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THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Shirley C. Robinson, Administrative Law Judge

Case No. 2015-000797

Deonta Brinston,

Respondent,

v.

South Carolina Department of Criminal Justice,

Appellant.

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SC Court of Appeals

**STATE OF SOUTH CAROLINA
COURT OF APPEALS**

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	)	
Respondent,	)	
vs.	)	
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**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

SC ADMIN. LAW COURT

Deonta L. Brinston,

Appellant,

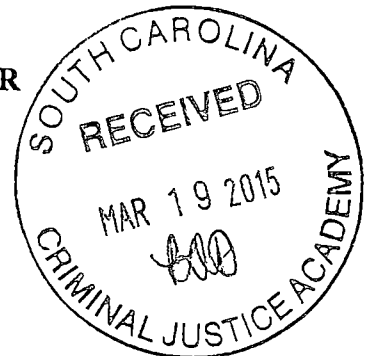
vs.

South Carolina Department of Criminal
Justice,

Respondent.

Docket No. 14-ALJ-30-0540-AP

ORDER



STATEMENT OF THE CASE

This matter is before the Administrative Law Court ("the ALC" or "the Court") for an administrative appeal pursuant to section 1-23-600(D) of the South Carolina Code (Supp. 2014). In this matter, Deonta L. Brinston ("Appellant") appeals the South Carolina Department of Criminal Justice Academy's ("the Academy's") final decision permanently denying him certification as a law enforcement officer due to substance abuse. After Appellant filed his Notice of Appeal, the Academy filed a Motion to Dismiss pursuant to ALC Rule 33, alleging the Notice of Appeal was not timely filed. Appellant filed a Response to the motion to which the Academy filed a Reply. After reviewing the parties' filings, this Court found the Notice of Appeal was timely filed and served and denied the Academy's motion to dismiss. On the merits, I reverse the Academy's final decision because the Academy's decision was arbitrary and capricious and characterized by an abuse of discretion and substantial evidence does not support the Academy's determination.

BACKGROUND

Appellant was formerly employed by the Anderson County Sheriff's Office as a deputy. In early 2014, Appellant was going through a divorce and custody battle. On April 2, 2014, Appellant's soon-to-be ex-wife, reported to the Anderson County Sheriff's Office via a phone call that Appellant and another deputy were using illegal steroids. No formal written complaint was filed. On April 9, 2014, as a result of the report, the Anderson County Sheriff's Office required Appellant and the other deputy to take a specialized urine-based drug test for steroids at AnMed Laboratory Services in Anderson County. On April 24, 2014, the test results showed Appellant and the other deputy tested positive for Methandienone. Appellant also tested positive

for Nandrolone. Both substances are listed as anabolic steroids under section 44-53-1510(A) of the South Carolina Code (2002).

On April 29, 2014, Appellant met with SLED agents to discuss the results of the test. Appellant declined to speak to the agents officially until he talked to an attorney. Appellant then went to a different room, was given his *Garrity*¹ warnings, and spoke with Lieutenant Steven J. Reeves and Sergeant Jonathan Brown of the Anderson County Sheriff's Office pursuant to the office's internal investigation. Appellant gave a verbal and written statement; however, Appellant left to talk with Chief Smith before signing the written statement, which existed only as an electronic document at the time. After a short discussion with Chief Smith, Chief Smith terminated Appellant for use of anabolic steroids. Specifically, Appellant was terminated for violating General Orders - 107 Conduct Unbecoming an Officer (Alcohol and Controlled Substances). On May 13, 2014, the Anderson County Sheriff's Department submitted a Personnel Change in Status form to the Academy, as required by statute, which indicated Appellant was terminated because he engaged in the use of anabolic steroids.

Appellant contested the urine analysis findings, arguing he was taking three over-the-counter supplements for body building, which he was advised could lead to false-positive test results. Appellant went to a private physician and was retested for steroids on May 20, 2014. The test results, as documented in a May 27, 2014 SOAP² note, show Appellant tested negative for steroids, but had low testosterone – low enough to qualify for hormone replacement therapy.

On June 19, 2014, Calhoun Falls Police Department submitted a Personnel Change in Status – Hire Form to the Academy indicating it intended to hire Appellant as a deputy. Shortly thereafter, the Academy revoked Appellant's law enforcement certification due to substance abuse. Appellant contested the Academy's decision and a contested case hearing was held on August 26, 2014.

At the contested case hearing, Appellant, Lieutenant Reeves, and Sergeant Brown testified. Appellant was represented by counsel. Lieutenant Reeves testified first. Lieutenant Reeves recalled the Anderson County Sheriff's Office receiving a call from Appellant's wife reporting Appellant and another deputy were using steroids. He indicated the Sheriff's Office

¹ See *Garrity v. State of N.J.*, 385 U.S. 493, 500 (1967) (providing that state and local government officials are entitled to an advisements of rights during an internal investigation).

² SOAP stands for "subjective, objective, assessment, and plan" and is a method physicians use to document notes on a patient's chart.

determined there was reasonable cause to investigate the allegation and reached out to Anderson County to determine how drug tests are administered to personnel. The County connected the Sheriff's Office with AnMed Lab Services in Anderson County. Lieutenant Reeves stated that on April 9, 2014, Appellant and the other deputy were transported to AnMed and administered a urinalysis test for steroids, with the result that both deputies tested positive for steroids. Lieutenant Reeves testified Appellant specifically tested positive for Methandienone and Nandrolone, which are listed as prohibited steroids under statute. He stated the Sheriff's Office contacted the South Carolina Law Enforcement Division ("SLED") after the results came back positive, and two SLED agents attempted to interview Appellant, but Appellant refused and requested an attorney. He further stated that after the SLED interview, he and Sergeant Brown interviewed Appellant. Lieutenant Reeves testified Appellant filled out a form indicating he received his *Garrity* warnings and then gave a verbal statement to him and Sergeant Brown and typed a written statement on his computer. However, Lieutenant Reeves explained that before Appellant could print or sign his written statement, Appellant left to talk with Chief Smith. Lieutenant Reeves moved to enter the AnMed lab report, the internal affairs investigation report, the *Garrity* form, and Appellant's written statement into evidence.

Appellant's counsel objected to the admission of Appellant's written statement because it was unsigned. She also objected to the lab report because there was no affidavit of authenticity or any indication the results were confirmed by a method, specifically gas chromatography, to rule out over-the-counter supplements. She further objected to the internal affairs investigation report because it contained hearsay. She did not object to the *Garrity* form. The Hearing Officer marked Appellant's written statement, the lab report, and the internal affairs investigation report as exhibits and entered the *Garrity* Form into evidence.

On cross-examination, Lieutenant Reeves admitted the Sheriff's Office did not have a formal written and signed complaint from Appellant's soon-to-be ex-wife pursuant to Anderson County Sheriff Office's General Order 111. Lieutenant Reeves also denied Appellant at any time asked for a blood test to confirm the results of the urine analysis test. He further stated he was not aware if the urine analysis results were confirmed with gas chromatography. Lieutenant Reeves was not able to directly state that he could produce the chain of custody for the lab report. On Re-Cross-examination, Lieutenant Reeves testified that before the urine analysis was conducted, the only evidence the Sheriff's Office had pointing to Appellant's steroid use was the

ex-wife's tip. He asserted Appellant did not appear physically impaired, did not show a loss of judgment, and did not engage in risky activity or safety violations while on the job.

Sergeant Brown testified and confirmed Lieutenant Reeve's testimony. He stated he was present when Appellant was transported for the urine analysis, he was present the day SLED came to investigate, and he was present when Appellant gave his verbal and written statement to Lieutenant Reeves. Sergeant Brown asserted that during the verbal interview with Lieutenant Reeves, Appellant admitted to taking a steroid that he had leftover from his weight lifting days, but he was only taking it to "get his head back on straight and to help him get back into the gym, motivation, and things of that nature." Sergeant Brown confirmed Appellant exited the interview before he signed his written statement. He affirmed that after Appellant had a short conversation with Chief Smith, Chief Smith informed him and Lieutenant Reeves that Appellant had been terminated. Sergeant Brown took Appellant's firearm, badge, and keys to his vehicle, and drove Appellant home.

On cross-examination, Sergeant Brown admitted he did not recall if Appellant admitted to using an illegal steroid or a prescription steroid. He only remembered Appellant admitting to using a steroid, which Appellant had described as a "stack" that he formerly used in weight lifting competitions. Sergeant Brown testified he was not aware whether gas chromatography was performed to confirm the results of the urine analysis. He did not recall Appellant requesting a blood test.

Appellant testified he has been in law enforcement since 2008. He asserted he was originally hired by the City of Easley as a police officer and then moved to Anderson County. Appellant described how he was a personal trainer and body builder before he became a police officer. Appellant recalled that during his time as a body builder, he took many over-the-counter substances to supplement his diet. He stated he had his own trainer who advised him to take several supplements, and he took the supplements without questioning the trainer. He described three specific over-the-counter supplements he took: Test PSI, ADT, and Mass X. He testified he bought all three of these products from a store like a GNC called Complete Nutrition. Appellant asserted he was advised that some of these supplements could produce a false-positive on a urine screen if he was tested for steroids. He also testified he was advised that if this happened, he should inform the tester of what he was taking and request a blood test to determine if the urine results were false-positive.

Appellant contended that once his AnMed test came back positive, he told Lieutenant Reeves and Sergeant Brown that it was a false-positive, and he wanted a blood test to confirm the results, but he never received a blood test. As a result, Appellant described how he went to a private physician and had a blood test performed, which came back negative for steroids and showed he had low testosterone. Appellant testified he would be willing to regularly submit to blood tests to prove he was not on steroids if the Academy did not revoke his certification. Appellant stated he does not have any other job opportunities if he can no longer be a police officer. He described his special skills as an officer in charge of a K9.

Appellant concluded his testimony by addressing the SOAP note. He identified the note as the note he received from his private physician reflecting the results of his blood test. The Hearing Officer asked whether Sergeant Brown objected to the note, and Sergeant Brown did not. Appellant's attorney then moved for the SOAP note to be put into evidence, and thereafter the Hearing Officer stated it was marked as Appellant's Exhibit Two. After its admittance, Sergeant Brown commented on the Record that there was approximately a month time gap between when Appellant was originally tested by the Sheriff's Office and when Appellant obtained the private test. Appellant's attorney further commented that the County had not provided any testimony about how long a steroid would stay in a person's system, which Sergeant Brown agreed with.

On September 15, 2014, the Hearing Officer issued his findings and recommendation. The Hearing Officer made four findings of fact: (1) Appellant tested positive for Methandienone and Nandrolone on April 9, 2014; (2) Methandienone and Nandrolone are statutory anabolic steroids; (3) the SOAP notes dated May 27, 2014, showed Appellant had low testosterone; and (4) "[i]t is well known that the use of anabolic steroids suppresses the naturally occurring testosterone in the body." As a result of these findings, the Hearing Officer made the following recommendations:

Given [Appellant's] contention that his positive test results came from taking three (3) over-the-counter supplements and Anderson County Sheriff's Office's failure to contest that contention via expert testimony or testimony from qualified medical personnel from AnMed or Lab Corp, I recommend [Appellant] be recertified as a law enforcement officer with two (2) years of probation.

I further recommend that this probationary period include random drug testing, including specific testing for steroid use, at least every three (3) months on dates selected by the Academy. These testing date will be communicated to [Appellant's] employer on the day testing is to occur. Failure to complete the

testing on the dates required by the Academy may be grounds for reopening this case. Testing positive for any controlled substance during the probationary period may be grounds for reopening this case. All drug testing done during this probationary period shall include specific testing for steroid use and, if a test is positive for steroid use, the sample shall be further tested using gas chromatography to determine if the result is from anabolic steroids or over-the-counter supplements.

On October 14, 2014, the South Carolina Law Enforcement Training Council ("the Council"), the adjudicatory body of the Academy, issued a final decision in Appellant's case in which it permanently withdrew Appellant's law enforcement certification. In its final decision, the Council relied on the same findings made by the Hearing Officer. As a result of these findings, the Council stated in its decision:

It is well known that the use of anabolic steroids suppresses the naturally occurring testosterone in the body. Given this result and the significant delay between the original testing performed by Anderson County Sheriff's Office (April 9, 2014) and the follow up testing performed by [Appellant's private physician] (May 20, 2014), the Law Enforcement Training Council find the [SOAP note] actually supports the allegations put forth by the Anderson County Sheriff's Office against [Appellant].

The Academy further stated:

The unlawful use of controlled substances by an active law enforcement officer is reprehensible. In this case, the use particularly of anabolic steroids during active law enforcement service placed the public at great danger. At any moment [Appellant] may have suffered from dangerous side effects of these unlawful substances, for example, a "Roid Rage" incident. For the reasons stated above and due to the great danger [Appellant] placed the public in by taking these substances while an active law enforcement officer, [Appellant's] request to have law enforcement certification reissued to him is permanently denied.

On November 14, 2014, Appellant filed a Notice of Appeal with this Court challenging the Council's decision.

STANDARD OF REVIEW

The Academy assumed the powers of the South Carolina Criminal Justice Academy Division of the South Carolina Department of Public Safety. See S.C. Code § 23-23-10(D) (Supp. 2014) ("Upon the signature of the Governor, all functions, duties, responsibilities, accounts, and authority statutorily exercised by the South Carolina Criminal Justice Academy Division of the Department of Public Safety are transferred to and developed upon the South Carolina Criminal Justice Academy."). Therefore, the Academy is an "agency" under the Administrative Procedures Act ("APA"). See S.C. Code Ann. § 1-23-310(2) (Supp. 2014).

Accordingly, the APA's standard of review governs appeals from decisions of the Academy and its Council. See S.C. Code Ann. § 1-23-600(D) (Supp. 2014) (directing administrative law judges to conduct appellate review in the same manner prescribed in section 1-23-380). Section 1-23-380 provides, in relevant part:

(5) 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.

"Substantial evidence is relevant evidence that, considering the record as a whole, a reasonable mind would accept to support an administrative agency's action." Trimmier v. S.C. Dep't of Labor, Licensing & Regulation, 405 S.C. 239, 246, 746 S.E.2d 491, 494 (Ct. App. 2013). 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, 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)). Furthermore, the reviewing court is prohibited from substituting its judgment for that of the agency as to the weight of the evidence on questions of fact. Grant v. S.C. Coastal Council, 319 S.C. 348, 353, 461 S.E.2d 388, 391 (1995). Finally, the party challenging an agency 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.

A decision is arbitrary and capricious "if it is without a rational basis, is based alone on one's will and not upon any course of reasoning and exercise of judgment, is made at pleasure,

without adequate determining principles, or is governed by no fixed rules or standards.” Deese v. S.C. State Bd. of Dentistry, 286 S.C. 182, 184-85, 332 S.E.2d 539, 541 (Ct. App. 1985). Additionally, a decision is arbitrary and capricious when it is “not supported by competent, substantial, and material evidence, and [i]s based on opinion and speculation testimony.” Wyndham Enterprises, LLC v. City of N. Augusta, 401 S.C. 144, 151, 735 S.E.2d 659, 663 (Ct. App. 2012).

DISCUSSION

This Court has jurisdiction to hear this appeal pursuant to section 1-23-600(D) of the South Carolina Code (Supp. 2014). The Council is the governing and adjudicative body of the Academy. See S.C. Code Ann. §23-23-80 (Supp. 2014). The Council has the authority to “certify and train qualified candidates and applicants for law enforcement officers and provide for suspension, revocation, or restriction of the certification, in accordance with regulations promulgated by the [C]ouncil.” S.C. Code Ann. § 23-23-80(6) (Supp. 2014). A potential employer is not allowed to hire a law enforcement officer unless that officer has been certified by the Council. S.C. Code Ann. § 23-23-40 (Supp. 2014).

The Council sets the minimum requirements for certification and hire, but local departments and offices are encouraged to adopt standards higher than the minimum standards. See S.C. Code Ann. § 23-23-10(B) (Supp. 2014) (“It is the intent of this chapter to encourage all law enforcement officers, departments, and agencies within this State to adopt standards which are higher than the minimum standards implemented pursuant to this chapter, and these minimum standards may not be considered sufficient or adequate in cases where higher standards have been adopted or proposed.”). One of the requirements for certification is the requirement of good character. S.C. Code Ann. Regs. 38-003 (Supp. 2014). This requirement provides:

Every agency who requests certification of any class of law enforcement officer shall certify to the Council that, in the opinion of the employing agency, the candidate is of good character and has not engaged in misconduct as defined in R.38-004.

Regulation 38-004 describes how certification can be denied based on misconduct. It provides, in relevant part:

A. The Council may deny certification based on evidence satisfactory to the Council that the candidate has engaged in misconduct. For purposes of this section, misconduct means:

2. Unlawful use of a controlled substance;

B. In considering whether to deny certification based on misconduct, the Council may consider the seriousness, the remoteness in time and any mitigating circumstances surrounding the act or omission constituting or alleged to constitute misconduct.

S.C. Code Ann. Regs. 38-004 (Supp. 2014). Regulation 38-016 governs withdrawal of certification, and contains almost identical language, in pertinent part, to that of Regulation 38-004:

A. A law enforcement officer, certified pursuant to the provisions of R.38-007 and R.38-008, shall have his or her certification as a law enforcement officer withdrawn by the Council upon the occurrence of any one or more of the following events:

4. Evidence satisfactory to the Council that the officer has engaged in misconduct. For purposes of this section, misconduct means:

b. Unlawful use of a controlled substance;

Provided however that in considering whether to withdraw certification based on misconduct, the Council may consider the seriousness, frequency and any mitigating circumstances surrounding the act or omission constituting or alleged to constitute misconduct.

S.C. Code Ann. Regs. 38-016 (Supp. 2014).

In the South Carolina Code, controlled substances include anabolic steroids as described in Chapter 53, which governs "poisons, drugs and other controlled substances." See S.C. Code Ann. §§ 44-53-10 et seq. (2002 & Supp. 2014). Section 44-53-1510 specifically lists substances that constitute anabolic steroids and Methandienone and Nandrolone are included in this list. Moreover, section 44-53-1530 provides:

It is unlawful for any person who is not a practitioner, pharmacist, or veterinarian to knowingly or intentionally possess anabolic steroids as defined in this article unless the steroids were obtained directly from, or pursuant to a valid prescription or order of, a practitioner while acting in the course of his professional practice.

S.C. Code Ann. § 44-53-1530 (Supp. 2014).

Here, the Council permanently withdrew Appellant's law enforcement certification because it determined Appellant was using illegal anabolic steroids. Appellant contests this finding on two grounds: Appellant claims the Council's decision is not supported by substantial evidence and the Council's decision was arbitrary or capricious or characterized by abuse of discretion. In contrast, the Academy argues substantial evidence supported the Council's decision, which was not arbitrary, capricious, or characterized by an abuse of discretion. I agree with Appellant.

Appellant challenges the Council's decision based on its findings of fact. Appellant argues the Council's first finding of fact, that he tested positive for anabolic steroids on April 9, 2014, is in error because Anderson County Sheriff's Office did not correctly follow Anderson County procedures to obtain and verify the test results. While Appellant objected to the lab report coming into evidence, Appellant did not object to Lieutenant Reeve's testimony that Appellant tested positive for Methandienone and Nandrolone on April 9, 2014. Therefore, this evidence was properly before the Council for their consideration and could be relied upon to conclude Appellant tested positive for anabolic steroids on April 9, 2014, while he was employed as an Anderson County Sheriff's Office. However, Appellant testified, and it was uncontested by the Sheriff's Office, that a urine test could produce a false-positive result and a blood test was necessary to confirm the positive result was not due to use of over-the-counter supplements. Therefore, the evidence is conflicting as to how reliable the urine analysis test results were.

Next, Appellant argues the Council's third finding of fact, that the SOAP note indicated Appellant had low testosterone, was also error because the Council omitted the SOAP note's other finding that Appellant tested negative for anabolic steroids. Admitting the SOAP note itself, and its conclusion that Appellant had low testosterone at the time, was not error. However, the Hearing Officer and the Council then used the information in the SOAP note to make their fourth finding, that "it is well known that the use of anabolic steroids suppresses the naturally occurring testosterone in the body." Appellant argues this finding was error because it is not well known that anabolic steroids suppress the body's naturally occurring testosterone. I agree with Appellant.

Contrary to the Hearing Officer's and the Council's finding, it is not well known that the use of anabolic steroids suppress the naturally occurring testosterone in the body. It was

improper for the Hearing Officer and the Council to make this finding, which is a medical conclusion, in the absence of expert witness testimony.³

In Watson v. Ford Motor Company, the South Carolina Supreme Court held:

Expert testimony may be used to help the jury to determine a fact in issue based on the expert's specialized knowledge, experience, or skill and is necessary in cases in which the subject matter falls outside the realm of ordinary lay knowledge. *Stated differently, expert evidence is required where a factual issue must be resolved with scientific, technical, or any other specialized knowledge.*

Watson v. Ford Motor Co., 389 S.C. 434, 445, 699 S.E.2d 169, 175 (2010) (emphasis added). Moreover, “a lay witness may only testify as to matters within his personal knowledge and may not offer opinion testimony which requires special knowledge, skill, experience, or training.” Id. at 446, 699 S.E.2d at 175 (citing Rules 602 and 701 of the South Carolina Rules of Evidence).

The Hearing Officer and the Council are not medical experts, but took it upon themselves to make a medical conclusion that a test result of low testosterone indicated Appellant was using steroids. Even if a correlation between steroid use and low testosterone is common knowledge, there are factors present in these circumstances that still require expert medical testimony for proper interpretation. For example, Appellant tested positive for steroids on April 9th and negative for steroids on May 20th. This is over a month time-gap. How long does the correlation between steroid use and low testosterone last? – Does a person have to be currently taking steroids for the correlation to be present? Moreover, would it be possible that Appellant has naturally low testosterone, a condition that is widely recognized and marketed to in today's society? Additionally, could over-the-counter supplements cause the same correlation? These questions cannot be answered without the assistance of expert medical testimony.

Further, it is clear from the Council's decision that it, at least in part, *relied* on its own improper medical conclusion in making its decision to permanently deny Appellant law enforcement certification:

Given this result and the significant delay between the original testing performed by Anderson County Sheriff's Office (April 9, 2014) and the follow up testimony performed by [Appellant's private physician] (May 20, 2014), the Law Enforcement Training Council find the [SOAP note] actually supports the allegations put forth by the Anderson County Sheriff's Office against [Appellant].

³ Upon entering the SOAP note into evidence, Appellant's counsel noted the County had not introduced evidence about how the time gap between the initial test and the private test could have impacted the results or interpretation of the results. Appellant did not introduce testimony on this issue either. Furthermore, neither party introduced testimony concerning whether low testosterone is indicative of recent steroid use.

Most disturbing, the Council *interpreted* the time gap, without any evidence, to support its conclusion that Appellant's low testosterone was the result of steroid use. Further, in its decision the Council also commented about the dangers of Appellant suffering from a "Roid Rage," which was, likewise, never discussed, described, or testified to. In conclusion, I find the Council abused its discretion by relying on its own medical conclusions in the absence of expert medical testimony. See Wyndham Enterprises, LLC, 401 S.C. at 151, 735 S.E.2d at 663 (holding a decision is arbitrary and capricious when it is "not supported by competent, substantial, and material evidence, and [i]s based on opinion and speculation testimony.").

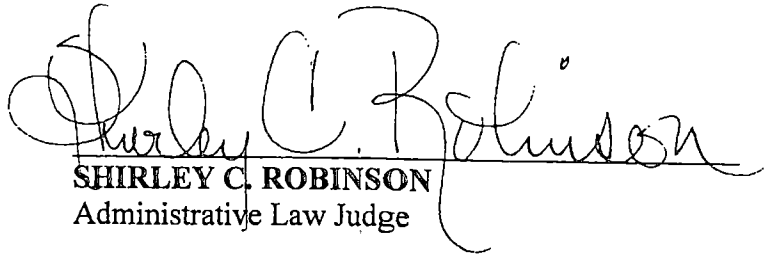
Moreover, while the Council has great latitude in making its decision to withdraw certification - all the regulation requires is "[e]vidence satisfactory to the Council that the officer has engaged in misconduct" - the Council's decision cannot be arbitrary or without evidentiary support. S.C. Code Ann. Regs. 38-016. Even disregarding the Council's improper medical conclusion, the evidence of Appellant's misconduct is tenuous. The only evidence of misconduct entered into evidence is Lieutenant Reeve's testimony that Appellant tested positive for Methandienone and Nandrolone on April 9, 2014, and the reliability of this evidence is questionable in light of Appellant's uncontroverted assertion that a urine analysis cannot always distinguish between anabolic steroids and over-the-counter supplements. Therefore, not only is the Council's decision tainted by an abuse of discretion, it also is not supported by substantial evidence. See § 1-23-380(5)(e) (providing a decision may be reversed if it is "clearly erroneous in view of the *reliable*, probative and substantial evidence on the whole record" (emphasis added)); see Trimmier, 405 S.C. at 246, 746 S.E.2d at 494 ("Substantial evidence is relevant evidence that, considering the record as a whole, a reasonable mind would accept to support an administrative agency's action.").

Accordingly, I find the Academy's decision cannot stand because the decision resulted, at least in part, from an abuse of discretion, and it is not supported by substantial evidence. Accordingly, the Academy's decision is reversed.

ORDER

Based upon the foregoing, **IT IS HEREBY ORDERED** that the Academy's decision shall be and hereby is **REVERSED**.

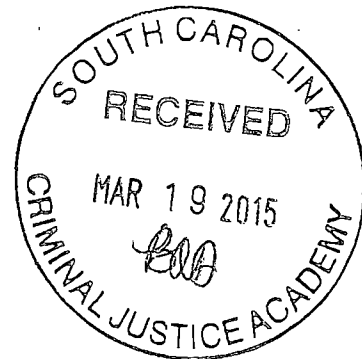
AND IT IS SO ORDERED.


SHIRLEY C. ROBINSON
Administrative Law Judge

March 18th, 2015
Columbia, South Carolina

CERTIFICATE OF SERVICE
This is to certify that the undersigned has in state
served this order in the above entitled action upon all
parties to the cause by depositing a copy hereof,
in the United States mail postage paid or in the emergency
Mail Service addressed to the party(ies) or their attorney(s).

This 18 day of March 2015
By: Jeckelyn Henderson
Clerk of Court



**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

APPEAL FROM THE LAW ENFORCEMENT TRAINING COUNCIL

Director Leroy Smith, on behalf of the Council

ALC Docket No.: 14-ALJ-30-0540-AP

Agency Case No.: 14-CJA-003

Deonta L. Brinston Appellant/Petitioner,

Law Enforcement Training Council Respondent.

BRIEF OF THE APPELLANT

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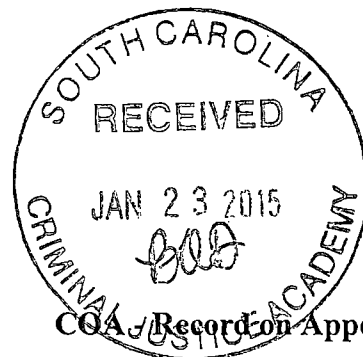
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I. STATEMENT OF ISSUES ON APPEAL

- A. Is the Respondent's Final Agency Decision to permanently deny Appellant law enforcement certification clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record?
- B. Is the Respondent's Final Agency Decision to permanently deny Appellant law enforcement certification arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion?

II. STATEMENT OF THE CASE

Petitioner/Appellant respectfully appeals the final agency decision of the Criminal Justice Academy Training Council dated October 14, 2014, and served upon Appellant by letter dated October 15, 2014, permanently denying him certification as a law enforcement officer in South Carolina (R. pp. 9-12, 244) despite the Hearing Officer's Recommendation that Appellant be certified on a two year probationary status with random substance testing at least every three months (R. pp. 233-236).

III. ARGUMENTS

A. Facts and Evidence Relevant to the Case

Appellant/Petitioner has been a law enforcement officer in the State of South Carolina continuously since 2008 – a total of approximately six (6) years. (R. p. 115) Appellant is a K9 officer who has used his K9 for narcotics detection, apprehension of felons, chases on foot, and as backup in tense and difficult situations. (R. p. 123-124) Appellant comes from a family of law enforcement officers, one of whom was killed in the line of duty. (R. p. 123).

In or about the Spring of 2014, Appellant and his wife were embroiled in a contested divorce and custody action involving Appellant's young daughter. (R. p. 124) Around March 2,

2014, Appellant's wife made a verbal report to the Anderson County Sheriff's Office alleging that Appellant and another officer (who was his then roommate) had allegedly used steroids. (R. pp. 83, 91). Anderson County General Order 111 requires that "All formal complaints will be taken in writing on an Employee Complaint Form and should be signed by the complainant (unless received anonymously) to document receipt of the complaint." (Tr. pp. 92-93)(Emphasis added). In violation of this policy, ACSO's Internal Affairs investigator, Lt. Steve Reeves, failed to take a written complaint from Appellant's estranged wife and failed to have her sign any such complaint, despite knowing the parties were in the midst of a family court matter. (R. p. 92). The estranged Mrs. Brinston's complaint was the only indication of alleged illegal steroid use by the Appellant. (Tr. p. 104, lms. 3-5).

Specifically, Lt. Reeves testified that:

3 Q: At the time that you all undertook this
4 evaluation, was there any outside evidence
5 other than this complaint by Mr. Brinston's
6 ex-wife, who he was engaged in litigation with,
7 about the fact that he was under the influence
8 of any drugs during work?

9 A: Not other than her, no, ma'am.

10 Q: That he in any way had a physical impairment?

11 A: Mr. Brinston?

12 Q: Yes, sir.

13 A: No, ma'am.

14 Q: A loss of judgment?

15 A: No, ma'am.

16 Q: That he committed any safety violations?
17 A: Not safety violations, no, ma'am.
18 Q: That he had engaged in activity that caused
19 risk of injury or possibility of death to
20 himself or anyone else?
21 A: No, ma'am.
22 Q: And under General Order 107 did he appear to be
23 under the influence of anything that would be
24 an intoxicating substance or other substance
25 that would cause him an inability to perform
1 the duties of his job?
2 A: Not at any time that I've seen him.
3 Q: So the sole suspicion that you had was based on
4 this allegation by Mrs. Brinston?
5 A: Yes, ma'am.

(R. pp. 103-104)

Furthermore, if the ACSO were "notified of conduct or behavior that causes immediate and direct concern for the job fitness of an employee or if there is concern an employee may be a threat to himself/herself or others" or the "supervisor believes an employee needs evaluation for job fitness" they should have made a mandatory referral to the County's Employee Assistance Program rather than terminate Appellant's employment. ACSO GENERAL ORDER 138, EMPLOYEE ASSISTANCE PROGRAM. However, by Lt. Reeves' own testimony, there was no evidence that Appellant met either criteria. (R. pp. 103-104)

Anderson County Sheriff's Office (ACSO)'s actions in testing Appellant for the alleged steroid use without reasonable cause violated Appellant's Fourteenth Amendment rights and Anderson County's own personnel ordinance. Specifically, as an employee of Anderson County, and, pursuant to the Drug-Free Workplace Act of 1988, only three types of drug and alcohol testing are permitted – 1) pre-employment testing, 2) reasonable suspicion testing, and 3) random

testing under a bona fide random testing program. ANDERSON COUNTY CODE, §55-52(e).

"Reasonable suspicion" is defined as:

- (a) *Any employee whose work performance or behavior creates a reasonable suspicion that he/she is unfit for duty and possibly abusing alcohol and drugs.*
- (b) *Any employee who is responsible for an accident on county property or involving county property where there is no reasonable explanation as to the cause or where negligence or carelessness appears to be the cause.*
- (c) *Any employee who is involved in an accident where the county has a reasonable belief that alcohol and/or drug use may have contributed to the employee's involvement in the accident.*
- (d) *Any employee who is responsible for an accident resulting in damage to county property in excess of \$100.00 or injury to other persons where there is not reasonable explanation as to the cause or where negligence or carelessness appears to be the cause.*

ANDERSON COUNTY CODE, §55-52(e)(2)(a-d)

Again, none of those conditions were present. (R. pp. 103-104). However, even if they were, which they were not, Appellant would have been entitled to have further testing performed to eliminate a falsely positive test. Specifically, ACSO failed to do any of the following:

- (7) *... Those samples that test positive on the first screen will be tested more extensively by means of gas chromatography/mass spectrometry (GC/MS) analysis to eliminate any false positive tests.*
- (8) *The laboratory will ensure that the chain-of-custody procedures are adhered to from the time of receipt of urine samples until testing is completed and results are reported. Samples that test positive will be stored by the laboratory for a minimum of one year.*
- (9) *An individual who tests positive may request a second analysis of the original sample. That test will be conducted at the same laboratory used by the county at the individual's expense. The individual can also request a separate retest at another SAMSHA-certified laboratory. In such instances, the laboratory used by the county will send a portion of the original sample to a laboratory designated by the individual. The cost of the retest shall be paid for by the individual.*
- (10) *All individuals required to submit to a test under this policy will receive written notification of drug test results.*

ANDERSON COUNTY CODE, §55-52(F)(7-10)

When asked about this at the hearing, Lt. Reeves admitted that they never performed gas chromatography on the sample (R. p. 96). Reeves also testified that he does not know if gas chromatography/mass spectrometry (GC/MS) was the only way to differentiate between over the counter side effects and illegal steroids. (R. p. 96) Both witnesses for Anderson County admitted they don't even know how GC/MS works. (R. p. 110). They also didn't know (or follow) the Anderson County Personnel Policy for drug testing. (R. p. 102).

Appellant testified that he took over the counter supplements that he had purchased from Complete Nutrition and taken at the instruction of a personal trainer and submitted into evidence the labels from the three supplements which he "stacked" for maximum beneficial results. (R. pp. 118-120, 220). Specifically, Appellant was advised that some of these supplements could falsely test positive as steroids and that he should ask for a blood test to differentiate between these legal agents and illegal steroids. (R. p. 120). Appellant testified that he made such a request after the falsely positive urine screen, but ACSO refused to do so. (R. p. 121). After all these violations of Appellant's rights, when SLED and ACSO questioned Appellant and gave him *Garrity* warnings, Appellant invoked his right to an attorney. Once he did so, Chief Smith was called in to meet with Appellant and terminated Appellant's employment with ACSO. (Tr. pp. 21, 31). ACSO thereafter filed a separation notice with the Criminal Justice Academy alleging cause for its termination of Appellant and then challenged Appellant's certification request when he was hired by Calhoun Falls Police Department.

The timeline of important events is as follows:

3/2/14 – Oral complaint from the estranged Mrs. Brinston to ACSO

4/9/14 – Urine test taken by Appellant

4/24/14 – Urine results reported to ACSO

4/29/14 – Meeting with Appellant regarding urine results

5/13/14 – ACSO sent a personnel change form (PCF) to CJA alleging Appellant engaged in unlawful use of a controlled substance

5/20/14 – Copy of the PCF filed by the ACSO was sent to Appellant pursuant to S.C. Code of Regulations, §38-009 and Appellant had private testing performed by a sports medicine doctor who evaluated it using liquid chromatography/mass spectrometry (LC/MS) and confirmed no illegal steroid use

6/19/14 – Calhoun Falls PD hires Appellant

7/1/14 – PCF received by CJA from Calhoun Falls

8/26/14 – Contested case hearing held by CJA regarding certification of Appellant for Calhoun Falls

The hearing officer, Robin E. Morse, Director of the Clinton Department of Public Safety, who observed the witnesses and took the testimony at the hearing, made his recommendation to the Training Council as follows:

Given Mr. Brinston's contention that his positive test results came from taking three (3) over-the-counter supplements and Anderson County Sheriff's Office's failure to contest that contention via expert testimony or testimony from qualified medical personnel from AnMed or Lab Corp, I recommend Mr. Brinston be recertified as a law enforcement officer with two (2) years of probation.

I further recommend that this probationary period include random drug testing, including specific testing for steroid use, at least every three (3) months on dates selected by the Academy. These testing dates will be

communicated to Mr. Brinston's employer on the day testing is to occur. Failure to complete the testing on the dates required by the Academy may be grounds for reopening this case. Testing positive for any controlled substance during the probationary period may be grounds for reopening this case. All drug testing done during this probationary period shall include specific testing for steroid use and, if a test is positive for steroid use, the sample shall be further tested using gas chromatography to determine if the result is from anabolic steroids or over-the-counter supplements. Prior to all drug testing Mr. Brinston shall provide to his employer, in a sealed and initialed over the seal envelope, a written list of any prescriptions, over-the-counter medications and/or supplements he is currently taking or has taken during the 45 days prior to testing. This list shall be submitted to the Academy, still in its sealed envelope, should Mr. Brinston test positive for any controlled substance(s) during this probationary period.

(R. pp. 235-236)

In its October 14, 2014 decision, which was mailed to Appellant on October 15, 2014, the Respondent rejected the Hearing Officer's recommendation and the evidence presented at the hearing, and, instead, determined that:

The unlawful use of controlled substances by an active law enforcement officer is reprehensible. In this case, the use particularly of anabolic steroids during active law enforcement service placed the public at great danger. At any moment Mr. Brinston may have suffered from dangerous side effects of these unlawful substances, for example, a "Roid Rage" incident. For the reasons stated above and due to the great danger Mr. Brinston placed the public in by taking these substances while an active law enforcement officer, Mr. Brinston's request to have law enforcement certification reissued to him is permanently denied. //

(R. pp. 11-12)

Appellant appeals this finding, as it is contrary to any evidence submitted by the ACSO of any danger Appellant exhibited or placed the general public in and the testimony of both ACSO officers. (R. pp. 103-104) and asks that the permanent denial of his law enforcement certification be overturned.

B. Standard Of Review

"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. "

S.C. CODE ANN §1-23-380(5)

C. Legal Discussion

"The South Carolina Law Enforcement Training Council is authorized to: (6) certify and train qualified candidates and applicants for law enforcement officers and provide for suspension, revocation, or restriction of the certification, in accordance with regulations promulgated by the council." S.C. CODE ANN. §23-23-80(6)

"The Department may deny certification based on evidence satisfactory to the Department that the candidate has engaged in misconduct. For purposes of this section, misconduct means:

- * * * 2. Unlawful use of a controlled substance. In considering whether to deny certification based on misconduct, the Department may consider the seriousness, the remoteness in time and

any mitigating circumstances surrounding the act or omission constituting or alleged to constitute misconduct.” S.C. Code of Regulations, §38-004(A)(2)&(B).

- (1) The Respondent’s Final Agency Decision is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record and is an abuse of discretion based on an error of law, because it is grounded in factual conclusions without evidentiary support**

In the case at bar, Appellant’s former employer, the Anderson County Sheriff’s Office (ACSO) asserted that its urine screening of April 9, 2014, which tested positive for two steroids listed on the prohibited list of anabolic steroids. Appellant attempted to have the results confirmed by further testing, but the ACSO refused. (R. pp. 120-121). The ACSO failed to abide by its own General Orders or County Personnel Policy (*supra* pp. 1-5).

As a threshold matter, had the ACSO complied with its own policies, Appellant would never have been subjected to the illegal testing he was. Regardless, had ACSO followed its own General Orders and Personnel Policy, gas chromatography and mass spectrometry would have been performed on the sample to differentiate illicit substances from over-the-counter agents. The fact that the required procedures under both the County’s own policies and the Sheriff’s own General Orders were not followed was proven by Appellant and admitted by the ACSO’s own witnesses. (R. pp. 92-93, 96, 102-104, 111, 120-121).

Our Supreme Court has defined substantial evidence as evidence that, in viewing the record as a whole, would allow reasonable minds to reach the same conclusion the Appellate Panel reached. Lark v. Bi-Lo, Inc., 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981). “Substantial evidence is not a mere scintilla of evidence, but evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion the agency reached.” Tiller v. Nat’l Health Care Ctr. of Sumter, 334 S.C. 333, 338, 513 S.E.2d 843, 845 (1999).

Further, an abuse of discretion occurs when there is an error of laws grounded in factual conclusions that are without evidentiary support. Clark v. Cantrell, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000).

The only evidence presented in support of the Agency's finding that Appellant actually engaged in misconduct was the unverified lab results (which had no chain of custody, no affidavit of authenticity, no confirming gas chromatography/mass spectrometry, and no other medical review performed) and ACSO's witnesses testimony about those results. Appellant had always maintained that the results were "false positives." Specifically, both officers from the ACSO testified upon cross-examination that Appellant never admitted unlawful use of a controlled substance – i.e. illegal anabolic steroids. (R. pp. 109-110)

Specifically, the Agency made only four findings of fact:

It is found as a fact:

1. Mr. Brinston tested positive on April 9, 2014, for Methandienone and Nandrolone.
2. Methandienone and Nandrolone are both listed as anabolic steroids under S.C. Code §44-53-1510(A).
3. The SOAP Note dated May 27, 2014, from Powdersville Internal Medicine (Brinston Exhibit #2) noted that Mr. Brinston's "Total Testosterone... was 116.3 (range 348.0-1197.0)."
4. It is well known that the use of anabolic steroids suppresses the naturally occurring testosterone in the body.

(R. p. 11)

The first finding of fact, that Appellant tested positive for two steroids, clearly omits all the evidence Appellant developed about the integrity of those results absent the required

safeguards provided by the Anderson County Code and the Rules of Evidence for the admission of said results.

The third finding of fact, omits the physician's other findings of no steroid use.

However, the fourth finding of fact is the most legally troubling. There was no expert testimony put forth by the Panel or the ACSO about the relationship between steroids and testosterone levels – clearly a scientific fact which would require medical expertise to establish. Further, after a thorough search of the largest body of “well known” data (aka the world wide web) there was nothing of the sort found to support this contention.

Based upon these four findings of fact, the Agency concluded that:

The unlawful use of controlled substances by an active law enforcement officer is reprehensible. In this case, the use particularly of anabolic steroids during active law enforcement service placed the public at great danger. At any moment Mr. Brinston may have suffered from dangerous side effects of these unlawful substances, for example, a “Roid Rage” incident. For the reasons stated above and due to the great danger Mr. Brinston placed the public in by taking these substances while an active law enforcement officer, Mr. Brinston's request to have law enforcement certification reissued to him is permanently denied. //

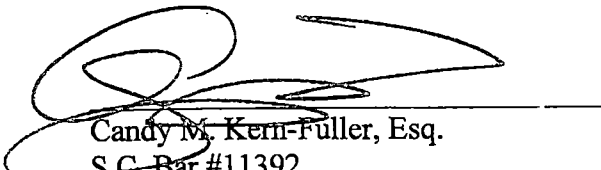
(R. pp. 11-12)

Accordingly, based on the lack of evidence and testimony regarding no evidence of actual use of illicit anabolic steroids, the CNE positive urine screen that was NEVER verified pursuant to Anderson County's own policies, Appellant's requests and the Rules of Evidence, and the *sua sponte* and improper medical conclusions made by the Hearing Officer and the Panel, there is not substantial evidence when considering the record as a whole that would allow reasonable minds

to reach the conclusion the agency reached. Further, the Agency's determination of its sanction is an error of law which is grounded in factual conclusions that are without evidentiary support.

IV. CONCLUSION

The Final Agency Decision should be overturned and Appellant's certification as a Law Enforcement Officer re-issued because the Respondent's Final Agency Decision is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record and is an abuse of discretion based on an error of law, because it is grounded in factual conclusions without evidentiary support.

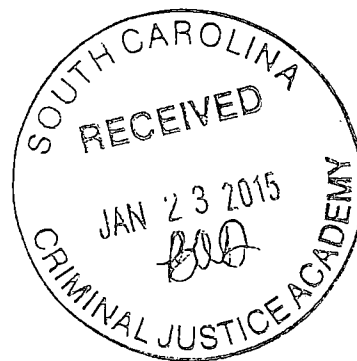


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January 22, 2015



STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Deonta L. Brinston.

Appellant,

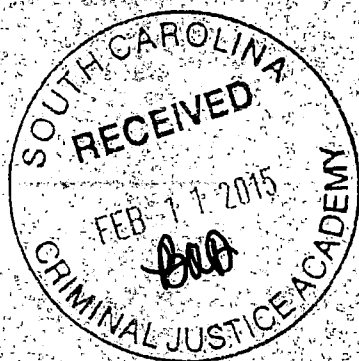
VS

South Carolina Department of Criminal
Justice,

Respondent:

Docket No. 14-ALJ-30-0540-AP

BRIEF OF RESPONDENT



FILED

FEB 03 2015

SC ADMIN. LAW COURT

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February 9, 2015

FILED

FEB 09 2015

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STATEMENT OF ISSUES ON APPEAL

- I. THE NOTICE OF APPEAL WAS UNTIMELY SERVED IN VIOLATION OF RULES 3 AND 33, SCALCR, THEREFORE, THIS COURT NO LONGER HAS JURISDICTION AND THIS APPEAL MUST BE DISMISSED.
- II. THE FINAL AGENCY DECISION TO DENY APPELLANT LAW ENFORCEMENT CERTIFICATION IS NOT CLEARLY ERRONEOUS IN VIEW OF THE RELIABLE, PROBATIVE, AND SUBSTANTIAL EVIDENCE OR ARBITRARY, CAPRICIOUS, CHARACTERIZED BY AN ABUSE OF DISCRETION, OR CLEARLY UNWARRANTED EXERCISE OF DISCRETION.
 - a. THE LAW ENFORCEMENT TRAINING COUNCIL IS NOT REQUIRED BOUND BY THE POLICIES AND PROCEDURES OF THE ANDERSON COUNTY SHERIFF'S OFFICE
 - b. REQUIREMENTS OF DRUG-FREE WORKPLACE ACT OF 1988 ARE NOT BINDING ON THE COUNCIL IN THIS CASE
 - c. GAS CHROMATOGRAPHY/MASS SPECTROMETRY ANALYSIS OF APPELLANT'S URINE SAMPLE WAS PERFORMED
 - d. RETESTING OF APPELLANT'S ORIGINAL SAMPLE WAS NEVER REQUESTED BY APPELLANT
 - e. LANGUAGE IN THE SANCTION SECTION OF THE FINAL AGENCY ORDER IS WITHIN THE AUTHORITY OF THE COUNCIL UNDER S.C. CODE §23-23-80
 - f. ARGUMENTS AGAINST THE FINDINGS OF FACT CONTAINED IN THE FINAL AGENCY ORDER ARE MISPLACED
- III. THE RECORD SUPPORTS THE DENIAL OF LAW ENFORCEMENT CERTIFICATION TO APPELLANT

STATEMENT OF THE CASE

On May 13, 2014, the South Carolina Criminal Justice Academy (hereinafter, "Academy") received a Personnel Change in Status Report of Separation for Appellant alleging Appellant engaged misconduct by unlawfully using a controlled substance. On July 1, 2014, the Academy received a Personnel Change in Status Report of Hire from the Calhoun Falls Police Department for Appellant stating they hired Appellant on June 19, 2014 (ROA, pages 223-224). On August 26, 2014, a contested case hearing was held regarding the allegation filed by Appellant's prior employer, the Anderson County Sheriff's Office (ROA, pages 78-222).

Appellant was represented by Candy Kern-Fuller, Esquire in the contested case hearing (ROA, page 79). Internal Affairs Investigators Steve Reeves and Jonathon Brown were present on behalf of the Anderson County Sheriff's Office, but presented narrative testimony only and were not allowed to function as legal representatives (Id.). Three (3) witnesses provided testimony: Lt. Reeves, Investigator Brown, and Appellant (ROA, pages 83-128).

On April 2, 2014, Appellant's soon-to-be ex-wife reported to the Anderson County Sheriff's Office that Appellant and another Anderson County Sheriff's Deputy were taking illegal steroids (ROA, page 83, line 15-page 7, line 3 and page 91, lines 15-18). Based on this report, Appellant and the other deputy were both required to submit to a specialized steroid urine test through AnMed Laboratory Services on April 9, 2014 (ROA, page 83, line 24-page 84, line 20). Appellant and the other deputy tested positive for Methandienone (ROA, page 84, line 21-page 8, line 1). Appellant also tested positive for Nandrolone (Id.). Methandienone and Nandrolone are both listed as anabolic steroids

under S.C. Code §44-53-1510(A) (ROA, page 85, lines 1-3).

Appellant contended he tested positive for Methandienone and Nandrolone because he was taking three (3) over-the-counter supplements: Test PSI, Alpha Mass X, and A-D-T (ROA, page 116, line 8-page 120, line 1 and page 220). To support this contention, Appellant submitted a SOAP Note dated May 27, 2014 from Powdersville Internal Medicine (ROA pages 221-222). This SOAP Note stated Appellant had returned to review his labs from May 20, 2014 (ROA, page 221). This SOAP Note did not indicate the presence of any anabolic steroids, but it did note that Appellant's "Total Testosterone... was 116.3 (range 348.0-1197.0)" (*Id.*).

In its' final agency decision the Law Enforcement Training Council (hereinafter, "Council") specifically found that "[i]t is well known that the use of anabolic steroids suppresses the naturally occurring testosterone in the body" (ROA, page 10, lines 5-6). The Council also found that the "significant delay between the original testing performed by Anderson County Sheriff's Office (April 9, 2014) and the follow up testing performed by Powdersville Internal Medicine (May 20, 2014)... [resulted in] the Powdersville Internal Medicine SOAP Note actually support[ing] the allegations put forth by the Anderson County Sheriff's Office against" Appellant (ROA, page 10, lines 6-11).

During the contested case hearing, Appellant objected to the admission of the written LabCorp test results (ROA, pages 213-214) on the basis that there was no affidavit of authenticity, the test results didn't show the limits on the pages that confirm positive, there was no medical review process, and there was no gas chromatography performed on the sample (ROA, page 88, lines 12-24). Despite these objections to the LabCorp test results, Appellant never objected to Internal Affairs Investigator Reeves'

testimony that Appellant was required to submit to a specialized steroid urine test through AnMed Laboratory Services on April 9, 2014 and that Appellant tested positive for Methandienone and Nandrolone (ROA, page 83, line 24-page 85, line 1).

On September 15, 2014, Robin E. Morse, Director of the Clinton Department of Public Safety, member of the Council, and hearing officer for this contested case hearing, issued his written, non-binding, recommendation to the full Council (ROA, pages 233-238). Director Morse recommended the Council grant Appellant's request for recertification with two (2) years of probation and random drug testing, including specific testing for steroid use, at least every three (3) months on dates selected by the Academy (ROA, pages 233-236).

On October 8, 2014, the full Council, after receiving Director Morse's recommendation, the hearing transcript, and all evidence from the hearing and making themselves familiar with the facts of this case, voted and unanimously (including Director Morse) decided that Appellant was no longer able to be certified as a law enforcement officer in the State of South Carolina.¹ Director Leroy Smith, Co-Chairman of the Council, issued the final, written agency decision of the Council on October 14, 2014 (ROA pages 4-7) and this final agency decision was mailed to Appellant's Counsel October 15, 2014 (ROA, pages 241-243). Appellant's Counsel also received this final agency decision via e-mail on October 15, 2014 (ROA, pages 244-246). According to the Product and Tracking Information provided by the U.S. Postal Service, Appellant mailed his Notice of Appeal to Respondent on November 20, 2014, one day past the date

¹¹ Chief Mark A. Keel, Chairman of the Council, was not present for this vote, as he had not yet arrived at the Training Council meeting. Also, the following Council members voted via their proxy/representative: Attorney General Alan Wilson, Director Bryan B. Stirling, Director Alvin A. Taylor, and Sheriff Bruce M. Bryant.

Appellant was required to serve his notice of appeal (ROA, pages 247-248).

Due to the late service of the Notice of Appeal, on November 21, 2014 Respondent filed a motion to dismiss the appeal (ROA, pages 41-58 and pages 249-258). On December 15, 2014, Appellant filed *Appellant's Reply [sic] to Motion to Dismiss* (ROA, pages 30-40). On December 16, 2014, Respondent filed Respondent's *Reply to Appellant's Reply [sic] to Motion to Dismiss* (ROA, pages 13-29 and page 274-280). On December 19, 2014, this Court issued an *Order Denying Motion to Dismiss* and setting deadlines for the filing of the Record on Appeal, Briefs, and Reply brief (ROA, pages 6-7 and page 289). The *Record on Appeal* was filed on December 23, 2014 and on January 22, 2015, Appellant filed *Brief of Appellant*.

STANDARD OF REVIEW

The Administrative Procedures Act (S.C. Code §§1-23-310 to -400) “governs appellate review of a final decision from an administrative agency.” *Hill v. Eagle Motor Lines*, 373 S.C. 422, 427, 645 S.E.2d 424, 428 (2007) (citation omitted). In appeals taken pursuant to the Administrative Procedures Act,

[t]he 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.

S.C. Code §1-23-380(5)(a)–(f) (Supp.2013). However, the Court “may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact.” S.C. Code Ann. §1-23-380(5); *MRI at Belfair, LLC v. S.C. Dep’t of Health & Envtl. Control*, 379 S.C. 1, 6, 664 S.E.2d 471, 474 (2008). Additionally, “[a]dministrative agencies are afforded wide latitude in making decisions, as shown in the deferential standard of appellate review.” *Heater of Seabrook, Inc. v. Public Service Com’n of South Carolina*, 332 S.C. 20, 503 S.E.2d 739 (1998). “Under the standard of review applicable to decision of administrative agencies ‘substantial evidence’ is not a mere scintilla of evidence, not the evidence viewed blindly from one side of the case, but

is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion the administrative agency reached in order to justify its action.” *Summersell v. South Carolina Dept. of Public Safety*, 334 S.C. 357, 513 S.E.2d 619 (S.C. App. 1999). “The burden is on appellants to prove convincingly that an administrative agency’s decision is unsupported by the evidence.” *Tennis v. South Carolina Dept. of Social Services*, 355 S.C. 551, 585 S.E.2d 312 (S.C. App. 2003).

ARGUMENT

- I. THE NOTICE OF APPEAL WAS UNTIMELY SERVED IN VIOLATION OF RULES 3 AND 33, SCALCR, THEREFORE, THIS COURT NO LONGER HAS JURISDICTION AND THIS APPEAL MUST BE DISMISSED.

Respondent asserts this matter is erroneously before this Honorable Court due to the Notice of Appeal being untimely served under Rules 3 and 33, SCALCR. Rule 33, SCALCR, states:

The notice of appeal from the final decision of an agency shall be filed with the [Administrative Law] Court and a copy served on each party and the agency whose final decision is the subject of the appeal within thirty (30) days of receipt of the decision from which the appeal is taken.

Further, Rule 3, SCALCR states:

In computing any period of time prescribed or allowed by these rules... the day of the act, event, or default after the designated period of time begins to run is not included. The last day of the period so computed is to be included... Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail, by e-mail, or upon a person designated by statute to accept service, five days shall be added to the prescribed period.

In this case, Appellant, by and through his attorney, Candy M. Kern-Fuller, was notified of the Council's final agency decision regarding Appellant's law enforcement certification via e-mail and U.S. Mail on October 15, 2014 (ROA, pages 9-12 and pages 241-246). Pursuant to Rules 3 and 33, SCALCR, Appellant was required to serve a copy of his notice of appeal on the Council by no later than November 19, 2014.² Thirty (30)

² Not counting October 15, 2014, the day of notice of the final agency decision, Appellant had thirty (30) days, which would take us to November 14, 2014, (Rule 33, SCALCR), plus five (5) days, which takes us to November 19, 2014 (Rule 3, SCALCR), to serve the notice of appeal. Notably, Appellant's Counsel claims she mailed the Notice of Appeal on November 14, 2014, the last day the Notice of Appeal would have been due to be served without the extra five (5) days allowed for under Rule 3, SCALCR, a rule

days from October 15, 2014 was November 14, 2014, the date Appellant claimed in his Proof of Service and Certificate of Service to mail the notice of appeal. Although the “stamps.com” postage label reflected a stamping date, i.e. the date the stamps.com label was created, of November 14, 2014, the United States Postal Service Tracking reflects that the Notice of Appeal was not actually deposited in the U.S. Mail until November 20, 2014, one day past the date Appellant was required to serve his Notice of Appeal. This error on Appellant’s part is fatal to his appeal.

The law in South Carolina regarding the timeliness of service of notice of appeals abundantly clear. Service of the notice of appeal is a jurisdictional requirement, and the Court has no authority to extend or expand the time in which the notice of appeal must be served. *Mears v. Mears*, 287 S.E. 168, 337 S.E.2d 206 (1985); *Conner v. City of Forest Acres*, 348 S.C. 454, 560 S.E.2d 606 (2002) (dismissing parties who had not been timely serviced with a notice of appeal); *McCray v. State*, 271 S.C. 185, 246 S.E.2d 230 (1978) (in absence of a notice of appeal having been given and timely served, the Supreme Court has no jurisdiction over an appeal).

Appellant’s response to Respondent’s motion to dismiss based on this untimely service essentially contained wholly unsupported assertions by Appellant’s Counsel that she placed the Notice of Appeal in a mailbox near her home in Anderson County on November 14, 2014. Moreover, Appellant tried to bolster the assertion that the Notice of

that in the undersigned’s experience is frequently forgotten about by attorneys. Also, notable is that Appellant’s Counsel has filed every single pleading in this case, other than the Notice of Appeal, on the last possible date allowed for by either rule or Court Order, indicating that it is Appellant’s Counsel’s normal practice to file pleadings on the last date allowed. This normal practice, of course, could explain why Appellant’s Counsel seeming appeared, via her claim that she filed the Notice of Appeal on November 14, 2014, to file that one pleading “early” in comparison to her other pleadings.

Appeal was mailed on November 14, 2014, by attaching a screen shot of Appellant's Counsel's computer showing Appellant's Counsel's working files and their last "Date Modified." Beyond the fact that the last date modified does not provide any evidence of the last date the documents were printed and/or accessed,³ the last date of modification is not relevant. The date the Notice of Appeal was mailed is the relevant issue before the Court and this information simply cannot be ascertained by the screen shot provided by Appellant's Counsel.

Respondent fully agreed with most of Appellant's recountance from *Green v. Green*, 320 S.C. 347, 350 (Ct. App. 1995),

Rule 5(b)(1), SCRCP, provides that 'service by mail is complete upon mailing of all pleadings and papers subsequent to the service of the original summons and complaint.' Mailing ordinarily occurs when a documents is deposited with the U.S. Postal Service properly addressed with sufficient postage affixed. *Southbridge Prop., Inc. v. Jones*, 292 S.C. 198, 355 S.E.2d 535 (1987). Any designated mail depository box, whether in a building or along a mail route, constitutes a depository authorized for the receipt and delivery of mail. *Rosen v. United States*, 245 U.S. 467, 62 L. Ed. 406, 38 S.Ct. 148 (1918). Although the postmark date on an envelope is compelling evidence in cases where timely service through the mail is at issue, we are unaware of any authority... indicating the postmark dates is dispositive.

Emphasis added. Respondent notes that the *Green* case was decided nearly 20 years ago, when all mail was still processed by hand.⁴ Today, almost all mail is processed by machines that automatically read the mailing address.⁵ Additionally, U.S. Postal Service

³ As may be seen in ROA, page 20, which shows a date of creation, date last saved, and date last printed.

⁴ The U.S. Postal Service first utilized a handwritten address-reading prototype during Christmas 1997. See <http://www.livescience.com/32290-how-do-post-office-machines-read-addresses.html>, paragraph 3, last accessed December 16, 2014 at 11:35 a.m. (Unable to include a copy in the Record on Appeal as the article will not print correctly from the webpage).

⁵ *Id.* paragraph 6
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Tracking numbers and bar codes are automatically scanned by sorting machines all along the sorting process. So, while Respondent fully agrees with the *Green Court*, that “the postmark date on an envelope is compelling evidence in cases where timely service through the mail is at issue,” Respondent strongly asserts that it is “unaware of any authority... indicating the postmark dates is dispositive.” As a result, this Court is allowed to look to other facts to determine if the Notice of Appeal was timely filed.

“An affidavit of service is Prima facie evidence of service which may be impeached by extrinsic evidence.” *Richardson Construction Company, Inc. v. Meek Engineering and Construction*, 247 S.C. 307, 262 S.E.2d 913, 916 (1980), citing *Laurens Trust Co. v. Copeland*, 154 S.C. 390, 151 S.E. 617 (1930) and *MCC Financial Services, Inc. v. Duffel*, 265 S.C. 519, 220 S.E.2d 127 (1975). In this case, if Appellant’s Counsel had, as she asserts, mailed the Notice of Appeal via a mailbox in Anderson County, the Product and Tracking Information (ROA, page 56) would have reflected passing through the local Anderson County Post Office, the Greenville County Bulk Mailing center (ROA, page 35, paragraph 9), and only then the Easley Post Office.⁶ It does not indicate this. The first time any tracking shows up is the day the “stamp” is created on stamps.com, November 14, 2014. Again, the relevant issue is not when the stamp is put

⁶ The U.S. Postal Service states that packages with USPS Tracking are tracked “End-to-End with up to 11 scan events on shipments – from pick up to the final deliver – with more frequent updates.” See <https://tools.usps.com/go/TrackConfirmAction%21input.action>, last accessed on December 16, 2014 at 11:30 a.m. (ROA, page 22). End-to-End Tracking is defined as including “The items acceptance by USPS, Processing at and departure from each location as it travels through the network from origin to destination, Arrival at the delivery unit, and departure from the delivery until with the carrier, If the item was delivered, as well as the date and time of delivery, If the delivery was attempted, but not successful, with the date and time of the attempt.” See <http://faq.usps.com/adaptivedesktop/faq.jsp?cf=USPSFAQ>, last accessed on December 16, 2014 at 11:32 a.m. (ROA, page 24).

on the Notice of Appeal, it is the date the Notice of Appeal is placed in the mail depository that is relevant.⁷ Nothing shows up on the Product and Tracking Information again until the package is noted as "Accepted at USPS Origin Sort Facility" at the Easley Post Office on November 20, 2014. So, Appellant would have this Court believe that the U.S. Postal Service is so woefully inadequate that not only did it send the Notice of Appeal to the return address (but only as far as the Easley Post Office and not all the way to the business), but that the U.S. Postal Service also had malfunctions with numerous scanning systems so NONE of this erroneous progress was tracked until the Notice of Appeal arrived back in the Easley Post Office. This argument is unbelievable at best and a blatant misrepresentation to this Court at worst.

In this case, the only "evidence" that the Notice of Appeal was mailed on November 14, 2014 is the wholly unsupported assertion by Appellant's Counsel, which Respondent notes was done through a "Statement of Counsel" rather than an Affidavit of Counsel. Respondent finds this fact extremely significant due to the differences in penalties for perjury (which an Affidavit would carry) versus dismissal of case and possible lawyer discipline (which a Statement would carry). Respondent also finds the representations made by Appellant's Counsel in her "Statement of Counsel" to be significant due to the extreme personal interest Appellant's Counsel now has in winning this argument, i.e. if Appellant's Counsel loses the argument it is highly probable she will be sued for malpractice. So, there is no doubt Appellant's Counsel is now highly

⁷ Even Stamps.com does not assert that merely putting postage on a package is sufficient to mail it. The Stamps.com Frequently Asked Questions specifically states that once you "affix your postage to your letter or package" you must "give it to your mail carrier or drop it in the nearest mailbox." See www.stamps.com/postage-online/faqs/, under "How does Stamps.com work." (ROA, pages 26-28).

personally invested in the outcome of this part of Appellant's case.

Appellant used the "Statement of Counsel" to try and bolster his argument that the Notice of Appeal was mishandled by the U.S. Postal Service. Appellant argued the U.S. Postal Service has committed multiple serious errors in the past (although no evidence of these errors is presented, beyond the "Statement of Counsel"). The "Statement of Counsel" alleges that the U.S. Postal Service "lost an entire bag of mail, which it did not locate for other two months" and that Appellant's Counsel had to cancel and re-issue several checks as a result of this event. Appellant's Counsel did not, however, attached any document(s) to her "Statement of Counsel" to back up this baseless allegation: not a cancelled and reissued check, not a letter from the U.S. Postal Service, not a letter to one of her clients explaining the issue. Appellant further tries to bolster his argument that the Notice of Appeal was mishandled by the U.S. Postal Service by attaching a random review of the U.S. Postal Service from a webpage titled <http://usps.pissedconsumer.com> with no explanation as to how that complaint relates to this case. For these reasons and the high level of personal investment Appellant's Counsel now has in this case, the "Statement of Counsel" is not of any use to this Court.

Moreover, the burden is on Appellant to show that he timely served (i.e. mailed) his Notice of Appeal. Other than the Statement of Counsel, NO evidence has been put forth to show Appellant timely served his Notice of Appeal. Although Appellant's Counsel asserts "numerous problems" with the U.S. Postal Service, she elected to only send the Notice of Appeal via U.S. Postal Service. If the issues with the U.S. Postal Service are as severe in her area as has been alleged, she could have used several other modes to serve a copy of the Notice of Appeal. For example, in addition to mailing the

Notice of Appeal via the U.S. Postal Service as required by rule, Counsel could have: e-mailed, faxed, had personally served, sent FedEx, sent UPS, or sent DHL the Notice of Appeal and simply stated in her Certificate of Service and Proof of Service that she sent the Notice of Appeal via the U.S. Postal Service and whatever additional method she selected. For example, Respondent notes that Appellant's Counsel sent *Appellant's Reply* [Sic] to *Motion to Dismiss* via U.S. Postal Service and e-mail to both the Court and Respondent. Additionally, Respondent notes that Appellant's Counsel sent *Brief of Appellant* via U.S. Postal Service and e-mail to the Court.⁸ This could have easily been done with the Notice of Appeal, but it was not. Given the seriousness and gravity of serving a Notice of Appeal in a timely manner and the numerous and significant issues Appellant's Counsel alleges she has encountered with the U.S. Postal Service, it seems sending such a document via multiple methods would be most prudent and reasonable.

Despite Appellant's Counsel Statement of Counsel, the only unbiased evidence of when the Notice of Appeal was received by the U.S. Postal Service is the Product and Tracking Information (ROA, pages 56-57), which shows an "Accepted at USPS Origin Sort Facility" at the Easley Post Office date of November 20, 2014. Therefore, the only unbiased evidence of the date of mailing shows the Notice of Appeal was not mailed

⁸ Respondent notes that an e-mail chain from Ms. Teckla S. Henderson, sent to both parties indicating she had received the Brief of Appellant from Appellant's Counsel, indicated in the section below, the e-mail originally sent by Appellant's Counsel, that Appellant's Counsel had copied Respondent's Counsel on the original e-mail to Ms. Henderson with the Brief of Appellant attached as a PDF. Respondent's Counsel, however, never received that original e-mail from Appellant's Counsel. Respondent's Counsel promptly e-mailed Appellant's Counsel notifying her of this issue and requested Appellant's Counsel re-email a copy of the Brief. As of the date of filing of this Brief, Appellant's Counsel has not responded to Respondent's Counsel's e-mail. Thank goodness the copy mailed via the U.S. Postal Service arrived promptly at Respondent's Counsel's offices on January 23, 2015!

until November 20, 2014, after the deadline for such service as imposed by the rules.

For these reasons, this Court is required, by rule and the case law discussed above, to dismiss this appeal with prejudice and may not entertain any of the arguments put forth by Appellant in his Brief.

II. THE FINAL AGENCY DECISION TO DENY APPELLANT LAW ENFORCEMENT CERTIFICATION IS NOT CLEARLY ERRONEOUS IN VIEW OF THE RELIABLE, PROBATIVE, AND SUBSTANTIAL EVIDENCE OR ARBITRARY, CAPRICIOUS, CHARACTERIZED BY AN ABUSE OF DISCRETION, OR CLEARLY UNWARRANTED EXERCISE OF DISCRETION.

Despite stating he has two (2) broad topics in his Statement of Issues on Appeal, Appellant essentially has running argument throughout his brief from page 1-12. Therefore, although Respondent has done broad "Issues" as well, those broad "Issues" contain sub-issue to assist the Court as it considers the issues in this case.

A. THE LAW ENFORCEMENT TRAINING COUNCIL IS NOT REQUIRED BOUND BY THE POLICIES AND PROCEDURES OF THE ANDERSON COUNTY SHERIFF'S OFFICE

Appellant argues, under the section titled "Facts and Evidence Relevant to the Case," that the Anderson County Sheriff's Office (hereinafter, "Anderson") violated their own policies numerous times during their investigation into Appellant's steroid use. While this may be true, the Council is not bound by Anderson's policies and procedures. Nothing in the Administrative Procedures Act (S.C. Code §1-23-10, et. seq.), Training Act (S.C. Code §23-23-10, et. seq.), or corresponding regulations (S.C. Reg. 38-001, et seq.) holds the Council to the requirements of an individual law enforcement agency's policies and procedures. If fact, it is quite the opposite. It is clear from the language in the Training Act and corresponding regulations that individual law enforcement agencies must conform their policies, procedures, and practices to state-wide standards for certain

things. For example, pursuant to S.C. Regs. 38-021 through 38-028, individual law enforcement agencies must perform driver training at least once a year for each officer and the scope and depth of that training is determined by the above regulations and the job duties each officer is assigned. Certainly an individual law enforcement agency can have a more rigorous standard within their own agency, for example performing the driving training two times each year for each officer, but they cannot do less than is required by the Training Act and regulations. This point is further solidified by the clearly stated legislative intent written in S.C. Code 23-23-10, which states, in part:

(A) In order to ensure the public safety and general welfare of the people of this State, and to promote equity for all segments of society, a program of training for law enforcement officers and other persons employed in the criminal justice system in this State is hereby proclaimed and this chapter must be interpreted to achieve these purposes principally through the establishment of minimum and advance standards in law enforcement selection and training.

(B) It is the intent of this chapter to encourage all law enforcement officers, departments, and agencies within this State to adopt standards which are higher than the minimum standards implemented pursuant to this chapter,... Nothing in this chapter may be construed to preclude an employing agency from establishing qualifications and standards for hiring or training law enforcement officers which exceed the minimum standards set by the Law Enforcement Training Council, hereinafter created,...

(Emphasis added). So, Appellant's arguments that the Council is hamstrung by Anderson's failure to follow their own policies is clearly erroneous. Anderson can have higher standards than the Council, but the Council is only bound by the minimum standards in the Training Act and corresponding regulations.

Moreover, S.C. Reg. 38-004 states:

A. The Council may deny certification based on evidence satisfactory to the Council that the candidate has engaged in misconduct. For purposes of this section, misconduct means:...

2. Unlawful use of a controlled substance;...

B. In considering whether to deny certification based on misconduct, the Council may consider the seriousness, the remoteness in time and any mitigating circumstances surrounding the act or omission constituting or alleged to constitute misconduct.

(Emphasis added). So, while Appellant argues that Anderson's failure to follow their policies is controlling in this case, it is clear the Council may deny certification "...based on evidence satisfactory to the Council..." So, if the testimony of Lt. Reeves was "evidence satisfactory to the Council," as stated in the final agency decision, then this Court has no authority to overrule that factual finding of the Council and the denial of Appellant's request for recertification stands.

B. REQUIREMENTS OF DRUG-FREE WORKPLACE ACT OF 1988 ARE NOT BINDING ON THE COUNCIL IN THIS CASE

Next, Appellant argues that Anderson violated his rights under the Fourteenth Amendment by testing him for steroid use "without reasonable cause." Appellant argues that "pursuant to the Drug-Free Workplace Act of 1988 only three types of drug and alcohol testing are permitted - 1) pre-employment testing, 2) reasonable suspicion testing, and 3) random testing under a bona fide random testing program." The Drug-Free Workplace Act, contained at 41 U.S.C.A. § 8102, et seq., is a federal law dealing with requirements for drug testing in organizations that are federal contractors and/or federal grant recipients. There is no evidence in the record that indicates Anderson is a federal contractor or a federal grant recipient. Therefore, although Anderson's policies may cite the Drug-Free Workplace Act, the requirements of that Act are not binding on the Council in determining whether to give Lt. Reeves' testimony any weight.

Appellant further argues that Anderson did not have "reasonable suspicion," as defined by Anderson's policies, to conduct the steroid testing on Appellant. Again, the Council is not bound by Anderson's policies, as outlined in the argument under section II, A above, so it does not matter whether Anderson had "reasonable suspicion" under Anderson's policies or not.

C. GAS CHROMATOGRAPHY/MASS SPECTROMETRY ANALYSIS OF APPELLANT'S URINE SAMPLE WAS PERFORMED

Appellant continues his argument by again putting forth a policy violation argument, inapplicable to the Council as outlined in section II, A above, this time alleging gas chromatography/mass spectrometry analysis was not performed to ensure Appellant's test was not a false positive. This argument is patently dishonest and false.

During the contested case hearing, Appellant objected to the admission of the written LabCorp test results (ROA, pages 213-214) on the basis that there was no affidavit of authenticity, there was no medical review process, and there was no gas chromatography performed on the sample (ROA, page 11, lines 12-24). Upon review of the LabCorp test results, Respondent observes that it is noted in several places that the test results were confirmed by "LCMSMS," "GCMS," "GC/MS or HPLC/MS/MS" (Id.). A quick google search reveals that "GCMS" and "GC/MS" are abbreviations for Gas Chromatography-Mass Spectrometry. See http://en.wikipedia.org/wiki/Gas_chromatography%E2%80%93mass_spectrometry, last accessed on February 4, 2015 at 2:32 p.m. Another google search shows that "LCMSMS" and "HPLC/MS/MS" are abbreviations for Liquid Chromatography-Mass Spectrometry. See http://en.wikipedia.org/wiki/Liquid_chromatography%E2%80%93mass_spectrometry, last accessed on February 4, 2015 at 54 COA - Record on Appeal

2:34 p.m. So, Appellant's objection to the admissibility of these test results based on "no medical review process" and "no gas chromatography performed on the sample" to ensure the results were not a false positive were grossly misleading to the Hearing Officer, who is not a medical doctor or a lab technician, and Appellant's assertions in his *Brief* that these requirements of Anderson's policies, in addition to being wholly irrelevant for the reasons stated in section II, A above, were not met is also grossly misleading to this Court.

Additionally, Appellant continues his misrepresentations to this Court by stating "Lt. Reeves admitted that they never performed gas chromatography on the sample" (Brief of Appellant, page 5, lines 1-2). This is a blatant misrepresentation of the Lt. Reeves' testimony, which reads as follows:

Q: In sitting here today do you know if they ever conducted gas chromatography on that test?

A: No, ma'am.

So, Lt. Reeves' testimony was that he did not know whether gas chromatography was performed or not. This is not surprising testimony from a police officer who, by all indications given his testimony and profession, is not a doctor or lab technician. Lt. Reeves simply admitted that he did not know whether gas chromatography was performed or not. Following Appellant's logic with this argument, a few lines later (ROA, page 96, lines 10-13) when Lt. Reeves admits he is not sure how long Appellant has been a law enforcement officer, it should be assumed that Appellant has not ever been a law enforcement officer or perhaps hasn't been a law enforcement officer for as long as Court Exhibit #3 to the contested case hearing shows (ROA, pages 207-208).

Such an argument makes no sense. Simply because a witness states they do not have

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knowledge about whether a certain kind of testing occurred, does not lead to a logical leap that the testing didn't occur. Moreover, again gas chromatography testing is not required by the Training Act, the corresponding regulations, or any other legal authority in law enforcement certification cases. Therefore, whether gas chromatography testing was performed or not is entirely irrelevant for purposes of this appeal. All that matters is whether the Council found "evidence satisfactory to the Council" that Appellant committed misconduct, i.e. unlawfully used a controlled substance. S.C. Reg. 38-004.

Interestingly, however, if you remove Appellant's grossly misleading objections to these lab results, Appellant's objection gets cut down to the original affidavit of authenticity argument, which undoubtedly would have been defeated by Lt. Reeves' testimony that these were the results received by Anderson from LabCorp. Thus, without Appellant's grossly misleading objection during the hearing it is highly likely the written lab results would have been admitted into evidence. Such an admission would, of course, have provided even further evidence for the Council to have considered, evidence that certainly would not have been favorable for Appellant.

D. RETESTING OF APPELLANT'S ORIGINAL SAMPLE WAS NEVER REQUESTED BY APPELLANT

Appellant further argues that he was not provided an opportunity to have his original sample retested, as allowed by Anderson policy, again a policy that is not binding on the Council. There is no evidence, however, that Appellant ever requested to have his original sample retested, at the original lab or another SAMSHA-certified lab (ROA, page 94, line 18-page 95, line 25; page 112, lines 13-22; and page 120, line 21-page 121, line 8).

Appellant did testify that he requested a blood test, just as Lt. Reeves testified he

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would have preferred a blood test, but due to limitations within Anderson County's own policies a blood test was not performed (Id.). Despite these limitations, Appellant never requested to have his original sample retested.

Appellant testified that he did have an independent blood test performed by Dr. Walpole of Velocity Sports in Anderson and that the results of that blood test showed "raised above normal" testosterone levels (ROA, page 121, lines 9-25). Significantly, the results of this blood test were not offered into evidence, merely Appellant's testimony that his testosterone levels were "raised above normal" (Id.). Moreover, Appellant's testimony indicates that this additional test by Dr. Walpole was conducted after the Anderson test and prior to the test by Dr. Walpole that Appellant did place into evidence. These indicators imply that at the time Dr. Walpole first tested Appellant, his testosterone was still elevated above normal due to illegal steroids in Appellant's system, hence, the reason these test results were not offered into evidence. Instead, Appellant offered another blood test by Dr. Walpole into evidence (blood draw on 5/20/14) (ROA, page 221-222). This SOAP Note specifically states that Appellant's testosterone levels were "116.3 (range 348.0 – 1197.0). This is hypogonadal range and he qualifies for hormone replacement therapy" (Id.). This SOAP Note also specifically states, "I have discussed this with him [a]nd recommended that we hold off on starting replacement until this is cleared/accepted data." So, Dr. Walpole indicates he had a discussion with Appellant about his low testosterone, not high testosterone. These facts further indicate that Dr. Walpole conducted blood tests on Appellant at least two (2) times: once when they discussed his high testosterone (ROA, page 121, 9-25) and a second time when they discussed his low testosterone (ROA, page 221-222). Such test results would, of course,

support the findings already made by the Council in this case.

E. LANGUAGE IN THE SANCTION SECTION OF THE FINAL AGENCY ORDER IS WITHIN THE AUTHORITY OF THE COUNCIL UNDER S.C. CODE §23-23-80

Next Appellant appeals the findings of the Council that:

The unlawful use of controlled substances by an active law enforcement officer is reprehensible. In this case, the use particularly of anabolic steroids during active law enforcement service placed the public at great danger. At any moment Mr. Brinston may have suffered from dangerous side effects of these unlawful substances, for example, a "Roid Rage" incident. For the reasons stated above and due to the great danger Mr. Brinston placed the public in by taking these substances while an active law enforcement officer, Mr. Brinston's request to have law enforcement certification reissued to him is permanently denied.

Appellant fails to point out that this section of the Final Agency Decision is titled "Sanction" (ROA, page 12). There are separate sections in the Final Agency Decision that are titled "Findings of Fact" and "Conclusions of Law," therefore, by its very title, the Council only intended this section to be interpreted as the "Sanction" for the misconduct the Council had determined Appellant committed. The Council apparently found it was important to have some amount of a public reprimand in the sanction section, which is clearly within the Council's authority (S.C. Code §23-23-80).

F. ARGUMENTS AGAINST THE FINDINGS OF FACT CONTAINED IN THE FINAL AGENCY ORDER ARE MISPLACED

Appellant then objects to the Council's findings stating "The only evidence presented in support of the Agency's findings that Appellant actually engaged in misconduct was the unverified lab results... and ACSO's witnesses testimony about those results" (Brief of Appellant, page 10). As discussed in depth above in section II, A above, Appellant made several grossly misleading objections during the contested case hearing regarding to the admissibility of the lab report and, as a direct result of those

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grossly misleading objections, the lab results were not entered into evidence, they were merely marked as a court exhibit in case there was any appeal from the Final Agency Decision.⁹ Council made their decision based on the Findings of Facts and Conclusions of Law listed in the Final Agency Order (ROA, pages 11-12).

Appellant's arguments regarding the first finding of fact, "Mr. Brinston tested positive on April 9, 2014, for Methandienone and Nandrolone" (ROA, page 11), are essentially based on his questions about the "integrity of those results..." (Brief of Appellant, page 10). The integrity of those test results has already been discussed at length in sections II, A and II, C above. Moreover, as also already discussed above, the Council determines whether misconduct has been committed based on "evidence satisfactory to the Council" (S.C. Reg. 38-004). Therefore, if the Council determined that sworn testimony from Lt. Reeves was "evidence satisfactory to the Council," to deny Appellant's request for recertification, then, even if that were the only evidence, that denial can lawfully stand. Lt. Reeves testimony was not, however, the only evidence the Council had before it.

The Council also had the SOAP Note from Dr. Walpole. Appellant objects to the Council not specifically noting that Dr. Walpole's May 20, 2014 test did not reveal any illegal steroids in Appellant's blood work. Council's failure to note the lack of illegal steroids in Appellant's blood work on May 20, 2014 indicates that Council did not find that to be a particularly relevant fact for their determination.

Appellant then objects to the finding of the Council that "It is well known that the use

⁹ This is common practice at Council contested case hearings so there is no question what evidence was offered at the time of the hearing and to ensure appellate courts have the most full and complete record before them should an appeal occur.

of anabolic steroids suppresses the naturally occurring testosterone in the body” (ROA, page 11). Appellant fails to acknowledge that S.C. Code §1-23-330(4) specifically states “The agency’s experience, technical competence and specialized knowledge may be utilized in the evaluation of the evidence.” The Council is made up of agency heads from eleven (11) different law enforcement agencies, including: the State Law Enforcement Division; the Attorney General’s Office; the Department of Corrections; Probation, Pardon, and Parole Services; the Department of Natural Resources; the Department of Public Safety; two (2) Sheriffs; two (2) Police Chiefs; and one (1) Detention Center. See S.C. Code §23-23-30. These agency heads have, between them, hundreds of years of law enforcement experience. Thus, it is not difficult to understand that, based on their vast years of experience in law enforcement, the Council is aware of at least some of the effects taking anabolic steroids would have on the human body. Moreover, despite Appellant’s claim that “after a thorough search of the largest body of ‘well known’ data (aka the world wide web) there was nothing of the sort found to support this contention,” Respondent’s Counsel was able to locate several articles discussing this very topic with a quick google search using the phrase “effects of taking anabolic steroids hypogonadism.” (Brief of Appellant, page 11).¹⁰

III. THE RECORD SUPPORTS THE DENIAL OF LAW ENFORCEMENT CERTIFICATION TO APPELLANT.

There was un-objected to testimony from Lt. Reeves that:

¹⁰ A small sample of articles regarding this known effect may be found at:
1) <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2360778/>;
2) <http://www.ncbi.nlm.nih.gov/pubmed/19068689>; and
3) <http://www.asih.net/ASIH%E2%80%93Towards%20a%20unified%20hypothesis%20of%20anabolic%20steroid%20action.pdf>. All articles last accessed on 2/5/15 at 3:43 p.m.

- 1) On April 2, 2014, Appellant's soon-to-be ex-wife reported to the Anderson County Sheriff's Office that Appellant and another Anderson County Sheriff's Deputy were taking illegal steroids (ROA, page 83, line 15-page 7, line 3 and page 91, lines 15-18);
- 2) Based on this report, Appellant and the other deputy were both required to submit to a specialized steroid urine test through AnMed Laboratory Services on April 9, 2014 (ROA, page 83, line 24-page 84, line 20);
- 3) The test results showed Appellant tested positive for Methandienone and Nandrolone (ROA, page 84, line 21-page 8, line 1); and
- 4) Methandienone and Nandrolone are both listed as anabolic steroids under S.C. Code §44-53-1510(A) (ROA, page 85, lines 1-3).

Further, there was evidence from a SOAP Note dated May 27, 2014 from Powdersville Internal Medicine stating Appellant had returned to review his labs from May 20, 2014 and there was no indication of the presence of any anabolic steroids, but it did note that Appellant's "Total Testosterone... was 116.3 (range 348.0-1197.0)" (ROA, pages 221-222).

The Council specifically found that "[i]t is well known that the use of anabolic steroids suppresses the naturally occurring testosterone in the body" (ROA, page 10, lines 5-6) and that the "significant delay between the original testing performed by Anderson County Sheriff's Office (April 9, 2014) and the follow up testing performed by Powdersville Internal Medicine (May 20, 2014)... [resulted in] the Powdersville Internal Medicine SOAP Note actually support[ing] the allegations put forth by the Anderson County Sheriff's Office against" Appellant (ROA, page 10, lines 6-11).

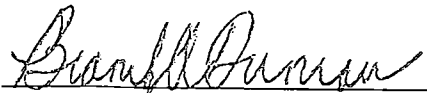
Based on these facts and evidence, the decision of the Council is factually supported by the record in this case and the decision of the Council to deny recertification to Appellant must be upheld.

CONCLUSION

For the reasons stated above, Respondent respectfully requests:

1. This Court to dismiss, with prejudice, this untimely filed and served appeal;
2. Appellant's requested relief be denied:
 - a. because the Final Agency Decision to deny Appellant law enforcement certification is not clearly erroneous in view of the reliable, probative, and substantial evidence and is not arbitrary, capricious, or characterized by an abuse of discretion or clearly unwarranted exercise of discretion;
 - b. because the Record supports the denial of law enforcement certification to Appellant.

Respectfully Submitted,



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Attorney for Respondent

February 9, 2015

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Deonta L. Brinston,	)	Docket No. 14-ALJ-30-0540-AP
	)	
Appellant,	)	
vs.	)	Certificate of Service
	)	
South Carolina Department of Criminal	)	
Justice,	)	
Respondent.	)	
_____	)	

I, Brandy A. Duncan, certify that I have served the within Brief of Respondent by mailing a copy via United States mail, postage prepaid, addressed to:

Candy M. Kern-Fuller, Esquire
Upstate Law Group, LLC
200 East Main Street
Easley, South Carolina 29640

I further certify that all parties required by Rule to be served have been served.

This 9th day of February, 2015.



Brandy A. Duncan, General Counsel
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Attorney for Respondent

FILED

FEB 09 2015

SC ADMIN. LAW COURT
COA - Record on Appeal 63

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Shirley C. Robinson, Administrative Law Judge

Appellate Case No. 2015-000797

 COPY

Deonta L. Brinston, ... Respondent,

v.

South Carolina Department of Criminal Justice, ... Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the Administrative Law Court by depositing a copy of it in the United States Mail, postage prepaid, on April 10, 2015, addressed to The Honorable Shirley C. Robinson, Administrative Law Court 1205 Pendleton Street, Suite 224, Columbia, South Carolina 29201.

Moreover, the Notice of Appeal was filed by the Administrative Law Court with a filing date of April 10, 2015. I received a return receipt for this mailing on April 15, 2015 and received the clocked copy of the Notice of Appeal filed with the Administrative Law Court on April 16, 2015.

April 22, 2015


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APR 10 2015

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

SC ADMIN. LAW COURT

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Shirley C. Robinson, Administrative Law Judge

COPY

Case No. 14-ALJ-30-0540-AP

Deonta L. Brinston,

Respondent,

v.

South Carolina Criminal Justice Academy,

Appellant.

NOTICE OF APPEAL

South Carolina Criminal Justice Academy appeals the decision of the Honorable Shirley C. Robinson dated March 18, 2015. Appellant received a copy of this decision on March 18, 2015.

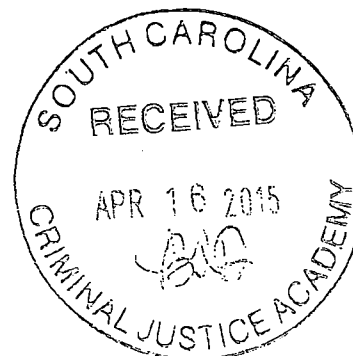
April 10, 2015



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Attorney for Appellant

Other Counsel of Record:

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Attorney for Respondent



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MAR 18 2015

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

SC ADMIN. LAW COURT

Deonta L. Brinston,

Appellant,

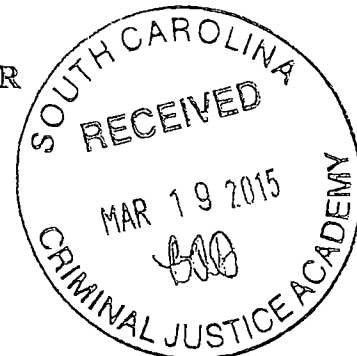
vs.

South Carolina Department of Criminal
Justice,

Respondent.

Docket No. 14-ALJ-30-0540-AP

ORDER



STATEMENT OF THE CASE

This matter is before the Administrative Law Court ("the ALC" or "the Court") for an administrative appeal pursuant to section 1-23-600(D) of the South Carolina Code (Supp. 2014). In this matter, Deonta L. Brinston ("Appellant") appeals the South Carolina Department of Criminal Justice Academy's ("the Academy's") final decision permanently denying him certification as a law enforcement officer due to substance abuse. After Appellant filed his Notice of Appeal, the Academy filed a Motion to Dismiss pursuant to ALC Rule 33, alleging the Notice of Appeal was not timely filed. Appellant filed a Response to the motion to which the Academy filed a Reply. After reviewing the parties' filings, this Court found the Notice of Appeal was timely filed and served and denied the Academy's motion to dismiss. On the merits, I reverse the Academy's final decision because the Academy's decision was arbitrary and capricious and characterized by an abuse of discretion and substantial evidence does not support the Academy's determination.

BACKGROUND

Appellant was formerly employed by the Anderson County Sheriff's Office as a deputy. In early 2014, Appellant was going through a divorce and custody battle. On April 2, 2014, Appellant's soon-to-be ex-wife, reported to the Anderson County Sheriff's Office via a phone call that Appellant and another deputy were using illegal steroids. No formal written complaint was filed. On April 9, 2014, as a result of the report, the Anderson County Sheriff's Office required Appellant and the other deputy to take a specialized urine-based drug test for steroids at AnMed Laboratory Services in Anderson County. On April 24, 2014, the test results showed Appellant and the other deputy tested positive for Methandienone. Appellant also tested positive

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FILED

APR 10 2015

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

SC ADMIN. LAW COURT

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Shirley C. Robinson, Administrative Law Judge

Case No. 14-ALJ-30-0540-AP

Deonta L. Brinston,.....Respondent,

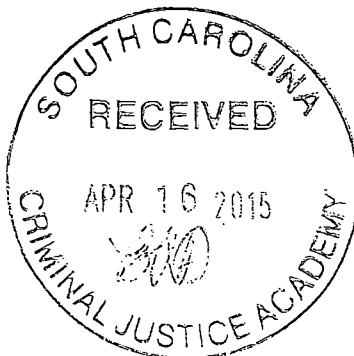
v.

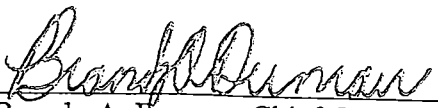
South Carolina Criminal Justice Academy,.....Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Deonta L. Brinston by depositing a copy of it in the United States Mail, postage prepaid, on April 10, 2015, addressed to his attorney of record, Candy M. Kern-Fuller, Esquire, Upstate Law Group, LLC, 200 East Main Street, Easley, South Carolina 29640.

April 10, 2015




Brandy A. Duncan, Chief General Counsel
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(803) 896-7414
(803) 896-8347 (fax)
Attorney for Appellant

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The Honorable Shirley C. Robinson
Administrative Law Court
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Columbia, South Carolina 29201

2. Article Number

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Mary Jane Snelling

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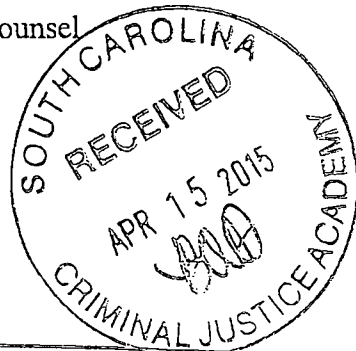
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Brandy Duncan, Chief General Counsel
S.C. Criminal Justice Academy
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Columbia, South Carolina 29212



THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APR 24 2015

APPEAL FROM THE ADMINISTRATIVE LAW COURT SC Court of Appeals

Shirley C. Robinson, Administrative Law Judge

Appellate Case No. 2015-000797



COPY

Deonta L. Brinston, ...Respondent,

v.

South Carolina Department of Criminal Justice, ...Appellant.

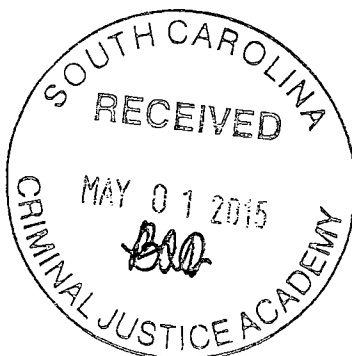
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Moreover, the Notice of Appeal was filed by the Administrative Law Court with a filing date of April 10, 2015. I received a return receipt for this mailing on April 15, 2015 and received the clocked copy of the Notice of Appeal filed with the Administrative Law Court on April 16, 2015.

April 22, 2015

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Attorney for Appellant



FILED

APR 10 2015

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

SC ADMIN. LAW COURT

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Shirley C. Robinson, Administrative Law Judge



COPY

Case No. 14-ALJ-30-0540-AP

Deonta L. Brinston,

Respondent,

v.

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South Carolina Criminal Justice Academy,

APR 24 2015

Appellant.

NOTICE OF APPEAL SC Court of Appeals

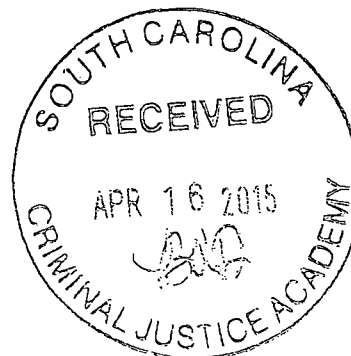
South Carolina Criminal Justice Academy appeals the decision of the Honorable Shirley C. Robinson dated March 18, 2015. Appellant received a copy of this decision on March 18, 2015.

April 10, 2015

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Attorney for Appellant

Other Counsel of Record:

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Upstate Law Group, LLC
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(864) 855-3446 (fax)
Attorney for Respondent



FILED

MAR 18 2015

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

SC ADMIN. LAW COURT

Deonta L. Brinston,

Docket No. 14-ALJ-30-0540-AP

Appellant,

vs.

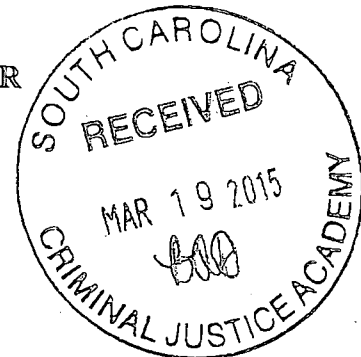
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APR 24 2015 ORDER

South Carolina Department of Criminal
Justice,

SC Court of Appeals

Respondent.



STATEMENT OF THE CASE

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BACKGROUND

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COA - Record on Appeal 11

FILED

APR 10 2015

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

SC ADMIN. LAW COURT

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Shirley C. Robinson, Administrative Law Judge

Case No. 14-ALJ-30-0540-AP

Deonta L. Brinston,.....Respondent,

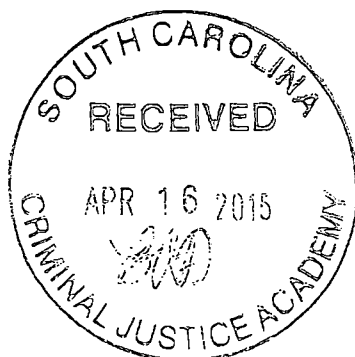
v.

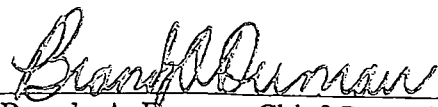
South Carolina Criminal Justice Academy,.....Appellant.

PROOF OF SERVICE

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April 10, 2015




Brandy A. Duncan, Chief General Counsel
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(803) 896-8347 (fax)
Attorney for Appellant

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
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2. Article Number (Transfer from service label) 7011 1570 0001 3219 7780		3. Service Type ☒ Certified Mail ☐ Express Mail ☐ Registered ☐ Return Receipt for Merchandise ☐ Insured Mail ☐ C.O.D. 4. Restricted Delivery? (Extra Fee) ☐ Yes	

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Brandy Duncan, Chief General Counsel
S.C. Criminal Justice Academy
5400 Broad River Road
Columbia, South Carolina 29212

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APR 15 2015
CRIMINAL JUSTICE ACADEMY**

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Shirley C. Robinson, Administrative Law Judge

Appellate Case No. 2015-000797



COPY

Deonta L. Brinston,.....Respondent,

v.

South Carolina Department of Criminal Justice.....Appellant.

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April 22, 2015

Brandy A. Duncan

Brandy A. Duncan, Chief General Counsel

Bar #72052

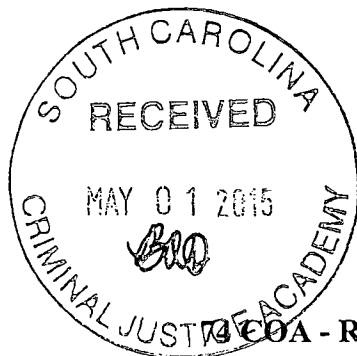
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Attorney for Appellant



FILED

APR 22 2014

SC COA - Record on Appeal

SC ADMIN. LAW COURT

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APR 10 2015

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

SC ADMIN. LAW COURT

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Shirley C. Robinson, Administrative Law Judge



COPY

Case No. 14-ALJ-30-0540-AP

Deonta L. Brinston,

Respondent,

v.

South Carolina Criminal Justice Academy,

Appellant.

NOTICE OF APPEAL

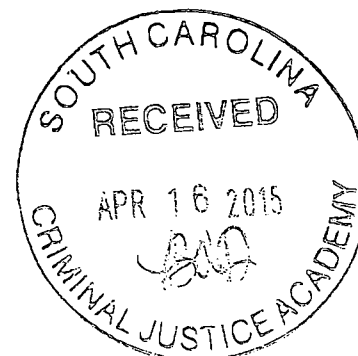
South Carolina Criminal Justice Academy appeals the decision of the Honorable Shirley C. Robinson dated March 18, 2015. Appellant received a copy of this decision on March 18, 2015.

April 10, 2015

Brandy A. Duncan, Chief General Counsel
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Attorney for Appellant

Other Counsel of Record:

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(864) 855-3114
(864) 855-3446 (fax)
Attorney for Respondent



FILED

MAR 18 2015

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

SC ADMIN. LAW COURT

Deonta L. Brinston,

Appellant,

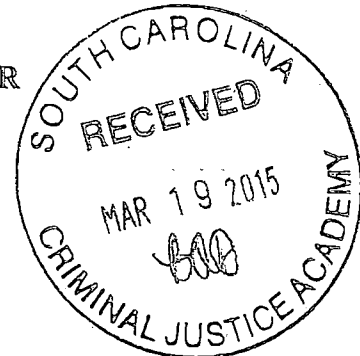
vs.

South Carolina Department of Criminal
Justice,

Respondent.

Docket No. 14-ALJ-30-0540-AP

ORDER



STATEMENT OF THE CASE

This matter is before the Administrative Law Court ("the ALC" or "the Court") for an administrative appeal pursuant to section 1-23-600(D) of the South Carolina Code (Supp. 2014). In this matter, Deonta L. Brinston ("Appellant") appeals the South Carolina Department of Criminal Justice Academy's ("the Academy's") final decision permanently denying him certification as a law enforcement officer due to substance abuse. After Appellant filed his Notice of Appeal, the Academy filed a Motion to Dismiss pursuant to ALC Rule 33, alleging the Notice of Appeal was not timely filed. Appellant filed a Response to the motion to which the Academy filed a Reply. After reviewing the parties' filings, this Court found the Notice of Appeal was timely filed and served and denied the Academy's motion to dismiss. On the merits, I reverse the Academy's final decision because the Academy's decision was arbitrary and capricious and characterized by an abuse of discretion and substantial evidence does not support the Academy's determination.

BACKGROUND

Appellant was formerly employed by the Anderson County Sheriff's Office as a deputy. In early 2014, Appellant was going through a divorce and custody battle. On April 2, 2014, Appellant's soon-to-be ex-wife, reported to the Anderson County Sheriff's Office via a phone call that Appellant and another deputy were using illegal steroids. No formal written complaint was filed. On April 9, 2014, as a result of the report, the Anderson County Sheriff's Office required Appellant and the other deputy to take a specialized urine-based drug test for steroids at AnMed Laboratory Services in Anderson County. On April 24, 2014, the test results showed Appellant and the other deputy tested positive for Methandienone. Appellant also tested positive

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APR 10 2015

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

SC ADMIN. LAW COURT

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Shirley C. Robinson, Administrative Law Judge

Case No. 14-ALJ-30-0540-AP

Deonta L. Brinston,.....Respondent,

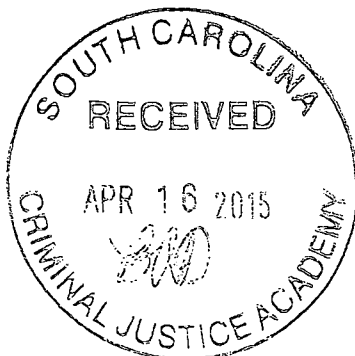
v.

South Carolina Criminal Justice Academy,.....Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Deonta L. Brinston by depositing a copy of it in the United States Mail, postage prepaid, on April 10, 2015, addressed to his attorney of record, Candy M. Kern-Fuller, Esquire, Upstate Law Group, LLC, 200 East Main Street, Easley, South Carolina 29640.

April 10, 2015



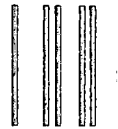
Brandy A. Duncan

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Attorney for Appellant

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☐ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ☐ 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 <i>Mary Jane Snelling</i> ☐ Agent ☐ Addressee	
1. Article Addressed to: The Honorable Shirley C. Robinson Administrative Law Court 1205 Pendleton Street, Suite 224 Columbia, South Carolina 29201		B. Received by (Printed Name) <i>Mary Jane Snelling</i> C. Date of Delivery	
2. Article Number: (Transfer from service label) 7011 1570 0001 3219 7780		D. Is delivery address different from item 1? ☐ Yes If YES, enter delivery address below: ☐ No	
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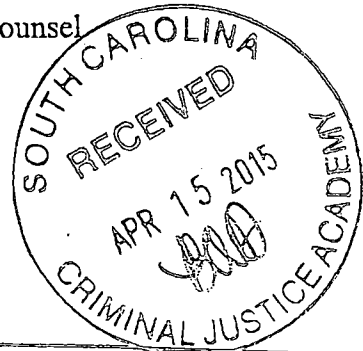
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Brandy Duncan, Chief General Counsel
S.C. Criminal Justice Academy
5400 Broad River Road
Columbia, South Carolina 29212



THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Shirley C. Robinson, Administrative Law Judge

Case No. 14-ALJ-30-0540-AP



COPY

Deonta L. Brinston,

RECEIVED

Respondent,

v.

APR 13 2015

South Carolina Criminal Justice Academy,

SC Court of Appeals

Appellant.

NOTICE OF APPEAL

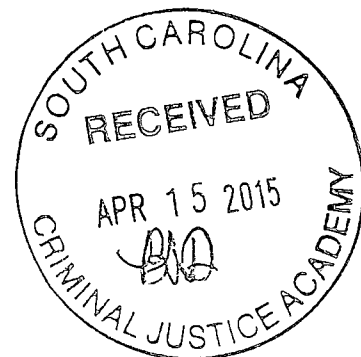
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April 10, 2015

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Attorney for Respondent



FILED

MAR 18 2015

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

SC ADMIN. LAW COURT

Deonta L. Brinston,

Appellant,

vs.

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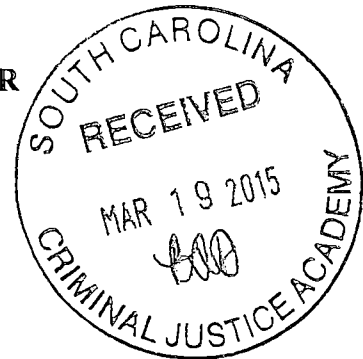
Docket No. 14-ALJ-30-0540-AP

ORDER

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APR 13 2015

SC Court of Appeals



STATEMENT OF THE CASE

This matter is before the Administrative Law Court ("the ALC" or "the Court") for an administrative appeal pursuant to section 1-23-600(D) of the South Carolina Code (Supp. 2014). In this matter, Deonta L. Brinston ("Appellant") appeals the South Carolina Department of Criminal Justice Academy's ("the Academy's") final decision permanently denying him certification as a law enforcement officer due to substance abuse. After Appellant filed his Notice of Appeal, the Academy filed a Motion to Dismiss pursuant to ALC Rule 33, alleging the Notice of Appeal was not timely filed. Appellant filed a Response to the motion to which the Academy filed a Reply. After reviewing the parties' filings, this Court found the Notice of Appeal was timely filed and served and denied the Academy's motion to dismiss. On the merits, I reverse the Academy's final decision because the Academy's decision was arbitrary and capricious and characterized by an abuse of discretion and substantial evidence does not support the Academy's determination.

BACKGROUND

Appellant was formerly employed by the Anderson County Sheriff's Office as a deputy. In early 2014, Appellant was going through a divorce and custody battle. On April 2, 2014, Appellant's soon-to-be ex-wife, reported to the Anderson County Sheriff's Office via a phone call that Appellant and another deputy were using illegal steroids. No formal written complaint was filed. On April 9, 2014, as a result of the report, the Anderson County Sheriff's Office required Appellant and the other deputy to take a specialized urine-based drug test for steroids at AnMed Laboratory Services in Anderson County. On April 24, 2014, the test results showed Appellant and the other deputy tested positive for Methandienone. Appellant also tested positive

for Nandrolone. Both substances are listed as anabolic steroids under section 44-53-1510(A) of the South Carolina Code (2002).

On April 29, 2014, Appellant met with SLED agents to discuss the results of the test. Appellant declined to speak to the agents officially until he talked to an attorney. Appellant then went to a different room, was given his *Garrity*¹ warnings, and spoke with Lieutenant Steven J. Reeves and Sergeant Jonathan Brown of the Anderson County Sheriff's Office pursuant to the office's internal investigation. Appellant gave a verbal and written statement; however, Appellant left to talk with Chief Smith before signing the written statement, which existed only as an electronic document at the time. After a short discussion with Chief Smith, Chief Smith terminated Appellant for use of anabolic steroids. Specifically, Appellant was terminated for violating General Orders - 107 Conduct Unbecoming an Officer (Alcohol and Controlled Substances). On May 13, 2014, the Anderson County Sheriff's Department submitted a Personnel Change in Status form to the Academy, as required by statute, which indicated Appellant was terminated because he engaged in the use of anabolic steroids.

Appellant contested the urine analysis findings, arguing he was taking three over-the-counter supplements for body building, which he was advised could lead to false-positive test results. Appellant went to a private physician and was retested for steroids on May 20, 2014. The test results, as documented in a May 27, 2014 SOAP² note, show Appellant tested negative for steroids, but had low testosterone – low enough to qualify for hormone replacement therapy.

On June 19, 2014, Calhoun Falls Police Department submitted a Personnel Change in Status – Hire Form to the Academy indicating it intended to hire Appellant as a deputy. Shortly thereafter, the Academy revoked Appellant's law enforcement certification due to substance abuse. Appellant contested the Academy's decision and a contested case hearing was held on August 26, 2014.

At the contested case hearing, Appellant, Lieutenant Reeves, and Sergeant Brown testified. Appellant was represented by counsel. Lieutenant Reeves testified first. Lieutenant Reeves recalled the Anderson County Sheriff's Office receiving a call from Appellant's wife reporting Appellant and another deputy were using steroids. He indicated the Sheriff's Office

¹ See *Garrity v. State of N.J.*, 385 U.S. 493, 500 (1967) (providing that state and local government officials are entitled to an advisement of rights during an internal investigation).

² SOAP stands for "subjective, objective, assessment, and plan" and is a method physicians use to document notes on a patient's chart.

determined there was reasonable cause to investigate the allegation and reached out to Anderson County to determine how drug tests are administered to personnel. The County connected the Sheriff's Office with AnMed Lab Services in Anderson County. Lieutenant Reeves stated that on April 9, 2014, Appellant and the other deputy were transported to AnMed and administered a urinalysis test for steroids, with the result that both deputies tested positive for steroids. Lieutenant Reeves testified Appellant specifically tested positive for Methandienone and Nandrolone, which are listed as prohibited steroids under statute. He stated the Sheriff's Office contacted the South Carolina Law Enforcement Division ("SLED") after the results came back positive, and two SLED agents attempted to interview Appellant, but Appellant refused and requested an attorney. He further stated that after the SLED interview, he and Sergeant Brown interviewed Appellant. Lieutenant Reeves testified Appellant filled out a form indicating he received his *Garrity* warnings and then gave a verbal statement to him and Sergeant Brown and typed a written statement on his computer. However, Lieutenant Reeves explained that before Appellant could print or sign his written statement, Appellant left to talk with Chief Smith. Lieutenant Reeves moved to enter the AnMed lab report, the internal affairs investigation report, the *Garrity* form, and Appellant's written statement into evidence.

Appellant's counsel objected to the admission of Appellant's written statement because it was unsigned. She also objected to the lab report because there was no affidavit of authenticity or any indication the results were confirmed by a method, specifically gas chromatography, to rule out over-the-counter supplements. She further objected to the internal affairs investigation report because it contained hearsay. She did not object to the *Garrity* form. The Hearing Officer marked Appellant's written statement, the lab report, and the internal affairs investigation report as exhibits and entered the *Garrity* Form into evidence.

On cross-examination, Lieutenant Reeves admitted the Sheriff's Office did not have a formal written and signed complaint from Appellant's soon-to-be ex-wife pursuant to Anderson County Sheriff Office's General Order 111. Lieutenant Reeves also denied Appellant at any time asked for a blood test to confirm the results of the urine analysis test. He further stated he was not aware if the urine analysis results were confirmed with gas chromatography. Lieutenant Reeves was not able to directly state that he could produce the chain of custody for the lab report. On Re-Cross-examination, Lieutenant Reeves testified that before the urine analysis was conducted, the only evidence the Sheriff's Office had pointing to Appellant's steroid use was the

ex-wife's tip. He asserted Appellant did not appear physically impaired, did not show a loss of judgment, and did not engage in risky activity or safety violations while on the job.

Sergeant Brown testified and confirmed Lieutenant Reeve's testimony. He stated he was present when Appellant was transported for the urine analysis, he was present the day SLED came to investigate, and he was present when Appellant gave his verbal and written statement to Lieutenant Reeves. Sergeant Brown asserted that during the verbal interview with Lieutenant Reeves, Appellant admitted to taking a steroid that he had leftover from his weight lifting days, but he was only taking it to "get his head back on straight and to help him get back into the gym, motivation, and things of that nature." Sergeant Brown confirmed Appellant exited the interview before he signed his written statement. He affirmed that after Appellant had a short conversation with Chief Smith, Chief Smith informed him and Lieutenant Reeves that Appellant had been terminated. Sergeant Brown took Appellant's firearm, badge, and keys to his vehicle, and drove Appellant home.

On cross-examination, Sergeant Brown admitted he did not recall if Appellant admitted to using an illegal steroid or a prescription steroid. He only remembered Appellant admitting to using a steroid, which Appellant had described as a "stack" that he formerly used in weight lifting competitions. Sergeant Brown testified he was not aware whether gas chromatography was performed to confirm the results of the urine analysis. He did not recall Appellant requesting a blood test.

Appellant testified he has been in law enforcement since 2008. He asserted he was originally hired by the City of Easley as a police officer and then moved to Anderson County. Appellant described how he was a personal trainer and body builder before he became a police officer. Appellant recalled that during his time as a body builder, he took many over-the-counter substances to supplement his diet. He stated he had his own trainer who advised him to take several supplements, and he took the supplements without questioning the trainer. He described three specific over-the-counter supplements he took: Test PSI, ADT, and Mass X. He testified he bought all three of these products from a store like a GNC called Complete Nutrition. Appellant asserted he was advised that some of these supplements could produce a false-positive on a urine screen if he was tested for steroids. He also testified he was advised that if this happened, he should inform the tester of what he was taking and request a blood test to determine if the urine results were false-positive.

Appellant contended that once his AnMed test came back positive, he told Lieutenant Reeves and Sergeant Brown that it was a false-positive, and he wanted a blood test to confirm the results, but he never received a blood test. As a result, Appellant described how he went to a private physician and had a blood test performed, which came back negative for steroids and showed he had low testosterone. Appellant testified he would be willing to regularly submit to blood tests to prove he was not on steroids if the Academy did not revoke his certification. Appellant stated he does not have any other job opportunities if he can no longer be a police officer. He described his special skills as an officer in charge of a K9.

Appellant concluded his testimony by addressing the SOAP note. He identified the note as the note he received from his private physician reflecting the results of his blood test. The Hearing Officer asked whether Sergeant Brown objected to the note, and Sergeant Brown did not. Appellant's attorney then moved for the SOAP note to be put into evidence, and thereafter the Hearing Officer stated it was marked as Appellant's Exhibit Two. After its admittance, Sergeant Brown commented on the Record that there was approximately a month time gap between when Appellant was originally tested by the Sheriff's Office and when Appellant obtained the private test. Appellant's attorney further commented that the County had not provided any testimony about how long a steroid would stay in a person's system, which Sergeant Brown agreed with.

On September 15, 2014, the Hearing Officer issued his findings and recommendation. The Hearing Officer made four findings of fact: (1) Appellant tested positive for Methandienone and Nandrolone on April 9, 2014; (2) Methandienone and Nandrolone are statutory anabolic steroids; (3) the SOAP notes dated May 27, 2014, showed Appellant had low testosterone; and (4) "[i]t is well known that the use of anabolic steroids suppresses the naturally occurring testosterone in the body." As a result of these findings, the Hearing Officer made the following recommendations:

Given [Appellant's] contention that his positive test results came from taking three (3) over-the-counter supplements and Anderson County Sheriff's Office's failure to contest that contention via expert testimony or testimony from qualified medical personnel from AnMed or Lab Corp, I recommend [Appellant] be recertified as a law enforcement officer with two (2) years of probation.

I further recommend that this probationary period include random drug testing, including specific testing for steroid use, at least every three (3) months on dates selected by the Academy. These testing date will be communicated to [Appellant's] employer on the day testing is to occur. Failure to complete the

testing on the dates required by the Academy may be grounds for reopening this case. Testing positive for any controlled substance during the probationary period may be grounds for reopening this case. All drug testing done during this probationary period shall include specific testing for steroid use and, if a test is positive for steroid use, the sample shall be further tested using gas chromatography to determine if the result is from anabolic steroids or over-the-counter supplements.

On October 14, 2014, the South Carolina Law Enforcement Training Council ("the Council"), the adjudicatory body of the Academy, issued a final decision in Appellant's case in which it permanently withdrew Appellant's law enforcement certification. In its final decision, the Council relied on the same findings made by the Hearing Officer. As a result of these findings, the Council stated in its decision:

It is well known that the use of anabolic steroids suppresses the naturally occurring testosterone in the body. Given this result and the significant delay between the original testing performed by Anderson County Sheriff's Office (April 9, 2014) and the follow up testing performed by [Appellant's private physician] (May 20, 2014), the Law Enforcement Training Council find the [SOAP note] actually supports the allegations put forth by the Anderson County Sheriff's Office against [Appellant].

The Academy further stated:

The unlawful use of controlled substances by an active law enforcement officer is reprehensible. In this case, the use particularly of anabolic steroids during active law enforcement service placed the public at great danger. At any moment [Appellant] may have suffered from dangerous side effects of these unlawful substances, for example, a "Roid Rage" incident. For the reasons stated above and due to the great danger [Appellant] placed the public in by taking these substances while an active law enforcement officer, [Appellant's] request to have law enforcement certification reissued to him is permanently denied.

On November 14, 2014, Appellant filed a Notice of Appeal with this Court challenging the Council's decision.

STANDARD OF REVIEW

The Academy assumed the powers of the South Carolina Criminal Justice Academy Division of the South Carolina Department of Public Safety. See S.C. Code § 23-23-10(D) (Supp. 2014) ("Upon the signature of the Governor, all functions, duties, responsibilities, accounts, and authority statutorily exercised by the South Carolina Criminal Justice Academy Division of the Department of Public Safety are transferred to and developed upon the South Carolina Criminal Justice Academy."). Therefore, the Academy is an "agency" under the Administrative Procedures Act ("APA"). See S.C. Code Ann. § 1-23-310(2) (Supp. 2014).

Accordingly, the APA's standard of review governs appeals from decisions of the Academy and its Council. See S.C. Code Ann. § 1-23-600(D) (Supp. 2014) (directing administrative law judges to conduct appellate review in the same manner prescribed in section 1-23-380). Section 1-23-380 provides, in relevant part:

(5) 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.

"Substantial evidence is relevant evidence that, considering the record as a whole, a reasonable mind would accept to support an administrative agency's action." Trimmier v. S.C. Dep't of Labor, Licensing & Regulation, 405 S.C. 239, 246, 746 S.E.2d 491, 494 (Ct. App. 2013). 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, 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)). Furthermore, the reviewing court is prohibited from substituting its judgment for that of the agency as to the weight of the evidence on questions of fact. Grant v. S.C. Coastal Council, 319 S.C. 348, 353, 461 S.E.2d 388, 391 (1995). Finally, the party challenging an agency 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.

A decision is arbitrary and capricious "if it is without a rational basis, is based alone on one's will and not upon any course of reasoning and exercise of judgment, is made at pleasure,

without adequate determining principles, or is governed by no fixed rules or standards.” Deese v. S.C. State Bd. of Dentistry, 286 S.C. 182, 184-85, 332 S.E.2d 539, 541 (Ct. App. 1985). Additionally, a decision is arbitrary and capricious when it is “not supported by competent, substantial, and material evidence, and [i]s based on opinion and speculation testimony.” Wyndham Enterprises, LLC v. City of N. Augusta, 401 S.C. 144, 151, 735 S.E.2d 659, 663 (Ct. App. 2012).

DISCUSSION

This Court has jurisdiction to hear this appeal pursuant to section 1-23-600(D) of the South Carolina Code (Supp. 2014). The Council is the governing and adjudicative body of the Academy. See S.C. Code Ann. §23-23-80 (Supp. 2014). The Council has the authority to “certify and train qualified candidates and applicants for law enforcement officers and provide for suspension, revocation, or restriction of the certification, in accordance with regulations promulgated by the [C]ouncil.” S.C. Code Ann. § 23-23-80(6) (Supp. 2014). A potential employer is not allowed to hire a law enforcement officer unless that officer has been certified by the Council. S.C. Code Ann. § 23-23-40 (Supp. 2014).

The Council sets the minimum requirements for certification and hire, but local departments and offices are encouraged to adopt standards higher than the minimum standards. See S.C. Code Ann. § 23-23-10(B) (Supp. 2014) (“It is the intent of this chapter to encourage all law enforcement officers, departments, and agencies within this State to adopt standards which are higher than the minimum standards implemented pursuant to this chapter, and these minimum standards may not be considered sufficient or adequate in cases where higher standards have been adopted or proposed.”). One of the requirements for certification is the requirement of good character. S.C. Code Ann. Regs. 38-003 (Supp. 2014). This requirement provides:

Every agency who requests certification of any class of law enforcement officer shall certify to the Council that, in the opinion of the employing agency, the candidate is of good character and has not engaged in misconduct as defined in R.38-004.

Regulation 38-004 describes how certification can be denied based on misconduct. It provides, in relevant part:

A. The Council may deny certification based on evidence satisfactory to the Council that the candidate has engaged in misconduct. For purposes of this section, misconduct means:

2. Unlawful use of a controlled substance;

B. In considering whether to deny certification based on misconduct, the Council may consider the seriousness, the remoteness in time and any mitigating circumstances surrounding the act or omission constituting or alleged to constitute misconduct.

S.C. Code Ann. Regs. 38-004 (Supp. 2014). Regulation 38-016 governs withdrawal of certification, and contains almost identical language, in pertinent part, to that of Regulation 38-004:

A. A law enforcement officer, certified pursuant to the provisions of R.38-007 and R.38-008, shall have his or her certification as a law enforcement officer withdrawn by the Council upon the occurrence of any one or more of the following events:

4. Evidence satisfactory to the Council that the officer has engaged in misconduct. For purposes of this section, misconduct means:

b. Unlawful use of a controlled substance;

Provided however that in considering whether to withdraw certification based on misconduct, the Council may consider the seriousness, frequency and any mitigating circumstances surrounding the act or omission constituting or alleged to constitute misconduct.

S.C. Code Ann. Regs. 38-016 (Supp. 2014).

In the South Carolina Code, controlled substances include anabolic steroids as described in Chapter 53, which governs "poisons, drugs and other controlled substances." See S.C. Code Ann. §§ 44-53-10 et seq. (2002 & Supp. 2014). Section 44-53-1510 specifically lists substances that constitute anabolic steroids and Methandienone and Nandrolone are included in this list. Moreover, section 44-53-1530 provides:

It is unlawful for any person who is not a practitioner, pharmacist, or veterinarian to knowingly or intentionally possess anabolic steroids as defined in this article unless the steroids were obtained directly from, or pursuant to a valid prescription or order of, a practitioner while acting in the course of his professional practice.

S.C. Code Ann. § 44-53-1530 (Supp. 2014).

Here, the Council permanently withdrew Appellant's law enforcement certification because it determined Appellant was using illegal anabolic steroids. Appellant contests this finding on two grounds: Appellant claims the Council's decision is not supported by substantial evidence and the Council's decision was arbitrary or capricious or characterized by abuse of discretion. In contrast, the Academy argues substantial evidence supported the Council's decision, which was not arbitrary, capricious, or characterized by an abuse of discretion. I agree with Appellant.

Appellant challenges the Council's decision based on its findings of fact. Appellant argues the Council's first finding of fact, that he tested positive for anabolic steroids on April 9, 2014, is in error because Anderson County Sheriff's Office did not correctly follow Anderson County procedures to obtain and verify the test results. While Appellant objected to the lab report coming into evidence, Appellant did not object to Lieutenant Reeve's testimony that Appellant tested positive for Methandienone and Nandrolone on April 9, 2014. Therefore, this evidence was properly before the Council for their consideration and could be relied upon to conclude Appellant tested positive for anabolic steroids on April 9, 2014, while he was employed as an Anderson County Sheriff's Office. However, Appellant testified, and it was uncontested by the Sheriff's Office, that a urine test could produce a false-positive result and a blood test was necessary to confirm the positive result was not due to use of over-the-counter supplements. Therefore, the evidence is conflicting as to how reliable the urine analysis test results were.

Next, Appellant argues the Council's third finding of fact, that the SOAP note indicated Appellant had low testosterone, was also error because the Council omitted the SOAP note's other finding that Appellant tested negative for anabolic steroids. Admitting the SOAP note itself, and its conclusion that Appellant had low testosterone at the time, was not error. However, the Hearing Officer and the Council then used the information in the SOAP note to make their fourth finding, that "it is well known that the use of anabolic steroids suppresses the naturally occurring testosterone in the body." Appellant argues this finding was error because it is not well known that anabolic steroids suppress the body's naturally occurring testosterone. I agree with Appellant.

Contrary to the Hearing Officer's and the Council's finding, it is not well known that the use of anabolic steroids suppress the naturally occurring testosterone in the body. It was

improper for the Hearing Officer and the Council to make this finding, which is a medical conclusion, in the absence of expert witness testimony.³

In Watson v. Ford Motor Company, the South Carolina Supreme Court held:

Expert testimony may be used to help the jury to determine a fact in issue based on the expert's specialized knowledge, experience, or skill and is necessary in cases in which the subject matter falls outside the realm of ordinary lay knowledge. *Stated differently, expert evidence is required where a factual issue must be resolved with scientific, technical, or any other specialized knowledge.*

Watson v. Ford Motor Co., 389 S.C. 434, 445, 699 S.E.2d 169, 175 (2010) (emphasis added). Moreover, "a lay witness may only testify as to matters within his personal knowledge and may not offer opinion testimony which requires special knowledge, skill, experience, or training." Id. at 446, 699 S.E.2d at 175 (citing Rules 602 and 701 of the South Carolina Rules of Evidence).

The Hearing Officer and the Council are not medical experts, but took it upon themselves to make a medical conclusion that a test result of low testosterone indicated Appellant was using steroids. Even if a correlation between steroid use and low testosterone is common knowledge, there are factors present in these circumstances that still require expert medical testimony for proper interpretation. For example, Appellant tested positive for steroids on April 9th and negative for steroids on May 20th. This is over a month time-gap. How long does the correlation between steroid use and low testosterone last? – Does a person have to be currently taking steroids for the correlation to be present? Moreover, would it be possible that Appellant has naturally low testosterone, a condition that is widely recognized and marketed to in today's society? Additionally, could over-the-counter supplements cause the same correlation? These questions cannot be answered without the assistance of expert medical testimony.

Further, it is clear from the Council's decision that it, at least in part, *relied* on its own improper medical conclusion in making its decision to permanently deny Appellant law enforcement certification:

Given this result and the significant delay between the original testing performed by Anderson County Sheriff's Office (April 9, 2014) and the follow up testimony performed by [Appellant's private physician] (May 20, 2014), the Law Enforcement Training Council find the [SOAP note] actually supports the allegations put forth by the Anderson County Sheriff's Office against [Appellant].

³ Upon entering the SOAP note into evidence, Appellant's counsel noted the County had not introduced evidence about how the time gap between the initial test and the private test could have impacted the results or interpretation of the results. Appellant did not introduce testimony on this issue either. Furthermore, neither party introduced testimony concerning whether low testosterone is indicative of recent steroid use.

Most disturbing, the Council *interpreted* the time gap, without any evidence, to support its conclusion that Appellant's low testosterone was the result of steroid use. Further, in its decision the Council also commented about the dangers of Appellant suffering from a "Roid Rage," which was, likewise, never discussed, described, or testified to. In conclusion, I find the Council abused its discretion by relying on its own medical conclusions in the absence of expert medical testimony. See Wyndham Enterprises, LLC, 401 S.C. at 151, 735 S.E.2d at 663 (holding a decision is arbitrary and capricious when it is "not supported by competent, substantial, and material evidence, and [i]s based on opinion and speculation testimony.").

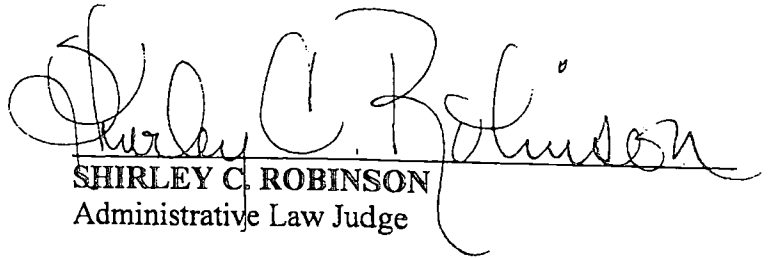
Moreover, while the Council has great latitude in making its decision to withdraw certification - all the regulation requires is "[e]vidence satisfactory to the Council that the officer has engaged in misconduct" - the Council's decision cannot be arbitrary or without evidentiary support. S.C. Code Ann. Regs. 38-016. Even disregarding the Council's improper medical conclusion, the evidence of Appellant's misconduct is tenuous. The only evidence of misconduct entered into evidence is Lieutenant Reeve's testimony that Appellant tested positive for Methandienone and Nandrolone on April 9, 2014, and the reliability of this evidence is questionable in light of Appellant's uncontroverted assertion that a urine analysis cannot always distinguish between anabolic steroids and over-the-counter supplements. Therefore, not only is the Council's decision tainted by an abuse of discretion, it also is not supported by substantial evidence. See § 1-23-380(5)(e) (providing a decision may be reversed if it is "clearly erroneous in view of the *reliable*, probative and substantial evidence on the whole record" (emphasis added)); see Trimmier, 405 S.C. at 246, 746 S.E.2d at 494 ("Substantial evidence is relevant evidence that, considering the record as a whole, a reasonable mind would accept to support an administrative agency's action.").

Accordingly, I find the Academy's decision cannot stand because the decision resulted, at least in part, from an abuse of discretion, and it is not supported by substantial evidence. Accordingly, the Academy's decision is reversed.

ORDER

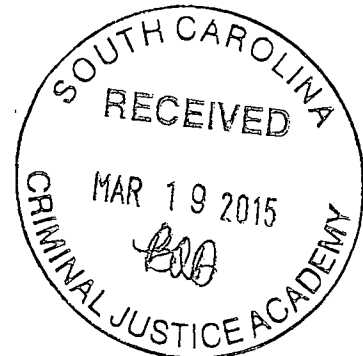
Based upon the foregoing, **IT IS HEREBY ORDERED** that the Academy's decision shall be and hereby is **REVERSED**.

AND IT IS SO ORDERED.


SHIRLEY C. ROBINSON
Administrative Law Judge

March 18th, 2015
Columbia, South Carolina

CERTIFICATE OF SERVICE
This is to certify that the undersigned has in state
served this order in the above entitled action upon all
parties to the cause by depositing a copy thereof,
in the United States mail, postage paid, or in the emergency
Mail Service addressed to the party(ies) or their attorney(s).
This 18 day of March 2015
By: Jeckelyn Henderson
Clerk of Court



THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Shirley C. Robinson, Administrative Law Judge

RECEIVED

Case No. 14-ALJ-30-0540-AP

APR 13 2015

SC Court of Appeals

Deonta L. Brinston, ... Respondent,

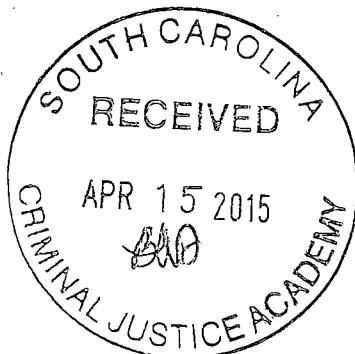
v.

South Carolina Criminal Justice Academy, ... Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Deonta L. Brinston by depositing a copy of it in the United States Mail, postage prepaid, on April 10, 2015, addressed to his attorney of record, Candy M. Kern-Fuller, Esquire, Upstate Law Group, LLC, 200 East Main Street, Easley, South Carolina 29640.

April 10, 2015



Brandy A. Duncan

Brandy A. Duncan, Chief General Counsel
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(803) 896-8347 (fax)
Attorney for Appellant

FILED

APR 16 2015

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

SC ADMIN. LAW COURT

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Shirley C. Robinson, Administrative Law Judge



COPY

Case No. 14-ALJ-30-0540-AP

Deonta L. Brinston,

Respondent,

v.

South Carolina Criminal Justice Academy,

Appellant.

NOTICE OF APPEAL

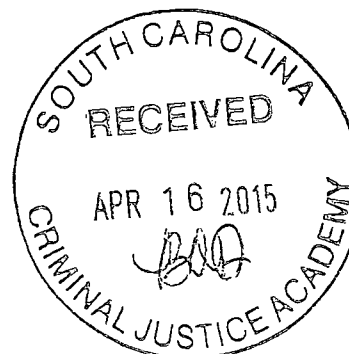
South Carolina Criminal Justice Academy appeals the decision of the Honorable Shirley C. Robinson dated March 18, 2015. Appellant received a copy of this decision on March 18, 2015.

April 10, 2015

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Attorney for Respondent



FILED

MAR 18 2015

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

SC ADMIN. LAW COURT

Deonta L. Brinston,

Appellant,

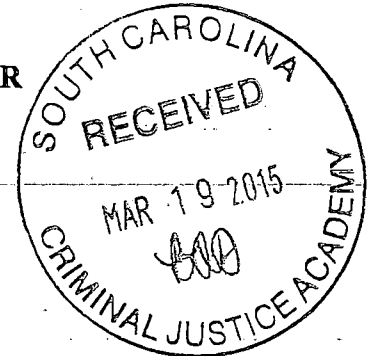
vs.

South Carolina Department of Criminal
Justice,

Respondent.

Docket No. 14-ALJ-30-0540-AP

ORDER



STATEMENT OF THE CASE

This matter is before the Administrative Law Court ("the ALC" or "the Court") for an administrative appeal pursuant to section 1-23-600(D) of the South Carolina Code (Supp. 2014). In this matter, Deonta L. Brinston ("Appellant") appeals the South Carolina Department of Criminal Justice Academy's ("the Academy's") final decision permanently denying him certification as a law enforcement officer due to substance abuse. After Appellant filed his Notice of Appeal, the Academy filed a Motion to Dismiss pursuant to ALC Rule 33, alleging the Notice of Appeal was not timely filed. Appellant filed a Response to the motion to which the Academy filed a Reply. After reviewing the parties' filings, this Court found the Notice of Appeal was timely filed and served and denied the Academy's motion to dismiss. On the merits, I reverse the Academy's final decision because the Academy's decision was arbitrary and capricious and characterized by an abuse of discretion and substantial evidence does not support the Academy's determination.

BACKGROUND

Appellant was formerly employed by the Anderson County Sheriff's Office as a deputy. In early 2014, Appellant was going through a divorce and custody battle. On April 2, 2014, Appellant's soon-to-be ex-wife, reported to the Anderson County Sheriff's Office via a phone call that Appellant and another deputy were using illegal steroids. No formal written complaint was filed. On April 9, 2014, as a result of the report, the Anderson County Sheriff's Office required Appellant and the other deputy to take a specialized urine-based drug test for steroids at AnMed Laboratory Services in Anderson County. On April 24, 2014, the test results showed Appellant and the other deputy tested positive for Methandienone. Appellant also tested positive

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for Nandrolone. Both substances are listed as anabolic steroids under section 44-53-1510(A) of the South Carolina Code (2002).

On April 29, 2014, Appellant met with SLED agents to discuss the results of the test. Appellant declined to speak to the agents officially until he talked to an attorney. Appellant then went to a different room, was given his *Garrity*¹ warnings, and spoke with Lieutenant Steven J. Reeves and Sergeant Jonathan Brown of the Anderson County Sheriff's Office pursuant to the office's internal investigation. Appellant gave a verbal and written statement; however, Appellant left to talk with Chief Smith before signing the written statement, which existed only as an electronic document at the time. After a short discussion with Chief Smith, Chief Smith terminated Appellant for use of anabolic steroids. Specifically, Appellant was terminated for violating General Orders - 107 Conduct Unbecoming an Officer (Alcohol and Controlled Substances). On May 13, 2014, the Anderson County Sheriff's Department submitted a Personnel Change in Status form to the Academy, as required by statute, which indicated Appellant was terminated because he engaged in the use of anabolic steroids.

Appellant contested the urine analysis findings, arguing he was taking three over-the-counter supplements for body building, which he was advised could lead to false-positive test results. Appellant went to a private physician and was retested for steroids on May 20, 2014. The test results, as documented in a May 27, 2014 SOAP² note, show Appellant tested negative for steroids, but had low testosterone – low enough to qualify for hormone replacement therapy.

On June 19, 2014, Calhoun Falls Police Department submitted a Personnel Change in Status – Hire Form to the Academy indicating it intended to hire Appellant as a deputy. Shortly thereafter, the Academy revoked Appellant's law enforcement certification due to substance abuse. Appellant contested the Academy's decision and a contested case hearing was held on August 26, 2014.

At the contested case hearing, Appellant, Lieutenant Reeves, and Sergeant Brown testified. Appellant was represented by counsel. Lieutenant Reeves testified first. Lieutenant Reeves recalled the Anderson County Sheriff's Office receiving a call from Appellant's wife reporting Appellant and another deputy were using steroids. He indicated the Sheriff's Office

¹ See *Garrity v. State of N.J.*, 385 U.S. 493, 500 (1967) (providing that state and local government officials are entitled to an advisement of rights during an internal investigation).

² SOAP stands for "subjective, objective, assessment, and plan" and is a method physicians use to document notes on a patient's chart.

determined there was reasonable cause to investigate the allegation and reached out to Anderson County to determine how drug tests are administered to personnel. The County connected the Sheriff's Office with AnMed Lab Services in Anderson County. Lieutenant Reeves stated that on April 9, 2014, Appellant and the other deputy were transported to AnMed and administered a urinalysis test for steroids, with the result that both deputies tested positive for steroids. Lieutenant Reeves testified Appellant specifically tested positive for Methandienone and Nandrolone, which are listed as prohibited steroids under statute. He stated the Sheriff's Office contacted the South Carolina Law Enforcement Division ("SLED") after the results came back positive, and two SLED agents attempted to interview Appellant, but Appellant refused and requested an attorney. He further stated that after the SLED interview, he and Sergeant Brown interviewed Appellant. Lieutenant Reeves testified Appellant filled out a form indicating he received his *Garrity* warnings and then gave a verbal statement to him and Sergeant Brown and typed a written statement on his computer. However, Lieutenant Reeves explained that before Appellant could print or sign his written statement, Appellant left to talk with Chief Smith. Lieutenant Reeves moved to enter the AnMed lab report, the internal affairs investigation report, the *Garrity* form, and Appellant's written statement into evidence.

Appellant's counsel objected to the admission of Appellant's written statement because it was unsigned. She also objected to the lab report because there was no affidavit of authenticity or any indication the results were confirmed by a method, specifically gas chromatography, to rule out over-the-counter supplements. She further objected to the internal affairs investigation report because it contained hearsay. She did not object to the *Garrity* form. The Hearing Officer marked Appellant's written statement, the lab report, and the internal affairs investigation report as exhibits and entered the *Garrity* Form into evidence.

On cross-examination, Lieutenant Reeves admitted the Sheriff's Office did not have a formal written and signed complaint from Appellant's soon-to-be ex-wife pursuant to Anderson County Sheriff Office's General Order 111. Lieutenant Reeves also denied Appellant at any time asked for a blood test to confirm the results of the urine analysis test. He further stated he was not aware if the urine analysis results were confirmed with gas chromatography. Lieutenant Reeves was not able to directly state that he could produce the chain of custody for the lab report. On Re-Cross-examination, Lieutenant Reeves testified that before the urine analysis was conducted, the only evidence the Sheriff's Office had pointing to Appellant's steroid use was the

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ex-wife's tip. He asserted Appellant did not appear physically impaired, did not show a loss of judgment, and did not engage in risky activity or safety violations while on the job.

Sergeant Brown testified and confirmed Lieutenant Reeve's testimony. He stated he was present when Appellant was transported for the urine analysis, he was present the day SLED came to investigate, and he was present when Appellant gave his verbal and written statement to Lieutenant Reeves. Sergeant Brown asserted that during the verbal interview with Lieutenant Reeves, Appellant admitted to taking a steroid that he had leftover from his weight lifting days, but he was only taking it to "get his head back on straight and to help him get back into the gym, motivation, and things of that nature." Sergeant Brown confirmed Appellant exited the interview before he signed his written statement. He affirmed that after Appellant had a short conversation with Chief Smith, Chief Smith informed him and Lieutenant Reeves that Appellant had been terminated. Sergeant Brown took Appellant's firearm, badge, and keys to his vehicle, and drove Appellant home.

On cross-examination, Sergeant Brown admitted he did not recall if Appellant admitted to using an illegal steroid or a prescription steroid. He only remembered Appellant admitting to using a steroid, which Appellant had described as a "stack" that he formerly used in weight lifting competitions. Sergeant Brown testified he was not aware whether gas chromatography was performed to confirm the results of the urine analysis. He did not recall Appellant requesting a blood test.

Appellant testified he has been in law enforcement since 2008. He asserted he was originally hired by the City of Easley as a police officer and then moved to Anderson County. Appellant described how he was a personal trainer and body builder before he became a police officer. Appellant recalled that during his time as a body builder, he took many over-the-counter substances to supplement his diet. He stated he had his own trainer who advised him to take several supplements, and he took the supplements without questioning the trainer. He described three specific over-the-counter supplements he took: Test PSI, ADT, and Mass X. He testified he bought all three of these products from a store like a GNC called Complete Nutrition. Appellant asserted he was advised that some of these supplements could produce a false-positive on a urine screen if he was tested for steroids. He also testified he was advised that if this happened, he should inform the tester of what he was taking and request a blood test to determine if the urine results were false-positive.

Appellant contended that once his AnMed test came back positive, he told Lieutenant Reeves and Sergeant Brown that it was a false-positive, and he wanted a blood test to confirm the results, but he never received a blood test. As a result, Appellant described how he went to a private physician and had a blood test performed, which came back negative for steroids and showed he had low testosterone. Appellant testified he would be willing to regularly submit to blood tests to prove he was not on steroids if the Academy did not revoke his certification. Appellant stated he does not have any other job opportunities if he can no longer be a police officer. He described his special skills as an officer in charge of a K9.

Appellant concluded his testimony by addressing the SOAP note. He identified the note as the note he received from his private physician reflecting the results of his blood test. The Hearing Officer asked whether Sergeant Brown objected to the note, and Sergeant Brown did not. Appellant's attorney then moved for the SOAP note to be put into evidence, and thereafter the Hearing Officer stated it was marked as Appellant's Exhibit Two. After its admittance, Sergeant Brown commented on the Record that there was approximately a month time gap between when Appellant was originally tested by the Sheriff's Office and when Appellant obtained the private test. Appellant's attorney further commented that the County had not provided any testimony about how long a steroid would stay in a person's system, which Sergeant Brown agreed with.

On September 15, 2014, the Hearing Officer issued his findings and recommendation. The Hearing Officer made four findings of fact: (1) Appellant tested positive for Methandienone and Nandrolone on April 9, 2014; (2) Methandienone and Nandrolone are statutory anabolic steroids; (3) the SOAP notes dated May 27, 2014, showed Appellant had low testosterone; and (4) "[i]t is well known that the use of anabolic steroids suppresses the naturally occurring testosterone in the body." As a result of these findings, the Hearing Officer made the following recommendations:

Given [Appellant's] contention that his positive test results came from taking three (3) over-the-counter supplements and Anderson County Sheriff's Office's failure to contest that contention via expert testimony or testimony from qualified medical personnel from AnMed or Lab Corp, I recommend [Appellant] be recertified as a law enforcement officer with two (2) years of probation.

I further recommend that this probationary period include random drug testing, including specific testing for steroid use, at least every three (3) months on dates selected by the Academy. These testing date will be communicated to [Appellant's] employer on the day testing is to occur. COA Record on Appeal 99

testing on the dates required by the Academy may be grounds for reopening this case. Testing positive for any controlled substance during the probationary period may be grounds for reopening this case. All drug testing done during this probationary period shall include specific testing for steroid use and, if a test is positive for steroid use, the sample shall be further tested using gas chromatography to determine if the result is from anabolic steroids or over-the-counter supplements.

On October 14, 2014, the South Carolina Law Enforcement Training Council ("the Council"), the adjudicatory body of the Academy, issued a final decision in Appellant's case in which it permanently withdrew Appellant's law enforcement certification. In its final decision, the Council relied on the same findings made by the Hearing Officer. As a result of these findings, the Council stated in its decision:

It is well known that the use of anabolic steroids suppresses the naturally occurring testosterone in the body. Given this result and the significant delay between the original testing performed by Anderson County Sheriff's Office (April 9, 2014) and the follow up testing performed by [Appellant's private physician] (May 20, 2014), the Law Enforcement Training Council find the [SOAP note] actually supports the allegations put forth by the Anderson County Sheriff's Office against [Appellant].

The Academy further stated:

The unlawful use of controlled substances by an active law enforcement officer is reprehensible. In this case, the use particularly of anabolic steroids during active law enforcement service placed the public at great danger. At any moment [Appellant] may have suffered from dangerous side effects of these unlawful substances, for example, a "Roid Rage" incident. For the reasons stated above and due to the great danger [Appellant] placed the public in by taking these substances while an active law enforcement officer, [Appellant's] request to have law enforcement certification reissued to him is permanently denied.

On November 14, 2014, Appellant filed a Notice of Appeal with this Court challenging the Council's decision.

STANDARD OF REVIEW

The Academy assumed the powers of the South Carolina Criminal Justice Academy Division of the South Carolina Department of Public Safety. See S.C. Code § 23-23-10(D) (Supp. 2014) ("Upon the signature of the Governor, all functions, duties, responsibilities, accounts, and authority statutorily exercised by the South Carolina Criminal Justice Academy Division of the Department of Public Safety are transferred to and developed upon the South Carolina Criminal Justice Academy."). Therefore, the Academy is an "agency" under the Administrative Procedures Act ("APA"). See S.C. Code Ann. § 1-23-310(2) (Supp. 2014).

Accordingly, the APA's standard of review governs appeals from decisions of the Academy and its Council. See S.C. Code Ann. § 1-23-600(D) (Supp. 2014) (directing administrative law judges to conduct appellate review in the same manner prescribed in section 1-23-380). Section 1-23-380 provides, in relevant part:

(5) 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.

"Substantial evidence is relevant evidence that, considering the record as a whole, a reasonable mind would accept to support an administrative agency's action." Trimmier v. S.C. Dep't of Labor, Licensing & Regulation, 405 S.C. 239, 246, 746 S.E.2d 491, 494 (Ct. App. 2013). 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, 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)). Furthermore, the reviewing court is prohibited from substituting its judgment for that of the agency as to the weight of the evidence on questions of fact. Grant v. S.C. Coastal Council, 319 S.C. 348, 353, 461 S.E.2d 388, 391 (1995). Finally, the party challenging an agency 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.

A decision is arbitrary and capricious "if it is without a rational basis, is based alone on one's will and not upon any course of reasoning and exercise of judgment, is made at pleasure,

without adequate determining principles, or is governed by no fixed rules or standards.” Deese v. S.C. State Bd. of Dentistry, 286 S.C. 182, 184-85, 332 S.E.2d 539, 541 (Ct. App. 1985). Additionally, a decision is arbitrary and capricious when it is “not supported by competent, substantial, and material evidence, and [i]s based on opinion and speculation testimony.” Wyndham Enterprises, LLC v. City of N. Augusta, 401 S.C. 144, 151, 735 S.E.2d 659, 663 (Ct. App. 2012).

DISCUSSION

This Court has jurisdiction to hear this appeal pursuant to section 1-23-600(D) of the South Carolina Code (Supp. 2014). The Council is the governing and adjudicative body of the Academy. See S.C. Code Ann. §23-23-80 (Supp. 2014). The Council has the authority to “certify and train qualified candidates and applicants for law enforcement officers and provide for suspension, revocation, or restriction of the certification, in accordance with regulations promulgated by the [C]ouncil.” S.C. Code Ann. § 23-23-80(6) (Supp. 2014). A potential employer is not allowed to hire a law enforcement officer unless that officer has been certified by the Council. S.C. Code Ann. § 23-23-40 (Supp. 2014).

The Council sets the minimum requirements for certification and hire, but local departments and offices are encouraged to adopt standards higher than the minimum standards. See S.C. Code Ann. § 23-23-10(B) (Supp. 2014) (“It is the intent of this chapter to encourage all law enforcement officers, departments, and agencies within this State to adopt standards which are higher than the minimum standards implemented pursuant to this chapter, and these minimum standards may not be considered sufficient or adequate in cases where higher standards have been adopted or proposed.”). One of the requirements for certification is the requirement of good character. S.C. Code Ann. Regs. 38-003 (Supp. 2014). This requirement provides:

Every agency who requests certification of any class of law enforcement officer shall certify to the Council that, in the opinion of the employing agency, the candidate is of good character and has not engaged in misconduct as defined in R.38-004.

Regulation 38-004 describes how certification can be denied based on misconduct. It provides, in relevant part:

A. The Council may deny certification based on evidence satisfactory to the Council that the candidate has engaged in misconduct. For purposes of this section, misconduct means:

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2. Unlawful use of a controlled substance;

B. In considering whether to deny certification based on misconduct, the Council may consider the seriousness, the remoteness in time and any mitigating circumstances surrounding the act or omission constituting or alleged to constitute misconduct.

S.C. Code Ann. Regs. 38-004 (Supp. 2014). Regulation 38-016 governs withdrawal of certification, and contains almost identical language, in pertinent part, to that of Regulation 38-004:

A. A law enforcement officer, certified pursuant to the provisions of R.38-007 and R.38-008, shall have his or her certification as a law enforcement officer withdrawn by the Council upon the occurrence of any one or more of the following events:

4. Evidence satisfactory to the Council that the officer has engaged in misconduct. For purposes of this section, misconduct means:

b. Unlawful use of a controlled substance;

Provided however that in considering whether to withdraw certification based on misconduct, the Council may consider the seriousness, frequency and any mitigating circumstances surrounding the act or omission constituting or alleged to constitute misconduct.

S.C. Code Ann. Regs. 38-016 (Supp. 2014).

In the South Carolina Code, controlled substances include anabolic steroids as described in Chapter 53, which governs "poisons, drugs and other controlled substances." See S.C. Code Ann. §§ 44-53-10 et seq. (2002 & Supp. 2014). Section 44-53-1510 specifically lists substances that constitute anabolic steroids and Methandienone and Nandrolone are included in this list. Moreover, section 44-53-1530 provides:

It is unlawful for any person who is not a practitioner, pharmacist, or veterinarian to knowingly or intentionally possess anabolic steroids as defined in this article unless the steroids were obtained directly from, or pursuant to a valid prescription or order of, a practitioner while acting in the course of his professional practice.

S.C. Code Ann. § 44-53-1530 (Supp. 2014).

Here, the Council permanently withdrew Appellant's law enforcement certification because it determined Appellant was using illegal anabolic steroids. Appellant contests this finding on two grounds: Appellant claims the Council's decision is not supported by substantial evidence and the Council's decision was arbitrary or capricious or characterized by abuse of discretion. In contrast, the Academy argues substantial evidence supported the Council's decision, which was not arbitrary, capricious, or characterized by an abuse of discretion. I agree with Appellant.

Appellant challenges the Council's decision based on its findings of fact. Appellant argues the Council's first finding of fact, that he tested positive for anabolic steroids on April 9, 2014, is in error because Anderson County Sheriff's Office did not correctly follow Anderson County procedures to obtain and verify the test results. While Appellant objected to the lab report coming into evidence, Appellant did not object to Lieutenant Reeve's testimony that Appellant tested positive for Methandienone and Nandrolone on April 9, 2014. Therefore, this evidence was properly before the Council for their consideration and could be relied upon to conclude Appellant tested positive for anabolic steroids on April 9, 2014, while he was employed as an Anderson County Sheriff's Office. However, Appellant testified, and it was uncontested by the Sheriff's Office, that a urine test could produce a false-positive result and a blood test was necessary to confirm the positive result was not due to use of over-the-counter supplements. Therefore, the evidence is conflicting as to how reliable the urine analysis test results were.

Next, Appellant argues the Council's third finding of fact, that the SOAP note indicated Appellant had low testosterone, was also error because the Council omitted the SOAP note's other finding that Appellant tested negative for anabolic steroids. Admitting the SOAP note itself, and its conclusion that Appellant had low testosterone at the time, was not error. However, the Hearing Officer and the Council then used the information in the SOAP note to make their fourth finding, that "it is well known that the use of anabolic steroids suppresses the naturally occurring testosterone in the body." Appellant argues this finding was error because it is not well known that anabolic steroids suppress the body's naturally occurring testosterone. I agree with Appellant.

Contrary to the Hearing Officer's and the Council's finding, it is not well known that the use of anabolic steroids suppress the naturally occurring testosterone in the body. It was

improper for the Hearing Officer and the Council to make this finding, which is a medical conclusion, in the absence of expert witness testimony.³

In Watson v. Ford Motor Company, the South Carolina Supreme Court held:

Expert testimony may be used to help the jury to determine a fact in issue based on the expert's specialized knowledge, experience, or skill and is necessary in cases in which the subject matter falls outside the realm of ordinary lay knowledge. *Stated differently, expert evidence is required where a factual issue must be resolved with scientific, technical, or any other specialized knowledge.*

Watson v. Ford Motor Co., 389 S.C. 434, 445, 699 S.E.2d 169, 175 (2010) (emphasis added).

Moreover, "a lay witness may only testify as to matters within his personal knowledge and may not offer opinion testimony which requires special knowledge, skill, experience, or training." Id. at 446, 699 S.E.2d at 175 (citing Rules 602 and 701 of the South Carolina Rules of Evidence).

The Hearing Officer and the Council are not medical experts, but took it upon themselves to make a medical conclusion that a test result of low testosterone indicated Appellant was using steroids. Even if a correlation between steroid use and low testosterone is common knowledge, there are factors present in these circumstances that still require expert medical testimony for proper interpretation. For example, Appellant tested positive for steroids on April 9th and negative for steroids on May 20th. This is over a month time-gap. How long does the correlation between steroid use and low testosterone last? – Does a person have to be currently taking steroids for the correlation to be present? Moreover, would it be possible that Appellant has naturally low testosterone, a condition that is widely recognized and marketed to in today's society? Additionally, could over-the-counter supplements cause the same correlation? These questions cannot be answered without the assistance of expert medical testimony.

Further, it is clear from the Council's decision that it, at least in part, *relied* on its own improper medical conclusion in making its decision to permanently deny Appellant law enforcement certification:

Given this result and the significant delay between the original testing performed by Anderson County Sheriff's Office (April 9, 2014) and the follow up testimony performed by [Appellant's private physician] (May 20, 2014), the Law Enforcement Training Council find the [SOAP note] actually supports the allegations put forth by the Anderson County Sheriff's Office against [Appellant].

³ Upon entering the SOAP note into evidence, Appellant's counsel noted the County had not introduced evidence about how the time gap between the initial test and the private test could have impacted the results or interpretation of the results. Appellant did not introduce testimony on this issue either. Furthermore, neither party introduced testimony concerning whether low testosterone is indicative of recent steroid use.

Most disturbing, the Council *interpreted* the time gap, without any evidence, to support its conclusion that Appellant's low testosterone was the result of steroid use. Further, in its decision the Council also commented about the dangers of Appellant suffering from a "Roid Rage," which was, likewise, never discussed, described, or testified to. In conclusion, I find the Council abused its discretion by relying on its own medical conclusions in the absence of expert medical testimony. See Wyndham Enterprises, LLC, 401 S.C. at 151, 735 S.E.2d at 663 (holding a decision is arbitrary and capricious when it is "not supported by competent, substantial, and material evidence, and [i]s based on opinion and speculation testimony.").

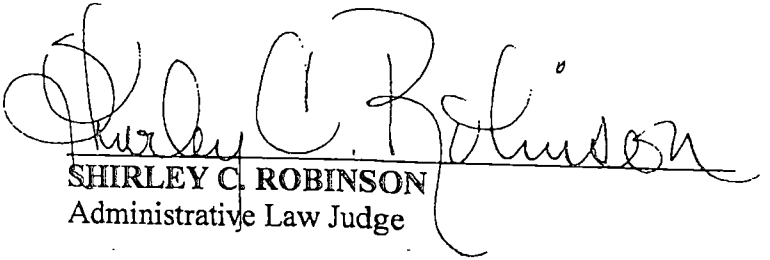
Moreover, while the Council has great latitude in making its decision to withdraw certification - all the regulation requires is "[e]vidence satisfactory to the Council that the officer has engaged in misconduct" - the Council's decision cannot be arbitrary or without evidentiary support. S.C. Code Ann. Regs. 38-016. Even disregarding the Council's improper medical conclusion, the evidence of Appellant's misconduct is tenuous. The only evidence of misconduct entered into evidence is Lieutenant Reeve's testimony that Appellant tested positive for Methandienone and Nandrolone on April 9, 2014, and the reliability of this evidence is questionable in light of Appellant's uncontroverted assertion that a urine analysis cannot always distinguish between anabolic steroids and over-the-counter supplements. Therefore, not only is the Council's decision tainted by an abuse of discretion, it also is not supported by substantial evidence. See § 1-23-380(5)(e) (providing a decision may be reversed if it is "clearly erroneous in view of the *reliable*, probative and substantial evidence on the whole record" (emphasis added)); see Trimmier, 405 S.C. at 246, 746 S.E.2d at 494 ("Substantial evidence is relevant evidence that, considering the record as a whole, a reasonable mind would accept to support an administrative agency's action.").

Accordingly, I find the Academy's decision cannot stand because the decision resulted, at least in part, from an abuse of discretion, and it is not supported by substantial evidence. Accordingly, the Academy's decision is reversed.

ORDER

Based upon the foregoing, IT IS HEREBY ORDERED that the Academy's decision shall be and hereby is REVERSED.

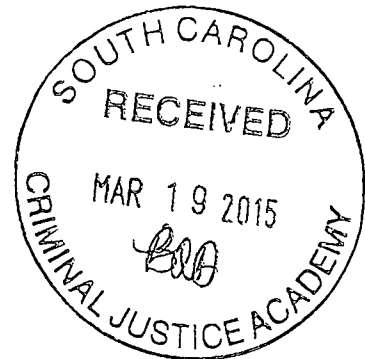
AND IT IS SO ORDERED.


SHIRLEY C. ROBINSON
Administrative Law Judge

March 18th, 2015
Columbia, South Carolina

CERTIFICATE OF SERVICE
This document is the undersigned's graduation state
served this order in the above entitled case on all
parties to this case by depositing a copy thereof,
in the United States mail, postage paid, or in the emergency
Mail Service addressed to the party,ies, or their attorney(s).

This 18 day of March 2015
by Jecklyn Henderson
- Clerk of Court



FILED

APR 10 2015

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

SC ADMIN. LAW COURT

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Shirley C. Robinson, Administrative Law Judge

Case No. 14-ALJ-30-0540-AP

Deonta L. Brinston,.....Respondent,

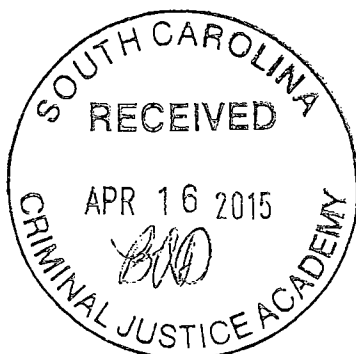
v.

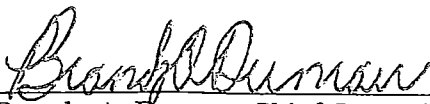
South Carolina Criminal Justice Academy,.....Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Deonta L. Brinston by depositing a copy of it in the United States Mail, postage prepaid, on April 10, 2015, addressed to his attorney of record, Candy M. Kern-Fuller, Esquire, Upstate Law Group, LLC, 200 East Main Street, Easley, South Carolina 29640.

April 10, 2015




Brandy A. Duncan, Chief General Counsel
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Columbia, South Carolina 29212
(803) 896-7414
(803) 896-8347 (fax)
Attorney for Appellant

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Deonta L. Brinston,

Appellant,

vs.

South Carolina Criminal Justice Academy,

Respondent.

Docket No. 14-ALJ-30-0540-AP



RECORD ON APPEAL

FILED

DEC 23 2014

SC ADMIN. LAW COURT

December 23, 2014

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DEC 23 2014

SC ADMIN. LAW COURT

Docket No. 14-ALJ-30-0540-AP

VS.

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SC ADMIN. LAW COURT

Respondent.

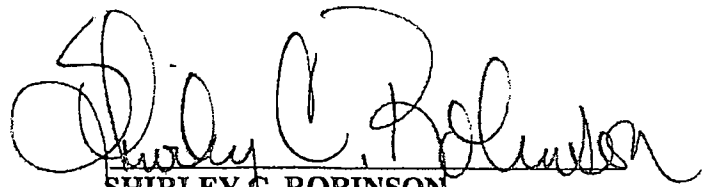
In this instance, the Certificate of Service filed along with Appellant's Notice of Appeal indicates that the notice was served by placing the documents in the United States mail, postage paid, on November 14, 2014. The Respondent vehemently asserts that Appellant's attorney actually placed the notice in the mail on November 20, 2014, and therefore the appeal was not filed timely and must be dismissed by this Court. Appellant's attorney is just as vehement in asserting that the notice was timely mailed, and that any conflict with the date reflected on the Postal Service's web tracking system is most probably due to errors made at the local post office.

Having thoroughly reviewed the Department's arguments and Appellant's response, to include Appellant's Statement of Counsel, the Court finds that the Department's motion must be denied. Appellant's counsel has sworn that she personally deposited the Notice of Appeal in the mail on November 14, 2014, and this Court can find no plausible reason to question the veracity of the sworn statement of Appellant's counsel. Moreover, South Carolina policy favors the disposition of issues on their merits rather than on technicalities. See Micronics, Inc. v. S.C. Dep't of Rev., 345 S.C. 506, 548 S.E.2d 223 (S.C. App. 2001).

IT IS THEREFORE ORDERED that the Department's Motion to Dismiss is **DENIED**.

IT IS FURTHER ORDERED that the Department shall file the Record on Appeal in accordance with ALC Rule 36(A) with forty-five (45) days from the date of this order. Appellant shall file the Brief of Appellant within thirty (30) days after the filing of the Record on Appeal. The Brief of Respondent shall be filed within thirty (30) days of the filing of Appellant's brief. Thereafter, Appellant may file a Reply brief within ten (10) days of the filing of the Respondent's brief, if he so chooses.

AND IT IS SO ORDERED.


SHIRLEY C. ROBINSON
Administrative Law Judge

December 19, 2014
Columbia, South Carolina

CERTIFICATE OF SERVICE
This is to certify that the undersigned has this date
served the above entitled action upon the
parties to this cause by depositing a copy hereof
in the United States mail postage paid at the Interstate
Mail Service addressed to the party(ies) or the attorney(s).
On 19 day of December 2014
By Shirley C. Robinson

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Deonta L. Brinston,

Appellant,

v.

South Carolina Department of Criminal
Justice,

Respondent.

NOTICE OF ASSIGNMENT

DOCKET NO. 14-ALJ-30-0540-AP

NOTICE IS GIVEN that a notice of appeal seeking review of agency action was filed on November 14, 2014. In accordance with S.C. Code Ann. § 1-23-570 (Supp. 2013), the Honorable Shirley C. Robinson, 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.

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.

The parties are directed to the relevant provisions of the Rules of Procedure for deadlines for perfecting the appeal and briefing the issues on appeal.

This the third day of December, 2014.

Ralph King Anderson, III
Chief Administrative Law Judge

By: Jana E. Shealy
Jana E. Shealy, Clerk
Edgar A. Brown Building
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201



FILED

COA - Record on Appeal 117/2014

COADMIN. LAW COURT

LAW ENFORCEMENT TRAINING COUNCIL
CRIMINAL JUSTICE ACADEMY

 ORIGINAL

In the Matter of the Issuance
of Law Enforcement Officer
Certification to Deonta L. Brinston

) Case No. 14-CJA-003

) FINAL AGENCY DECISION
)

On May 13, 2014, the Academy received a Personnel Change in Status Report from the Anderson County Sheriff's Office for Mr. Brinston alleging Mr. Brinston engaged in unlawful use of a controlled substance. On July 1, 2014, the Academy received a PCS of Hire from the Calhoun Falls Police Department for Mr. Brinston stating they hired Mr. Brinston on June 19, 2014. On August 26, 2014, a contested case hearing was held regarding this allegation.

Mr. Brinston was represented by Candy Kern-Fuller, Esquire in the contested case hearing. Internal Affairs Investigators Steve Reeves and Jonathon Brown were present on behalf of the Anderson County Sheriff's Office, but presented narrative testimony only and were not allowed to function as a legal representative. Three (3) witnesses provided testimony, Lt. Reeves, Investigator Brown, and Mr. Brinston.

On April 2, 2014, Mr. Brinston's soon-to-be ex-wife reported to the Anderson County Sheriff's Office that Mr. Brinston and another Anderson County Sheriff's Deputy were taking illegal steroids. Based on this report, Mr. Brinston and the other deputy were both required to submit to a specialized steroid urine test through AnMed Laboratory Services on April 9, 2014. Mr. Brinston and the other deputy tested positive for Methandienone. Mr. Brinston also tested positive for Nandrolone. Methandienone and Nandrolone are both listed as anabolic steroids under S.C. Code §44-53-1510(A). Mr. Brinston contends he tested positive for Methandienone and Nandrolone because he was taking three (3) over-the-counter supplements, specifically Tests

PSI, Alpha Mass X, and A-D-T (Brinston Exhibit #1). To support this contention, Mr. Brinston submitted a SOAP Note dated May 27, 2014, from Powdersville Internal Medicine (Brinston Exhibit #2). This SOAP Note stated Mr. Brinston had returned to review his labs from May 20, 2014. This SOAP Note did not indicate the presence of any anabolic steroids, but it did note that Mr. Brinston's "Total Testosterone... was 116.3 (range 348.0-1197.0)." It is well known that the use of anabolic steroids suppresses the naturally occurring testosterone in the body. Given this result and the significant delay between the original testing performed by Anderson County Sheriff's Office (April 9, 2014) and the follow up testing performed by Powdersville Internal Medicine (May 20, 2014), the Law Enforcement Training Council finds the Powdersville Internal Medicine SOAP Note actually supports the allegations put forth by the Anderson County Sheriff's Office against Mr. Brinston.

Mr. Brinston objected to the admission of the written LabCorp test results (Court Exhibit #6, Not Admitted into Evidence) on the basis that there was no affidavit of authenticity, there was no medical review process, and there was no gas chromatography performed on the sample. Despite these objections, Mr. Brinston did not object to Internal Affairs Investigator Reeves' narrative testimony that Mr. Brinston was required to submit to a specialized steroid urine test through AnMed Laboratory Services on April 9, 2014, and that Mr. Brinston tested positive for Methandienone and Nandrolone.

Based on the testing discussed above from April 9, 2014, and May 20, 2014 (including the test results), the concerns raised by Mr. Brinston with regard to the April 9, 2014 testing, the Law Enforcement Training Council makes the following findings:

FINDINGS OF FACT

It is found as a fact:

1. Mr. Brinston tested positive on April 9, 2014, for Methandienone and Nandrolone.
2. Methandienone and Nandrolone are both listed as anabolic steroids under S.C. Code §44-53-1510(A).
3. The SOAP Note dated May 27, 2014, from Powdersville Internal Medicine (Brinston Exhibit #2) noted that Mr. Brinston's "Total Testosterone... was 116.3 (range 348.0-1197.0)."
4. It is well known that the use of anabolic steroids suppresses the naturally occurring testosterone in the body.

CONCLUSIONS OF LAW

It is concluded as a matter of law:

1. S.C. Code §23-23-80(6) allows the Law Enforcement Training Council to suspend, revoke, or restrict law enforcement certification in accordance with regulations promulgated by the Council.
2. S.C. Reg. 38-004 states, in part:

The Council may deny certification based on evidence satisfactory to the Council that the candidate has engaged in misconduct. For purposes of this section, misconduct means:

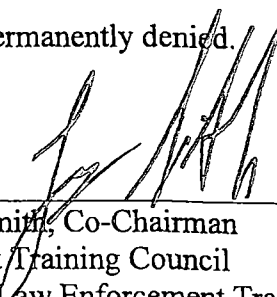
- 2) Unlawful use of a controlled substance...
3. Methandienone and Nandrolone are both listed as anabolic steroids under S.C. Code §44-53-1510(A). Chapter 53 of Title 44 of the South Carolina Code is titled Poisons, Drugs and Other Controlled Substances (emphasis added). Thus, it is clear the intent

of the South Carolina Legislature is that anabolic steroids are considered controlled substances even though they are not contained in a specific Schedule in South Carolina.

4. Methandienone and Nandrolone are both listed as anabolic steroids under 21 U.S.C. §802(41)(A)(xxii) and (xxiv). Anabolic steroids are specifically listed as Schedule III controlled substances under 21 U.S.C. §812.

SANCTION

The unlawful use of controlled substances by an active law enforcement officer is reprehensible. In this case, the use particularly of anabolic steroids during active law enforcement service placed the public at great danger. At any moment Mr. Brinston may have suffered from dangerous side effects of these unlawful substances, for example, a "Roid Rage" incident. For the reasons stated above and due to the great danger Mr. Brinston placed the public in by taking these substances while an active law enforcement officer, Mr. Brinston's request to have law enforcement certification reissued to him is permanently denied.



Director Leroy Smith, Co-Chairman
Law Enforcement Training Council
On Behalf of the Law Enforcement Training Council

Date: October 14, 2014

FILED

DEC 16 2014

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

SC ADMIN. LAW COURT

In the Matter of Issuance of Law)
Enforcement Officer Certification to)
Deonta L. Brinston,)

Appellant,)

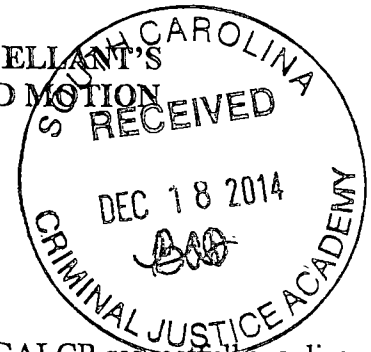
vs.)

South Carolina Law Enforcement Training)
Council,)

Respondent.)

Docket No. 14-ALJ-30-0540-AP

REPLY TO APPELLANT'S
REPLY [SIC] TO MOTION
TO DISMISS



Respondent, pursuant to Rule 240(f), SCACR and Rule 68, SCALCR respectfully replies to the *Appellant's Reply [Sic] to Motion to Dismiss*¹ as follows:

As previously put forth in the Motion to Dismiss, Appellant was required to serve a copy of his notice of appeal on the agency and each party by no later than November 19, 2014. Appellant's response to the motion to dismiss essentially contains only two items: an attempt to improperly inflame the Court (paragraph 2 of page 1, starting "In this matter on appeal...") by discussing issues irrelevant to the matters at issue in the motion before the court and wholly unsupported assertions by Appellant's Counsel that she placed the Notice of Appeal in a mailbox near her home in Anderson County. Moreover, Appellant tries to bolster the assertion that the Notice of Appeal was mailed on November 14, 2014, by attaching a screen shot of Counsel's computer showing Appellant's working files and their last "Date Modified." Beyond the fact that the last date modified does not provide any evidence of the last date the documents were printed and/or accessed,² the last date of modification is not relevant. The date the Notice of Appeal was mailed is the only relevant issue before the Court.

Respondent fully agrees with most of Appellant's recountance from *Green v. Green*, 320

S.C. 347, 350 (Ct. App. 1995),

Rule 5(b)(1), SCRCP, provides that ‘service by mail is complete upon mailing of all pleadings and papers subsequent to the service of the original summons and complaint.’ Mailing ordinarily occurs when a documents is deposited with the U.S. Postal Service properly addressed with sufficient postage affixed. *Southbridge Prop., Inc. v. Jones*, 292 S.C. 198, 355 S.E.2d 535 (1987). Any designated mail depository box, whether in a building or along a mail route, constitutes a depository authorized for the receipt and delivery of mail. *Rosen v. United States*, 245 U.S. 467, 62 L. Ed. 406, 38 S.Ct. 148 (1918). Although the postmark date on an envelope is compelling evidence in cases where timely service through the mail is at issue, we are unaware of any authority... indicating the postmark dates is dispositive.

Emphasis added. Respondent notes that the *Green* case was decided nearly 20 years ago, when all mail was still processed by hand.³ Today, almost all mail is processed by machines that automatically read the mailing address.⁴ Additionally, U.S. Postal Service Tracking numbers and bar codes are automatically scanned by sorting machines all along the sorting process. So, while Respondent fully agrees with the Green Court, that “the postmark date on an envelope is compelling evidence in cases where timely service through the mail is at issue,” Respondent asserts that it is “unaware of any authority... indicating the postmark dates is dispositive. As a result, this Court is allowed to look to other facts to determine if the Notice of Appeal was timely filed.

“An affidavit of service is Prima facie evidence of service which may be impeached by extrinsic evidence.” *Richardson Construction Company, Inc. v. Meek Engineering and Construction*, 247 S.C. 307, 262 S.E.2d 913, 916 (1980), citing *Laurens Trust Co. v. Copeland*,

¹ This document was improperly labeled a reply when, pursuant to Rule 240, SCACR, it is a response to Respondent’s motion to dismiss.

² As may be seen in Exhibit A, which shows a dates of creation, date last saved, and date last printed.

³ The U.S. Postal Service first utilized a handwritten address-reading prototype during Christmas 1997. See <http://www.livescience.com/32290-how-do-post-office-machines-read-addresses.html>, paragraph 3, last accessed December 16, 2014 at 11:35 a.m. (Unable to attach a copy as the article will not print correctly from the webpage).

⁴ *Id.*, paragraph 6.

154 S.C. 390, 151 S.E. 617 (1930) and *MCC Financial Services, Inc. v. Duffel*, 265 S.C. 519, 220 S.E.2d 127 (1975). If Appellant's Counsel had, as asserted, mailed the Notice of Appeal via a mailbox in Anderson County, the Product and Tracking Information previously submitted as part of Exhibit C to *Motion to Dismiss Appeal as Untimely Served* would have reflected passing through the local Anderson County Post Office, the Greenville County Bulk Mailing center (see Statement of Counsel, paragraph 9), and only then the Easley Post Office.⁵ **It does not indicate this.** The first time any tracking shows up is the day the "stamp" is created on stamps.com, November 14, 2014. Again, the relevant issue is not when the stamp is put on the mail, it is the date the mail is placed in the mail depository that is relevant.⁶ **Nothing** shows up on the Product and Tracking Information again until the package is noted as "Accepted at USPS Origin Sort Facility" at the Easley Post Office on November 20, 2014. So, Appellant would have this Court believe that the U.S. Postal Service is so woefully inadequate that not only did it send the Notice of Appeal to the return address (but only as far as the Easley Post Office and not all the way to the business), but that the U.S. Postal Service also had malfunctions with numerous scanning systems so **NONE** of this erroneous progress was tracked until the Notice of Appeal arrived back

⁵ The U.S. Postal Service states that packages with USPS Tracking are tracked "End-to-End with up to 11 scan events on shipments – from pick up to the final deliver – with more frequent updates." See <https://tools.usps.com/go/TrackConfirmAction%21input.action>, last accessed on December 16, 2014 at 11:30 a.m. Copy with highlights attached for convenience as Exhibit B. End-to-End Tracking is defined as including "The items acceptance by USPS, Processing at and departure from each location as it travels through the network from origin to destination, Arrival at the delivery unit, and departure from the delivery unit with the carrier, If the item was delivered, as well as the date and time of delivery, If the delivery was attempted, but not successful, with the date and time of the attempt." See <http://faq.usps.com/adaptivedesktop/faq.jsp?ef+USPSFAQ>, last accessed on December 16, 2014 at 11:32 a.m. Copy with highlights attached for convenience as Exhibit C.

⁶ Even Stamps.com does not assert that merely putting postage on a package is sufficient to mail it. The Stamps.com Frequently Asked Questions specifically states that once you "affix your postage to your letter or package" you must "give it to your mail carrier or drop it in the nearest

in the Easley Post Office. This argument is unbelievable at best.

As mentioned previously in the Motion to Dismiss, the law in South Carolina regarding the timeliness of service of notice of appeals abundantly clear. Service of the notice of appeal is a jurisdictional requirement, and the Court has no authority to extend or expand the time in which the notice of intent to appeal must be served. *Mears v. Mears*, 287 S.E. 168, 337 S.E.2d 206 (1985); *Conner v. City of Forest Acres*, 348 S.C. 454, 560 S.E.2d 606 (2002) (dismissing parties who had not been timely serviced with a notice of appeal); *McCray v. State*, 271 S.C. 185, 246 S.E.2d 230 (1978) (in absence of a notice of appeal having been given and timely served, the Supreme Court has no jurisdiction over an appeal).

In this case, the only “evidence” that the Notice of Appeal was mailed on November 14, 2014 is the wholly unsupported assertion by Appellant’s Counsel, which Respondent notes was done through a “Statement of Counsel” rather than an Affidavit of Counsel. Respondent finds this fact extremely significant due to the differences in penalties for perjury (which an Affidavit would carry) versus dismissal of case and possible lawyer discipline (which a Statement would carry). Appellant tries to bolster his argument that the Notice of Appeal was mishandled by the U.S. Postal Service by using this “Statement of Counsel” to discuss alleged errors that the U.S. Postal Service has committed in the past (although no evidence of these errors is presented, beyond the Statement of Counsel). The Statement of Counsel alleges that the U.S. Postal Service “lost an entire bag of mail, which it did not locate for other two months” and that Counsel had to cancel and re-issue several checks as a result of this event. Counsel did not, however, attach any document(s) to her Statement to back up this allegation: not a cancelled and reissued check, not a letter from the U.S. Postal Service, not a letter to one of her clients explaining the issue.

Appellant further tries to bolster his argument that the Notice of Appeal was mishandled by the U.S. Postal Service by attaching a random review of the U.S. Postal Service from a webpage titled <http://usps.pissedconsumer.com> with no explanation as to how that complaint relates to this case. For these reasons, the Statement of Counsel is not of any use to the Court.

The burden is on Appellant to show that he timely filed and served (i.e. mailed) his Notice of Appeal. Although Appellant's Counsel asserts "numerous problems" with the U.S. Postal Service, she elected to only send the Notice of Appeal via U.S. Postal Service. If the issues with the U.S. Postal Service are as severe in her area as has been alleged, she could have used several other modes to serve a copy of the Notice of Appeal. For example, in addition to mailing the Notice of Appeal via the U.S. Postal Service, Counsel could have: e-mailed, faxed, had personally served, sent FedEx, sent UPS, or sent DHL the Notice of Appeal and simply stated in her Certificate of Service and Proof of Service that she sent the Notice of Appeal via the U.S. Postal Service and whatever additional method she selected. For example, Respondent notes that Appellant's Counsel sent *Appellant's Reply* [Sic] *to Motion to Dismiss* via U.S. Postal Service and e-mail to both the Court and Respondent. This could have easily been done with the Notice of Appeal. Given the seriousness and gravity of filing a Notice of Appeal in a timely manner and the numerous and significant issues Appellant's Counsel alleges she has encountered with the U.S. Postal Service, it seems sending such a document via multiple methods would be most prudent and reasonable.

Despite Appellant's Counsel Statement of Counsel, the only unbiased evidence of when the Notice of Appeal was received by the U.S. Postal Service is the Product and Tracking Information previously submitted as part of Exhibit C to *Motion to Dismiss Appeal as Untimely*

Served, which shows an "Accepted at USPS Origin Sort Facility" at the Easley Post Office date of November 20, 2014. Therefore, the only unbiased evidence of the date of mailing shows the Notice of Appeal was not mailed until November 20, 2014, after the deadline for such service as imposed by the rules.

WHEREFORE, the undersigned again respectfully prays this Court dismisses, with prejudice, this untimely served appeal.

Respectfully Submitted,


Brandy A. Duncan, General Counsel
Bar #72052
5400 Broad River Road
Columbia, South Carolina 29212
(803) 896-7414
(803) 896-8347 (fax)
Attorney for Respondent

December 16, 2014

Exhibit A

Motion to Dismiss Appeal as Untimely, Saved.doc Prop. [X]

General | Security | Custom | Details | Previous Versions

Property	Value
Categories	
Comments	
Origin	
Authors	Duncan_Brandy
Last saved by	Duncan, Brandy
Revision number	3
Version number	
Program name	Microsoft Office Word
Company	SC Criminal Justice Academy
Manager	
Content created	11/21/2014 1:42 PM
Date last saved	11/21/2014 2:32 PM
Last printed	11/21/2014 2:32 PM
Total editing time	00:05:00
Content	
Content status	
Content type	

[Remove Properties and Personal Information](#)

OK Cancel Apply

Exhibit B

[English](#)[Customer Service](#)[USPS Mobile](#)[Register / Sign In](#)

USPS Tracking™



Customer Service
Have questions? We're here to help.

Tracking (or receipt) number

Enter up to 35 numbers separated by commas.

Improved USPS Tracking™

We're always working to improve our tracking. Here are some of the ways we're making package tracking better.

- View **End-to-End** tracking with up to 11 scan events on shipments - from pick up to final delivery - with more frequent updates.
- Receive **Text** alerts to get status updates sent right to your phone. Choose between receiving alerts for all activity or just for delivery status. You can also text your tracking number to 28777 (2USPS™) to get the latest status when you're on the go.
- Provide **Delivery Instructions** for your carrier if you will not be home to accept a package.

Which services and tracking number formats are compatible?

Enter tracking numbers, spaces optional, for items using these services:

Find

SERVICE	SAMPLE NUMBER
Certified Mail®	9407 1000 0000 0000 0000 00 7000 0000 0000 0000 0000
Collect on Delivery	9303 3000 0000 0000 0000 00 M000 0000 00
Global Express Guaranteed®	82 000 000 00
Priority Mail Express International™	EC 000 000 000 US
Priority Mail Express™	9270 1000 0000 0000 0000 00 EA 000 000 000 US
Priority Mail International®	CP 000 000 000 US
Priority Mail®	9205 5000 0000 0000 0000 00 1400 0000 0000 0000 0000
Registered Mail™	9208 8000 0000 0000 0000 00 RA 000 000 000 US
Signature Confirmation™	9202 1000 0000 0000 0000 00 2300 0000 0000 0000 0000
USPS Tracking™	9400 1000 0000 0000 0000 00 0300 0000 0000 0000 0000

HELPFUL LINKS

[Contact Us](#)[Site Index](#)[FAQs](#)

ON ABOUT.USPS.COM

[About USPS Home](#)[Newsroom](#)[USPS Service Updates](#)[Forms & Publications](#)[Government Services](#)[Careers](#)

OTHER USPS SITES

[Business Customer Gateway](#)[Postal Inspectors](#)[Inspector General](#)[Postal Explorer](#)[National Postal Museum](#)[Resources for Developers](#)

LEGAL INFORMATION

[Privacy Policy](#)[Terms of Use](#)[FOIA](#)[No FEAR Act EEO Data](#)

Copyright © 2014 USPS. All Rights Reserved.

Search or Enter a Tracking Number

COA - Record on Appeal 131

Exhibit C



Quick Tools

- [Track](#)
Enter up to 35 Tracking # Find
- [My USPS.com](#)
- [Find USPS Locations](#)
- [Buy Stamps](#)
- [Schedule a Pickup](#)
- [Calculate a Price](#)
- [Look Up a ZIP Code](#)
- [Hold Mail](#)
- [Change of Address](#)

[Back](#)

What is USPS Tracking™?

Solution:

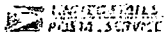
USPS Tracking™ is a service that provides end-to-end tracking, including confirmation of delivery (or attempted delivery). This includes:

- The items acceptance by USPS
- Processing at and departure from each location as it travels through the network from origin to destination
- Arrival at the delivery unit, and departure from the delivery unit with the carrier
- If the item was delivered, as well as the date and time of delivery
- If delivery was attempted, but not successful, with the date and time of the attempt

USPS Tracking does NOT provide:

- Expedited delivery
- Guaranteed delivery time
- Mailing or signature receipt (unless an additional service is purchased)
- Address information

Example: PS Form 400, *USPS Tracking Label*, is one type of label used when the service is purchased at retail.



USPS TRACKING #

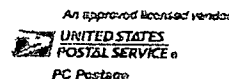
Related Articles:

[What do the USPS Tracking™ Label and Form Look Like?](#)
[How Can I Use USPS Tracking™?](#)
[How Much Does USPS Tracking™ Cost?](#)

Exhibit D


[HOME](#) | [LEARN MORE](#) | [GET STARTED](#)


Live Online Chat

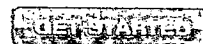
[how it works](#)[features](#)[testimonials](#)[FAQs](#)[view demo](#)[get started](#)[plans](#)

Frequently Asked Questions

A great place to learn more about Stamps.com.

- [What is Stamps.com?](#)
- [How does Stamps.com work?](#)
- [What can I do with Stamps.com?](#)
- [How does the No-Risk Trial work?](#)
- [What do I get for trying the service?](#)
- [How much does it cost?](#)
- [What type of POSTAGE DISCOUNTS can I get with Stamps.com?](#)
- [What if I decide to cancel?](#)
- [Can I do batch mailings with Stamps.com?](#)
- [Can Stamps.com help me track my postage spending?](#)
- [What makes Stamps.com better than a postage meter?](#)
- [How does Stamps.com help eBay® or ecommerce store sellers?](#)
- [What type of solutions does Stamps.com offer to professional shippers?](#)
- [Can I use Stamps.com together with QuickBooks?](#)
- [Does Stamps.com support an ODBC connection to my database?](#)
- [Can more than one person access a Stamps.com account at the same time?](#)
- [Do I need special labels to print postage?](#)
- [Can Stamps.com work with the Mac?](#)
- [Does Stamps.com offer an Enterprise Solution?](#)
- [About Stamps.com.](#)
- [Get Started.](#)

- \$25 in postage coupons
- Free digital scale (\$50 value)
- \$5 supplies kit
- 4-week trial

[Offer Details](#)


* Just pay S&H

Savings Calculator

How much money can Stamps.com save you? Use our calculator to find out...

Popular Features

[Software Integrations](#)
[Shipping Rate Discounts](#)
[Reports and Package Tracking](#)
[Certified Mail](#)

Learn more about...

[Stamps.com vs. Post Office](#)
[Stamps.com for Shippers](#)
[Stamps.com vs. Postage Meters](#)
[Enterprise \(5+ locations\)](#)

What is Stamps.com?

Stamps.com is a service that allows you to print official United States Postal Service® postage directly from your PC and printer. Our services are available for a small monthly fee, there are no taxes or additional fees besides the cost of actual postage printed. No special hardware is needed. Once your mail or package is ready to go, simply hand it to your mail carrier. It's that easy! [back to top](#)

How does Stamps.com work?

Our software connects you via the Internet to your Stamps.com Postage Account. You simply put your letter or package on the Stamps.com scale, select the service and USPS® mail class you want and press print. Once printed, simply affix your postage to your letter or package and give it to your mail carrier or drop it in the nearest mailbox. When you print postage, the postage amount will be deducted from your account. There's never any additional taxes or fees. [back to top](#)

What can I do with Stamps.com?

Everything you can do at the Post Office, you can now do from the convenience of your desk! Print stamps. Print shipping labels. Print directly on envelopes to create professional looking mail. Add Stamps.com insurance to protect your valuable items. Use free USPS Tracking on your Priority Mail Express®, Priority Mail®, First Class Package Service®, and Parcel Select® shipments. Keep track of postage spent with client codes and easy reporting. [back to top](#)

How does the No-Risk Trial work?

New customers are eligible for our 4 Week No-Risk Trial. Simply cancel before the trial period ends and you will not be charged. If you like the service, do nothing and your account continues automatically. [back to top](#)

What do I get for trying the service?

Your Stamps.com account automatically starts with \$5 free postage to use during your trial and a free Stamps.com Supplies Kit (\$5 Value) with address / postage labels and a user manual. As a new Stamps.com customer you will receive a FREE 5 lb. Digital Scale. The scale is a \$50 value and is yours to keep with no additional obligation. Just pay for shipping and handling. You will also receive coupons for \$20 in postage redeemable after your trial period (\$10 per month for two months). Total value of your offer is \$80! [back to top](#)

How much does it cost?

\$15.99/month - no hidden costs, cancel anytime. [back to top](#)

What type of postage discounts can I get with Stamps.com?

With Stamps.com, you will pay less for Priority Mail or Priority Mail Express than you would if you went to the Post Office! Stamps.com customers can get discounts of up to 49% on Priority Mail, up to 54% on Priority Mail Express, and up to 22% on First Class Package Service. International shippers can save up to 12% on Priority Mail International, up to 10% for Priority Mail Express International shipments, and up to 13% on First Class Package International Service. [back to top](#)

START YOUR 4-WEEK TRIAL TODAY

What if I decide to cancel?

Unlike other postage meter solutions, you are not tied to any long-term commitment, and there are no cancellation fees. [back to top](#)

Can I do batch mailing with Stamps.com?

Yes. Stamps.com allows you to easily print multiple shipping labels in just a few clicks. To send packages of the same weight and mail class to multiple addresses simply choose the addresses from your address book or upload a new list of addresses. Use the advanced Batch processing function to fulfill multiple orders with different weights and/or mail classes. Simply import your order lists, specify weight and mail class information for each package, and print all of your shipping labels in one batch. It's that easy. [back to top](#)

Can Stamps.com help me track my postage spending?

With Stamps.com you can track your mailing and shipping spending to the penny! You can even use your own internal reference codes to make sure everything is billed properly. [back to top](#)

What makes Stamps.com better than a postage meter?

With Stamps.com there are no long-term commitments, hidden fees, proprietary ink costs or reset fees to worry about. [Learn more](#). And you will pay less for Priority or Priority Mail Express with Stamps.com than you will with a meter. Just download the software and print only the postage you need. [back to top](#)

How does Stamps.com help eBay® or ecommerce store sellers?

With Stamps.com, it's easy to manage and fulfill customer orders. The Stamps.com software helps you retrieve order data directly from the most popular web stores including eBay®, Amazon.com® (Pro Merchant account) and PayPal®, shopping carts such as Zen Cart™ and Magento®, as well as leading multi-carrier shipping management systems including Kewill Flagship™ and Interapptive Shipworks. With one click, you can download orders from multiple sources. Print out one shipping label at a time, or batch your orders and print all your labels at the same time. Stamps.com will automatically post back to your web store and shopping cart account information data like tracking number and shipping cost. This allows you to easily let your customers know that an order has shipped. To learn more and see a complete list of integrations, [click here](#). [back to top](#)

What type of solutions does Stamps.com offer to professional shippers?

Whether you ship 10 packages or 10,000 packages each day, Stamps.com has a solution for you. Stamps.com Pro offers ecommerce shippers direct connectivity with most major marketplaces, accounting systems and ecommerce software packages. Stamps.com Professional Shipper offers higher volume shippers the speed, direct ODBC database connectivity and higher postage limits you need to run your business. [Click here](#) to learn more. If you have higher volume or custom shipping needs, please [contact us](#) to discuss your needs with our team of USPS shipping consultants. [back to top](#)

Can I use Stamps.com together with QuickBooks?

Yes, Stamps.com has an plug-in which allows customers to use the functions of Stamps.com within the QuickBooks software. [Click here](#) to learn more. [back to top](#)

Does Stamps.com support an ODBC connection to my database?

Yes, Stamps.com Professional Shipper allows you to import order information directly from your database into Stamps.com for shipping. Stamps.com can pull order or customer information from virtually any database, from Excel to SQL. [Click here](#) to learn about Stamps.com Professional Shipper and how to integrate Stamps.com directly into your shipping workflow. [back to top](#)

Can more than one person access a Stamps.com account at the same time?

Yes. Stamps.com's new Multi-User functionality enables more than one person in your company to both access your Stamps.com account and print postage at the same time. With the Multi-User option, companies can also monitor postage spending for individual users under one account.

[back to top](#)

Do I need special labels to print postage?

No. Stamps.com's allows you to print postage on standard labels, envelopes or plain paper. To print NetStamps™ (Stamps.com's postage stamp alternative) you will need to purchase our NetStamps labels at a nominal cost. [back to top](#)

Can Stamps.com work with the Mac?

The new web version of Stamps.com is now available for use on the Mac operating system! You can print stamps and shipping labels directly from your web browser, no download needed! [Learn more](#)
[back to top](#)

Does Stamps.com offer an Enterprise Solution?

Yes! If you'd like to implement Stamps.com across a network of offices and get a more detailed level of postage reporting, Stamps.com has a solution for you. [Learn more](#) about our Enterprise Reporting Center. [back to top](#)

About Stamps.com

Approved by the USPS in 1999, Stamps.com is the leading provider of Internet-based postage solutions. Stamps.com is at least 50% cheaper than a traditional postage meter and serves nearly 500,000 satisfied customers. These customers have printed more than \$3 billion in postage using Stamps.com.
[back to top](#)

Try Stamps.com for 4 Weeks!

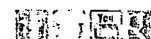
Every new customer account starts with:

- Free 5 lb. Digital Scale, connects via USB
- 4-week trial
- \$5 in free postage to use in trial period
- Free Supplies Kit including postage labels
- Additional \$10 postage coupons to use after trial
- *pay only s&h fee



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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

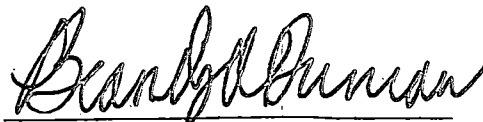
In the Matter of Issuance of Law	)	Docket No. 14-ALJ-30-0540-AP
Enforcement Officer Certification to	)	
Deonta L. Brinston,	)	
Appellant,	)	
vs.	)	Certificate of Service
	)	
South Carolina Law Enforcement Training	)	
Council,	)	
Respondent.	)	

I, Brandy A. Duncan, certify that I have served the within Reply to Appellant's Reply [Sic] to Motion to Dismiss by mailing a copy via United States mail, postage prepaid, addressed to:

Candy M. Kern-Fuller, Esquire
Upstate Law Group, LLC
200 East Main Street
Easley, South Carolina 29640-2073

I further certify that all parties required by Rule to be served have been served.

This 16th day of December, 2014.



Brandy A. Duncan, General Counsel
Bar #72052
5400 Broad River Road
Columbia, South Carolina 29212
(803) 896-7414
(803) 896-8347 (fax)
Attorney for Respondent

FILED

DEC 16 2014

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Deonta L. Brinston)
Appellant/Petitioner,)
)
v.)
)
Law Enforcement Training Council,)
Respondent,)
_____)

Docket No. 14-ALJ-30-0540-AP

CJA Case No: 14-CJA-003

**APPELLANT'S REPLY TO
MOTION TO DISMISS**



Petitioner/Appellant respectfully replies to the Respondent South Carolina Law
Enforcement Training Council's Motion to Dismiss as follows:

I. FACTS/BACKGROUND

In this matter on appeal, a police officer has been *permanently* denied the right to certification by the Respondent, contrary to the Hearing Officer's recommendation, based on an erroneous assertion of *one* positive steroid test performed by the Anderson County Sheriff's Office in violation of the ACSO's own policies and procedures. The test was also performed in contradiction of the procedural safeguards as dictated by the Fourteenth Amendment of the United States Constitution and the County's own personnel ordinances. Among other things, Appellant was specifically denied the right to further testing of the specimen to differentiate between legal, over the counter supplements versus illegal ones as guaranteed by ANDERSON COUNTY CODE, §55-52(F)(7-10). (See Appellant's Brief, pp. 3-5)

The Respondent issued its decision on October 15, 2014. As noted in Respondent's Motion, Appellant's appeal was not due until November 19, 2014. The appeal was completed, printed and *personally* mailed by the undersigned late on Friday evening, November 14, 2014 at an outside mailbox in Anderson County, South Carolina and NOT at the Easley, South Carolina post office. (See attached Statement of Counsel, Exhibit A).

After receiving Respondent's Motion, and the Court's granting of an additional ten (10) days to reply, the undersigned undertook her own investigation to determine what could have occurred that caused the online tracking information to reflect events differently than what was personally known to the undersigned - specifically, that the appeal was **NEVER** placed at the Easley Post Office or in a box that was to feed to the Easley Post Office.

The information provided by the postal employees in Greenville and Easley was that the entry on November 20, 2014 only indicated that the package was received at and scanned at the Easley Post office on that date. As shown in Exhibit A, knowing that the package was never dropped there, the only explanation that could be provided by the employees was that the location where the package was dropped must have accidentally sent the package to the return address, instead of the mailing address. Once received at the Easley Post Office, the packages were then routed to the proper addresses.

As shown in Exhibit A, the packages were dropped at an outside mail box near the undersigned's home. Upon investigation, it was learned that the mailbox does not have weekend pickup services and should feed directly to the regional bulk mail center in Greenville, South Carolina and *not* to either the Anderson or Easley post offices. The only explanation that could be provided by the USPS employees was that the return address must have been erroneously selected versus the outgoing address and the mail routed to the return addresses' post office – Easley, South Carolina.

As the electronic records of Appellant's counsel show, the briefs and all documents related thereto were completed on the 14th of November, 2014, which was the date she placed them in the U.S. Mail, as shown by the postmarks. (See Exhibit B). There would have been no

reason for the undersigned to have delayed until the 20th of November, 2014 to mail the items completed on November 14, 2014.

The USPS error is just that – a mailing error over which the Appellant had no control. Apparently, the parties to this case are not the only ones who have experienced errors and problems with deliveries and the accuracy of the online tracking system. (See Exhibit C)

II. LAW AND APPLICATION

Respondent cites in its brief cases where timely filing and service is addressed.

Specifically, SCALCR 4B states:

4B. Filing Defined.

The date of the filing is the date of delivery or the date of mailing. Any document filed with the Court shall be accompanied by proof of service of such document on all parties, and, if filed by mail, shall be accompanied by a certificate of the date of mailing.

A document is deemed filed with the Court by:

* * *

(2) by depositing the document in the U.S. mail, properly addressed to the Court, with sufficient first class postage attached;

Respondent does not deny that the package was deposited in the U.S. Mail, that it was properly addressed and that it contained sufficient postage. Rather, it solely relies on the online tracking information to support its contention that the Appeal was allegedly mailed one day late.

As the Court recounted in *Green v. Green*, 320 S.C. 347, 350 (Ct. App. 1995), “Rule 5(b)(1), SCRCRCP, provides that ‘service by mail is complete upon mailing of all pleadings and papers subsequent to service of the original summons and complaint.’ Mailing ordinarily occurs when a document is deposited with the U.S. Postal Service properly addressed with sufficient postage affixed. *Southbridge Prop., Inc. v. Jones*, 292 S.C. 198, 355 S.E.2d 535 (1987). Any designated mail depository box, whether in a building or along a mail route,

constitutes a depository authorized for the receipt and delivery of mail. *Rosen v. United States*, 245 U.S. 467, 62 L. Ed. 406, 38 S. Ct. 148 (1918). Although the postmark date on an envelope is compelling evidence in cases where timely service through the mail is at issue, we are unaware of any authority ... indicating the postmark date is dispositive. See William B. Johnson, Annot., *Proof of Mailing by Evidence of Business or Office Custom*, 45 A.L.R. 4th 476 (1986). Such would assume the infallibility of the U.S. Postal Service, an illogical assumption given the volume of letters and packages constantly being processed and the number of human hands any one envelope may pass through." *Id.* (emphasis added). Such an illogical assumption of infallibility would presumably also apply to the online tracking information, which is also the subject of "human hands."

CONCLUSION

As shown by the statements of Counsel, the documents attached hereto and the application of the facts, since the documents were *not* ever mailed at the Easley Post Office or any feeder box, the only way for them to have arrived at the Easley facility would have been for them to have been mailed no later than November 19, 2014. Accordingly, the appeal was timely pursuant to the Rules and should *not* be dismissed.



Candy M. Kern-Fuller, Esq.
S.C. Bar #11392

UPSTATE LAW GROUP, LLC
200 East Main Street
Easley, South Carolina 29640
(864) 855-3114
(864) 855-3227 (Facsimile)

ATTORNEY FOR APPELLANT

December 15, 2014

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Deonta L. Brinston	)	Docket No. 14-ALJ-30-0540-AP
Appellant/Petitioner,	)	
	)	CJA Case No: 14-CJA-003
v.	)	
	)	STATEMENT OF COUNSEL
Law Enforcement Training Council,	)	
Respondent,	)	

I, Candy M. Kern-Fuller, Esq. affirm pursuant to SCRCP 11 and SCRAP 407 (The Rules of Professional Conduct) as follows:

- 1) I am a licensing, practicing attorney admitted the Bar of South Carolina, the Bar of the District of South Carolina and the Fourth Circuit Court of Appeals;
- 2) I have been a licensed attorney in South Carolina since November 2002;
- 3) I have never been publicly or privately disciplined by the Bar in any way;
- 4) I am a former law clerk to the Honorable G. Ross Anderson, Jr., United States District Court Judge from 2002-2003;
- 5) I understand and strictly adhere to our Rules of Professional Conduct, including the Attorney's Oath of Professionalism;
- 6) My office is located in Easley, South Carolina and my home is located in Anderson, South Carolina;
- 7) On November 14, 2014, I prepared the appeals brief and related documents in this matter (See attached electronic data showing electronic time stamps on the MS Word and .pdf files);
- 8) Over the past few years, we have had numerous problems with our mail service at the Easley Post Office. Specifically, in February 2014, the post office lost an entire bag of mail, which it did not locate for over two months. This bag contained numerous checks that we sent out

as a batch to our clients – all of which had to be cancelled and re-issued. As a result of this incident, we began using the online tracking service afforded through www.stamps.com.

Despite this, we often find that our mail is still “misplaced” or “misrouted” until we place a “trace” on it through the Post Office. Often that is not even successful because the mail is not “scanned” at handling locations along the way. When we have inquired about “priority mail” that is supposed to be 2 day service mail, we are told the mail must be outstanding for seven (7) calendar days before a “trace” can even be initiated. Even then, we find that the online tracking information we are provided does match the series of events (or mail locations) where a particular piece of mail has been routed. Apparently, we are not the only ones experiencing these irregularities (See attached other complaints regarding the online tracking tool.)

- 9) In this case, I worked on this brief until after 7:00 p.m. on November 14, 2014, to make sure I had it completed by the end of that week and filed timely. As such, my paralegal provided me the mail envelopes I needed to do the mailings myself in this case. I was scheduled to meet my husband for dinner that evening and, therefore, dropped the packages at an outside mailbox near my home in Anderson County. I was not aware until the Respondent filed this Motion that the particular box I used on that evening had its last pickup at 3:15 p.m. that day and had no weekend pickup (It used to have weekend pickup, but that was discontinued as part of cost reductions employed by the USPS). I was aware that this box is scheduled to feed directly to the Greenville Bulk Mailing center, because I used this location regularly from 2005-2009 as my primary mailing facility.

- 10) I state unequivocally and firmly that I placed the mail in the Anderson County box and not the Easley Post Office, on my way to dinner with my husband that evening, November 14, 2014 and at no time did I mail the documents for this appeal from the Easley Post Office.
- 11) After receiving the Motion and other correspondence from Respondent's Counsel, I researched this matter with the Easley Post Office, the Anderson Post Office and the Greenville Post Office mailing facility. After piecing together the differing information I received, the only logical explanation I was provided was that the packages would have been picked up from the outside mailbox receptacle on Monday after 3:15 p.m. Noone could explain the delay between the pickup at the Anderson County mail receptacle on that Monday and the scanning in Easley on November 20th other than to say it was "in transit" between those times and must have been erroneously routed to the return address on the envelopes. I was told, however, that because it was mailed from that Anderson County outside mail receptacle it HAD to have been mailed *on or prior to* November 19th to have arrived back at the Easley location by November 20, 2014.
- 12) I personally placed the appeal in the mail on Friday, November 14, 2014 and my Certificate of Service regarding the same is true and accurate. While the mail debacle by the U.S. Postal Service is unfortunate, Appellant and I did nothing wrong in this situation. We are at the mercy of the mail service like any other customer.

I affirm the above to be true and accurate pursuant to SCRCP 11 and SCRAP 407 (The Rules of Professional Conduct).



Candy M. Kern-Fuller, Esq.

S.C. Bar #11392

UPSTATE LAW GROUP, LLC

200 East Main Street

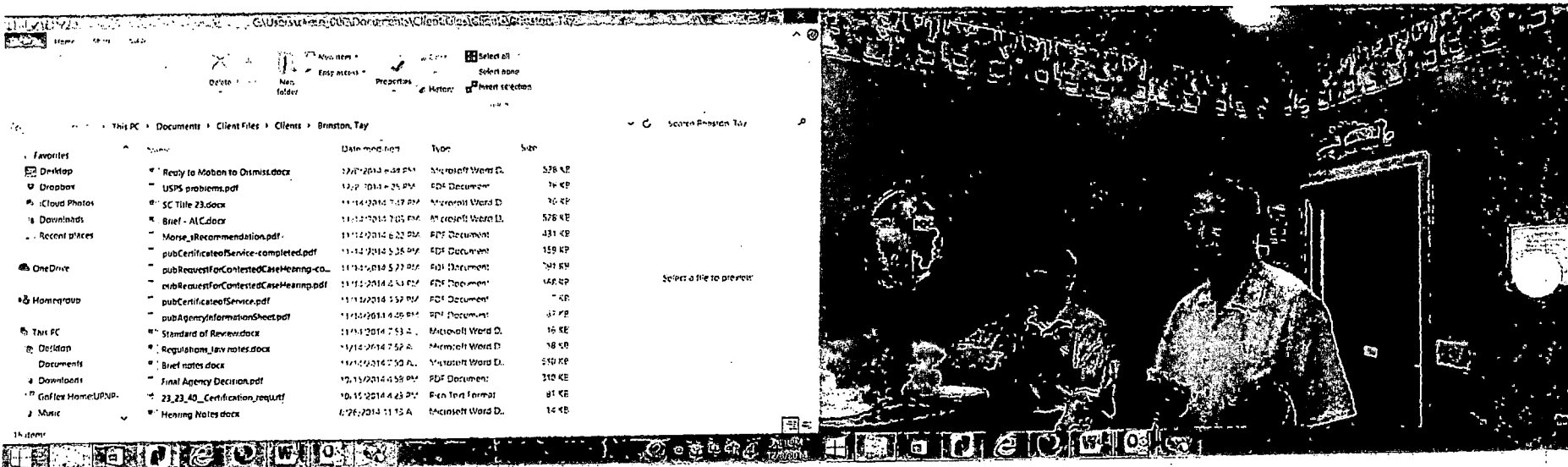
Easley, South Carolina 29640

(864) 855-3114

(864) 855-3227 (Facsimile)

ATTORNEY FOR APPELLANT

December 15, 2014



Usps - Hasn't arrived on Scheduled Delivery

350 of 1009 Usps Reviews

Oct 22, 2013 by anonymous 158 VIEWS 1 COMMENTS \$17 LOSSES

4/5 REVIEW RATING 2.5

 Shipping  Package Shipping



Scheduled Delivery Day: October 21, 2013

Product & Tracking Information

Postal Product:
Package Services

Features:
USPS Tracking™

DATE & TIME	STATUS OF ITEM	LOCATION
October 17, 2013, 10:14 am		HONOLULU, HI 96820
October 16, 2013	Electronic Shipping Info Received	
October 12, 2013, 4:47 pm	Processed through USPS Sort Facility	RICHMOND, CA 94804
October 11, 2013, 7:17 pm	Arrived Shipping Partner Facility	UNION CITY, CA 94567

148 COA - Record on Appeal

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT



In the Matter of Issuance of Law
Enforcement Officer Certification to
Deonta L. Brinston,

Appellant,

vs.

South Carolina Law Enforcement Training
Council,

Respondent.

Docket No. Unassigned at this Date

**MOTION TO DISMISS APPEAL
AS UNTIMELY SERVED**

Respondent, South Carolina Law Enforcement Training Council, by and through its attorney, Brandy A. Duncan, hereby moves this Honorable Court for an order dismissing this matter as untimely filed under Rules 3 and 33, SCALCR. Rule 33, SCALCR, states:

The notice of appeal from the final decision of an agency shall be filed with the [Administrative Law] Court and a copy served on each party and the agency whose final decision is the subject of the appeal within thirty (30) days of receipt of the decision from which the appeal is taken.

Further, Rule 3, SCALCR states:

In computing any period of time prescribed or allowed by these rules... the day of the act, event, or default after the designated period of time begins to run is not included. The last day of the period so computed is to be included... Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail, by e-mail, or upon a person designated by statute to accept service, five days shall be added to the prescribed period.

In this case, Appellant, Deonta L. Brinston, by and through his attorney, Candy M. Kern-Fuller, was notified of the South Carolina Law Enforcement Training Council's final agency decision regarding Appellant's law enforcement certification via e-mail and U.S. Mail on October 15, 2014 (See Exhibit A). Pursuant to Rules 3 and 33, SCALCR, Appellant was required to serve a copy of his notice of appeal on the agency and each party by no later than November 19, 2014.

Not counting October 15, 2014, the day of notice of the final agency decision, Appellant had

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FILED

NOV 27 2014

thirty (30) days (Rule 33, SCALCR) plus five (5) days (Rule 3, SCALCR) to serve the notice of appeal. Thirty (30) days from October 15, 2014 was November 14, 2014, the date Appellant claimed in his Proof of Service and Certificate of Service to mail the notice of appeal. Five (5) days from November 14, 2014 (the extra five (5) days provided by Rule 3, SCALCR, was November 19, 2014. (See Exhibit B). Unfortunately for Appellant, although the "stamps.com" postage label reflected a stamping date of November 14, 2014, the United States Postal Service Tracking reflects that this notice of appeal was not actually deposited in the U.S. Mail until November 20, 2014, one day past the date Appellant was required to serve his notice of appeal. (See Exhibit C).

The law in South Carolina regarding the timeliness of service of notice of appeals abundantly clear. Service of the notice of appeal is a jurisdictional requirement, and the Court has no authority to extend or expand the time in which the notice of intent to appeal must be served. *Mears v. Mears*, 287 S.E. 168, 337 S.E.2d 206 (1985); *Conner v. City of Forest Acres*, 348 S.C. 454, 560 S.E.2d 606 (2002) (dismissing parties who had not been timely serviced with a notice of appeal); *McCray v. State*, 271 S.C. 185, 246 S.E.2d 230 (1978) (in absence of a notice of appeal having been given and timely served, the Supreme Court has no jurisdiction over an appeal).

WHEREFORE, the undersigned respectfully pray this Court dismisses, with prejudice, this untimely served appeal.

Respectfully Submitted,



Brandy A. Duncan, General Counsel
Bar #72052

5400 Broad River Road
Columbia, South Carolina 29212

(803) 896-7414

(803) 896-8347 (fax)

Attorney for Respondent

November 21, 2014

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Exhibit A

Duncan, Brandy

From: Duncan, Brandy
Sent: Wednesday, October 15, 2014 2:17 PM
To: 'candy@upstatelawgroup.com'; cpdchiefgalloway@gmail.com;
sreeves@andersonsheriff.com
Subject: Deonta Brinston
Attachments: Final Agency Decision.pdf



SCANNED

Ms. Kern-Fuller, Chief Galloway, & Lt. Reeves,

Attached please find an electronic copy of the Final Agency Decision in the Deonta Brinston case. Please let me know if you have any questions.

Thanks,

Brandy A. Duncan
Chief General Counsel
S.C. Criminal Justice Academy
5400 Broad River Road
Columbia, South Carolina 29212
(803) 896-7414 (Office)
(803) 608-9738 (Work Cell)
(803) 896-8347 (Fax)

Notice of Confidentiality: The information contained in this e-mail may be legally privileged and/or confidential. It is intended only for the use of the individual(s) or entity named. If you are not the intended recipient, you are hereby notified that any dissemination, distribution, copying, or use of the information contained in this e-mail or the e-mail itself is strictly prohibited. If you have received this e-mail in error, please notify me immediately, delete the original e-mail, and shred any printed copies of the e-mail. Thank you.

IMPORTANT NOTE: *July 1, 2014 was the cutoff date for old PCS of Hire forms. Please go to our web site (www.sccja.sc.gov) and get the new form revised 02/2014.*

Duncan, Brandy

From: Microsoft Outlook
To: candy@upstatelawgroup.com; cpdchiefgalloway@gmail.com;
sreeves@andersonsheriff.com
Sent: Wednesday, October 15, 2014 2:17 PM
Subject: Relayed: Deonta Brinston

Delivery to these recipients or groups is complete, but no delivery notification was sent by the destination server:

candy@upstatelawgroup.com (candy@upstatelawgroup.com)

cpdchiefgalloway@gmail.com (cpdchiefgalloway@gmail.com)

sreeves@andersonsheriff.com (sreeves@andersonsheriff.com)

Subject: Deonta Brinston

Duncan, Brandy

From: Steve Reeves <sreeves@andersonsheriff.com>
To: Duncan, Brandy
Sent: Wednesday, October 15, 2014 2:23 PM
Subject: Read: Deonta Brinston



Your message was read on Wednesday, October 15, 2014 6:22:49 PM UTC.



South Carolina Criminal Justice Academy

October 15, 2014

Candy M. Kern-Fuller, Esquire
Upstate Law Group, LLC
200 East Main Street
Easley, South Carolina 29640-2073

Re: Certification Appeal: Deonta L. Brinston
Case No. 14-CJA-003

Dear Ms. Kern-Fuller:

Enclosed please find the final agency decision in the above referenced case. Mr. Brinston is entitled to appeal this decision to the Administrative Law Court if he chooses. Any such appeal must be filed with the Administrative Law Court within thirty (30) days after receiving this notification.

If you have any questions or concerns, please do not hesitate to contact me at (803) 896-7414.

Sincerely,

Brandy A. Duncan
Chief General Counsel

Enclosure as Stated

cc: Lt. Steven J. Reeves, Anderson County Sheriff's Office
Chief John T. Galloway, Calhoun Falls Police Department

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**LAW ENFORCEMENT TRAINING COUNCIL
CRIMINAL JUSTICE ACADEMY**

In the Matter of the Issuance
of Law Enforcement Officer
Certification to Deonta L. Brinston

)
)
)
)

Case No. 14-CJA-003

FINAL AGENCY DECISION

On May 13, 2014, the Academy received a Personnel Change in Status Report from the Anderson County Sheriff's Office for Mr. Brinston alleging Mr. Brinston engaged in unlawful use of a controlled substance. On July 1, 2014, the Academy received a PCS of Hire from the Calhoun Falls Police Department for Mr. Brinston stating they hired Mr. Brinston on June 19, 2014. On August 26, 2014, a contested case hearing was held regarding this allegation.

Mr. Brinston was represented by Candy Kern-Fuller, Esquire in the contested case hearing. Internal Affairs Investigators Steve Reeves and Jonathon Brown were present on behalf of the Anderson County Sheriff's Office, but presented narrative testimony only and were not allowed to function as a legal representative. Three (3) witnesses provided testimony, Lt. Reeves, Investigator Brown, and Mr. Brinston.

On April 2, 2014, Mr. Brinston's soon-to-be ex-wife reported to the Anderson County Sheriff's Office that Mr. Brinston and another Anderson County Sheriff's Deputy were taking illegal steroids. Based on this report, Mr. Brinston and the other deputy were both required to submit to a specialized steroid urine test through AnMed Laboratory Services on April 9, 2014. Mr. Brinston and the other deputy tested positive for Methandienone. Mr. Brinston also tested positive for Nandrolone. Methandienone and Nandrolone are both listed as anabolic steroids under S.C. Code §44-53-1510(A). Mr. Brinston contends he tested positive for Methandienone and Nandrolone because he was taking three (3) over-the-counter supplements, specifically Tests

PSI, Alpha Mass X, and A-D-T (Brinston Exhibit #1). To support this contention, Mr. Brinston submitted a SOAP Note dated May 27, 2014, from Powdersville Internal Medicine (Brinston Exhibit #2). This SOAP Note stated Mr. Brinston had returned to review his labs from May 20, 2014. This SOAP Note did not indicate the presence of any anabolic steroids, but it did note that Mr. Brinston's "Total Testosterone... was 116.3 (range 348.0-1197.0)." It is well known that the use of anabolic steroids suppresses the naturally occurring testosterone in the body. Given this result and the significant delay between the original testing performed by Anderson County Sheriff's Office (April 9, 2014) and the follow up testing performed by Powdersville Internal Medicine (May 20, 2014), the Law Enforcement Training Council finds the Powdersville Internal Medicine SOAP Note actually supports the allegations put forth by the Anderson County Sheriff's Office against Mr. Brinston.

Mr. Brinston objected to the admission of the written LabCorp test results (Court Exhibit #6, Not Admitted into Evidence) on the basis that there was no affidavit of authenticity, there was no medical review process, and there was no gas chromatography performed on the sample. Despite these objections, Mr. Brinston did not object to Internal Affairs Investigator Reeves' narrative testimony that Mr. Brinston was required to submit to a specialized steroid urine test through AnMed Laboratory Services on April 9, 2014, and that Mr. Brinston tested positive for Methandienone and Nandrolone.

Based on the testing discussed above from April 9, 2014, and May 20, 2014 (including the test results), the concerns raised by Mr. Brinston with regard to the April 9, 2014 testing, the Law Enforcement Training Council makes the following findings:

FINDINGS OF FACT

It is found as a fact:

1. Mr. Brinston tested positive on April 9, 2014, for Methandienone and Nandrolone.
2. Methandienone and Nandrolone are both listed as anabolic steroids under S.C. Code §44-53-1510(A).
3. The SOAP Note dated May 27, 2014, from Powdersville Internal Medicine (Brinston Exhibit #2) noted that Mr. Brinston's "Total Testosterone... was 116.3 (range 348.0-1197.0)."
4. It is well known that the use of anabolic steroids suppresses the naturally occurring testosterone in the body.

CONCLUSIONS OF LAW

It is concluded as a matter of law:

1. S.C. Code §23-23-80(6) allows the Law Enforcement Training Council to suspend, revoke, or restrict law enforcement certification in accordance with regulations promulgated by the Council.

2. S.C. Reg. 38-004 states, in part:

The Council may deny certification based on evidence satisfactory to the Council that the candidate has engaged in misconduct. For purposes of this section, misconduct means:

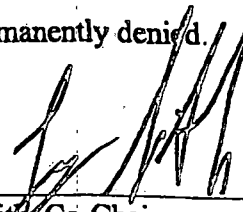
- 2) Unlawful use of a controlled substance...
3. Methandienone and Nandrolone are both listed as anabolic steroids under S.C. Code §44-53-1510(A). Chapter 53 of Title 44 of the South Carolina Code is titled Poisons, Drugs and Other Controlled Substances (emphasis added). Thus, it is clear the intent

of the South Carolina Legislature is that anabolic steroids are considered controlled substances even though they are not contained in a specific Schedule in South Carolina.

4. Methandienone and Nandrolone are both listed as anabolic steroids under 21 U.S.C. §802(41)(A)(xxii) and (xxiv). Anabolic steroids are specifically listed as Schedule III controlled substances under 21 U.S.C. §812.

SANCTION

The unlawful use of controlled substances by an active law enforcement officer is reprehensible. In this case, the use particularly of anabolic steroids during active law enforcement service placed the public at great danger. At any moment Mr. Brinston may have suffered from dangerous side effects of these unlawful substances, for example, a "Roid Rage" incident. For the reasons stated above and due to the great danger Mr. Brinston placed the public in by taking these substances while an active law enforcement officer, Mr. Brinston's request to have law enforcement certification reissued to him is permanently denied.



Director Leroy Smith, Co-Chairman
Law Enforcement Training Council
On Behalf of the Law Enforcement Training Council

Date: October 14, 2014

Exhibit B

South Carolina Administrative Law Court (SC ALC)
Request for Contested Case Hearing FORM
Mail to: 1205 Pendleton St., Suite 224, Columbia, SC 29201

Last Name: Brinston		First: Deonta	Middle: L.	☒ Mr. ☐ Mrs.	☐ Miss ☐ Ms.	Docket No. (To Be Completed by ALC)
Mailing Address: 1050 Double Springs Road			City: Townville		State and Zip: SC 29689	
Home Number:	Work Number:	Cell Number: 864-551-0231		*E-Mail Address: Taybrinston@gmail.com		

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

REPRESENTATION

Are you representing yourself? ☐ Yes ☒ No

Are you represented by an Attorney? ☒ Yes ☐ No

Name of Attorney: **Candy M. Kern-Fuller, Esq.**

Attorney Mailing Address:
200 East Main Street

City, State and Zip:
Easley, South Carolina 29640

Attorney Work Number and Cell Number:
864-855-3114 (W)/864-905-3610 (C)

Attorney E-Mail Address:
attorney@upstatelawgroup.com

CASE INFORMATION

Name of Agency that Issued the Decision:
(Example - Dept. of Revenue, Dept. of Insurance, DHEC)

In order to have your case processed, you must attach the agency decision. Is it attached?:

☒ Yes ☐ No

If no, please explain:

Date the decision was issued: **10/15/2014**

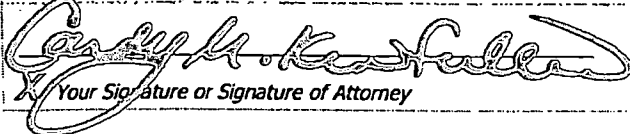
Date the decision was received: **10/15/2014 (by email)**

Please provide a brief statement regarding why the hearing is being requested and the relief sought:

Hearing is being requested because the panel improperly made sua sponte scientific conclusions in the absence of testimony about those conclusions and without the opportunity for Appellant to dispute the erroneous findings.

Payment via ☒ Check ☐ Money Order ☐ Cash for \$
submitted today to the Administrative Law Court via

(applicable filing fee pursuant to ALC Rule 71) is being
☐ U.S. Postal Service ☐ Hand-delivery


Your Signature or Signature of Attorney

11/14/2014

Date

PROOF OF SERVICE (MUST BE COMPLETED)

Your Name: **Candy M. Kern-Fuller, Esq.**

Date: **11/14/2014**

City: **Easley**

State: **SC**

I hereby certify that on the date and place listed above, I served a copy of the foregoing Request for Contested Case Hearing on all other parties to this matter by depositing the same in the United States Mail, postage paid, and addressed as follows (use the reverse side for any additional names):

SC CJA **5400 Broad River Rd** **Columbia, SC 29212-3540**

Name and/or Agency Name Address City, State and Zip
Chief John T. Galloway, Calhoun Falls, 110 W Savannah St, Calhoun Falls, SC 29628

Sheriff John Skipper, ACSO 305 Camson Road **Anderson, SC 29625**

Name and/or Agency Name Address City, State and Zip


Your Signature or Signature of Attorney
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11/14/2014

Date

Attention: All cases filed in the Administrative Law Court are subject to the Rules of Procedure found at the Court's website www.scalc.net or from the Clerk of Court. Failure to follow these rules may result in dismissal of your case.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

In the matter of issuance of Law
Enforcement Officer certification to
Deonta L. Brinston

Appellant/Petitioner,

vs.

Law Enforcement Training Council of
the Criminal Justice Academy

Respondent.

Docket No. -ALJ-

CERTIFICATE OF SERVICE

Attorney for the

I hereby certify that I am the Appellant (Appellant/Petitioner/Respondent) in the above-captioned matter and that on the 14th day of November, 2014, in Easley (city), South Carolina, I served a copy of the forgoing Notice of Appeal (type of document) on the following person(s) by depositing the same in the United States Mail, postage paid, and addressed as follows:

Brandy A. Duncan, Chief General Counsel
South Carolina Criminal Justice Academy

Name
5400 Briad River Road
Address
Columbia, SC 29212-3540
City/State/Zip

Chief John T. Galloway
Calhoun Falls Police Department
Name
110 W Savannah St
Address
Calhoun Falls, SC 29628
City/State/Zip

South Carolina Administrative Law Court

Name
1205 Pendleton St., Suite 224
Address
Columbia, SC 29201
City/State/Zip

Sheriff John Skipper
Anderson County Sheriff's Office

Name
305 Camson Road
Address
Anderson, SC 29625
City/State/Zip

Candy M. Kern-Fuller, Esq.
(Print Name)


(Signature)

200 East Main Street
(Street)

Easley, SC 29640
(City, State, Zip Code)

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Exhibit C

[English](#)[Customer Service](#)[USPS Mobile](#)[Register / Sign In](#)

USPS Tracking™

[Customer Service](#)

Have questions? We're here to help.

Tracking Number: 940551189956 1099104457

On Time

Expected Delivery Day: Friday, November 21, 2014

Product & Tracking Information

Postal Product:
Priority Mail 2-Day™Features:
USPS Tracking™Up to \$50 insurance included
Restrictions Apply[Text Updates](#)[Email Updates](#)

DATE & TIME

STATUS OF ITEM

LOCATION

November 21, 2014 , 11:09
am

Delivered, In/At Mailbox

COLUMBIA, SC 29212

Your item was delivered in or at the mailbox at 11:09 am on November 21, 2014 in COLUMBIA, SC 29212.

November 21, 2014 , 10:23
am

Sorting Complete

COLUMBIA, SC 29210

November 21, 2014 , 5:11
am

Arrived at Post Office

COLUMBIA, SC 29210

November 21, 2014 , 3:00
am

Arrived at USPS Facility

COLUMBIA, SC 29201

November 20, 2014 , 8:51
pm

Departed USPS Facility

GREENVILLE, SC 29607

November 20, 2014 , 7:42
pmArrived at USPS Origin
Facility

GREENVILLE, SC 29607

November 20, 2014 , 6:27
pmAccepted at USPS Origin
Sort Facility

EASLEY, SC 29640

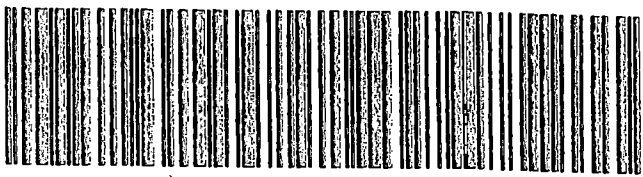
November 14, 2014

Pre-Shipment Info Sent to
USPS

Track Another Package

Tracking (or receipt) number

[Track It](#)

P	\$5.05	062S0008200909
	US POSTAGE PRIORITY MAIL COMMERCIAL BASE PRICING	FROM 29640
		stamps.com 11/14/2014
PRIORITY MAIL 2-DAY™		
UPSTATE LAW GROUP 200 E. MAIN STREET EASLEY SC 29640		0024
SHIP TO: Brandy A. Duncan, Esquire General Counsel South Carolina Criminal Justice Academy 5400 Broad River Road Columbia SC 29212-3540		C075
		
USPS TRACKING #		
		
9405 5118 9956 1099 1044 57		
Tracking		

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

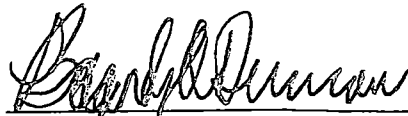
In the Matter of Issuance of Law	)	Docket No. Unassigned at this Date
Enforcement Officer Certification to	)	
Deonta L. Brinston,	)	
Appellant,	)	
vs.	)	Certificate of Service
	)	
South Carolina Law Enforcement Training	)	
Council,	)	
Respondent.	)	
	)	

I, Brandy A. Duncan, certify that I have served the within Motion to Dismiss Appeal as Untimely Served by mailing a copy via United States mail, postage prepaid, addressed to:

Candy M. Kern-Fuller, Esquire
Upstate Law Group, LLC
200 East Main Street
Easley, South Carolina 29640-2073

I further certify that all parties required by Rule to be served have been served.

This 21st day of November, 2014.



Brandy A. Duncan, General Counsel
Bar #72052
5400 Broad River Road
Columbia, South Carolina 29212
(803) 896-7414
(803) 896-8347 (fax)
Attorney for Respondent

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Deonta L. Brinston)
Appellant/Petitioner,)
)
v.)
)
Law Enforcement Training Council,)
Respondent,)
_____)

Docket No. ____-ALJ-____-____-____

CJA Case No: 14-CJA-003

Petitioner/Appellant respectfully appeals the decision of the Criminal Justice Academy Training Council dated October 14, 2014, and served upon Appellant by letter dated October 15, 2014, permanently denying him certification as a law enforcement officer in South Carolina.

I. BACKGROUND/FACTS

Appellant/Petitioner has been a law enforcement officer in the State of South Carolina continuously since 2008 – a total of approximately six (6) years. (Tr. p. 38) Appellant is a K9 officer who has used his K9 for narcotics detection, apprehension of felons, chases on foot, and as backup in tense and difficult situations. (Tr. p. 46-47) Appellant comes from a family of law enforcement officers, one of whom was killed in the line of duty. (Tr. p. 46).

In or about the Spring of 2014, Appellant and his wife were embroiled in a contested divorce and custody action involving Appellant's young daughter. (Tr. p. 47) Around March 2, 2014, Appellant's wife made a verbal report to the Anderson County Sheriff's Office alleging that Appellant and another officer (who was his then roommate) had allegedly used steroids. (Tr. pp. 6, 14). Anderson County General Order 111 requires that "All formal complaints will be taken in writing on an *Employee Complaint Form* and should be signed by the complainant (unless received anonymously) to document receipt of the complaint." (Tr. pp. 15-16)

In violation of this policy, ACSO's Internal Affairs investigator, Lt. Steve Reeves, failed to take a written complaint from Appellant's estranged wife and failed to have her sign any complaint, despite knowing the parties were in the midst of a family court matter. (Tr. p. 15). The estranged Mrs. Brinston's complaint was the only indication of alleged illegal steroid use. (Tr. p. 26).

Specifically, Lt. Reeves testified that:

3 Q: At the time that you all undertook this
4 evaluation, was there any outside evidence
5 other than this complaint by Mr. Brinston's
6 ex-wife, who he was engaged in litigation with,
7 about the fact that he was under the influence
8 of any drugs during work?

9 A: Not other than her, no, ma'am.

10 Q: That he in any way had a physical impairment?

11 A: Mr. Brinston?

12 Q: Yes, sir.

13 A: No, ma'am.

14 Q: A loss of judgment?

15 A: No, ma'am.

16 Q: That he committed any safety violations?

17 A: Not safety violations, no, ma'am.

18 Q: That he had engaged in activity that caused
19 risk of injury or possibility of death to
20 himself or anyone else?

21 A: No, ma'am.

22 Q: And under General Order 107 did he appear to be
23 under the influence of anything that would be
24 an intoxicating substance or other substance
25 that would cause him an inability to perform
1 the duties of his job?

2 A: Not at any time that I've seen him.

3 Q: So the sole suspicion that you had was based on
4 this allegation by Mrs. Brinston?

5 A: Yes, ma'am.

(Tr. pp. 26-27)

Furthermore, if the ACSO were “notified of conduct or behavior that causes immediate and direct concern for the job fitness of an employee or if there is concern an employee may be a threat to himself/herself or others” or the “supervisor believes an employee needs evaluation for job fitness” they should have made a mandatory referral to the Employee Assistance Program rather than terminate Appellant’s employment. ACSO General Order 138, Employee Assistance Program. However, by Lt. Reeves’ own testimony, there was no evidence that Appellant met either criteria. (Tr. pp. 26-27)

Anderson County Sheriff’s Office (ACSO)’s actions in testing Appellant for the alleged steroid use without reasonable cause violated Appellant’s Fourteenth Amendment rights and Anderson County’s own personnel ordinance. Specifically, as an employee of Anderson County, and pursuant to the Drug-Free Workplace Act of 1988, only three types of drug and alcohol testing are permitted – 1) pre-employment testing, 2) reasonable suspicion testing, and 3) random testing under a bona fide random testing program (ANDERSON COUNTY CODE, §55-52(e).)

“Reasonable suspicion” is defined as:

- (a) Any employee whose work performance or behavior creates a reasonable suspicion that he/she is unfit for duty and possibly abusing alcohol and drugs.*
- (b) Any employee who is responsible for an accident on county property or involving county property where there is no reasonable explanation as to the cause or where negligence or carelessness appears to be the cause.*
- (c) Any employee who is involved in an accident where the county has a reasonable belief that alcohol and/or drug use may have contributed to the employee's involvement in the accident.*
- (d) Any employee who is responsible for an accident resulting in damage to county property in excess of \$100.00 or injury to other persons where there is not reasonable explanation as to the cause or where negligence or carelessness appears to be the cause.*

ANDERSON COUNTY CODE, §55-52(e)(2)(a-d)

Again, none of those conditions were present. (Tr. pp. 26-27). However, even if they were, which they were not, Appellant would have been entitled to have further testing performed to eliminate a falsely positive test. Specifically, ACSO failed to do any of the following:

(7) ... *Those samples that test positive on the first screen will be tested more extensively by means of gas chromatography/mass spectrometry (GC/MS) analysis to eliminate any false positive tests.*

(8) *The laboratory will ensure that the chain-of-custody procedures are adhered to from the time of receipt of urine samples until testing is completed and results are reported. Samples that test positive will be stored by the laboratory for a minimum of one year.*

(9) *An individual who tests positive may request a second analysis of the original sample. That test will be conducted at the same laboratory used by the county at the individual's expense. The individual can also request a separate retest at another SAMSHA-certified laboratory. In such instances, the laboratory used by the county will send a portion of the original sample to a laboratory designated by the individual. The cost of the retest shall be paid for by the individual.*

(10) *All individuals required to submit to a test under this policy will receive written notification of drug test results.*

ANDERSON COUNTY CODE, §55-52(F)(7-10)

When asked about this at the hearing, Lt. Reeves admitted that they never performed gas chromatography on the sample (Tr. p. 19). Reeves also testified that he does not know if gas chromatography/mass spectrometry (GC/MS) was the only way to differentiate between over the counter side effects and illegal steroids. (Tr. p. 19) Both witnesses for Anderson County admitted they don't even know how GC/MS works. (Tr. p. 34). They also didn't know (or follow) the Anderson County Personnel Policy for drug testing. (Tr. p. 25).

Appellant testified that he took over the counter supplements that he had purchased from Complete Nutrition and taken at the instruction of a personal trainer and submitted into evidence the labels from the three supplements which he "stacked" for maximum beneficial results.

(Brinston Ex. 1; Tr. pp. 41-43) Specifically, Appellant was advised that some of these

supplements could falsely test positive as steroids and that he should ask for a blood test to differentiate between these legal agents and illegal steroids. (Tr. p. 43). Appellant testified that he made such a request after the falsely positive urine screen, but ACSO refused to do so. (Tr. p. 44). After all these violations of Appellant's rights, when SLED and ACSO questioned Appellant and gave him *Garrity* warnings, Appellant invoked his right to an attorney. Once he did so, Chief Smith was called in to meet with Appellant and terminated Appellant's employment with ACSO. (Tr. pp. 21, 31). ACSO thereafter filed a separation notice with the Criminal Justice Academy alleging cause for its termination of Appellant and then challenged Appellant's certification request when he was hired by Calhoun Falls Police Department.

The timeline of important events is as follows:

3/2/14 – Oral complaint from the estranged Mrs. Brinston to ACSO

4/9/14 – Urine test taken by Appellant

4/24/14 – Urine results reported to ACSO

4/29/14 – Meeting with Appellant regarding urine results

5/13/14 – ACSO sent a personnel change form (PCF) to CJA alleging Appellant engaged in unlawful use of a controlled substance

5/20/14 – Copy of the PCF filed by the ACSO was sent to Appellant pursuant to S.C. Code of Regulations, §38-009 and he had private testing performed by a sports medicine doctor who evaluated it using liquid chromatography/mass spectrometry (LC/MS) and confirmed no illegal steroid use

6/19/14 – Calhoun Falls PD hires Appellant

7/1/14 – PCF received by CJA from Calhoun Falls

8/26/14 – Contested case hearing held by CJA regarding certification of Appellant for Calhoun Falls

The hearing officer, Robin E. Morse, Director of the Clinton Department of Public Safety, who observed the witnesses and took the testimony at the hearing, made his recommendation to the Training Council as follows:

Given Mr. Brinston's contention that his positive test results came from taking three (3) over-the-counter supplements and Anderson County Sheriff's Office's failure to contest that contention via expert testimony or testimony from qualified medical personnel from AnMed or Lab Corp, I recommend Mr. Brinston be recertified as a law enforcement officer with two (2) years of probation.

I further recommend that this probationary period include random drug testing, including specific testing for steroid use, at least every three (3) months on dates selected by the Academy. These testing dates will be communicated to Mr. Brinston's employer on the day testing is to occur. Failure to complete the testing on the dates required by the Academy may be grounds for reopening this case. Testing positive for any controlled substance during the probationary period may be grounds for reopening this case. All drug testing done during this probationary period shall include specific testing for steroid use and, if a test is positive for steroid use, the sample shall be further tested using gas chromatography to determine if the result is from anabolic steroids or over-the-counter supplements. Prior to all drug testing Mr. Brinston shall provide to his employer, in a sealed and initialed over the seal envelope, a written list of any prescriptions, over-the-counter medications and/or supplements he is currently taking or has taken during the 45 days prior to testing. This list shall be submitted to the Academy, still in its sealed envelope, should Mr. Brinston test positive for any controlled substance(s) during this probationary period.

(Morse recommendation, pp. 3-4)

In its October 14, 2014 decision, which was mailed to Appellant on October 15, 2014, the Respondent rejected the Hearing Officer's recommendation and the evidence presented at the hearing, and, instead, determined that:

The unlawful use of controlled substances by an active law enforcement officer is reprehensible. In this case, the use particularly of anabolic steroids during active law enforcement service placed the public at great danger. At any moment Mr. Brinston may have suffered from dangerous side effects of these unlawful substances, for example, a "Roid Rage" incident. For the reasons stated above and due to the great danger Mr. Brinston placed the public in by taking these substances while an active law enforcement officer, Mr. Brinston's request to have law enforcement certification reissued to him is permanently denied. //

(Final Agency Decision, p.4)

Appellant appeals this finding, which is contrary to any evidence submitted by the ACSO of any danger Appellant exhibited or placed the general public in and the testimony of both ACSO officers. (Tr. pp. 26-27) and asks that the permanent denial of his law enforcement certification be overturned.

II. STANDARD OF REVIEW

"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. "

III. ISSUES

- A. Is the Respondent's Final Agency Decision clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record?
- B. Is the Respondent's Final Agency Decision arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion?

IV. DISCUSSION

"The South Carolina Law Enforcement Training Council is authorized to: (6) certify and train qualified candidates and applicants for law enforcement officers and provide for suspension, revocation, or restriction of the certification, in accordance with regulations promulgated by the council." S.C. CODE ANN. §23-23-80(6)

"The Department may deny certification based on evidence satisfactory to the Department that the candidate has engaged in misconduct. For purposes of this section, misconduct means:

* * * 2. Unlawful use of a controlled substance. In considering whether to deny certification based on misconduct, the Department may consider the seriousness, the remoteness in time and any mitigating circumstances surrounding the act or omission constituting or alleged to constitute misconduct." S.C. Code of Regulations, §38-004(A)(2)&(B).

In the case at bar, Appellant's former employer, the Anderson County Sheriff's Office (ACSO) asserted that its urine screening of April 9, 2014, which tested positive for two steroids listed on the prohibited list of anabolic steroids. Appellant attempted to have the results confirmed by further testing, but the ACSO refused. (Tr. pp. 43-44). The ACSO failed to abide by its own General Orders or County Personnel Policy (*supra pp. 1-5*). As a threshold matter, had the ACSO complied with its own policies, Appellant would never have been subjected to the

illegal testing he was. Regardless, had ACSO followed its own General Orders and Personnel Policy, gas chromatography and mass spectrometry would have been performed on the sample to differentiate illicit substances from over-the-counter agents. The fact that the required procedures under both the County's own policies and the Sheriff's own General Orders were not followed was proven by Appellant and admitted by the ACSO's own witnesses. (Tr. pp. 15-16, 19, 25-27, 34, 43-44).

THE RESPONDENT'S FINAL AGENCY DECISION IS CLEARLY ERRONEOUS IN VIEW OF THE RELIABLE, PROBATIVE, AND SUBSTANTIAL EVIDENCE ON THE WHOLE RECORD AND IS AN ABUSE OF DISCRETION BASED ON AN ERROR OF LAW, BECAUSE IT IS GROUNDED IN FACTUAL CONCLUSIONS WITHOUT EVIDENTIARY SUPPORT.

Our Supreme Court has defined substantial evidence as evidence that, in viewing the record as a whole, would allow reasonable minds to reach the same conclusion the Appellate Panel reached. *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981). "Substantial evidence is not a mere scintilla of evidence, but evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion the agency reached." *Tiller v. Nat'l Health Care Ctr. of Sumter*, 334 S.C. 333, 338, 513 S.E.2d 843, 845 (1999).

Further, an abuse of discretion occurs when there is an error of laws grounded in factual conclusions that are without evidentiary support. *Clark v. Cantrell*, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000).

The only evidence presented in support of the Agency's finding that Appellant actually engaged in misconduct was the unverified lab results (which had no chain of custody, no affidavit of authenticity, no confirming gas chromatography/mass spectrometry, and no other medical review performed) and ACSO's witnesses testimony about those results. Appellant had always maintained that the results were "false positives." Specifically, both officers from the

ACSO testified upon cross-examination that Appellant never admitted unlawful use of a controlled substance – i.e. illegal anabolic steroids. (Tr. pp. 32-33)

Specifically, the Agency made only four findings of fact:

It is found as a fact:

1. Mr. Brinston tested positive on April 9, 2014, for Methandienone and Nandrolone.
2. Methandienone and Nandrolone are both listed as anabolic steroids under S.C. Code §44-53-1510(A).
3. The SOAP Note dated May 27, 2014, from Powdersville Internal Medicine (Brinston Exhibit #2) noted that Mr. Brinston's "Total Testosterone... was 116.3 (range 348.0-1197.0)."
4. It is well known that the use of anabolic steroids suppresses the naturally occurring testosterone in the body.
4. It is well known that the use of anabolic steroids suppresses the naturally occurring testosterone in the body.

The first finding of fact, that Appellant tested positive for two steroid, clearly omits all the evidence Appellant developed about the integrity of those results absent the required safeguards provided by the Anderson County Code and the Rules of Evidence for the admission of said results.

The third finding of fact, omits the physician's other findings of no steroid use.

The fourth finding of fact is the most troubling. There was no expert testimony put forth by the Panel or the ACSO about the relationship between steroids and testosterone levels – clearly a scientific fact which would require medical expertise to establish. Further, after a

thorough search of the largest body of "well known" data (aka the world wide web) there was nothing of the sort found to support this contention.

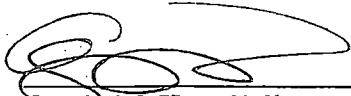
Based upon these four findings of fact, the Agency concluded that:

The unlawful use of controlled substances by an active law enforcement officer is reprehensible. In this case, the use particularly of anabolic steroids during active law enforcement service placed the public at great danger. At any moment Mr. Brinston may have suffered from dangerous side effects of these unlawful substances, for example, a "Roid Rage" incident. For the reasons stated above and due to the great danger Mr. Brinston placed the public in by taking these substances while an active law enforcement officer, Mr. Brinston's request to have law enforcement certification reissued to him is permanently denied. //

Accordingly, based on the lack of evidence and testimony regarding no evidence of actual use of illicit anabolic steroids, the ONE positive urine screen that was NEVER verified pursuant to Anderson County's own policies, Appellant's requests and the Rules of Evidence, and the *sua sponte* and improper medical conclusions made by the Hearing Officer and the Panel, there is not substantial evidence when considering the record as a whole that would allow reasonable minds to reach the conclusion the agency reached. Further, the Agency's determination of its sanction is an error of law which is grounded in factual conclusions that are without evidentiary support.

V. CONCLUSION

The Final Agency Decision should be overturned and Appellant's certification as a Law Enforcement Officer re-issued.



Candy M. Kern-Fuller, Esq.

S.C. Bar #11392

UPSTATE LAW GROUP, LLC

200 East Main Street

Easley, South Carolina 29640

(864) 855-3114

(864) 855-3227 (Facsimile)

ATTORNEY FOR APPELLANT

November 14, 2014

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

In the matter of issuance of Law
Enforcement Officer certification to
Deonta L. Brinston

Appellant/Petitioner,

vs.

Law Enforcement Training Council of
the Criminal Justice Academy

Respondent.

Docket No. -ALJ- - -

CERTIFICATE OF SERVICE

Attorney for the

I hereby certify that I am the Appellant (Appellant/Petitioner/Respondent) in the above-captioned matter and that on the 14th day of November, 2014, in Easley (city), South Carolina, I served a copy of the forgoing Notice of Appeal (type of document) on the following person(s) by depositing the same in the United States Mail, postage paid, and addressed as follows:

**Brandy A. Duncan, Chief General Counsel
South Carolina Criminal Justice Academy**

Name
5400 Briard River Road
Address
Columbia, SC 29212-3540
City/State/Zip

**Chief John T. Galloway
Calhoun Falls Police Department**

Name
110 W Savannah St
Address
Calhoun Falls, SC 29628
City/State/Zip

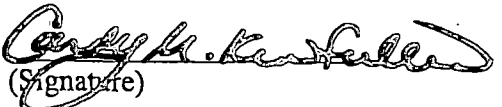
South Carolina Administrative Law Court

Name
1205 Pendleton St., Suite 224
Address
Columbia, SC 29201
City/State/Zip

**Sheriff John Skipper
Anderson County Sheriff's Office**

Name
305 Camson Road
Address
Anderson, SC 29625
City/State/Zip

Candy M. Kern-Fuller, Esq.
(Print Name)


(Signature)

200 East Main Street
(Street)

Easley, SC 29640
(City, State, Zip Code)

South Carolina Administrative Law Court (S.C. ALC)
Request for Contested Case Hearing FORM
Mail to: 1205 Pendleton St., Suite 224, Columbia, SC 29201

Last Name: Brinston	First: Deonta	Middle: L.	☒ Mr. ☐ Mrs.	☐ Miss ☐ Ms.	Docket No. (To Be Completed by ALC)
Mailing Address: 1050 Double Springs Road			City: Townville		State and Zip: SC 29689
Home Number:	Work Number:	Cell Number: 864-551-0231		*E-Mail Address: Taybrinston@gmail.com	

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

REPRESENTATION

Are you representing yourself? ☐ Yes ☒ No

Are you represented by an Attorney? ☒ Yes ☐ No

Name of Attorney: **Candy M. Kern-Fuller, Esq.**

Attorney Mailing Address:
200 East Main Street

City, State and Zip:
Easley, South Carolina 29640

Attorney Work Number and Cell Number:
864-855-3114 (W)/864-905-3610 (C)

Attorney E-Mail Address:
attorney@upstatelawgroup.com

CASE INFORMATION

Name of Agency that Issued the Decision:
(Example – Dept. of Revenue, Dept. of Insurance, DHEC)

In order to have your case processed, you must attach the agency decision. Is it attached?:

☒ Yes ☐ No

If no, please explain:

Date the decision was issued: **10/15/2014**

Date the decision was received: **10/15/2014 (by email)**

Please provide a brief statement regarding why the hearing is being requested and the relief sought:

Hearing is being requested because the panel improperly made sua sponte scientific conclusions in the absence of testimony about those conclusions and without the opportunity for Appellant to dispute the erroneous findings.

Payment via ☒ Check ☐ Money Order ☐ Cash for \$
submitted today to the Administrative Law Court via

(applicable filing fee pursuant to ALC Rule 71) is being
☐ U.S. Postal Service ☐ Hand-delivery


Your Signature or Signature of Attorney

11/14/2014

Date

PROOF OF SERVICE (MUST BE COMPLETED)

Your Name: **Candy M. Kern-Fuller, Esq.**

Date: **11/14/2014**

City: **Easley**

State: **SC**

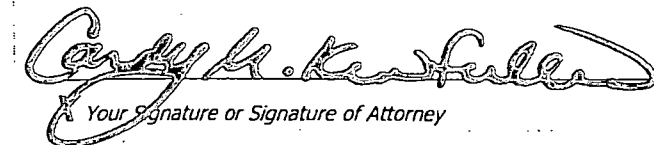
I hereby certify that on the date and place listed above, I served a copy of the foregoing Request for Contested Case Hearing **on all other parties** to this matter by depositing the same in the United States Mail, postage paid, and addressed as follows (use the reverse side for any additional names):

SC CJA **5400 Broad River Rd** **Columbia, SC 29212-3540**

Name and/or Agency Name Address City, State and Zip
Chief John T. Galloway, Calhoun Falls, 110 W Savannah St, Calhoun Falls, SC 29628

Sheriff John Skipper, ACSO 305 Camson Road **Anderson, SC 29625**

Name and/or Agency Name Address City, State and Zip


Your Signature or Signature of Attorney

11/14/2014

Date

COA - Record on Appeal 181

Attention: All cases filed in the Administrative Law Court are subject to the Rules of Procedure found at the Court's website www.scalc.net or from the Clerk of Court. Failure to follow these rules may result in dismissal of your case.



South Carolina Criminal Justice Academy

October 15, 2014

Candy M. Kern-Fuller, Esquire
Upstate Law Group, LLC
200 East Main Street
Easley, South Carolina 29640-2073

Re: Certification Appeal: Deonta L. Brinston
Case No. 14-CJA-003

Dear Ms. Kern-Fuller:

Enclosed please find the final agency decision in the above referenced case. Mr. Brinston is entitled to appeal this decision to the Administrative Law Court if he chooses. Any such appeal must be filed with the Administrative Law Court within thirty (30) days after receiving this notification.

If you have any questions or concerns, please do not hesitate to contact me at (803) 896-7414.

Sincerely,

Brandy A. Duncan
Chief General Counsel

Enclosure as Stated

cc: Lt. Steven J. Reeves, Anderson County Sheriff's Office
Chief John T. Galloway, Calhoun Falls Police Department

182 COA - Record on Appeal

**LAW ENFORCEMENT TRAINING COUNCIL
CRIMINAL JUSTICE ACADEMY**

In the Matter of the Issuance
of Law Enforcement Officer
Certification to Deonta L. Brinston

) Case No. 14-CJA-003

) FINAL AGENCY DECISION
)

On May 13, 2014, the Academy received a Personnel Change in Status Report from the Anderson County Sheriff's Office for Mr. Brinston alleging Mr. Brinston engaged in unlawful use of a controlled substance. On July 1, 2014, the Academy received a PCS of Hire from the Calhoun Falls Police Department for Mr. Brinston stating they hired Mr. Brinston on June 19, 2014. On August 26, 2014, a contested case hearing was held regarding this allegation.

Mr. Brinston was represented by Candy Kern-Fuller, Esquire in the contested case hearing. Internal Affairs Investigators Steve Reeves and Jonathon Brown were present on behalf of the Anderson County Sheriff's Office, but presented narrative testimony only and were not allowed to function as a legal representative. Three (3) witnesses provided testimony, Lt. Reeves, Investigator Brown, and Mr. Brinston.

On April 2, 2014, Mr. Brinston's soon-to-be ex-wife reported to the Anderson County Sheriff's Office that Mr. Brinston and another Anderson County Sheriff's Deputy were taking illegal steroids. Based on this report, Mr. Brinston and the other deputy were both required to submit to a specialized steroid urine test through AnMed Laboratory Services on April 9, 2014. Mr. Brinston and the other deputy tested positive for Methandienone. Mr. Brinston also tested positive for Nandrolone. Methandienone and Nandrolone are both listed as anabolic steroids under S.C. Code §44-53-1510(A). Mr. Brinston contends he tested positive for Methandienone and Nandrolone because he was taking three (3) over-the-counter supplements, specifically Tests

PSI, Alpha Mass X, and A-D-T (Brinston Exhibit #1). To support this contention, Mr. Brinston submitted a SOAP Note dated May 27, 2014, from Powdersville Internal Medicine (Brinston Exhibit #2). This SOAP Note stated Mr. Brinston had returned to review his labs from May 20, 2014. This SOAP Note did not indicate the presence of any anabolic steroids, but it did note that Mr. Brinston's "Total Testosterone... was 116.3 (range 348.0-1197.0)." It is well known that the use of anabolic steroids suppresses the naturally occurring testosterone in the body. Given this result and the significant delay between the original testing performed by Anderson County Sheriff's Office (April 9, 2014) and the follow up testing performed by Powdersville Internal Medicine (May 20, 2014), the Law Enforcement Training Council finds the Powdersville Internal Medicine SOAP Note actually supports the allegations put forth by the Anderson County Sheriff's Office against Mr. Brinston.

Mr. Brinston objected to the admission of the written LabCorp test results (Court Exhibit #6, Not Admitted into Evidence) on the basis that there was no affidavit of authenticity, there was no medical review process, and there was no gas chromatography performed on the sample. Despite these objections, Mr. Brinston did not object to Internal Affairs Investigator Reeves' narrative testimony that Mr. Brinston was required to submit to a specialized steroid urine test through AnMed Laboratory Services on April 9, 2014, and that Mr. Brinston tested positive for Methandienone and Nandrolone.

Based on the testing discussed above from April 9, 2014, and May 20, 2014 (including the test results), the concerns raised by Mr. Brinston with regard to the April 9, 2014 testing, the Law Enforcement Training Council makes the following findings:

FINDINGS OF FACT

It is found as a fact:

1. Mr. Brinston tested positive on April 9, 2014, for Methandienone and Nandrolone.
2. Methandienone and Nandrolone are both listed as anabolic steroids under S.C. Code §44-53-1510(A).
3. The SOAP Note dated May 27, 2014, from Powdersville Internal Medicine (Brinston Exhibit #2) noted that Mr. Brinston's "Total Testosterone... was 116.3 (range 348.0-1197.0)."
4. It is well known that the use of anabolic steroids suppresses the naturally occurring testosterone in the body.

CONCLUSIONS OF LAW

It is concluded as a matter of law:

1. S.C. Code §23-23-80(6) allows the Law Enforcement Training Council to suspend, revoke, or restrict law enforcement certification in accordance with regulations promulgated by the Council.
2. S.C. Reg. 38-004 states, in part:

The Council may deny certification based on evidence satisfactory to the Council that the candidate has engaged in misconduct. For purposes of this section, misconduct means:

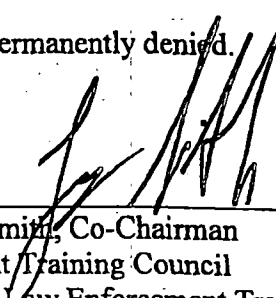
- 2) Unlawful use of a controlled substance...
3. Methandienone and Nandrolone are both listed as anabolic steroids under S.C. Code §44-53-1510(A). Chapter 53 of Title 44 of the South Carolina Code is titled Poisons, Drugs and Other Controlled Substances (emphasis added). Thus, it is clear the intent

of the South Carolina Legislature is that anabolic steroids are considered controlled substances even though they are not contained in a specific Schedule in South Carolina.

4. Methandienone and Nandrolone are both listed as anabolic steroids under 21 U.S.C. §802(41)(A)(xxii) and (xxiv). Anabolic steroids are specifically listed as Schedule III controlled substances under 21 U.S.C. §812.

SANCTION

The unlawful use of controlled substances by an active law enforcement officer is reprehensible. In this case, the use particularly of anabolic steroids during active law enforcement service placed the public at great danger. At any moment Mr. Brinston may have suffered from dangerous side effects of these unlawful substances, for example, a "Roid Rage" incident. For the reasons stated above and due to the great danger Mr. Brinston placed the public in by taking these substances while an active law enforcement officer, Mr. Brinston's request to have law enforcement certification reissued to him is permanently denied.



Director Leroy Smith, Co-Chairman
Law Enforcement Training Council
On Behalf of the Law Enforcement Training Council

Date: October 14, 2014

LAW ENFORCEMENT TRAINING COUNCIL
CRIMINAL JUSTICE ACADEMY

In the Matter of the Issuance) Case No.
of Law Enforcement Officer) 14-CJA-003
Certification to Deonta L. Brinston)

COPY

HEARING

Tuesday, August, 26, 2014
10:03 a.m. - 11:16 a.m.

The Hearing before Robin Morse, Member of the South Carolina Law Enforcement Training Council, was taken at the South Carolina Criminal Justice Academy, 5400 Broad River Road, Columbia, South Carolina, on the 26th day of August, 2014 before Nadine A. Garrett, Court Reporter and Notary Public in and for the State of South Carolina.



APPEARANCES

Robin Morse, Hearing Officer
South Carolina Law Enforcement Training Council

Brandy A. Duncan, Esquire
General Counsel
South Carolina Criminal Justice Academy
5400 Broad River Road
Columbia, SC 29212-3540

Steven J. Reeves, Lieutenant
Jonathan Brown, Sergeant
Anderson County Sheriff's Office
305 Camson Road
Anderson, South Carolina 29625
Appearing for Anderson County Sheriff's Office

Candy M. Kern-Fuller, Esquire
Upstate Law Group, LLC
200 E. Main Street
Easley, South Carolina 29640
Attorney for Mr. Brinston

Also Present:
Susan Lockwood, Paralegal to Candy M. Kern-Fuller

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STIPULATIONS

It is stipulated and agreed that this hearing is being taken pursuant to the Administrative Procedures Act, the Practice Act and Regulations of the Training Council.



1 (Court's Exhibit Number One through Three were marked
2 prior to the hearing.)

3 **HEARING OFFICER:** My name is Robin Morse. I am the
4 director of the Clinton Department of Public
5 Safety and a member of the Law Enforcement
6 Training Council. This is a certification
7 contested case hearing for Deonta L. Brinston
8 and has been initiated at his request. The
9 case number for this hearing is 2014-CJA-003.
10 Proceedings of this hearing are being recorded
11 by a court reporter so the full Law Enforcement
12 Training Council can make themselves familiar
13 with the facts of this case. The purpose of
14 this hearing is to adjudicate the allegation of
15 misconduct filed by the Anderson County
16 Sheriff's Office that Mr. Brinston is no longer
17 eligible for certification as a police officer
18 in South Carolina. I am the Hearing Officer
19 for today's hearing. Jonathan Brown and Steve
20 Reeves are here on behalf of the Anderson
21 County Sheriff's Office. Mr. Brinston is
22 represented by Candy Kern-Fuller in this
23 proceeding. Each party will have an
24 opportunity to call witnesses and present
25 evidence. Each person that is called to



1 present testimony must take an oath to tell the
2 truth. The party calling the witness may
3 question the person first with cross
4 examination by the other party as appropriate
5 and then I may ask questions if I deem it
6 necessary. At the conclusion of the hearing I
7 will make a written recommendation to the full
8 Law Enforcement Training Council. A copy of
9 this recommendation will be provided to both
10 parties. The full Law Enforcement Training
11 Council will be provided with copies of the
12 transcript from today's hearing, all exhibits
13 entered into evidence, and my recommendation.
14 After receiving these copies and becoming
15 familiar with the facts of this case, the full
16 Law Enforcement Training Council will make the
17 final agency decision as to whether
18 Mr. Brinston is eligible to be re-certified as
19 a law enforcement officer in the State of South
20 Carolina. Is everyone ready to proceed?

21 **MS. KERN-FULLER:** Yes, sir.

22 **HEARING OFFICER:** As a housekeeping matter, Madam
23 Court Reporter, please mark the following
24 documents as Court exhibits. South Carolina
25 Code 23-23-10 through 23-23-140, the Training



1 Act; South Carolina Regulation 37-062 through
2 38-028, the regulations corresponding to the
3 Training Act; and Deonta Brinston's certified
4 Training History Report.

5 (Court's Exhibit Number One through Three were
6 admitted into evidence.)

7 HEARING OFFICER: Mr. Reeves or Mr. Brown, one of --
8 whoever wants to go first.

9 MR. REEVES: Thank you.

10 STEVEN J. REEVES, having been duly sworn, testifies
11 as follows:

12 DIRECT TESTIMONY OF MR. REEVES:

13 MR. REEVES: Myself and Sergeant Brown work for the
14 Anderson County Sheriff's Office in the Office
15 of Professional Standards. About March 2nd of
16 this year a source of information came forward
17 that we interviewed that provided some
18 information and behavior of Mr. Brinston and
19 another deputy, which I need to bring in the
20 other deputy because it was a joint -- they
21 were both investigated at this time. And after
22 working this information to a point, we -- and
23 talking to Captain Brookshire, who's our
24 immediate supervisor, we decided as an office
25 and per our investigation at that point that



1 there was enough to show cause to test both
2 these officers specifically for steroids; not a
3 normal drug panel, but steroids. At that point
4 there -- we had to reach out to Anderson County
5 personnel and find out how they drug test
6 Anderson County personnel, to be on the same
7 page with them. They reached out to AnMed Lab
8 Services in Anderson, who provided the services
9 for that. From that point the -- there was a
10 urinalysis test for both of these officers. At
11 this point -- I'll kind of dovetail toward Mr.
12 Brinston, so that's why we're here at this
13 point. We called Mr. Brinston in, transported
14 him down to AnMed, he did give a sample for the
15 urinalysis. After an amount of time, that
16 testing came back. My understanding AnMed does
17 not do the testing on site, they send it to
18 LabCorp, which is typical of anybody that
19 drives a dump truck or anything else within
20 Anderson County, whatever the position may be.
21 At that time on 4/24 we were notified of the
22 results of the testing on Mr. Brinston from
23 LabCorp, that came through personnel for
24 Anderson County, and that he tested positive
25 for Methendienone and Nadrolone, which are two



1 steroids. At that point we referenced the
2 state statutes and both of those are listed
3 under state statutes as being prohibited. We
4 called in -- we called in SLED at a certain
5 point at this time because we didn't know,
6 obviously, it's illegal to possess these,
7 illegal to sell them, to ask them to do a
8 parallel at this time, which is typical what we
9 do at the Office of Professional Standards.
10 Agent Tribble with SLED, after this test came
11 back positive, attempted to interview Mr.
12 Brinston at our office. I believe at that
13 time, according to Agent Tribble, that Deputy
14 Brinston asked that he speak to a lawyer and he
15 stopped that interview process. We took
16 Mr. Brinston into our office at that time, both
17 myself and Sergeant Brown, had him fill out the
18 Garrity form that we use at our office and had
19 a verbal interview at that time on several
20 different subjects involved in this IA. At
21 that point, which is typical of any interview
22 we do, we allow the officer or employee to type
23 their own statement in our office. We don't
24 write it for them. Deputy Brinston started
25 that process. At a point he asked me -- when



1 I checked on him he asked to speak with Chief
2 Smith with the -- Patrol. I told him I would
3 reach out to him and ask if he would come talk
4 with him, which Chief Smith did. I let Chief
5 Smith know what we had found out up to that
6 point in our IA, internal investigation. Chief
7 Smith spoke to Deputy Brinston alone. At that
8 point he came out and said that he had just
9 terminated Deputy Brinston. And that's why
10 we're here now. What he did ask me, and I had
11 admission before, Chief Smith had asked on the
12 paperwork that was sent down, is just to have
13 a summary of what we found out per our IA that
14 he would send down to the Academy because
15 Mr. Brinston was terminated during an internal
16 investigation. And at this point what I have
17 is -- that would be items that would be entered
18 into evidence, would be the lab reports on
19 Mr. Brinston and also anything else that we --
20 I have an IA report that we do on every report
21 that gives a timeline, which I've tried to
22 verbally go through here. And the statement
23 that Mr. Brinston typed out, he did not sign it
24 because at that point he asked to see Chief
25 Smith and he left, but I have a copy of that



1 that I printed out, and in as much that he
2 admitted that he had taken substances that he
3 had as a holdover from his days of training or
4 weightlifting or whatever during the time
5 period.

6 **MS. DUNCAN:** Do you have copies of all of those so
7 that we can --

8 **MR. REEVES:** I don't have copies, but I have --

9 **MS. DUNCAN:** Okay. Do you have --

10 **MR. REEVES:** Sure.

11 **MS. DUNCAN:** -- the original that we can give to Ms.
12 Kern-Fuller so she can look at them please?

13 **MR. REEVES:** That's the lab.

14 **HEARING OFFICER:** What was that you just handed her?

15 **MS. DUNCAN:** The IA report. Just the IA report so
16 she can take a look at it and see if she has
17 any objection. And did you -- was there a
18 statement as well?

19 **MR. REEVES:** The Garrity form and the statement.

20 **MS. DUNCAN:** -- have copies of the lab report or the
21 statement. We can mark them and make copies
22 for you to take with you. You know, just kind
23 of pass around the table as we go.

24 **MR. REEVES:** I've got some additional -- because I
25 want her to have everything. I've got the copy

1 of the -- our GO, General Orders, that we use
2 in this case. And I've also got Article 14 of
3 the anabolic steroids that list these items if
4 that's something that --

5 **MS. DUNCAN:** Okay. Let's handle these first.

6 **MS. KERN-FULLER:** I have objections to each of them.

7 With regard to this statement, it's an unsigned
8 statement. It's my understanding that it was
9 typed on a computer. And Mr. Brinston disputes
10 some of the languages in here, that he does not
11 recall typing that. Since it is unsigned, I
12 would object to it based upon that. With
13 regard to the testing, obviously there's not an
14 affidavit of authenticity to admit this.
15 Secondly, it doesn't show the limits on the
16 pages that confirm positive. Thirdly, it says
17 that is any analysis for anabolic steroids is
18 performed by gas chromatography and confirmed
19 by gas chromatography. And there's no
20 indication that this was ever put through gas
21 chromatography or through a medical review
22 process after it was done to determine whether
23 an over-the-counter item could have actually
24 performed that result. With regard to the
25 internal affairs case report, obviously with



1 regard to the internal affairs case report it
2 cites numerous pieces of hearsay information,
3 individuals who are not here that cannot be
4 cross examined. And for that reason we would
5 object to that as well. And the Garrity
6 warnings we have no objection to.

7 **HEARING OFFICER:** This one's the Garrity Warning and
8 there's no objections to that one, so we'll
9 introduce that one as Exhibit One.

10 **(Reeves' Exhibit Number One was marked and admitted**
11 **into evidence.)**

12 **HEARING OFFICER:** I have before me a LabCorp report
13 and Ms. Kern-Fuller is objecting to that, she's
14 objecting to the internal affairs report, and
15 also the officer's statement, which is not
16 signed. At the time we will just enter these
17 as Court exhibits for right now and not as
18 evidence. These three items are Court Exhibits
19 Four, Five, and Six.

20 **(Court's Exhibits Numbers Four, Five, and Six were**
21 **marked and entered into the record.)**

22 **MS. DUNCAN:** You have more that you were testifying
23 about?

24 **MR. REEVES:** I do. A copy of our General Orders
25 107, Alcohol & Controlled Substances and



1 Definitions.

2 MS. KERN-FULLER: I'm sorry. I'm comparing
3 electronically. I have no objection to that.

4 MS. DUNCAN: So without objection, that would be --

5 HEARING OFFICER: This is a copy of the General
6 Order in reference to Alcohol & Controlled
7 Substances to be entered as Court's exhibit
8 with no objections.

9 MS. DUNCAN: No, no. Not Court's Exhibit --

10 HEARING OFFICER: I mean, excuse me --

11 MS. DUNCAN: Anderson County --

12 HEARING OFFICER: Anderson. Excuse me.

13 (Reeves' Exhibit Number Two was marked and admitted
14 into evidence.)

15 MR. REEVES: That's the Article 14, Anabolic
16 Steroids. Candy, that's the other page to
17 that. Sorry.

18 MS. KERN-FULLER: That's fine.

19 MS. DUNCAN: Is that without objection?

20 MS. KERN-FULLER: Without objection.

21 HEARING OFFICER: This is Anabolic Steroids from
22 Article 14 entered by Anderson as an exhibit.
23 It's two pages. I'm going to paperclip it
24 together for you.

25 (Reeves' Exhibit Number Three was marked and admitted



1 into evidence.)

2 MR. REEVES: That's it.

3 HEARING OFFICER: That's all --

4 MR. REEVES: Yes, sir.

5 HEARING OFFICER: -- from you? Ms. Kern-Fuller, do
6 you have any questions?

7 MS. KERN-FULLER: I do.

8 MR. REEVES - CROSS EXAMINATION BY MS. KERN-FULLER:

9 Q: Lieutenant Reeves?

10 A: Yes, ma'am.

11 Q: Lieutenant Reeves, you're familiar with General
12 Order 111, Office of Professional Standards; is
13 that correct?

14 A: Yes, ma'am.

15 Q: And in this particular case the source of
16 information was actually Mr. Brinston's
17 ex-wife, wasn't it?

18 A: Yes, ma'am.

19 Q: And so it was not an anonymous complaint, was
20 it? You knew who it was.

21 A: I didn't know her when she came forward
22 initially.

23 Q: But you knew who she was?

24 A: Once she said who she was, yes.

25 Q: Okay. And with regard to General Order 111,

1 isn't it true that all formal complaints were
2 supposed to be taken in writing on a employee
3 complaint form?

4 A: It depends. It depends on where the complaints
5 come from. At the point -- the reason that I
6 put in this form here that she was a source of
7 information, that I didn't know if Brinston
8 knew where this information came from and
9 knowing there's a child involved and all that
10 other stuff. And that's why I listed her as a
11 source of information.

12 Q: At any time did you undertake as part of your
13 investigation to determine if Mr. Brinston's
14 ex-wife had any motives to make false
15 complaints against him?

16 A: That was considered in conversations that we
17 had during the whole time. That's always a
18 consideration.

19 Q: And you're aware they had prior family court
20 interaction against each other?

21 A: I was aware by her saying that.

22 Q: And isn't it true that as part of the complaint
23 procedures -- and you can read along with me if
24 you want. Paragraph two, all formal complaints
25 will be taken in writing on an employee



1 complaint form and should be signed by the
2 complainant, unless received anonymously, to
3 document receipt of the complaint. Is that
4 true?

5 A: That's true.

6 Q: And in this case her complaint was not
7 anonymous, you knew who she was.

8 A: Yes, ma'am.

9 Q: You knew her name.

10 A: Yes, ma'am.

11 Q: Did Anderson County take a written complaint
12 from the former Mrs. Brinston?

13 A: No, ma'am.

14 Q: And was the complaint taken by the ranking
15 on-duty supervisor?

16 A: No, ma'am. She came directly to us.

17 Q: And in this case, since there was no complaint
18 form, then the supervisor couldn't complete the
19 appropriate section of the employee complaint
20 for either, could he?

21 A: No, ma'am.

22 Q: Who was Mr. Brinston's supervisor?

23 A: Captain is Captain Derek Roland, that shift.

24 Q: And at any point in time was Captain Roland
25 involved in this process?



- 1 A: He was, in a different aspect.
- 2 Q: What was the different aspect?
- 3 A: There was a different aspect of this IA that --
- 4 this internal investigation that involved
- 5 Mr. Brinston's relationship with a --
- 6 Q: A female?
- 7 A: -- a separate individual, yes.
- 8 Q: And did you undertake any efforts to determine
- 9 -- now, at this point Mr. and Ms. Brinston are
- 10 not married anymore, right?
- 11 A: They were married at that time, I think
- 12 separated.
- 13 Q: And in the middle of a court process?
- 14 A: Yes, ma'am.
- 15 Q: The test that was performed was a urine screen;
- 16 is that correct?
- 17 A: Yes, ma'am.
- 18 Q: At any point in time did Officer Brinston ask
- 19 you to conduct a blood test?
- 20 A: He didn't ask me, no, ma'am.
- 21 Q: Did he ask anyone in your department?
- 22 A: No one that I know of. Can I explain that a
- 23 little bit?
- 24 Q: Sure.
- 25 A: My experience in working criminal cases or



1 whatever, I wanted a blood test because I know
2 it can be more accurate typically. That
3 urinalysis was what was decided by AnMed and
4 LabCorp. That's the way they do that steroid,
5 that anabolic steroid test, it's got to be a
6 urinalysis. We didn't have any choice in that
7 matter. That was the only test available.

8 Q: Is it your testimony today that they cannot
9 detect the presence of anabolic steroids by a
10 blood test --

11 A: No. They can. They wanted -- that's what
12 LabCorp asked for, it was going to be a
13 urinalysis.

14 Q: And if this had been a DUI under the statute
15 and there had been a urinalysis, the person
16 would have been entitled to have a blood test,
17 wouldn't they?

18 A: Yes, ma'am.

19 Q: But in this case, if Mr. Brinston testifies he
20 asked for that, it would be your testimony that
21 Anderson County never gave him a blood test.

22 A: And I testified that's what I asked for too,
23 the process that was given to me through
24 Anderson County personnel and AnMed and they
25 said it would have to be a urinalysis.

1 Q: In sitting here today do you know if they ever
2 conducted gas chromatography on that test?

3 A: No, ma'am.

4 Q: Do you know sitting here today whether gas
5 chromatography was the only way to actually
6 detect whether it was a prescription illegal
7 anabolic steroid or a side effect of an
8 over-the-counter supplement?

9 A: No, ma'am.

10 Q: Do you know how long Officer Brinston has been
11 a police officer in South Carolina?

12 A: Not exactly. I'm sure you've got that in front
13 of you.

14 Q: Were you given a copy of this training report?

15 A: In 2008.

16 Q: And is it my understanding that what Anderson
17 County is asking today is for Mr. Brinston
18 never to be certified as an officer in this
19 state again because of this one test that
20 there's been no gas chromatography performed on
21 and no blood test to back up?

22 A: It's my understanding today that Chief Smith
23 with Anderson County Sheriff's Office filled
24 out that paperwork that was sent down and
25 filled it out completely. We're not involved



1 in the termination process, which I'm sure
2 Mr. Brinston advised you. You probably already
3 knew that anyway. We don't even get an
4 opinion. We have an opinion, but we don't get
5 to give one. We're not involved in that
6 process. The forms that were sent down were
7 checked off of what Chief Smith deems is
8 appropriate.

9 Q: And you're here to defend that today?

10 A: Yes, ma'am. We were sent down to defend that.

11 Q: And if you are successful in your challenge, he
12 will never be certified as a police officer in
13 this state again.

14 A: Yes, ma'am. I understand that.

15 Q: Now, you also said that at the time you called
16 in SLED and I believe you said Agent Tribble.
17 That would be Andy Tribble, wouldn't it?

18 A: Yes, ma'am.

19 Q: And Andy used to be employed by the Anderson
20 County Sheriff's Office until a few years ago?

21 A: He did.

22 Q: And in fact y'all used to investigate things
23 together in IA, didn't you?

24 A: We worked in criminal investigations together.

25 Q: Very closely, right?

1 A: We worked in criminal investigation together.

2 Q: Didn't you all use to partner investigate
3 together?

4 A: Ma'am?

5 Q: Didn't y'all used to partner to investigate
6 cases together?

7 A: I mean, occasionally we went -- we might have
8 worked some cases. I wouldn't call him a
9 partner. There were other individuals that I
10 would call partners with Investigator Tribble.

11 Q: And so Agent Tribble was asked to parallel with
12 you, I believe was your words. And when Agent
13 Tribble spoke with Mr. Brinston, he asked to
14 get the advice of an attorney, as is his right
15 under the sixth amendment, right? Is that
16 correct?

17 A: Yes, ma'am.

18 Q: And despite that, you then gave him the Garrity
19 Warning that's been entered as Exhibit One, and
20 you proceeded to question him.

21 A: After Agent Tribble and Agent Sloan were
22 finished.

23 Q: And after he had asked for an attorney to be
24 involved, right?

25 A: To them in a separate room in a separate part



1 of the building, which is typically what we do
2 with all our cases.

3 Q: You were aware of the request before you gave
4 him the Garrity warnings.

5 A: Yes, ma'am.

6 Q: Where was the statement that you have
7 proffered, that is allegedly Mr. Brinston's
8 statement, prepared?

9 A: In my office.

10 Q: On who's computer?

11 A: On mine.

12 Q: And was that left in a saved format on your
13 computer?

14 A: Ask the question again. I didn't understand
15 that.

16 Q: Sure. Was that left on an electronic form on
17 your computer?

18 A: Yes. Yes.

19 Q: And I noticed with regard to the LabCorp report
20 that was put into evidence, that it references
21 a chain of custody. Do you have that chain of
22 custody with you?

23 A: I have what was faxed over to me from
24 personnel.

25 Q: So you have no idea what the chain of custody



1 is on that report sitting here today?

2 A: I have what was faxed over from personnel. I
3 didn't get anything directly from LabCorp.

4 Q: Are you aware that our office attempted to get
5 Mr. Brinston's personnel file under the Freedom
6 of Information Act?

7 A: Ma'am?

8 Q: Are you aware that our office has attempted to
9 get Mr. Brinston's file under the Freedom of
10 Information Act?

11 A: No, ma'am.

12 Q: Are you aware that we have had to file suit
13 under the Freedom of Information Act to get a
14 copy of Mr. Brinston's file?

15 A: No, ma'am.

16 MS. KERN-FULLER: I have no further questions of
17 this witness.

18 HEARING OFFICER: Anything else?

19 RE-DIRECT TESTIMONY OF MR. REEVES:

20 MR. REEVES: To remark on a couple of things, I
21 guess going in from the last thing that she
22 mentioned, we don't get Freedom of Information
23 requests in our unit. I wouldn't know anything
24 about that. The statement that was taken on my
25 computer, which is the way we do with either



1 officer or witnesses or anybody that comes in,
2 the minute he asked for -- to speak with Chief
3 Smith, at that point we waited until Chief
4 Smith got there. He didn't do any additional
5 on the statement. When we left the office, I
6 locked it and then just made an electronic
7 copy into our IA electronic file. And the next
8 person to go in the office was me. And I'm the
9 only one that had a key. We had to go through
10 Anderson County. In speaking with my
11 supervisors, they weren't familiar with how
12 exactly we would go about the testing. And we
13 had to kind of go about it on our own to find
14 it had to be a specific test, but went through
15 Anderson County personnel, which is a separate
16 entity from the sheriff's office. And then
17 everything came back through them. I couldn't
18 get it sent directly to me. And I think that's
19 about it.

20 **HEARING OFFICER:** Ms. Kerns-Fuller, anything else?

21 Any questions from what he said.

22 **MS. KERN-FULLER:** I have one question just as a
23 followup.

24 **MR. REEVES - RE-CROSS EXAMINATION BY MS. KERN-FULLER:**

25 **Q:** You said you went to Anderson County personnel?

1 A: Yes, ma'am.

2 Q: And what was the purpose of that?

3 A: That's what we directed from our supervisors.
4 We have -- to give you some background, we've
5 got a company that does medical at our
6 detention center, which has changed recently.

7 They do basic drug screens, which this is not
8 a basic drug screen. It was very specific. He
9 wasn't on anything that they could handle. So
10 we were told by Captain Brookshire to address
11 County personnel and go by the standards that
12 they would go by in the companies and
13 everything, they would go by for anyone at
14 fleet services or finance, or anybody else that
15 they would have a reason to drug test, either
16 it's preemployment or during the process of one
17 of their investigations.

18 Q: And who did you speak with in personnel?

19 A: Kathy Fullbright.

20 Q: And did Ms. Fullbright advise you of what the
21 requirements were under the Anderson County
22 policy for drug testing an Anderson County
23 employee?

24 A: No, ma'am. She just asked what it was for. I
25 inspect (sic) to our administrator, Jan



1 Robinson, and Jan directed me down there for
2 our needs, what we needed.

3 Q: At the time that you all undertook this
4 evaluation, was there any outside evidence
5 other than this complaint by Mr. Brinston's
6 ex-wife, who he was engaged in litigation with,
7 about the fact that he was under the influence
8 of any drugs during work?

9 A: Not other than her, no, ma'am.

10 Q: That he in any way had a physical impairment?

11 A: Mr. Brinston?

12 Q: Yes, sir.

13 A: No, ma'am.

14 Q: A loss of judgment?

15 A: No, ma'am.

16 Q: That he committed any safety violations?

17 A: Not safety violations, no, ma'am.

18 Q: That he had engaged in activity that caused
19 risk of injury or possibility of death to
20 himself or anyone else?

21 A: No, ma'am.

22 Q: And under General Order 107 did he appear to be
23 under the influence of anything that would be
24 an intoxicating substance or other substance
25 that would cause him an inability to perform



1 the duties of his job?

2 A: Not at any time that I've seen him.

3 Q: So the sole suspicion that you had was based on
4 this allegation by Mrs. Brinston?

5 A: Yes, ma'am.

6 MS. KERN-FULLER: Thank you. I have no further
7 questions.

8 HEARING OFFICER: I got one question that I just
9 want to clarify for my mind.

10 MR. REEVES - EXAMINATION BY THE HEARING OFFICER:

11 Q: You said that the statement was typed on your
12 computer?

13 A: Yes, sir.

14 Q: And it was locked?

15 A: Yes, sir.

16 Q: Explain to me what you mean by that and how
17 this works. I mean, I just want to be sure I
18 understand.

19 A: And I think that's where she was going with
20 that. Before we left I saved it, sent it to
21 our IA file, which is an electronic -- a shared
22 file system, locked the office, left with him
23 once Chief Smith was there and they met. And
24 then that was at the point that Chief Smith
25 terminated him. And then from the IA file, I



1 printed it and that's what you have in front of
2 you, exactly the way it was left.

3 **HEARING OFFICER:** Okay. I just wanted to understand
4 the procedure, how that part went. All right.
5 Who's going to be next for Anderson?

6 **MR. BROWN:** I can.

7 **JONATHAN BROWN**, having been duly sworn, testifies as
8 follows:

9 **DIRECT TESTIMONY OF MR. BROWN:**

10 **MR. BROWN:** Okay. Earlier this year I was
11 approached by Lieutenant Reeves with the
12 Anderson County Sheriff's Office regarding a
13 potential internal affairs investigation on one
14 of our employees -- well, actually two or our
15 employees. Once I learned of the name, based
16 on my friendship with one of them, I kind of
17 took a backseat per se. I just more of -- did
18 more of an assisting role as opposed to a lead
19 investigator. And what I mean by that is,
20 Lieutenant Reeves handled the majority of the
21 communication with all parties involved. I was
22 present whenever a statement was needed to be
23 obtained by any witness or anything of that
24 nature. I was present the day that
25 Mr. Brinston came to the Sheriff's office and

1 we transported him to AnMed for the urinalysis.
2 I was present the day he was brought in to --
3 spoke with SLED, however I wasn't in the room
4 whenever he spoke with SLED. Once he was
5 finished with Investigator Tribble, like
6 Lieutenant Reeves has already mentioned, we
7 brought him into a separate room, which was
8 Lieutenant's office, advised him of Garrity,
9 informed him thoroughly of everything that we
10 were -- that we needed to discuss. He advised
11 that he understood, at which time he did begin
12 to speak verbally with us. We -- kind of a Q
13 and A session, we would ask questions, he would
14 answer. And vice versa, if he had a question,
15 he would also ask us questions and at which
16 point we answered them all to the best of our
17 ability. During the course of the verbal
18 interview, he did admit to --

19 **MS. KERN-FULLER:** I'm going to object based on the
20 prior objection with regard to his sixth
21 amendment rights. I believe the testimony has
22 established that he had asked for an attorney
23 at the time when SLED questioned him, that the
24 IA investigators were aware that he had asked
25 for an attorney, and despite that, they had



1 given him Garrity Warnings and proceeded to
2 question him after he engaged his right under
3 the sixth amendment to have an attorney.

4 **MR. REEVES:** May I see a copy of the Garrity
5 Warning, please?

6 **MS. DUNCAN:** Yeah.

7 **HEARING OFFICER:** Since the Miranda applies to
8 criminal investigations and Garrity applies to
9 an internal thing, I'm going to allow him to go
10 ahead and testify.

11 **MS. KERN-FULLER:** Thank you.

12 **MR. BROWN:** Again, we continued to conduct our
13 interview -- excuse me, Lieutenant did and I
14 would step in when necessary. Once again, he
15 did admit to taking a steroid and he advised
16 that it was a stack -- I have no idea of that
17 terminology -- that he had from previous
18 weightlifting competitions that he did prior to
19 law enforcement and that he was -- that the
20 only reason why he did it was to help get his
21 head back on straight and to help him get back
22 into the gym, motivation, and things of that
23 nature. However, he did admit to taking them
24 at which time -- once we completed our oral
25 interview, he was asked if he would be willing



1 to write his statement at that time. He got up
2 and stepped over to Lieutenant Reeves' computer
3 and began his statement at which time
4 Lieutenant Reeves and I exited the room to
5 allow him to have all the time and peace and
6 quiet that he needed. After -- I really don't
7 know the allotted amount of time that passed,
8 he had advised that he wished to speak with
9 Chief Smith. Once again --

10 (Interruption)

11 MS. DUNCAN: Go ahead.

12 MR. BROWN: He advised that he wished to speak with
13 Chief Smith at which time contact was made with
14 Chief Smith, he did come to our office and he
15 spoke to Mr. Brinston privately. Chief Smith
16 then inform us that he had just terminated Mr.
17 Brinston at which time I -- I'm the one that
18 took his firearm, his badge, keys to his
19 vehicle, things of that nature. After several
20 minutes I did ask Mr. Brinston if he would like
21 to call someone to pick him up and take him
22 home or if he would like someone to take him,
23 it didn't matter to me, at which time I took
24 him home. And that's the end.

25 HEARING OFFICER: Anything else?



1 MR. BROWN: No, sir:

2 HEARING OFFICER: Miss Kern-Fuller.

3 MR. BROWN - CROSS EXAMINATION BY MS. KERN-FULLER:

4 Q: Now, when you said that Mr. Brinston admitted
5 to taking something, did he admit to taking
6 over-the-counter anabolic growth agents?

7 A: All I recall him advising was that it was a
8 stack that he used whenever he was in
9 competitively body lifting.

10 Q: At any point in time did he tell you that what
11 he was using an illegal steroid or a
12 prescription steroid?

13 A: No, ma'am. I don't recall..

14 Q: So what he could have been referring to was an
15 over-the-counter anabolic supplement; is that
16 correct?

17 A: Are you asking my opinion or -- I'm not aware
18 of how anabolic steroids work, per se.

19 Q: I'm trying -- I'm not trying to get your
20 opinion. I'm trying to ask you what you recall
21 him saying.

22 A: And the reason why I'm saying I don't know is
23 because I've never taken them to my knowledge,
24 okay. I do recall him just stating that it was
25 a stack that he used whenever he -- in his

1 previous weightlifting days whenever he was
2 competitive. And that's all that I really
3 recall.

4 Q: So sitting here today you cannot testify that
5 he admitted that he used a prescription
6 steroid, right?

7 A: I do not recall him specifying, no, ma'am.

8 Q: And you said that Mr. Brinston typed up a
9 statement on the computer and then asked to
10 speak with Chief Smith and then he went to
11 speak with Chief Smith; is that correct?

12 A: Yes, ma'am.

13 Q: What did Chief Smith know about this incident
14 at the time if you all were still investigating
15 it?

16 A: Whatever Lieutenant Reeves informed of him.
17 However I do know, based on a DHEC printout,
18 according to that, he's never been prescribed
19 any type of steroid.

20 Q: I understand. But you've already admitted that
21 he never said he took a prescription steroid,
22 right?

23 A: But also he's never been prescribed one either.

24 Q: I understand that. And I think we established
25 during Lieutenant Reeves' testimony, you're not



1 aware that they ever performed gas
2 chromatography on the urine sample --

3 A: Correct.

4 Q: -- to determine whether it truly was a
5 prescription versus a non-prescriptive effect,
6 right?

7 A: Correct.

8 Q: And how familiar are you with gas
9 chromatography?

10 A: I have no idea.

11 Q: I understand. Now at the time that Officer
12 Brinston typed this statement on Lieutenant
13 Reeves' computer and then he went to go see
14 Chief Smith --

15 A: Yes, ma'am.

16 Q: -- did you go back into the room with
17 Lieutenant Reeves after that, into Lieutenant
18 Reeves' office?

19 A: No, ma'am. I stayed either in the common area
20 of the building or on the front porch.

21 Q: And did Lieutenant Reeves leave with you when
22 Officer Brinston went to go talk to Chief
23 Smith?

24 A: If I recall, he was with me the entire time, if
25 I recall.

1 Q: And I believe you said that Chief Smith
2 terminated Officer Brinston. Did he give a
3 reason for why he terminated Officer Brinston?

4 A: Because the chain of structure, he doesn't owe
5 me an explanation. So, no, ma'am, he did not
6 specify anything to me.

7 Q: And I understand he doesn't owe you one. I
8 guess my question is did he give one to you or
9 to Officer Brinston.

10 A: Not to me he didn't.

11 Q: Not in your presence?

12 A: No.

13 Q: At any time during your questioning -- or
14 during the questioning of Officer Brinston did
15 he state that the urine test was a false
16 positive and he wanted a blood test?

17 A: Honestly I do not recall.

18 Q: So if Officer Brinston testifies he did ask for
19 that, you wouldn't have any knowledge one way
20 or the other?

21 A: I recall the interview, but I do not recall
22 that aspect of it, no, ma'am.

23 MS. KERN-FULLER: Thank you. I have no further
24 questions of this witness.

25 HEARING OFFICER: Anything else?



1 MR. BROWN: No, sir.

2 HEARING OFFICER: Do you all have anything else?

3 MR. REEVES: The only thing I wanted to add, it got
4 in under the -- Ms. Fuller's already addressed
5 it with Sergeant Brown, this is the DHEC query
6 that was run. And it was in with the LabCorp
7 paperwork. I don't know if that needs to be
8 marked or if she even saw that when she went
9 through the LabCorp --

10 MS. DUNCAN: You were wanting it marked separately
11 then?

12 MR. REEVES: I just want her to be able to see it.
13 It was the third sheet in the LabCorp.

14 MS. KERN-FULLER: I saw it. And it's just subject
15 to the same objection, authentication --

16 MR. REEVES: And we ran that before we ever did
17 anything else.

18 MS. DUNCAN: Does anybody object to us marking this
19 separately, since it is a separate document, as
20 a Court exhibit?

21 MS. KERN-FULLER: If he wants it marked separately
22 subject to that objection, I don't have a
23 problem.

24 HEARING OFFICER: This is a DHEC query report be
25 entered as a Court's exhibit.



1 MS. DUNCAN: It looks like Court's Seven.

2 (Court's Exhibit Number Seven was marked and entered
3 into the record.)

4 HEARING OFFICER: All right. Miss Kern-Fuller --

5 MS. KERN-FULLER: Thank you.

6 HEARING OFFICER: -- your turn.

7 MS. KERN-FULLER: Thank you.

8 HEARING OFFICER: Just be sure that everybody speaks
9 loud enough so that she can hear.

10 MS. KERN-FULLER: I'll try. My husband tells me all
11 the time I don't project well enough to be a
12 litigator, so. I don't know. After 12 years
13 I'm hoping I'm getting better. Would you state
14 your full name for the record, Mr. Brinston?

15 MR. BRINSTON: Deonta Lamon Brinston.

16 COURT REPORTER: Let me swear him in.

17 MS. KERN-FULLER: Sure.

18 DEONTA L. BRINSTON, having been duly sworn, testifies
19 as follows:

20 MR. BRINSTON - DIRECT EXAMINATION BY MS. KERN-FULLER:

21 Q: State your full name for the record, please.

22 A: Deonta Lamon Brinston.

23 Q: And, Mr. Brinston, how long have you been a law
24 enforcement officer in South Carolina?

25 A: I was employed by Easley City in 2008.



1 Q: Have you continuously been a law enforcement
2 officer in South Carolina from 2008 until the
3 time you were terminated by Anderson County?

4 A: Yes, ma'am.

5 Q: Would you tell the Hearing Officer about what
6 your passion is for a career?

7 A: It is law enforcement. And plenty goes
8 through, I guess, my background coming from
9 Mississippi and when I got out of college up
10 here, I met some pretty good law enforcement
11 officers through Easley City and also Clemson
12 City and started talking to them more and they
13 kind of pushed me towards either going military
14 or looking to get into law enforcement here
15 locally before I got out of college and went
16 back home. 2008 I met Yusef Kelly and became
17 real good friends. He was also in my wedding
18 too. And he kind of gave me the, hey, you
19 should think about it, think you'll be good at
20 it, law enforcement. He told me start at
21 Anderson County as well. Right when I was
22 looking to get in, I wanted to follow his steps
23 a little bit, and I started Anderson County
24 first, where I first applied, Clemson City and
25 Easley City. And then I was called that

1 weekend by Easley City, getting employed, and
2 took the oath with Easley City and started
3 working with them.

4 Q: Have you done anything else except for be a law
5 enforcement officer since October of 2008?

6 A: I was a personal trainer, doing that part time,
7 and working at the gym. And that was it.

8 Q: And having struggled through a personal trainer
9 this morning ourselves, is it often when you're
10 doing personal training that you take
11 over-the-counter supplements?

12 A: Yeah. Sometimes you're sponsored by them, so
13 you get them free.

14 Q: And during the course and scope of when you
15 were a personal trainer involved in body
16 building, did you take over-the-counter
17 substances?

18 A: I had a personal trainer myself and also
19 bodybuilding coach and a strength conditioning
20 coach that I ended up meeting when I was trying
21 to go overseas after I got out of college. And
22 they would tell you, hey, you got to get
23 bigger, you got to get stronger for your
24 definitions and would direct you to path of
25 getting your testosterone level checked, your



1 thyroids, your glands checked to make sure you
2 don't have anything wrong with you before you
3 go undertaking to such a strenuous diet and to
4 the point of having to get our gallbladder
5 removed from a high protein intake. My body
6 building coach introduced me to a doctor. I
7 don't recall his name. And my body building
8 coach also took his own life a few years ago
9 when I started Anderson County. He came to me
10 and said, hey, you got to get bigger, you're
11 tall, you know. And so he instructed me on
12 Alpha Mass, the Mass stacks. And I started
13 just taking whatever he told me; hey, look, you
14 need to do this, you need to do that. Because
15 he was a triple crown champion. And that span
16 he was Mr. Universe, Mr. America, and Mr. USA.
17 So wanted to reach my goals and, you know, win
18 those competitions. I also met another law
19 enforcement officer here when I came to the
20 academy who they won their body building shows.
21 And I wanted to be like him. So I was like,
22 yeah, I want to be a cop like that guy, you
23 know, big, strong-stature guy that, hey, his
24 presence is enough to help you pretty much say,
25 hey, I better listen to this guy. And so,

1 yeah, I took several over-the-counter things
2 and I met with doctors that checked my levels
3 to find out what I needed and if my
4 testosterone levels were low as well.

5 Q: And I'm going to show you a document that you
6 provided to me. Can you tell me what that
7 document is first?

8 A: Yes, ma'am. It's Test PSI. And it's one of
9 the -- it was, and it changed monthly with the
10 leading over-the-counter supplements that you
11 can take for lean muscles so you don't put on
12 too much body weight, but you can keep raising
13 your testosterone for a booster because at a
14 certain age for me, our testosterone can slow
15 down. The other one is A-D-T. And is has
16 turbulence boosters and also it's known to have
17 DHEA, which is now being banned in the NCAA
18 athletes across the nation. And Mass X, which
19 is an extreme anabolic growth agent. Which is
20 all over the counter that I got from Complete
21 Nutrition.

22 Q: And Complete Nutrition is like a vitamin
23 supplement place like GNC; is that correct?

24 A: Yeah. It more on the verge of being GNC. It's
25 more competitive for serious athletes or the



1 person that's really, really into the whole
2 working out regiment.

3 Q: And these three agents, are they the agents
4 that you took when you were doing the body
5 building?

6 A: They are. One of them name changed from A-D-T
7 to -- it Epistane. And they change their names
8 when they either get weaker or stronger or if
9 people get kind of immune to them, they have to
10 add something or take something away. Then
11 they'll just change the whole total product
12 name. And I learned that from being in the
13 body-building world and being around all the
14 trainers and supplement guys that are sponsored
15 by these companies or these agencies.

16 Q: And all three of these items were things you
17 can get over the counter without a prescription
18 at Complete Nutrition?

19 A: Yes, ma'am.

20 MS. KERN-FULLER: I move to put that in, please, as
21 Mr. Brinston's exhibit.

22 HEARING OFFICER: You okay with that? Do you
23 object?

24 MR. REEVES: No, sir.

25 (Brinston's Exhibit Number One was marked and

1 admitted into evidence.)

2 HEARING OFFICER: Can I ask one question?

3 MS. KERN-FULLER: Sure.

4 HEARING OFFICER: What was the name of the place
5 that said he got the supplements from?

6 MS. KERN-FULLER: Complete Nutrition.

7 HEARING OFFICER: Complete --

8 MS. KERN-FULLER: Yes, sir.

9 Q: Mr. Brinston, were you ever advised that some
10 of these supplements may test with a false
11 positive on a urine screen?

12 A: I was.

13 Q: And as a result, what were you informed to do
14 if that ever occurred?

15 A: Just notify whoever tests me. I'm also to
16 notify that when I was in college about certain
17 supplements that we took at well.

18 Q: And what is the response to it if it tests the
19 false positive on a urine, what should you do?

20 A: Blood test.

21 Q: And when this issue came up, based on the
22 report by your wife to internal affairs, did
23 you ask for a blood test?

24 A: I did. I also stated that you're getting false
25 positives.



1 Q: Who did you state that to?

2 A: The two gentleman right there, Mr. Reeves and
3 Mr. Brown.

4 Q: And did you ask to have a blood test performed?

5 A: Once I told them that they were getting a false
6 positive, I said, well, blood test me.

7 Q: And did they ever blood test you?

8 A: No, ma'am.

9 Q: Do you believe sitting here today that a blood
10 test would have resolved this issue and shown
11 that that was a false positive?

12 A: After meeting with Dr. Walpole, I do believe
13 so. Significantly after he broke blood test
14 down and told me that the blood test is the
15 most accurate way of finding out if your
16 testosterone or glands or levels are raised or
17 low. And I told him and paid for it out of
18 pocket and had it done.

19 Q: And who is Dr. Walpole?

20 A: He's an MD at Velocity Sports in Anderson
21 County. But it's off Highway 153.

22 Q: And you had that blood test performed yourself?

23 A: I did and ask them to check my testosterone
24 levels, which I was told they was raised above
25 normal.

1 Q: And if the Academy decides to allow you to be
2 certified, are you willing to regularly submit
3 to blood tests to show that you are not, in any
4 way, using inappropriate substances?

5 A: I am.

6 Q: If the Academy does not approve your
7 certification, do you have any other job
8 possibilities?

9 A: Not -- I didn't look at working for Anderson
10 County Law Enforcement at all as a job. I took
11 it on as a career. I didn't look to be out of
12 it, even at this time.

13 Q: And did you have any special skills in the law
14 enforcement community that would be useful to
15 a community like Calhoun Falls?

16 A: I do.

17 Q: Tell the Academy Board what those are, please.

18 A: I'm a very people person. I relate. I've
19 never had any uses of force unless it was in
20 reference to assisting another agency with my
21 K-9. There's nothing in my personnel file that
22 shows that I'm irritable, I'm not sociable.
23 There's been times I've been seen out with
24 people kids, hey, can I take a picture with you
25 and your K-9. And, yeah, we got calls and,



1 yeah, we're busy or, yeah, I got to take a
2 stolen lawnmower report, but that kid wants to
3 see me and my K-9. Hey, I'll stop, he get out,
4 show kids the dog, just to try to do the whole
5 community personal relationship. I mean,
6 because right now looking at everything in the
7 media, it's probably would be the worst time
8 for somebody to want to be a police officer.
9 But even yet and still with the controversy, I
10 still want to be. I mean, it's in my
11 bloodline. I had two relatives, one was killed
12 in the line of duty. And I love it. I'm not
13 here to say, oh, I just want to help people,
14 but I do and that's what we do.

15 Q: And you mentioned a K-9. What kind of K-9 work
16 do you do?

17 A: I have Albie who's a seven-year German
18 Shepherd. I earned the right to get him about
19 a year or two ago. And he's been my K-9
20 partner ever since.

21 Q: And what kind of work do you do with Albie?

22 A: Drugs, apprehension of felons, use him to
23 attitude adjusting when you pull on scene with
24 domestic backup, he's very vocal, helps out.
25 Narcotic call-outs. When Mr. Brown was in



1 narcotics, they can call me, hey, I was there.
2 Even without getting overtime, hey, I was
3 always there to use my tool as a resource.
4 High-speed chases where somebody's bailing, for
5 highway patrol, state transport, you name it.
6 I find articles as well. There was a gun that
7 was found used in a shooting.

8 Q: And does Calhoun Falls especially want your
9 skills as a K-9 officer?

10 A: From what was told to me by the Chief and Mayor
11 they do.

12 Q: Do you think this issue with your -- the
13 alleged positive result of steroids is just a
14 huge misunderstanding?

15 A: I do.

16 Q: Do you think in any way that it was brought on
17 by animosity between you and your former wife
18 as a result of your family court domestic
19 action?

20 A: I would definitely say yes.

21 **MS. KERN-FULLER:** Thank you. I have no further
22 questions.

23 **HEARING OFFICER:** Any questions?

24 **MR. REEVES:** (Indication of no).

25 **MR. BROWN:** I have one only because I think it's



1 something that needs to be justified because
2 I've heard it several times just sitting here.

3 **MR. BRINSTON - CROSS EXAMINATION BY MR. BROWN:**

4 Q: Ta, whenever you purchased this K-9 from the
5 Anderson County Sheriff's Office, what kind of
6 paperwork did you fill out for that?

7 A: That was a small, I guess you can say, binding
8 document or contract.

9 Q: Which stated?

10 A: That Albie was in my possession, that I was to
11 take that K-9 and make sure he stays trained
12 and under my command, he doesn't hurt any tame
13 people or officials or anybody.

14 Q: Was it also in that paperwork that even though
15 they were relinquishing the ownership of
16 Anderson County Sheriff's -- of Albie by the
17 Anderson County Sheriff's Office to you, that
18 they kept all certification and documentation
19 for this K-9?

20 A: No, they did not.

21 Q: They didn't?

22 A: No, sir, not in that paperwork. What was
23 relinquished to me was that if I would do any
24 police proceeding, all I have to do was talk to
25 Sheriff Skipper.

1 Q: And then he, at that time, would either
2 authorize or deny your request, right?

3 A: I don't know what he would do. I haven't had
4 a chance to talk to Sheriff Skipper.

5 Q: So basically until you have authorization, you
6 have basically a house pet?

7 A: No, I don't have a house pet.

8 **HEARING OFFICER:** Anything further?

9 **MS. KERN-FULLER:** I do have one thing. And I
10 believe it may already be in the Agency's
11 paperwork, but I don't know that it's been
12 entered into evidence, so. I want to lay a
13 foundation for it, first of all.

14 **MR. BRINSTON - RE-DIRECT EXAMINATION BY MS.**

15 **KERN-FULLER:**

16 Q: Officer Brinston, you testified about going to
17 Dr. Walpole in Powdersville; is that correct?

18 A: That's right.

19 Q: And I have in my file a document signed by Dr.
20 Walpole and dated, which has a copy of blood
21 work that was done. Could you review that,
22 please, and tell me if that was the blood test
23 that you referenced in your testimony that you
24 had performed?

25 A: Yes, ma'am.



1 HEARING OFFICER: Any objection?

2 MR. BROWN: No, sir.

3 MS. KERN-FULLER: I move to admit it, please.

4 MS. DUNCAN: That's Number Two.

5 HEARING OFFICER: Exhibit Number Two for
6 Mr. Brinston.

7 (Brinston's Exhibit Number Two was marked and
8 admitted into evidence.)

9 HEARING OFFICER: Anything else?

10 MS. KERN-FULLER: I have nothing further. Thank
11 you.

12 MS. DUNCAN: Any rebuttal or --

13 MR. BROWN: I don't think there's a rebuttal. The
14 only thing that I think we do need to put on
15 the record is the time lapse between the
16 original specimen urinalysis and the time stamp
17 on the blood work taken from Mr. Brinston's
18 doctor. It's noted there is an over-a-month
19 time gap. If I recall correctly, it's possibly
20 closer to two months. I just think that needs
21 to be noted, that anything that would have been
22 in his system at the time of the original
23 analysis could possibly be out a month and a
24 half to two months later.

25 MS. KERN-FULLER: I'll be happy to reply to that. I



1 don't think there is even one month's
2 difference between the two I think the note
3 shows that the labs were drawn, that the date
4 on that is a followup to the labs being drawn.
5 I don't think that the County has put in any
6 evidence of how long it stays in the system in
7 a blood test --

8 **MR. BROWN:** Correct.

9 **MS. KERN-FULLER:** -- so I don't think there's a
10 proper medical foundation for that objection.

11 **HEARING OFFICER:** All right, sir. Get these back in
12 order.

13 **MS. DUNCAN:** The court reporter and I can go over
14 when we're done and make sure everybody has a
15 complete copy of the exhibits.

16 **MS. KERN-FULLER:** That'd be great.

17 **HEARING OFFICER:** Okay. If there's no more
18 testimony, would anybody like to make any
19 closing statements?

20 **MS. KERN-FULLER:** I'd like to make a closing
21 statement.

22 **CLOSING STATEMENT BY MS. KERN-FULLER:**

23 **MS. KERN-FULLER:** I believe that the role of the
24 certification of the Academy is a very
25 important role. And it's one that I know the



1 Academy takes very seriously as well as every
2 law enforcement agency in this state. Law
3 enforcement officers are human. And if you had
4 an officer that had a drug problem that came
5 forward and said, I have a drug problem and I
6 need a rehabilitation, I don't think that the
7 Academy would prohibit them from being a law
8 enforcement officer in this state for the rest
9 of their life. This case is much different
10 than that. This gentleman was a bodybuilder.
11 He took an over-the-counter legal product. His
12 doctor has provided evidence and taken labs
13 that the product was not an illegal
14 prescription. The County didn't do the blood
15 test. They didn't do gas chromatography. In
16 our situation, this is a terrible
17 misunderstanding. And this misunderstanding
18 has led to the loss of Mr. Brinston's job with
19 Anderson County. But we ask today that it not
20 lead to a loss of this man's passion and his
21 career as a law enforcement officer. He's a
22 good officer. And you have not heard today
23 some laundry list of bad events in this
24 officer's life. There's this one incident,
25 which was a misunderstanding. And we ask that

1 he be allowed to move on with his life and to
2 get a job with another agency and to follow his
3 passion as an officer at a time, when he says,
4 when it's very difficult to be an officer. And
5 we just ask that the Academy look at the facts
6 and circumstances in this situation and to
7 grant him the right to do that. Thank you.

8 **HEARING OFFICER:** Would either one of you all --

9 **CLOSING STATEMENT BY MR. REEVES:**

10 **MR. REEVES:** I'll go. I've got a feeling Sergeant
11 Brown's got something to say too, but I'll go
12 first.

13 **MS. DUNCAN:** Only one of you gets to talk at
14 closing.

15 **MR. REEVES:** To follow up, on a lot of things we use
16 County personnel to follow their guidelines.
17 And that's per our supervisors, so that's why
18 we went through them. I didn't bring it up
19 because it's not an issue now. Ta's not
20 unfamiliar to us in IA. He's given a statement
21 before. It's got no specific relation to what
22 we're dealing with here today, but the whole
23 idea -- and I'll say this off -- I'll say this
24 officially because that came out of -- from
25 Candy, or Ms. Fuller, originally that he says



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2 get a job with another agency and to follow his
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21 before. It's got no specific relation to what
22 we're dealing with here today, but the whole
23 idea -- and I'll say this off -- I'll say this
24 officially because that came out of -- from
25 Candy, or Ms. Fuller, originally that he says

1 what's in that statement is not what he wrote.
2 He knows that's exactly what he wrote. And
3 that's not an issue we need to go at. That
4 bothers me more than anything else. Everything
5 explained to him, used the resources that are
6 available to us. And what he's got to
7 understand, and I need to get this out so that
8 he knows that, that's it's never been anything
9 personal. And I tell anybody that ever comes
10 in with an IA case that we work. It's not.
11 It's just a job that we do. That it never was
12 anything. It's not anything like that. He
13 needs to know that going away no matter what
14 ever happens. I want Ta to know that. That's
15 it. Thank you.

16 **HEARING OFFICER:** Anything else? What we will do is
17 we will take this under -- I'll take it and
18 look at it and I will do my recommendation and
19 I guess at some point we'll get that -- my
20 recommendation will then go the to the Training
21 Council, which Training Council will, you know,
22 vote on it and decide what the final outcome
23 is. Okay. We thank you all for coming.

24 (There being nothing further, the hearing concluded
25 at 11:16 a.m.)



CERTIFICATE

This is to certify that the within hearing consisting of fifty-four (54) pages, is a true and correct transcript of the testimony given by said witnesses after being duly sworn; said hearing was reported by the method of Stenotype with Backup.

I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal on September 8, 2014.



Nadine A. Garrett
Court Reporter

Notary Public for South Carolina
My Commission Expires: 8/11/2016

▷

Effective: June 16, 2008

Code of Laws of South Carolina 1976 Annotated Currentness

Title 23. Law Enforcement and Public Safety

Chapter 23. Law Enforcement Training Council

→ → § 23-23-10. Purpose; definitions.

(A) In order to insure the public safety and general welfare of the people of this State, and to promote equity for all segments of society, a program of training for law enforcement officers and other persons employed in the criminal justice system in this State is hereby proclaimed and this chapter must be interpreted to achieve these purposes principally through the establishment of minimum and advance standards in law enforcement selection and training.

(B) It is the intent of this chapter to encourage all law enforcement officers, departments, and agencies within this State to adopt standards which are higher than the minimum standards implemented pursuant to this chapter, and these minimum standards may not be considered sufficient or adequate in cases where higher standards have been adopted or proposed. Nothing in this chapter may be construed to preclude an employing agency from establishing qualifications and standards for hiring or training law enforcement officers which exceed the minimum standards set by the council, hereinafter created, nor, unless specifically stated, may anything in this chapter be construed to affect any sheriff, or other law enforcement officer elected under the provisions of the Constitution of this State.

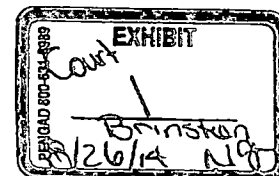
(C) It is the intent of the General Assembly in creating a facility and a governing council to maximize training opportunities for law enforcement officers and criminal justice personnel, to coordinate training; and to set standards for the law enforcement and criminal justice service, all of which are imperative to upgrading law enforcement to professional status.

(D) Upon the signature of the Governor, all functions, duties, responsibilities, accounts, and authority statutorily exercised by the South Carolina Criminal Justice Academy Division of the Department of Public Safety are transferred to and devolved upon the South Carolina Criminal Justice Academy.

(E) As contained in this chapter:

(1) "law enforcement officer" means an appointed officer or employee hired by and regularly on the payroll of the State or any of its political subdivisions, who is granted statutory authority to enforce all or some of the criminal, traffic, and penal laws of the State and who possesses, with respect to those laws, the power to effect arrests for offenses committed or alleged to have been committed; and

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Code 1976 § 23-23-10

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(2) "council" means the Law Enforcement Training Council created by this chapter.

CREDIT(S)

HISTORY: 2006 Act No. 317, § 1, eff May 30, 2006; 2008 Act No. 335, § 12, eff June 16, 2008.

Current through End of 2013 Reg. Sess.

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Effective: June 16, 2008

Code of Laws of South Carolina 1976 Annotated Currentness

Title 23. Law Enforcement and Public Safety

Chapter 23. Law Enforcement Training Council

→ → § 23-23-20. South Carolina Criminal Justice Academy.

There is hereby created the South Carolina Criminal Justice Academy which shall provide facilities and training for all officers from state, county, and local law enforcement agencies and for other designated persons in the criminal justice system. Correctional officers and other personnel employed or appointed by the South Carolina Department of Corrections may be trained by the department. Administration of this academy must be vested in a director who is responsible for selection of instructors, course content, maintenance of physical facilities, recordkeeping, supervision of personnel, scheduling of classes, enforcement of minimum standards for certification, and other matters as may be agreed upon by the council. The director must be hired by and responsible to the council. Basic and advance training must be provided at the training facility.

CREDIT(S)

HISTORY: 2006 Act No. 317, § 1, eff May 30, 2006; 2008 Act No. 335, § 13, eff June 16, 2008.

Current through End of 2013 Reg. Sess.

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Effective:[See Text Amendments]

Code of Laws of South Carolina 1976 Annotated Currentness

Title 23. Law Enforcement and Public Safety

Chapter 23. Law Enforcement Training Council

→→ § 23-23-30. South Carolina Law Enforcement Training Council; members; terms.

(A) There is hereby created a South Carolina Law Enforcement Training Council consisting of the following eleven members:

- (1) the Attorney General of South Carolina;
- (2) the Chief of the South Carolina Law Enforcement Division;
- (3) the Director of the South Carolina Department of Probation, Parole and Pardon Services;
- (4) the Director of the South Carolina Department of Corrections;
- (5) the Director of the South Carolina Department of Natural Resources;
- (6) the Director of the South Carolina Department of Public Safety;
- (7) one chief of police from a municipality having a population of less than ten thousand. This person must be appointed by the Governor and shall serve at his pleasure;
- (8) one chief of police from a municipality having a population of more than ten thousand. This person must be appointed by the Governor and shall serve at his pleasure;
- (9) one county sheriff from a county with a population of less than fifty thousand. This person must be appointed by the Governor and shall serve at his pleasure;
- (10) one county sheriff from a county with a population of more than fifty thousand. This person must be appointed by the Governor and shall serve at his pleasure; and
- (11) one detention director who is responsible for the operation and management of a county or multi-

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jurisdictional jail. This person must be appointed by the Governor and shall serve at his pleasure.

(B)(1) The members provided for in subitems (A)(1) through (A)(6) above shall be ex officio members with full voting rights.

(2) The members provided for in subitems (A)(7) through (A)(11) above shall begin serving on January 1, 2007.

In the event that a vacancy arises, it must be filled by appointment or election and confirmation of the original authority granting membership on the basis of the above referenced criteria.

(C) This council shall meet for the first time within ninety days after January 1, 2007, and shall elect one of its members as chairperson and one of its members as vice chairperson. These officers shall serve a term of one year and may be reelected. After the initial meeting, the council shall meet at the call of the chairperson, or at the call of the majority of the members of the council, but it shall meet no fewer than four times a year.

(D) Members of the council shall serve without compensation. A council member who terminates his office or employment which qualifies him for appointment shall immediately cease to be a member of the council.

CREDIT(S)

HISTORY: 2006 Act No. 317, § 1, eff May 30, 2006.

Current through End of 2013 Reg. Sess.

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Code 1976 § 23-23-40

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Effective:[See Text Amendments]

Code of Laws of South Carolina 1976 Annotated Currentness

Title 23. Law Enforcement and Public Safety

Chapter 23. Law Enforcement Training Council

⇒ § 23-23-40. Certification requirement.

No law enforcement officer employed or appointed on or after July 1, 1989, by any public law enforcement agency in this State is authorized to enforce the laws or ordinances of this State or any political subdivision thereof unless he has been certified as qualified by the Law Enforcement Training Council, except that any public law enforcement agency in this State may appoint or employ as a law enforcement officer, a person who is not certified if, within one year after the date of employment or appointment, the person secures certification from the council; provided, that if any public law enforcement agency employs or appoints as a law enforcement officer a person who is not certified, the person shall not perform any of the duties of a law enforcement officer involving the control or direction of members of the public or exercising the power of arrest until he has successfully completed a firearms qualification program approved by the council; and provided, further, that within three working days of employment the department must be notified by a public law enforcement agency that a person has been employed by that agency as a law enforcement officer; and within three working days of the notice the firearms qualification program as approved by the director must be provided to the newly hired personnel. If the firearms qualification program approved by the director is not available within three working days after receipt of the notice, then the public law enforcement agency making the request for the firearms qualification program may employ the person to perform any of the duties of a law enforcement officer, including those involving the control and direction of members of the public and exercising the powers of arrest. Should any such person fail to secure certification within one year from his date of employment, he may not perform any of the duties of a law enforcement officer involving control or direction of members of the public or exercising the power of arrest until he has been certified. He is not eligible for employment or appointment by any other agency in South Carolina as a law enforcement officer, nor is he eligible for any compensation by any law enforcement agency for services performed as an officer. Exceptions to the one-year rule may be granted by the director in these cases:

- (1) military leave or injury occurring during that first year which would preclude the receiving of training within the usual period of time; or
- (2) in the event of the timely filing of application for training, which application, under circumstances of time and physical limitations, cannot be honored by the training academy within the prescribed period; or
- (3) upon presentation of documentary evidence that the officer-candidate has successfully completed equivalent training in one of the other states which by law regulate and supervise the quality of police training and which require a minimum basic or recruit course of duration and content at least equivalent to that provided in this

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chapter or by standards set by the Law Enforcement Training Council; or

(4) if it is determined by documentary evidence that the training will result in undue hardship to the requesting agency, the requesting agency must propose an alternate training schedule for approval.

Notwithstanding another provision of law, in the case of a candidate for certification who begins one or more periods of state or federal military service within one year after his date of employment or appointment, the period of time within which he must obtain the certification required to become a law enforcement officer is automatically extended for an additional period equal to the aggregate period of time the candidate performed active duty or active duty for training as a member of the National Guard, the State Guard, or a reserve component of the Armed Forces of the United States, plus ninety days. The director must take all necessary and proper action to ensure that a candidate for certification as a law enforcement officer who performs military service within one year of his employment or appointment is not prejudiced in obtaining certification as a result of having performed state or federal military service.

CREDIT(S)

HISTORY: 2006 Act No. 317, § 1, eff May 30, 2006.

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Code 1976 § 23-23-50

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Effective:[See Text Amendments]

Code of Laws of South Carolina 1976 Annotated Currentness

Title 23. Law Enforcement and Public Safety

Chapter 23. Law Enforcement Training Council

→→ § 23-23-50. Continuing Law Enforcement Education Credits (CLEEC) in domestic violence requirement; guidelines for exemptions.

(A) A law enforcement officer who is Class 1-LE certified in this State is required to complete Continuing Law Enforcement Education Credits (CLEEC) in domestic violence each year of a three-year recertification period. The number of required annual CLEEC hours in domestic violence shall be determined by the Law Enforcement Training Council but must be included in the forty CLEEC hours required over the three-year recertification period. The training must be provided or approved by the South Carolina Criminal Justice Academy and must include, but is not limited to, the following curriculum: responding to crime scenes, Fourth Amendment issues, incident report writing, mutual restraining orders, orders of protection, determining primary aggressors, dual arrests, victim and offender dynamics, victims' resources, victims' rights issues, interviewing techniques, criminal domestic violence courts, victimless prosecution, offender treatment programs, and recognizing special needs populations.

(B) The Law Enforcement Training Council shall develop guidelines to provide for an exemption from the requirement of certain Class 1-LE certified law enforcement officers whose job responsibilities may not include responding to domestic violence cases from completing CLEEC hours in domestic violence each year. The request for an exemption must be made by the chief executive officer of the law enforcement officer's employing agency. A waiver or exemption from domestic violence training must not reduce the forty CLEEC hours required over the three-year period.

CREDIT(S)

HISTORY: 2006 Act No. 317, § 1, eff May 30, 2006.

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Code 1976 § 23-23-60

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Effective:[See Text Amendments]

Code of Laws of South Carolina 1976 Annotated Currentness

Title 23. Law Enforcement and Public Safety

Chapter 23. Law Enforcement Training Council

⇒⇒ § 23-23-60. **Certificates of compliance; information to be submitted relating to qualification of candidates for certification; expiration of certificate.**

(A) At the request of any public law enforcement agency of this State the council is hereby authorized to issue certificates and other appropriate indicia of compliance and qualification to law enforcement officers or other persons trained under the provisions of this chapter. Members of the council may individually or collectively visit and inspect any training school, class, or academy dealing with present or prospective law enforcement officers, and are expected to promote the most efficient and economical program for police training, including the maximum utilization of existing facilities and programs for the purpose of avoiding duplication. The council may make recommendations to the director, the General Assembly, or to the Governor regarding the carrying out of the purposes, objectives, and intentions of this chapter or other acts relating to training in law enforcement.

(B) All city and county police departments, sheriffs' offices, state agencies, or other employers of law enforcement officers having such officers as candidates for certification shall submit to the director, for his confidential information and subsequent safekeeping, the following:

(1) an application under oath on a format prescribed by the director;

(2) evidence satisfactory to the director that the candidate has completed high school and received a high school diploma, equivalency certificate (military or other) recognized and accepted by the South Carolina Department of Education or South Carolina special certificate;

(3) evidence satisfactory to the director of the candidate's physical fitness to fulfill the duties of a law enforcement officer including:

(a) a copy of his medical history compiled by a licensed physician or medical examiner approved by the employer;

(b) a certificate of a licensed physician that the candidate has recently undergone a complete medical examination and the results thereof;

(4) evidence satisfactory to the director that the applicant has not been convicted of any criminal offense that carries a sentence of one year or more or of any criminal offense that involves moral turpitude. Forfeiture of bond, a guilty plea, or a plea of nolo contendere is considered the equivalent of a conviction;

(5) evidence satisfactory to the director that the candidate is a person of good character. This evidence must include, but is not limited to:

(a) certification by the candidate's employer that a background investigation has been conducted and the employer is of the opinion that the candidate is of good character;

(b) evidence satisfactory to the director that the candidate holds a valid current state driver's license with no record during the previous five years for suspension of driver's license as a result of driving under the influence of alcoholic beverages or dangerous drugs, driving while impaired (or the equivalent), reckless homicide, involuntary manslaughter, or leaving the scene of an accident. Candidates for certification as state or local correctional officers may hold a valid current driver's license issued by any jurisdiction of the United States;

(c) evidence satisfactory to the director that a local credit check has been made with favorable results;

(d) evidence satisfactory to the director that the candidate's fingerprint record as received from the Federal Bureau of Investigation and South Carolina Law Enforcement Division indicates no record of felony convictions.

In the director's determination of good character, the director shall give consideration to all law violations, including traffic and conservation law convictions, as indicating a lack of good character. The director shall also give consideration to the candidate's prior history, if any, of alcohol and drug abuse in arriving at a determination of good character;

(6) a copy of the candidate's photograph;

(7) a copy of the candidate's fingerprints;

(8) evidence satisfactory to the director that the candidate's present age is not less than twenty-one years. This evidence must include a birth certificate or another acceptable document;

(9) evidence satisfactory to the director of successful completion of a course of law enforcement training as established and approved by the director, and conducted at an academy or institution approved by the director, this evidence to consist of a certificate granted by the approved institution.

(C) A certificate as a law enforcement officer issued by the department will expire three years from the date of issuance or upon discontinuance of employment by the officer with the employing entity or agency. Prior to the expiration of the certificate, the certificate may be renewed upon application presented to the director on a form prescribed by the director. The application for renewal must be received by the director at least forty-five days prior to the expiration of the certificate. If the officer's certificate has lapsed, the department may reissue the certificate after receipt of an application and if the director is satisfied that the officer continues to meet the requirements of subsections (B)(1) through (B)(9).

(D) The director may accept for training as a law enforcement officer an applicant who has met requirements of subsections (B)(1) through (B)(8).

CREDIT(S)

HISTORY: 2006 Act No. 317, § 1, eff May 30, 2006.

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Code 1976 § 23-23-70

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Effective: June 16, 2008

Code of Laws of South Carolina 1976 Annotated Currentness

Title 23. Law Enforcement and Public Safety

Chapter 23. Law Enforcement Training Council

→→ § 23-23-70. Certificates to be issued to certain officers appointed as chiefs and certain retired law enforcement officers.

(A) A retired law enforcement officer with twenty years or more law enforcement experience who subsequently serves as a magistrate or municipal judge of this State and is or has been appointed chief of a municipal department by the governing body thereof must be issued a certificate as a law enforcement officer pursuant to Section 23-23-60 if that person completes the legal course for Class I certified officers taught by the Criminal Justice Academy. This provision applies to a retired law enforcement officer of this State with twenty years or more law enforcement experience whose certificate has lapsed due to a three-year break in service who subsequently is appointed chief of a municipal department by the governing body thereof.

(B) A retired South Carolina law enforcement officer must be issued a certificate pursuant to Section 23-23-60, authorizing him to serve as a certified law enforcement officer, if the officer meets the following qualifications at the time of application:

(1) the officer must have been retired pursuant to Section 9-11-60 or 9-11-70 for not more than ten years, except that the department may certify an officer who has been retired for more than ten years if the officer provides evidence satisfactory to the director that he has received law enforcement training and experience sufficient to qualify him to serve as a certified law enforcement officer;

(2) within the previous three years, the officer must have completed a legal course and all other training programs for certified officers mandated by law and taught by the Criminal Justice Academy; and

(3) the officer must have maintained a constable commission during his retirement, without interruption.

(C) A retired federal law enforcement officer must be issued a certificate pursuant to Section 23-23-60, authorizing him to serve as a certified law enforcement officer, if the officer provides evidence satisfactory to the director that he has received law enforcement training and experience sufficient to qualify him to serve as a certified law enforcement officer.

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Code 1976 § 23-23-70

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HISTORY: 2006 Act No. 317, § 1, eff May 30, 2006; 2008 Act No. 335, § 6, eff June 16, 2008.

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Code 1976 § 23-23-80

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Effective: June 16, 2008

Code of Laws of South Carolina 1976 Annotated Currentness

Title 23. Law Enforcement and Public Safety

Chapter 23. Law Enforcement Training Council

→ → § 23-23-80. South Carolina Law Enforcement Training Council; powers and duties.

The South Carolina Law Enforcement Training Council is authorized to:

- (1) receive and disburse funds, including those hereinafter provided in this chapter;
- (2) accept any donations, contributions, funds, grants, or gifts from private individuals, foundations, agencies, corporations, or the state or federal governments, for the purpose of carrying out the programs and objectives of this chapter;
- (3) consult and cooperate with counties, municipalities, agencies, or official bodies of this State or of other states, other governmental agencies, and with universities, colleges, junior colleges, and other institutions, concerning the development of police training schools, programs, or courses of instruction, selection, and training standards, or other pertinent matters relating to law enforcement;
- (4) publish or cause to be published manuals, information bulletins, newsletters, and other materials to achieve the objectives of this chapter;
- (5) make such regulations as may be necessary for the administration of this chapter, including the issuance of orders directing public law enforcement agencies to comply with this chapter and all regulations so promulgated;
- (6) certify and train qualified candidates and applicants for law enforcement officers and provide for suspension, revocation, or restriction of the certification, in accordance with regulations promulgated by the council;
- (7) require all public entities or agencies that employ or appoint law enforcement officers to provide records in the format prescribed by regulation of employment information of law enforcement officers; and
- (8) provide by regulation for mandatory continued training of certified law enforcement officers, this training to be completed within each of the various counties requesting this training on a regional basis.

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Code 1976 § 23-23-80

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HISTORY: 2006 Act No. 317, § 1, eff May 30, 2006; 2008 Act No. 335, § 14, eff June 16, 2008.

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Effective: June 16, 2008

Code of Laws of South Carolina 1976 Annotated Currentness

Title 23. Law Enforcement and Public Safety

Chapter 23. Law Enforcement Training Council

→ → § 23-23-90. Internal documents relating to requirements or administration of chapter as basis for court action.

An oral or written report, document, statement, or other communication that is written, made, or delivered concerning the requirements or administration of this chapter or regulations promulgated pursuant to it must not be the subject of or basis for an action at law or in equity in any court of the State if the communication is between:

(1) law enforcement agencies, their agents, employees, or representatives; or

(2) law enforcement agencies, their agents, employees, or representatives and the South Carolina Criminal Justice Academy or the Law Enforcement Training Council.

CREDIT(S)

HISTORY: 2006 Act No. 317, § 1, eff May 30, 2006; 2008 Act No. 335, § 19, eff June 16, 2008.

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Code 1976 § 23-23-100

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Effective:[See Text Amendments]

Code of Laws of South Carolina 1976 Annotated Currentness

Title 23. Law Enforcement and Public Safety

Chapter 23. Law Enforcement Training Council

⇒ § 23-23-100. **Compliance orders; penalties.**

(A) Whenever the director finds that any public law enforcement agency is in violation of any provisions of this chapter, the director may issue an order requiring the public law enforcement agency to comply with the provision. The director may bring a civil action for injunctive relief in the appropriate court or may bring a civil enforcement action. Violation of any court order issued pursuant to this section must be considered contempt of the issuing court and punishable as provided by law. The director also may invoke the civil penalties as provided in subsection (B) for violation of the provisions of this chapter, including any order or regulation hereunder. Any public law enforcement agency against which a civil penalty is invoked by the director may appeal the decision to the court of common pleas of the county where the public law enforcement agency is located.

(B) Any public law enforcement agency which fails to comply with this chapter and regulations promulgated pursuant to this chapter or fails to comply with any order issued by the director is liable for a civil penalty not to exceed one thousand five hundred dollars a violation. When the civil penalty authorized by this subsection is imposed upon a sheriff, the sheriff is responsible for payment of this civil penalty.

CREDIT(S)

HISTORY: 2006 Act No. 317, § 1, eff May 30, 2006.

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Code 1976 § 23-23-110

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Effective:[See Text Amendments]

Code of Laws of South Carolina 1976 Annotated Currentness

Title 23. Law Enforcement and Public Safety

Chapter 23. Law Enforcement Training Council

⇒⇒ § 23-23-110. Law enforcement in municipality with single officer when officer attending training.

When a municipality employs only one law enforcement officer and that officer is attending law enforcement training at the South Carolina Criminal Justice Academy as required by law, the sheriff of the county wherein the municipality is located, or the head of the entity in charge of countywide law enforcement if the county sheriff is not, shall provide systematic patrolling of the municipal area while its law enforcement officer is attending the training.

CREDIT(S)

HISTORY: 2006 Act No. 317, § 1, eff May 30, 2006.

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Code 1976 § 23-23-115

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Effective:[See Text Amendments]

Code of Laws of South Carolina 1976 Annotated Currentness

Title 23. Law Enforcement and Public Safety

Chapter 23. Law Enforcement Training Council

→ § 23-23-115. Training of officers with Savannah River Site Law Enforcement Department.

Notwithstanding another provision of law, a person employed as a law enforcement officer with the Savannah River Site Law Enforcement Department, a United States Department of Energy facility, may attend and be trained at the Criminal Justice Academy in accordance with training and certification standards established by the State. Expenses for mandated and elective training must be established by the Criminal Justice Academy and paid by the law enforcement officer's employer. An authorized representative of the United States Department of Energy shall certify to the academy that the officer is employed as a law enforcement officer at the Savannah River Site and request the officer's admission to the academy for training.

CREDIT(S)

HISTORY: 2006 Act No. 317, § 1, eff May 30, 2006.

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Code 1976 § 23-23-120

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Effective: June 4, 2008

Code of Laws of South Carolina 1976 Annotated Currentness

Title 23. Law Enforcement and Public Safety

Chapter 23. Law Enforcement Training Council

→ → § 23-23-120. Reimbursement for training costs.

(A) For purposes of this section, "governmental entity" means the State or any of its political subdivisions.

(B) After July 1, 2007, every governmental entity of this State intending to employ on a permanent basis a law enforcement officer who has satisfactorily completed the mandatory training as required under this chapter must comply with the provisions of this section.

(C) If a law enforcement officer has satisfactorily completed his mandatory training while employed by a governmental entity of this State and within two years from the date of satisfactory completion of the mandatory training a different governmental entity of this State subsequently hires the law enforcement officer, the subsequent hiring governmental entity shall reimburse the governmental entity with whom the law enforcement officer was employed at the time of attending the mandatory training:

(1) one hundred percent of the cost of training the officer, which shall include the officer's salary paid during the training period and other training expenses incurred while the officer was attending the mandatory training, if the officer is hired within one year of the date of satisfactory completion of the mandatory training; or

(2) fifty percent of the cost of training the officer, which shall include the officer's salary paid during the training period and other training expenses incurred while the officer was attending the mandatory training, if the officer is hired after one year but before the end of the second year after the date of satisfactory completion of the mandatory training.

(D) If the law enforcement officer is employed by more than one successive governmental entity within the two-year period after the date of satisfactory completion of the mandatory training, a governmental entity which reimbursed the governmental entity that employed the officer during the training period may obtain reimbursement from the successive governmental entity employer for:

(1) one hundred percent of the cost of training the officer, which shall include the officer's salary paid during the training period and other training expenses incurred while the officer was attending the mandatory training, if the officer is hired within one year of the date of satisfactory completion of the mandatory training;

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or

(2) fifty percent of the cost of training the officer, which shall include the officer's salary paid during the training period and other training expenses incurred while the officer was attending the mandatory training, if the officer is hired after one year but before the end of the second year after the date of satisfactory completion of the mandatory training.

(E) The governmental entity that employed the officer during the training period or a governmental entity seeking reimbursement from a successive governmental entity employer must not be reimbursed for more than one hundred percent of the cost of the officer's salary paid during the training period and other training expenses incurred while the officer was attending the mandatory training.

(F) A governmental entity, prior to seeking any other reimbursement, must first seek reimbursement from the subsequent hiring governmental entity under the provisions of this section. In no case may a governmental entity receive more than one hundred percent of the cost of the officer's salary paid during the training period and other training expenses incurred while the officer was attending the mandatory training.

(G) No officer shall be required to assume the responsibility of the repayment of these or any other related costs by the employing agency of the governmental entity of the employing agency in their effort to be reimbursed pursuant to this section.

(H) Any agreement in existence on or before the effective date of this section, between a governmental entity and a law enforcement officer concerning the repayment of costs for mandatory training, remains in effect to the extent that it does not violate the provisions of subsections (E), (F), or (G). No governmental entity shall, as a condition of employment, enter into a promissory note for the repayment of costs for mandatory training after the effective date of this section.

CREDIT(S)

HISTORY: 2008 Act No. 269, § 1, eff June 4, 2008.

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Code 1976 § 23-23-130

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Effective: July 1, 2008

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Title 23. Law Enforcement and Public Safety

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→ → § 23-23-130. Retention of academy-generated revenue.

2008

Notwithstanding any other provision of law, revenue received from the sale of meals to employees and students attending non-mandated, advanced, or specialized training courses, sale of student locks and materials, sale of legal manuals and other publications, postal reimbursement, photo copying, sale of miscellaneous refuse and recyclable materials, tuition from non-mandated, advanced, or specialized courses, coin operated telephones, revenue from E-911 and coroner training, private college tuition, and revenue from canteen operations and building management services, revenue from "Crime-to-Court" and other Criminal Justice Academy training series shall be retained by the academy and expended in budgeted operations for food services, expansion of the department's distance learning programs, professional training, fees and dues, clothing allowance, and other related services or programs as the director of the Criminal Justice Academy may deem necessary. The Law Enforcement Training Council, Criminal Justice Academy shall report annually to the General Assembly the amount of miscellaneous revenue retained and carried forward.

CREDIT(S)

HISTORY: 2008 Act No. 353, § 2, Pt 27A.1, eff July 1, 2008.

2008

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Code 1976 § 23-23-140

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Effective: June 12, 2013

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Title 23. Law Enforcement and Public Safety

Chapter 23. Law Enforcement Training Council

→ → § 23-23-140. Patrol canine teams, certification.

(A) For purposes of this section, "patrol canine teams" refers to a certified officer and a specific patrol canine controlled by the handler working together in the performance of law enforcement or correctional duties. "Patrol canine teams" does not refer to canines used exclusively for tracking or specific detection.

(B) The South Carolina Criminal Justice Academy shall verify that patrol canine teams have been certified by a nationally recognized police dog association or similar organization.

(C) No law enforcement agency may utilize patrol canine teams after July 1, 2014, unless the patrol canine teams have met all certification requirements.

CREDIT(S)

HISTORY: 2013 Act No. 62, § 2, eff June 12, 2013.

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South Carolina Code of State Regulations Annotated Currentness
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Chapter 37. South Carolina Criminal Justice Academy (Refs & Annos)

→ 37-062. Training to Take Place within One Year of Hire.

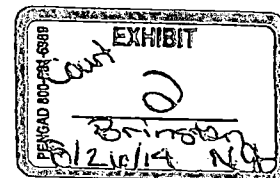
A. No operator employed or appointed on or after the effective date of these regulations by any agency in this State is authorized to receive, process, transmit and/or dispatch emergency and non-emergency calls for police, fire, emergency medical and other public safety services via communication devices unless he or she has been certified as qualified by the Council, except that any agency in this State may appoint or employ as an operator, a person who is not certified if, within one year after the date of employment or appointment, the person secures certification from the Council. Exceptions to the one-year rule may be granted by the Director in these cases:

1. military leave or injury occurring during the first year which would preclude the receiving of training within the usual period of time; or
2. in the event of the timely filing of application for training, which application, under circumstances of time and physical limitations, cannot be honored by the training academy within the prescribed period; or
3. upon presentation of documentary evidence that the candidate has successfully completed equivalent training in one of the other states which by law regulate and supervise the quality of operator training and which require a minimum basic or recruit course of duration and content at least equivalent to that provided in these regulations or by standards set by the Council; or
4. if it is determined by documentary evidence that the training will result in undue hardship to the requesting agency, the requesting agency must propose an alternate training schedule for approval.

B. Notwithstanding another provision of law, in the case of a candidate for certification who begins one or more periods of state or federal military service within one year after his date of employment or appointment, the period of time within which he must obtain the certification required to become an operator is automatically extended for an additional period equal to the aggregate period of time the candidate performed active duty or active duty for training as a member of the National Guard, the State Guard, or a reserve component of the Armed Forces of the United States, plus one hundred and eighty days. The Director must take all necessary and proper action to ensure that a candidate for certification as an operator who performs military service within one year of his employment or appointment is not prejudiced in obtaining certification as a result of having performed state or federal military service.

HISTORY: Added by State Register Volume 38, Issue No. 6, Doc. No. 4369, eff June 27, 2014.

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S.C. CODE REGS. 37-062, SC ADC 37-062

Current through State Register Volume 38, Issue 7, eff July 25, 2014

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Chapter 37. South Carolina Criminal Justice Academy (Refs & Annos)
⇒⇒ 37-063. Requirement of Good Character.

A. Background Investigations.

Every agency who requests operator's certification shall conduct a background investigation in accordance with guidelines issued by the Council.

B. Certification to the Council.

Every agency who requests operator's certification shall certify to the Council that, in the opinion of the agency, the candidate is of good character and has not engaged in misconduct as defined in R. 37-073. However, a finding of good character is subject to final approval by the Council.

C. Availability of Background Information.

Information obtained in any background investigation made in response to these regulations, shall be available, upon request, to the Academy and/or Council for its review and to any future prospective agency to assist them in a determination of an applicant's good character for operator's or law enforcement certification.

HISTORY: Added by State Register Volume 38, Issue No. 6, Doc. No. 4370, eff June 27, 2014.

S.C. CODE REGS. 37-063, SC ADC 37-063

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37-068. Application for Issuance or Re-issuance of Certification.

A. All candidates for issuance or re-issuance of operator's certification shall be submitted to the Academy within fifteen business days after hire on a form prescribed by the Council.

B. All candidates for issuance or re-issuance of operator certification must not have any active notification(s) from the South Carolina Department of Social Services notifying the Academy and/or the Council to revoke certification pursuant to S.C. Code §63-17-1060.

HISTORY: Added by State Register Volume 38, Issue No. 6, Doc. No. 4374, eff June 27, 2014.

S.C. CODE REGS. 37-068, SC ADC 37-068

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⇒ 38-001. Authority of Director.

A. The Director is authorized to issue orders directing that public law enforcement agencies and law enforcement officers certified in this state comply with Chapter 23, Title 23 Code of Laws of South Carolina, 1976, as amended, and the regulations promulgated pursuant thereto.

B. All orders so issued shall be reviewed and ratified by the Council prior to their issuance.

HISTORY: Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997. Amended by State Register Volume 27, Issue No. 5, eff May 23, 2003; State Register Volume 38, Issue No. 3, eff March 28, 2014.

S.C. CODE REGS. 38-001, SC ADC 38-001

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⇒⇒ 38-002. Application for Re-issuance of Certification.

All applications for re-issuance of law enforcement certification shall be submitted to the Academy within fifteen days after hiring on a form prescribed by the Council.

HISTORY: Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997. Amended by State Register Volume 27, Issue No. 5, eff May 23, 2003; State Register Volume 38, Issue No. 3, eff March 28, 2014.

S.C. CODE REGS. 38-002, SC ADC 38-002

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⇒⇒ 38-003. Requirement of Good Character.

A. Background Investigations.

Every agency who requests certification of any class of law enforcement officer shall conduct a background investigation in accordance with guidelines issued by the Council.

B. Certification to the Council.

Every agency who requests certification of any class of law enforcement officer shall certify to the Council that, in the opinion of the employing agency, the candidate is of good character and has not engaged in misconduct as defined in R.38-004.

C. Availability of Background Information.

Information obtained in any background investigation made in response to these regulations, shall be available, upon request, to the Academy and/or Council for its review and to any future prospective law enforcement employers to assist them in a determination of an applicant's good character for law enforcement certification.

HISTORY: Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997. Amended by State Register Volume 27, Issue No. 5, eff May 23, 2003; State Register Volume 38, Issue No. 3, eff March 28, 2014.

S.C. CODE REGS. 38-003, SC ADC 38-003

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→→ 38-004. Denial of Certification for Misconduct.

A. The Council may deny certification based on evidence satisfactory to the Council that the candidate has engaged in misconduct. For purposes of this section, misconduct means:

1. Conviction, plea of guilty, plea of no contest or admission of guilt (regardless of withheld adjudication) to a felony, a crime punishable by a sentence of one year or more (regardless of the sentence actually imposed, if any), or a crime of moral turpitude in this or any other jurisdiction;
2. Unlawful use of a controlled substance;
3. The repeated use of excessive force in dealing with the public and/or prisoners;
4. Dangerous and/or unsafe practices involving firearms, weapons, and/or vehicles which indicate either a willful or wanton disregard for the safety of persons or property;
5. Physical or psychological abuses of members of the public and/or prisoners;
6. Misrepresentation of employment-related information;
7. Dishonesty with respect to his/her employer;
8. Untruthfulness with respect to his/her employer.

B. In considering whether to deny certification based on misconduct, the Council may consider the seriousness, the remoteness in time and any mitigating circumstances surrounding the act or omission constituting or alleged to constitute misconduct.

HISTORY: Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997. Amended by State Register Volume 27, Issue No. 5, eff May 23, 2003; State Register Volume 38, Issue No. 3, eff March 28, 2014.

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ATTORNEY GENERAL'S OPINIONS

The intentional overdose of a prescription medication for the stated purpose of committing suicide is an "unlawful use of a controlled substance." S.C. Op. Atty. Gen. (Dec. 6, 2010) 2010 WL 5578961.

S.C. CODE REGS. 38-004, SC ADC 38-004

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⇒⇒ 38-005. Firearms Qualification Requirement.

Each law enforcement agency shall maintain proof of completion of a firearms qualification program and keep on file, available for inspection, proof that the firearms qualification program was administered by an Academy accredited firearms instructor.

HISTORY: Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997. Amended by State Register Volume 27, Issue No. 5, eff May 23, 2003; State Register Volume 38, Issue No. 3, eff March 28, 2014.

S.C. CODE REGS. 38-005, SC ADC 38-005

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→→ 38-006. Certification.

Certification will occur upon the successful completion of the prescribed training course as set out in 38-007. No candidate may be certified in more than one class at any one time and certification shall be that required for the most recent employing agency.

HISTORY: Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997. Amended by State Register Volume 27, Issue No. 5, eff May 23, 2003; State Register Volume 38, Issue No. 3, eff March 28, 2014.

S.C. CODE REGS. 38-006, SC ADC 38-006

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⇒⇒ 38-007. Training Requirements for Basic Law Enforcement Certification.

A. Class 1 Certifications.

1. Candidates for basic certification as law enforcement officers with full powers shall successfully complete a training program as approved by the Council and will be certified as Class 1-LE.
2. Candidates for basic certification as both law enforcement officers with full powers and as local detention facility officers (jailers) shall successfully complete the requirements to be certified as Class 1-LE and Class 2-LCO and will be certified as Class 1-LECO.

B. Class 2 Certifications.

1. Candidates for basic certification as local detention facility officers (jailers) shall successfully complete a training program as approved by the Council and will be certified as Class 2-LCO.
2. Candidates for basic certification as correctional officers with the Department of Corrections shall successfully complete a training program as approved by the Council and will be certified as Class 2-SCO.
3. Candidates for basic certification as juvenile correction officers with the Department of Juvenile Justice shall successfully complete a training program as approved by the Council and will be certified as Class 2-JCO.

C. Class 3 Certifications.

Candidates for basic certification as law enforcement officers with limited powers of arrest or special duties shall successfully complete a training program as approved by the Council and will be certified as Class 3-SLE.

HISTORY: Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997. Amended by State Register Volume 27, Issue No. 5, eff May 23, 2003; State Register Volume 38, Issue No. 3, eff March 28, 2014.

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ATTORNEY GENERAL'S OPINIONS

Simultaneous service as a criminal Justice Academy instructor certified as a Class 3 law enforcement officer and part-time employment performing the duties of a deputy coroner would be dual office holding. S.C. Op. Atty. Gen. (October 2, 2012) 2012 WL 4836949.

S.C. CODE REGS. 38-007, SC ADC 38-007

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⇒⇒ 38-008. Equivalent Training.

A. Other States.

All candidates who have received law enforcement training in other states shall submit satisfactory proof of successful completion and a verified copy of the courses taken. Training will be reviewed on a case by case basis and each candidate will be given credit for any training deemed equivalent to training offered by the Academy. All candidates must satisfy legal and firearms training as well as remedy any deficiencies in prior training.

B. Federal Training.

All candidates who have received law enforcement training with U.S. federal agencies shall submit satisfactory proof of successful completion and a verified copy of the courses taken. Training will be reviewed on a case by case basis and each candidate will be given credit for any training deemed to be equivalent to training offered by the Academy. All candidates must satisfy legal and firearms training as well as remedy any deficiencies in prior training.

C. Military Training.

All candidates who have received law enforcement training as U.S. military police shall submit satisfactory proof of successful completion and a verified copy of the courses taken. Training will be reviewed on a case by case basis and each candidate will be given credit for any training deemed to be equivalent to training offered by the Academy. All candidates must satisfy legal and firearms training as well as remedy any deficiencies in prior training.

D. Prior Training with Break in Service.

1. All certification lapses when an individual terminates active law enforcement duty.

2. A candidate with a break in service of less than one year will be re-certified by the Academy upon receiving a request by his department and upon providing proof of no disabilities at law.

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3. A candidate with a break in service of one year but less than three years will be re-certified upon submission of the application with appropriate documents as set out in Section 23-23-60 and R.38-002.

4. A candidate with a break in service of three years or more must complete all the requirements of Section 23-23-60 and R.38-002, R.38-005 and R.38-006.

5. When a candidate becomes subject to new training requirements, as set forth in R.38-007, as a result of a transfer from one agency to another with different training requirements, the candidate must successfully complete the training requirements for the class of certification the candidate will occupy with the new agency.

6. A candidate who has been continuously certified in this state, in any class, and who transfers to a class in which he/she has been previously certified, will be certified in the prior class upon successful completion of the firearms qualification requirement.

HISTORY: Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997. Amended by State Register Volume 27, Issue No. 5, eff May 23, 2003; State Register Volume 38, Issue No. 3, eff March 28, 2014.

S.C. CODE REGS. 38-008, SC ADC 38-008

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→ 38-009. Separation from Law Enforcement Employment.

A. All law enforcement agencies and other employers of law enforcement officers are required to notify the Academy when an officer leaves the employment of the agency/employer, regardless of the reason for the separation within 15 days of separation.

B. Such notification shall take place on a form as prescribed by the Council, contain the facts and circumstances leading to the separation, and be for the Academy and Council's confidential use and subsequent safekeeping.

C. In the event that such notification contains allegations of misconduct, a copy of such notice shall be sent to the law enforcement officer and the officer shall be informed of the provisions of Section 23-23-90 and allowed to file a response for the Academy and Council's use and safekeeping.

D. A willful failure by law enforcement agencies and other employers of law enforcement officers to supply the facts and circumstances of separation shall subject the violator to a civil penalty as provided by law.

HISTORY: Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997. Amended by State Register Volume 27, Issue No. 5, eff May 23, 2003; State Register Volume 38, Issue No. 3, eff March 28, 2014.

NOTES OF DECISIONS

In general 1

1. In general

Town's disclosure of misconduct form reporting African-American police officer's use of excessive force against an arrestee to South Carolina criminal justice academy, pursuant to state regulations, did not constitute public disclosure, as required to establish a due process liberty interest claim arising of town's dissemination of an false and defamatory impression about the officer; failure to comply with the disclosure rule would have subjected the town to civil penalties. *Bell v. Town of Port Royal*, South Carolina, 2008, 586 F.Supp.2d 498. Constitutional Law ¶ 4173(2); Municipal Corporations ¶ 185(7)

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→→ 38-010. Reserve Police

A. Definition.

In addition to the definition required by law, a "reserve" officer is not paid by the agency for which the officer performs law enforcement duties.

B. Documentation and Reporting.

1. Each agency having a reserve law enforcement officer program shall keep on file, available for inspection, all documentation required for regularly salaried law enforcement officers and as set out in R.38-002.

2. Each agency shall certify to the Academy, using a form prescribed by the Council, that such documentation is on file in the agency.

C. In-Service Requirement.

Each agency having a reserve law enforcement officer program shall keep on file, and make available for inspection, documentation that each reserve officer has completed the in-service requirement as required by law.

D. Transfers.

1. A reserve officer who desires to transfer to regular law enforcement status shall complete all the requirements as set forth by law and under R.38-008 as appropriate for the class of certification which the reserve officer will occupy.

2. A certified law enforcement officer who transfers to reserve status for a period of time not to exceed three years, shall be deemed to have no break in service as defined in R.38-008. Should the period of time exceed three years, the officer shall be deemed to have a break in service and shall complete all the requirements as set forth by law and under R.38-007, as appropriate for the class of certification which the reserve officer will occupy.

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E. Operational Procedures.

Any law enforcement agency wishing to establish a Reserve Officer program must meet minimum department sponsored certification criteria as required by the Academy Standards Section.

HISTORY: Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997. Amended by State Register Volume 27, Issue No. 5, eff May 23, 2003; State Register Volume 38, Issue No. 3, eff March 28, 2014.

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→→ 38-011. Traffic Radar Operator.

A. Qualification.

Only Class 1 certified law enforcement officers and appointed reserve officers may be accredited as traffic radar operators.

B. Accreditation.

To be accredited as a traffic radar operator, a law enforcement officer must complete a course of training taught by a certified law enforcement traffic radar instructor.

HISTORY: Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997. Amended by State Register Volume 27, Issue No. 5, eff May 23, 2003; State Register Volume 38, Issue No. 3, eff March 28, 2014.

S.C. CODE REGS. 38-011, SC ADC 38-011

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⇒⇒ 38-012. Application for Re-certification.

An application for re-certification must be submitted on a form approved by the Council and is deemed complete when the form, with the necessary information as set out in R.38-013, is received by the Academy.

HISTORY: Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997. Amended by State Register Volume 27, Issue No. 5, eff May 23, 2003; State Register Volume 38, Issue No. 3, eff March 28, 2014.

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⇒⇒ 38-013. Continuing Law Enforcement Education Requirements for Re-certification.

A. Eligibility.

No law enforcement officer is eligible for re-certification unless, in addition to the requirements of R.38-012, the officer has successfully completed, at a minimum, the number of approved continuing law enforcement education hours as appropriate for the officer's certification class, as specified in R.38-007. Such education hours shall be designated as Continuing Law Enforcement Education (CLEE) hours in the context of these regulations.

B. Class 1 Re-Certification Requirements:

1. Officers possessing a current Class 1-LE Certification shall be required to obtain forty CLEE hours in a three year period. The forty CLEE hours shall consist of at least one legal update course and one domestic violence course, presented or approved by the Academy, each year of the three year period. The remaining required CLEE hours in the three year period may come from any source approved by the Academy.

2. Officers possessing a current Class 1-LECO certification shall be required to complete the number of hours of in-service instruction per year as specified by the Jail Standards Committee and approved by the Academy. Each officer shall also be required to complete at least one legal update course and one domestic violence course, presented or approved by the Academy, each year of the three year period.

C. Class 2 Re-certification Requirements:

1. Officers possessing a current Class 2-LCO Certification shall be required to complete the number of hours of in-service instruction per year as specified by the Jail Standards Committee and approved by the Academy.

2. Officers possessing a current Class 2-SCO Certification shall be required to complete a Academy approved agency in-service program of at least forty hours every three years. At least one course each year shall be a legal update course.

3. Officers possessing a current Class 2-JCO Certification shall be required to complete a Academy ap-

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proved agency in-service program of at least forty hours every three years. At least one course each year shall be a legal update course. 207

D. Class 3 Re-certification Requirements:

Officers possessing a current Class 3 Certification shall be required to complete at least one legal update course, presented by the Academy, each year of the three year period.

HISTORY: Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997. Amended by State Register Volume 27, Issue No. 5, eff May 23, 2003; State Register Volume 38, Issue No. 3, eff March 28, 2014.

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→ 38-014. Approval of Continuing Law Enforcement Education Hours for Re-certification Requirements.

A. The Academy shall approve courses for CLEE hours toward officer re-certification upon application made on a form approved by the Academy and containing the following information concerning the courses:

1. The name of the course sponsor and its address;
2. The course agenda showing the actual number of hours of instruction;
3. A listing of course faculty with educational and professional credentials for each faculty member;
4. A copy of the course written materials, including a lesson plan and any test instruments which will be used;
5. Any supporting material which the course offeror wishes to submit for the Academy's consideration.

B. The Academy shall maintain a listing of courses which are approved for CLEE hours towards officer recertification and shall indicate after each course the number of CLEE hours for which the course is approved. The listing shall be updated on an annual basis.

C. Courses, once approved, shall be added to the listing maintained by the Academy. In order to receive continuing approval for course offerings, the offeror of each course must provide, on each successive second anniversary of the course's being placed on the listing, an updated application form and supporting documentation as stated in paragraph (A) of this section. Failure to comply with this requirement shall result in the course being removed from the listing and having its approval withdrawn.

HISTORY: Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997. Amended by State Register Volume 27, Issue No. 5, eff May 23, 2003; State Register Volume 38, Issue No. 3, eff March 28, 2014.

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→→ 38-015. Extension of Certification Renewal Date.

A certified law enforcement officer who is unable to complete the requirements of R.38-013 within the three year period specified will be granted an extension to his/her renewal date in the following cases:

A. Military Leave.

Any officer called to active military duty for a period of more than thirty consecutive days shall be granted an extension to his/her renewal date, as specified in Section 23-23-60(C) of the South Carolina Code of Laws, for the duration of the active duty, plus ninety days.

B. Medical Disability or Administrative Leave.

1. Any officer who is on disability leave, medical leave, administrative leave as a result of an assault by an inmate, patient or client, or other administrative leave granted by the employing agency, with or without pay, for a period of more than thirty consecutive days, shall be granted an extension to his/her renewal date, as specified in Section 23-23-60(C) of the South Carolina Code of Laws, for the duration of the leave, provided such extension does not exceed one year.

2. Any officer on medical leave, disability leave, administrative leave as a result of an assault by an inmate, patient or client, or other administrative leave granted by the employing agency, for a period of one year or more shall be treated under R.38-008(C)(3) or (4).

C. Eligibility and Application for Extension of Renewal Date.

1. Only officers whose law enforcement responsibilities have been suspended will be eligible for an extension of renewal date.

2. Application by the employing agency for an extension of renewal date shall be made within forty-five days of the beginning of military leave, medical leave, disability leave, administrative leave as a result of an assault by an inmate, patient or client, or other administrative leave granted by the employing agency, on a form prescribed by the Council.

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3. Notification by the employing agency of a return to active law enforcement duty shall be made within fifteen days of return to active law enforcement duty on a form prescribed by the Council.

HISTORY: Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997. Amended by State Register Volume 27, Issue No. 5, eff May 23, 2003; State Register Volume 38, Issue No. 3, eff March 28, 2014.

S.C. CODE REGS. 38-015, SC ADC 38-015

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⇒⇒ 38-016, Withdrawal of Certification of Law Enforcement Officers.

A. A law enforcement officer, certified pursuant to the provisions of R.38-007 and R.38-008, shall have his or her certification as a law enforcement officer withdrawn by the Council upon the occurrence of any one or more of the following events:

1. The officer is found to have falsified any application for certification and training based upon which the officer was admitted for training.
2. The officer is found to be ineligible for service as a law enforcement officer because of his or her failure to meet prerequisite qualifications for training and certification, as set by law, even though such ineligibility is not discovered until after the officer's initial certification.
3. The officer is convicted of a criminal offense under the law of any jurisdiction which would, by the laws of this State, disqualify the officer from obtainment of certification as provided for in R.38-007 and R.38-008.
4. Evidence satisfactory to the Council that the officer has engaged in misconduct. For purposes of this section, misconduct means:
 - a. Conviction, plea of guilty, plea of no contest or admission of guilt (regardless of withheld adjudication) to a felony, or a crime punishable by a sentence of more than one year (regardless of the sentence actually imposed, if any), or a crime of moral turpitude in this or any other jurisdiction;
 - b. Unlawful use of a controlled substance;
 - c. The repeated use of excessive force in dealing with the public and/or prisoners;
 - d. Dangerous and/or unsafe practices involving firearms, weapons, and/or vehicles which indicate either a willful or wanton disregard for the safety of persons or property;

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- e. Physical or psychological abuse of members of the public and/or prisoners;
- f. Misrepresentation of employment-related information;
- g. Dishonesty with respect to his/her employer;
- h. Untruthfulness with respect to his/her employer;
- i. Violations of criminal law resulting from administrative inquiries.

Provided however that in considering whether to withdraw certification based on misconduct, the Council may consider the seriousness, frequency and any mitigating circumstances surrounding the act or omission constituting or alleged to constitute misconduct.

B. The officer's certification expires due to the officer's failure to meet re-certification requirements as set out in R.38-013.

HISTORY: Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997. Amended by State Register Volume 27, Issue No. 5, eff May 23, 2003; State Register Volume 38, Issue No. 3, eff March 28, 2014.

ATTORNEY GENERAL'S OPINIONS

The intentional overdose of a prescription medication for the stated purpose of committing suicide is an "unlawful use of a controlled substance." S.C. Op.Atty.Gen. (Dec. 6, 2010) 2010 WL 5578961.

S.C. CODE REGS. 38-016, SC ADC 38-016

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Article 1. Criminal Justice Academy

§ Subarticle 1. Law Enforcement Training

⇒ ⇒ 38-017. Reporting of Events Requiring Withdrawal of Certification.

A. It shall be the responsibility of the sheriff or the chief executive officer of every law enforcement agency or department within the State to report to the Academy the occurrence of any event or series of events, set forth in R.38-016 which requires the withdrawal of certification of a law enforcement officer who is currently or was last employed by his or her agency.

B. The report shall be made within fifteen days of the final agency or department action resulting from the internal investigation conducted by the agency or department, and shall be on a form prescribed by the Council.

C. A willful failure to report information shall subject the violator to a civil penalty as provided by the Council.

D. Only events which are determined as founded by the department or agency shall be reported as provided herein above.

HISTORY: Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997. Amended by State Register Volume 27, Issue No. 5, eff May 23, 2003; State Register Volume 38, Issue No. 3, eff March 28, 2014.

S.C. CODE REGS. 38-017, SC ADC 38-017

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⇒⇒ 38-018. Investigation of Events Requiring Withdrawal of Certification; Notification to Officer.

A. Upon receipt of a report pursuant to R.38-017(A), the Council shall initiate an investigation into reported events which may require withdrawal of the law enforcement officer's certification.

B. The Director and/or Council may suspend the certification of any law enforcement officer pending the outcome of an investigation initiated pursuant to paragraph (A) above.

C. A law enforcement officer who is the subject of an investigation shall be notified of its initiation on a form prescribed by the Council, sent by certified mail to the current address on file at the Academy, return receipt requested, as soon as practicable after the investigation is initiated.

D. Duplicate of such notice shall be sent, in the same manner prescribed in paragraph (C) above, to the current sheriff or chief executive officer of the employing agency or department of the law enforcement officer.

E. The Council may direct that the investigation, on its behalf, be conducted. The investigation shall be sent to the Council for its confidential use and review.

F. Where the Council's investigation indicates that withdrawal of the law enforcement officer's certification is not warranted, the Council shall notify the law enforcement officer and the sheriff or chief executive officer of the employing law enforcement agency of its finding, in accordance with the notice provisions of paragraph (C) and (D) above.

G. Where the Council's investigation indicates that withdrawal of the law enforcement officer's certification is warranted, the Council shall proceed in accordance with R.38-019.

HISTORY: Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997. Amended by State Register Volume 27, Issue No. 5, eff May 23, 2003; State Register Volume 38, Issue No. 3, eff March 28, 2014.

S.C. CODE REGS. 38-018, SC ADC 38-018

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⇒⇒ 38-019. Notification of Withdrawal of Certification.

A. Prior to the withdrawal of a law enforcement officer's certification pursuant to R.38-016, the Council shall notify the officer whose certification is to be withdrawn on a form prescribed by the Council sent by registered mail, to the current address on file at the Academy, return receipt requested, to the officer.

B. Such notice shall be provided to the officer ten days in advance of the effective date of withdrawal of the certification.

C. Duplicate of such notice shall be sent in the same manner as in paragraph (A) above, to the current sheriff or the chief executive officer of the law enforcement agency or department of the law enforcement officer.

HISTORY: Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997. Amended by State Register Volume 27, Issue No. 5, eff May 23, 2003; State Register Volume 38, Issue No. 3, eff March 28, 2014.

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⇒⇒ 38-020. Confidentiality of Notification.

All notifications to law enforcement officers and their respective employing law enforcement agencies pursuant to R.38-017, R.38-018, and R.38-019 shall be handled in a confidential and sensitive manner.

HISTORY: Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997. Amended by State Register Volume 27, Issue No. 5, eff May 23, 2003; State Register Volume 38, Issue No. 3, eff March 28, 2014.

S.C. CODE REGS. 38-020, SC ADC 38-020

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⇒ ⇒ 38-021. Law Enforcement Emergency Vehicle Training Requirement.

A. Every agency which employs one or more law enforcement officers who uses emergency vehicles shall make provision for the training set out in R.38-022 as appropriate for each such officer's law enforcement duty requirements prior to any such officer's certification as qualified by the Council.

B. Officers holding valid certification on the effective date of these regulations must successfully complete the training set out in R.38-022, as is appropriate for such officer's law enforcement duty requirements within 180 days of such date.

HISTORY: Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997. Amended by State Register Volume 27, Issue No. 5, eff May 23, 2003; State Register Volume 38, Issue No. 3, eff March 28, 2014.

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⇒⇒ 38-022. Law Enforcement Emergency Vehicle Training Requirement.

A. Non-Emergency Response Training.

1. Every law enforcement officer who drives or operates an emergency vehicle shall successfully complete a course of instruction as approved by the Academy relating to non-emergency operation of the law enforcement emergency vehicle.
2. Every law enforcement agency required to make provisions for the training prescribed in R.38-022(A)(1) and shall promulgate written policy and procedure concerning non-emergency vehicle response, consistent with the provisions of the course of instruction as approved by the Academy, which shall be included as part of the training provided to its officers.

B. Emergency Response Training.

1. Every Class 1 law enforcement officer and any other law enforcement officer who drives or operates a law enforcement emergency vehicle in response to an emergency, as defined in these regulations, shall successfully complete a course of instruction as approved by the Academy relating to emergency response operation of the law enforcement emergency vehicle.
2. Every agency required to make provision for the training prescribed in R.38-022(B)(1) shall promulgate written policy and procedure concerning emergency response with the law enforcement emergency vehicle, consistent with the provisions of the course of instruction as approved by the Academy, which shall be included as part of the training program provided to its officers.

C. Pursuit Training.

1. Every Class 1 law enforcement officer and any other law enforcement officer who drives or operates a law enforcement emergency vehicle in pursuit of an actual or suspected violator of the law, as defined in these regulations, shall successfully complete a course of instruction as approved by the Academy relating to pursuit operation of the law enforcement emergency vehicle.

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2. Every agency required to make provision for the training prescribed in R.38-022(C)(1) shall promulgate written policy and procedure concerning pursuit operation of the law enforcement emergency vehicle, consistent with the provisions of the course of instruction as approved by the Academy which shall be included as a part of the training program provided to its officers.

HISTORY: Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997. Amended by State Register Volume 27, Issue No. 5, eff May 23, 2003; State Register Volume 38, Issue No. 3, eff March 28, 2014.

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⇒⇒ 38-023. Notification of Training Compliance.

A. Every agency required to conduct training pursuant to R.38-022 shall provide proof of completion of the required training programs, including appropriate instruction in the written policies and procedures of the agency concerning operation of the law enforcement emergency vehicle as required by R.38-022.

B. A law enforcement officer who transfers from one agency to another shall be required to successfully complete the training program appropriate for the agency to which transfer has occurred, in accordance with R.38-022. Provided, however, that an officer who has successfully completed a training program pursuant to R.38-022 within a period of one year of the date of transfer to another agency, where the successfully completed program is appropriate for the officer's law enforcement duty with the agency to which transferred, shall not be required to complete another training program upon such a transfer, but rather the employing agency to which transferred shall provide appropriate instruction to the transferred officer in the written policies and procedures of the agency concerning operation of the law enforcement emergency vehicle as required by R.38-022. This training shall be reported to the Academy as required in R.38-023(A).

HISTORY: Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997. Amended by State Register Volume 27, Issue No. 5, eff May 23, 2003; State Register Volume 38, Issue No. 3, eff March 28, 2014.

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⇒ ⇒ 38-024. Continuing Training Requirement.

A. The training required by R.38-022 shall be conducted on a continuing basis no less frequently than annually. Every agency shall report, on the form prescribed by the Academy, the provision of appropriate training on or before the expiration of the current certification. Nothing in these regulations shall be construed to prohibit such training on a basis more frequently than annually.

B. Officers successfully completing appropriate required emergency vehicle training shall be provided CLEE hours in accordance with R.38-013 appropriate for the number of hours of instruction received.

HISTORY: Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997. Amended by State Register Volume 27, Issue No. 5, eff May 23, 2003; State Register Volume 38, Issue No. 3, eff March 28, 2014.

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→→ 38-025. Approval of Training Programs.

A. All agencies required to conduct training programs pursuant to R.38-022 shall, prior to initiation of the required training, submit training materials as required by the Academy for review and approval.

B. CLEE hours shall be awarded only for materials properly submitted and approved by the Academy.

HISTORY: Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997. Amended by State Register Volume 27, Issue No. 5, eff May 23, 2003; State Register Volume 38, Issue No. 3, eff March 28, 2014.

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☒ Subarticle 1. Law Enforcement Training

⇒⇒ 38-026. Equivalent Law Enforcement Emergency Vehicle Training.

Training provided by other states, the federal government or private training providers, will be evaluated in a fashion consistent with the provisions of R.38-008. In each instance where an agency or officer submits a request for credit for equivalent training, the employing agency must provide verification that appropriate instruction in the written policies and procedures of the agency has occurred, in accordance with the directives of R.38-023(B) regarding transferred officers.

HISTORY: Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997. Amended by State Register Volume 27, Issue No. 5, eff May 23, 2003; State Register Volume 38, Issue No. 3, eff March 28, 2014.

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⇒⇒ 38-027. Effect of Failure to Comply.

A. Any agency which willfully fails to comply with the directives of R.38-021 through 38-026, shall be subject to a civil penalty as provided by law.

B. Any law enforcement officer found not to be in compliance with the directives of R.38-021 through 38-026, shall have his or her certification as a law enforcement officer withdrawn in accordance with R.38-026(A)(2) and his or her authority to exercise law enforcement powers shall cease, and the officer's certification shall be deemed to have lapsed.

HISTORY: Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997. Amended by State Register Volume 27, Issue No. 5, eff May 23, 2003; State Register Volume 38, Issue No. 3, eff March 28, 2014.

S.C. CODE REGS. 38-027, SC ADC 38-027

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§ Subarticle 1. Law Enforcement Training

⇒⇒ 38-028. Definitions.

A. For purposes of R. 38-001 - 38-028, the following definitions shall apply:

1. "Agency" means local government or public safety agency employing law enforcement officers.
2. "Director" means the Director of the South Carolina Criminal Justice Academy.
3. "Academy" means the South Carolina Criminal Justice Academy.
4. "Council" means the Law Enforcement Training Council.

B. For purposes of R. 38-021 and 38-022, the following definitions shall apply:

1. "Emergency" means a sudden or unexpected occurrence involving an imminent threat to human life or immediate potential for extreme property damage under conditions requiring immediate response to curtail imminent harm to human life.

With respect to the suspected commission of a criminal offense and law enforcement response to such offense, the classification of the crime as felony or misdemeanor shall not be the sole determinative factor of whether an emergency is present; but rather all known factors, in accordance with the first paragraph above, will be weighed in a determination of whether an emergency exists.

2. "Non-Emergency" means a situation involving conditions routinely encountered in line of law enforcement duty which does not pose an imminent threat to human life or immediate potential for extreme property damage which would require immediate response to curtail harm to human life.
3. "Pursuit" means a event involving a law enforcement officer attempting to apprehend a person in a motor vehicle while that person is trying to avoid capture by willfully failing to yield to the officer's signal to stop. It also includes the closing of the distance between a law enforcement vehicle and the violator's vehicle under circumstances where the violator is not yet aware of the law enforcement action.

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4. "Emergency Response" means the driving of a law enforcement emergency vehicle by a law enforcement officer in response to an emergency, as defined herein, where the response is conducted in accordance with state law and department policy.

5. "Non-Emergency Response" means the driving of a law enforcement emergency vehicle by a law enforcement officer in response to a non-emergency, as defined herein. This response involves operation of the law enforcement emergency vehicle in all modes other than emergency response or pursuit mode.

6. "Law Enforcement Emergency Vehicle" means a motor vehicle, as defined by the laws of this state, whether marked or unmarked, used by a law enforcement agency in the conduct of law enforcement operations, in accordance with state law and department policy.

SUBARTICLE 3 E-911 SYSTEM

HISTORY: Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997. Amended by State Register Volume 27, Issue No. 5, eff May 23, 2003; State Register Volume 38, Issue No. 3, eff March 28, 2014.

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§ Subarticle 3. E-911 System
⇒ 38-060. Definitions.

A. "Operator" means a telecommunications operator or dispatcher employed in an E-911 system.

B. "Agency" means local government or public safety agency employing operators.

C. "Director" means the Director of the South Carolina Criminal Justice Academy.

D. "Academy" means the South Carolina Criminal Justice Academy.

E. "Council" means the Law Enforcement Training Council.

HISTORY: Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997. Amended by State Register Volume 38, Issue No. 3, eff March 28, 2014.

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Subarticle 3. E-911 System

⇒⇒ 38-061. Minimum Requirements for E-911 Operator Enrollment in Training.

A. All agencies having operators as candidates for training and certification shall submit to the Academy, the following:

1. an application under oath in a format prescribed by the Council;
2. evidence satisfactory to the Council that the candidate possesses a high school diploma or equivalent recognized and accepted by the South Carolina Department of Education;
3. evidence satisfactory to the Council that the candidate's present age is not less than eighteen years;
4. evidence satisfactory to the Council that the candidate has not been convicted of any criminal offense that carries a possible sentence of more than one year.

B. Nothing in this regulation shall be construed to preclude any agency from establishing qualifications or standards for hiring that exceed these minimum standards.

HISTORY: Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997. Amended by State Register Volume 38, Issue No. 3, eff March 28, 2014.

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Subarticle 3. E-911 System

→→ 38-062. Training Requirements for Certification.

A. Candidates for certification as operators shall successfully complete a prescribed course of training as approved by the Council and will be certified as Class 4-TCO.

B. Candidates employed as operators prior to June 27, 1997 may be certified without completing the training referenced in paragraph (A) above if the candidate has:

1. two years continuous employment as an emergency services dispatcher and no break in service of longer than six months; or

2. one year continuous employment as an emergency services dispatcher, no break in service of more than six months, and prior training accredited by the Academy, and the candidate successfully passes a comprehensive test as approved by the Director and administered by the Academy. No retest will be offered.

HISTORY: Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997. Amended by State Register Volume 38, Issue No. 3, eff March 28, 2014.

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§ Subarticle 3. E-911 System

⇒⇒ 38-063. Break in Service after Certification.

A. All certification lapses upon separation from employment.

B. Candidates with prior certification and a break in service of less than one year will be recertified upon a request by the employing agency, provided the agency produces evidence satisfactory to the Council that the candidate has not been convicted of any criminal offense that carries a possible sentence of more than one year.

C. Candidates with prior certification and a break in service of more than one year must meet the requirements of 38-061 and 38-062(A).

HISTORY: Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997. Amended by State Register Volume 38, Issue No. 3, eff March 28, 2014.

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Article 1. Criminal Justice Academy

§ Subarticle 3. E-911 System

⇒⇒ 38-064. Separation from Employment.

Agencies shall notify the Academy of the separation from employment of any certified operator. If the separation is a result of the conviction for a criminal offense carrying a possible sentence of more than one year, such conviction shall be reported to the Academy. All reports shall take place on a form approved by the Director.

HISTORY: Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997. Amended by State Register Volume 38, Issue No. 3, eff March 28, 2014.

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<http://web2.westlaw.com/print/printstream.aspx?vr=2.0&mt=Westlaw&sv=Split&pb=DA...> 8/19/2014

Westlaw

S.C. Code of Regulations R. 38-065

Page 1

C
South Carolina Code of State Regulations Annotated Currentness
Regulations

Chapter 38. Department of Public Safety (Refs & Annos)

Article 1. Criminal Justice Academy

§ Subarticle 3. E-911 System

⇒⇒ 38-065. Cost of Training.

The cost of training shall be established by the Academy. Agencies shall forward an authorized purchase order for this amount with each application for training.

HISTORY: Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997. Amended by State Register Volume 38, Issue No. 3, eff March 28, 2014.

S.C. CODE REGS. 38-065, SC ADC 38-065

Current through State Register Volume 38, Issue 7, eff July 25, 2014

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Training History Report

SC Criminal Justice Academy

Reported by Acadis® Readiness Suite

08/25/2014

For: Brinston, Deonta L.

Academy ID: 5553-8606

Brinston, Deonta L

Person Status: Active
SSN

DOB
Gender

EEOC

Employment

Status	Organization	Title/Rank	Employment Type	Appointment Type	Dates
Inactive	Anderson Co. Sheriff's Office (Primary)	Officer	Class 1 LEO		08/22/2011 - 04/29/2014
Inactive	Easley Police Dept.	Officer	Class 1 LEO		10/03/2008 - 06/08/2011

Certifications

Name	Issued	Expiration	Status
Class 1 Law Enforcement Officer	03/27/2009	03/27/2015	Withdrawn

Training

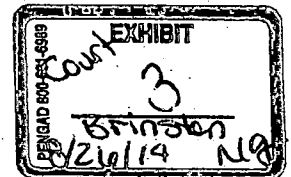
Upcoming, Ongoing, & Unconfirmed

No upcoming & ongoing training data exists.

Current Period to Date (01/01/2014 - 08/25/2014)

No current year training data exists.

Previous Period (01/01/2013 - 12/31/2013)



Course/Title (Course No.)	Training Dates	Grade	Status	Training Category	Hours
SMD - Operator - SMD-2013.01.14B	01/14/2013 01/16/2013	0.00%	Departed - 05/09/2013		0h 0m

Total Hours (0h 0m)

Other Periods (through 12/31/2012)

Course/Title (Course No.)	Training Dates	Grade	Status	Training Category	Hours
Gangs - LE Response to Gangs in the Community - LE Response to Gangs in the Comm 2012.03.07	03/07/2012 03/07/2012	0.00%	Departed - 03/07/2012		0h 0m
In-Service	02/24/2012 02/24/2012	N/A	Complete		56h 0m
MRN	02/03/2012 02/03/2012	N/A	Complete		0h 0m
Legal 11/12	02/02/2012 02/02/2012	N/A	Complete		2h 0m
CDV 2011	02/01/2012 02/01/2012	N/A	Complete		4h 0m
IN-SERVICE	11/29/2011 11/29/2011	N/A	Complete		26h 0m
CDV 2010	11/24/2011 11/24/2011	N/A	Complete		4h 0m
LEGAL 10/11	05/19/2011 05/19/2011	N/A	Complete		2h 0m
CDV 2009	09/30/2009 09/30/2009	N/A	Complete		4h 0m
LEGAL 09/10	09/24/2009 09/24/2009	N/A	Complete		2h 0m
Basic Law Enforcement (1135)	03/27/2009 03/27/2009	N/A	Complete		396h 0m
Basic Law Enforcement (1135)	02/13/2009 02/13/2009	N/A	Complete		0h 0m

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For Official Use Only

Training History Report

SC Criminal Justice Academy

Reported by Acadis & Readiness Suite

08/25/2014

For: Brinston, Deonta L.

Academy ID 5553-8606

Physical Abilities Test (1172)

12/08/2008

12/08/2008

N/A Complete

1h 0m

Total Hours (497h 0m)

A grade of ## indicates that the weights for this class are not valid and grades cannot be calculated.

Education

No education data exists.

Miscellaneous

Audit LETS/ACADIS

Complete

Comments

HAVE PCS HIRE W/CALHOUN FALLS POLICE DEPT. SCANNED ONLY.

Has Application

Yes

Has been Fingerprinted

Yes

Has Birth Certificate

Yes

Has Driver's License

Yes

Has High School Diploma

Yes

Has Medical Form

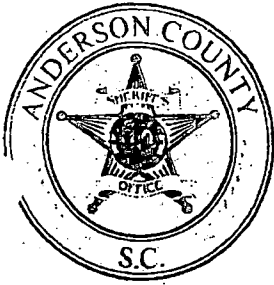
Yes

Training Audit

Complete

THIS IS TO CERTIFY THAT THIS
IS A TRUE COPY AS CONTAINED
IN THE FILES OF THE S.C.
CRIMINAL JUSTICE ACADEMY.

Maria B. Brown
CUSTODIAN OF RECORDS
DATE August 25, 2014



ANDERSON COUNTY SHERIFF'S OFFICE

Sheriff John Skipper, Jr.

Office of Professional Standards

219 Old County Home Rd.

Anderson, SC 29625

Phone: (864) 260-1065

Fax: (864) 332-5490

Officer/Employee Statement

Case Number: IA 2014-002

Date: 04/29/2014

I, Deonta Brinston, hereby give freely and voluntarily this statement to Lt. Steven J. Reeves of the Anderson County Sheriff's Office.

I Cpl. D.L. Brinston was called into internal affairs on the listed date at 1000hrs. I was asked to speak to SLED agents along with the Sgt. And Lt. of internal affairs. I first met with two SLED agents (Tribble & Sloan) who were very professional at the time of our meeting. I was then advised of my Miranda Warnings, and asked to initial and sign. I informed them that I wanted my attorney present. Agent Tribble stated he understood and gave me his card with his contact information for my attorney.

I then met with Lt. Reeves and Sgt. Brown with Internal Affairs. Lt. Reeves informed me he needed to speak with me in reference to an internal investigation in reference to having an acquaintance with Dorian Hollingsworth and a steroid test coming back positive.

In pursuant to my rights under Garrity Rights I spoke to Lt. Reeves in reference to the use of Anabolic Steroids, I informed Lt. Reeves I did use a certain testosterone prior to law enforcement at Anderson County Sheriff's Office and while at Anderson County. I informed Lt. Reeves I had the pills remaining from when I was competing heavily in SCNPC bodybuilding competitions to help me win my shows. I did inform Lt. Reeves what the substance was and that I also took over the counter substances that acted as non-anabolic inhibitors, or would increase the effect of what was taken. I did inform Lt. Reeves I took the substance without a prescription to help get my head back on straight and regain my focus in the gym. I did inform Lt. Reeves I only had approx. 16 pills left. And they were all taken. I was asked if I ever took any of the prescription drugs prescribed to a co-worker and informed him that never happened.

XXXXXXXXXXXXXXXXXXXX End of Statement XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

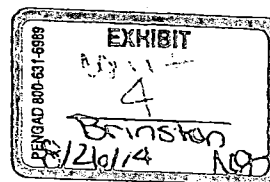
Signature: _____

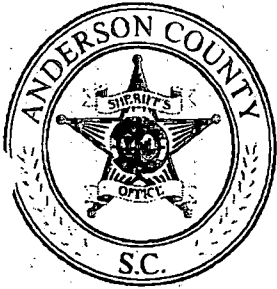
Date: _____

WITNESSES:

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ANDERSON COUNTY SHERIFF'S OFFICE

Sheriff John Skipper, Jr.

Office of Professional Standards

219 Old County Home Rd.

Anderson, SC 29625

Phone: (864) 260-1065

Fax: (864) 332-5490

Internal Affairs Case Report

Case #IA 2014 - 002

Pursuant to the Office of Professional Standards Investigation of a complaint concerning possible violation of G0-107 Conduct Unbecoming an Officer by Deputies Cameron Hill and Deonta Brinston.

4/02/2014

Myself and Sgt. Jonathan Brown interviewed a source of information that outlined a timeline of behavior and provided evidence of possession of inhibitors used in the external intake of testosterone (steroids). Agent Andrew Tribble with the State Law Enforcement Division was brought in and brought up to speed on the information at hand. A request was sent out to Captain Robbie Hendrix with the S.L.E.D. asking for assistance in the investigation.

4/09/2014

Based on the information provided and discussions with Captain Don Brookshire it was decided that there was enough evidence to warrant calling both Deputies in for a specialized "steroid" panel. This testing was set up at AnMed Laboratory Services. Deputy Brinston was contacted to meet myself and Sgt. Brown at the Stone Building on this date at 8am and from there we drove him to AnMed Lab where the urinalysis sample was taken. Deputy Brinston was transported back to the Stone Building and left the premises.

Sgt. Brown and myself met Deputy Hill at his current residence in which he shares with Deputy Brinston. Deputy Brinston was on scene at that time and it was decided that Deputy Hill could drive his marked patrol vehicle to AnMed Lab while Sgt. Brown rode as a passenger. Once at AnMed Lab a urinalysis sample was taken from Hill and he left the site.

4/24/2014

OPS was notified of results of both urinalysis by Anderson County Personnel representatives.

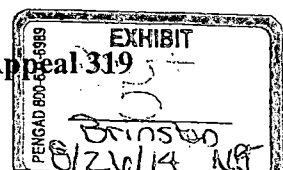
Summary of results:

Deputy Cameron Hill tested positive for Boldenone and Methandienone.

Deputy Deonta Brinston tested positive for Nandrolone and Methandienone.

Methandienone and Nandrolone are both listed as an "anabolic steroid" in Article 14/Section 44-53-1510 (A) South Carolina Code of Laws.

Boldenone is considered an "anabolic steroid" covered under subsection (B) of the same section and is considered expressly intended for the administration through implants to cattle or other non-human species.



Deputy Hill resigned his position with the Sheriff's Office that same evening while on shift.

4/28/2014

Agent Tribble asked if I could make contact with Deputy Brinston and set up a meeting time at the Stone Building for an interview. I contacted Deputy Brinston and asked him to be at the Stone Building at 9am on 4/29/2014.

4/29/2014

Deputy Brinston met with Agent Tribble and Sloan for approximately 15-20 minutes and then refused to speak to them officially until he talked an attorney. At that time Deputy Brinston was asked to come into my office where myself and Sgt. Brown sat down with him. At 9:17am I explained and asked Deputy Brinston to complete an Internal Investigation Advisement/Garrity Warning form. Sgt. Brown and myself signed off as witnesses to this completed form.

After a verbal interview Deputy Brinston did provide the following statement:

Case Number: IA 2014-002

Date: 04/29/2014

I, Deonta Brinston, hereby give freely and voluntarily this statement to Lt. Steven J. Reeves of the Anderson County Sheriff's Office.

I Cpl. D.L. Brinston was called into internal affairs on the listed date at 1000hrs. I was asked to speak to SLED agents along with the Sgt. And Lt. of internal affairs. I first met with two SLED agents (Tribble & Sloan) who were very professional at the time of our meeting. I was then advised of my Miranda Warnings, and asked to initial and sign. I informed them that I wanted my attorney present. Agent Tribble stated he understood and gave me his card with his contact information for my attorney.

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XXXXXXXXXXXXXXXXXXXX End of Statement XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

I checked in on Deputy Brinston more than once during his statement and he advised that he wanted to speak to Chief Keith Smith (Uniform Patrol) at that point. I advised him that I would

attempt to contact him. Chief Smith advised that he would be enroute to the Stone Building in approximately 20-30 minutes. I informed Deputy Brinston.

Chief Smith arrived at the Stone Building and I gave him a summary of what had occurred during the morning interview sessions. He spoke briefly to Deputy Brinston in private, at the Chief's request. After only 3-4 minutes Chief Smith came out of the "meeting room" and advised that he had terminated Deputy Brinston. Sgt. Brown collected his county issued firearm, badge, and Sheriff's Office Credentials then took Deputy Brinston home at that time.

Pursuant to the complaint filed concerning the possession/use of "anabolic" steroids and considering the information gathered to this point to include positive urinalysis tests by both Deputies Hill and Brinston that showed levels of "anabolic steroids" in their systems and in Deputy Brinston's case a verbal and written admission that he has been taking "testosterone" during his employment with A.C.S.O. I sustain the allegation that both Deputies did violate GO 107 Conduct Unbecoming an Officer (Alcohol and Controlled substances)

Respectfully Submitted,

Lieutenant Steven J. Reeves



LabCorp OTS RTP
1904 T W Alexander Drive, RTP, NC 27709-0153

Phone: 919-572-6900

SPECIMEN 100-743-3483-0	TYPE S	PRIMARY LAB UI	REPORT STATUS COMPLETE	Page #: 1
ADDITIONAL INFORMATION SS#: * 8645510231 CCU:0450782511 H-00555206 DOB: 1/02/1983				
PATIENT NAME BRINSTON, DEONTA		SEX N	AGE(YR./MOS.) 31 / 3	
PT. ADD.:				
DATE OF COLLECTION TIME 4/09/2014 8:20	DATE RECEIVED 4/10/2014	DATE REPORTED 4/24/2014	TIME 5:38	4502
CLINICAL INFORMATION S05 LM NCD-0450782511 PHYSICIAN ID. NPI PATIENT ID. 425471449 ACCOUNT: AnMed Health Alun Anna McCormick 800 N Fair St. Anderson SC 29621-0000 ACCOUNT NUMBER: 39110710				
TEST		RESULT		LIMITS
LAB				

Reason for testing: Reasonable Suspicion/Cause
Collectors Name:

Collectors Phone #: 8645123180

MRO Name from CCF:

Chain-of-Custody Protocol Performed

Anabolic Steroid Scr w Validity

Bolasterone

NONE DETECTED

Boldenone

NONE DETECTED

4-Chlorotestosterone

NONE DETECTED

Danazol

NONE DETECTED

Drostanolone

NONE DETECTED

Fluoxymesterone

NONE DETECTED

Mesterolone

NONE DETECTED

Methandienone

Positive

METHANDIENONE CONFIRMED BY LCMSMS

Methandriol

NONE DETECTED

Methenolone

NONE DETECTED

Methyltestosterone

NONE DETECTED

Nandrolone

Positive

NANDROLONE + METABOLITES CONFIRMED BY GCMS

Norethandrolone

NONE DETECTED

Oxandrolone

NONE DETECTED

Oxymesterone

NONE DETECTED

Oxymetholone

NONE DETECTED

Stanozolol

NONE DETECTED

Patient Name: BRINSTON, DEONTA

Patient ID: 425471449

Spec #: 100-743-3483-0

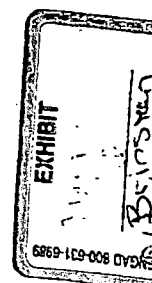
Seq #: 4502

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Results are flagged in Accordance with Age Dependent Reference Ranges

Continued on Next Page

LCM Version: 03.26.01





LabCorp OTS RTP
1904 T W Alexander Drive, RTP, NC 27709-0153

Phone: 919-572-6900

SPECIMEN 100-743-3483-0	TYPE S	PRIMARY LAB UI	REPORT STATUS COMPLETE	Page #: 2

ADDITIONAL INFORMATION SS#:

8645510231

CCU:0450782511 H-00555206

DOB: 1/02/1983

PATIENT NAME
BRINSTON, DEONTASEX
NAGE(YR/MOS.)
31 / 3

PT. ADD.:

DATE OF COLLECTION TIME 4/09/2014 8:20	DATE RECEIVED 4/10/2014	DATE REPORTED 4/24/2014	TIME 5:38	4502

CLINICAL INFORMATION

S05 LM NCD-0450782511

PHYSICIAN ID.	NPI	PATIENT ID. 425471449

ACCOUNT: AnMed Health
Allan Anna McCormick
800 N Fant St
Anderson

SC 29621-0000

ACCOUNT NUMBER: 39110710

TEST	RESULT	LIMITS	LAB
Trenbolone			
NONE DETECTED			02
Probenecid			
NONE DETECTED			02
Clenbuterol			
NONE DETECTED			02
T/E Ratio Interpretation			
ELEVATED			02
ELEVATED TESTOSTERONE/EPITESTOSTERONE RATIO WAS CONFIRMED AT >4:1 BY HPLC/MS/MS.			
Testosterone	300.6 ng/ml		
Epitestosterone	5.2 ng/ml		02
T/E Ratio	57.8		02
ANALYSIS FOR ANABOLIC STEROIDS IS PERFORMED BY GC/MS. ANY POSITIVE OR ABNORMAL RESULTS ARE CONFIRMED BY GC/MS OR HPLC/MS/MS.			02
THE TESTOSTERONE/EPITESTOSTERONE RATIO IS REPORTED AS ELEVATED WHEN THE CALCULATED RESULT IS > 4.0.			
Validity Result:	NORMAL		
Creatinine	>200.0 mg/dl		02
Specific Gravity	1.0176		02
Urine, pH	6.3		02

LAB: 01 UI LabCorp OTS RTP
1904 T W Alexander Drive, RTP, NC 27709-0153

DIRECTOR: Michael Fox MD

LAB: 02 MX MedFox Laboratories Inc
402 W County Road D, St Paul, MN 55112-3522

DIRECTOR: Mark Catlin G MD

Pat Name: BRINSTON, DEONTA

Pat ID: 425471449

Spec #: 100-743-3483-0

Seq #: 4502

Results are Flagged in Accordance with Age Dependent Reference Ranges

Last Page of Report

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LCM Version: 03.26.01

Patient Rx History Report

SEARCH CRITERIA: ADHOC QUERY ALL PRESCRIBERS ALL DISPENSERS 2 OUT OF 2 RECIPIENT SELECTED FROM: NAME BEGINS BRINSTON,
D ; DOB ; WITHIN 730 DAYS FOR SUBSTANCE CLASS 0 TO 5 DISPENSED FROM 04/01/2013 TO 04/03/2014

Patients that match search criteria

03449383 BRINSTON DEONTA, DOB
06465074 BRINSTON DEONTA L, DOB ; 1

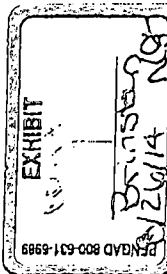
Fill Date	Product, Str, Form	Qty	Days	Pt ID	Prescriber	Written	RX#	N/R*	Pharm
01/03/2014	HYDROCODONE-HOMATROPINE SYRUP	100.000	3	06465074	BD3373557	01/03/2014	4402450	N	FB0424375

Prescribers for prescriptions listed

BD3373557 DAVIES, WALLACE J II MD; OFFICE ANDERSON EMER ASSOC, PC, 800 N FANT ST, ANDERSON SC 296

Pharmacies that dispensed prescriptions listed

FB0424375 BI-LO PHARMACY #5709; 4405 HIGHWAY 24, ANDERSON SC 29626,





ANDERSON COUNTY SHERIFF'S OFFICE

Sheriff John Skipper, Jr.

Office of Professional Standards

305 Camson Rd
Anderson, SC 29625
Phone: (864) 260-1065
Fax: (864) 332-5490

Internal Investigation Advisement/Garrity Warning

YOU ARE HEREBY ADVISED THAT YOU ARE THE SUBJECT OF AN INTERNAL INVESTIGATION BEING CONDUCTED BY THE DEPARTMENT. THE NATURE OF THE INVESTIGATION IS AN ADMINISTRATIVE INQUIRY INTO:

Relationship with Doricea Hollingsworth, Presume of the late Strands
(parent to child)

READ THE FOLLOWING CAREFULLY AND INITIAL EACH ITEM.

RS

I UNDERSTAND THAT I WILL BE ASKED QUESTIONS NARROWLY RELATED TO THE PERFORMANCE OF MY OFFICIAL DUTIES AND/OR FITNESS FOR THE DEPARTMENT.

RS

I UNDERSTAND THAT I AM ENTITLED TO ALL RIGHTS AND PRIVILEGES GUARANTEED ME BY THE LAWS AND THE CONSTITUTION OF THIS STATE AND THE CONSTITUTION OF THE UNITED STATES, AND THAT STATEMENTS OR INFORMATION PROVIDED BY ME, AS A PART OF THIS ADMINISTRATIVE INVESTIGATION CANNOT BE USED AGAINST ME IN ANY SUBSEQUENT CRIMINAL PROCEEDING, (EXCEPT FOR PERJURY OR OBSTRUCTION OF JUSTICE CHARGES).

RS

I UNDERSTAND THAT IF I REFUSE TO ANSWER QUESTIONS DURING THIS INVESTIGATION, OR IF I AM UNTRUTHFUL, SUCH ACTION MAY RESULT IN MY DISMISSAL FROM THE SHERIFF'S OFFICE.

RS

I UNDERSTAND THAT STATEMENTS OR INFORMATION PROVIDED BY ME AS PART OF THIS ADMINISTRATIVE INVESTIGATION MAY BE USED AGAINST ME IN SUBSEQUENT DISCIPLINARY ACTIONS.

RS

I UNDERSTAND THAT IF I AM PLACED ON ADMINISTRATIVE LEAVE WITH PAY, THAT I MUST MAKE MYSELF AVAILABLE TO OFFICIALS OF THE SHERIFF'S OFFICE, AND PROVIDE A CONTACT NUMBER WHERE I MAY BE REACHED DURING MY ABSENCE FROM DUTY.

RS

I UNDERSTAND THAT I AM TO REFRAIN FROM DISCUSSING THIS INVESTIGATION WITH ANYONE OTHER THAN THE APPROPRIATE AUTHORITY.

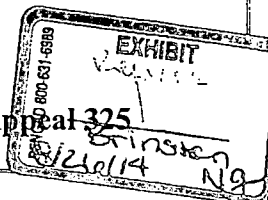
I HAVE READ THIS ADVISEMENT AND I FULLY UNDERSTAND ITS CONTENTS.

[Signature]
SIGNATURE OF EMPLOYEE

DATE 4-29-2014

[Signature]
WITNESS

DATE 29 April 2014



ALCOHOL & CONTROLLED SUBSTANCES:

Standards concerning the use of alcohol and drugs, and the use of alcohol and drug-screening tests, apply to all Sheriff's Office personnel. No employee of the Sheriff's Office is allowed to use any illegal drugs or substances, as defined in the South Carolina Code of Laws under Controlled Substances or related provisions. Possession and use of prescribed, controlled substances is permitted only with a proper prescription.

DEFINITIONS:

- **Alcoholic Beverages** refers to all liquors, beer and wine.
- **Prescription and nonprescription medication** includes any medication given under the direction of a physician or any "over the counter" medication that could hinder an employee's ability to safely complete all assigned job tasks.
- **Illegal drug or substance** includes all illegal drugs or substances that could result in criminal prosecution for possession or use.

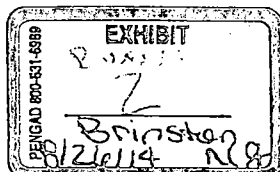
No Employee of the Sheriff's Office is allowed to use or be under the influence of alcoholic beverages or any intoxicating substance while in an on-duty status. The only exception to this policy is in the performance of a law enforcement duty for investigative purposes, and then, only with specific consent from a supervisor and never in uniform.

To the extent that it results in impairment, intoxication, obnoxious or offensive behavior which discredits them or the agency while off-duty, ACSO employees will refrain from consuming intoxicating beverages in the areas of Anderson County in which the Anderson County Sheriff's Office has primary jurisdiction. Primary jurisdiction does not apply to the corporate limits of any municipality that has its own police department (e.g., City of Anderson, Belton, Honea Path, Iva, Williamston, and West Pelzer). This restriction includes establishments typically known as bars, pool halls, billiard parlors or other establishments which do not primarily serve meals or frequenting a bar in a restaurant for the sole purpose of consuming alcohol. Exceptions to this are consumption at a private residence or a private party or when frequenting a "restaurant" that's main purpose is the service of food.

While consuming alcohol in an authorized public place, ACSO employees will not wear any part of the uniform (badge, gun, etc.) or insignia which will identify them as an ACSO employee.

Deputies are, at all times, responsible for their actions and the consumption of alcohol must be with moderation and in a manner that ensures that no discredit is brought upon the Sheriff's Office.

Prescription or Nonprescription Medication – Employees taking medication that could impair their ability to perform assigned job tasks must inform their immediate supervisor. Failure to inform a supervisor constitutes a violation of this policy which may lead to punitive action.



ARTICLE 14.

ANABOLIC STEROIDS

SECTION 44-53-1510. Definition of "anabolic steroid"; exceptions.

(A) The term "anabolic steroid" includes any of the following or any isomer, ester, salt, or derivative of the following that acts in the same manner on the human body:

- (1) clostebol;
- (2) dehydrochloromethyltestosterone;
- (3) ethylestrenol;
- (4) fluoxymesterone;
- (5) mesterolone;
- (6) methandienone;
- (7) methandrostenolone;
- (8) methenolone;
- (9) methyltestosterone;
- (10) nandrolone;
- (11) norethandrolone;
- (12) oxandrolone;
- (13) oxymesterone;
- (14) oxymetholone;
- (15) stanozolol; and
- (16) testosterone.

(B) Anabolic steroids that are expressly intended for administration through implants to cattle or other nonhuman species, and that are approved by the federal Food and Drug Administration for this use, are not considered anabolic steroids as defined by this article and are not governed by its provisions.

HISTORY: 1989 Act No. 115, Section 1.

SECTION 44-53-1520. Unprofessional conduct to dispense under certain circumstances.

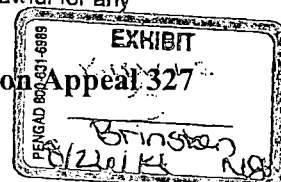
It is unprofessional conduct, and is not a valid medical purpose, for a practitioner or veterinarian to prescribe, dispense, or administer an anabolic steroid, or a pharmacist to dispense an anabolic steroid, for the purpose of the hormonal manipulation that is intended to increase muscle mass, strength, or weight without a medical necessity to do so, or for the intended purpose of improving performance in any form of exercise, sport, or game.

HISTORY: 1989 Act No. 115, Section 1.

SECTION 44-53-1530. Possessing anabolic steroids without a prescription, or prescribing anabolic steroids, by non-practitioner, pharmacist, or veterinarian unlawful; penalties.

It is unlawful for any person who is not a practitioner, pharmacist, or veterinarian to knowingly or intentionally possess anabolic steroids as defined in this article unless the steroids were obtained directly from, or pursuant to a valid prescription or order of, a practitioner while acting in the course of his professional practice. It is unlawful for any

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person who is not a practitioner, pharmacist, or veterinarian to knowingly or intentionally prescribe, dispense, deliver, or administer anabolic steroids to a person. Any person who violates this article with respect to:

(1) prescription, dispensation, delivery, or administration of an anabolic steroid, or delivery of an anabolic steroid to a person for human use without any purpose other than a valid medical purpose, or the sale or delivery of an anabolic steroid to a person for human use without a valid prescription, or the prescription, dispensation, delivery, or administration of an anabolic steroid to a person by any person who is not a practitioner, pharmacist, or veterinarian, is guilty of a felony and, upon conviction, must be punished as follows:

(a) for a first offense, imprisoned for a term not to exceed five years or fined in an amount not to exceed five thousand dollars, or both;

(b) for a second or subsequent offense, imprisoned for a term not to exceed ten years or fined in an amount not to exceed ten thousand dollars, or both;

(2) possession of ten or fewer dosage units of anabolic steroids without a valid prescription is guilty of a misdemeanor and, upon conviction, must be punished as follows:

(a) for a first offense, imprisoned for a term not to exceed six months or fined in an amount not to exceed one thousand dollars;

(b) for a second or subsequent offense, imprisoned for a term not to exceed one year or fined in an amount not to exceed two thousand dollars, or both;

(3) possession of more than ten but fewer than one hundred dosage-units of anabolic steroids without a valid prescription is guilty of a misdemeanor and, upon conviction, must be punished as follows:

(a) for a first offense, imprisoned for a term not to exceed one year or fined in an amount not to exceed two thousand dollars, or both;

(b) for a second or subsequent offense, imprisoned for a term not to exceed two years or fined in an amount not to exceed three thousand dollars, or both;

(4) possession of more than one hundred dosage-units of anabolic steroids without a valid prescription is guilty of a felony and, upon conviction, must be punished as follows:

(a) for a first offense, imprisoned for a term not to exceed five years or fined in an amount not to exceed five thousand dollars, or both;

(b) for a second or subsequent offense, imprisoned for a term not to exceed ten years or fined in an amount not to exceed ten thousand dollars, or both.

HISTORY: 1989 Act No. 115, Section 1.

SECTION 44-53-1550. What constitutes a prior offense.

For purposes of determining whether or not a person has committed a second or subsequent offense under the provisions of this article, a violation of any other provision of this article or provision of law of the United States or any state, territory, or district, relating to an anabolic steroid, constitutes a prior offense.

HISTORY: 1989 Act No. 115, Section 1.

EXHIBIT
B7C
Appeal 329
8/26/14 NO

DEONTA BRINSTON: Signed SOAP Note for 05/27/2014

Age on DOS: 31 yrs, DOB:

Powdersville Internal Medicine

100 Powers Blvd. PO Box 51158 Piedmont, SC 29673

8642200103

seen by: H Walpole, MD

seen on: Tuesday 27 May 2014

electronically signed by: H Walpole, MD

signed on: Tuesday 27 May 2014 8:59 AM

VS	Height:	Weight:	BMI:	Blood Pressure	Temp:	Pulse:
	78.0 in	274.0 lb	31.7	134 / 82 mmHg	98.6 F	67 bpm

CC 1 week (Appt time: 7:45 AM) (Arrival time: 7:53 AM) 1 week fu

S Ta is back today to review his labs. He is still trying to get his job back by going through recommended lines of communication and evaluation recommended by his Atty. So far there has been what I believe is full disclosure from him. He is showing me labels of products he has taken from the gym - supplements available OTC and has done research to find out how substances used remotely could show up on any screen. He is not using and wants to follow the book of rules and regs to get his job back along with his passion for the Anderson Co Sherrif's office work. He has offered to let blood testing and urine testing be done and this offer was not accepted by the department. His affect and demeanor are pleasant and controlled. Today labs drawn from 5/20/14 showed a near normal CBC, CMP. FSH, LH were wnl. Total Testosterone done by LC/MS (highly sensitive for accuracy) was 116.3 (range 348.0 - 1197.0). This is hypogonadal range and he qualifies for hormone replacement therapy.

He is going to get he knee taken care of with the referral to Orthopedics.

Past Medical History (Known allergies): NKDA.

O General: WNWd in no acute distress. Alert and oriented x3. Head: Normocephalic, atraumatic, no lesions. Chest: Lungs clear, no rales, no rhonchi, no wheezes. There is good excursion. Breath sounds are equal bilaterally. Heart: RRR, no murmurs, no rubs, no gallops. S1 & S2 are present.

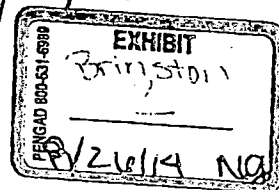
A Hypogonadism documented by LC/MS

DIAGNOSIS:

Hypogonadism [253.4]

P Today labs drawn from 5/20/14 showed a near normal CBC, CMP. FSH, LH were wnl. Total Testosterone done by LC/MS (highly sensitive for accuracy) was 116.3 (range 348.0 - 1197.0). This is hypogonadal range and he qualifies for hormone replacement therapy. I have discussed this with him and recommended that we hold off on starting replacement until this is cleared/accepted data. I have no reason to question it, but the pattern he reports to me and the scrutiny he is under makes me want to do everything I can to help him clear himself from any reproach.

H Walpole
5/27/14



27 May 2014 5:01 AM
page 1 of 1

DEONTA BRINSTON: Patient Visit Plan for 05/27/2014

Age on DOS: 31 yrs, DOB:

Powdersville Internal Medicine

100 Powers Blvd, PO Box 51158 Piedmont, SC 29673

8642200103

Visit Date: 05/27/2014

Patient Visit Plan

Today labs drawn from 5/20/14 showed a near normal CBC, CMP. FSH, LH were wnl. Total Testosterone done by LC/MS (highly sensitive for accuracy) was 116.3 (range 348.0 - 1197.0). This is hypogonadal range and he qualifies for hormone replacement therapy. I have discussed this with him and recommended that we hold off on starting replacement until this is cleared/accepted data. I have no reason to question it, but the pattern he reports to me and the scrutiny he is under makes me want to do everything I can to help him clear himself from any reproach.

Heather G. Camp
5/27/14

Duncan, Brandy

From: Brenda Scott <brendas@wctel.net>
Sent: Tuesday, July 01, 2014 3:04 PM
To: Duncan, Brandy
Subject: hire form
Attachments: hire form.pdf



Please let us know if you get this.



SOUTH CAROLINA CRIMINAL JUSTICE ACADEMY

5400 Broad River Road
Columbia, South Carolina 29212-3540
Attention: Certification Department
Phone: (803) 896-7802 Fax: (803) 896-7803



PERSONNEL CHANGE IN STATUS - HIRE FORM

Calhoun Falls Police Dept. 864-418-8502 06-19-14
Reporting Department Telephone # Today's Date
Deonta L. Brinston
Officer's Name (First MI. Last) SS# or Academy LD.# DOB Race Male
Female

Pending

Date of Hire Driver's License # Issuing State

PLEASE CHECK ONE:



Class 1 LE



Class 3SLE (Limited Duty)



Reserve Appointment



Class 2LCO (Jailer)



Class 1LECO (LEO/Jailer)

Calhoun Falls Police Dept.

Commissioning Agency

06-19-14

Date

AFFIDAVIT OF BACKGROUND INVESTIGATION

I hereby attest that I have conducted a complete background investigation on the above officer. Below is a list of this officer's former law enforcement agencies contacted for terms of separation:

Date Contacted	Agency(s)	Contact Person
06-19-2014	Easley City P.D.	
06-19-2014	Anderson County S.O.	Carl Anderson

My background investigation concluded that this officer is of "Good Character" and does not have any disqualifications which would render the officer uncertifiable under the South Carolina Training Act, Section 23-23-60 and I hereby make application for certification.

A complete and current Criminal History Check has been conducted and charge(s):
☒ WERE NOT FOUND (no CHC / NCIC is required)
☐ WERE FOUND (attach CHC / NCIC showing disposition)

A complete and current Driving Record has been reviewed and Suspension(s) as a result of driving under the influence of alcoholic beverages or dangerous drugs, driving while impaired, reckless homicide, involuntary manslaughter, or leaving the scene of an accident:

☒ WERE NOT FOUND (no Driving Record is required)
☐ WERE FOUND (attach Driving Record showing suspensions)

Signature of Investigating Officer: Chief John T. Galloway John T. Galloway
(Signature) (Print Name)
Authorizing Signature for Department: John T. Galloway Date: 06-19-2014
(Print Name)

Sworn to and subscribed before me this
19 day of June Year 2014

Brenda V Scott
Signature of Notary Public for South Carolina

My commission expires: Jan 7, 2019

Brenda V. Scott
Commission Expires
January 7, 2019



South Carolina Criminal Justice Academy

July 24, 2014



Deonta L. Brinston

Re: Certification Appeal: Deonta L. Brinston
Case No. 14-CJA-003

Dear Mr. Brinston:

Your certification contested case hearing has been scheduled for Tuesday, August 26, 2014 at 10:00 a.m. in the Criminal Justice Academy's conference room. The Criminal Justice Academy is located at 5400 Broad River Road, Columbia, South Carolina 29212. When you arrive at the Academy, please ask the receptionist to call me to the front and I will take you to the conference room. You have the right to subpoena witnesses to testify. To assist with this process a blank copy of a hearing subpoena is enclosed.

At the hearing, evidence will be presented to demonstrate that you unlawfully used a controlled substance, specifically Nandrolone and Methandienone.

S.C. Reg. 38-004 states, in part:

The Council may deny certification based on evidence satisfactory to the Council that the candidate has engaged in misconduct. For purposes of this section, misconduct means:

2. Unlawful use of a controlled substance...

Please be advised 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 me.

If you have any questions or concerns, please do not hesitate to contact me at (803) 896-7414.

Sincerely,

Brandy A. Duncan
Chief General Counsel

Enclosure as Stated

cc: 334 Lt. Steven J. Reeves, Anderson County Sheriff's Office
COA - Record on Appeal
Robin Morse, Member, LETC

**LAW ENFORCEMENT TRAINING COUNCIL
CRIMINAL JUSTICE ACADEMY**

In the Matter of the Issuance)
of Law Enforcement Officer.)
Certification to Deonta L. Brinston)
_____)

Case No. 14-CJA-003

SUBPOENA OF WITNESS

TO: _____

YOU ARE HEREBY DIRECTED to personally appear before Robin Morse,
Member of the South Carolina Law Enforcement Training Council, at the South Carolina
Criminal Justice Academy, at 5400 Broad River Road, Columbia, S.C., on the 26th of
August 2014, at 10:00 a.m., to testify in the above-captioned matter.

Name:

Dated: _____

7010 1870 0000 5041 5322

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For delivery information visit our website at www.usps.com	
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Deonta L. Brinston	
Street, Apt. # or PO Box #	
City, State, Z	
PS Form 3800, August 2005	
See reverse for instructions	

Duncan, Brandy

From: Duncan, Brandy
Sent: Tuesday, August 19, 2014 11:19 AM
To: 'taybrinston@gmail.com'
Subject: Notice of Hearing
Attachments: Notice of Hearing.pdf; Subpoena - Template.doc

Mr. Brinston,

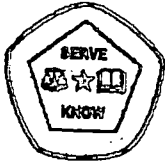
Attached are the notice of hearing and template for subpoena you requested. The hard copy of the notice of hearing has not been returned to the Academy, but, we have also not received the green card indicating the notice has been delivered. So, it is possible that this is the mail that is being returned to sender.

Thanks,

Brandy A. Duncan
Chief General Counsel
S.C. Criminal Justice Academy
5400 Broad River Road
Columbia, South Carolina 29212
(803) 896-7414 (Office)
(803) 608-9738 (Work Cell)
(803) 896-8347 (Fax)

Notice of Confidentiality: The information contained in this e-mail may be legally privileged and/or confidential. It is intended only for the use of the individual(s) or entity named. If you are not the intended recipient, you are hereby notified that any dissemination, distribution, copying, or use of the information contained in this e-mail or the e-mail itself is strictly prohibited. If you have received this e-mail in error, please notify me immediately, delete the original e-mail, and shred any printed copies of the e-mail. Thank you.

IMPORTANT NOTE: *July 1, 2014 was the cutoff date for old PCS of Hire forms. Please go to our web site (www.sccja.sc.gov) and get the new form revised 02/2014.*



South Carolina Criminal Justice Academy

July 24, 2014

Deonta L. Brinston

Re: Certification Appeal: Deonta L. Brinston
Case No. 14-CJA-003

Dear Mr. Brinston:

Your certification contested case hearing has been scheduled for Tuesday, August 26, 2014 at 10:00 a.m. in the Criminal Justice Academy's conference room. The Criminal Justice Academy is located at 5400 Broad River Road, Columbia, South Carolina 29212. When you arrive at the Academy, please ask the receptionist to call me to the front and I will take you to the conference room. You have the right to subpoena witnesses to testify. To assist with this process a blank copy of a hearing subpoena is enclosed.

At the hearing, evidence will be presented to demonstrate that you unlawfully used a controlled substance, specifically Nandrolone and Methandienone.

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2. Unlawful use of a controlled substance...

Please be advised 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 me.

If you have any questions or concerns, please do not hesitate to contact me at (803) 896-7414.

Sincerely,

Brandy A. Duncan
Chief General Counsel

Enclosure as Stated

cc: Lt. Steven J. Reeves, Anderson County Sheriff's Office
Robin Morse, Member, LETC
338 COA - Record on Appeal

**LAW ENFORCEMENT TRAINING COUNCIL
CRIMINAL JUSTICE ACADEMY**

In the Matter of the Issuance)
of Law Enforcement Officer)
Certification to Deonta L. Brinston)
_____)

Case No. 14-CJA-003

SUBPOENA OF WITNESS

TO: _____

YOU ARE HEREBY DIRECTED to personally appear before Robin Morse,
Member of the South Carolina Law Enforcement Training Council, at the South Carolina
Criminal Justice Academy, at 5400 Broad River Road, Columbia, S.C., on the 26th of
August 2014, at 10:00 a.m., to testify in the above-captioned matter.

Name:

Dated: _____



South Carolina Criminal Justice
5400 Broad River Road
Columbia, SC 29212-3540



7/28
8-19
8-12

CERTIFIED MAIL



7010 1870 0000 5041 5322

UWC

Deonta L. Brinston

NIXIE

206 SE 1008

0008/16/14

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2964000000000000

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- 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.

1. Article Addressed to:

Deonta L. Prinston

2. Article Number

(Transfer from service label)

7010 1870 0000 5041 5322

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes

If YES, enter delivery address below: ☐ No

3. Service Type

☒ Certified Mail

☐ Express Mail

☐ Registered

☐ Return Receipt for Merchandise

☐ Insured Mail

☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540



City of Clinton
Department of Public Safety

404 North Broad Street, Clinton, SC 29325

864-833-7512 Fax: 864-833-7502

Robin E. Morse, Director

On May 13, 2014, the Academy received a Personnel Change in Status Report for Mr. Brinston alleging Mr. Brinston engaged in unlawful use of a controlled substance. On July 1, 2014, the Academy received a PCS of Hire from the Calhoun Falls Police Department for Mr. Brinston stating they hired Mr. Brinston on June 19, 2014. On August 26, 2014, a contested case hearing was held regarding this allegation.

Mr. Brinston was represented by Candy Kern-Fuller, Esquire in the contested case hearing. Internal Affairs Investigators Steve Reeves and Jonathon Brown were present on behalf of the Anderson County Sheriff's Office, but presented narrative testimony only and were not allowed to function as a legal representative. Three (3) witnesses provided testimony, Lt. Reeves, Investigator Brown, and Mr. Brinston.

On April 2, 2014, Mr. Brinston's soon-to-be ex-wife reported to the Anderson County Sheriff's Office that Mr. Brinston and another Anderson County Sheriff's Deputy were taking illegal steroids. Based on this report, Mr. Brinston and the other deputy were both required to submit to a specialized steroid urine test through AnMed Laboratory Services on April 9, 2014. Mr. Brinston and the other deputy tested positive for Methandienone. Mr. Brinston also tested positive for Nandrolone. Methandienone and Nandrolone are both listed as anabolic steroids under S.C. Code §44-53-1510(A). Mr. Brinston contends he tested positive for Methandienone and Nandrolone because he was taking three (3) over-the-counter supplements, specifically Tests PSI, Alpha Mass X, and A-D-T (Brinston Exhibit #1). To support this contention, Mr. Brinston submitted a SOAP Note dated May 27, 2014 from Powdersville Internal Medicine (Brinston Exhibit #2). This SOAP Note stated Mr. Brinston had returned to review his labs from May 20, 2014. This SOAP Note did not indicate the presence of any anabolic steroids, but it did note that Mr. Brinston's "Total Testosterone... was 116.3 (range 348.0-1197.0)." It is well known that the use of anabolic steroids suppresses the naturally occurring testosterone in the body. Given this result and the significant delay between the original testing performed by Anderson County Sheriff's Office (April 9, 2014) and the follow up

testing performed by Powdersville Internal Medicine (May 20, 2014), I believe the Powdersville Internal Medicine SOAP Note actually supports the allegations put forth by the Anderson County Sheriff's Office against Mr. Brinston.

Mr. Brinston objected to the admission of the written LabCorp test results (Court Exhibit #6, Not Admitted into Evidence) on the basis that there was no affidavit of authenticity, there was no medical review process, and there was no gas chromatography performed on the sample. Despite these objections, Mr. Brinston did not object to Internal Affairs Investigator Reeves' narrative testimony that Mr. Brinston was required to submit to a specialized steroid urine test through AnMed Laboratory Services on April 9, 2014 and that Mr. Brinston tested positive for Methandienone and Nandrolone.

Based on the testing discussed above from April 9, 2014 and May 20, 2014 (including the test results), the concerns raised by Mr. Brinston with regard to the April 9, 2014 testing, I make the following findings and recommendations:

FINDINGS OF FACT

It is found as a fact:

1. Mr. Brinston tested positive on April 9, 2014 for Methandienone and Nandrolone.
2. Methandienone and Nandrolone are both listed as anabolic steroids under S.C. Code §44-53-1510(A).
3. The SOAP Note dated May 27, 2014 from Powdersville Internal Medicine (Brinston Exhibit #2) noted that Mr. Brinston's "Total Testosterone... was 116.3 (range 348.0-1197.0)."
4. It is well known that the use of anabolic steroids suppresses the naturally occurring testosterone in the body.

CONCLUSIONS OF LAW

It is concluded as a matter of law:

1. S.C. Code §23-23-80(6) allows the Law Enforcement Training Council to suspend, revoke, or restrict law enforcement certification in accordance with regulations promulgated by the Council.
2. S.C. Reg. 38-004 states, in part:

The Council may deny certification based on evidence satisfactory to the Council that the candidate has engaged in misconduct. For purposes of this section, misconduct means:

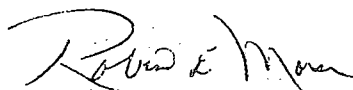
- 2) Unlawful use of a controlled substance...
3. Methandienone and Nandrolone are both listed as anabolic steroids under S.C. Code §44-53-1510(A). Chapter 53 of Title 44 of the South Carolina Code is titled Poisons, Drugs and Other Controlled Substances (emphasis added). Thus, it is clear the intent of the South Carolina Legislature is that anabolic steroids are considered controlled substances even though they are not contained in a specific Schedule in South Carolina.
4. Methandienone and Nandrolone are both listed as anabolic steroids under 21 U.S.C. §802(41)(A)(xxii) and (xxiv). Anabolic steroids are specifically listed as Schedule III controlled substances under 21 U.S.C. §812.

RECOMMENDED SANCTION

Given Mr. Brinston's contention that his positive test results came from taking three (3) over-the-counter supplements and Anderson County Sheriff's Office's failure to contest that contention via expert testimony or testimony from qualified medical personnel from AnMed or Lab Corp, I recommend Mr. Brinston be recertified as a law enforcement officer with two (2) years of probation.

I further recommend that this probationary period include random drug testing, including specific testing for steroid use, at least every three (3) months on dates selected by the Academy. These testing dates will be

communicated to Mr. Brinston's employer on the day testing is to occur. Failure to complete the testing on the dates required by the Academy may be grounds for reopening this case. Testing positive for any controlled substance during the probationary period may be grounds for reopening this case. All drug testing done during this probationary period shall include specific testing for steroid use and, if a test is positive for steroid use, the sample shall be further tested using gas chromatography to determine if the result is from anabolic steroids or over-the-counter supplements. Prior to all drug testing Mr. Brinston shall provide to his employer, in a sealed and initialed over the seal envelope, a written list of any prescriptions, over-the-counter medications and/or supplements he is currently taking or has taken during the 45 days prior to testing. This list shall be submitted to the Academy, still in its sealed envelope, should Mr. Brinston test positive for any controlled substance(s) during this probationary period.



Robin E. Morse, Director
Clinton Public Safety



South Carolina Criminal Justice Academy

September 15, 2014

Chief Mark Keel, Chairman
S.C. State Law Enforcement Division
4400 Broad River Road
Columbia, South Carolina 29210

Director Leroy Smith, Co-Chairman
S.C. Dept. of Public Safety
10311 Wilson Blvd.
Blythewood, South Carolina 29016

Sheriff Bruce M. Bryant
York County Sheriff's Office
Moss Judicial Center
1675-2A York Highway
York, South Carolina 29745-7430

Sheriff J. Edward Darnell
Bamberg County Sheriff's Office
Post Office Box 210
Bamberg, South Carolina 29003

Director Bryan Stirling
S.C. Dept. of Corrections
4444 Broad River Road
Columbia, South Carolina 29210

Director Ronaldo Myers
Alvin S. Glenn Detention Center
201 John Mark Dial Drive
Columbia, South Carolina 29209

Director Alvin A. Taylor
S.C. Dept. of Natural Resources
1000 Assembly Street
Columbia, South Carolina 29202

Director John C. Thomas
North Augusta Dept. of Public Safety
444 East Buena Vista Avenue
North Augusta, South Carolina 29841

Director Kela Thomas
S.C. Probation, Parole, & Pardon Services
Post Office Box 50666
Columbia, South Carolina 29205

Attorney General Alan Wilson
S.C. Attorney General's Office
Post Office Box 11549
Columbia, South Carolina 29211

Re: Certification Appeal: Deonta Brinston
Case No. 14-CJA-003

Dear Training Council Members:

Enclosed please find the following documents from the hearing referenced above:

- 1) The non-binding, written recommendation from Hearing Officer Robin Morse;
- 2) The transcript from the hearing; and
- 3) Copies of all exhibits entered into evidence at the hearing.

Please review these materials and make yourself familiar with the facts of this case so a final agency decision may be made at the next Training Council meeting, currently scheduled for Wednesday, October 8, 2014 at 10:00 a.m.

346 COA - Record on Appeal

Page 1 of 2

If you have any questions or concerns, please call me at (803) 896-7414.

Sincerely,



Brandy A. Duncan
Chief General Counsel

Enclosures as Stated

cc: Director Robin E. Morse (No Enclosures)
Clinton Dept. of Public Safety
404 North Broad Street
Clinton, South Carolina 29325

Deonta L. Brinston (Enclosures as Stated)

Chief John T. Galloway (Enclosed Recommendation Only)
Calhoun Falls Police Department
101 West Savannah Street
Calhoun Falls, South Carolina 29628

Duncan, Brandy

From: Duncan, Brandy
Sent: Monday, September 15, 2014 11:44 AM
To: cpdchiefgalloway@gmail.com
Subject: Deonta Brinston
Attachments: Hearing Officer Recommendation.pdf



Chief Galloway,

As we discussed on the phone a couple of weeks ago, attached please find a scanned copy of the recommendation from the Hearing Officer from Mr. Brinston's contested case hearing. A hard copy has been mailed out to you and Mr. Brinston today. The Training Council meets on October 8, 2014 at 10:00 a.m. and I anticipate we will get a final agency decision during that meeting.

Thanks,

Brandy A. Duncan
Chief General Counsel
S.C. Criminal Justice Academy
5400 Broad River Road
Columbia, South Carolina 29212
(803) 896-7414 (Office)
(803) 608-9738 (Work Cell)
(803) 896-8347 (Fax)

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IMPORTANT NOTE: July 1, 2014 was the cutoff date for old PCS of Hire forms. Please go to our web site (www.sccja.sc.gov) and get the new form revised 02/2014.

Duncan, Brandy

From: Microsoft Outlook
To: cpdchiefgalloway@gmail.com
Sent: Monday, September 15, 2014 11:44 AM
Subject: Relayed: Deonta Brinston

Delivery to these recipients or groups is complete, but no delivery notification was sent by the destination server:

cpdchiefgalloway@gmail.com (cpdchiefgalloway@gmail.com)

Subject: Deonta Brinston



South Carolina Criminal Justice Academy

October 15, 2014

Candy M. Kern-Fuller, Esquire
Upstate Law Group, LLC
200 East Main Street
Easley, South Carolina 29640-2073



Re: Certification Appeal: Deonta L. Brinston
Case No. 14-CJA-003

Dear Ms. Kern-Fuller:

Enclosed please find the final agency decision in the above referenced case. Mr. Brinston is entitled to appeal this decision to the Administrative Law Court if he chooses. Any such appeal must be filed with the Administrative Law Court within thirty (30) days after receiving this notification.

If you have any questions or concerns, please do not hesitate to contact me at (803) 896-7414.

Sincerely,

Brandy A. Duncan
Chief General Counsel

Enclosure as Stated

cc: Lt. Steven J. Reeves, Anderson County Sheriff's Office
Chief John T. Galloway, Calhoun Falls Police Department

7011 1570 0001 3219 6752

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 Calhoun Falls Police Department
 101 West Savannah Street
 Calhoun Falls, South Carolina 29628

PS Form 3811, August 2004

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1. Article Addressed to:

Chief John T. Galloway
 Calhoun Falls Police Department
 101 West Savannah Street
 Calhoun Falls, South Carolina 29628

2. Article Number
 (Transfer from service label)

COMPLETE THIS SECTION ON DELIVERY

A. Signature
☒ *PL Waters* ☐ Agent ☐ Addressee

B. Received by (Printed Name) *PL Waters* C. Date of Delivery *10-21-14*

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Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$
Postmark Here	
Sent To	Chief John T. Galloway
Street, Apt. N or PO Box, N	Calhoun Falls Police Department
City, State, Z	101 West Savannah Street Calhoun Falls, South Carolina 29628
PS Form 3800, August 2005 (with changes)	

UNITED STATES POSTAL SERVICE

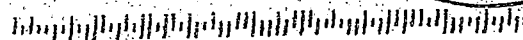
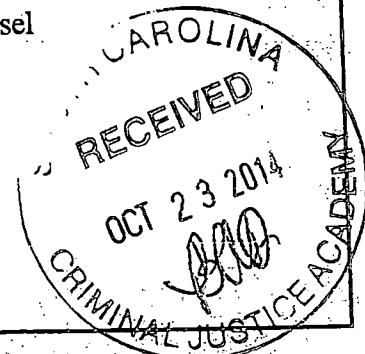


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USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

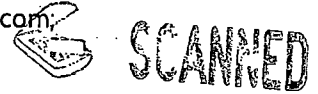
Brandy Duncan, Chief General Counsel
S.C. Criminal Justice Academy
5400 Broad River Road
Columbia, South Carolina 29212

Deanta Brinston



Duncan, Brandy

From: Duncan, Brandy
Sent: Wednesday, October 15, 2014 2:17 PM
To: 'candy@upstatelawgroup.com'; cpdchiefgalloway@gmail.com;
sreeves@andersonsheriff.com
Subject: Deonta Brinston
Attachments: Final Agency Decision.pdf



Ms. Kern-Fuller, Chief Galloway, & Lt. Reeves,

Attached please find an electronic copy of the Final Agency Decision in the Deonta Brinston case. Please let me know if you have any questions.

Thanks,

Brandy A. Duncan
Chief General Counsel
S.C. Criminal Justice Academy
5400 Broad River Road
Columbia, South Carolina 29212
(803) 896-7414 (Office)
(803) 608-9738 (Work Cell)
(803) 896-8347 (Fax)

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IMPORTANT NOTE: *July 1, 2014 was the cutoff date for old PCS of Hire forms. Please go to our web site (www.sccja.sc.gov) and get the new form revised 02/2014.*

Duncan, Brandy

From: Microsoft Outlook
To: candy@upstatelawgroup.com; cpdchiefgalloway@gmail.com;
sreeves@andersonsheriff.com
Sent: Wednesday, October 15, 2014 2:17 PM
Subject: Relayed: Deonta Brinston

Delivery to these recipients or groups is complete, but no delivery notification was sent by the destination server:

candy@upstatelawgroup.com (candy@upstatelawgroup.com)

cpdchiefgalloway@gmail.com (cpdchiefgalloway@gmail.com)

sreeves@andersonsheriff.com (sreeves@andersonsheriff.com)

Subject: Deonta Brinston

Duncan, Brandy

From: Steve Reeves <sreeves@andersonsheriff.com>
To: Duncan, Brandy
Sent: Wednesday, October 15, 2014 2:23 PM
Subject: Read: Deonta Brinston



Your message was read on Wednesday, October 15, 2014 6:22:49 PM UTC.

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USPS Tracking™

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Have questions? We're here to help.

Tracking Number: 940551189956 1099104457

On Time

Expected Delivery Day: Friday, November 21, 2014

Product & Tracking Information

Postal Product:
Priority Mail 2-Day™Features:
USPS Tracking™Up to \$50 insurance included
Restrictions Apply

DATE & TIME

November 21, 2014 , 11:09
am

STATUS OF ITEM

Delivered, In/At Mailbox

LOCATION

COLUMBIA, SC 29212

Your item was delivered in or at the mailbox at 11:09 am on November 21, 2014 in COLUMBIA, SC 29212.

November 21, 2014 , 10:23
am

Sorting Complete

COLUMBIA, SC 29210

November 21, 2014 , 5:11
am

Arrived at Post Office

COLUMBIA, SC 29210

November 21, 2014 , 3:00
am

Arrived at USPS Facility

COLUMBIA, SC 29201

November 20, 2014 , 8:51
pm

Departed USPS Facility

GREENVILLE, SC 29607

November 20, 2014 , 7:42
pmArrived at USPS Origin
Facility

GREENVILLE, SC 29607

November 20, 2014 , 6:27
pmAccepted at USPS Origin
Sort Facility

EASLEY, SC 29640

November 14, 2014

Pre-Shipment Info Sent to
USPS

Available Actions

[Text Updates](#)[Email Updates](#)

Track Another Package

Tracking (or receipt) number

[Track It](#)

P	\$5.05	062S0008200909
	US POSTAGE PRIORITY MAIL COMMERCIAL BASE PRICING	FROM 29640
		stamps.com 11/14/2014
PRIORITY MAIL 2-DAY™		
UPSTATE LAW GROUP 200 E. MAIN STREET EASLEY SC 29640		0024
		C075
SHIP TO:	Brandy A. Duncan, Esquire General Counsel South Carolina Criminal Justice Academy 5400 Broad River Road Columbia SC 29212-3540	
		
USPS TRACKING #		
		
9405 5118 9956 1099 1044 57		
Tracking		



South Carolina Criminal Justice Academy

November 21, 2014

Jana E. Cox Shealy, Clerk of Court
Administrative Law Court
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201

Re: In the Matter of Issuance of Law Enforcement Officer
Certification to Deonta L. Brinston,
Case No. Unassigned at this Date

Dear Ms. Shealy:

Enclosed please find the original and four (4) copies of Motion to Dismiss Appeal as Untimely Served for the above referenced case. Please return one copy to me via the self-address, pre-postaged envelope.

Please note that I will be out of the state of South Carolina from November 25, 2014 through December 6, 2014 for a family vacation to Hawaii that was planned and paid for prior to receiving notice of this untimely served appeal. Additionally, although I am scheduled to return to the state of South Carolina on the evening of December 6, 2014, I will not return to work until December 8, 2014. Should you need to reach me regarding this matter during the time I am out of state and out of the office, I may be contacted at (803) 608-9738.

Thank you in advance for your consideration of this matter.

If you have any questions or concerns, please call me at (803) 608-9738.

Respectfully,

Brandy A. Duncan
Chief General Counsel

cc: Candy M. Kern-Fuller, Esquire
Upstate Law Group, LLC
200 East Main Street
Easley, South Carolina 29640-2073

Sheriff John Skipper
Anderson County Sheriff's Office
305 Camson Road
Anderson, South Carolina 29625

Chief John T. Galloway
Calhoun Falls Police Department
101 West Savannah Street
Calhoun Falls, South Carolina 29628

7011 1570 0001 3219 6868

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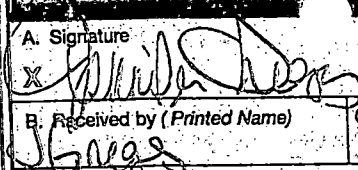
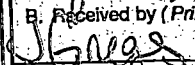
Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Del [®] (Endorsement)	
Total Postage	

Postmark Here

Candy M. Kern-Fuller, Esquire
 Upstate Law Group, LLC
 200 East Main Street
 Easley, South Carolina 29640-2073

Sent To _____
 Street, Apt. No.
 or PO Box No. _____
 City, State, ZIP _____

PS Form 3800, August 2003

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
☒ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ☒ 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. 1. Article Addressed to: Candy M. Kern-Fuller, Esquire Upstate Law Group, LLC 200 East Main Street Easley, South Carolina 29640-2073 2. Article Number (Transfer from service label)	A. Signature  ☐ Agent ☐ Addressee B. Received by (Printed Name)  C. Date of Delivery 11-24 D. Is delivery address different from item 1? ☐ Yes If YES, enter delivery address below: ☐ No 3. Service Type ☒ Certified Mail ☐ Express Mail ☐ Registered ☐ Return Receipt for Merchandise ☐ Insured Mail ☐ C.O.D. 4. Restricted Delivery? (Extra Fee) ☐ Yes

7011 1570 0001 3219 6868 **Briston**

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

U.S. Postal Service
CERTIFIED MAIL™ RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)
 For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$	Postmark Here
Certified Fee		
Return Receipt Fee (Endorsement Required)		

Restricted Del
(Endorsement)

Total Postage

Sent To

Street, Apt. No.
or PO Box No.
City, State, Zip

Candy M. Kern-Fuller, Esquire
 Upstate Law Group, LLC
 200 East Main Street
 Easley, South Carolina 29640-2073

PS Form 3800, August 2006

UNITED STATES

POSTAL SERVICE

SC 296

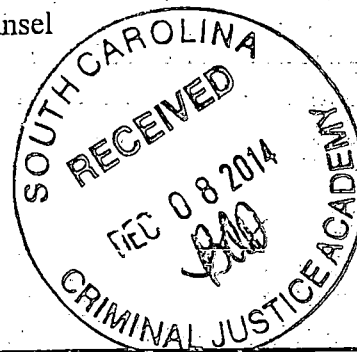
DEC 08 2014



First-Class Mail
 Postage & Fees Paid
 USPS
 Permit No. G-10

° Sender: Please print your name, address, and ZIP+4 in this box °

Brandy Duncan, Chief General Counsel
 S.C. Criminal Justice Academy
 5400 Broad River Road
 Columbia, South Carolina 29212



7011 1570 0001 3219 6837

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CERTIFIED MAIL RECEIPT
 (Domestic Mail Only; No Insurance Coverage Included)
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OFFICIAL USE

Postage	\$	Postmark Here
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery (Endorsement Required)		
Total Postage		

Sent To _____
 Street, Apt. No.,
 or PO Box No. _____
 City, State, ZIP _____

PS Form 3811

SENDER: COMPLETE THIS SECTION

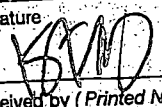
☒ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
☒ Print your name and address on the reverse so that we can return the card to you.
☒ Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
 Jana E. Cox Shealy, Clerk of Court
 Administrative Law Court
 1205 Pendleton Street, Suite 224
 Columbia, South Carolina 29201

2. Article Number
 (Transfer from service label) 7011 1570 0001 3219 6837

PS Form 3811, February 2004

COMPLETE THIS SECTION ON DELIVERY

A. Signature  ☐ Agent
☒ Addressee

B. Received by (Printed Name) _____ C. Date of Delivery _____

D. Is delivery address different from item 1? ☐ Yes
 If YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

Domestic Return Receipt 102595-02-M-1540

7011 1570 0001 3219 6837

U.S. Postal ServiceTM
CERTIFIED MAILTM RECEIPT
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For delivery information, visit our website at www.usps.com
OFFICIAL USE

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery (Endorsement Required)	

Postmark
Here

Total Postage

Sent To

Street, Apt. No.,
or PO Box No.
City, State, ZIP

Jana E. Cox Shealy, Clerk of Court
Administrative Law Court
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201

PS Form 3800

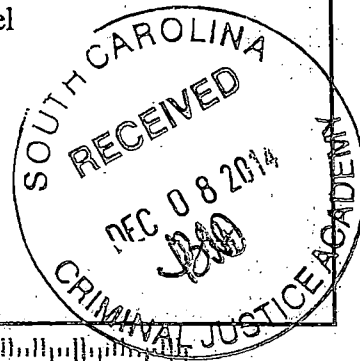
UNITED STATES POSTAL SERVICE



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

° Sender: Please print your name, address, and ZIP+4 in this box °

Brandy Duncan, Chief General Counsel
S.C. Criminal Justice Academy
5400 Broad River Road
Columbia, South Carolina 29212



12355000

7011 1570 0001 3219 6851

U.S. Postal Service CERTIFIED MAIL™ RECEIPT (Domestic Mail Only; No Insurance Coverage)	
For delivery information visit our website at www.usps.com	
OFFICIAL USE	
Postage \$ _____ Certified Fee _____ Return Receipt Fee (Endorsement Required) _____ Restricted Delivery (Endorsement) _____ Total Postage _____	Postmark Here _____
Sent To _____ Street, Apt. No. or PO Box No. _____ City, State, ZIP _____	Sheriff John Skipper Anderson County Sheriff's Office 305 Camson Road Anderson, South Carolina 29625

SENDER: COMPLETE THIS SECTION ☒ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ☒ 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. 1. Article Addressed to: Sheriff John Skipper Anderson County Sheriff's Office 305 Camson Road Anderson, South Carolina 29625	COMPLETE THIS SECTION ON DELIVERY Signature: <i>Christi Lee</i> ☐ Agent ☒ Addressee Received by (Printed Name): <i>Christi Lee</i> C. Date of Delivery: <i>11/24/14</i> D. Is delivery address different from item 1? ☐ Yes If YES, enter delivery address below: ☐ No 3. Service Type: ☒ Certified Mail ☐ Express Mail ☐ Registered ☐ Return Receipt for Merchandise ☐ Insured Mail ☐ C.O.D. 4. Restricted Delivery? (Extra Fee) ☐ Yes
2. Article Number (Transfer from service label) 7011 1570 0001 3219 6851	

Boston

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

7011 1570 0001 3219 6851

U.S. Postal Service TM	
CERTIFIED MAIL TM RECEIPT	
(Domestic Mail Only, No Insurance Coverage Included)	
For delivery information, visit our website at www.usps.com	
OFFICIAL USE	
Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Del TM (Endorsement)	
Total Postage	
Sent To	Sheriff John Skipper
Street, Apt. No. or PO Box No.	Anderson County Sheriff's Office
City, State, ZIP	305 Camson Road
	Anderson, South Carolina 29625

PS Form 3800

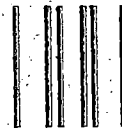
UNITED STATES

POSTAL SERVICE

50 255

24 DEC 14

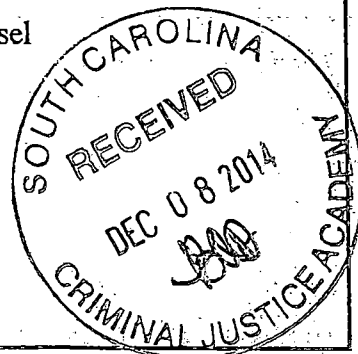
1711 21



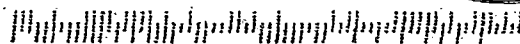
First-Class Mail
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USPS
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° Sender: Please print your name, address, and ZIP+4 in this box °

Brandy Duncan, Chief General Counsel
S.C. Criminal Justice Academy
5400 Broad River Road
Columbia, South Carolina 29212



12355399



4489 6726 1000 0257 7107

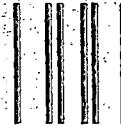
U.S. Postal Service	
CERTIFIED MAIL RECEIPT	
(Domestic Mail Only, No Insurance Coverage Included)	
For delivery information visit our website at www.usps.com	
OFFICIAL USE	
Postage \$	Postmark Here
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage	Chief John T. Galloway Calhoun Falls Police Department 101 West Savannah Street Calhoun Falls, South Carolina 29628
Sent To	
Street, Apt. or PO Box	
City, State, Zip	
PS Form 3811	11-24-11

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
☒ Complete items 1, 2, and 3. NOV 24 2014 ☒ Item 4 if Restricted Delivery is desired. ☒ 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 ☒ Agent ☐ Addressee B. Received by (Printed Name) JOHN T. GALLOWAY C. Date of Delivery 11-24-14 D. Is delivery address different from item 1? ☒ Yes If YES, enter delivery address below: PO BOX 246 CALHOUN FALLS SC 29628
1. Article Addressed to: Chief John T. Galloway Calhoun Falls Police Department 101 West Savannah Street Calhoun Falls, South Carolina 29628	3. Service Type ☒ Certified Mail ☐ Express Mail ☐ Registered ☐ Return Receipt for Merchandise ☐ Insured Mail ☐ C.O.D. 4. Restricted Delivery? (Extra Fee) ☐ Yes
2. Article Number (Transfer from service label)	7011 1570 0001 3219 6844 Bohannon
PS Form 3811, February 2004	Domestic Return Receipt 102595-02-M-1540

7011 1570 0001 3225 6844

U.S. Postal Service	
CERTIFIED MAIL RECEIPT	
(Domestic Mail Only, No Insurance Coverage Provided)	
For delivery information visit our website at www.usps.com	
OFFICIAL USE	
Postage \$	Postmark Here
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage	Chief John T. Galloway
Sent To	Calhoun Falls Police Department
Street, Apt. or PO Box	101 West Savannah Street
City, State, ZIP+4	Calhoun Falls, South Carolina 29628
PS Form 38	

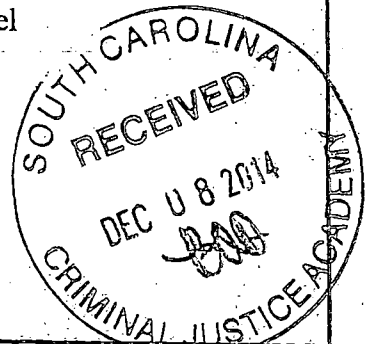
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Brandy Duncan, Chief General Counsel
S.C. Criminal Justice Academy
5400 Broad River Road
Columbia, South Carolina 29212



Duncan, Brandy

From: Teckla Henderson <thenderson@scalcn.net>
Sent: Friday, December 05, 2014 1:49 PM
To: candy@upstatelawgroup.com
Cc: Duncan, Brandy
Subject: Brinston v. SC Department of Criminal Justice 14A0540 Court's Request for Appellant Response

Dear Attorney Kern-Fuller:

The Court is in receipt of Respondent's motion filed November 21, 2014 seeking dismissal of the above-referenced appeal alleging Appellant's failure to timely serve a copy of Appellant's Notice of Appeal upon the Respondent. As of this date, the Court has not received a response to this motion on behalf of the Appellant. **Judge Robinson is now asking that a formal response to the Respondent's motion be filed with our office no later than ten (10) days from the date of this correspondence.**

Should you have any questions or concerns, please do not hesitate to contact me.

Very truly yours,

Teckla S. Henderson
Judicial Law Clerk to The Honorable Shirley C. Robinson
South Carolina Administrative Law Court
Edgar Brown Building
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201
(803) 734- 6402 Chambers
(803) 734- 6400 Fax

South Carolina Administrative Law Court Trusted Root Certificate
<https://cn.arx.com/?options=7&bselected=MTU2>

Duncan, Brandy

From: Candy M. Kern-Fuller (Office) <candy@upstatelawgroup.com>
Sent: Monday, December 15, 2014 6:43 PM
To: 'Teckla Henderson'
Cc: Duncan, Brandy
Subject: RE: Brinston v. SC Department of Criminal Justice 14A0540 Court's Request for Appellant Response
Attachments: Exhibit A to Reply.pdf; Reply to Motion to Dismiss.pdf; ReplyCertificateofService-completed.pdf; Exhibit B.pdf; Exhibit C.pdf

Dear Ms. Henderson:

Thank you for allowing me the additional time for me to investigate the series of events that occurred at the Postal Service regarding the mailing of our appeal. Since I understand that today is the busiest mailing day at the USPS, I am enclosing the electronic version of our filings, which were mailed via certified mail at 6:21 p.m. this evening from James Island, South Carolina.

Please let me know if you require any additional information.

Candy Kern-Fuller, Esq.
Upstate Law Group, LLC
200 East Main Street
Easley, South Carolina 29640
(864) 855-3114
(864) 855-3446 (facsimile)

**** CERTIFIED MEDIATOR AND ARBITRATOR FOR OVER 10 YEARS ****

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From: Teckla Henderson [<mailto:thenderson@scalco.net>]
Sent: Friday, December 5, 2014 1:49 PM
To: candy@upstatelawgroup.com
Cc: bduncan@sccja.sc.gov
Subject: Brinston v. SC Department of Criminal Justice 14A0540 Court's Request for Appellant Response

Dear Attorney Kern-Fuller:

The Court is in receipt of Respondent's motion filed November 21, 2014 seeking dismissal of the above-referenced appeal alleging Appellant's failure to timely serve a copy of Appellant's Notice of Appeal upon the Respondent. As of this date, the Court has not received a response to this motion on behalf of the Appellant. Judge Robinson is now asking that a formal response to the Respondent's motion be filed with our office no later than ten (10) days from the date of this correspondence.

COA - Record on Appeal 369

Should you have any questions or concerns, please do not hesitate to contact me.

Very truly yours,

Teckla S. Henderson
Judicial Law Clerk to The Honorable Shirley C. Robinson
South Carolina Administrative Law Court
Edgar Brown Building
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201
(803) 734- 6402 Chambers
(803) 734- 6400 Fax

South Carolina Administrative Law Court Trusted Root Certificate
<https://cn.arx.com/?options=7&bselected=MTU2>

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FAQs

Thanks for your email.

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The case number for request is: HQ120761475

Confirmation Details

Request Type

InquiryType Information
Category Sending Mail
Topic Send Domestic Mail > Priority Mail®

Contact Information:

First Name Brandy
Middle Initial A
Last Name Duncan
Company Name SC Criminal Justice Academy
Address 1 5400 Broad River Road
Address 2
City Columbia
State SC
Urbanization
ZIP Code™ 29212
Phone 803-608-9738
Email bduncan@sccja.sc.gov
Preferred response method email

What would you like to do now?

- [Print>](#)
- **Submit another request**
- **Return to the USPS.com homepage**

Review Email

Please review the request before submitting.

Your request details:

Request Type

[edit]

InquiryType Information

Category Sending Mail

Topic Send Domestic Mail > Priority Mail®

Additional Detail:

Additional Information: What does phrase "end-to-end" mean in terms of tracking a piece of mail?

Duncan, Brandy

From: Teckla Henderson <thenderson@scalc.net>
Sent: Tuesday, December 16, 2014 9:32 AM
To: Candy M. Kern-Fuller (Office)
Cc: Duncan, Brandy
Subject: RE: Brinston v. SC Department of Criminal Justice 14A0540 Court's Request for Appellant Response

Thank you. I will be sure to forward the same to Judge Robinson for review.

Teckla S. Henderson
Judicial Law Clerk to The Honorable Shirley C. Robinson
South Carolina Administrative Law Court
Edgar Brown Building
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201
(803) 734- 6402 Chambers
(803) 734- 6400 Fax

From: Candy M. Kern-Fuller (Office) [<mailto:candy@upstatelawgroup.com>]
Sent: Monday, December 15, 2014 6:43 PM
To: Teckla Henderson
Cc: bduncan@sccja.sc.gov
Subject: RE: Brinston v. SC Department of Criminal Justice 14A0540 Court's Request for Appellant Response

Dear Ms. Henderson:

Thank you for allowing me the additional time for me to investigate the series of events that occurred at the Postal Service regarding the mailing of our appeal. Since I understand that today is the busiest mailing day at the USPS, I am enclosing the electronic version of our filings, which were mailed via certified mail at 6:21 p.m. this evening from James Island, South Carolina.

Please let me know if you require any additional information.

Candy Kern-Fuller, Esq.
Upstate Law Group, LLC
200 East Main Street
Easley, South Carolina 29640
(864) 855-3114
(864) 855-3446 (facsimile)

**** CERTIFIED MEDIATOR AND ARBITRATOR FOR OVER 10 YEARS ****

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COA - Record on Appeal 373

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Sent: Friday, December 5, 2014 1:49 PM
To: candy@upstatelawgroup.com
Cc: bduncan@sccja.sc.gov
Subject: Brinston v. SC Department of Criminal Justice 14A0540 Court's Request for Appellant Response

Dear Attorney Kern-Fuller:

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COA - Record on Appeal 375

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Please let me know if you require any additional information.

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(864) 855-3114
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376 COA - Record on Appeal

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To: Duncan, Brandy
Sent: Tuesday, December 16, 2014 10:37 AM
Subject: Read: Brinston v. SC Department of Criminal Justice 14A0540 Court's Request for Appellant Response

Your message was read on Tuesday, December 16, 2014 3:37:23 PM UTC.

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S.C. Criminal ~~380 COA~~ **Record on Appeal**

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South Carolina Criminal Justice Academy

December 16, 2014

The Honorable Shirley C. Robinson
Administrative Law Court
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201

Re: In the Matter of Issuance of Law Enforcement Officer
Certification to Deonta L. Brinston,
Case No. 14-ALJ-30-0540-AP

Dear Judge Robinson:

Enclosed please find the original and four (4) copies of Motion to Dismiss Appeal as Untimely Served for the above referenced case. Please return one copy to me via the self-address, pre-postaged envelope.

Thank you in advance for your consideration of this matter.

If you have any questions or concerns, please call me at (803) 608-9738.

Respectfully,

Brandy A. Duncan
Chief General Counsel

cc: Candy M. Kern-Fuller, Esquire
Upstate Law Group, LLC
200 East Main Street
Easley, South Carolina 29640-2073

Sheriff John Skipper
Anderson County Sheriff's Office
305 Camson Road
Anderson, South Carolina 29625

Chief John T. Galloway
Calhoun Falls Police Department
101 West Savannah Street
Calhoun Falls, South Carolina 29628

COA - Record on Appeal 383

Duncan, Brandy

From: Duncan, Brandy
Sent: Tuesday, December 16, 2014 2:06 PM
To: 'Teckla Henderson'; Candy M. Kern-Fuller (Office)
Subject: RE: Brinston v. SC Department of Criminal Justice 14A0540 Court's Request for Appellant Response
Attachments: Reply to Response to Motion to Dismiss Appeal as Untimely Served.pdf

Ms. Henderson,

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Please let me know if you need anything else from me on this matter.

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From: Teckla Henderson <thenderson@scal.c.net>
To: Duncan, Brandy
Sent: Tuesday, December 16, 2014 2:07 PM
Subject: Read: Brinston v. SC Department of Criminal Justice 14A0540 Court's Request for Appellant Response

Your message was read on Tuesday, December 16, 2014 7:07:05 PM UTC.

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390 COA - Record on Appeal

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(803) 608-9738 (Work Cell)
(803) 896-8347 (Fax)

Notice of Confidentiality: The information contained in this e-mail may be legally privileged and/or confidential. It is intended only for the use of the individual(s) or entity named. If you are not the intended recipient, you are hereby notified that any dissemination, distribution, copying, or use of the information contained in this e-mail or the e-mail itself is strictly prohibited. If you have received this e-mail in error, please notify me immediately, delete the original e-mail, and shred any printed copies of the e-mail. Thank you.

IMPORTANT NOTE: July 1, 2014 was the cutoff date for old PCS of Hire forms. Please go to our web site (www.sccja.sc.gov) and get the new form revised 02/2014.

COA - Record on Appeal 391

From: Teckla Henderson [<mailto:thenderson@scalco.net>]
Sent: Tuesday, December 16, 2014 9:32 AM
To: Candy M. Kern-Fuller (Office)
Cc: Duncan, Brandy
Subject: RE: Brinston v. SC Department of Criminal Justice 14A0540 Court's Request for Appellant Response

Thank you. I will be sure to forward the same to Judge Robinson for review.

Teckla S. Henderson
Judicial Law Clerk to The Honorable Shirley C. Robinson
South Carolina Administrative Law Court
Edgar Brown Building
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201
(803) 734- 6402 Chambers
(803) 734- 6400 Fax

From: Candy M. Kern-Fuller (Office) [<mailto:candy@upstatelawgroup.com>]
Sent: Monday, December 15, 2014 6:43 PM
To: Teckla Henderson
Cc: bduncan@sccja.sc.gov
Subject: RE: Brinston v. SC Department of Criminal Justice 14A0540 Court's Request for Appellant Response

Dear Ms. Henderson:

Thank you for allowing me the additional time for me to investigate the series of events that occurred at the Postal Service regarding the mailing of our appeal. Since I understand that today is the busiest mailing day at the USPS, I am enclosing the electronic version of our filings, which were mailed via certified mail at 6:21 p.m. this evening from James Island, South Carolina.

Please let me know if you require any additional information.

Candy Kern-Fuller, Esq.
Upstate Law Group, LLC
200 East Main Street
Easley, South Carolina 29640
(864) 855-3114
(864) 855-3446 (facsimile)

**** CERTIFIED MEDIATOR AND ARBITRATOR FOR OVER 10 YEARS ****

CONFIDENTIALITY NOTE: THIS EMAIL WAS SENT FROM A LAW FIRM. IT MAY CONTAIN PRIVILEGED OR CONFIDENTIAL INFORMATION AND IS INTENDED SOLELY FOR THE USE OF THE PERSON(S) NAMED ABOVE OR THE PERSON(S) WHO IS THE INTENDED RECIPIENT OF THE MESSAGE. IF YOU ARE NOT AN INTENDED RECIPIENT OF THIS EMAIL, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION OR DUPLICATION OF THIS E-MAIL IS PROHIBITED AND THAT THERE SHALL BE NO WAIVER OF ANY PRIVILEGE OR CONFIDENCE BY YOUR RECEIPT OF THIS TRANSMISSION. IF YOU HAVE RECEIVED THIS E-MAIL IN ERROR, PLEASE NOTIFY US BY COLLECT TELEPHONE CALL OR FAX TO THE NUMBER INDICATED ABOVE.

From: Teckla Henderson [<mailto:thenderson@scalco.net>]
Sent: Friday, December 19, 2014 1:25 PM
Subject: RE: Brinston v. SC Department of Criminal Justice 14A0540 Court's Request for Appellant Response

To: candy@upstatelawgroup.com

Cc: bduncan@sccja.sc.gov

Subject: Brinston v. SC Department of Criminal Justice 14A0540 Court's Request for Appellant Response

Dear Attorney Kern-Fuller:

The Court is in receipt of Respondent's motion filed November 21, 2014 seeking dismissal of the above-referenced appeal alleging Appellant's failure to timely serve a copy of Appellant's Notice of Appeal upon the Respondent. As of this date, the Court has not received a response to this motion on behalf of the Appellant. **Judge Robinson is now asking that a formal response to the Respondent's motion be filed with our office no later than ten (10) days from the date of this correspondence.**

Should you have any questions or concerns, please do not hesitate to contact me.

Very truly yours,

Teckla S. Henderson
Judicial Law Clerk to The Honorable Shirley C. Robinson
South Carolina Administrative Law Court
Edgar Brown Building
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201
(803) 734- 6402 Chambers
(803) 734- 6400 Fax

South Carolina Administrative Law Court Trusted Root Certificate
<https://cn.arx.com/?options=7&bselected=MTU2>

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South Carolina Administrative Law Court Trusted Root Certificate
<https://cn.arx.com/?options=7&bselected=MTU2>

Duncan, Brandy

From: eCustomerCare National <ECCADUSER@usps.gov>
Sent: Tuesday, December 16, 2014 9:07 PM
To: Duncan, Brandy
Subject: Acknowledgement of Inquiry for eCustomerCare Case HQ120761475.
(KMM25895491V81992L0KM)

Dear Customer,

This is an auto-reply message provided to acknowledge our receipt of your inquiry.

Your issue is being assigned for review, research, and resolution. We will contact you if more information is needed. Otherwise we will provide a response as soon as possible.

Thank you for contacting the United States Postal Service.

****Please do not reply to this message.****

Your privacy is important to us. If you would like additional information on our privacy policy, please visit us online at: www.usps.com.

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USPS Tracking™



[Customer Service >](#)
Have questions? We're here to help.

Tracking Number: 950260000232 4349000672

Updated Delivery Day: Wednesday, December 17, 2014

Product & Tracking Information

Postal Product:
Priority Mail 2-Day™

Features:
Certified Mail™

Up to \$50 insurance included
Restrictions Apply

DATE & TIME

December 17, 2014, 10:37
am

STATUS OF ITEM

Delivered

LOCATION

COLUMBIA, SC 29212

Available Actions

[Text Updates](#)[Email Updates](#)[Return Receipt After Mailing](#)

Your item was delivered at 10:37 am on December 17, 2014 in COLUMBIA, SC 29212.

December 17, 2014, 10:25
am

Sorting Complete

COLUMBIA, SC 29210

December 17, 2014, 7:47
am

Arrived at Unit

COLUMBIA, SC 29210

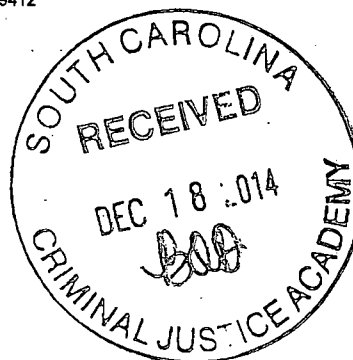
December 15, 2014, 6:22
pm

Acceptance (SSK)

CHARLESTON, SC 29412

Track Another Package

Tracking (or receipt) number

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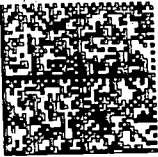
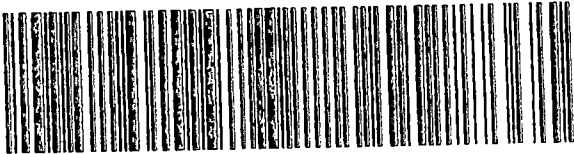
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FROM: Upstate Law Group LLC
200 E. Main St
Easley SC 29640

P		U.S. POSTAGE \$9.05 PM 2-DAY 29412 0024 Date of sale 12/15/14 06 2500 08307409
	PRIORITY MAIL 2-DAY™	
EXPECTED DELIVERY 12/19/2014		
SHIP TO:	Brandy A. Duncan SCCJA 5400 Broad River Rd	0024
COLUMBIA SC 29212-3540		
USPS CERTIFIED MAIL		
		
9502 6000 0232 4349 0006 72		

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UNITED STATES
POSTAL SERVICE.

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Duncan, Brandy

From: eCustomerCare National <ECCADUSER@usps.gov>
Sent: Thursday, December 18, 2014 9:54 PM
To: Duncan, Brandy
Subject: Response to your recent inquiry (Case ID 120761475) (KMM25955457V57595L0KM)

Dear Brandy,

Thank you for contacting us regarding tracking. I can understand how terminology can sometimes be confusing.

End-to-end tracking as you call it means tracking an item from the beginning where it is picked up or dropped off to its final destination with scans at points all along the way.

The type of delivery information available is based on the class of mail or add-on services that are purchased at the time of mailing.

Tracking - This service provides detailed information. You will see the item scanned at acceptance, as it travels, and when it is delivered. Tracking information is only available with:

- Domestic Priority Mail Express items
- Domestic USPS Tracking items
- Priority Mail Express International items
- Global Express Guaranteed items

Confirmation of delivery - This service confirms that an item was delivered. It is included with services that are designed to be a low cost alternative to full tracking. Instead of seeing the acceptance information and updated scans, as the item is en route, confirmation of delivery services provide assurance of delivery or of attempted delivery. This is available with the purchase of the following:

- Signature Confirmation service.
- Certified Mail service.
- Registered Mail service.
- International Registered Mail service.

If you need full tracking on your mail item, I would suggest our traceable Priority Mail Express service. Priority Mail Express is our only guaranteed traceable delivery service.

I hope this has been helpful and informative to you. If we can be of assistance to you in the future, please don't hesitate to contact us.

Thank you for emailing your Postal Service. We appreciate your business. Have a great day!

Best regards,

Marci

COA - Record on Appeal 397

Duncan, Brandy

From: Teckla Henderson <thenderson@scalac.net>
Sent: Friday, December 19, 2014 4:19 PM
To: Candy M. Kern-Fuller (Office); Duncan, Brandy
Subject: Brinston v. SCDCJ 14A0540 Order on Department's Motion to Dismiss
Attachments: DOC_20141219211135.PDF

Dear Attorneys:

Attached, please find a scanned version of the Court's Order addressing the Respondent's Motion to Dismiss. A hard copy of the same was also placed in the mail to you today.

Very truly yours,

Teckla S. Henderson
Judicial Law Clerk to The Honorable Shirley C. Robinson
South Carolina Administrative Law Court
Edgar Brown Building
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201
(803) 734- 6402 Chambers
(803) 734- 6400 Fax

South Carolina Administrative Law Court Trusted Root Certificate
<https://cn.arx.com/?options=7&bselected=MTU2>

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

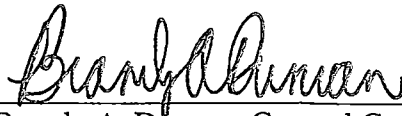
Deonta L. Brinston,	)	Docket No. 14-ALJ-30-0540-AP
	)	
Appellant,	)	
vs.	)	Certificate of Service
	)	
South Carolina Criminal Justice Academy,	)	
	)	
Respondent.	)	

I, Brandy A. Duncan, certify that I have served the within Record on Appeal by mailing a copy via United States mail, postage prepaid, addressed to:

Candy M. Kern-Fuller, Esquire
Upstate Law Group, LLC
200 East Main Street
Easley, South Carolina 29640

I further certify that all parties required by Rule to be served have been served.

This 23rd day of December, 2014.



Brandy A. Duncan, General Counsel
Bar #72052
South Carolina Criminal Justice Academy
5400 Broad River Road
Columbia, South Carolina 29212
(803) 896-7414
(803) 896-8347 (fax)
Attorney for Respondent



FILED

DEC 23 2014

SC ADMIN. LAW COURT

COA - Record on Appeal 399



South Carolina Criminal Justice Academy Certification-Compliance



PERSONNEL CHANGE IN STATUS REPORT NOTIFICATION OF SEPARATION DUE TO MISCONDUCT

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/Compliance Unit. Attention: Katherine Gunter.

Anderson County Sheriff's Office	864-260-4670	4/29/14
Reporting Department	Phone #	Today's Date
Deonta L. Brinston	5553-8606	3/27/15
Officer's Name	Academy ID #	Current Certification Date
Officer's Current Home Address	City/Town	Zip Code
PLEASE CHECK ☒ ONE:	☒ Class 1 LE	☐ Class 1LECO ☐ Class 2 LCO
	☐ Class 3SLE (Limited Duty)	☐ Reserve Officer

(For any separation involving misconduct as defined in S.C. Reg. 38-004. Completion of the back of this form is **REQUIRED**.)

Date of Separation: 4/29/14 (specify mo/day/yr)

☒ Termination **INVOLVING MISCONDUCT** as defined in S.C. Reg. 38-004

Resignation **INVOLVING MISCONDUCT** as defined in S.C. Reg. 38-004

(Please indicate the nature of the misconduct by checking the appropriate selection below.)

☐	Conviction, plea of guilty, plea of no contest or admission of guilt (regardless of withheld adjudication) to a felony, a crime punishable by a sentence of more than one year (regardless of the sentence actually imposed, if any) or a crime of moral turpitude in this or any other jurisdiction:
☒	Unlawful use of a controlled substance;
☐	The repeated use of excessive force in dealing with the public and/or prisoners;
☐	Dangerous and/or unsafe practices involving firearms, weapons and/or vehicle which indicated either a willful or wanton disregard for the safety of persons or property;
☐	Physical or psychological abuses of members of the public and/or prisoners;
☐	Misrepresentation of employment-related information;
☐	Dishonesty/untruthfulness with respect to his/her employer;

Only events which have been substantiated by investigation have been reported above. The facts & information herein are true & accurate to the best of my knowledge. All investigation report(s), statements, test results, audio/video records, or other documentation related to the misconduct are attached to this Misconduct Report Form.

Employing Agency Head (Chief, Sheriff, Director)	5/5/2014 Date
John S. Skipper, Jr.	Sheriff
Print Name	Official Title

NOTE: A willful failure to report may subject the violator to a civil penalty as provided by law.
Revised 01/13



COA - Record on Appeal
South Carolina Criminal Justice Academy



Certification-Compliance

PERSONNEL CHANGE IN STATUS REPORT NOTIFICATION OF SEPARATION DUE TO MISCONDUCT -- Page 2

Officer's Name Deonta Brinston CJA ID# 5553-8606
Address _____ Ph # N/A
City _____ State _____ Zip Code _____
Employing Agency Contact Person (for more information) Sheriff John S. Skipper, Jr.
Contact Telephone Number (Area Code and Telephone Number): 864-260-4400

The below information is REQUIRED for all separations due to misconduct:

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. Attach additional sheets if necessary for full documentation.)*

Deonta Brinston was taken to AnMed Health for a urine sample collection on March 9, 2014 as part of an active Internal Affairs Investigation into suspected use of anabolic steroids. The test was concluded and the results released to show that Deonta Brinston was tested positive for the following anabolic steroids listed in Article 14: Section 44-53-1510 S.C. Code of Laws:

Deonta Brinston tested positive for Nandrolone and Methandienone. SLED has been involved in the investigation, but no charges have been filed.

Criminal Charges Filed: Yes ☐ No ☒ Date: 5/5/2014

CHARGE(S):

Only events which have been substantiated by investigation have been reported above. The facts & information herein are true & accurate to the best of my knowledge. All investigation report(s), statements, test results, audio/video records, or other documentation related to the misconduct are attached to this Misconduct Report Form.

Employing Agency Head (Chief, Sheriff, Director):



DATE: 5/5/2014

Print Name: John S. Skipper, Jr.

Official Title: Sheriff

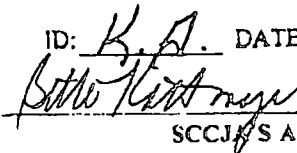
SCCJA USE ONLY

MRN: _____ CODE: 21 ID: K.A. DATE: 5/16/14

Copy sent to Officer on

5/16/14
Date

by



SCCJA S Authorized Signature

Revised 01/13



May 16, 2014

South Carolina Criminal Justice Academy

Deonta L. Brinson

Dear Mr. Brinson:

The Criminal Justice Academy has received an allegation of misconduct as defined in Regulations 37-004 and/or 37-016 against you. A copy of the allegation is enclosed for your review. Under Regulation 37-009(C), you have the right to provide the Academy with a response to this allegation, and a form is included for your use in doing so. Your response should be limited to the facts and circumstances regarding this allegation.

Also, you are hereby given notice that if the circumstances surrounding the allegation of misconduct resulted in your separation from the accusing law enforcement agency (either through termination or voluntary separation), pursuant to S.C. Reg. 37-008(D)(1), you are NOT currently a certified law enforcement officer. Additionally, since allegations of misconduct have been made against you, once you find employment with another law enforcement agency you must undergo a certification review to determine if you can be reissued law enforcement certification. PROVIDING A RESPONSE TO THE ALLEGATION(S) DOES NOT REINSTATE YOUR CERTIFICATION. It is, however, your opportunity to explain, from your perspective, the facts and circumstances regarding the allegation of misconduct. Should an agency inquire about your status and/or request a copy of this allegation, a copy of your response will also be provided to the inquiring agency. Please be advised that the Academy takes all allegations of misconduct seriously, and these allegations will be thoroughly reviewed in determining your future eligibility for certification.

If you wish to file a response, please complete the enclosed response form and mail it to the attention of Bette Kottmyer, Certification/Compliance, Criminal Justice Academy, 5400 Broad River Road, Columbia, SC 29212. Please **DO NOT** bring any response to the Academy in person. Additionally, please remember that the allegations made against you will NOT be reviewed to determine if you can be re-certified until you find employment with another law enforcement agency. Therefore, calling to check the status of your review will accomplish nothing until you are employed with another law enforcement agency.

Sincerely,

Hubert F. Harrell

Hubert F. Harrell
Director

HFH/
Enclosures

**The South Carolina Criminal Justice Academy
Certification Unit**

**5400 Broad River Road
Columbia, S.C. 29212-3540**



Attention: Ms. Bette Kottmyer

Under Regulations 38-009, I wish to file response to the personnel change in status form containing allegations of misconduct submitted to the Criminal Justice Academy by my previous law enforcement employer.

The facts and circumstances leading to my separation are:

Response is located on next page.

Respectfully,

Signature

Dante L Brinston

Print Name

Social Security Number

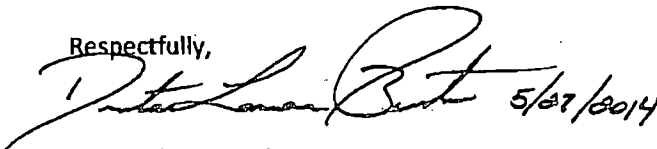
May 27, 2014

The facts and circumstances leading to my separation are:

On March 9, 2014, I, Deonta L. Brinston, was taken to AnMed Hospital by Anderson County Internal Affairs personnel (Lt. Reeves and Sergeant Jonathan Brown). Once I arrived at the hospital, I was advised that I must submit a urine sample, at no time did either of the investigators advised me why I was taking a urine sample. On April 29, 2014, I met with SLED agents Andy Tribble and Michael Sloan. They provided Miranda rights which I refused to sign without my attorney presence so they concluded their communication with me. I later met with Internal Affairs investigators Lt. Steve Reeves and Sergeant Jonathan Brown who advised they were investigating an allegation of anabolic steroids use. They advised me that my urine analysis tested positive of a small trace of anabolic steroids. I requested a copy of the urine analysis which was denied. I advised them that I would speak to them under Garrity and they proceeded to inquire if I had used anabolic steroids. I stated that I used Methandrostenolone and Deca Durabolin also known as Nandrolone Decanoate that was provide to me by my weight lifting Coach Steve Michalik (decease) from 2009-2011 where I participated in bodybuilding competitions. I was asked by Lt. Reeves to provide a written statement regarding my response to the allegations and my involvement. I inquired about the accuser and what actions did I do to resort to this investigation. Lt. Reeves advised that I needed to provide what I was taking and with whom I was taking the "steroids" with. I advised him that the pills I were taking are "over the counter" performance enhancement pills that I purchased at "Complete Nutrition" store (see list attached). I provided this information and agreed to provide proof of purchase and that the pills will test positive for anabolic steroids (low %). After writing a statement regarding the allegations, I was asked by Lt. Reeves to add information that I was not comfortable with. I then advised Lt. Reeves that I would like to speak with Chief Smith where I resigned and turned in my badge and weapon. Due to the fact that I resigned, I do not understand how I was terminated. I believe that if my urine analysis was evaluated by a medical physician it will show that the positive test is of a low dosage that could be from daily usage of "over the counter" performance enhancement supplements.

Please accept this letter as my appeal and if you have any questions, please contact me at 864-551-0231.

Respectfully,

A handwritten signature in black ink, appearing to read 'Deonta Lamon Brinston', followed by the date '5/27/2014'.

Deonta Lamon Brinston



South Carolina Criminal Justice Academy Certification-Compliance



PERSONNEL CHANGE IN STATUS REPORT NOTIFICATION OF SEPARATION DUE TO MISCONDUCT

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/Compliance Unit, Attention: Katherine Gunter.

Anderson County Sheriff's Office	864-260-4670	4/29/14
Reporting Department	Phone #	Today's Date
Deonta L. Brinston	5553-8606	3/27/15
Officer's Name	Academy ID #	Current Certification Date
Officer's Current Home Address	City/Town	Zip Code

PLEASE CHECK



ONE:

☒ Class 1 LE

☐ Class 1LECO ☐ Class 2 LCO

☐ Class 3SLE (Limited Duty)

☐ Reserve Officer

(For any separation involving misconduct as defined in S.C. Reg. 38-004. Completion of the back of this form is REQUIRED.)

Date of Separation: 4/29/14

(specify mo/day/yr)

RECEIVED

MAY 13 2014

X Termination INVOLVING MISCONDUCT as defined in S.C. Reg. 38-004

Resignation INVOLVING MISCONDUCT as defined in S.C. Reg. 38-004

SCCJA CERTIFICATION

(Please indicate the nature of the misconduct by checking the appropriate selection below.)

☐	Conviction, plea of guilty, plea of no contest or admission of guilt (regardless of withheld adjudication) to a felony, a crime punishable by a sentence of more than one year (regardless of the sentence actually imposed, if any) or a crime of moral turpitude in this or any other jurisdiction:
☒	Unlawful use of a controlled substance;
☐	The repeated use of excessive force in dealing with the public and/or prisoners;
☐	Dangerous and/or unsafe practices involving firearms, weapons and/or vehicle which indicated either a willful or wanton disregard for the safety of persons or property;
☐	Physical or psychological abuses of members of the public and/or prisoners;
☐	Misrepresentation of employment-related information;
☐	Dishonesty/untruthfulness with respect to his/her employer;

Only events which have been substantiated by investigation have been reported above. The facts & information herein are true & accurate to the best of my knowledge. All investigation report(s), statements, test results, audio/video records, or other documentation related to the misconduct are attached to this Misconduct Report Form.

Employing Agency Head (Chief, Sheriff, Director)	5/5/2014
	Date

John S. Skipper, Jr.
Print Name

Sheriff
Official Title

NOTE: A willful failure to report may subject the violator to a civil penalty as provided by law.
Revised 01/13



Certification-Compliance

PERSONNEL CHANGE IN STATUS REPORT

NOTIFICATION OF SEPARATION DUE TO MISCONDUCT – Page 2

Officer's Name Deonta Brinston CJA ID# 5553-8606
Address _____ Ph # N/A
City _____ State _____ Zip Code _____
Employing Agency Contact Person (for more information) Sheriff John S. Skipper, Jr.
Contact Telephone Number (Area Code and Telephone Number): 864-260-4400

The below information is REQUIRED for all separations due to misconduct:

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. Attach additional sheets if necessary for full documentation.)

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Deonta Brinston tested positive for Nandrolone and Methandienone. SLED has been involved in the investigation, but no charges have been filed.

Criminal Charges Filed: Yes ☐ No ☒ Date: 5/5/2014

CHARGE(S):

Only events which have been substantiated by investigation have been reported above. The facts & information herein are true & accurate to the best of my knowledge. All investigation report(s), statements, test results, audio/video records, or other documentation related to the misconduct are attached to this Misconduct Report Form.

Employing Agency Head (Chief, Sheriff, Director): John S. Skipper, Jr. DATE: 5/5/2014

Print Name: John S. Skipper, Jr.

Official Title: Sheriff

SCCJA USE ONLY

MRN: _____ CODE: 21 ID: _____ DATE: _____

Copy sent to Officer on 5/16/14 by Beth Kirtz

Date

SCCJA's Authorized Signature

Revised 01/13

Certification-Compliance

PERSONNEL CHANGE IN STATUS REPORT

NOTIFICATION OF SEPARATION DUE TO MISCONDUCT - Page 2

Officer's Name Deonta Brinston CJA ID# 5553-8606
Address _____ Ph # N/A
City _____ State _____ Zip Code _____
Employing Agency Contact Person (for more information) Sheriff John S. Skipper, Jr.
Contact Telephone Number (Area Code and Telephone Number): 864-260-4400

The below information is REQUIRED for all separations due to misconduct:

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Deonta Brinston tested positive for Nandrolone and Methandienone. SLED has been involved in the investigation, but no charges have been filed.

Criminal Charges Filed: Yes ☐ No ☒ Date: 5/5/2014

CHARGE(S):

Only events which have been substantiated by investigation have been reported above. The facts & information herein are true & accurate to the best of my knowledge. All investigation report(s), statements, test results, audio/video records, or other documentation related to the misconduct are attached to this Misconduct Report Form.

Employing Agency Head (Chief, Sheriff, Director):



DATE: 5/5/2014

Print Name: John S. Skipper, Jr.

Official Title: Sheriff

SCCJA USE ONLY

MRN: _____ CODE: 21 ID: _____ DATE: _____

Copy sent to Officer on 5/16/14 by Beth Kettner
Date SCCJA's Authorized Signature

Revised 01/13

DEONTA BRINSTON: Signed SOAP Note for 05/27/2014
Age on DOB: 31 yrs, DOB:

Powdersville Internal Medicine
100 Powers Blvd. PO Box 51158 Piedmont, SC 29673
8642200103

seen by: H Walpole, MD
seen on: Tuesday 27 May 2014

electronically signed by: H Walpole, MD
signed on: Tuesday 27 May 2014 8:59 AM

VS Height: 78.0 in Weight: 274.0 lb BMI: 31.7 Blood Pressure: 134 / 82 mmHg Temp: 98.6 F Pulse: 67 bpm

CC 1 week: (Appt time: 7:45 AM) (Arrival time: 7:53 AM) 1 week fu

S Ta is back today to review his labs. He is still trying to get his job back by going through recommended lines of communication and evaluation recommended by his Atty. So far there has been what I believe is full disclosure from him. He is showing me labels of products he has taken from the gym - supplements available OTC and has done research to find out how substances used remotely could show up on any screen. He is not using and wants to follow the book of rules and regs to get his job back along with his passion for the Anderson Co Sheriff's office work. He has offered to let blood testing and urine testing be done and this offer was not accepted by the department. His affect and demeanor are pleasant and controlled. Today labs drawn from 5/20/14 showed a near normal CBC, CMP. FSH, LH were wnl. Total Testosterone done by LC/MS (highly sensitive for accuracy) was 116.3 (range 343.0 - 1197.0). This is hypogonadal range and he qualifies for hormone replacement therapy.

He is going to get his knee taken care of with the referral to Orthopedics.

Past Medical History (Known allergies): NKDA.

O General: WNL in no acute distress. Alert and oriented x3. Head: Normocephalic, atraumatic, no lesions. Chest: Lungs clear, no rales, no rhonchi, no wheezes. There is good excursion. Breath sounds are equal bilaterally. Heart: RRR, no murmurs, no rubs, no gallops. S1 & S2 are present.

A Hypogonadism documented by LC/MS

DIAGNOSIS:

Hypogonadism [253.4]

H Walpole
5/27/14

Over the Counter Supplement that I was actively taken at the time of this incident.

INSANE TESTOSTERONE BOOSTS
LEAN MUSCLE GAINS
DRY GAINS
INTENSE STAMINA

Directions: As a dietary supplement, consume 2 to 3 capsules twice daily. Do not consume more than 6 capsules in a 24 hour period.

Warnings: Do not use this product if you are at risk for or are being treated for high blood pressure, heart, kidney, thyroid or psychiatric disease, anxiety, depression, seizure disorders, strokes, or any other medical condition. May increase serum hormone levels which could produce a positive result if you are subject to steroid testing. Do not take for more than 6 weeks without a 4 week break. Not for use in any persons under the age of 21. **KEEP AWAY FROM CHILDREN.**

Manufactured by: A.T.E. Labs
8123 FM 1900 West (Box) - Houston, Texas 77060

SOLUTIONSFORATHLETES.COM



TEST PSI

120 Capsules • Dietary Supplement

Supplement Facts

Servings Per Container: 30 • Serving Size: 4 Capsules

Amount Per Serving	%DV
Proprietary Blend	4178mg
D-Aspartic Acid	
Folic Acid (Folate) P.E.	
Insulin (Purified) (95%)	
Androst-1,4-dien-7,17-dione	
* Daily Value Not Established	
Other Ingredients: Gelatin (capsule), Rice Flour & Cellulose	

* These statements have not been evaluated by the Food & Drug Administration. This product is not intended to diagnose, treat, cure, or prevent any disease.

PROUDLY
MADE IN THE USA



INTENSE STAMINA
DRY GAINS
LEAN MUSCLE GAINS
INSANE TESTOSTERONE BOOSTS

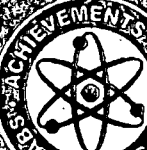
INTENSE STAMINA
DRY GAINS
LEAN MUSCLE GAINS
INSANE TESTOSTERONE BOOSTS

Alpha Blend: is designed specifically to allow the body to release more growth hormone and elevate testosterone levels to achieve great muscle gains. To simplify this, stack with Alpha 1-7. To simplify this, stack with HGH. Stacking with BOTH is strongly not suggested.

Directions: As a dietary supplement, consume 1 capsule 2 to 3 times daily. This product should only be used by healthy males over the age of 21. Do not consume more than 3 capsules in a 24 hour period. Do not, under any circumstances, exceed 4 weeks of use without at least a 30 day break. Proper Post Cycle Therapy (PCT) should be used after discontinuing use.

Warnings: Do not use this product if you are at risk for or are being treated for high blood pressure, heart, kidney, thyroid or psychiatric disease, anxiety, depression, seizure disorders, strokes, or any other medical condition. May increase serum hormone levels which could produce a positive result if you are subject to steroid testing. Do not take this product if you are using anabolic steroids. MAINTAIN 100% abstinence from all other anabolic steroids. Not for use in women or in any persons under the age of 21. **KEEP AWAY FROM CHILDREN.**

Manufactured by: A.T.E. Labs
8123 FM 1900 West (Box) - Houston, Texas 77060



MASSX

EXTREME ANABOLIC GROWTH AGENT

90 Capsules • Advanced Dietary Supplement

Supplement Facts

Servings Per Container: 90 • Serving Size: 1 Capsule

Amount Per Serving	%DV
One to Zinc Monochelate	25mg 25%
Testosterone	25mg 25%
Insulin (Purified)	25mg 25%
Androst-1,4-dien-7,17-dione	25mg 25%
* Daily Value Not Established	
Other Ingredients: Gelatin (capsule), Rice Flour	

* These statements have not been evaluated by the Food & Drug Administration. This product is not intended to diagnose, treat, cure, or prevent any disease.

PROUDLY
MADE IN THE USA



INSANE TESTOSTERONE BOOSTS
LEAN MUSCLE GAINS
DRY GAINS
INTENSE STAMINA

Supplement Facts

Servings Per Container: 30 • Serving Size: 3 Capsules

Recommended Use: Take 1 capsule 2-3 times daily. Do not exceed 3 capsules in a 24 hour period. Do not exceed 4 weeks of use without at least a 30 day break. A proper PCT (Post Cycle Therapy) such as SOTO H-TEST should be used during the last week and for several weeks after use.

Proprietary Formula:

Androst-1,4-dien-7,17-dione (95%)
Androst-1,4-dien-7,17-dione (95%)
Androst-1,4-dien-7,17-dione (95%)

WARNING: DO NOT take this product if you are subject to drug screening in your sanctioning body or profession.

Arimistane 1-DHEA Trib 99%

A-D-T

Before purchase and usage discuss this product with your trained SOTO Supplements representative.

Only approved for distribution from authorized Distribution Facilities, Pharmaceutical Laboratories and Governmental Research Facilities.

DIETARY SUPPLEMENT 300MG 90 CAPSULES



RED LABEL

WARNING: DO NOT take this product if you are subject to drug screening in your sanctioning body or profession.

Arimistane 1-DHEA Trib 99%

A-D-T

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DIETARY SUPPLEMENT 300MG 90 CAPSULES

INSANE TESTOSTERONE BOOSTS
LEAN MUSCLE GAINS
DRY GAINS
INTENSE STAMINA

DEONTA BRINSTON: Result
Order Number: 14007638610

Powdersville Internal Medicine
100 Powers Blvd. PO Box 51158 Piedmont, SC 29673
8642200103



Order # 14007638610 received on Fri May 23, 2014 12:26 PM UTC

Vendor's record of Patient:

BRINSTON, DEONTA L

Date of birth:

Gender:

Vendor patient ID: 1567

Phone:

Address:

Performing vendors:

LabCorp Burlington

director: William F Hancock, MD
address: 1447 York Court
Burlington, NC 272153361
phone: (800) 762-4344

site: 01

Studies ordered:

study: CBC With Differential/Platelet	Final
study: Comp. Metabolic Panel (14)	Final
study: FSH and LH	Final
study: Testosterone, Total, LC/MS	Final
study: Hemoglobin A1c	Final
study: Prostate-Specific Ag, Serum	Final

Additional information:

(no additional information)

Vendor's record of Requesting Provider:

Provider name: WALPOLE, H

Account number: 39117975

Test results performed for a reading of blood work.

DEONTA BRINSTON: Result
Order Number: 14007638610

Powersville Internal Medicine
100 Powers Blvd, PO Box 51158 Piedmont, SC 29673
8642200103

CBC With Differential/Platelet

Accession #: 14007638610

study 1 of 6

Collected: 5/20/2014 9:21 AM

Received at Vendor: 5/20/2014 6:26 PM

Reported: 5/23/2014 8:14 AM

Test	Observation	Reference interval	Status	Abnormal results	Site	
WBC	6.5 x10E3/uL	3.4-10.8	Final		01	Q
RBC	6.13 x10E6/uL	4.14-5.80	Final	Above Normal High	01	Q
Hemoglobin	17.0 g/dL	12.6-17.7	Final		01	Q
Hematocrit	49.6 %	37.5-51.0	Final		01	Q
MCV	81 fL	79-97	Final		01	Q
MCH	27.7 pg	26.6-33.0	Final		01	Q
MCHC	34.3 g/dL	31.5-35.7	Final		01	Q
RDW	15.6 %	12.3-15.4	Final	Above Normal High	01	Q
Platelets	251 x10E3/uL	155-379	Final		01	Q
Neutrophils	69 %	40-74	Final		01	Q
Lymphs	22 %	14-46	Final		01	Q
Monocytes	4 %	4-12	Final		01	Q
Eos	4 %	0-5	Final		01	Q
Basos	1 %	0-3	Final		01	Q
Immature Cells			Not Performed		01	Q
Neutrophils (Absolute)	4.4 x10E3/uL	1.4-7.0	Final		01	Q
Lymphs (Absolute)	1.4 x10E3/uL	0.7-3.1	Final		01	Q
Monocytes (Absolute)	0.3 x10E3/uL	0.1-0.9	Final		01	Q
Eos (Absolute)	0.2 x10E3/uL	0.0-0.4	Final		01	Q
Baso (Absolute)	0.1 x10E3/uL	0.0-0.2	Final		01	Q
Immature Granulocytes	0 %	0-2	Final		01	Q
Immature Grans (Abs)	0.0 x10E3/uL	0.0-0.1	Final		01	Q
NRBC			Not Performed		01	Q
Hematology Comments:			Not Performed		01	Q

Comp. Metabolic Panel (14)

Accession #: 14007638610

study 2 of 6

Collected: 5/20/2014 9:21 AM

Received at Vendor: 5/20/2014 6:26 PM

Reported: 5/23/2014 8:14 AM

Test	Observation	Reference interval	Status	Abnormal results	Site	
Glucose, Serum	94 mg/dL	65-99	Final		01	Q
BUN	10 mg/dL	6-20	Final		01	Q
Creatinine, Serum	1.27 mg/dL	0.76-1.27	Final		01	Q

27 May 2014 8:52 AM
page 2 of 4

DEONTA BRINSTON: Result

Order Number: 14007638610

Powdersville Internal Medicine

100 Powers Blvd. PO Box 51158 Piedmont, SC 29673

8642200103

eGFR If NonAfrican Am	75 mL/min/1.73	>59	Final	01	Q
eGFR If African Am	86 mL/min/1.73	>59	Final	01	Q
BUN/Creatinine Ratio	8	8-19	Final	01	Q
Sodium, Serum	140 mmol/L	134-144	Final	01	Q
Potassium, Serum	4.5 mmol/L	3.5-5.2	Final	01	Q
Chloride, Serum	103 mmol/L	97-108	Final	01	Q
Carbon Dioxide, Total	27 mmol/L	19-28	Final	01	Q
Calcium, Serum	9.8 mg/dL	8.7-10.2	Final	01	Q
Protein, Total, Serum	7.3 g/dL	6.0-8.5	Final	01	Q
Albumin, Serum	4.2 g/dL	3.5-5.5	Final	01	Q
Globulin, Total	3.1 g/dL	1.5-4.5	Final	01	Q
A/G Ratio	1.4	1.1-2.5	Final	01	Q
Bilirubin, Total	0.4 mg/dL	0.0-1.2	Final	01	Q
Alkaline Phosphatase, S	84 IU/L	39-117	Final	01	Q
AST (SGOT)	23 IU/L	0-40	Final	01	Q
ALT (SGPT)	27 IU/L	0-44	Final	01	Q

FSH and LH

Accession #: 14007638610

study 3 of 6

Collected: 5/20/2014 9:21 AM

Received at Vendor: 5/20/2014 6:26 PM

Reported: 5/23/2014 8:14 AM

Test	Observation	Reference Interval	Status	Abnormal results	Site
LH	3.4 mIU/mL	1.7-8.6	Final		01 Q
FSH	7.3 mIU/mL	1.5-12.4	Final		01 Q

Testosterone, Total, LC/MS

Accession #: 14007638610

study 4 of 6

Collected: 5/20/2014 9:21 AM

Received at Vendor: 5/20/2014 6:26 PM

Reported: 5/23/2014 8:14 AM

Test	Observation	Reference interval	Status	Abnormal results	Site
Testosterone, Total, LC/MS	116.3 ng/dL	348.0-1197.0	Final	Below Normal Low	01 Q
Comment:			Final		01 Q
Observation note: Adult male reference interval is based on a population of lean males up to 40 years old.					

Hemoglobin A1c

Accession #: 14007638610

study 5 of 6

Collected: 5/20/2014 9:21 AM

Received at Vendor: 5/20/2014 6:26 PM

Reported: 5/23/2014 8:52 AM
27 May 2014 8:52 AM
page 3 of 4

DEONTA BRINSTON: Result

Order Number: 14007638610

Powdersville Internal Medicine

100 Powers Blvd. PO Box 51158 Piedmont, SC 29673

8642200103

study 5 of 6

Reported: 5/23/2014 8:14 AM

Test	Observation	Reference interval	Status	Abnormal results	Site
Hemoglobin A1c	5.5 %	4.8-5.6	Final		01 Q
 Observation note: Increased risk for diabetes: 5.7 - 6.4 Diabetes: >6.4 Glycemic control for adults with diabetes: <7.0					

Prostate-Specific Ag, Serum

Accession #: 14007638610

Collected: 5/20/2014 9:21 AM

Received at Vendor: 5/20/2014 6:26 PM

study 6 of 6

Reported: 5/23/2014 8:14 AM

Test	Observation	Reference interval	Status	Abnormal results	Site
Prostate Specific Ag, Serum	0.3 ng/mL	0.0-4.0	Final		01 Q
 Observation note: Roche ECLIA methodology. According to the American Urological Association, Serum PSA should decrease and remain at undetectable levels after radical prostatectomy. The AUA defines biochemical recurrence as an initial PSA value 0.2 ng/mL or greater followed by a subsequent confirmatory PSA value 0.2 ng/mL or greater. Values obtained with different assay methods or kits cannot be used interchangeably. Results cannot be interpreted as absolute evidence of the presence or absence of malignant disease.					



South Carolina Criminal Justice Academy

December 23, 2014

The Honorable Shirley C. Robinson
Administrative Law Court
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201

Re: In the Matter of Issuance of Law Enforcement Officer
Certification to Deonta L. Brinston,
Case No. 14-ALJ-30-0540-AP

Dear Judge Robinson:

Enclosed please find the original and two (2) copies of Record on Appeal for the above referenced case. Please return one copy to me via the self-address, pre-postaged envelope.

Thank you in advance for your consideration of this matter.

If you have any questions or concerns, please call me at (803) 608-9738.

Respectfully,

Brandy A. Duncan
Chief General Counsel

cc: Candy M. Kern-Fuller, Esquire
Upstate Law Group, LLC
200 East Main Street
Easley, South Carolina 29640-2073

414 COA - Record on Appeal

7011 1570 0001 3219 6981

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Sent To Candy M. Kern-Fuller, Esquire Street, Apt. or PO Box Upstate Law Group, LLC City, State, 200 East Main Street Easley, South Carolina 29640-2073	
PS Form 3811, February 2004	

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PS Form 3811, February 2004

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Total Postage & Fees	\$
Postmark Here	
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Street, Apt. or PO Box	Upstate Law Group, LLC
City, State, .	200 East Main Street
	Easley, South Carolina 29640-2073
PS Form 3800, 7-15-09	

UNITED STATES POSTAL SERVICE

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29 DEC '14



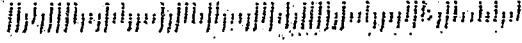
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Brandy Duncan, Chief General Counsel
S.C. Criminal Justice Academy
5400 Broad River Road
Columbia, South Carolina 29212

Brinston - ROA

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RECEIVED
DEC 31 2014
CRIMINAL JUSTICE ACADEMY



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Sent To: The Honorable Shirley C. Robinson
 Administrative Law Court
 1205 Pendleton Street, Suite 224
 Columbia, South Carolina 29201

PS Form 3800, August 2006

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. 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. 1. Article Addressed to: The Honorable Shirley C. Robinson Administrative Law Court 1205 Pendleton Street, Suite 224 Columbia, South Carolina 29201 2. Article Number (Transfer from service label)	A. Signature ☒ Agent ☐ Addressee B. Received by (Printed Name) C. Date of Delivery D. Is delivery address different from item 1? ☐ Yes If YES, enter delivery address below: ☐ No 3. Service Type ☒ Certified Mail ☐ Express Mail ☐ Registered ☐ Return Receipt for Merchandise ☐ Insured Mail ☐ C.O.D. 4. Restricted Delivery? (Extra Fee) ☐ Yes

PS Form 3811, February 2004

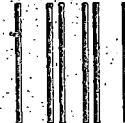
Domestic Return Receipt

102595-02-M-1540

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Postage	\$
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Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$
Postmark Here	
Sent To	The Honorable Shirley C. Robinson
Street, Apt. 1 or PO Box A	Administrative Law Court
City, State, Z	1205 Pendleton Street, Suite 224
	Columbia, South Carolina 29201
PS Form 3800, August 2006	

UNITED STATES POSTAL SERVICE
COLUMBIA
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29 DEC '14
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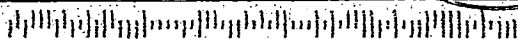
First-Class Mail
Postage & Fees Paid
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Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

Brandy Duncan, Chief General Counsel
S.C. Criminal Justice Academy
5400 Broad River Road
Columbia, South Carolina 29212

**SOUTH CAROLINA
RECEIVED
DEC 30 2014
CRIMINAL JUSTICE ACADEMY**

Brinston ROA



Duncan, Brandy

From: Teckla Henderson <thenderson@scal.net>
Sent: Friday, January 23, 2015 2:19 PM
To: Candy M. Kern-Fuller (Office)
Cc: Duncan, Brandy
Subject: RE: Brinston v. SC Department of Criminal Justice 14A0540; Brief of appellant



Thank you. I will be sure to forward the same to Judge Robinson for review.

Teckla S. Henderson
Judicial Law Clerk to The Honorable Shirley C. Robinson
South Carolina Administrative Law Court
Edgar Brown Building
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201
(803) 734- 6402 Chambers
(803) 734- 6400 Fax

From: Candy M. Kern-Fuller (Office) [<mailto:candy@upstatelawgroup.com>]
Sent: Thursday, January 22, 2015 5:32 PM
To: Teckla Henderson
Cc: bduncan@sccja.sc.gov
Subject: RE: Brinston v. SC Department of Criminal Justice 14A0540; Brief of appellant

Dear Ms. Henderson and Ms. Duncan:

Please see attached an electronic copy of the Appellant's brief which was mailed this evening.

Candy Kern-Fuller, Esq.
Upstate Law Group, LLC
200 East Main Street
Easley, South Carolina 29640
(864) 855-3114
(864) 855-3446 (facsimile)

**** CERTIFIED MEDIATOR AND ARBITRATOR FOR OVER 10 YEARS ****

CONFIDENTIALITY NOTE: THIS EMAIL WAS SENT FROM A LAW FIRM. IT MAY CONTAIN PRIVILEGED OR CONFIDENTIAL INFORMATION AND IS INTENDED SOLELY FOR THE USE OF THE PERSON(S) NAMED ABOVE OR THE PERSON(S) WHO IS THE INTENDED RECIPIENT OF THE MESSAGE. IF YOU ARE NOT AN INTENDED RECIPIENT OF THIS EMAIL, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION OR DUPLICATION OF THIS E-MAIL IS PROHIBITED AND THAT THERE SHALL BE NO WAIVER OF ANY PRIVILEGE OR CONFIDENCE BY YOUR RECEIPT OF THIS TRANSMISSION. IF YOU HAVE RECEIVED THIS E-MAIL IN ERROR, PLEASE NOTIFY US BY COLLECT TELEPHONE CALL OR FAX TO THE NUMBER INDICATED ABOVE.

Duncan, Brandy

From: Duncan, Brandy
Sent: Friday, January 23, 2015 2:56 PM
To: Teckla Henderson; Candy M. Kern-Fuller (Office)
Subject: RE: Brinston v. SC Department of Criminal Justice 14A0540; Brief of appellant



Ms. Kern-Fuller,

I am not sure why, but your e-mail did not come through to me. Will you please send it again?

Thanks,

Brandy A. Duncan
Chief General Counsel
S.C. Criminal Justice Academy
5400 Broad River Road
Columbia, South Carolina 29212
(803) 896-7414 (Office)
(803) 608-9738 (Work Cell)
(803) 896-8347 (Fax)

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IMPORTANT NOTE: July 1, 2014 was the cutoff date for old PCS of Hire forms. Please go to our web site (www.sccja.sc.gov) and get the new form revised 02/2014.

From: Teckla Henderson [<mailto:thenderson@scalc.net>]
Sent: Friday, January 23, 2015 2:19 PM
To: Candy M. Kern-Fuller (Office)
Cc: Duncan, Brandy
Subject: RE: Brinston v. SC Department of Criminal Justice 14A0540; Brief of appellant

Thank you. I will be sure to forward the same to Judge Robinson for review.

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Judicial Law Clerk to The Honorable Shirley C. Robinson
South Carolina Administrative Law Court
Edgar Brown Building
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201
(803) 734- 6402 Chambers
(803) 734- 6400 Fax

From: Candy M. Kern-Fuller (Office) [<mailto:candy@upstatelawgroup.com>]
Sent: Thursday, January 22, 2015 5:32 PM

To: Teckla Henderson

Cc: bduncan@sccja.sc.gov

Subject: RE: Brinston v. SC Department of Criminal Justice 14A0540; Brief of appellant

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Candy Kern-Fuller, Esq.
Upstate Law Group, LLC
200 East Main Street
Easley, South Carolina 29640
(864) 855-3114
(864) 855-3446 (facsimile)

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Duncan, Brandy

From: Microsoft Outlook
To: Teckla Henderson; Candy M. Kern-Fuller (Office)
Sent: Friday, January 23, 2015 2:56 PM
Subject: Relayed: RE: Brinston v. SC Department of Criminal Justice 14A0540; Brief of appellant

Delivery to these recipients or groups is complete, but no delivery notification was sent by the destination server:

Teckla Henderson (thenderson@scalco.net)

Candy M. Kern-Fuller (Office) (candy@upstatelawgroup.com)

Subject: RE: Brinston v. SC Department of Criminal Justice 14A0540; Brief of appellant

Duncan, Brandy

From: Teckla Henderson <thenderson@scal.c.net>
To: Duncan, Brandy
Sent: Friday, January 23, 2015 3:51 PM
Subject: Read: Brinston v. SC Department of Criminal Justice 14A0540; Brief of appellant

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South Carolina Criminal Justice Academy

February 9, 2015

The Honorable Shirley C. Robinson
Administrative Law Court
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201

Re: Deonta L. Brinston v. South Carolina Department of Criminal Justice
Case No. 14-ALJ-30-0540-AP

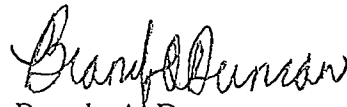
Dear Judge Robinson:

Enclosed please find the original and two (2) copies of Brief of Respondent for the above referenced case. Please return one copy to me via the self-address, pre-postaged envelope.

Thank you in advance for your consideration of this matter.

If you have any questions or concerns, please call me at (803) 608-9738.

Respectfully,


Brandy A. Duncan
Chief General Counsel

cc: Candy M. Kern-Fuller, Esquire
Upstate Law Group, LLC
200 East Main Street
Easley, South Carolina 29640-2073

424 COA - Record on Appeal

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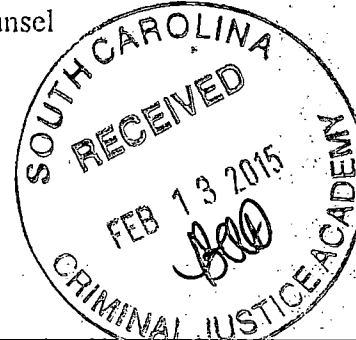
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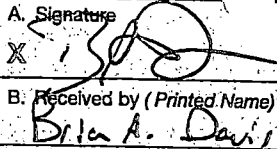
Brandy Duncan, Chief General Counsel
S.C. Criminal Justice Academy
5400 Broad River Road
Columbia, South Carolina 29212



BOR-Boston

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Street, Apt. No. or PO Box No.	Upstate Law Group, LLC
City, State, Zip	200 East Main Street Easley, South Carolina 29640-2073
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	Easley, South Carolina 29640-2073
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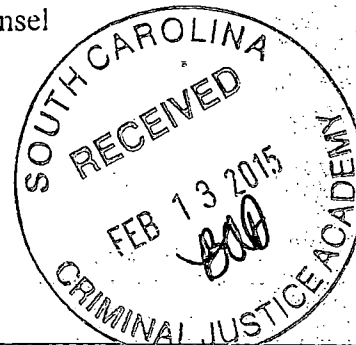
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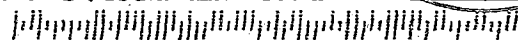
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Brandy Duncan, Chief General Counsel
S.C. Criminal Justice Academy
5400 Broad River Road
Columbia, South Carolina 29212



BOR - Braxton



Duncan, Brandy

From: Duncan, Brandy
Sent: Friday, February 27, 2015 4:08 PM
To: 'Candy M. Kern-Fuller (Office)'
Cc: Teckla Henderson (thenderson@scalco.net)
Subject: Brinston v. SC Department of Criminal Justice 14A0540 - Reply Brief?



SCANNED

Ms. Kern-Fuller,

I don't know if you completed one or not, but if you did complete a Reply Brief for the Brinston case, I have not received it via U.S. Mail or e-mail as of today.

If you did not complete a Reply Brief, if you would send me a quick response to this e-mail letting me know that I would greatly appreciate it.

Thanks,

Brandy A. Duncan
Chief General Counsel
S.C. Criminal Justice Academy
5400 Broad River Road
Columbia, South Carolina 29212
(803) 896-7414 (Office)
(803) 608-9738 (Work Cell)
(803) 896-8347 (Fax)

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Duncan, Brandy

From: Microsoft Outlook
To: 'Candy M. Kern-Fuller (Office)'; Teckla Henderson (thenderson@scalcn.net)
Sent: Friday, February 27, 2015 4:08 PM
Subject: Relayed: Brinston v. SC Department of Criminal Justice 14A0540 - Reply Brief?

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'Candy M. Kern-Fuller (Office)' (candy@upstatelawgroup.com)

Teckla Henderson (thenderson@scalcn.net) (thenderson@scalcn.net)

Subject: Brinston v. SC Department of Criminal Justice 14A0540 - Reply Brief?

Duncan, Brandy

From: candy@upstatelawgroup.com
Sent: Friday, February 27, 2015 4:10 PM
To: Duncan, Brandy
Subject: Read report : Brinston v. SC Department of Criminal Justice 14A0540 - Reply Brief?

Recipient: candy@upstatelawgroup.com
Time of reading : 02/27/2015 04:09 PM
Subject: Brinston v. SC Department of Criminal Justice 14A0540 - Reply Brief?

Ms. Kern-Fuller, I don't know if you completed one or not, but if you did complete a Reply Brief for the Brinston case, I have not received it via U.S. Mail or e-mail as of today. If you did not complete a Reply Brief, if you would send me a quick response to this e-mail letting me know that I would greatly appreciate it. Thanks,
Brandy A. Duncan Chief General Counsel S.C. Criminal Justice Academy 5400 Broad River Road Columbia, South Carolina 29212 (803) 896-7414 (Office) (803) 608-9738 (Work Cell) (8

Duncan, Brandy

From: Teckla Henderson <thenderson@scalco.net>
To: Duncan, Brandy
Sent: Monday, March 02, 2015 10:17 AM
Subject: Read: Brinston v. SC Department of Criminal Justice 14A0540 - Reply Brief?

Your message was read on Monday, March 02, 2015 3:17:07 PM UTC.

Duncan, Brandy

From: Duncan, Brandy
Sent: Tuesday, March 03, 2015 9:46 AM
To: Teckla Henderson (thenderson@scalco.net)
Cc: candy@upstatelawgroup.com
Subject: Brinston v. SC Department of Criminal Justice 14A0540 - Reply Brief?



SCANNED

Ms. Henderson,

As of today, I have not received a reply from Ms. Kern-Fuller regarding my Friday e-mail inquiring about whether she had filed a Reply Brief in the above referenced case. Will you please let me know if Ms. Kern-Fuller has filed a Reply Brief or not?

Thanks,

Brandy A. Duncan
Chief General Counsel
S.C. Criminal Justice Academy
5400 Broad River Road
Columbia, South Carolina 29212
(803) 896-7414 (Office)
(803) 608-9738 (Work Cell)
(803) 896-8347 (Fax)

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Duncan, Brandy

From: Microsoft Outlook
To: Teckla Henderson (thenderson@scalc.net); candy@upstatelawgroup.com
Sent: Tuesday, March 03, 2015 9:46 AM
Subject: Relayed: Brinston v. SC Department of Criminal Justice 14A0540 - Reply Brief?

Delivery to these recipients or groups is complete, but no delivery notification was sent by the destination server:

Teckla Henderson (thenderson@scalc.net) (thenderson@scalc.net)

candy@upstatelawgroup.com (candy@upstatelawgroup.com)

Subject: Brinston v. SC Department of Criminal Justice 14A0540 - Reply Brief?

Duncan, Brandy

From: Teckla Henderson <thenderson@scalco.net>
To: Duncan, Brandy
Sent: Tuesday, March 03, 2015 10:10 AM
Subject: Read: Brinston v. SC Department of Criminal Justice 14A0540 - Reply Brief?

Your message was read on Tuesday, March 03, 2015 3:10:03 PM UTC.

COA - Record on Appeal 435

Duncan, Brandy

From: Teckla Henderson <thenderson@scalcn.net>
Sent: Tuesday, March 03, 2015 10:22 AM
To: Duncan, Brandy
Cc: candy@upstatelawgroup.com
Subject: RE: Brinston v. SC Department of Criminal Justice 14A0540 - Reply Brief?

 **SCANNED**

Dear Attorney Duncan:

As of this date, the Court has not received a Reply Brief on behalf of the Appellant.

Very truly yours,

Teckla S. Henderson
Judicial Law Clerk to The Honorable Shirley C. Robinson
South Carolina Administrative Law Court
Edgar Brown Building
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201
(803) 734- 6402 Chambers
(803) 734- 6400 Fax

From: Duncan, Brandy [mailto:BDuncan@sccja.sc.gov]
Sent: Tuesday, March 03, 2015 9:46 AM
To: Teckla Henderson
Cc: candy@upstatelawgroup.com
Subject: Brinston v. SC Department of Criminal Justice 14A0540 - Reply Brief?

Ms. Henderson,

As of today, I have not received a reply from Ms. Kern-Fuller regarding my Friday e-mail inquiring about whether she had filed a Reply Brief in the above referenced case. Will you please let me know if Ms. Kern-Fuller has filed a Reply Brief or not?

Thanks,

Brandy A. Duncan
Chief General Counsel
S.C. Criminal Justice Academy
5400 Broad River Road
Columbia, South Carolina 29212
(803) 896-7414 (Office)
(803) 608-9738 (Work Cell)
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Duncan, Brandy

From: Duncan, Brandy
Sent: Tuesday, March 03, 2015 10:30 AM
To: 'Teckla Henderson'
Cc: candy@upstatelawgroup.com
Subject: RE: Brinston v. SC Department of Criminal Justice 14A0540 - Reply Brief?



Okay. Thank you for check on that for me.

Thanks,

Brandy A. Duncan
Chief General Counsel
S.C. Criminal Justice Academy
5400 Broad River Road
Columbia, South Carolina 29212
(803) 896-7414
(803) 896-8347 (fax)
(803) 608-9738 (cell)

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From: Teckla Henderson [<mailto:thenderson@scal.c.net>]
Sent: Tuesday, March 03, 2015 10:22 AM
To: Duncan, Brandy
Cc: candy@upstatelawgroup.com
Subject: RE: Brinston v. SC Department of Criminal Justice 14A0540 - Reply Brief?

Dear Attorney Duncan:

As of this date, the Court has not received a Reply Brief on behalf of the Appellant.

Very truly yours,

Teckla S. Henderson
Judicial Law Clerk to The Honorable Shirley C. Robinson
South Carolina Administrative Law Court
Edgar Brown Building
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201
(803) 734- 6402 Chambers
(803) 734- 6400 Fax

From: Duncan, Brandy [mailto:BDuncan@sccja.sc.gov]
Sent: Tuesday, March 03, 2015 9:46 AM
To: Teckla Henderson
Cc: candy@upstatelawgroup.com
Subject: Brinston v. SC Department of Criminal Justice 14A0540 - Reply Brief?

Ms. Henderson,

As of today, I have not received a reply from Ms. Kern-Fuller regarding my Friday e-mail inquiring about whether she had filed a Reply Brief in the above referenced case. Will you please let me know if Ms. Kern-Fuller has filed a Reply Brief or not?

Thanks,

Brandy A. Duncan
Chief General Counsel
S.C. Criminal Justice Academy
5400 Broad River Road
Columbia, South Carolina 29212
(803) 896-7414 (Office)
(803) 608-9738 (Work Cell)
(803) 896-8347 (Fax)

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Duncan, Brandy

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candy@upstatelawgroup.com (candy@upstatelawgroup.com)

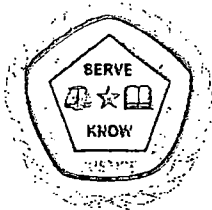
Subject: RE: Brinston v. SC Department of Criminal Justice 14A0540 - Reply Brief?

Duncan, Brandy

From: Teckla Henderson <thenderson@scalco.net>
To: Duncan, Brandy
Sent: Tuesday, March 03, 2015 10:32 AM
Subject: Read: Brinston v. SC Department of Criminal Justice 14A0540 - Reply Brief?

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COA - Record on Appeal 441



South Carolina Criminal Justice Academy

April 10, 2015

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: Deonta L. Brinston, Respondent v. South Carolina Criminal Justice Academy, Appellant,
Case No. 14-ALJ-30-0540-AP

Dear Ms. Kitchings:

Enclosed for filing is a notice of appeal in the above case. Also enclosed are the following:

- (1) Proof of service of the notice of appeal on the respondent.
- (2) A copy of the order which is to be challenged on appeal.

I have not enclosed a filing fee because this appeal is filed on behalf of the State of South Carolina. See Rule 203(d)(2)(B)(iii), SCACR.

Also, please note the transcript of the contest case has already been obtained.

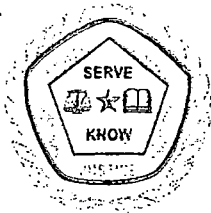
April 10, 2015

Brandy A. Duncan, Chief General Counsel
5400 Broad River Road
Columbia, South Carolina 29212
(803) 896-7414
(803) 896-8347 (fax)
Attorney for Appellant

Other Counsel of Record:

Candy M. Kern-Fuller, Esquire
Upstate Law Group, LLC
200 East Main Street
Easley, South Carolina 29640-2073
(864) 855-3114
(864) 855-3446 (fax)
Attorney for Respondent

442 COA - Record on Appeal



South Carolina Criminal Justice Academy

April 10, 2015

The Honorable Shirley C. Robinson
Administrative Law Court
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201

RE: Deonta L. Brinston, Respondent v. South Carolina Criminal Justice Academy, Appellant,
Case No. 14-ALJ-30-0540-AP

Dear Judge Robinson:

Enclosed for filing is a notice of appeal in the above case.

Sincerely,

Brandy A. Duncan, Chief General Counsel
5400 Broad River Road
Columbia, South Carolina 29212
(803) 896-7414
(803) 896-8347 (fax)
Attorney for Appellant

cc: The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Candy M. Kern-Fuller, Esquire
Upstate Law Group, LLC
200 East Main Street
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2. Article Number:

(Transfer from service label)

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PS Form 3811, February 2004

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☐ Agent☐ Addressee

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Howard Chish

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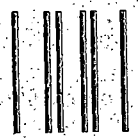
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Total Postage & Fees	\$
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City, State	Post Office Box 11629
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Brandy Duncan, Chief General Counsel
S.C. Criminal Justice Academy
5400 Broad River Road
Columbia, South Carolina 29212

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Sent To The Honorable Shirley C. Robinson Administrative Law Court Street, A or PO Box 1205 Pendleton Street, Suite 224 City, State Columbia, South Carolina 29201	
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PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540	

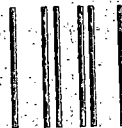
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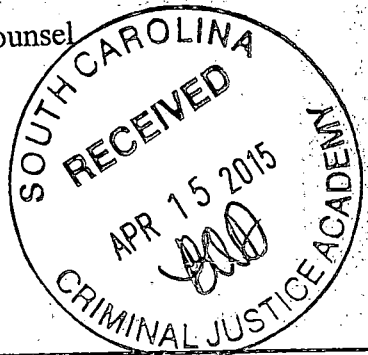
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Sent to Candy M. Kern-Fuller, Esquire
Street or PO Upstate Law Group, LLC
City, S 200 East Main Street
 Easley, South Carolina 29640-2073

PS Form 3800, August 2006 See Reverse for Instructions

7011 1570 0001 3219 7773

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2. Article Number (Transfer from service label)	3. Service Type ☒ Certified Mail ☐ Express Mail ☐ Registered ☐ Return Receipt for Merchandise ☐ Insured Mail ☐ C.O.D. 4. Restricted Delivery? (Extra Fee) ☐ Yes

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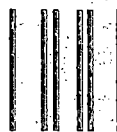
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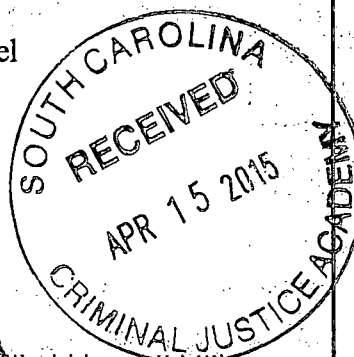
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Brandy - COA NOA



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

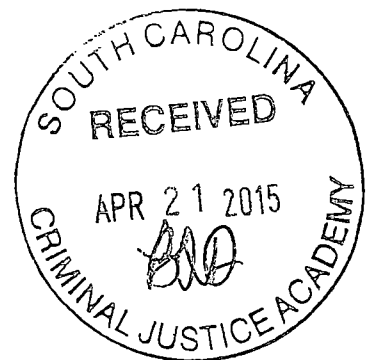
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DEPUTY CLERK

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COLUMBIA, SOUTH CAROLINA 29201
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April 20, 2015

Mrs. Brandy Anne Duncan, Esquire
5400 Broad River Rd.
Columbia SC 29212

Re: Deonta Brinston SC Dept. of Criminal Justice
Appellate Case No. 2015-000797



Dear Mr. Duncan:

Upon reviewing your notice of appeal, the following deficiency or deficiencies have been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within ten (10) days of the date of this letter:

- A proof of service showing that a copy has been served on the Administrative Law Court has not been provided as required by Rule 203(b)(6), SCACR.

Very truly yours,

A handwritten signature in black ink that reads "Jenny Abbott Kitchings". The signature is stylized and includes a large, sweeping flourish at the end.

CLERK

cc: Candy M. Kern-Fuller, Esquire



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

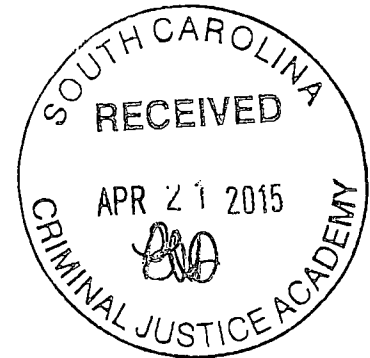
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April 20, 2015

Mrs. Brandy Anne Duncan, Esquire
5400 Broad River Rd.
Columbia SC 29212

Re: Deonta Brinston SC Dept. of Criminal Justice
Appellate Case No. 2015-000797



Dear Mr. Duncan:

This Court has received your notice of appeal, and the case has been assigned the appellate case number that appears above. Please use this number on all future correspondence relating to this matter.

All parties to this matter are advised that all filings must comply with the requirements of Rule 267 of the South Carolina Appellate Court Rules (SCACR). The SCACR are available online at www.sccourts.org/courtreg. Additionally, any filings submitted by counsel admitted in South Carolina must include counsel's bar number.

The attention of the parties is directed to the order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. The order can be found at www.sccourts.org/courtOrders/HTMLFiles/2014-04-15-02.htm. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will not review filings for redaction or to determine if materials should be sealed.

This is to advise that the title in the above matter has been changed to read as follows:

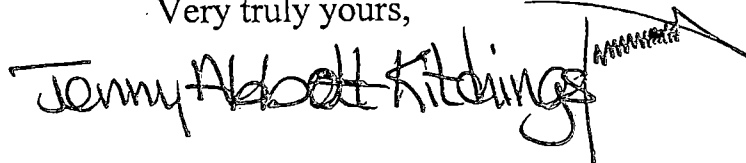
Deonta L. Brinston, Respondent;

v.

South Carolina Department of Criminal Justice, Appellant.

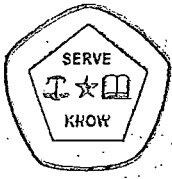
All future records in this matter should be changed to reflect this title. If you have any questions, please do not hesitate to contact this office.

Very truly yours,

A handwritten signature in black ink that reads "Jonny Abbott Kitchens". The signature is written in a cursive, somewhat stylized font. There is a horizontal line above the signature, and a small, scribbled mark to the right of the name.

CLERK

cc: Candy M. Kern-Fuller, Esquire
Jana E. Shealy



South Carolina Criminal Justice Academy

April 22, 2015

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

The Honorable Shirley C. Robinson
Administrative Law Court
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201

RE: Deonta L. Brinston, Respondent v. South Carolina Department of Criminal Justice,
Appellant
Case No. 2015-000797

Dear Ms. Kitchings:

Enclosed for filing is proof of service of the notice of appeal on the Administrative Law Court as requested in Ms. Kitchings letter dated April 20, 2015.

I have enclosed an extra copy of this proof of service for my records, along with a postage prepaid envelope. Please return the extra copy to me with the clocked in stamp.

April 22, 2015


Brandy A. Duncan, Chief General Counsel
Bar #72052
5400 Broad River Road
Columbia, South Carolina 29212
(803) 896-7414
(803) 896-8347 (fax)
Attorney for Appellant

Other Counsel of Record:

Candy M. Kern-Fuller, Esquire
Upstate Law Group, LLC
200 East Main Street
Easley, South Carolina 29640-2073
(864) 855-3114
(864) 855-3446 (fax)
Attorney for Respondent

COA - Record on Appeal 453

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PS Form 3800, August 2005 See reverse for instructions	

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1. Article Addressed to: Candy M. Kern-Fuller, Esquire Upstate Law Group, LLC 200 East Main Street Easley, South Carolina 29640-2073		B. Received by (Printed Name) Candy M. Kern-Fuller	
		C. Date of Delivery 4-21-11	
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2. Article Number (Transfer from service label)		4. Restricted Delivery? (Extra Fee) ☐ Yes	
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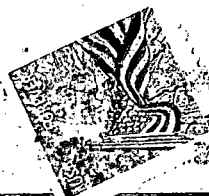
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Street, Apt. or PO Box	Upstate Law Group, LLC
City, State, .	200 East Main Street
	Easley, South Carolina 29640-2073
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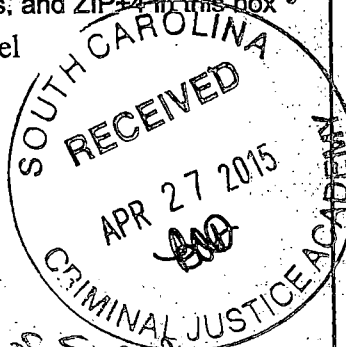
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City, State	1205 Pendleton Street, Suite 224
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1. Article Addressed to: The Honorable Shirley C. Robinson Administrative Law Court 1205 Pendleton Street, Suite 224 Columbia, South Carolina 29201	
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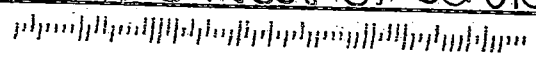
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S.C. Criminal Justice Academy
5400 Broad River Road
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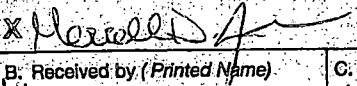
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1. Article Addressed to: The Honorable Jenny Abbott Kitchings Clerk, South Carolina Court of Appeals Post Office Box 11629 Columbia, South Carolina 29211	3. Service Type ☒ Certified Mail ☐ Express Mail ☐ Registered ☐ Return Receipt for Merchandise ☐ Insured Mail ☐ C.O.D. 4. Restricted Delivery? (Extra Fee) ☐ Yes
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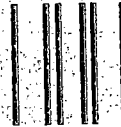
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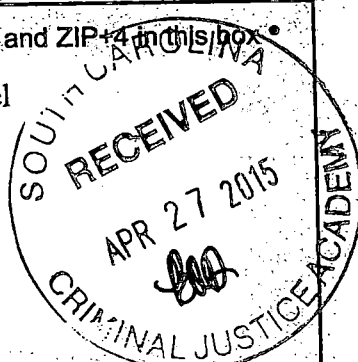
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 S.C. Criminal Justice Academy
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Sec. 55-52. - Substance abuse policy.

- (a) *Purpose.* The intent of this policy is to document the county's position with respect to alcohol and drug abuse (substance abuse). The county's position requires procedures that are designed to:
- (1) Establish and maintain a safe, healthy working environment for all employees;
 - (2) Ensure the reputation of the county and its employees as good, responsible citizens;
 - (3) Reduce the incidence of accidental injury to employees or to property;
 - (4) Reduce absenteeism, indifferent job performance, and other nonproductive action; and
 - (5) Provide assistance toward rehabilitation for any employee who seeks the county's help in overcoming any addiction to, dependence upon, or problem with alcohol or drugs.
- (b) *General policy.* Alcohol and/or drug abuse in the workplace is dangerous because it leads to physical impairment, loss of judgment, safety violations, and the risk of injury and possible death. The failure of any employee to comply with the procedures set forth in the policy will result in disciplinary action up to and including discharge.

The county will treat alcohol and/or chemical dependency as a health problem. The voluntary seeking of assistance for any such problem is encouraged, and an employee will not be subject to discipline solely as a result of seeking assistance for such problem. However, the seeking of assistance for any such problem will not shield the employee from discipline for a violation of the county's substance abuse policy if such violation comes to the county's attention through other means, such as direct observation, job performance, drug testing, etc. before the employee voluntarily seeks assistance.

The Drug-Free Workplace Act of 1988 requires all county employees to notify the county within five calendar days after any criminal conviction for the manufacture, distribution, dispensation, possession, or use of narcotics, drugs, or any other controlled substance at the workplace. Criminal conviction means a finding of guilt, a plea of no contest, or a plea of guilty. The county will notify all federal contracting agencies and grantors of such conviction within ten days of receiving notice of the conviction.

Employees will be given a copy of this policy and will be required to sign a form acknowledging its receipt. By continuing to work, the employee agrees that he/she will abide by the policy as a condition of employment. Failure to sign the form will result in disciplinary action up to and including discharge.

The term "county property" as used in this policy includes, but is not limited to, work sites, parking lots, vehicles, offices, and locations where an employee is working for the county in any capacity.

- (c) *Inspection.* To ensure that illegal drugs and alcohol do not enter or affect the workplace, the county reserves the right to search all county property, including vehicles, containers, lockers, or other items. A search may be conducted whenever the county has reasonable suspicion that an employee may be in violation of this policy. Failure to consent to, or cooperate with, such inspections will be grounds for disciplinary action up to and including discharge.
- (d) *Alcoholic beverages, illegal drugs, and legal drugs.*
- (1) *Alcoholic beverages.*
 - a. The consumption or possession of alcoholic beverages on county property is strictly prohibited and places the violator in jeopardy of immediate discharge. The possession of alcohol in a personal vehicle on county property is not prohibited provided such possession is in compliance with this policy, as well as state, federal, and local laws.

b. **460 COA - Record on Appeal**

Being under the influence of alcoholic beverages while on duty will subject an employee to disciplinary action up to and including discharge. An employee will be considered under the influence of alcohol when, in the judgment of the employee's supervisor or another county official, the employee's ability to perform the job safely and effectively is affected by the use of alcohol. An employee who is perceived to be under the influence of alcohol will be removed immediately from the workplace and may be required to submit to a breath or blood test to measure the blood alcohol concentration. A determination that an employee is under the influence of alcohol may be made by the county without conducting a test to determine the employee's alcohol concentration.

- c. Employees who consume alcoholic beverages at any time during work hours, including lunch and breaks, either on or off county premises, may be subject to disciplinary action up to and including discharge.
 - d. Any employee arrested for an alcohol-related incident must immediately notify his/her supervisor and the county administrator of the arrest if the incident occurs:
 - i. During scheduled working hours;
 - ii. While operating a county vehicle on county or personal business; or
 - iii. While operating a personal vehicle on county business.
- (2) *Illegal drugs.*
- a. "Illegal drugs" are drugs or controlled substances which are: (1) not legally obtainable or (2) legally obtainable but not obtained or used in a lawful manner. Examples include cocaine, marijuana, opiates, amphetamines, and phencyclidine, as well as prescription drugs which are not lawfully obtained or properly utilized. The term "illegal drugs" also refers to mind-altering and/or addictive substances which are not sold as drugs or medicines but are used for mind or behavior-altering effect.
 - b. The manufacture, distribution, dispensation, possession, or use of illegal drugs on county premises is strictly prohibited and places the violator in jeopardy of immediate discharge.
 - c. Being under the influence of illegal drugs while on duty will subject an employee to disciplinary action up to and including discharge for the first offense. An employee will be considered to be under the influence of illegal drugs if the employee tests positive for any illegal drug (or its metabolites) at or above the cutoff level established by the county.
 - d. Employees who distribute, dispense, possess, or use illegal drugs at any time, either on or off county premises, and either on or off duty, will be subject to disciplinary action up to and including discharge.
 - e. Law enforcement authorities will be notified whenever illegal drugs are found in the workplace.
- (3) *Legal drugs.*

- a. "Legal drugs" are those prescribed or over-the-counter drugs which are legally obtained by the employee and used for the purpose for which they were prescribed and sold.
- b. Legal drugs shall be used only in the manner, combination, and quantity prescribed during the term of the work shift. Legal drugs shall be used only by the person to whom the drug is prescribed.
- c. If an employee has any indication that prescribed or over-the-counter drugs may affect their behavior and/or performance, the employee must notify their supervisor, or other appropriate county official, that they are taking drugs prior to beginning work. Where such use of legal drugs adversely affects job performance, it is in the best interest of the employee, co-workers, and the county for that employee to be temporarily relieved of his/her duties. If an employee is

COA - Record on Appeal 461

relieved of his/her duties, that employee may be temporarily reassigned to an available position for which he/she is qualified until fit to return to his/her regular position. If no such reassignment is made, the employee may elect to use available sick leave or annual leave until he/she is fit to return to regular duty. Failure to provide proper notification may subject the employee to disciplinary action.

- (e) *Types of testing.* The county shall administer three types of alcohol and/or drug testing programs: pre-employment, reasonable suspicion, and random.

(1) *Pre-employment.*

- a. All applicants who are conditionally offered employment into any full-time, part-time, or intern position will be tested for the presence of illegal drugs. The pre-employment testing program shall apply to applicants for positions in all county departments, including those headed by elected officials.
- b. Applicants will be advised of the county's substance abuse policy and testing requirements in writing prior to an offer of hire or referral for a drug test.
- c. If an applicant refuses to provide a urine or other appropriate testing specimen, he/she will not be considered for employment, and the employment application process will be terminated.
- d. If any applicant's test is positive, the applicant will not be considered for employment and will be informed that he/she has failed to meet medical standards. If the applicant asks what substance was detected by the test, he/she, or his/her legal guardian, shall be informed in a confidential manner.
- e. Any applicant who refuses to provide a urine or other appropriate testing specimen or who fails to pass the pre-employment drug test may be ineligible for hire for a period of 12 months.

(2) *Reasonable suspicion.*

- a. The county will require alcohol and/or drug screening tests when there is reasonable suspicion such as, but not limited to, the following:
 - i. Any employee whose work performance or behavior creates a reasonable suspicion that he/she is unfit for duty and possibly abusing alcohol and drugs.
 - ii. Any employee who is responsible for an accident on county property or involving county property where there is no reasonable explanation as to the cause or where negligence or carelessness appears to be the cause.
 - iii. Any employee who is involved in an accident where the county has a reasonable belief that alcohol and/or drug use may have contributed to the employee's involvement in the accident.
 - iv. Any employee who is responsible for an accident resulting in damage to county property in excess of \$100.00 or injury to other persons where there is not reasonable explanation as to the cause or where negligence or carelessness appears to be the cause.
- b. If a supervisor has a reasonable suspicion that an employee is using alcohol and/or illegal drugs, he/she must report their findings and observations to the department head and the personnel manager. Upon approval by the personnel manager and/or other appropriate county officials, the employee will be asked to consent to a drug and/or alcohol test and sign a form acknowledging his/her consent.
- c. Any employee who refuses to provide a urine or other appropriate testing specimen may be subject to disciplinary action up to and including discharge.
- d.

The reasonable cause testing program shall apply to all full-time, part-time, and temporary employees of the county including those employed in departments headed by elected officials. Elected officials are excluded from the policy but may elect to participate on a voluntary basis.

(3) *Random testing.*

- a. The random testing program shall apply to all employees of the county who are required to submit to random testing pursuant to any applicable state or federal law. Any employee subject to random testing will be notified at the time of hire or at the time his/her job becomes subject to such testing.
- b. Selection of employees for random testing shall be conducted through the use of random number generator or another neutral selection process.
- c. When an employee is selected for random testing, both the employee and the employee's supervisor shall be notified on the day the test is scheduled to occur. The supervisor shall explain to the employee that he/she is under no suspicion of taking drugs and that the employee's name was selected randomly pursuant to this policy.
- d. Any employee who refuses to provide a urine or other appropriate testing specimen will be subject to disciplinary action up to and including discharge.

(f) *Testing procedures.*

- (1) A designated collection site will be provided where employees and applicants will present themselves for testing. The site will possess all necessary personnel, materials, equipment, facilities, and supervision to provide for the collection, security, temporary storage, and transportation of urine or other required specimens to a drug testing laboratory.
- (2) Employees will be asked by their supervisor or other appropriate county official to report to a collection site. Employees who are believed to be under the influence of drugs will be transported to the collection site by the employee's supervisor or other appropriate county officials. Applicants will be instructed to report to the collection site at a specified time.
- (3) To ensure that the sample or specimen provided by an individual is properly identified and not accidentally confused with any other sample, strict procedures shall be used when collecting and transferring the sample. The total of these procedures is known as the chain-of-custody.
- (4) Individuals required to submit to a test under this policy may be given an opportunity prior to testing to complete a control form listing all drugs they have recently taken, including prescribed drugs, and to explain the circumstances of the use of those drugs.
- (5) Collection of samples or specimens shall allow individual privacy unless there is reason to believe that a particular individual may alter or substitute the specimen to be provided. Precautions shall be taken to ensure that a specimen has not been adulterated or diluted during the collection procedure and that all information on the specimen bottle and the chain-of-custody form can be identified as belonging to a given individual. Collection of urine specimens shall not be made under observation unless the county has reason to believe that a particular individual may alter or substitute the specimen.
- (6) All specimens collected by the county pursuant to this policy shall be tested in a laboratory certified by the United States Department of Health and Human Services Substance Abuse and Mental Health Services Administration.
- (7) All samples will first be subjected to an individual screening process to detect the presence of drugs. Those samples having a negative screen (no illegal or illicitly used substance) will be considered to have tested negative and no further testing will be done on those samples. Those samples that test positive on the first screen will be tested more extensively by means of gas chromatography/mass spectrometry (GC/MS) analysis to eliminate any false positive tests.

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- (8) The laboratory will ensure that the chain-of-custody procedures are adhered to from the time of receipt of urine samples until testing is completed and results are reported. Samples that test positive will be stored by the laboratory for a minimum of one year.
- (9) An individual who tests positive may request a second analysis of the original sample. That test will be conducted at the same laboratory used by the county at the individual's expense. The individual can also request a separate retest at another SAMSHA-certified laboratory. In such instances, the laboratory used by the county will send a portion of the original sample to a laboratory designated by the individual. The cost of the retest shall be paid for by the individual.
- (10) All individuals required to submit to a test under this policy will receive written notification of drug test results.

(g) *Rehabilitation.*

(1) *Eligibility.*

- a. All regular employees of the county shall be eligible to participate in a rehabilitation program.
- b. A list of organizations that provide alcohol and drug counseling, rehabilitation, or assistance is available in the personnel department.

(2) *Employee self-referral.*

- a. Any employee who feels that he/she has developed an addiction to, dependence upon, or problem with alcohol or drugs, legal or illegal, is encouraged to seek assistance and rehabilitation. Employees may contact the personnel manager for additional information or assistance regarding self-referrals.
- b. The Anderson-Oconee Alcohol and Drug Abuse Commission d/b/a/ Anderson-Oconee Behavioral Health Services offers rehabilitation and counseling services on a confidential basis to county employees at no charge. They do not contact the county if the employee makes the initial contact and requests confidentiality.

(3) *Employer referral.*

- a. Employees who are determined through testing procedures or medical evaluation to have developed an addiction to, dependence upon, or problem with alcohol or drugs may, at the sole discretion of the county, be offered an opportunity to participate in a rehabilitation program as an alternative to disciplinary action. If medical rehabilitation is approved and medical evaluation indicates that an employee cannot be relied upon to work his/her job safely, the employee will be required to take a leave of absence. In the alternative, the employee may be allowed to temporarily transfer to an available position which he/she is qualified to perform and can perform safely. The employee may return to his/her regular position when evidence of satisfactory rehabilitation is provided. In the event the employee's regular position has been filled, the employee will be reinstated to an available position for which he/she is qualified.
- b. Employees who refuse the offer of rehabilitation or who fail to provide the county with evidence of satisfactory rehabilitation will be subject to disciplinary action up to and including discharge.

(4) *General.*

- a. Contact with organizations offering alcohol and drug treatment programs will be made by the personnel manager and/or county physician.
- b. Rehabilitation is the responsibility of the employee. Any employee seeking rehabilitation for alcohol or drug addiction will be entitled to benefits outlined in the group medical insurance plan, if applicable. Compensation during this period of rehabilitation will be the same as it would for any other illness.

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- c. Upon successful completion of the rehabilitation program, the employee will be eligible to return to active status in accordance with the policy established for employees returning from a medical leave of absence. The employee will be required to participate in any post-treatment counseling programs as recommended by the treatment center. In addition, the employee must agree to a program of follow-up testing for a one-year period after completion of the rehabilitation program. Follow-up testing will consist of up to 12 unannounced drug screen tests during the one-year period.
- (h) *Confidentiality.* Employee requests for rehabilitation will be treated as confidential and only persons with a "need to know" (e.g., county administrator, personnel manager, department supervisor) will be made aware of such requests.

(Ord. No. 94-023, § 53, 10-4-94; Ord. No. 97-029, 11-18-97; Ord. No. 98-018, 10-20-98; Ord. No. 04-023, § 1 (Exh. A), 9-21-04)

Note— Formerly, § 55-52 pertained to the safety committee.

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JUN 26 2015
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Shirley C. Robinson, Administrative Law Judge

Case No. 2015-000797

Deonta Brinston,.....Respondent,

v.

South Carolina Department of Criminal Justice ,.....Appellant.

CERTIFICATE OF COUNSEL

I certify that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material, with the exception of ACSO General Orders 111 and 138. ACSO General Orders 111 and 138 were not able to be easily located by the undersigned, were not part of the record presented to the Law Enforcement Training Council, and were not part of the Record on Appeal before the Administrative Law Court.

I further certify that all redactions required by Rule 41.2, SCRCP have been performed to the extent possible while maintaining the information necessary for the Court's review of this case.

June 26, 2015



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THE STATE OF SOUTH CAROLINA
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APPEAL FROM THE ADMINISTRATIVE LAW COURT

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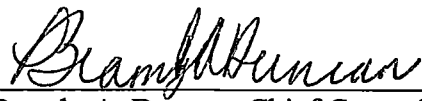
v.

South Carolina Department of Criminal Justice ,.....Appellant.

PROOF OF SERVICE

I certify that I have served the Record on Appeal on Deonta Brinston by depositing a copy of it in the United States Mail, postage prepaid, on June 26, 2015, addressed to his attorney of record, Candy M. Kern-Fuller, Esquire, Upstate Law Group, LLC, 200 East Main Street, Easley, South Carolina 29640-2073.

June 26, 2015


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South Carolina Criminal Justice Academy

RECEIVED

JUN 26 2015

SC Court of Appeals

June 26, 2015

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: Deonta Brinston, Respondent v. South Carolina Department of Criminal Justice, Appellant,
Case No. 2015-000797

Dear Ms. Kitchings:

Enclosed for filing in the above referenced case are:

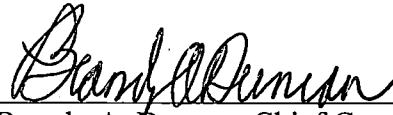
- 1) 15 bound copies of Final Brief of Appellant;
- 2) 1 unbound copy of Final Brief of Appellant;
- 3) 15 copies of Certificate of Counsel that Final Brief complies with Rule 211(B), SCACR, bound with Final Brief of Appellant;
- 4) 1 unbound copy of Certificate of Counsel that Final Brief complies with Rule 211(B), SCACR;
- 5) 15 copies of Proof of Service of the Final Brief of Appellant on the Respondent, bound with Final Brief of Appellant;
- 6) 1 unbound copy of Proof of Service of the Final Brief of Appellant on the Respondent;
- 7) 15 bound copies of Record on Appeal;
- 8) 1 unbound copy of Record on Appeal;
- 9) 15 bound copies of Certificate of Counsel for the Record on Appeal;
- 10) 1 unbound copy of Certificate of Counsel for the Record on Appeal;
- 11) 15 bound copies of Proof of Service of the Record on Appeal on the Respondent;
- 12) 1 unbound copy of Proof of Service of the Record on Appeal on the Respondent;

Although a reply brief is allowed by Rule 208, Appellant has elected to not file a reply brief.

Additionally, please be advised that the undersigned will no longer work at the Criminal Justice Academy after of July 1, 2015. Therefore, please change the attorney of record for Appellant on this case to James Fennell, SC Bar #72576, with the following contact information:

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June 26, 2015



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