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SC Court of Appeals

**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

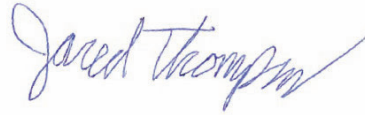
May 5, 2025
Columbia, South Carolina

¹⁶ In all likelihood, the excluded evidence was *not* prejudicial. Officer 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