213, 215 (1991). Here, Appellant had access to the discovery tools provided by regulation in proceedings for revocation of a law enforcement certificate. S.C. Code Regs. § 37-104. Appellant did not take advantage of these discovery tools.⁵

Appellant next argues that the Court should not have considered this argument because the Respondent did not make it below but was instead raised for the first time on appeal. Appellant relies upon SCALC Rule 38 which provides that the ALC will not ordinarily consider any fact which does not appear in the record and *Kiawah Resort Associates v. S.C. Tax Commission*, 318 S.C. 502, 458 S.E.2d 542 (1995), which holds that appellate courts have limited review and cannot ordinarily consider issues not raised to and ruled on by the administrative agency.” However, Appellant ignores SCALC Rule 40(A). This rule states that: “[t]he administrative law judge may affirm, reverse, or remand any ruling, order, or judgment upon any ground(s) appearing in the Record.” As a result, the Court’s affirmance of the decision based upon an argument not made below is not improper. *See also* Rule 220(c), SCACR (“**Affirmance on Any Ground Appearing in Record.** The appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal”) (emphasis in original).

V. Admissibility of Sanchez Lawsuit Evidence

The Court affirmed the exclusion of the Sanchez lawsuit evidence for two reasons: (1) Appellant, who was acting *pro se* at the time, failed to make an offer of proof as required by Rule 103, SCRE, and, (2) if an error was made, the error was harmless because the evidence in question

⁴ Appellant indicates requests for potential evidence were made in a proceeding with the South Carolina Department of Employment and Workforce and also under the Freedom of Information Act. [R.p. 113].

⁵ Appellant’s argument also ignores the fact that the requests submitted in alternate forums and the responses thereto are not in the record. As a result, the Court is unable to evaluate whether Appellant did in fact make the requests at issue and, if so, whether the request was validly denied.

was cumulative to other evidence already in the record. Appellant takes issue with both of these conclusions.

He first contends that an appropriate offer of proof was made. A satisfactory offer of proof requires that: (1) the substance of the evidence; and (2) “the specific evidentiary basis supporting admission” be made known to the court or were apparent from the context. Rule 103, SCRE. According to Appellant, Officer Sanchez’s responses to the questions he asked indicate that Officer Sanchez knew precisely the statements to which Appellant referred, and, accordingly, the substance of the proffer was apparent from the context.

This reasoning is flawed. Appellant confuses the requirement of Rule 613, SCRE, that a witness be advised of the substance of the statement, including the time and place it was made, with the requirement of Rule 103, SCRE that, for an offer of proof to be valid, the substance of the evidence be made known “to the court.” Whether Officer Sanchez could identify the statement at issue from Appellant’s questions is irrelevant for purposes of an offer of proof. The question is whether the substance of the allegedly inconsistent statement was made known to the court, or, in this case, the hearing officer. The record does not reflect that it was.⁶

Appellant also argues that the record indicates that Appellant was attempting to introduce the statements as a prior inconsistent statement, and, therefore, the evidentiary basis for admission of the statement was known. The Court has once again reviewed the record and simply disagrees with Appellant’s view. The Court believes that the record indicates that Appellant was attempting to impeach Officer Sanchez by use of a prior bad act.

Finally, Appellant challenges the Court’s conclusion that it could not find Appellant was prejudiced by exclusion of the federal court document.⁷ Appellant stresses that Officer Sanchez’s credibility was the most important aspect of the case and argues that Appellant could not adequately attack the officer’s credibility without the admission of the statement.

This argument ignores the Court’s actual ruling on the question of prejudice. The Court concluded that the failure to make a valid offer of proof precluded it from making a determination that Appellant was prejudiced by the exclusion of the evidence in question.⁸

⁶ Appellant’s briefs did not identify allegedly inconsistent the statement to the Court. Appellant’s Petition for rehearing also fails to identify the statement. The absence of the statement itself from the record precludes informed appellate review.

⁷ Again, it is unclear whether the document sought to be admitted was a complaint, a deposition, or an affidavit.

⁸ The Court did conclude that it was unlikely the evidence was prejudicial in a footnote but that was not the basis of its ruling.

In summary, the Court concludes that Appellant has failed to demonstrate that the Court overlooked or misapprehended points which require a different outcome in this matter.

ORDER

IT IS HEREBY ORDERED that the Petition for Rehearing is **DENIED**.

AND IT IS SO ORDERED.

A handwritten signature in blue ink, appearing to read "Robert L. Reibold", is positioned above a horizontal line.

The Honorable Robert L. Reibold
Administrative Law Judge

June 5, 2025
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Jared Thompson, hereby certify that I have on this date served this order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).



Jared Thompson
Judicial Law Clerk

June 5, 2025
Columbia, South Carolina