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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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

ALC Case No. 24-ALJ-30-0425-AP
Court of Appeals Appellate Case No. 2025-001354

Omar Brown, Appellant,

v.

South Carolina Criminal Justice Academy, Respondent.

Appellate Case No. 2026-002099

PETITIONER'S REPLY TO RESPONDENT'S RETURN

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INDEX

ARGUMENTS IN REPLY 1

1.

The constitutional right to due process in administrative hearings required the Department to disclose the evidence it intended to use against Mr. Brown, and Mr. Brown requested copies of the evidence that was in the possession of the Department and the Department repeatedly refused to turn the evidence over which violated Mr. Brown's due process rights.....1

2.

Sanchez's prior inconsistent statement was admissible because Mr. Brown identified the inconsistent statement, Sanchez was sufficiently advised of it and denied it, and the substance of the evidence was apparent from the context.....3

CONCLUSION.....4

ARGUMENTS IN REPLY

1.

The constitutional right to due process in administrative hearings required the Department to disclose the evidence it intended to use against Mr. Brown, and Mr. Brown requested copies of the evidence that was in the possession of the Department and the Department repeatedly refused to turn the evidence over which violated Mr. Brown's due process rights.

"[D]ue process requires an opportunity to confront and cross-examine adverse witnesses," and "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 v. S.C. State Bd. of Educ.*, 301 S.C. 326, 329, 391 S.E.2d 866, 867 (1990) (emphasis added). *See also* S.C. Const. art. I, § 22 (providing a constitutional right to due process in administrative proceedings). In striking down the regulation at issue in *Brown*, this Court held that even though the individual was granted a hearing as "a favor," that hearing "did not comport with procedural due process since the [Agency] did not disclose any evidence substantiating [its case] in order to allow [the individual] the opportunity to contest the allegations against her." *Id*. at 329, 391 S.E.2d at 869.

Notwithstanding the clear language from this Court, the ALC and the Agency continue to insist that individuals in administrative hearings are not entitled to the disclosure of the evidence that will be used against them. The evidence that the Department used against Mr. Brown was the live testimony of Sanchez and Lizarazo. But it refused to disclose to Mr. Brown these witnesses' prior recorded statements. This deprived Mr. Brown of the opportunity to challenge the truthfulness of their testimony, i.e., the evidence against him.

The Agency argues in its Return that Mr. Brown was given summary of the Department's investigation which gave Mr. Brown sufficient notice of what it would use in an effort to prove its

case against him. (Return p. 10). But a summary written by the investigator is not the witnesses' statements and Mr. Brown cannot impeach Sanchez or Lizarazo with what someone else said they said.

Additionally, Mr. Brown did utilize the discovery tools available to him. He submitted FOIA requests and subpoenas to the Department for this information and the Department repeatedly refused to give it to him. (R. p. 112, ll. 2 – 21). This Court's decision in *Stinney v. Sumter Sch. Dist. 17*, 391 S.C. 547, 707 S.E.2d 397 (2011) is distinguishable from the facts in this case. 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, this 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 this 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). Mr. Brown made adequate requests for the evidence that was in the possession of the Department and the Department's repeated refusals to disclose its evidence to Mr. Brown violated his due process rights.

2.

Sanchez's prior inconsistent statement was admissible because Mr. Brown identified the inconsistent statement, Sanchez was sufficiently advised of it and denied it, and the substance of the evidence was apparent from the context.

The Agency argues in its Return that Mr. Brown failed to identify the inconsistent statement, failed to lay a proper foundation under Rule 613(b), and failed to make a sufficient offer of proof under Rule 103. (Return pp. 12–16). The Agency also maintains that the Hearing Officer properly excluded the evidence under Rule 608(b). (Return pp. 13–14). The Agency's arguments are unconvincing.

Contrary to the Agency's argument, the Record sufficiently identifies the 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. (R. p. 61, ll. 23–25; R. p. 62, ll. 6–8). In response, Mr. Brown sought to introduce evidence that Sanchez had admitted to doing exactly that in federal court filings. (R. p. 62, l. 16 – p. 64, l. 14). Sanchez's prior admission is directly inconsistent with his testimony at the hearing.

Mr. Brown also laid a sufficient foundation. 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. 61, l. 21 – p. 62, l. 15). 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).

Finally, the substance of the evidence was "apparent from the context," which constituted a sufficient offer of proof. Rule 103, SCRE. The Agency argues that the substance of the evidence was unclear because Mr. Brown referred to a federal action, a deposition, and an affidavit. (Return pp. 12–13). But those references all describe the same evidence: Sanchez's admission in federal court filings that he had made false statements in an affidavit to obtain a warrant. (R. p. 62, l. 16 – p. 64, l. 14). The Hearing Officer erred in excluding Sanchez's prior inconsistent statement.

CONCLUSION

By reason of the foregoing arguments, Petitioner respectfully requests this Court grant this petition for a writ of certiorari and order full briefing on the questions presented.

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This 2nd day of November 2026.