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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM ADMINISTRATIVE LAW COURT
Administrative Law Judge Robert L. Reibold

ALC Case No. 24-ALJ-30-0425-AP

Omar Brown, Appellant,

v.

South Carolina Criminal Justice Academy, Respondent.
Appellate Case No. 2026-002099

RETURN TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. WHETHER THE ALC ERRED IN FINDING APPELLANT’S PROCEDURAL DUE PROCESS RIGHTS WERE NOT VIOLATED WHEN HE FAILED TO UTILIZE DISCOVERY PROCEDURES TO OBTAIN DEPARTMENT EVIDENCE BEFORE THE CONTESTED CASE HEARING?
2. WHETHER THE ALC ERRED WHEN IT RULED THE HEARING OFFICER PROPERLY EXCLUDED EXTRINSIC EVIDENCE OF A WITNESS’S PRIOR STATEMENT?

STATEMENT OF THE CASE

North Charleston Police Department (Department) submitted two allegations of misconduct against Appellant to the South Carolina Criminal Justice Academy (Agency) pursuant to S.C. Code Ann. §23-23-150(B)(1). (R. pp. 151-158) The Department alleged Appellant willfully made 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 Appellant willfully used excessive force in an objectively unreasonable manner.¹ (R. p. 152) Appellant timely requested a contested case hearing regarding the allegations. (R. p. 23) The hearing was held before a Hearing Officer with the Agency and the Department and Appellant presented their respective cases. (R. pp. 24-147)

¹ The first allegation constitutes misconduct under S.C. Code Ann. §23-23-150(A)(3)(i). The second allegation may constitute misconduct under S.C. Code Ann. §23-1-250(B)

Contested Case Hearing

During the contested case hearing the following information was established. 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. (R. p. 40, l. 12-p. 41, l. 1). The mother had a history of mental health issues and neglecting her child. (R. p. 41, 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. 6; State's Ex. 1B, 0:00-2:00). Sanchez arrived and spoke with the mother while Appellant spoke with the grandmother. (R. p. 41, ll. 13-18; State's Ex.s 1A & 1B). The mother was visibly upset while speaking with Sanchez in the front yard. (State's Ex. 1A, 0:00-3:30). The grandmother sat 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 sat. 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" towards the grandmother. (R. p. 42, ll. 8-10). 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 faced 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. 43, ll. 19 – 25). Once the mother was successfully handcuffed, Appellant started pulling her to her feet by her wrists alone. Sanchez grabbed her upper arms to help bring her to her feet safely. 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. 45, 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. 47, 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. 53, l. 17 – p. 55, l. 11). Sanchez confirmed EMS was never called for the suspect even though she claimed she had been choked. (R. p. 59, l. 4 – p. 60, l. 11).

Appellant's supervisor, Diego 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. 67, l. 22 – p. 68, l. 25). Later, Sanchez told him he should look at the video and Lizarazo went and spoke with Appellant. (R. p. 69, ll. 1 -11). Lizarazo testified that 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. 69, l. 12 – p. 71, l. 20). Lizarazo admitted he did not complete the personal injury report on Appellant's injury until the following day. Department policy required it be completed the same day as the injury. (R. 89, l. 15- p. 90, l. 3) Later that evening Lizarazo's supervisor called him and told Lizarazo Appellant notified him he was at the hospital bleeding profusely from his leg and was severely injured. (R. p. 73, l. 15 – p. 74, 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. 74, l. 7 – p. 75, l. 2).

Jeremy Ledford conducted the internal affairs investigation of the arrest. (R. p. 107, l. 18- p. 108, l. 11). He reviewed the body-camera videos, and interviewed Appellant, Sanchez, and Lizarazo. (R. p. 109, 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. 109, l. 14 – p. 110, l. 19). When Ledford interviewed Appellant, Appellant denied Lizarazo offered him medical treatment. (R. p. 115, l. 5 – p. 116, l. 8).

During the contested case hearing, the Department sought to introduce the video-recorded internal affairs interview with Appellant. (R. p. 111, ll. 16- 24). Appellant objected because the Department had not turned over the video prior to the hearing. After hearing from Appellant and the Department, the Hearing Officer allowed Appellant's recorded interview to be introduced. (R. p. 114, ll. 3-7; State's Ex. 1C). 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. 131, 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 using the subpoena provided 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. 112, l. 2- p. 113, l. 1). 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. 134, ll. 4 -12).

Also, during cross-examination of Sanchez, 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. (R. p. 61, ll. 21-25) 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. (R. p. 62, ll. 1-8) 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.”² (R. p. 62, ll. 9-15) Appellant never asked Sanchez about a deposition in the federal case admitting to creating a false affidavit. (R. at p. 61, l. 21 – p. 62, l. 15). After the above questioning occurred, Appellant sought to introduce a document he claimed showed that Sanchez admitted to filing a false affidavit. Appellant moved to introduce the document stating, “ His saying that he is credible as a witness and makes an allegation that an officer did something wrong, when, yet, he has multiple times deceived a judge in other things, I just think it calls his credibility into question.” (R. p. 62, ll. 22- p. 63, l. 1) It was not clear what

² A review of the transcript indicates this line of questions concerned the allegations of the federal civil lawsuit Sanchez was facing and were connected to the incident which led to the misconduct allegations against Appellant.

the document was, and Appellant did not proffer it for the record. Appellant made comments that Sanchez admitted in a deposition but then states he admitted through his counsel. After the Department's attorney looked at the document he told the Hearing Officer it appeared to be a civil complaint. (R. p. 63, ll. 11-17) The Hearing Officer denied Appellant's request to introduce the document but allowed Appellant to question Sanchez about it. (R. p. 64, ll. 15-17).

Hearing Officer Findings and Recommendation and LETC Meeting

Following the contested case hearing, the Hearing Officer issued a Findings and Recommendation to the Law Enforcement Training Council (Council)³ recommending misconduct was proven on both counts. (R. pp. 14-22) Appellant renewed his objections regarding the Department not providing him recorded interviews in different administrative proceedings in his Motion in Opposition and during oral argument before the Council. (R. p. 187- p. 189; R. p. 195- p. 227) After reviewing and discussing the case, and listening to oral arguments, the Council voted to find Appellant committed misconduct and to issue the sanction of permanent denial of law enforcement certification. (R. pp. 195-231 and R. pp. 3-11) The Council found misconduct and voted to permanently deny Appellant a law enforcement certification.⁴ (R. p. 3)

Appeal to the Administrative Law Court (ALC)

Appellant appealed the Council's final agency decision to the ALC. In his appeal, Appellant presented two issues: 1) his due process rights were violated when the North Charleston Police Department refused to provide him with the video recorded interviews of himself, Sanchez,

³ The Council is the governing body of Respondent Agency in this matter. See S.C. Code Ann. §§23-23-20 & 23-23-80)

⁴ Council found misconduct was proven in two ways 1) 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, and 2) by willfully using excessive force in an objectively unreasonable manner.

and Lizarazo prior to the hearing and 2) that the Hearing Officer erred in prohibiting Appellant from introducing a document allegedly from a federal lawsuit against Sanchez to challenge his credibility. (R. p. 244) The ALC ruled against Appellant on both issues. (R. pp. 290- 302)

Regarding the first issue, the ALC disagreed with Appellant's characterization of his due process rights in an administrative hearing. Appellant effectively argued that this Court held in *Brown v. S.C. State Bd. Of Educ.*, 301 S.C. 326 (1990) that "disclosure of evidence used to prove the State's case" requires Departments proactively produce all evidence to Appellant whether they intend to use it in a hearing or not and without regard for set discovery procedures. The ALC used due process rights in criminal and civil matters to illustrate the overreach of Appellant's argument and held "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." (R. p. 296) Alternatively, the ALC also ruled that Appellant's due process rights were not violated because Appellant did not use the discovery tools provided by statute and regulation. (R. pp. 297-298)

On the second issue, the ALC ruled Appellant did not properly preserve the second issue because Appellant failed to make a formal offer of proof under Rule 103, SCRE. (R. pp. 299-300) The ALC then held "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," Appellant did not lay the proper foundation to admit the document as a prior inconsistent statement under Rule 613, SCRE. The ALC noted that Appellant did not raise the issue of bias or inconsistent statements with the hearing officer. The first time the issues were raised were in the appeal. (R. p. 300) Rather Appellant argued for admission of the document as a

specific instance of conduct to attack Sanchez's credibility. The ALC ruled the Hearing Officer properly excluded the document under Rule 608(b), SCRE. (R. p. 301) Finally, the ALC concluded that the failure to make a valid offer of proof precluded the court from deciding that Appellant was prejudiced by the exclusion of the evidence. (R. p. 302)

Appellant filed a Motion for Rehearing, primarily arguing the Court misapplied incorrect criminal procedure to Appellant's due process claim. Appellant also argued his questions to Sanchez during cross-examination satisfied the proffer requirement in Rule 103, SCRE because the substance of the evidence was apparent from the context. (R. pp. 305-308) In its' Order denying the Motion for Rehearing, the ALC clarified the Court was not applying criminal law to the contested case hearing. Instead, affirmed its' original decision rejecting that due process in civil administrative proceedings requires the level of disclosure advocated for by Appellant. (R. p. 322) The ALC also explained that Appellant was conflating the offer of proof required in Rule 103, SCRE with laying the required foundation in Rule 613, SCRE. (R. pp. 323-324)

Appeal to the S.C. Court of Appeals

Appellant appealed the ALC's final order and decision as well as the order denying rehearing to the South Carolina Court of Appeals. After reviewing the record, and both parties' briefs, the Court of Appeals ruled that Appellant "failed to properly subpoena the interviews for the hearing despite having this procedure available to him." Brown v. SCCJA, Op. No. 2026-UP-346 (Ct. App. Filed July 8, 2026) Additionally, the Court ruled that even if Appellant followed available procedures and the Department improperly denied his requests, Appellant's rights were not substantially prejudiced. The Court reasoned the Department did not introduce the witnesses' interviews at the hearing and Appellant had knowledge of what occurred during his own interview and was permitted to cross-examine witnesses and call witnesses during his case-in-

chief. Id. The Court of Appeals also held that the Hearing Officer properly excluded the documents from the federal lawsuit as improper extrinsic evidence under Rule 608(b), SCRE. The Court also held that the evidence would not be properly admitted under Rule 613(b), SCRE because Appellant failed to lay the proper foundation and the witness admitted the substance of the prior inconsistent statement. Id.

ARGUMENT

1.

The ALC did not err in finding that Appellant’s procedural due process rights were not violated when he failed to utilize known discovery procedures to obtain department evidence before the contested case hearing.

As an initial matter, Respondent largely agrees with Appellant’s legal framework presented in its brief. (Apl’s Brf. pp. 13-16) Respondent disagrees with any suggestion that this Agency is a “leviathan” which has acted in anyway other than complete fairness with Appellant or has acted in a way that oversteps its authority issued to it by the General Assembly. The General Assembly created this Agency and the Council to “ensure the public safety and general welfare of the people of [South Carolina]” S.C. Code Ann. §23-23-10. The General Assembly authorized the Council to “make such regulations as may be necessary for the administration of [Chapter 23 of the South Carolina Code of Laws].” S.C. Code Ann. §23-23-80(5). The General Assembly also enacted S.C. Code §23-23-150 to establish what conduct by law enforcement officers is misconduct and to provide officers accused of committing misconduct their due process rights enumerated in our U.S. and South Carolina Constitutions.

Additionally, Respondent disagrees with Appellant’s contention that procedural due process requires an automatic production of all possible evidence a department may have

regardless of whether discovery procedures were utilized by an individual. The ALC did inappropriately apply incorrect law to Appellant's procedural due process rights. The ALC held "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." (R. p. 296) When the Department reported the allegations of misconduct against Appellant they included a detailed summary of its investigation and findings. This documentation was personally served on Appellant November 14, 2023. (R. pp. 149-159) Appellant was given sufficient notice of what the State intended to use to prove the allegations it reported.

In *Brown v. S.C. State Bd. Of Educ.*, this Court reversed the Board of Education's decision to invalidate a teacher's teaching certification. The Court found that the teacher's due process rights were violated because the only evidence the Board presented during the administrative hearing was the letter from the testing company informing the Board it had invalidated the teacher's test scores. There was no evidence presented as to why those test scores were invalidated that the teacher could refute. 301 S.C. 326, 391 S.E.2d 866 (1990).

A more applicable example is *Stinney v. Sumter School Dist. 17*, 391 S.C. 547, 707 S.E.2d 391 (2011), in which 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.

Additionally, *Spartanburg v. Parris*, 251 S.C. 182, 161 S.E.2d 228 (1968), is distinguishable to this case. In *Parris*, an affidavit of a witness was allowed to be admitted instead of live testimony to justify terminating a police officer. This clearly denied the officer his right to confront and cross-examine that witness. Here, Sanchez and Lizarazo were present and Appellant cross-examined both.

Finally, the Court of Appeals case *Kelsey v. S.C. Dep’t of Prob.*, 441 S.C. 373, 893 S.E.2d 588 (Ct. App. 2023) is also distinguishable. The case was based primarily on a specific regulation, but also the inmate requested the documents through the proper procedures, and the Agency denied the inmate had a right to view the documents. The inmate then brought the issue up for enforcement with the ALC which is the appropriate procedure. Appellant did not do that in this matter before the Court.

Appellant’s interpretation of disclosure would make procedures and regulations for discovery pointless. There would be a proactive, ongoing requirement on the State to produce all possible evidence. Respondent is unaware of any precedent for such a broad disclosure duty.

Appellant continues to argue that he did request the evidence, but Appellant requested the items in other administrative proceedings. He did not attempt to use the procedures laid out for the contested case hearing to compel discovery despite Respondent providing that information and the necessary form to Appellant for use in the hearing. (R. p. 172 & R. p. 112, l. 2- p. 113, l.

1) “One 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.” *Zaman v. S.C. State Bd. Of Med. Exam’rs*, 305 S.C. 281, 285, 408 S.E.2d 213, 215 (1991) It is ironic that Appellant raises concerns over “the creeping rise of the administrative state...” to then seemingly argue the hearing officer in this administrative hearing should enforce subpoenas and FOIA requests presented to other administrative agencies with no lawful authority to do so. There were constitutionally sufficient administrative procedures available to Appellant. Appellant admits he was aware of those procedures but did not use them. Appellant was able to cross-examine both witnesses and call witnesses of his own. Therefore, there was no due process violation in this case.

2.

The ALC did not err in finding the Hearing Officer properly excluded extrinsic evidence of a witness’s prior statement.

Respondent again agrees and adopts the ALC’s ruling and reasoning on Rule 103, SCRE. Appellant conflates the foundation needed for admission of a prior inconsistent statement in Rule 613(b) with the required proffer of evidence required for a court to rule in Rule 103, SCRE. Respondent argues that Appellant failed to satisfy either rule in this case.

Rule 103, SCRE provides “error may not be predicated upon a ruling which admits or excludes evidence unless ... a substantial right of a party is affected and 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.” As the ALC noted, Appellant’s description of the substance of the evidence was poor. (R. p. 300) Appellant called it a federal action, a deposition, and an affidavit. The Department’s attorney reviewed the document and described it as a civil

complaint. The Hearing Officer never reviewed the document, and Appellant never requested it be admitted as a proffered exhibit. (R. pp. 61-64) Thus, the substance of the evidence was not offered or apparent from the context to a sufficient degree that a court could make a ruling.

Appellant did not seek to admit the documents under Rule 608(c). During the contested case hearing, Appellant cross-examined Sanchez regarding the events that took place and then challenged him with the allegations of a federal lawsuit that was pending against Sanchez. The federal lawsuit did not relate to the incident that led to the misconduct allegations against Appellant, and it does not appear that Appellant was involved in the lawsuit. Yet, Appellant argues that this wholly unconnected lawsuit somehow shows Sanchez has a bias, prejudice, or motive to misrepresent information about Appellant under Rule 608(c), SCRE. Actual bias is defined as genuine prejudice that a judge, juror, witness, or other person has against some person or relevant subject. *Actual Bias*, *Black's Law Dictionary* 198 (11th ed. 2019). Prejudiced is defined as “harboring or manifesting unreasonable preconceptions or predilection against or, less commonly, in favor of someone or something; esp., tending to be opposed to someone or something without good cause or before acquiring sufficient information or knowledge” Prejudiced, *Black's Law Dictionary* 1428 (11th ed. 2019). Here, Appellant argued to admit a deposition⁵ from a federal civil lawsuit about a completely different matter. Appellant did not argue the statement referred to him or suggested Sanchez disliked Appellant or had preconceived opinions that would influence the case. Instead, Appellant argued to admit the statement because it “calls [Sanchez’s] credibility into question.” (R. p. 65, 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

⁵ The record was unclear on whether the document Appellant intended to admit was a complaint, a deposition, or an affidavit. For ease, Respondent refers to the document as a deposition here.

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 correctly 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).

Additionally, the evidence Appellant tried to admit does not fall under Rule 613, SCRE for two reasons. First, Appellant failed to identify where the witness made an inconsistent statement which could be impeached. Second, Appellant failed to lay the proper foundation for the document to be admitted under this rule.

As was noted by the ALC in its Final Order and Decision, as well as its Order denying Rehearing, Appellant has not provided what statement Sanchez was inconsistent on. Without a clear inconsistent statement, there is no reason to admit the federal lawsuit document. (R. p. 300, Footnote 14 & p. 324 Footnote 6)

Rule 613, SCRE(b) allows extrinsic evidence of a prior inconsistent statement if 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. Additionally, the witness must be 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. Then 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. p. 61, l. 21 – p. 62, 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 clearly. 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. The Hearing Officer and opposing counsel were both confused by what Appellant was striving to admit because Appellant

failed to provide the necessary foundation. (R. p. 63, l. 2 – p. 64, l. 17) Therefore it was appropriate for the Hearing Officer to exclude Sanchez’s prior statement.

Conclusion

Based on the above arguments, Respondent respectfully requests the Court deny Appellant’s petition for a writ of certiorari and affirm the lower courts’ rulings.

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This 23rd day of October 2026.