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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge Shirley C. Robinson

Case No.: 12-ALJ-30-0014-AP

South Carolina Department of Corrections,.....Appellant,

v.

Johnnie L. Bryant,.....Respondent.

RECORD ON APPEAL

January 31, 2014

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SC ADMIN. LAW COURT

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

South Carolina Department of Corrections, Appellant, v. Johnnie L. Bryant, Respondent.	)	Docket No. 12-ALJ-30-0014-AP **ORDER**

GENERAL COUNSEL

STATEMENT OF THE CASE

This matter is an appeal by Appellant South Carolina Department of Corrections ("Department") from a Final Decision of the South Carolina State Employee Grievance Committee ("Committee") dated September 12, 2011. The Committee's decision was issued following an administrative hearing held on August 23, 2011. Upon careful review of the matter, the Committee's decision is affirmed.

BACKGROUND

Respondent Johnnie L. Bryant ("Respondent") was employed with the Department from October 11, 1999, until March 20, 2011, most recently as a Correctional Officer II. Respondent was notified by letter dated March 31, 2011, that his employment had been terminated effective March 30, 2011, for violation of Department Policy ADM-11.04, Employee Corrective Action: Item 250, Use of Unnecessary and/or Excessive Use of Force; Item 260, Making False Statements During the Course of an Official Investigation; and Item 180, Falsification of Official Documents.[1] The events that led to Respondent's termination occurred on August 17, 2008.

On August 17, 2008, an inmate assaulted Correctional Officer Kenneth Cobb while he was working at Ridgeland Correctional Institution ("RCI"). Respondent, along with Officer John Middleton, arrived in response to the incident. Respondent and Officer Middleton first attempted to gain control over the inmate through the use of chemical munitions. After a brief struggle with the

[1] Department Policy ADM-11.04, Employee Correction Action, indicates the recommended sanction for a first offense of Use of Unnecessary and/or Excessive Use of Force is a 1 to 10-day suspension up to termination. The recommended sanction for a first offense of Making False Statements During the Course of an Official Investigation is a written warning up to termination. The recommended sanction for a first offense of Falsification of Official Documents is also a written warning to up termination.

inmate, Respondent and Officer Middleton restrained and handcuffed the inmate. At some point after the inmate was handcuffed, he sustained an injury to his head requiring eight internal sutures and 37 external staples. The inmate was admitted to the hospital and remained hospitalized overnight. Three Correctional Officers – Respondent, Officer Middleton, and Sergeant Wiggins – all had contact with the inmate from the time he was restrained until he arrived in Medical for treatment of his injuries. Following the inmate's arrival at Medical, Respondent submitted an incident report regarding the events of August 17, 2008. This incident report covered the period of time from Respondent's arrival at RCI's Beaufort Wing – the location of the incident – until the inmate was placed in handcuffs.

On August 17, 2008, Department Investigators also began an investigation of the incident. After reviewing the original statements provided by Respondent and Officer Middleton, the Investigator requested that both officers complete another incident report. The same day, Respondent signed another incident report that provided an expanded explanation of the incident. On August 20, 2008, Respondent provided a voluntary statement to the Department's Division of Investigation where he expanded further on the statements he previously provided.

On August 25, 2008, Appellant was placed on administrative suspension without pay pending an investigation into the allegations that he used excessive force toward the inmate on August 17, 2008. Further, on September 24, 2008, warrants were issued for the arrests of Respondent and Officer Middleton for Assault and Battery with Intent to Kill and Misconduct in Office based on their alleged assault of the inmate. However on May 14, 2009, the 14th Circuit Solicitor's Office entered a *Nolle Prosse* of all criminal charges against Respondent.

On March 6, 2011, Respondent filed a civil lawsuit against the Department for wrongful discharge and gross negligence.[2] On March 21, 2011, the Department's Division of Investigations Director prepared an investigative memorandum summarizing the investigation into the circumstances surrounding the August 17, 2008 incident. According to the memorandum, the inmate provided a statement to the Department Investigators on August 20, 2008, and he stated that Officer

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[2] The lawsuit was dismissed on June 9, 2011; however, Respondent was granted the right to re-file after he had exhausted his administrative remedies through the State Grievance Procedure. Respondent filed another civil suit on January 30, 2012. At the request of the Department, this case was removed to Federal District Court on March 6, 2012. On May 28, 2012, the parties agreed to dismiss the Federal lawsuit without prejudice with the right to re-file pending the outcome of this appeal before the ALC.

Middleton "bulldogged his head into the side of the Unit." The memorandum also stated that several inmates were interviewed as part of the investigation and provided various accounts of the events surrounding the inmate's injury.

On March 23, 2011, the Department notified Respondent, via certified letter, that an Employee Corrective Action meeting was scheduled for 8:30 a.m. on March 30, 2011. Respondent and his attorney appeared at the meeting on March 30, 2011. However, per Department Policy, Respondent was not allowed to be represented by counsel at the Corrective Action meeting. Respondent and his attorney subsequently left without attending the meeting, and it was held in Respondent's absence. Following the meeting, the Warden of RCI recommended that Respondent be terminated based upon the investigation conducted by the Department's Division of Investigations. As of March 30, 2011, Respondent had been on administrative suspension without pay for 947 days.

On April 15, 2011, Respondent filed a grievance with the Department, and an investigative review hearing was held on May 12, 2011, at the Department's offices in Columbia, South Carolina. Respondent subsequently filed a grievance report with the Human Resources Division of the South Carolina Budget and Control Board on June 8, 2011. Mediation was held at the Human Resources Division's offices on August 16, 2011; however, the parties were unable to reach an agreement. Subsequently, a hearing on the merits of this matter was held on August 23, 2011, at the offices of the State Employee Grievance Committee of the South Carolina Budget and Control Board. The Committee issued its Final Decision on September 12, 2011, and it found that the Department had acted wrongfully in its termination of Respondent.

The Department filed an Amended Motion for Reconsideration, and the Committee Attorney denied this motion by a decision dated December 22, 2011.[3] The Department then filed this appeal with the ALC on January 17, 2012.

STANDARD OF REVIEW

The ALC's appellate review of final decisions in state employee grievance proceedings is governed by the standards provided in S.C. Code Ann. § 1-23-380. This statute provides that the ALC "may not substitute its judgment for the judgment of the agency as to the weight of the

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[3] The decision is dated December 12, 2012; however, this appears to be a scrivener's error.

evidence on questions of fact."[4] § 1-23-380(5). However, the ALC, pursuant to § 1-23-380(5),

> 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 [Board];
> (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.

Id.

A decision is supported by "substantial evidence" when the Record as a whole allows reasonable minds to reach the same conclusion reached by the agency. Bilton v. Best W. Royal Motor Lodge, 282 S.C. 634, 641, 321 S.E.2d 63, 68 (Ct. App. 1984). A decision will not be set aside simply because reasonable minds may differ on the judgment. Lark v. Bi-Lo, Inc., 276 S.C. 130, 136, 276 S.E.2d 304, 307. 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); Grant v. S.C. Coastal Council, 319 S.C. 348, 353, 461 S.E.2d 388, 391 (1995).

In applying the substantial evidence rule, the factual findings of the administrative agency are presumed to be correct. Rodney v. Michelin Tire Co., 320 S.C. 515, 519, 466 S.E.2d 357, 359 (1996) (citing Kearse v. State Health and Human Servs. Fin. Comm'n, 318 S.C. 198, 200, 456 S.E.2d 892, 893 (1995)). 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.

An abuse of discretion occurs when an administrative agency's ruling is based upon an error of law, such as application of the wrong legal principle; or, when based upon factual conclusions, the ruling is without evidentiary support; or, when the trial court is vested with discretion, but the ruling reveals no discretion was exercised; or, when the ruling does not fall within the range of permissible

[4] Pursuant to S.C. Code Ann. § 1-23-10(1), the Commission is considered an "agency."

decisions applicable in a particular case, such that it may be deemed arbitrary and capricious. State v. Allen, 370 S.C. 88, 94, 634 S.E.2d 653, 656 (2006) (application of standard to circuit court) (citing Fontaine v. Peitz, 291 S.C. 536, 539, 354 S.E.2d 565, 566 (1987); see also Converse Power Corp, 350 S.C. 39, 47 564 S.E.2d 341, 345 (Ct. App. 2002) (quoting Deese v. State Bd. of Dentistry, 286 S.C. 182, 184-85, 332 S.E.2d 539, 541 (Ct. App. 1985) ("A decision is arbitrary 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.").

ISSUES ON APPEAL

1. Did the Committee err by applying an incorrect standard of review and by declining to apply the correct standard in response to the Department's Motion for Reconsideration?

2. Did the Committee err in its finding that the Department did not provide sufficient evidence to support the charges that Respondent made false statements during the course of an official investigation and falsified official documents?

3. Did the Committee err by finding a causal connection between the filing of Respondent's civil lawsuit and the Department's decision to terminate Respondent's employment?

DISCUSSION

Standard of Review

The Department argues that, in overturning its decision to terminate Respondent's employment, the Committee applied an incorrect standard of review and afforded the agency less deference than mandated by statute. The Department asserts that the appropriate standard of review for this matter is provided under S.C. Code Ann. § 8-17-340(E)(1). Additionally, the Department further argues that the Committee erred by finding the Department's objection to the standard of review was not timely made. As noted by the Committee Attorney in his decision on the Department's Motion for Reconsideration, State employee grievance appeals are "contested cases" under the Administrative Procedures Act ("APA"). When the APA or applicable regulations do not address a specific issue before the Committee, the Committee looks to the ALC Rules of Procedure for guidance. See 2009 Revised Notes to ALC Rule 1 (providing that the ALC Rules "are applicable

to all matters within the jurisdiction of the court," including "contested cases under the [APA]"). ALC Rule 29 provides that "[a]ll objections to procedure, admission of evidence, or any other matter shall be timely made and stated on the record." ALC Rule 29(A)(6). This requirement is also applicable to the instructions given to the Committee by the Committee Attorney.

To be preserved for appellate review, an issue must have been raised to and ruled upon by the trial judge. Wilder Corp. v. Klaus Wilke, et al., 330 S.C. 71, 497 S.E.2d 731 (1998). A contemporaneous objection is required to preserve issues for direct appellate review. State v. Patterson, 324 S.C. 5, 482 S.E.2d 760 (1997). A party cannot use a motion for reconsideration to present to the court an issue the party could have raised prior to the final decision but did not. Patterson v. Reid, 318 S.C. 183, 185, 456 S.E.2d 436, 437 (Ct. App. 1995).

The Department and Respondent were asked at the hearing if there were "any additional instructions requested or objections to the ones [that were] given" after the Committee's attorney had instructed the Committee to decide this appeal pursuant to the standard of review contained in § 8-17-340(E)(2). Neither the Department nor Respondent objected to the instruction concerning the standard of review. The Department did not object until approximately three weeks after receiving the Committee's Final Decision. Because the Department did not contemporaneously object to the use of § 8-17-340(E)(2) as the governing standard of review in this matter, the instruction become the law of the case and cannot be altered through a motion for reconsideration. See Carolina Chloride, Inc. v. Richland County, 394 S.C. 154, 172, 714 S.E.2d 869, 878 (2011) (noting "an unchallenged ruling, right or wrong, becomes the law of the case").

Although the Department argues that the Committee Attorney "had ample opportunity to apply the correct standard of review in its original decision," the Department was required to timely object to the instruction. It did not. The Department cannot attempt to challenge the issue on appeal when it was required to object at the time the parties were asked if they had any objection to the standard of review to be used by the Committee.[5] Accordingly, the Committee did not err in

[5] Moreover, even if the ALC Rules were not applicable to this matter, applying the South Carolina Rules of Civil Procedure would compel the same result. See ALC Rule 68 (providing that the South Carolina Rules of Civil Procedure "may, in the discretion of the presiding administrative law judge, be applied in proceedings before the Court to resolve questions not addressed" by the ALC Rules). While jury instructions are not specifically used in matters before the Committee, the rules pertaining to jury instructions are sufficiently analogous as to be applied in the instant case. See Rule 51, SCRCP (declaring that "[n]o party may assign as error the giving or the failure to give an instruction unless he objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which he objects and the grounds for his objection."); see also Hope Ferry Motors of Columbia, Inc. v. Hyatt, 310 S.C. 171, 175 n.3, 425 S.E.2d

determining this matter pursuant to the standard of review provided under § 8-17-340(E)(2).

Substantial Evidence

The Department next argues that, contrary to the Committee's ruling, the Department introduced sufficient evidence to support the charges that Respondent made false statements during the course of an official investigation and falsified official documents.[6] The Court disagrees. The Committee was presented with three statements made by Respondent. Each subsequent report by Respondent contained more detailed information than the statement previously provided. While the statements vary in detail, there is nothing inconsistent or contradictory contained within any of those three statements. The Committee found the testimony of the Department's Investigator to be credible, and neither he nor any other Department witness could produce any evidence to suggest that Respondent was responsible for the injuries sustained by the inmate on August 17, 2008. In fact, the inmate provided a statement during the investigation and stated that Officer Middleton – and not Respondent – "bulldogged his head into the side of the unit." Finally, the Committee noted that the Solicitor's Office had dropped the charges against Respondent while Officer Middleton's charges were still pending as of the date of the Committee's hearing.

Accordingly, there is substantial evidence in the Record to support the Committee's decision that the Department failed to provide any evidence that Respondent made false statements or misled the Department in its investigation of the August 27, 2008 incident. Based on the testimony and the evidence presented during the hearing, reasonable minds could reach the conclusion the Committee reached in this matter. The Committee observed the witnesses and is in the best position to judge their demeanor and veracity and to evaluate the credibility of each witness' testimony. See Woodall v. Woodall, 322 S.C. 7, 10, 471 S.E.2d 154, 157 (1996); Brown v. Allstate Insurance Company, 337 S.C. 499, 23 S.E.2d 807 (Ct. App. 1999) (quoting Cherry v. Thompson, 276 S.C. 524, 280 S.E.2d 541 (1981) and Morehead v. Doe, 324 S.C. 559, 479 S.E.2d 817 (Ct. App. 1996).

786, 789 n.3 (Ct. App. 1992) (recognizing that failure to timely object to jury charge renders such charge "the law of the case").

[6] The Department also determined that Respondent violated its Employee Corrective Action policy for the offense of "Use of Unnecessary and/or Excessive Use of Force," and the Committee found insufficient evidence to support the Department's decision. Notably, the Department does not challenge the Committee's determination regarding this specific charge.

Civil Lawsuit

The Department next argues that the Committee erred in its implication that Respondent's termination by the Department was due, at least in part, to a civil lawsuit filed by the Respondent. As noted above, the findings of the Committee may be reversed if they are clearly erroneous in view of the substantial evidence on the whole record. § 1-23-380(5)(e). Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. See S.C. Dep't of Mental Health v. Moore, 295 S.C. 42, 45, 367 S.E.2d 27, 28 (1988).

Respondent presented evidence that, after being suspended without pay for over 900 days, the Department instituted termination procedures less than two weeks after Respondent filed a civil lawsuit. More specifically, Respondent filed the civil lawsuit against the Department on March 6, 2011, and the Department made its decision to terminate Respondent effective March 30, 2011. The Department had represented to Respondent that he would be kept on unpaid suspension pending a decision by the Solicitor's Office on the criminal charges against Officer Middleton. As of the date of the Committee hearing, Officer Middleton's criminal charges were still pending, and the Department was unable to explain why it did not wait for the charges against Officer Middleton to be resolved. Moreover, no Department witness could provide the Committee with any evidence, circumstantial or direct, to refute the inference that the Respondent's firing was motivated by the filing of his civil lawsuit against the Department.

Most notably, the Record reflects that Respondent was first charged with the violations underlying his eventual termination on March 23, 2011 – the same day the Department represented that it was served with Respondent's lawsuit. In the decision, the Committee noted that "additional circumstances" factored into the decision regarding the timing of Respondent's lawsuit and his eventual termination by the Department. There is nothing contained within the Record that suggest the Committee abused its discretion or erred in its determination regarding the timing of the lawsuit and Respondent's termination. Accordingly, in reviewing the Record the Committee's Decision is supported by the substantial evidence on the whole Record.

ORDER

IT IS HEREBY ORDERED that the State Employee Grievance Committee's Final Decision to reverse Respondent's termination with the Department is **AFFIRMED**.

AND IT IS SO ORDERED.

SHIRLEY C. ROBINSON
Administrative Law Judge

August 28th, 2013
Columbia, South Carolina

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

This 28 day of August 2013

By: _____
Judicial Law Clerk

009

THE STATE OF SOUTH CAROLINA

ADMINISTRATIVE LAW COURT

The Honorable Shirley C. Robinson

Case No. 2012-ALJ-30-0014-AP

South Carolina Department of Corrections.....Appellant,

v.

Johnnie L Bryant,.....Respondent.

REDACTED RECORD ON APPEAL

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Attorney for Respondent

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ALJ Form #102a
February 2006

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Johnnie L. Bryant, Appellant, vs. South Carolina Department of Corrections, Respondent.	**NOTICE OF ASSIGNMENT** **(Appeal)** DOCKET NO. 12-ALJ-30-0014-AP

NOTICE IS GIVEN that a notice of appeal seeking review of agency action was filed on January 17, 2012. In accordance with S.C. Code Ann. § 1-23-570 (Supp. 2010), 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 twentieth day of January, 2012.

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

RECEIVED
JAN 24 2012
HUMAN RESOURCES DIVISION

FILED
JAN 20 2012
0004
SC ADMIN LAW COURT

RECEIVED
JAN 27 2012
GENERAL COUNSEL

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

South Carolina Department of Corrections, Appellant, vs. Johnnie L. Bryant, Respondent.	**AMENDED** **NOTICE OF ASSIGNMENT** **(Appeal)** DOCKET NO. 12-ALJ-30-0014-AP

NOTICE IS GIVEN that a request for appeal was filed on January 17, 2012. Due to a clerical error, the caption incorrectly listed South Carolina Department of Corrections as the Respondent. Therefore, this Notice of Assignment is amended to reflect that Johnnie L. Bryant is the Respondent. The Administrative Law Judge may be contacted by mail at 1205 Pendleton Street, 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**.

A copy of any document or any other item filed with the Court shall be sent to all other parties at the time of filing. If a mailing address changes, or if an address is incorrect, the Court must be notified immediately of the correct address.

This the 25th day of January, 2012.

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
JAN 25 2012
SC ADMIN. LAW COURT

NIKKI R. HALEY, CHAIR
GOVERNOR

CURTIS M. LOFTIS, JR.
STATE TREASURER

RICHARD ECKSTROM, CPA
COMPTROLLER GENERAL

SC BUDGET AND CONTROL BOARD

HUGH K. LEATHERMAN, SR.
CHAIRMAN, SENATE FINANCE
COMMITTEE

W. BRIAN WHITE
CHAIRMAN, HOUSE WAYS AND MEANS
COMMITTEE

MARCIA S. ADAMS
EXECUTIVE DIRECTOR

Human Resources Division
Samuel L. Wilkins
DIRECTOR

803-896-5300
FAX 803-896-5050

June 27, 2012

The Honorable William R. Byars, Jr., Director
S.C. Department of Corrections
4444 Broad River Road
Columbia, South Carolina 29210

Dear Judge Byars:

The Budget and Control Board approved the South Carolina Department of Corrections' request to appeal to the Administrative Law Court, the decision of the State Employee Grievance Committee in the Johnnie L. Bryant appeal. The Budget and Control Board granted this approval at its meeting on June 27, 2012.

Please call if you have questions.

Sincerely,

Samuel L. Wilkins

Samuel L. Wilkins
Director

c: Mr. Christopher Florian
Mr. Marshall L. Horton

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

South Carolina Department of Corrections, Appellant, vs. Johnnie L. Bryant, Respondent.	)	**MOTION TO LIFT THE STAY** DOCKET NO. 12-ALJ-30-0014-AP

To: Honorable Shirley A. Robinson, Administrative Law Judge.

The Human Resources Division ("HRD"), formerly the Office of Human Resources, moves to lift the stay in the above-captioned matter. In support thereof, HRD states as follows:

1. South Carolina Code of Laws Section 8-17-340(F) reads in relevant part:

> Only after an agency submits a written request to the Office of Human Resources seeking approval of the board may the agency file a notice of appeal seeking appellate review of the Administrative Law Court. However, the agency may perfect the appeal only upon approval of the board. See also, Reg. 19-718.09(C).

2. On January 12, 2012, HRD received a written request from the South Carolina Department of Corrections ("SCDC") seeking approval by the South Carolina Budget and Control Board ("Board") to appeal the decision of the State Employee Grievance Committee to the Administrative Law Court.

3. Subsequently, SCDC filed the Notice of Appeal in this matter on January 17, 2012.

4. The Amended Notice of Assignment was filed on January 25, 2012, making the Record on Appeal due by March 12, 2012.

5. On February 23, 2012, Your Honor granted HRD's request to hold in abeyance the time in which to file the Record on Appeal until after the Board rendered a decision.

FILED
JUN 27 2012
SC ADMIN. LAW COURT

6. The Board approved SCDC's request to appeal the above-referenced matter to the Administrative Law Court. The Board granted this approval at its meeting today, June 27, 2012.

WHEREFORE, HRD requests the stay be lifted. HRD further requests that it be granted 20 days from today's date, or by July 17, 2012, in which to file the Record on Appeal.

Respectfully submitted,

Molly R. Crum
Assistant General Counsel
South Carolina Budget and Control Board
Post Office Box 11608
Columbia, SC 29211
(803) 737-1116

Columbia, SC
June 27, 2012.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

South Carolina Department of Corrections, Appellant, vs. Johnnie L. Bryant, Respondent.	)	**CERTIFICATE OF SERVICE** DOCKET NO. 12-ALJ-30-0014-AP

I, Renee Larsen, an employee of the South Carolina Budget and Control Board, Office of General Counsel, do hereby certify that I have this day served a copy of the attached Motion to Lift the Stay on the parties by causing same to be deposited in the United States mail, postage pre-paid, and addressed as follows:

Christopher Florian, Esq.
Office of General Counsel
SC Department of Corrections
P.O. Box 21787
Columbia, SC 29221-1787
Counsel for Appellant

Marshall Horton, Esq.
Horton Law Firm, LLC
P.O. Box 3766
Bluffton, SC 29910
Counsel for Respondent

Renee Larsen

Columbia, South Carolina
June 27, 2012.

FILED
JUN 27 2012
SC ADMIN. LAW COURT

Keever, Heather

From: Teckla Henderson [mailto:thenderson@scalc.net]
Sent: Tuesday, May 15, 2012 1:31 PM
To: Chris Florian; mlh@hortonlawfirmllc.com; Crum, Molly
Subject: SCDC v. Johnnie L. Bryant 12A0014 SCBCB Request Granted

Dear Attorneys:

The Court has reviewed the SCBCB's request filed May 11, 2012 and applicable law. Judge Robinson has GRANTED the Request and will continue to hold the above-referenced appeal in abeyance until this matter can be presented to the Budget and Control Board and the Board has had the opportunity to render a decision.

If there are any further 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

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NIKKI R. HALEY, CHAIR
GOVERNOR

CURTIS M. LOFTIS, JR.
STATE TREASURER

RICHARD ECKSTROM, CPA
COMPTROLLER GENERAL

SC BUDGET AND CONTROL BOARD

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POST OFFICE BOX 11608
COLUMBIA, SOUTH CAROLINA 29211
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HUGH K. LEATHERMAN, SR.
CHAIRMAN, SENATE FINANCE COMMITTEE

W. BRIAN WHITE
CHAIRMAN, HOUSE WAYS AND MEANS COMMITTEE

MARCIA S. ADAMS
EXECUTIVE DIRECTOR

May 11, 2012

The Honorable Shirley C. Robinson
Administrative Law Judge
Edgar A. Brown Building
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201
[Hand-delivered]

RE: ***South Carolina Department of Corrections v. Johnnie L. Bryant***
12-ALJ-30-0014-AP

Dear Judge Robinson:

Please accept this letter in lieu of a formal motion. On February 23, 2012, Your Honor granted my request to hold in abeyance the time for filing the Record on Appeal in the above-referenced matter until after the South Carolina Budget and Control Board ("Board") heard the matter and rendered a decision. Since the matter was not presented at the Board's meeting on May 9, 2012, the Office of Human Resources respectfully requests the time in which to file a Record on Appeal continue to be held in abeyance until after the Board hears the matter and renders a decision. The next Board meeting is June 19, 2012.

By copy of this letter, we are notifying Appellant's and Respondent's counsels of our request. Feel free to contact me at (803) 737-1116 if you have any questions or if I can be of assistance.

Sincerely,

Molly R. Crum
Assistant General Counsel

cc: Christopher Florian, Esq.
Marshall Horton, Esq.

FILED
MAY 11 2012
SC ADMIN. LAW COURT

Facsimile (803) 734-1175

RECEIVED
MAR 07 2012
HUMAN RESOURCES DIVISION

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

South Carolina Department of Corrections, Appellant, vs. Johnnie L. Bryant, Respondent.	)	**MOTION TO HOLD IN ABEYANCE** DOCKET NO. 12-ALJ-30-0014-AP

To: Honorable Shirley A. Robinson, Administrative Law Judge.

Pursuant to the Rules of Procedure for the Administrative Court, the South Carolina Office of Human Resources ("OHR") respectfully moves to be held in abeyance the time in which to file a Record on Appeal in the captioned matter. In support thereof, OHR states as follows:

1. The Amended Notice of Assignment was filed on January 25, 2012, making the Record on Appeal due by March 12, 2012.

2. On January 12, 2012, OHR received a written request from the South Carolina Department of Corrections ("SCDC") seeking approval by the South Carolina Budget and Control Board ("Board") to appeal to the Administrative Law Court.

3. Subsequently, SCDC filed the Notice of Appeal in this matter on January 17, 2012.

4. South Carolina Code of Laws Section 8-17-340(F) reads in relevant part:

> Only after an agency submits a written request to the Office of Human Resources seeking approval of the board may the agency file a notice of appeal seeking appellate review in the Administrative Law Court. However, the agency may perfect the appeal only upon approval of the board. See also, Reg. 19-718.09(C).

It is the intention that this matter be presented to Board at its meeting scheduled for May 9, 2012.

MOTION GRANTED
2/13/12
Shirley C. Robinson — Date
SC Administrative Law Judge

FILED
FEB 22 2012
0012

6. Since Board approval is necessary in order for SCDC to perfect its appeal, OHR, by its undersigned counsel, respectfully requests the time in which to file a Record on Appeal be held in abeyance until after the Board hears the matter and renders a decision.

WHEREFORE, the South Carolina Office of Human Resources respectfully requests the time to file the Record on Appeal be held in abeyance until May 9, 2012, or until the date upon which the Board renders a decision, whichever is later.

Molly R. Crum
Assistant General Counsel
South Carolina Budget and Control Board
Post Office Box 11608
Columbia, SC 29211
(803) 737-1116

Columbia, SC
February 22, 2012.

CERTIFICATE OF SERVICE
This is to certify that the undersigned has this date served this or/der in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the interagency Mail Service addressed to the party(ies) or their attorney(s).
This 23 day of February 2012
By: Rebekah J. Henderson
Judicial Law Clerk

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

South Carolina Department of Corrections, Appellant, vs. Johnnie L. Bryant, Respondent.	)	**CERTIFICATE OF SERVICE** DOCKET NO. 12-ALJ-30-0014-AP

I, Renee Larsen, an employee of the South Carolina Budget and Control Board, Office of General Counsel, do hereby certify that I have this day served a copy of the attached Motion to Hold in Abeyance on the parties by causing same to be deposited in the United States mail, postage pre-paid, and addressed as follows:

Christopher Florian, Esq.
Deputy General Counsel
SC Department of Corrections
P.O. Box 21787
Columbia, SC 29221-1787
Counsel for Appellant

Marshall Horton, Esq.
Horton Law Firm, LLC
P.O. Box 3766
Bluffton, SC 29910
Counsel for Respondent

Renee Larsen

Columbia, South Carolina
February 22, 2012.

FILED
FEB 22 2012
SC ADMIN. LAW COURT

STATE OF SOUTH CAROLINA
IN THE ADMINISTRATIVE LAW COURT

Johnnie L. Bryant, Respondent, v. South Carolina Department of Corrections, Appellant.	)	**NOTICE OF APPEAL**

The Department of Corrections (SCDC) hereby appeals the decision of the State Employee Grievance Committee (Committee) in the above referenced matter. SCDC's motion for reconsideration was denied in this case by way of the Committee's decision issued on December 22, 2012 and received December 28, 2012. See Decision on Motion for Reconsideration, attached as Exhibit 1; Final Decision, attached as Exhibit 2. This appeal is taken on the following grounds:

1. The Committee applied an incorrect standard of review in this case because the matter involved the actual abuse of an inmate.
2. In denying SCDC's petition for rehearing, the Committee Attorney erred by ruling the incorrect instructions verbally given to the Committee were the law of the case.
3. The Committee erred in finding SCDC lacked sufficient evidence to support the corrective action taken based upon the charges of making false statements during the course of an official investigation and falsification of official documents.
4. The Committee erred in implying a causal connection between Mr.

Bryant's lawsuit and SCDC's decision to take corrective action.

SCDC has requested a copy of the recording of the hearing of the above referenced matter from the Committee in order to obtain a transcript. A copy of the request is attached. See Letter to Human Resources Division, attached as Exhibit 3.

Respectfully Submitted,

Christopher Florian
Deputy General Counsel
S.C. Department of Corrections
4444 Broad River Road
P.O. Box 21787
Columbia, SC 29221-1787
(803) 896-8508
florian.chris@doc.sc.gov

Respondent's Counsel of Record:
Mr. Marshall L. Horton
Horton Law Firm, L.L.C
Post Office Box 3766
Bluffton, South Carolina 29910
(843) 757-6190
mlh@hortonlawfirmllc.com

January 17, 2012

NIKKI R. HALEY, CHAIR
GOVERNOR

CURTIS M. LOFTIS, JR.
STATE TREASURER

RICHARD ECKSTROM, CPA
COMPTROLLER GENERAL

B*CB

SC BUDGET AND CONTROL BOARD

Human Resources Division
Samuel L. Wilkins
DIRECTOR

(803) 896-5300
FAX (803) 896-5050

Exhibit 11

W. BRIAN WHITE
CHAIRMAN, HOUSE WAYS AND MEANS COMMITTEE

MARCIA S. ADAMS
EXECUTIVE DIRECTOR

RECEIVED
DEC 2 9 2011
GENERAL COUNSEL

December 22, 2011

CERTIFIED MAIL

Mr. Marshall L. Horton
Horton Law Firm, L.L.C.
Post Office Box 3766
Bluffton, South Carolina 29910

Mr. Christopher Florian
Deputy General Counsel
S.C. Department of Corrections
4444 Broad River Road
Columbia, South Carolina 29210

Dear Mr. Horton and Ms. Florian:

In accordance with the State Employee Grievance Procedure Act, you are hereby advised of the reconsideration decision on the appeal of Johnnie L. Bryant v. the South Carolina Department of Corrections to the State Employee Grievance Committee. The Committee's decision is enclosed for your file.

Please advise us if you have any questions.

Sincerely,

Samuel L. Wilkins

Samuel L. Wilkins
Director

Enclosure

c: Mr. William R. Byars, Jr.

STATE EMPLOYEE GRIEVANCE COMMITTEE

DECISION ON MOTION FOR RECONSIDERATION

APPELLANT'S NAME: Johnnie L. Bryant
JOB CLASSIFICATION: Correctional Officer II
AGENCY: S.C. Department of Corrections
DATE OF HEARING: August 23, 2011 & November 18, 2011
NATURE OF CASE: Termination

Pursuant to a timely request made by the South Carolina Department of Corrections ("SCDC"), the State Employee Grievance Committee ("Committee") reconvened at 9:00 a.m. on November 18, 2011, to reconsider its Final Decision ("Order") issued in this appeal on September 12, 2011, in the case of Johnnie L. Bryant v. SCDC.

ANALYSIS

SCDC submitted an Amended Motion for Reconsideration ("Motion") asserting three grounds upon which it contends the Committee should reconsider its Order. These grounds are addressed as follows:

I. STANDARD OF REVIEW APPLIED BY THE COMMITTEE

SCDC contends that the Committee "afforded [it] less deference than mandated by statute," because S.C. CODE ANN. § 8-17-340(E)(1) provided the proper mechanism by which the Committee should have evaluated SCDC's termination of Appellant.[1] Insofar as the first ground concerns the propriety of a legal standard the Committee Attorney instructed the Committee to apply, the undersigned disposes of this issue without the Committee's input. S.C. CODE ANN. § 8-17-340(C) (directing the Committee Attorney to "rule on all . . . legal issues").

State employee grievance appeals are "contested cases" under the South Carolina Administrative Procedures Act ("APA"), which governs proceedings before the Committee. S.C. CODE ANN. § 8-17-330; 2006 S.C. Act No. 387, § 53 (recognizing legislative intent in amending S.C. CODE ANN. § 8-17-340 to "provide a uniform procedure for contested cases and appeals from administrative agencies"). The APA and applicable regulations[2] do not address the instructions given to the Committee on the

[1] "[G]reater deference" is given to an agency's decision under S.C. CODE ANN. § 8-17-340(E)(1) for cases "involving actual or threatened abuse, neglect, or exploitation" of a "patient, client, or inmate by an employee."

[2] 23A S.C. CODE ANN. REGS. 19-718, *et seq.*

record before deliberations begin. Consequently, the Administrative Law Court Rules of Procedure ("SCALCR") are looked to for guidance. 2009 Revised Notes to Rule 1, SCALCR (providing that the SCALCR "are applicable to all matters within the jurisdiction of the Court," including "contested cases under the [APA]").

Rule 29 of the SCALCR provides that "[a]ll objections to procedure, admission of evidence or any other matter shall be timely made and stated on the record." SCALCR 29(A)(6). The parties were asked at the hearing if there were "any additional instructions requested or objections to the ones [that were] given" after the undersigned had instructed the Committee to decide this appeal pursuant to S.C. CODE ANN. § 8-17-340(E)(2). SCDC made no objection to the aforementioned instruction at that time. It was not until six weeks after the hearing (and over three weeks after the Order was issued) that SCDC raised such an objection by claiming in its Amended Motion that an erroneous instruction had been given.[3]

It follows that Rule 29's requiring objections to be "timely made" and "stated on the record" applies to an objection to any of the instructions given to the Committee. In the absence of such a contemporaneous objection, the instruction as given becomes the law of the case and cannot be altered through a motion for reconsideration. *See* Patterson v. Reid, 318 S.C. 183, 185, 456 S.E.2d 436, 437 (Ct. App. 1995) (observing that "[a] party cannot for the first time raise an issue by way of a [motion for reconsideration] which could have been raised at trial"); Hope Petty Motors of Columbia, Inc. v. Hyatt, 310 S.C. 171, 175 n.3, 425 S.E.2d 786, 789 n.3 (Ct. App. 1992) (recognizing that failure to timely object to jury charge renders such charge "the law of the case").

Even if the SCALCR were not dispositive on this issue, applying the South Carolina Rules of Civil Procedure would compel the same result. *See* Rule 68, SCALCR (providing that the SCRCP "may, in the discretion of the presiding administrative law judge, be applied in proceedings before the Court to resolve questions not addressed by [the SCALCR]"); Rule 51, SCRCP (declaring that "[n]o party may assign as error the giving or the failure to give an instruction unless he objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which he objects and the grounds for his objection").

Accordingly, SCDC's Motion is DENIED as to the standard of review that the Committee applied in this matter.[4]

Warren V. Ganjehsani
Committee Attorney

[3] The State Division of Human Resources received SCDC's Amended Motion for Reconsideration (dated October 6, 2011) on October 7, 2011.

[4] In light of this issue's disposition, a decision need not be reached on the merits of whether the Committee would have been instructed to apply S.C. CODE ANN. § 8-17-340(E)(1) if SCDC had made a timely request in this regard.

The Committee addresses below the remaining grounds upon which SCDC's Motion is based:

II. SUFFICIENCY OF EVIDENCE AGAINST APPELLANT

The Committee found that Appellant established that his termination by SCDC prejudiced his substantial rights and was both "clearly erroneous" and "arbitrary or capricious" as set forth in S.C. CODE ANN. § 8-17-340(E)(2)(e) and (f). SCDC argues that "ample evidence support[s] the charges" of Appellant making "false statements during the course of an investigation and falsif[ying] official documents."

After further deliberation, the Committee does not consider its findings in this regard to be unsupported by the evidence or controlled by an error of law. Accordingly, the Committee DENIES the Motion by SCDC on this issue.

III. APPELLANT'S TERMINATION AND CIVIL ACTION AGAINST SCDC

The Committee noted in the Order that it was "troubled by the circumstances surrounding Appellant's suspension and eventual termination," including Appellant's termination occurring roughly 3 ½ weeks after Appellant filed a lawsuit against SCDC on March 6, 2011. SCDC argues that the Committee "erred in implying a causal connection between [A]ppellant's lawsuit and the corrective action" taken against him.

SCDC argues that the record does not reflect its awareness of the lawsuit prior to March 23, 2011 – the date on which it contends it was served with the action. SCDC avers that this is significant because internal "communications about the corrective action had occurred" prior to that time and the "process was underway" to terminate Appellant.

The Committee finds SCDC's argument on this matter unpersuasive. It is undisputed that the effective date of Appellant's termination – March 30, 2011 – was one week after SCDC claims it was served with the lawsuit. Although the record contains a March 21, 2011 investigative memorandum presumably generated prior to the date on which SCDC alleges it received the lawsuit, the record also reflects March 23, 2011 as the date that Appellant was first charged with the violations underlying his eventual termination – the *same day* SCDC represented that it was served with Appellant's lawsuit. (R., at pp. 25-27; 53-55.) Consequently, the Committee does not find that it has misapprehended the timeline of relevant events.

Moreover, the Committee noted additional circumstances that factored into its decision other than the lawsuit's timing. Therefore, SCDC's suggestion that the Committee placed undue emphasis on this issue is contrary to the totality of the findings contained in the Order.

Accordingly, the Committee DENIES the Motion by SCDC on this issue.

DECISION

Based on the foregoing reasons, the Committee denies SCDC's Motion and affirms the prior Order reversing Appellant's termination in its entirety.

For the Committee: Lesia Kubelka/ Date: 12/22/12

NIKKI R. HALEY, CHAIR
GOVERNOR

CURTIS M. LOFTIS, JR.
STATE TREASURER

RICHARD ECKSTROM, CPA
COMPTROLLER GENERAL

B*CB

SC BUDGET AND CONTROL BOARD

Human Resources Division
Samuel L. Wilkins
DIRECTOR

803-896-5300
FAX 803-896-5050

Exhibit 2

HUGH K. LEATHERMAN, JR.
CHAIRMAN, SENATE FINANCE
COMMITTEE

W. BRIAN WHITE
CHAIRMAN, HOUSE WAYS AND MEANS
COMMITTEE

MARCIA S. ADAMS
EXECUTIVE DIRECTOR

September 12, 2011

CERTIFIED MAIL

Mr. Marshall L. Horton
Horton Law Firm, L.L.C.
Post Office Box 3766
Bluffton, South Carolina 29910

Dear Mr. Horton:

In accordance with the State Employee Grievance Procedure Act, you are hereby advised of the final decision on the appeal of Johnnie L. Bryant against the South Carolina Department of Corrections to the State Employee Grievance Committee. Pursuant to the Act, within twenty calendar days of the conclusion of the hearing, the State Employee Grievance Committee shall render its decision on the appeal. The Committee's decision is enclosed for your file.

Please advise us if you have any questions.

Sincerely,

Samuel L. Wilkins

Samuel L. Wilkins
Director

Enclosure

c: Mr. William R. Byars, Jr.
Mr. Christopher Florian

NIKKI R. HALEY, CHAIR
GOVERNOR

CURTIS M. LOFTIS, JR.
STATE TREASURER

RICHARD ECKSTROM, CPA
COMPTROLLER GENERAL

B&CB

SC BUDGET AND CONTROL BOARD

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HUGH K. LEATHERMAN, SR.
CHAIRMAN, SENATE FINANCE
COMMITTEE

W. BRIAN WHITE
CHAIRMAN, HOUSE WAYS AND MEANS
COMMITTEE

MARCIA S. ADAMS
EXECUTIVE DIRECTOR

RECEIVED
SEP 14 2011
GENERAL COUNSEL

September 12, 2011

CERTIFIED MAIL

Mr. William R. Byars, Jr., Director
S.C. Department of Corrections
4444 Broad River Road
Columbia, South Carolina 29210

Dear Mr. Byars:

In accordance with the State Employee Grievance Procedure Act, you are hereby advised of the final decision on the appeal of Johnnie L. Bryant v. South Carolina Department of Corrections to the State Employee Grievance Committee. Pursuant to the Act, within twenty calendar days of the conclusion of the hearing, the State Employee Grievance Committee shall render its decision on the appeal. A copy of our letter to Mr. Marshall L. Horton, the attorney representing Mr. Bryant, and the Committee's decision are enclosed for your file.

Please advise us if you have any questions.

Sincerely,

Samuel L. Wilkins

Samuel L. Wilkins
Director

Enclosures

c: Mr. Christopher Florian

State Employee Grievance Committee

Final Decision

APPELLANT'S NAME:	Johnnie L. Bryant
JOB CLASSIFICATION:	Correctional Officer II (Sergeant)
AGENCY:	S. C. Department Corrections
DATE OF HEARING:	August 23, 2011
NATURE OF CASE:	Termination

Based on documentary evidence and testimony presented at the hearing of Johnnie L. Bryant v. S.C. Department of Corrections (SCDC) held in Columbia, South Carolina, on August 23, 2011, the State Employee Grievance Committee (Committee) finds:

FINDINGS OF FACT

1. Mr. Johnnie L. Bryant (Appellant) was employed with SCDC from October 11, 1999, until March 30, 2011, most recently as a Correctional Officer II (Sergeant). (Committee Exhibit #1, pp. 41 and 62.)

2. Appellant was notified by letter dated March 31, 2011, that his employment had been terminated effective March 30, 2011, for violation of SCDC Policy ADM-11.04, Employee Corrective Action: Item 250, Use of Unnecessary and/or Excessive Use of Force; Item 260, Making False Statements During the Course of an Official Investigation; and Item 180, Falsification of Official Documents. (Committee Exhibit #1, p. 62.)

3. On August 17, 2008, Appellant was working at Ridgeland Correctional Institution (RCI) when a call came in for a first responder to "Beaufort Wing" (B Wing). According to Appellant, when he arrived at the scene he found Correctional Officer Kenneth Cobb (Officer Cobb) bleeding from the back of the head. Appellant instructed Officer Cobb to report to the appropriate area at RCI for treatment (Medical). Appellant also saw Inmate Thomas Doughty (Inmate Doughty) swinging a string tied to a padlock, which he had used to strike Officer Cobb. Appellant instructed Inmate Doughty to drop the padlock several times, but he refused and continued to move toward Appellant. Appellant administered a shot of chemical munition known as "Top Cop" to Inmate Doughty, but Inmate Doughty continued to move toward Appellant. Correctional Officer John Middleton (Officer Middleton) administered a second shot of "Top Cop" to Inmate Doughty, who continued to approach the officers. After a brief struggle with Inmate Doughty, Appellant and Officer Middleton restrained and handcuffed him.

4. At some point after Inmate Doughty was handcuffed, he sustained an injury to his head requiring eight internal sutures and 37 external staples. Inmate Doughty was admitted to the hospital and remained hospitalized overnight.

5. Three Correctional Officers - Appellant, Officer Middleton, and Sergeant John Wiggins (Sergeant Wiggins) - all had contact with Inmate Doughty from the time he was restrained until he arrived in Medical for treatment of his injuries.

6. Following Inmate Doughty's arrival at Medical, Appellant hand-wrote a report regarding the incident. This incident report covered the period of time from Appellant's arrival at B Wing until Inmate Doughty was placed in handcuffs. (Agency Exhibit #3.)

7. On August 17, 2008, SCDC Investigators Fred Hamer (Investigator Hamer) and Anthony Orr (Investigator Orr) began an investigation into the incident. (Committee Exhibit #1, p. 25.)

8. Investigator Hamer testified that after reviewing the original statements provided by Appellant and Officer Middleton, he asked them to fill out another incident report because the information he gathered was inconsistent with the information in the original reports. A subsequent report also dated August 17, 2008, was signed by Appellant. This incident report provided an expanded explanation of the incident and stated that Inmate Doughty was turned over to Sergeant Wiggins and then taken to Medical "for treatment of injuries sustained during the takedown." (Agency Exhibit #1.)

9. Appellant provided a voluntary statement regarding the incident to SCDC's Division of Investigations on August 20, 2008, wherein he expanded further on the statements he provided previously. The additional information included Appellant's statement that he

> "and [Officer] Middleton[,] while escorting Inmate Doughty outside, fell coming out of (along with Inmate Doughty) the exit door because [I]nmate Doughty was still resisting. [Appellant and Officer Middleton] pick[ed] Inmate Doughty up. [Sergeant] John Wiggins assumed control of Inmate Doughty. When Inmate Doughty lowered his head, [Appellant] noticed one or two drops of blood. [Appellant] ran into the Unit to rinse [his] facial area and to finish unlocking the unit."

(Agency Exhibits #2 and #4.)

10. Appellant testified that he and Officer Middleton were feeling the effects of the "Top Cop" that had been sprayed and that he could not see clearly.

11. On August 25, 2008, Appellant was placed on administrative suspension without pay pending an investigation into allegations that he used excessive force toward Inmate Doughty on August 17, 2008. (Committee Exhibit #1, pp. 52 and 59 - 61.)

12. Investigator Hamer stated that an officer filling out an incident report should include everything that happens from the time he arrives at a crisis until the crisis is resolved. In this case, Investigator Hamer testified that Appellant's incident report should have included all details from the time he arrived at B-Wing until Inmate Doughty was turned over to Sergeant Wiggins.

13. On September 24, 2008, warrants were issued for the arrests of Appellant and Officer Middleton for Assault and Battery with Intent to Kill and Misconduct in Office based on their alleged assault of Inmate Doughty. On September 25, 2008, the Jasper County Sheriff's Department served Appellant with the warrant, booked him into the Detention Center, and a bond hearing was held. On September 29, 2008, the Jasper County Sheriff's Department served Officer Middleton with the warrant for his arrest, he was booked into the Detention Center, and a bond hearing was held. (Committee Exhibit #1, p. 61.)

14. On October 27, 2008, preliminary hearings were held for Appellant and Officer Middleton, and both cases were bound over for General Sessions Court. (Committee Exhibit #1, p. 61.)

15. On May 14, 2009, the 14th Circuit Solicitor's Office (Solicitor's Office)[1] entered a *Nolle Prosse* of all criminal charges against Appellant. (Committee Exhibit #1, p. 35.)

16. On March 6, 2011, Appellant filed suit against SCDC for wrongful discharge and gross negligence. (Committee Exhibit #1, pp. 15 - 21.)

17. On March 21, 2011, SCDC Division of Investigations Director Debra G. Barnwell (Ms. Barnwell) prepared an investigative memorandum summarizing the investigation into the circumstances surrounding Inmate Doughty's injuries. According to this memorandum, on August 20, 2008, Investigators Hamer and Orr interviewed Inmate Doughty, who admitted striking Officer Cobb with a padlock on a string. Inmate Doughty stated that he was escorted outside the unit by Officer Middleton where Officer Middleton "bulldogged his head into the side of the Unit." Appellant stated that he, Officer Middleton, and Inmate Doughty fell through the door while going outside. (Committee Exhibit #1, pp. 59 - 61.)

18. According to Ms. Barnwell's memorandum, several inmates were interviewed as part of the investigation and provided various accounts of the events surrounding Inmate Doughty's injury. Inmate Lorenzo Anderson (Inmate Anderson) stated that he saw Inmate Doughty hit Officer Cobb with the padlock on the string, but he did not see the officers or Inmate Doughty fall down. He did state, however, that when he went outside he saw plenty of blood. Inmate Andrew Bason also stated he saw Inmate Doughty strike Officer Cobb. Inmate Glenn Brown (Inmate Brown) stated

[1] Although the 14th Circuit was never specifically named in the record, the Committee takes judicial notice of the fact that the county where the criminal charges were pending against Appellant is located in the 14th Judicial Circuit.

that Inmate Doughty stumbled and fell against the wall while resisting removal from B Wing. Inmate Brown also noted that Inmate Doughty hit his head outside of the unit when Sergeant Wiggins came to get Inmate Doughty. Inmate Brown believes that Inmate Doughty's head hit the bench when he was taken to the floor. Inmate Billy Watson (Inmate Watson) stated that Appellant and Officer Middleton took Inmate Doughty out of the door and Inmate Doughty fell down outside of the unit. Inmate Watson stated that the officers did not have a good grip and Inmate Doughty fell down head first. Inmate Watson also noted that there was a lot of blood approximately five steps from the exit door. (Committee Exhibit #1, pp. 60 - 61.)

19. Ms. Barnwell's memorandum noted that Officer Middleton initially told investigators he did not see any blood, but in his written statement he noted that he and Appellant saw the laceration on Inmate Doughty's head when they were lifting him to his feet after they had placed the handcuffs on him. (Committee Exhibit #1, p. 59.)

20. According to Ms. Barnwell's investigative memorandum and testimony, samples were taken from a blood and hair stain on the wall outside of the unit about five feet above the ground one or two days after the incident and were submitted to the South Carolina Law Enforcement Division (SLED) for analysis. SLED confirmed the blood/hair was a match for Inmate Doughty. (Committee Exhibit #1, p. 61.)

21. Appellant testified that after Inmate Doughty was under control, he left him with Officer Middleton so he could wash his face because of his exposure to "Top Cop" and get back to the other inmates. Appellant said that Officer Middleton stayed with Inmate Doughty until Sergeant Wiggins assumed control of him, and that he did not know how Inmate Doughty's injury occurred.

22. Sergeant Wiggins stated that Inmate Doughty was bleeding from the head and leaning forward when he took control of him from Officer Middleton. He stated that Appellant was nearby but not with Inmate Doughty and Officer Middleton. Sergeant Wiggins also testified that Inmate Doughty was bleeding from the head when he escorted him to Medical.

23. SCDC notified Appellant by certified letter dated March 23, 2011, that an Employee Corrective Action meeting was scheduled in Warden LeVern Cohen's (Warden Cohen) office at RCI at 8:30 a.m. on March 30, 2011. (Committee Exhibit #1, p. 53.)

24. Appellant testified that he and his attorney, Mr. Marshall Horton (Mr. Horton), arrived for the Corrective Action Meeting on March 30, 2011, but they were told by the Sergeant-at-Arms that Mr. Horton would not be allowed to attend the Corrective Action meeting. Subsequently, Appellant and Mr. Horton left RCI without attending the Corrective Action meeting, which was held in Appellant's absence.

25. SCDC Policy ADM-11.04 3.2, Review Meeting Process states in part that "[t]he employee may NOT be represented by counsel at [the Corrective Action] meeting." (Committee Exhibit #1, p. 71.)

26. Following the Corrective Action meeting, Warden Cohen recommended that Appellant be terminated "based on the synopsis of an investigation conducted by [Investigator] Hamer from the Division of Investigations regarding the alleged assault on [I]nmate Thomas Doughty." (Committee Exhibit #1, p. 56.)

27. Warden Cohen testified he did not investigate the allegations against Appellant personally, but that he based his decision to terminate Appellant on the investigation conducted by Investigators Hamer and Orr.

28. Investigator Hamer testified he believed Appellant and Officer Middleton lied in the incident reports they submitted regarding their interactions with Inmate Doughty. Investigator Hamer stated that he was continually misled by Appellant and Officer Middleton.

29. SCDC Employee Relations Branch Chief Robin Gracien (Ms. Gracien) sent a letter[2] to Appellant dated March 31, 2011, informing him that his employment had been terminated for violation of SCDC Policy ADM-11.04, Employee Corrective Action: Item 250, Use of Unnecessary and/or Excessive Use of Force; Item 260, Making False Statements During the Course of an Official Investigation; and Item 180, Falsification of Official Documents. The letter states in part that Appellant

> "indicated in [his] official statements that [I]nmate Doughty was unruly and [Appellant] and Officer Middleton took him to the ground where he was restrained. [Appellant] also stated that [there] may have been one drop of blood on the outside of the unit; however, the evidence does not support [Appellant's] claim. Samples of blood/hair recovered from the wall outside of [the] unit [approximately] five (5) feet from the ground were taken to SLED for analysis. SLED confirmed that the blood/hair was a match for [I]nmate Doughty. While [SCDC] is aware that [Appellant's] criminal charges were eventually dropped, the investigative findings support [the] need for administrative action."

Ms. Gracien's letter also stated in part that "since [Appellant] refused to participate in the corrective action review meeting[,] it was held in [his] absence with Warden Cohen on March 30, 2011." (Committee Exhibit #1, p. 62.)

30. Ms. Gracien testified that employees are not allowed to have an attorney present at the Corrective Action meeting because the employees conducting the meeting do not have legal representation.

31. Ms. Gracien also testified that Appellant remained on suspension after his criminal charges were dropped because Officer Middleton's charges remained pending and the investigation was continuing. She testified that as time went on and the

[2] This letter was signed by Ms. Corrie Unthank on behalf of Ms. Gracien.

Solicitor's Office failed to move Officer Middleton's case along or respond to SCDC's request for information regarding Officer Middleton's case, the decision was made to go forward with administrative action regarding Appellant. Ms. Gracien stated that Officer Middleton's charges are still pending with the Solicitor's Office. She said the fact that Appellant's criminal charges were dropped "does not mean [SCDC] would not initiate and feel the need to take administrative action for wrongdoing or policy violations regardless of the outcome of the criminal charges."

32. Ms. Gracien testified that several people made the decision to keep Appellant on suspension after his criminal charges were dropped, including herself, Warden Cohen, the Human Resources Director, the Inspector General, and the Division Director.

33. SCDC Policy ADM-11.04, Employee Corrective Action, indicates the recommended sanction for a first offense of Use of Unnecessary and/or Excessive Use of Force is a 1- to 10-day suspension up to termination. The recommended sanction for a first offense of Making False Statements During the Course of an Official Investigation is a written warning up to termination. The recommended sanction for a first offense of Falsification of Official Documents is also a written warning up to termination. (Committee Exhibit #1, pp. 78 - 83.)

STATEMENTS OF POLICY AND CONCLUSIONS OF LAW

The State Employee Grievance Procedure Act (Grievance Act) creates the Grievance Committee as a quasi-judicial review body that conducts hearings of certain specified state employee grievance appeals. S.C. CODE ANN. § 8-17-340 (1976). In addition, the Grievance Act provides:

> (E) The committee may sustain, reject, or modify a grievance hearing decision of an agency as follows:
>
> (1) In cases involving actual or threatened abuse, neglect, or exploitation, to include those terms as they may be defined in § 43-35-10 or 20-7-490, of a patient, client, or inmate by an employee, the agency's decision must be given greater deference and may not be altered or overruled by the committee, unless the covered employee establishes that:
>
> (a) The agency's finding that the covered employee abused, neglected, or exploited or threatened to abuse, neglect, or exploit a patient, client, or inmate is clearly erroneous in view of reliable, probative, and substantial evidence;
>
> (b) The agency's disciplinary action was not within its established personnel policies, procedures, and regulations; or

(c) The agency's action was arbitrary and capricious.

(2) In all other cases, the committee may not alter or overrule an agency's decision, unless the covered employee establishes that the agency's decision is one or more of the following and prejudices substantial rights of the covered employee:
(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. § 8-17-340.

This case is governed by § 8-17-340(E)(2). Based on the record and testimony presented at the hearing, the Committee concludes that Appellant has convincingly established that SCDC's decision was clearly erroneous in light of the substantial evidence on the record and was arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. "'Substantial evidence' is something less than the weight of the evidence; it is evidence which, considering the record as a whole, would allow reasonable minds, to reach the conclusion that the administrative agency reached in order to justify its action." *Todd's Ice Cream, Inc. v. South Carolina Employment Security Commission*, 281 S.C. 254, 258, 315 S.E.2d 373, 375 (Ct. App. 1984). "A decision is arbitrary 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. South Carolina State Bd. of Dentistry*, 286 S.C. 182, 184-185, 332 S.E.2d 539, 541 (Ct. App. 1985).

The record is clear that Inmate Doughty sustained an injury on August 17, 2008, after being removed from B Wing at RCI. What is unclear is who caused the injury and how it happened. Statements provided by inmates who witnessed various portions of the incident vary, but none of these statements implicate Appellant as the person who caused the injury to Inmate Doughty. While the Committee found the testimony of Investigator Hamer to be credible, neither he nor anyone else at SCDC produced any credible evidence to suggest Appellant was responsible for Inmate Doughty's injuries that required sutures and staples to his head. Moreover, the Committee noted that the Solicitor's Office dropped the charges against Appellant, which is in contrast to the Solicitor's decision not to drop the charges pending against Officer Middleton. Perhaps most important is Inmate Doughty's statement that Officer Middleton was the one who "bulldogged his head into the side of the unit." Consequently, the Committee found that there was insufficient evidence to support SCDC's determination that Appellant violated its Employee Corrective Action policy for the offense of "Use of Unnecessary and/or Excessive Use of Force" in his dealings with Inmate Doughty.

Investigator Hamer testified that he believed Appellant and Officer Middleton were untruthful in their statements by failing to include all the details in the first incident reports they completed. Investigator Hamer also noted that not all the details of the investigation were consistent. Investigator Hamer testified that he felt like he was purposely being misled, but he failed to produce any credible evidence to substantiate his claims that the information in the incident reports was false. A review of the incident reports indicates that while each subsequent report contained more detailed information than those provided previously, the information contained in the reports was not contradictory or inconsistent. Consequently, the Committee found that SCDC lacked sufficient evidence to determine that Appellant violated its Employee Corrective Action policy for the offense of "Making False Statements During the Course of an Official Investigation" and "Falsification of Official Documents."

Additionally, the Committee was troubled by the circumstances surrounding Appellant's suspension and eventual termination. Specifically, the Committee noted that Appellant remained on suspension after the Solicitor's Office dropped the charges against him on May 14, 2009. SCDC contends that it was awaiting the decision by the Solicitor's Office on Officer Middleton's charges before taking any further action against Appellant. After Appellant filed a lawsuit against SCDC on March 6, 2011, SCDC decided to terminate him effective March 30, 2011, even though Officer Middleton's charges were, and still are, pending.

Having found insufficient evidence to determine that Appellant violated SCDC's Employee Corrective Action policy for the offenses of "Use of Unnecessary and/or Excessive Use of Force," "Making False Statements During the Course of an Official Investigation," and "Falsification of Official Documents," the Committee finds that SCDC's decision to terminate Appellant was clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record, and was arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

DECISION

The Committee finds Appellant has established that SCDC's decision prejudiced his substantial rights and met one or more of the elements contained in S.C. CODE ANN. § 8-17-340(E)(2). Therefore, the Committee finds in favor of Appellant and grants Appellant reinstatement to SCDC effective March 30, 2011, and the relief permitted by the Grievance Act.

For the Committee: _____ Date: 9/12/11

South Carolina Department of Corrections

Exhibit " 3 "

NIKKI R. HALEY, Governor
WILLIAM R. BYARS, JR., Director

January 17, 2012

Director Samuel L. Wilkins
Human Resources Division
8301 Parklane Road
Suite A220
Columbia, SC 29223

Re: Johnnie L. Bryant v. S.C. Department of Corrections

Dear Director Wilkins:

Please find enclosed a copy of the Department of Corrections' Notice of Appeal in the above referenced matter. Please forward to me a complete copy of the recording of the hearing, including the recording related to the Committee's decision on the Department of Corrections' motion for reconsideration, for the purpose of obtaining a transcript. We appreciate your assistance in this matter.

Sincerely,

Christopher Florian
Deputy General Counsel

cc: South Carolina Administrative Law Court
Edgar A. Brown Building
1205 Pendleton St., Suite 224
Columbia, SC 29201

Marshall Horton, Esq.
Horton Law Firm, L.L.C.
Post Office Box 3766
Bluffton, South Carolina 29910

STATE OF SOUTH CAROLINA
IN THE ADMINISTRATIVE LAW COURT

Johnnie L. Bryant, Respondent, v. South Carolina Department of Corrections, Appellant.	)	**CERTIFICATE OF SERVICE**

I certify that I have served the foregoing Notice of Appeal by depositing it in the United States Mail, postage prepaid, on January 13, 2012 addressed to the following recipients:

Mr. Marshall L. Horton
Horton Law Firm, L.L.C.
Post Office Box 3766
Bluffton, South Carolina 29910

Director Samuel L. Wilkins
Human Resources Division
8301 Parklane Road
Suite A220
Columbia, SC 29223

January 17, 2012

Christopher Florian
Deputy General Counsel
S.C. Department of Corrections
4444 Broad River Road
P.O. Box 21787
Columbia, SC 29221-1787

STATE EMPLOYEE GRIEVANCE COMMITTEE

DECISION ON MOTION FOR RECONSIDERATION

APPELLANT'S NAME: Johnnie L. Bryant
JOB CLASSIFICATION: Correctional Officer II
AGENCY: S.C. Department of Corrections
DATE OF HEARING: August 23, 2011 & November 18, 2011
NATURE OF CASE: Termination

Pursuant to a timely request made by the South Carolina Department of Corrections ("SCDC"), the State Employee Grievance Committee ("Committee") reconvened at 9:00 a.m. on November 18, 2011, to reconsider its Final Decision ("Order") issued in this appeal on September 12, 2011, in the case of Johnnie L. Bryant v. SCDC.

ANALYSIS

SCDC submitted an Amended Motion for Reconsideration ("Motion") asserting three grounds upon which it contends the Committee should reconsider its Order. These grounds are addressed as follows:

I. STANDARD OF REVIEW APPLIED BY THE COMMITTEE

SCDC contends that the Committee "afforded [it] less deference than mandated by statute," because S.C. CODE ANN. § 8-17-340(E)(1) provided the proper mechanism by which the Committee should have evaluated SCDC's termination of Appellant.[1] Insofar as the first ground concerns the propriety of a legal standard the Committee Attorney instructed the Committee to apply, the undersigned disposes of this issue without the Committee's input. S.C. CODE ANN. § 8-17-340(C) (directing the Committee Attorney to "rule on all . . . legal issues").

State employee grievance appeals are "contested cases" under the South Carolina Administrative Procedures Act ("APA"), which governs proceedings before the Committee. S.C. CODE ANN. § 8-17-330; 2006 S.C. Act No. 387, § 53 (recognizing legislative intent in amending S.C. CODE ANN. § 8-17-340 to "provide a uniform procedure for contested cases and appeals from administrative agencies"). The APA and applicable regulations[2] do not address the instructions given to the Committee on the

[1] "[G]reater deference" is given to an agency's decision under S.C. CODE ANN. § 8-17-340(E)(1) for cases "involving actual or threatened abuse, neglect, or exploitation" of a "patient, client, or inmate by an employee."

[2] 23A S.C. CODE ANN. REGS. 19-718, *et seq.*

record before deliberations begin. Consequently, the Administrative Law Court Rules of Procedure ("SCALCR") are looked to for guidance. 2009 Revised Notes to Rule 1, SCALCR (providing that the SCALCR "are applicable to all matters within the jurisdiction of the Court," including "contested cases under the [APA]").

Rule 29 of the SCALCR provides that "[a]ll objections to procedure, admission of evidence or any other matter shall be timely made and stated on the record." SCALCR 29(A)(6). The parties were asked at the hearing if there were "any additional instructions requested or objections to the ones [that were] given" after the undersigned had instructed the Committee to decide this appeal pursuant to S.C. CODE ANN. § 8-17-340(E)(2). SCDC made no objection to the aforementioned instruction at that time. It was not until six weeks after the hearing (and over three weeks after the Order was issued) that SCDC raised such an objection by claiming in its Amended Motion that an erroneous instruction had been given.[3]

It follows that Rule 29's requiring objections to be "timely made" and "stated on the record" applies to an objection to any of the instructions given to the Committee. In the absence of such a contemporaneous objection, the instruction as given becomes the law of the case and cannot be altered through a motion for reconsideration. *See* Patterson v. Reid, 318 S.C. 183, 185, 456 S.E.2d 436, 437 (Ct. App. 1995) (observing that "[a] party cannot for the first time raise an issue by way of a [motion for reconsideration] which could have been raised at trial"); Hope Petty Motors of Columbia, Inc. v. Hyatt, 310 S.C. 171, 175 n.3, 425 S.E.2d 786, 789 n.3 (Ct. App. 1992) (recognizing that failure to timely object to jury charge renders such charge "the law of the case").

Even if the SCALCR were not dispositive on this issue, applying the South Carolina Rules of Civil Procedure would compel the same result. *See* Rule 68, SCALCR (providing that the SCRCP "may, in the discretion of the presiding administrative law judge, be applied in proceedings before the Court to resolve questions not addressed by [the SCALCR]"); Rule 51, SCRCP (declaring that "[n]o party may assign as error the giving or the failure to give an instruction unless he objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which he objects and the grounds for his objection").

Accordingly, SCDC's Motion is DENIED as to the standard of review that the Committee applied in this matter.[4]

Warren V. Ganjehsani
Committee Attorney

[3] The State Division of Human Resources received SCDC's Amended Motion for Reconsideration (dated October 6, 2011) on October 7, 2011.

[4] In light of this issue's disposition, a decision need not be reached on the merits of whether the Committee would have been instructed to apply S.C. CODE ANN. § 8-17-340(E)(1) if SCDC had made a timely request in this regard.

The Committee addresses below the remaining grounds upon which SCDC's Motion is based:

II. SUFFICIENCY OF EVIDENCE AGAINST APPELLANT

The Committee found that Appellant established that his termination by SCDC prejudiced his substantial rights and was both "clearly erroneous" and "arbitrary or capricious" as set forth in S.C. CODE ANN. § 8-17-340(E)(2)(e) and (f). SCDC argues that "ample evidence support[s] the charges" of Appellant making "false statements during the course of an investigation and falsif[ying] official documents."

After further deliberation, the Committee does not consider its findings in this regard to be unsupported by the evidence or controlled by an error of law. Accordingly, the Committee DENIES the Motion by SCDC on this issue.

III. APPELLANT'S TERMINATION AND CIVIL ACTION AGAINST SCDC

The Committee noted in the Order that it was "troubled by the circumstances surrounding Appellant's suspension and eventual termination," including Appellant's termination occurring roughly 3 ½ weeks after Appellant filed a lawsuit against SCDC on March 6, 2011. SCDC argues that the Committee "erred in implying a causal connection between [A]ppellant's lawsuit and the corrective action" taken against him.

SCDC argues that the record does not reflect its awareness of the lawsuit prior to March 23, 2011 – the date on which it contends it was served with the action. SCDC avers that this is significant because internal "communications about the corrective action had occurred" prior to that time and the "process was underway" to terminate Appellant.

The Committee finds SCDC's argument on this matter unpersuasive. It is undisputed that the effective date of Appellant's termination – March 30, 2011 – was one week after SCDC claims it was served with the lawsuit. Although the record contains a March 21, 2011 investigative memorandum presumably generated prior to the date on which SCDC alleges it received the lawsuit, the record also reflects March 23, 2011 as the date that Appellant was first charged with the violations underlying his eventual termination – the *same day* SCDC represented that it was served with Appellant's lawsuit. (R. at pp. 25-27; 53-55.) Consequently, the Committee does not find that it has misapprehended the timeline of relevant events.

Moreover, the Committee noted additional circumstances that factored into its decision other than the lawsuit's timing. Therefore, SCDC's suggestion that the Committee placed undue emphasis on this issue is contrary to the totality of the findings contained in the Order.

Accordingly, the Committee DENIES the Motion by SCDC on this issue.

DECISION

Based on the foregoing reasons, the Committee denies SCDC's Motion and affirms the prior Order reversing Appellant's termination in its entirety.

For the Committee: Lesia Rudelka/hmk Date: 12/22/12

State Employee Grievance Committee

Final Decision

APPELLANT'S NAME: Johnnie L. Bryant
JOB CLASSIFICATION: Correctional Officer II (Sergeant)
AGENCY: S. C. Department Corrections
DATE OF HEARING: August 23, 2011
NATURE OF CASE: Termination

Based on documentary evidence and testimony presented at the hearing of Johnnie L. Bryant v. S.C. Department of Corrections (SCDC) held in Columbia, South Carolina, on August 23, 2011, the State Employee Grievance Committee (Committee) finds:

FINDINGS OF FACT

1. Mr. Johnnie L. Bryant (Appellant) was employed with SCDC from October 11, 1999, until March 30, 2011, most recently as a Correctional Officer II (Sergeant). (Committee Exhibit #1, pp. 41 and 62.)

2. Appellant was notified by letter dated March 31, 2011, that his employment had been terminated effective March 30, 2011, for violation of SCDC Policy ADM-11.04, Employee Corrective Action: Item 250, Use of Unnecessary and/or Excessive Use of Force; Item 260, Making False Statements During the Course of an Official Investigation; and Item 180, Falsification of Official Documents. (Committee Exhibit #1, p. 62.)

3. On August 17, 2008, Appellant was working at Ridgeland Correctional Institution (RCI) when a call came in for a first responder to "Beaufort Wing" (B Wing). According to Appellant, when he arrived at the scene he found Correctional Officer Kenneth Cobb (Officer Cobb) bleeding from the back of the head. Appellant instructed Officer Cobb to report to the appropriate area at RCI for treatment (Medical). Appellant also saw Inmate Thomas Doughty (Inmate Doughty) swinging a string tied to a padlock, which he had used to strike Officer Cobb. Appellant instructed Inmate Doughty to drop the padlock several times, but he refused and continued to move toward Appellant. Appellant administered a shot of chemical munition known as "Top Cop" to Inmate Doughty, but Inmate Doughty continued to move toward Appellant. Correctional Officer John Middleton (Officer Middleton) administered a second shot of "Top Cop" to Inmate Doughty, who continued to approach the officers. After a brief struggle with Inmate Doughty, Appellant and Officer Middleton restrained and handcuffed him.

4. At some point after Inmate Doughty was handcuffed, he sustained an injury to his head requiring eight internal sutures and 37 external staples. Inmate Doughty was admitted to the hospital and remained hospitalized overnight.

5. Three Correctional Officers - Appellant, Officer Middleton, and Sergeant John Wiggins (Sergeant Wiggins) - all had contact with Inmate Doughty from the time he was restrained until he arrived in Medical for treatment of his injuries.

6. Following Inmate Doughty's arrival at Medical, Appellant hand-wrote a report regarding the incident. This incident report covered the period of time from Appellant's arrival at B Wing until Inmate Doughty was placed in handcuffs. (Agency Exhibit #3.)

7. On August 17, 2008, SCDC Investigators Fred Hamer (Investigator Hamer) and Anthony Orr (Investigator Orr) began an investigation into the incident. (Committee Exhibit #1, p. 25.)

8. Investigator Hamer testified that after reviewing the original statements provided by Appellant and Officer Middleton, he asked them to fill out another incident report because the information he gathered was inconsistent with the information in the original reports. A subsequent report also dated August 17, 2008, was signed by Appellant. This incident report provided an expanded explanation of the incident and stated that Inmate Doughty was turned over to Sergeant Wiggins and then taken to Medical "for treatment of injuries sustained during the takedown." (Agency Exhibit #1.)

9. Appellant provided a voluntary statement regarding the incident to SCDC's Division of Investigations on August 20, 2008, wherein he expanded further on the statements he provided previously. The additional information included Appellant's statement that he

> "and [Officer] Middleton[,] while escorting Inmate Doughty outside, fell coming out of (along with Inmate Doughty) the exit door because [I]nmate Doughty was still resisting. [Appellant and Officer Middleton] pick[ed] Inmate Doughty up. [Sergeant] John Wiggins assumed control of Inmate Doughty. When Inmate Doughty lowered his head, [Appellant] noticed one or two drops of blood. [Appellant] ran into the Unit to rinse [his] facial area and to finish unlocking the unit."

(Agency Exhibits #2 and #4.)

10. Appellant testified that he and Officer Middleton were feeling the effects of the "Top Cop" that had been sprayed and that he could not see clearly.

11. On August 25, 2008, Appellant was placed on administrative suspension without pay pending an investigation into allegations that he used excessive force toward Inmate Doughty on August 17, 2008. (Committee Exhibit #1, pp. 52 and 59 - 61.)

12. Investigator Hamer stated that an officer filling out an incident report should include everything that happens from the time he arrives at a crisis until the crisis is resolved. In this case, Investigator Hamer testified that Appellant's incident report should have included all details from the time he arrived at B-Wing until Inmate Doughty was turned over to Sergeant Wiggins.

13. On September 24, 2008, warrants were issued for the arrests of Appellant and Officer Middleton for Assault and Battery with Intent to Kill and Misconduct in Office based on their alleged assault of Inmate Doughty. On September 25, 2008, the Jasper County Sheriff's Department served Appellant with the warrant, booked him into the Detention Center, and a bond hearing was held. On September 29, 2008, the Jasper County Sheriff's Department served Officer Middleton with the warrant for his arrest, he was booked into the Detention Center, and a bond hearing was held. (Committee Exhibit #1, p. 61.)

14. On October 27, 2008, preliminary hearings were held for Appellant and Officer Middleton, and both cases were bound over for General Sessions Court. (Committee Exhibit #1, p. 61.)

15. On May 14, 2009, the 14th Circuit Solicitor's Office (Solicitor's Office)[1] entered a *Nolle Prosse* of all criminal charges against Appellant. (Committee Exhibit #1, p. 35.)

16. On March 6, 2011, Appellant filed suit against SCDC for wrongful discharge and gross negligence. (Committee Exhibit #1, pp. 15 - 21.)

17. On March 21, 2011, SCDC Division of Investigations Director Debra G. Barnwell (Ms. Barnwell) prepared an investigative memorandum summarizing the investigation into the circumstances surrounding Inmate Doughty's injuries. According to this memorandum, on August 20, 2008, Investigators Hamer and Orr interviewed Inmate Doughty, who admitted striking Officer Cobb with a padlock on a string. Inmate Doughty stated that he was escorted outside the unit by Officer Middleton where Officer Middleton "bulldogged his head into the side of the Unit." Appellant stated that he, Officer Middleton, and Inmate Doughty fell through the door while going outside. (Committee Exhibit #1, pp. 59 - 61.)

18. According to Ms. Barnwell's memorandum, several inmates were interviewed as part of the investigation and provided various accounts of the events surrounding Inmate Doughty's injury. Inmate Lorenzo Anderson (Inmate Anderson) stated that he saw Inmate Doughty hit Officer Cobb with the padlock on the string, but he did not see the officers or Inmate Doughty fall down. He did state, however, that when he went outside he saw plenty of blood. Inmate Andrew Bason also stated he saw Inmate Doughty strike Officer Cobb. Inmate Glenn Brown (Inmate Brown) stated

[1] Although the 14th Circuit was never specifically named in the record, the Committee takes judicial notice of the fact that the county where the criminal charges were pending against Appellant is located in the 14th Judicial Circuit.

that Inmate Doughty stumbled and fell against the wall while resisting removal from B Wing. Inmate Brown also noted that Inmate Doughty hit his head outside of the unit when Sergeant Wiggins came to get Inmate Doughty. Inmate Brown believes that Inmate Doughty's head hit the bench when he was taken to the floor. Inmate Billy Watson (Inmate Watson) stated that Appellant and Officer Middleton took Inmate Doughty out of the door and Inmate Doughty fell down outside of the unit. Inmate Watson stated that the officers did not have a good grip and Inmate Doughty fell down head first. Inmate Watson also noted that there was a lot of blood approximately five steps from the exit door. (Committee Exhibit #1, pp. 60 - 61.)

19. Ms. Barnwell's memorandum noted that Officer Middleton initially told investigators he did not see any blood, but in his written statement he noted that he and Appellant saw the laceration on Inmate Doughty's head when they were lifting him to his feet after they had placed the handcuffs on him. (Committee Exhibit #1, p. 59.)

20. According to Ms. Barnwell's investigative memorandum and testimony, samples were taken from a blood and hair stain on the wall outside of the unit about five feet above the ground one or two days after the incident and were submitted to the South Carolina Law Enforcement Division (SLED) for analysis. SLED confirmed the blood/hair was a match for Inmate Doughty. (Committee Exhibit #1, p. 61.)

21. Appellant testified that after Inmate Doughty was under control, he left him with Officer Middleton so he could wash his face because of his exposure to "Top Cop" and get back to the other inmates. Appellant said that Officer Middleton stayed with Inmate Doughty until Sergeant Wiggins assumed control of him, and that he did not know how Inmate Doughty's injury occurred.

22. Sergeant Wiggins stated that Inmate Doughty was bleeding from the head and leaning forward when he took control of him from Officer Middleton. He stated that Appellant was nearby but not with Inmate Doughty and Officer Middleton. Sergeant Wiggins also testified that Inmate Doughty was bleeding from the head when he escorted him to Medical.

23. SCDC notified Appellant by certified letter dated March 23, 2011, that an Employee Corrective Action meeting was scheduled in Warden LeVern Cohen's (Warden Cohen) office at RCI at 8:30 a.m. on March 30, 2011. (Committee Exhibit #1, p. 53.)

24. Appellant testified that he and his attorney, Mr. Marshall Horton (Mr. Horton), arrived for the Corrective Action Meeting on March 30, 2011, but they were told by the Sergeant-at-Arms that Mr. Horton would not be allowed to attend the Corrective Action meeting. Subsequently, Appellant and Mr. Horton left RCI without attending the Corrective Action meeting, which was held in Appellant's absence.

25. SCDC Policy ADM-11.04 3.2, Review Meeting Process states in part that "[t]he employee may NOT be represented by counsel at [the Corrective Action] meeting." (Committee Exhibit #1, p. 71.)

26. Following the Corrective Action meeting, Warden Cohen recommended that Appellant be terminated "based on the synopsis of an investigation conducted by [Investigator] Hamer from the Division of Investigations regarding the alleged assault on [I]nmate Thomas Doughty." (Committee Exhibit #1, p. 56.)

27. Warden Cohen testified he did not investigate the allegations against Appellant personally, but that he based his decision to terminate Appellant on the investigation conducted by Investigators Hamer and Orr.

28. Investigator Hamer testified he believed Appellant and Officer Middleton lied in the incident reports they submitted regarding their interactions with Inmate Doughty. Investigator Hamer stated that he was continually misled by Appellant and Officer Middleton.

29. SCDC Employee Relations Branch Chief Robin Gracien (Ms. Gracien) sent a letter[2] to Appellant dated March 31, 2011, informing him that his employment had been terminated for violation of SCDC Policy ADM-11.04, Employee Corrective Action: Item 250, Use of Unnecessary and/or Excessive Use of Force; Item 260, Making False Statements During the Course of an Official Investigation; and Item 180, Falsification of Official Documents. The letter states in part that Appellant

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[2] This letter was signed by Ms. Corrie Unthank on behalf of Ms. Gracien.

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> (E) The committee may sustain, reject, or modify a grievance hearing decision of an agency as follows:
>
> (1) In cases involving actual or threatened abuse, neglect, or exploitation, to include those terms as they may be defined in § 43-35-10 or 20-7-490, of a patient, client, or inmate by an employee, the agency's decision must be given greater deference and may not be altered or overruled by the committee, unless the covered employee establishes that:
>
> (a) The agency's finding that the covered employee abused, neglected, or exploited or threatened to abuse, neglect, or exploit a patient, client, or inmate is clearly erroneous in view of reliable, probative, and substantial evidence;
>
> (b) The agency's disciplinary action was not within its established personnel policies, procedures, and regulations; or

(c) The agency's action was arbitrary and capricious.

(2) In all other cases, the committee may not alter or overrule an agency's decision, unless the covered employee establishes that the agency's decision is one or more of the following and prejudices substantial rights of the covered employee:
(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. § 8-17-340.

This case is governed by § 8-17-340(E)(2). Based on the record and testimony presented at the hearing, the Committee concludes that Appellant has convincingly established that SCDC's decision was clearly erroneous in light of the substantial evidence on the record and was arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. "'Substantial evidence' is something less than the weight of the evidence; it is evidence which, considering the record as a whole, would allow reasonable minds, to reach the conclusion that the administrative agency reached in order to justify its action." *Todd's Ice Cream, Inc. v. South Carolina Employment Security Commission*, 281 S.C. 254, 258, 315 S.E.2d 373, 375 (Ct. App. 1984). "A decision is arbitrary 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. South Carolina State Bd. of Dentistry*, 286 S.C. 182, 184-185, 332 S.E.2d 539, 541 (Ct. App. 1985).

The record is clear that Inmate Doughty sustained an injury on August 17, 2008, after being removed from B Wing at RCI. What is unclear is who caused the injury and how it happened. Statements provided by inmates who witnessed various portions of the incident vary, but none of these statements implicate Appellant as the person who caused the injury to Inmate Doughty. While the Committee found the testimony of Investigator Hamer to be credible, neither he nor anyone else at SCDC produced any credible evidence to suggest Appellant was responsible for Inmate Doughty's injuries that required sutures and staples to his head. Moreover, the Committee noted that the Solicitor's Office dropped the charges against Appellant, which is in contrast to the Solicitor's decision not to drop the charges pending against Officer Middleton. Perhaps most important is Inmate Doughty's statement that Officer Middleton was the one who "bulldogged his head into the side of the unit." Consequently, the Committee found that there was insufficient evidence to support SCDC's determination that Appellant violated its Employee Corrective Action policy for the offense of "Use of Unnecessary and/or Excessive Use of Force" in his dealings with Inmate Doughty.

Investigator Hamer testified that he believed Appellant and Officer Middleton were untruthful in their statements by failing to include all the details in the first incident reports they completed. Investigator Hamer also noted that not all the details of the investigation were consistent. Investigator Hamer testified that he felt like he was purposely being misled, but he failed to produce any credible evidence to substantiate his claims that the information in the incident reports was false. A review of the incident reports indicates that while each subsequent report contained more detailed information than those provided previously, the information contained in the reports was not contradictory or inconsistent. Consequently, the Committee found that SCDC lacked sufficient evidence to determine that Appellant violated its Employee Corrective Action policy for the offense of "Making False Statements During the Course of an Official Investigation" and "Falsification of Official Documents."

Additionally, the Committee was troubled by the circumstances surrounding Appellant's suspension and eventual termination. Specifically, the Committee noted that Appellant remained on suspension after the Solicitor's Office dropped the charges against him on May 14, 2009. SCDC contends that it was awaiting the decision by the Solicitor's Office on Officer Middleton's charges before taking any further action against Appellant. After Appellant filed a lawsuit against SCDC on March 6, 2011, SCDC decided to terminate him effective March 30, 2011, even though Officer Middleton's charges were, and still are, pending.

Having found insufficient evidence to determine that Appellant violated SCDC's Employee Corrective Action policy for the offenses of "Use of Unnecessary and/or Excessive Use of Force," "Making False Statements During the Course of an Official Investigation," and "Falsification of Official Documents," the Committee finds that SCDC's decision to terminate Appellant was clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record, and was arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

DECISION

The Committee finds Appellant has established that SCDC's decision prejudiced his substantial rights and met one or more of the elements contained in S.C. CODE ANN. § 8-17-340(E)(2). Therefore, the Committee finds in favor of Appellant and grants Appellant reinstatement to SCDC effective March 30, 2011, and the relief permitted by the Grievance Act.

For the Committee: Date: 9/12/11

STATE OF SOUTH CAROLINA	)	IN THE STATE EMPLOYMENT GRIEVANCE COMMITTEE
JOHNNIE L. BRYANT, Claimant, vs. SOUTH CAROLINA DEPARTMENT OF CORRECTIONS Respondents.	)	**MR. BRYANT'S BRIEF IN RESPONSE TO THE SCDOC'S MOTION FOR RECONSIDERATION**

TO: JOSEPH C. MILLER, SOUTH CAROLINA STATE EMPLOYMENT GRIEVANCE COMMITTEE CHAIRMAN:

Introduction

Mr. Johnnie L. Bryant, by and through his attorneys, hereby provides the Chairman with this brief in response to the Department of Correction's Motion for Reconsideration. The decision made by the Committee on September 12, 2011 is supported by all applicable law and should stand as the final decision in this case.

The basis for the South Carolina Department of Correction's ("SCDOC") motion are twofold: (i) that the Committee failed to consider evidence of a false statement, and (ii) that the Committee's finding of a causal connection between Mr. Bryant's firing and Mr. Bryant's filing of an employment based lawsuit was unwarranted. Both grounds fail as a matter of law and this Committee should dismiss the SCDOC's motion without further hearings.

Case History

On August 25, 2008, Mr. Bryant was suspended from his job as a corrections officer and was placed on "suspension without pay pending investigation" pursuant to SCDC Employee Policy ADM-11.04. The events that led to the Plaintiff being accused of this misconduct occurred on or about August 17, 2008.

Mr. Bryant remained on suspension without pay and no significant action took place until he filed a civil lawsuit in the Jasper County Court of Common Pleas on March 9, 2011. On March 23, 2011 the Ridgeland Correctional Institute sent out an "Official Notification of an Employee Corrective Action." On March 30, 2011 a hearing was held without the Plaintiff's presence and the Plaintiff's employment was terminated.[1] Officially, Mr. Bryant was suspended for 947 days without pay.

Mr. Bryant filed a timely Verified Grievance with the SCDOC on April 14, 2011. An investigative review hearing was held on May 12, 2011 at the SCDOC's offices in Columbia. Mr. Bryant filed his Grievance Report with the Human Resources Division of the SC Budget and Control Board on June 8, 2011.

Mr. Bryant's civil lawsuit was dismissed on June 9, 2011 pursuant to a hearing that occurred on the same day in the Jasper County Courthouse; however, Mr. Bryant was granted the right to re-file after he had exhausted his administrative remedies through the State Grievance Procedure.

An unsuccessful mediation was held at the Human Resources Division's offices on August 16, 2011. The SCDOC has not made any objection to the timeliness of any filing or action taken by Mr. Bryant.

[1] Plaintiff was barred from attending with his counsel pursuant to a constitutionally suspect SCDOC policy forbidding employees from being represented by legal counsel at their corrective action meetings.

A full hearing on the merits of this case was held on August 23, 2011 at the offices of the SC Budget and Control Board in Columbia in front of the State Employee Grievance Committee ("Committee"). At the conclusion of this hearing, the Committee found that the SCDOC had acted wrongfully in their termination of Mr. Bryant. The Committee set forth a written Final Decision on September 12, 2011.

The SCDOC's Amended Motion for Reconsideration was filed on or before October 11, 2011, and Mr. Bryant's response is due on October 19, 2011.

Standard of Review

S.C. Code Reg. 19-178.07(F)(10) sets forth that "as a result of this final written decision, either the covered employee or the agency may request reconsideration within 30 days from the receipt of the decision." It is under this Code section that the SCDOC files this current Motion.

The Code section cited, however, does not give this Committee any guidance as to what Standard of Review should be applied to this current Motion. In the absence of such guidance Mr. Bryant relies on the standard set by Rule 59(e), SCRCP, and that:

> "[o]ur rules contemplate two basic situations in which a party should consider filing a Rule 59(e) motion. A party *may* wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. A party *must* file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review."

Elam v. South Carolina Dept. of Transp., 361 S.C. 9,602 S.E.2d 772, 780 (2004).

In this case, it is Mr. Bryant's position that the Commission has understood and fully considered the issues of this case. Furthermore, Mr. Bryant asserts that the Commission has ruled on all arguments and issues presented, and the SCDOC does not appear to assert that there are issues left unresolved by the Final Decision dated September 12, 2011.

Legal Argument

In upholding the Committee's September 12th Final Order, Mr. Bryant respectfully requests that this Committee consider the following arguments: (I) the Committee correctly found that Mr. Bryant did not make any false statement, and (II) the Committee correctly identified that the timing of Mr. Bryant's firing concerned his filing of a civil lawsuit.

I. The Committee correctly found that Mr. Bryant did not make any false statement

i. The Committee correctly found that Mr. Bryant did not make any false statements.

The Committee was presented with three statements that were purportedly made by Mr. Bryant. (*see* Agency's Exhibit 1, Agency's Exhibit 2, and Agency's Exhibit 3). The SCDOC is mistaken in asserting that these documents present evidence of any false statements.

Exhibit 1 was a typed written statement signed by Mr. Bryant which was not typed by Mr. Bryant. This exhibit gave the general facts of the incident involving Inmate Doughty, but did not mention any injuries to Mr. Doughty. Exhibit 1 was dated August 17, 2008, the date of the occurrence.

Exhibit 3 was also dated on August 17, 2008, was not in Mr. Bryant's handwriting, but also gave a general description of the incident. It was not signed by Mr. Bryant. However, as the Committee notes, it is not inconsistent with Exhibit 1.

Exhibit 2 was a hand written statement given on August 20, 2011 by Mr. Bryant (it was typed out due to Mr. Bryant's penmanship and presented as Exhibit 4). This document was in Mr. Bryant's handwriting and signed by Mr. Bryant. This statement, given three days after the incident, includes a mention of Mr. Bryant, Officer Middleton, and Inmate Doughty falling as

they left the facility. However, there is nothing in Exhibit 2 that is inconsistent with any other statements.

The basis for the SCDOC's position that this case should be reconsidered is that the failure to mention the falling on the first reports constitutes an omission that is so egregious that it should be considered a false statement. This is a meritless position; the Committee has already had the opportunity to fully examine the issue, and the Committee found that:

> "[a] review of the incident reports indicate that while each subsequent report contained more detailed information than those previously, the information contained in the reports was not contradictory or inconsistent."

See Final Decision dated September 12, 2011, Page 8. The SCDOC does not attempt to address the logic or reason behind this finding of fact, and merely attempts to re-argue the position they advanced at the August 23rd hearing. The Committee has ruled on this matter and the SCDOC does not advance any argument or attempt to present any evidence in their motion that has not already been presented.

Simply put, Officer Hamer was asked on the stand to identify any time when Mr. Bryant made a false statement, and he could not. Furthermore, no other SCDOC representatives could point out where Mr. Bryant made a false statement. This failure to offer evidence should be dispositive on the matter.

However, the "omission" argument advanced in this current motion is even more disingenuous when it is considered that the witnesses called by the SCDOC, especially Officer Hamer, testified that the basis of Mr. Bryant being accused of giving a false statement was that they were unsatisfied with the story that Mr. Bryant consistently gave. No SCDOC witness testified that the August 20, 2008 statement (Exhibit 2) contained such ground breaking new information that it rendered the two August 17, 2008 statements (Exhibit 1 and Exhibit 3) a false

statement. However, numerous SCDOC witnesses testified that they felt they were being misled, and that this feeling of being misled was the motivating factor in charging Mr. Bryant with giving a false statement. Of course, there was no evidence presented to substantiate that Mr. Bryant misled the SCDOC, and the Committee correctly found the SCDOC was unable to present any evidence to substantiate this claim.

The Committee has considered this "false statement" issue at a fully noticed hearing, heard multiple witnesses testify on the matter, considered documentary evidence, and heard arguments of counsel concerning this issue. Considering that the SCDOC's current motion does not present anything that has not already been considered, this current motion should be dismissed without any further hearings.

ii. Even if the SCDOC was justified in disciplining Mr. Bryant for making a false statement, the severity of the SCDOC's punishment of Mr. Bryant was grossly inappropriate.

It is absurd to believe that, even if Mr. Bryant's multiple reports can be considered a "false statement," that this false statement offense comes close to justifying the punishment that Mr. Bryant received. Mr. Bryant was basically given the "death penalty" of punishments: suspension without pay for over 900 days. The evidence shows that the SCDOC knowingly destroyed Mr. Bryant's ability to make living in his chosen occupation. In the highly unlikely scenario that the SCDOC had the legal authority to impose such a lengthy suspension without pay, this punishment should be reserved for only the most egregious of violations. Mr. Bryant's violations, in a light most favorable to the SCDOC, are minor clerical violations.

The heart of the matter is that the SCDOC is attempting to justify the extraordinarily severe punishment imposed on Mr. Bryant. The true issue of this case was whether Mr. Bryant used excessive force on Inmate Doughty. The SCDOC is not even attempting to argue with the

Commission's conclusion that there was no evidence of Mr. Bryant using excessive force on Inmate Doughty. At this point in the litigation the SCDOC is attempting to shoe-horn a weak "false statement" argument to justify what they did to Mr. Bryant. Respectfully, the Commission should see this argument for what is it and dismiss the SCDOC's motion without further hearing.

II. The Committee correctly identified that the timing of Mr. Bryant's firing concerned his filing of a civil lawsuit.

The Committee correctly determined that the trigger for Mr. Bryant's termination was the filing of a civil suit. Furthermore, this factual finding does not affect the case currently before the Commission, but rather appears to concern liability in other legal venues.

The Committee was correct in finding that the Department of Corrections could not produce evidence to refute the inference that Mr. Bryant was terminated for filing a lawsuit. Ms. Gracien testified that the Plaintiff would be kept on unpaid suspension until the criminal charges regarding Officer Middleton were resolved. She further testified that charges have not yet been resolved. On cross-examination Mr. Gracien was unable to explain why the Department of Correction did not wait to terminate Mr. Bryant until after Officer Middleton's criminal charges were resolved.

Mr. Bryant presented evidence that, after being suspended without pay for over 900 days, the SCDOC instituted termination procedures less than two weeks after Mr. Bryant filed a civil lawsuit. This is compelling circumstantial evidence that the SCDOC fired Mr. Bryant for filing his civil lawsuit.

Ms. Gracien could not give the Committee any evidence, circumstantial or direct, to refute the inference that Mr. Bryant's firing was motivated by filing a civil lawsuit. Considering

there was no reason whatsoever given for the timing of Mr. Bryant's firing, the Commission was free to rest their finding on the circumstantial evidence presented.

The Committee was correct to be concerned about the suspect timing of the Corrective Action Meeting in relation to the date Mr. Bryant filed his lawsuit against the Department of Corrections. The SCDOC's motion to reconsider this issue should be denied.

Conclusion

For the reasons stated above, Mr. Bryant requests that the SCDOC's motions be denied.

Respectfully,

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Bluffton, South Carolina
This 19th day of October, 2010

STATE OF SOUTH CAROLINA
STATE EMPLOYEE GRIEVANCE COMMITTEE

Johnnie L. Bryant, Grievant,	)	
v.	)	**The Department of Corrections' Amended Motion for Reconsideration**
South Carolina Department of Corrections, Agency.	)	

The Department of Corrections (SCDC) hereby requests the State Employee Grievance Committee (Committee) reconsider its September 12, 2011 decision in the above referenced matter pursuant to S.C. Code Reg. 19-718.07(F)(10). For the reasons stated below, SCDC respectfully submits the Committee should reconsider its decision and find in favor of the agency.

I. THE COMMITTEE APPLIED AN INCORRECT STANDARD OF REVIEW IN A CASE INVOLVING ACTUAL ABUSE OF AN INMATE.

In issuing its decision to overturn the corrective action, the Committee applied an incorrect standard of review, and afforded the agency less deference than mandated by statute.

S.C. Code Ann. § 8-17-340(E)(1) provides:

> In cases involving actual or threatened abuse, neglect, or exploitation, to include those terms as they may be defined in Section 43-35-10 or 63-7-20, of a patient, client, or inmate by an employee, the agency's decision must be given greater deference and may not be altered or overruled by the committee, unless the covered employee establishes that:
>
> > (a) The agency's finding that the covered employee abused, neglected, or exploited or threatened to abuse, neglect, or exploit a patient, client, or inmate is clearly erroneous in view of reliable, probative, and substantial evidence;
> >
> > (b) The agency's disciplinary action was not within its established personnel policies, procedures, and regulations; or
> >
> > (c) The agency's action was arbitrary and capricious.

The term "abuse" is defined as "physical abuse or psychological abuse." S.C. Code Ann. § 43-35-10(1). Physical abuse is further defined by statute:

> "Physical abuse" means intentionally inflicting or allowing to be inflicted physical injury on a vulnerable adult by an act or failure to act. Physical abuse includes, but is not limited to, slapping, hitting, kicking, biting, choking, pinching, burning, actual or attempted sexual battery as defined in Section 16-3-651, use of medication outside the standards of reasonable medical practice for the purpose of controlling behavior, and unreasonable confinement. Physical abuse also includes the use of a restrictive or physically intrusive procedure to control behavior for the purpose of punishment except that a therapeutic procedure prescribed by a licensed physician or other qualified professional or that is part of a written plan of care by a licensed physician or other qualified professional is not considered physical abuse. Physical abuse does not include altercations or acts of assault between vulnerable adults.

S.C. Code Ann. § 43-35-10(8).

Instead of applying the deferential standard of review mandated by S.C. Code Ann. § 8-17-340(E)(1), the Committee's decision relied upon the more stringent standard of review found in § 8-17-340(E)(2).[1] In doing so, the Committee erred by not affording

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[1] S.C. Code Ann. 8-17-340(E)(2) provides:

> (2) In all other cases, the committee may not alter or overrule an agency's decision, unless the covered employee establishes that the agency's decision is one or more of the following and prejudices substantial rights of the covered employee:
>
> (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

the agency the level of deference appropriate in this type of case.

In the case at hand, the Department of Corrections terminated grievant in connection with a use of force against Inmate Doughty. Specifically, grievant was charged with use of unnecessary and/or excessive force, falsification of official documents, and making false statements during the course of an official investigation. These charges clearly fall within the scope of "cases involving actual or threatened abuse" of an inmate pursuant to S.C. Code Ann. § 8-17-340(E)(1).

Therefore, because the Committee applied an incorrect standard of review in issuing its decision, SCDC respectfully requests the Committee reconsider its decision and apply the standard of review as mandated by S.C. Code Ann. § 8-17-340(E)(1).

II. THE COMMITTEE ERRED IN FINDING SCDC LACKED SUFFICIENT EVIDENCE TO SUPPORT THE CHARGES OF MAKING FALSE STATEMENTS DURING THE COURSE OF AN OFFICIAL INVESTIGATION AND FALSIFICATION OF OFFICIAL DOCUMENTS.

Contrary to the Committee's decision, SCDC presented ample evidence to support the charges that grievant made false statements during the course of an investigation and falsified official documents.

In the case at hand, Investigator Frederick Hamer testified that when he first met with grievant at the outset of his investigation, he advised grievant that he and Investigator Orr "need everything that happened, from the time they arrived on the scene until that inmate [Inmate Doughty] was turned over to the yard officer." Grievant initially provided a handwritten incident report purporting to have been written on August 17, 2008 at 6:30 p.m., documenting the use of force against inmate Thomas Doughty on August 17, 2008:

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unwarranted exercise of discretion.

> I, Sgt. Johnnie Bryant respond to Beaufort-B wing an observe Ofc. Kenneth Cobb bleeding from the rear of his head. I told Officer Cobb to exit the Beaufort-B wing and go to medical. I then observe Inmate Thomas Doughty # 238012 W/M with a sock swinging it (with a lock inside). I gave Inmate Doughty several directive to drop the sock (with the lock inside) and turn to be cuff. Inmate refuse and began to approach me (Sgt. Bryant). I pulled my Top Cop # 813 and administered one burst to the Facial Area. Inmate Doughty continued his actions and refused. Inmate Doughty appeared to be on some type of narcotic. Inmate Doughty look wild. I Sgt. Bryant and Ofc. Middleton place Inmate Doughty on the floor. I cuff Inmate Doughty and escort the Inmate Doughty out the unit.

(Agency Exhibit 3).

According to Investigator Hamer's testimony, about an hour and a half after his first meeting with grievant, grievant provided additional information, in the form of a typed incident report. This additional incident report also stated it had been drafted on August 17, 2008 at 6:30 p.m.:

> I, Sgt. J. Bryant responded to the Beaufort "B" wing as a first responder and observed Ofc. K. Cobb bleeding from the back of his head. I told Ofc. K. Cobb to report to medical. I then observed Inmate Doughty, Thomas W/M #238012 swinging a string with a pad lock tied to one end. I gave Inmate Doughty several directives to drop the weapon. Inmate Doughty refused all directives and continued to swing the weapon while aggressively approaching me and yelling, "Y'all caused this shit!" I then administered one short burst of Top Cop chemical munitions from canister #813 to the facial area of Inmate Doughty. Inmate Doughty still continued with his aggressive behavior. Ofc. J. Middleton then administered a short burst of Top Cop chemical munition to Inmate Doughty' s facial area. Inmate Doughty still did not cease his actions. At that time, I and Ofc. J. Middleton knew the chemical munitions were ineffective against Inmate Doughty. I then maintained eye contact with Inmate Doughty to give Ofc. J. Middleton the opportunity to go around to the right side of Inmate Doughty, while I remained on the left side of Inmate Doughty. Inmate Doughty kept his eyes on me while still swinging the weapon and did not see Ofc. J. Middleton approaching him from the right side. During the takedown procedure, Ofc. J. Middleton approached Inmate Doughty from the right rear and I approached Inmate Doughty from the left side. After Ofc. J. Middleton got control of Inmate Doughty's right arm, I gained control of the left arm and we simultaneously place Inmate Doughty to the floor. I, Sgt. J. Bryant, then placed the handcuffs on Inmate Doughty. **We then escorted Inmate Doughty to the outside of the unit where Sgt. J. Wiggins assumed control of the inmate.** Inmate Doughty was escorted to medical for treatment of injuries sustained during the takedown. Beginning weight of chemical munitions canister #813 was 142 grams, ending weighty was

118 grams, total chemical munitions used was 24 grams.

(Agency Exhibit 1) (emphasis added).

However, on August 20, 2008, at 11:49 a.m., grievant provided Investigator Hamer with a voluntary statement containing an account which both added new information and contained important inconsistencies when compared with his incident reports:

> On August 17, 2008 at Ridgeland Coorectional Institution at approximately 4:30 pm. Sgt. Johnnie Bryant responded to the Beaufort "B" Wing as a First Responder and observed OFC Kenneth Cobb bleeding from the back the head. I told OFC K. Cobb to report to medical. I then observed Inmate Thomas Doughty W/M swinging a string with a Padlock tied to one end. I gave Inmate Doughty several directives to drop the weapon. Inmate Doughty refused all directives and continued to swing the weapon while aggressively approaching me and yelling, "Y'all caused this shit!" I then administered a short burst of Top Cop chemical munitions from canister #813 to the facial area of Inmate Doughty. Inmate Doughty still continued with his aggressive behavior. OFC John Middleton then administered a short burst of Top Cop chemical munition to Inmate Doughty's facial area. Inmate Doughty did not cease his actions. I and OFC J. Middleton then lowered Inmate Doughty to the floor to restrain him. Inmate Doughty resisted being placed in restraints. After a brief struggle, Inmate Doughty was successfully restrained. **I and OFC Middleton while escorting Inmate Doughty outside, Fell while coming out of (along with Inmate Doughty) the exit door, because Inmate Doughty still was resisting. We pick Inmate Doughty up Sgt John Wiggins assumed control of Inmate Doughty. When Inmate Doughty lowered his head, I Sgt Bryant notice one or two drops of blood.** I Sgt Bryant ran into the Unit to rinse my Facial Area and to finish unlocking the unit."

(Agency Exhibits 2 and 4) (emphasis added).

At the hearing, grievant attempted to explain the omission of key details from his typed incident report by characterizing it as a compilation of reports and not an incident report. Specifically, he stated "this is not the actual incident report. . . . It's a synopsis of the actual incident report." However, this testimony runs counter to both the report itself and Investigator Hamer's testimony. Specifically, the incident report lists only one

reporting official – grievant – and it contains grievant's signature under the report. The form does provide an area for a supervisor and the major to comment and sign beneath their comments, but the statement itself is signed only by grievant. Perhaps most significantly, the document itself is titled "Incident Report," not summation of incident reports. (Agency Exhibit 1).

Moreover, Investigator Hamer testified –the Committee found his testimony to be credible – that an incident report is expected to contain an account of everything an officer did from the moment he responded to an event through the conclusion of the crisis. Investigator Hamer testified that falling through a door while escorting an inmate and seeing blood on the inmate would be the sort of the details expected to be included on an incident report. However, despite the fact grievant's report mentions events that occurred both before and after the three of them allegedly fell, it omits any mention of the fall. In view of Investigator Hamer's admonishment to grievant that he needed to know everything that happened, the omission of those events is tantamount to a false statement.

Additionally, even if the Committee determines the incident reports were not false, inconsistencies between grievant's voluntary statement and his testimony at the hearing show that both cannot be accurate. Specifically, at the hearing, grievant testified he left Inmate Doughty in the custody of Officer Middleton when he saw Sergeant Wiggins approaching from across the institution's yard. However, in grievant's voluntary statement to the investigators, grievant stated he and Officer Middleton released Inmate Doughty to the custody of Sergeant Wiggins before grievant returned to the dorm to rinse his face and unlock the doors. (Exhibit 4).

In its decision, the Committee found "[a] review of the incident reports indicates

that while each subsequent report contained more detailed information than those provided previously, the information contained in the reports was not contradictory or inconsistent." As a result of its finding, the Committee found there was insufficient evidence to support the charges of making false statements during the course of an official investigation and falsification of official documents.

The Committee's finding on this point overlooked two key facts. First, Investigator Hamer had clearly directed grievant that the investigators needed to know all events starting with grievant's arrival and ending with custody of Inmate Doughty being given to Sergeant Wiggins. As explained by Investigator Hamer, if grievant, Officer Middleton and Inmate Doughty fell going through the door and grievant saw blood, grievant should have documented those events on the incident report. There was no mention at all about those events. By failing to include any mention at all of such an event in response to a request for everything that occurred, grievant, by omission, made a false statement.

Second, the reports and the voluntary statements contradicted grievant's testimony that he left Inmate Doughty alone with Sergeant Middleton once he saw Sergeant Wiggins approaching. Grievant's testimony differs from his account in both (1) his typed incident report:

> We then escorted Inmate Doughty to the outside of the unit where Sgt. J. Wiggins assumed control of the inmate.

and (2) his voluntary statement:

> We pick Inmate Doughty up Sgt John Wiggins assumed control of Inmate Doughty. When Inmate Doughty lowered his head, I Sgt Bryant notice one or two drops of blood. I Sgt Bryant ran into the Unit to rinse my Facial Area and to finish unlocking the unit.

(Agency Exhibits 1, 2, and 4).

Therefore, the Committee incorrectly overturned the agency's conclusion that grievant violated SCDC policy in making false statements during the course of an official investigation and falsification of official documents. Considering the record as a whole, there was substantial evidence to support the agency's finding that grievant both made false statements during an official investigation and falsified official documents. See Todd's Icre Cream, Inc. v. S.C. Employment Security Comm'n, 281 S.C. 254, 258, 315 S.E.2d 373, 375 (Ct. App. 1984) (explaining substantial evidence means evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion the agency reached in order to justify its action).

III. THE COMMITTEE ERRED IN IMPLYING A CAUSAL CONNECTION BETWEEN APPELLANT'S LAWSUIT AND THE AGENCY'S DECISION TO TERMINATE APPELLANT.

The Committee expressed that it was troubled by the timing of appellant's termination in relation to the filing of his lawsuit. However, SCDC conclusively demonstrated there was no connection between the decision to terminate appellant and the lawsuit.

At the hearing, Robin Gracien, employee relations branch chief, testified that the corrective action process was already in motion before the lawsuit was received. Specifically, she explained communications were received from the South Carolina Law Enforcement Division in late 2010 about the case. She stated that at the beginning of March 2011, SCDC's Division of Investigation began preparing the documentation to provide to the reprimanding authority, which eventually led to the production of an Investigative Memorandum, dated March 21, 2011. (R.p.59). Ms. Gracien testified all of

these events occurred before SCDC was served with appellant's lawsuit on March 23, 2011.

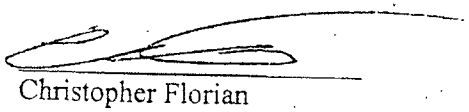
Although the Committee correctly noted the lawsuit was filed on March 6, 2011, the date of service of the lawsuit is more significant than the date of filing because the date of service is the date SCDC was provided notice of the lawsuit. There is no evidence SCDC was aware of the lawsuit prior to the date of service on March 23, 2011. March 23, 2011 is after communications about the corrective action had occurred and after the investigative memorandum was drafted to provide to the reprimanding authority. There could not have been a connection between the decision to issue corrective action and appellant's lawsuit because appellant did not serve his lawsuit until after the corrective action process was underway. Instead, as explained by Ms. Gracien's testimony, the corrective action was prompted by the ongoing failure of the solicitor's office to bring Officer Middleton's related case to a disposition. Ms. Gracien testified internal discussions about ending Mr. Bryant's administrative suspension and proceeding with corrective action had been ongoing since late 2010.

Consequently, the Committee erred in implying a causal connection between appellant's lawsuit and the corrective action because the undisputed timeline of events does not support the existence of any connection.

CONCLUSION

For the reasons above, SCDC respectfully requests the Committee reconsider its decision and sustain the agency's decision in this matter.

Respectfully Submitted,



Christopher Florian

Deputy General Counsel
S.C. Department of Corrections
4444 Broad River Road
P.O. Box 21787
Columbia, SC 29221-1787

October 6, 2011

STATE OF SOUTH CAROLINA
STATE EMPLOYEE GRIEVANCE COMMITTEE

Johnnie L. Bryant, Grievant,

v.

South Carolina Department of Corrections, Agency.

Certificate of Service

PROOF OF SERVICE

I certify that I have served the Department of Corrections' Amended Motion to Reconsider by depositing it in the United States Mail, postage prepaid, on October 6, 2011 addressed to the Grievant as follows:

Mr. Marshall L. Horton
Horton Law Firm, L.L.C.
Post Office Box 3766
Bluffton, South Carolina 29910

October 6, 2011

Christopher Florian
Deputy General Counsel
S.C. Department of Corrections
4444 Broad River Road
P.O. Box 21787
Columbia, SC 29221-1787

STATE OF SOUTH CAROLINA
STATE EMPLOYEE GRIEVANCE COMMITTEE

Johnnie L. Bryant, Grievant,	)	
v.	)	**The Department of Corrections' Motion for Reconsideration**
South Carolina Department of Corrections, Agency.	)	

The Department of Corrections (SCDC) hereby requests the State Employee Grievance Committee (Committee) reconsider its September 12, 2011 decision in the above referenced matter pursuant to S.C. Code Reg. 19-718.07(F)(10). For the reasons stated below, SCDC respectfully submits the Committee should reconsider its decision and find in favor of the agency.

I. THE COMMITTEE ERRED IN FINDING SCDC LACKED SUFFICIENT EVIDENCE TO SUPPORT THE CHARGES OF MAKING FALSE STATEMENTS DURING THE COURSE OF AN OFFICIAL INVESTIGATION AND FALSIFICATION OF OFFICIAL DOCUMENTS.

Contrary to the Committee's decision, SCDC presented ample evidence to support the charges that grievant made false statements during the course of an investigation and falsified official documents.

The Committee may reverse an agency's decision if, in relevant part, the agency's decision was clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record, or it was arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. See S.C. Code Ann. § 8-17-340(E)(2)(e) to (f). Substantial evidence means evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion the agency reached in order to justify its action. Todd's Icre Cream, Inc. v. S.C. Employment Security

Comm'n, 281 S.C. 254, 258, 315 S.E.2d 373, 375 (Ct. App. 1984).

In the case at hand, Investigator Frederick Hamer testified that when he first met with grievant at the outset of his investigation, he advised grievant that he and Investigator Orr "need everything that happened, from the time they arrived on the scene until that inmate [Inmate Doughty] was turned over to the yard officer." Grievant initially provided a handwritten incident report purporting to have been written on August 17, 2008 at 6:30 p.m., documenting the use of force against inmate Thomas Doughty on August 17, 2008:

> I, Sgt. Johnnie Bryant respond to Beaufort-B wing an observe Ofc. Kenneth Cobb bleeding from the rear of his head. I told Officer Cobb to exit the Beaufort-B wing and go to medical. I then observe Inmate Thomas Doughty # 238012 W/M with a sock swinging it (with a lock inside). I gave Inmate Doughty several directive to drop the sock (with the lock inside) and turn to be cuff. Inmate refuse and began to approach me (Sgt. Bryant). I pulled my Top Cop # 813 and administered one burst to the Facial Area. Inmate Doughty continued his actions and refused. Inmate Doughty appeared to be on some type of narcotic. Inmate Doughty look wild. I Sgt. Bryant and Ofc. Middleton place Inmate Doughty on the floor. I cuff Inmate Doughty and escort the Inmate Doughty out the unit.

(Agency Exhibit 3).

According to Investigator Hamer's testimony, about an hour and a half after his first meeting with grievant, grievant provided additional information, in the form of a typed incident report. This additional incident report also stated it had been drafted on August 17, 2008 at 6:30 p.m.:

> I, Sgt. J. Bryant responded to the Beaufort "B" wing as a first responder and observed Ofc. K. Cobb bleeding from the back of his head. I told Ofc. K. Cobb to report to medical. I then observed Inmate Doughty, Thomas W/M #238012 swinging a string with a pad lock tied to one end. I gave Inmate Doughty several directives to drop the weapon. Inmate Doughty refused all directives and continued to swing the weapon while aggressively approaching me and yelling, "Y'all caused this shit!" I then administered one short burst of Top Cop chemical munitions from canister #813 to the facial area of Inmate Doughty. Inmate Doughty still continued with his aggressive behavior. Ofc. J. Middleton then

administered a short burst of Top Cop chemical munition to Inmate Doughty' s facial area. Inmate Doughty still did not cease his actions. At that time, I and Ofc. J. Middleton knew the chemical munitions were ineffective against Inmate Doughty. I then maintained eye contact with Inmate Doughty to give Ofc. J. Middleton the opportunity to go around to the right side of Inmate Doughty, while I remained on the left side of Inmate Doughty. Inmate Doughty kept his eyes on me while still swinging the weapon and did not see Ofc. J. Middleton approaching him from the right side. During the takedown procedure, Ofc. J. Middleton approached Inmate Doughty from the right rear and I approached Inmate Doughty from the left side. After Ofc. J. Middleton got control of Inmate Doughty's right arm, I gained control of the left arm and we simultaneously place Inmate Doughty to the floor. I, Sgt. J. Bryant, then placed the handcuffs on Inmate Doughty. **We then escorted Inmate Doughty to the outside of the unit where Sgt. J. Wiggins assumed control of the inmate.** Inmate Doughty was escorted to medical for treatment of injuries sustained during the takedown. Beginning weight of chemical munitions canister #813 was 142 grams, ending weighty was 118 grams, total chemical munitions used was 24 grams.

(Agency Exhibit 1) (emphasis added).

However, on August 20, 2008, at 11:49 a.m., grievant provided Investigator Hamer with a voluntary statement containing an account which both added new information and contained important inconsistencies when compared with his incident reports:

On August 17, 2008 at Ridgeland Coorectional Institution at approximately 4:30 pm. Sgt. Johnnie Bryant responded to the Beaufort "B" Wing as a First Responder and observed OFC Kenneth Cobb bleeding from the back the head. I told OFC K. Cobb to report to medical. I then observed Inmate Thomas Doughty W/M swinging a string with a Padlock tied to one end. I gave Inmate Doughty several directives to drop the weapon. Inmate Doughty refused all directives and continued to swing the weapon while aggressively approaching me and yelling, "Y'all caused this shit!" I then administered a short burst of Top Cop chemical munitions from canister #813 to the facial area of Inmate Doughty. Inmate Doughty still continued with his aggressive behavior. OFC John Middleton then administered a short burst of Top Cop chemical munition to Inmate Doughty's facial area. Inmate Doughty did not cease his actions. I and OFC J. Middleton then lowered Inmate Doughty to the floor to restrain him. Inmate Doughty resisted being placed in restraints. After a brief struggle, Inmate Doughty was successfully restrained. **I and OFC Middleton while escorting Inmate Doughty outside, Fell while coming out of (along with Inmate Doughty) the exit door, because Inmate Doughty still was resisting. We pick Inmate Doughty up Sgt John Wiggins assumed control of Inmate Doughty. When**

Inmate Doughty lowered his head, I Sgt Bryant notice one or two drops of blood. I Sgt Bryant ran into the Unit to rinse my Facial Area and to finish unlocking the unit."

(Agency Exhibits 2 and 4) (emphasis added).

At the hearing, grievant attempted to explain the omission of key details from his typed incident report by characterizing it as a compilation of reports and not an incident report. Specifically, he stated "this is not the actual incident report. . . . It's a synopsis of the actual incident report." However, this testimony runs counter to both the report itself and Investigator Hamer's testimony. Specifically, the incident report lists only one reporting official – grievant – and it contains grievant's signature under the report. The form does provide an area for a supervisor and the major to comment and sign beneath their comments, but the statement itself is signed only by grievant. Perhaps most significantly, the document itself is titled "Incident Report," not summation of incident reports. (Agency Exhibit 1).

Moreover, Investigator Hamer testified –the Committee found his testimony to be credible – that an incident report is expected to contain an account of everything an officer did from the moment he responded to an event through the conclusion of the crisis. Investigator Hamer testified that falling through a door while escorting an inmate and seeing blood on the inmate would be the sort of the details expected to be included on an incident report. However, despite the fact grievant's report mentions events that occurred both before and after the three of them allegedly fell, it omits any mention of the fall. In view of Investigator Hamer's admonishment to grievant that he needed to know everything that happened, the omission of those events is tantamount to a false statement.

Additionally, even if the Committee determines the incident reports were not

false, inconsistencies between grievant's voluntary statement and his testimony at the hearing show that both cannot be accurate. Specifically, at the hearing, grievant testified he left Inmate Doughty in the custody of Officer Middleton when he saw Sergeant Wiggins approaching from across the institution's yard. However, in grievant's voluntary statement to the investigators, grievant stated he and Officer Middleton released Inmate Doughty to the custody of Sergeant Wiggins before grievant returned to the dorm to rinse his face and unlock the doors. (Exhibit 4).

In its decision, the Committee found "[a] review of the incident reports indicates that while each subsequent report contained more detailed information than those provided previously, the information contained in the reports was not contradictory or inconsistent." As a result of its finding, the Committee found there was insufficient evidence to support the charges of making false statements during the course of an official investigation and falsification of official documents.

The Committee's finding on this point overlooked two key facts. First, Investigator Hamer had clearly directed grievant that the investigators needed to know all events starting with grievant's arrival and ending with custody of Inmate Doughty being given to Sergeant Wiggins. As explained by Investigator Hamer, if grievant, Officer Middleton and Inmate Doughty fell going through the door and grievant saw blood, grievant should have documented those events on the incident report. There was no mention at all about those events. By failing to include any mention at all of such an event in response to a request for everything that occurred, grievant, by omission, made a false statement.

Second, the reports and the voluntary statements contradicted grievant's

testimony that he left Inmate Doughty alone with Sergeant Middleton once he saw Sergeant Wiggins approaching. Grievant's testimony differs from his account in both (1) his typed incident report:

> We then escorted Inmate Doughty to the outside of the unit where Sgt. J. Wiggins assumed control of the inmate.

and (2) his voluntary statement:

> We pick Inmate Doughty up Sgt John Wiggins assumed control of Inmate Doughty. When Inmate Doughty lowered his head, I Sgt Bryant notice one or two drops of blood. I Sgt Bryant ran into the Unit to rinse my Facial Area and to finish unlocking the unit.

(Agency Exhibits 1, 2, and 4).

Therefore, the Committee incorrectly overturned the agency's conclusion that grievant violated SCDC policy in making false statements during the course of an official investigation and falsification of official documents. Considering the record as a whole, there was substantial evidence to support the agency's finding that grievant both made false statements during an official investigation and falsified official documents.

II. THE COMMITTEE ERRED IN IMPLYING A CAUSAL CONNECTION BETWEEN APPELLANT'S LAWSUIT AND THE AGENCY'S DECISION TO TERMINATE APPELLANT.

The Committee expressed that it was troubled by the timing of appellant's termination in relation to the filing of his lawsuit. However, SCDC conclusively demonstrated there was no connection between the decision to terminate appellant and the lawsuit.

At the hearing, Robin Gracien, employee relations branch chief, testified that the corrective action process was already in motion before the lawsuit was received. Specifically, she explained communications were received from the South Carolina Law

Enforcement Division in late 2010 about the case. She stated that at the beginning of March 2011, SCDC's Division of Investigation began preparing the documentation to provide to the reprimanding authority, which eventually led to the production of an Investigative Memorandum, dated March 21, 2011. (R.p.59). Ms. Gracien testified all of these events occurred before SCDC was served with appellant's lawsuit on March 23, 2011.

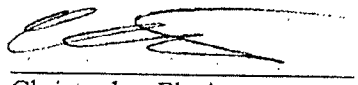
Although the Committee correctly noted the lawsuit was filed on March 6, 2011, the date of service of the lawsuit is more significant than the date of filing because the date of service is the date SCDC was provided notice of the lawsuit. There is no evidence SCDC was aware of the lawsuit prior to the date of service on March 23, 2011. March 23, 2011 is after communications about the corrective action had occurred and after the investigative memorandum was drafted to provide to the reprimanding authority. There could not have been a connection between the decision to issue corrective action and appellant's lawsuit because appellant did not serve his lawsuit until after the corrective action process was underway. Instead, as explained by Ms. Gracien's testimony, the corrective action was prompted by the ongoing failure of the solicitor's office to bring Officer Middleton's related case to a disposition. Ms. Gracien testified internal discussions about ending Mr. Bryant's administrative suspension and proceeding with corrective action had been ongoing since late 2010.

Consequently, the Committee erred in implying a causal connection between appellant's lawsuit and the corrective action because the undisputed timeline of events does not support the existence of any connection.

CONCLUSION

For the reasons above, SCDC respectfully requests the Committee reconsider its decision and sustain the agency's decision in this matter.

Respectfully Submitted,



Christopher Florian
Deputy General Counsel
S.C. Department of Corrections
4444 Broad River Road
P.O. Box 21787
Columbia, SC 29221-1787

October 5, 2011

STATE OF SOUTH CAROLINA
STATE EMPLOYEE GRIEVANCE COMMITTEE

Johnnie L. Bryant, Grievant,

v.

South Carolina Department of Corrections, Agency.

Certificate of Service

PROOF OF SERVICE

I certify that I have served the Department of Corrections' Motion to Reconsider by depositing it in the United States Mail, postage prepaid, on October 5, 2011 addressed to the Grievant as follows:

Mr. Marshall L. Horton
Horton Law Firm, L.L.C.
Post Office Box 3766
Bluffton, South Carolina 29910

October 5, 2011

Christopher Florian
Deputy General Counsel
S.C. Department of Corrections
4444 Broad River Road
P.O. Box 21787
Columbia, SC 29221-1787

NIKKI R. HALEY, CHAIR
GOVERNOR

CURTIS M. LOFTIS, JR.
STATE TREASURER

RICHARD ECKSTROM, CPA
COMPTROLLER GENERAL

BCB

SC BUDGET AND CONTROL BOARD

HUGH K. LEATHERMAN, SR.
CHAIRMAN, SENATE FINANCE
COMMITTEE

W. BRIAN WHITE
CHAIRMAN, HOUSE WAYS AND MEANS
COMMITTEE

MARCIA S. ADAMS
EXECUTIVE DIRECTOR

Human Resources Division
Samuel L. Wilkins
DIRECTOR

803-896-5300
FAX 803-896-5050

September 1, 2011

Mr. Christopher Florian
Staff Attorney
South Carolina Department of Corrections
4444 Broad River Road
Columbia, South Carolina 29221-1787

Dear Mr. Florian:

This letter is in response to your letter, dated August 22, 2011, originally sent to Mr. Paul M. Koch of the South Carolina Budget and Control Board's Office of General Counsel. In your letter you indicate that the South Carolina Department of Corrections' Use of Force Policy (Policy) was relevant and necessary to recent proceedings before the State Employee Grievance Committee, but you were concerned with the access others may have to this information based on its inclusion in the Record before the Committee. You further request that the Policy be maintained in the manner of a sealed court record. I have been asked to provide a response.

We are sensitive to your security concerns regarding dissemination of the South Carolina Department of Corrections' Policy. The documents submitted by the South Carolina Department of Corrections have been shared only with those involved in the grievance appeal process. While we have received no inquiries about the Policy to date, we will notify the South Carolina Department of Corrections of any Freedom of Information Act request for a copy of the Policy received by the Budget and Control Board. Additionally, we will take actions consistent with any Court ruling that the South Carolina Department of Corrections may obtain regarding disclosure of the Policy.

Should you have questions about this response, please do not hesitate to contact me.

Sincerely,

Terry M. Baggott

Terry M. Baggott
Managing Partner

c: Paul M. Koch
Samuel L. Wilkins
Marshall Horton

South Carolina Department of Corrections

NIKKI R. HALEY, Governor
WILLIAM R. BYARS, JR., Director

August 22, 2011

Mr. Paul M. Koch, Esq.
South Carolina Budget and Control Board
Office of General Counsel
P.O. Box 11608
Columbia, SC 29211

Re: Johnnie L. Bryant v. S.C. Department of Corrections
Human Resources Division Appeal

Dear Mr. Koch:

The above referenced appeal is currently pending before the State Employee Grievance Committee. As part of the record submitted in this appeal (pages 85 – 99), the Department of Corrections submitted its Use of Force policy. All parties agree the policy is relevant to the current proceedings. However, the handling of this policy poses particular security concerns, and since the Budget and Control Board is considered the custodian of records for this hearing, I am writing to ensure you are made aware of these concerns.

Distribution of the Use of Force policy is strictly limited within the Department of Corrections. Copies are not made unless absolutely necessary and only those employees whose duties are affected by the policy are permitted access. Most importantly, we carefully safeguard the policy to avoid any potential for an inmate to obtain a copy since the safe and secure operation of the State's highest security prisons depends in a significant way on the implementation of this policy. In practical terms, in litigation involving the policy, this typically means the Department obtains a protective order limiting its use and disclosure. However, as this case is pending before the Committee, no such formal mechanism is available.

Accordingly, the Department of Corrections respectfully requests the above referenced pages of the record in this matter be maintained in a manner analogous to sealing a court record. Under no circumstances should copies of the Use of Force policy be publicly accessible. The continued safety of correctional employees and inmates, as well as the public, mandates that steps be taken to prevent the policy from falling into the hands of an inmate.

Sincerely,

Christopher Florian
SCDC Staff Attorney

RECEIVED
AUG 23 2011
OFFICE OF HUMAN RESOURCES

cc: Marshall Horton, Esq.
State Employee Grievance Committee Chair

P.O. Box 21787 - 4444 Broad River Road - Columbia, SC 29221-1787 - Telephone (803) 896-8555
http://www.state.sc.us/scdc E-mail: corrections.info@doc.state.sc.us

South Carolina Department of Corrections

NIKKI R. HALEY, Governor
WILLIAM R. BYARS, JR., Director

August 15, 2011

By Email to hkeever@orh.sc.gov
State Employee Grievance Committee Chairman
c/o Ms. Heather Keever
8301 Parklane Road
Suite A220
Columbia, SC 29223

Re: Johnnie L. Bryant v. S.C. Department of Corrections

Dear Committee Chairman:

Please be advised that prior to the hearing in this matter, the Department of Corrections will move to seal a portion of Committee Exhibit 1 of this case. Specifically, SCDC will request to seal pages 85 to 99 such that those documents are used only for purposes of resolving this appeal. Moreover, the Department will respectfully seek that those documents not be made publicly accessible and no additional copies be made beyond those necessary for the present case. Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,

Christopher Florian
SCDC Staff Attorney

cc: Marshall Horton (via fax to (843)757-6191)

P.O. Box 21787 - 4444 Broad River Road - Columbia, SC 29221-1787 - Telephone (803) 896-8555
http://www.state.sc.us/scdc E-mail: corrections.info@doc.state.sc.us

STATE OF SOUTH CAROLINA
STATE EMPLOYEE GRIEVANCE COMMITTEE

Johnnie L. Bryant, Grievant,

vs

South Carolina Department of Corrections, Agency.

Gina M. Smith, CSR, RPR
117 Harmon Creek Court
Lexington, SC 29072
803-359-5705

MS. KUDELKA: This Committee has convened to consider the agency's request for reconsideration of its decision made in the appeal of Johnnie L. Bryant against South Carolina Department of Corrections. This reconsideration hearing is being held in Columbia, South Carolina, this 18th day of November 2011. A record is being made of this reconsideration hearing.

For the record, my name is Lesia Kudelka, Department of Labor, License, and Regulation, and other members of the State Employee Grievance Committee present are Leroy Taylor, Department of Public Safety; Ami Franklin, State Ethics Commission; Rov Kelly, Department of Insurance; Michael Jones, Department of Health and Human Services. The Committee attorney is Warren Ganjehsani, Attorney General's Office.

The human resources division has furnished to the members of the Committee a copy of the request for reconsideration as well as the appellant's response. Assisting the Committee is Joseph Miller, human resources division. The requirement that written public notice of the time, date, place and agenda for this hearing has been met.

Pursuant to the Freedom of Information Act, in order for this Committee to go into executive session to consider the request for reconsideration, we must take a vote in open session of this intent and the reason why. I will now entertain a motion that this Committee go into executive session.

UNIDENTIFIED COMMITTEE MEMBER: Madam chair, I move that this Committee go into executive session to consider the agency request for reconsideration of the Committee's decision made in the appeal of Johnnie L. Bryant against the South Carolina Department of Correction and to receive any necessary legal advice from the Committee's attorney.

MS. KUDELKA: Do I have a second?

UNIDENTIFIED COMMITTEE MEMBER: Second.

MS. KUDELKA: At this time, we will go into executive session. No votes will be taken while the Committee is in executive session. The Committee attorney will remain to provide legal advice, but all other parties are asked to leave the hearing room. I apologize, I got a move and a second. All in favor, say aye. Any opposed? We will now go into executive session.

(The Committee entered executive session.)

UNIDENTIFIED COMMITTEE MEMBER: Madam chair, I move that this Committee comes out of executive session.

MS. KUDELKA: Okay. Do I have a second?

UNIDENTIFIED COMMITTEE MEMBER: Second.

MS. KUDELKA: Okay. All in favor, say aye. Any opposed? Okay. We are now out of executive session. No votes were taken while we were in executive session.

Is there any discussion? If there is no discussion, I will now entertain motions from the panel.

UNIDENTIFIED COMMITTEE MEMBER: Madam chairman, I'd like to make a motion that the Committee reconfirms their original decision that the agency acted arbitrary and capricious and we deny the reconsideration.

MS. KUDELKA: All right. Do I have a second?

UNIDENTIFIED COMMITTEE MEMBER: Second.

MS. KUDELKA: All in favor, say aye. All opposed. That's three in favor of the motion and two opposed.

(Whereupon the proceeding concluded.)

CERTIFICATE OF REPORTER

I, Gina M. Smith, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

February 13, 2012

Gina M. Smith

Gina M. Smith
Notary Public,
State of South Carolina at Large.
My Commission expires
July 23, 2013.

STATE OF SOUTH CAROLINA
STATE EMPLOYEE GRIEVANCE COMMITTEE

Johnnie L. Bryant, Grievant,

vs

South Carolina Department of Corrections, Agency.

Gina M. Smith, CSR, RPR
117 Harmon Creek Court
Lexington, SC 29072
803-359-5705

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MS. KUDELKA: This is the hearing of the appeal of termination instituted by Johnnie L. Bryant against the South Carolina Department of Corrections being held in Columbia, South Carolina, the 23rd day of August 2001. A record is being made of the hearing.

For the record, my name is Lesia Kudelka, and I am with the Department of Labor, Licensing, and Regulation. Other members of the State Employee Grievance Committee present are Leroy Taylor with the Department of Public Safety; Ami Franklin, the State Ethics Commission; Rov Kelly, Department of Insurance; and Michael Jones, the Department of Health and Human Services. The Committee attorney is Warren Ganjehsani, Attorney General's Office.

State employee grievance and appeals regulation 19-718.07E7 provides that each party shall provide to the secretary a list of representatives and witnesses at the beginning of the hearing. At this time, the secretary will accept representatives and witness lists from both parties. That's fine, if you want to write them out and --

MR. HORTON: I'm just going to have to

write them out.

MS. KUDELKA: That is perfectly fine.

MR. HORTON: Thank you. And I apologize for the informality.

MS. KUDELKA: That's fine.

The appellant is represented by Marshall Horton, attorney at law. The employee and agency is represented by Christopher Florian.

MR. FLORIAN: That's correct, thank you.

MS. KUDELKA: Okay. Staff attorney. Your attention is called to the fact that the hearing will be conducted as informally as is compatible with the equitable presentation of both sides of the case and in compliance with the Administrative Procedures Act.

I am the presiding officer of this committee, and it's my duty to take whatever action is necessary to ensure an equitable, orderly and expeditious hearing. We will be bound by the Rules of Evidence. The Committee attorney shall determine the order and relevance of the testimony and the appearance of witnesses and shall rule on all motions and objections.

The human resources division has furnished to the members of the Committee a copy of records,

reports and documentation of the earlier proceedings on the grievance. These documents were provided to the human resources division by the agency and the appellant. These documents will be considered by the Committee as the record on appeal during this hearing and according to 8-17-350 of the State Employee Grievance Procedure Act. Will now be marked into evidence as Committee 1.

(Committee 1 was marked for identification.)

MR. JONES: Warden Levern Cohen.

MS. KUDELKA: Oh, no, I'm sorry. We're just doing the Committee exhibit right now.

MR. JONES: Okay.

MS. KUDELKA: The appellant and the agency may, if they so desire, make an opening statement before the presentation of their cases. Then the appellant may call and examine witnesses from the appellant list of witnesses. After the appellant has finished, the agency may present its case.

Each side will be given the opportunity at the appropriate time to ask questions of a witness. The presiding officer, any member of the Committee, or the Committee attorney may direct questions to any party or witness at any time during the

proceedings.

Before closing the hearing, the presiding officer will allow both parties to present a brief summary or closing statement if they so desire. The appellant will have the option of closing first or last.

I wish to point out that only testimony and evidence pertinent to the grounds on which the appeal is based or pertinent to the charges on which the agency's action is based will be allowed. Testimony or evidence which is repetitive or cumulative will not be permitted.

Are there any questions by either party?

MR. HORTON: No, ma'am.

MR. FLORIAN: No, ma'am.

MS. KUDELKA: Okay. Witnesses are asked not to discuss this case either before or after testifying until they are excused. This is not intended to preclude the parties from entering into discussion with their respective witnesses. Does any witness not understand this?

Okay. Witnesses are to remain available after testifying until they are excused by the presiding officer. After the opening statement, witnesses may not remain in the hearing room except

when called to testify. Witnesses will be asked to testify under oath.

At this time, the secretary will determine which witnesses on the parties' list are present and administer the oath to all those witnesses.

MR. JONES: Warden Levern Cohen. Robin Gracien. Investigator Frederick Hamer.

MR. HAMER: Yes, sir.

MR. JONES: John Middleton. Investigator Anthony Orr.

MR. ORR: Yes, sir.

MR. JONES: Sergeant John Wiggins, Jr.

MR. WIGGINS: Yes, sir.

MR. JONES: Christopher Florian.

MR. FLORIAN: I'm not actually a witness. I'm just a representative.

MR. JONES: Okay. Shanika Johnson.

MS. JOHNSON: Representative as well.

MR. JONES: Johnnie Bryant.

MR. BRYANT: Here.

MR. JONES: Is that Marshall Hoston, H-O-S-T-O-N?

MR. HORTON: I'm sorry, Marshall Horton, H-O-R-T-O-N. I apologize for my poor penmanship.

MR. JONES: Okay. All witnesses that

testify, please stand and raise your right hand. You're already standing. Do you swear or affirm that the testimony you will give today is the whole truth and nothing but the truth?

(All swear or affirm.)

MR. TAYLOR: Madam chairman, I move that this Committee go into executive session to hear the appeal of termination instituted by Johnnie L. Bryant against the South Carolina Department of Correction.

MS. KUDELKA: If you can hold one minute. I'm sorry. I've got a little bit more to read, okay?

MR. TAYLOR: Okay.

MS. KUDELKA: The appellant, the agency witnesses or anyone else related to the case are not to discuss the case with any member of the State Employee Grievance Committee before, during, or after the hearing until the final decision is reached. The only time the case is to be discussed is during the formal hearing procedures.

After hearing this appeal, the Committee will report its findings and decision in writing to the employee and the employee and agency within 20 calendar days of the conclusion of the hearing.

The decision shall be final in terms of administrative review.

Assisting the Committee today is Joseph Miller with the human resources division.

The requirement that written public notice of time, place, date, and agenda for this hearing has been met.

Pursuant to the Freedom of Information Act, in order for the Committee to go into executive session to hear this appeal, we must take a vote in open session of this intent and the reason why. I will now entertain a motion that this Committee goes into executive session.

MR. TAYLOR: Madam chairman, I move that this Committee go into executive session to hear the appeal of termination instituted by Johnnie L. Bryant against the Department -- the South Carolina Department of Correction and receive any necessary legal advice for the Committee.

MS. KUDELKA: Do I have a second?

UNIDENTIFIED COMMITTEE MEMBER: Second.

MS. KUDELKA: All in favor. Okay. We're in executive session. Okay. We'll excuse all but the parties involved and other authorized persons.

At this time, we'll begin, and,

Mr. Horton, would you like to make an opening statement?

MR. HORTON: Yes, ma'am. May it please the Commission, my name is Marshall Horton. I run a small law -- a small office in Bluffton. I represent Johnnie Bryant in this appeal.

Mr. Bryant is a professional corrections officer. This is what he does for a living. He had been working at the Ridgeland Correctional Institute since 1999. At that time, he had a exemplary service record. He was the 2002 corrections officer of the year. He had never had any negative write-ups and had been -- received at least one promotion. At the time that the incident in question here occurred, he was -- his rank was sergeant two. He also -- he also is a certified corrections officer and has been certified since 2005, just to give you a little background of the man who I speak on behalf of.

By all accounts, his career as a corrections officer was going well until August of 2008, which was the event that we're all going to discuss at length today.

I'm going to save a lot of the details of what occurred on that day for Mr. Bryant to

testify, but I will just give you a very brief outline of what exactly happened, and to summarize, it was a nightmare situation, the stuff that bad dreams are made out of. Mr. Bryant responded to a call that an inmate had attacked another corrections officer.

When he arrived, he saw a corrections officer down and not moving, and an inmate, Thomas Doughty, swinging a lock on a rope or a chain attacking the officer. Mr. Bryant engaged the inmate alone, tried to use Mace on him, sort of a pepper spray which I think they call Top Cop to which apparently Inmate Doughty did not even respond to that.

At a certain point, he was able to subdue and wrestle down Inmate Doughty -- I believe he had the help of another officer -- and escorted him out of the building. As if that wasn't scary enough, this happened in a open area to where there was various other inmates sort of milling around. So it wasn't even as if these two gentlemen were in the same room. This was an open area with a bunch of inmates. Mr. Bryant was the only officer on the scene, okay?

At some point, Inmate Doughty got hurt,

and there's no question about that. There is photographs and we've known that from the beginning. He -- for lack of better words, he hurt his head or busted his head pretty badly, and you're going to see some more photographs, if you haven't already seen them, that show the extent of the injuries.

Problem here is that Mr. Bryant doesn't know how that happened. He doesn't know where it came from. He doesn't know who did it. All he's maintained, that quite simply it wasn't him. They did -- the only incident of violence towards Doughty that he really knows about is after when they were going out to the paddy wagon trying to leave the prison, they all did fall, the two officers which were escorting Doughty and Mr. Bryant. I don't think that any of you or us or anyone in this room probably is going to think that the injuries that occurred to this man happened on that fall, but they happened somewhere. The problem is is that he didn't do it.

Now, through this -- through this process, granted, we don't have all the evidence and we're going to be learning new things today too, but we don't know how this happened, okay?

In that process of this incident, Mr. Bryant was charged, for lack of better words, of three acts of misconduct, okay? He was charged with use of unnecessary force and excessive force. He was charged with making false statements during the course of the official investigation, and he was charged with the falsifications of official documents.

Speaking directly towards the falsification of documents and making a false statement, to this day, we have no idea what they're talking about. We have not seen any statement. We have not seen any document. The only statement that we have seen indicates that Mr. Bryant said exactly what he's been saying for the entire time. So as these statements and official documents come out, we'll be learning them along with y'all, okay?

The two issues that we're here, the first is that we believe he was wrongfully terminated. We don't believe that quite frankly he did this. And as you're going to hear testimony, I don't think there's anyone who's going to be here to say anything different than what Mr. Bryant's going to say, and if they are, it will certainly be news to

me.

The second issue, and I don't know the full extent that the Committee has to review this situation, but because of this, Mr. Bryant wasn't terminated in 2008. He was put on suspension without pay pending investigation to which that pending without pay -- suspension without pay pending investigation lasted 947 days, at which time he attempted to get other work, he attempted to update his certification, he attempted to contact the jail to basically say fire me or hire me back on, but do something because I'm basically here and destitute and I can't do anything with myself, to which nothing was done until of course he hired me and I filed a civil lawsuit, and the day that the civil lawsuit was served upon the prison, they decided to do a termination hearing.

Your Honor, the -- our case -- our case doesn't really hinge on the introduction of much evidence. We discussed who to call and what evidence to really bring up. Our case really is based on a lack of evidence. So because of that, the only person who I'm going to call is Mr. Bryant to give y'all his side -- his account of what happened, and I think that's about it. Thank you

very much. I appreciate y'all hearing us.

MS. KUDELKA: Thank you. Mr. Florian.

MR. FLORIAN: Thank you. Good morning. My name's Chris Florian. I'm an attorney with the Department of Corrections. To my left, this is Shanika Johnson. She's an attorney with our office. She'll be also working on this hearing with me. And to her left, this is Frederick Hamer. He's the investigator who handled this case, so he's probably the most knowledgeable person as far as our department's concerned about it.

This case is basically a puzzle with a missing piece. What the evidence is going -- is going to show, and I like Mr. Horton am going to leave a few things that I'm going to wait until after the hearing to talk about, but what undisputed evidence is going to show is on August 17, 2008, Ridgeland Correctional, Sergeant Bryant was designated a first responder. The first responders' duties include responding to serious incidents that are taking place at the institution.

Well, this Inmate Doughty, he's in what they call Beaufort B wing. It's a dorm at the institution. He's got this lock tied to a string, and first responders are called, and while first

responders are responding and Mr. Bryant is responding, this inmate actually strikes Officer Cobb in the back of the head.

So as Bryant is coming into the door, he sees this officer, Officer Cobb, and he's on his way out to medical. That leaves Officer Bryant or Sergeant Bryant, Officer Middleton in the dorm with the inmate, and eventually they're able to corner the inmate and take him down to the floor and handcuff him. They escort him out of the dorm to turn him over to Sergeant Wiggins who is also a first responder.

After they escort him out, sometime before Sergeant Wiggins arrives, something happens to Inmate Doughty, and his head is basically split open, and the pictures are in the record.

DNA collected from a wall outside of the dorm about five feet up matches Inmate Doughty, and the DNA comes from blood and hair on the wall.

There's really no explanation given for the injury. Investigators talked to everyone involved, and you'll get to see Sergeant Bryant's incident reports, his statements. You can really come to your own conclusion.

While the investigation is going on,

Mr. Bryant ends up being administratively suspended. That actually leads to criminal indictments as well. Eventually it leads to Mr. Bryant's termination. He's terminated for unnecessary use of force, falsification of documents, and making false statements during the investigation.

I appreciate your attention through this hearing. I'm confident at the end of the hearing, you'll conclude that the termination should be upheld. Thank you.

MS. KUDELKA: Okay. Mr. Horton, are you ready to begin or do you need a couple minutes before you call your first witness?

MR. HORTON: No, ma'am, I'm ready to go.

MS. KUDELKA: Okay. All right. Then go ahead and call your first witness.

MR. HORTON: Ma'am, I'd like to call Mr. Johnnie Bryant.

MS. KUDELKA: Just be aware that this is being recorded, so if you'll speak up so that the microphones can hear you.

MR. BRYANT: Yes, ma'am.

MS. KUDELKA: And in that book you may -- there may be references to some documents, and you

should be able to locate them in there if they refer to them.

MR. HORTON: I'm going to hold for one second so I can unfasten this overly ambitious staple I've got here. Y'all wouldn't happen to have a staple remover, would you? Thank you.

DIRECT EXAMINATION

BY MR. HORTON:

Q. Mr. Bryant, could you please state your name for the record?

A. Yeah, it's Johnnie L. Bryant, Jr.

Q. Okay. Where do you currently live?

A. Hilton Head, South Carolina. 48 Bryant Road, Hilton Head, South Carolina, in Spanish Grove.

Q. Okay. How long you been living there?

A. Just about practically all my life.

Q. Okay. Were you born out there?

A. Born in Palmetto Beach, Florida.

Q. Okay. When did you move to South Carolina?

A. Roughly probably about the age of five or six my mom moved us back.

Q. Okay. She move y'all to the island?

A. Yeah. She's originally from Hilton Head,

South Carolina.

Q. Y'all making plans for the hurricane?

A. Trying to.

Q. What do you -- what is your profession?

A. My profession is criminal justice, trying to maintain and continue in my criminal justice career. I'm going to school right now for my master's in public administration. Already have my bachelor's in criminal justice. I have two associate's in criminal justice and one in business and computer.

Q. How long have you been working in the field of criminal justice?

A. About -- in the corrections, about 13 years approximately.

Q. Okay. Do you remember when you were first hired over at the Ridgeland Correctional Institute?

A. Yes, in 1999 August.

Q. Okay. And what were you hired as their -- hired there to do?

A. As a correctional officer to -- to monitor inmates.

Q. Okay. Did you enjoy your job?

A. Yes, I sure enough did. I did enjoy it.

Q. Did you receive any promotions?

A. Yes, I received a promotion for corporal and then sergeant later on down the line.

Q. Did you ever receive any awards or citations?

A. Yes, I got a correction officer of the year. I got a certificate for reevaluation of policy and procedure. I can't remember the other one. I got another one, but I can't remember right offhand from the State, from the Academy.

Q. Prior to 2008, did you ever have any disciplinary proceedings or any write-ups or any disciplinary actions against you whatsoever?

A. No, sir.

Q. Okay. Had you ever been cited for poor performance of duty?

A. No, sir, never have.

Q. Had you ever been -- have you ever had any issue with use of force issues?

A. No, sir, never have.

Q. Okay. Tell me about what the -- pardon me. You are certified -- or you were certified --

A. Right.

Q. -- as a corrections officer. Is that correct?

A. Yes. Yes.

Q. Okay. When did you receive that certification?

A. 2005. Well, it began in 1999, but when I got hired in 1999, went to the academy, probably about 19 -- about 2000, we also received -- because we have to wait for the FBI check to come back. Even after you pass the academy, you're still not really certified. You still got to wait until NCIC clear you from their investigation, so it still takes a little while after that. So it would have been approximately about three months later.

Q. Is it common for the sergeants over there at the Ridgeland -- Ridgeland Correctional Institute to be certified?

A. Yes.

Q. Can you tell the Committee a little bit about what you study to become a certified police officer -- corrections officer, pardon me?

A. We study about inmates, type of inmates that we be dealing with, inmate -- which is inmate activities. Study about gangs, different gangs of the inmates. Basically that was really about it. I mean, we study -- we deal with the -- talk -- we study about the weapons and the chemicals, and that's about it.

Q. At these trainings, are you trained and versed in use of force issues and policies?

A. Well, yes, we train in use of force to the bare minimum, yes, bare minimum.

Q. Okay.

A. We deal with hand-to-hand combat on what if an inmate have a knife or if an inmate have a -- if we have to draw a gun, draw a gun, you know, a particular gun or protect ourself from if an inmate have any type of weapon. But mostly they'll tell us to turn the room, which is meaning go get help.

Q. In your -- in your time at the Ridgeland Correctional Institute, are you -- did you become familiar with their use of force policy?

A. A little bit, yes, sir.

Q. Okay. Mr. Bryant, I'm going to -- I'm going to instruct you to tell the Commission what happened on this date. You and I have obviously talked about it before, but I'm going to let this really come from you, and if you could start from the beginning and tell the Commission what happened on this day in August 2008.

A. Okay. On August 2008, I was in the visitation area. The yard was clear. It was during the count time so I was in the visitation

area talking to the Captain Eichelberger, which is now Major Eichelberger. We were discussing how we were going to feed because that day we was real short. We had no cafeteria officer because the cafeteria officer had to go on a run.

I was the only sergeant, yard sergeant, the only responder. As a matter of fact, I was -- I mean covering everything else. So the captain said, well, we'll wait until after visitation is over, and then he would go down to the cafeteria and then I'll be on the yard and we'd do one wing at a time.

Well, count cleared. Visitation still wasn't over as of yet because we had to clear the people out. But anyway, before that happened, a call came across the window, said first responder report to Beaufort B, first responder officers down, first responder report to Beaufort B. So I had keys, I was only the yard -- only yard officer, I had to report, only responder --

Q. Hang on. I'm going to interrupt you.

A. I'm sorry.

Q. We don't all know what a yard officer is, so if you could explain what it -- what that means.

A. A yard officer, what I do is I cover the

yard. I monitor the yard. I open the doors for the inmates to come out to eat or go to different areas within the institution.

I give them about five minutes to clear the -- you know, come out, and then I lock the doors back. And I do each -- it's about -- it's four units, and it's two sides to each unit. So five minutes to go and clear the area, clear the door area.

They supposed to go walk to the right of the line because we got a big -- it's like a big perimeter. A lot of people don't know about it, but Mr. Hamer know. It's a perimeter. They walk to the right side, and they go to the cafeteria or they'll go to the library, go to the B building, mailroom, canteen, and so forth and so on.

Q. All right. Sorry to interrupt. Go on.

A. Yeah, that's fine. So anyway, I responded, and when I got to the door, I looked and I looked, I'm like, well, where is the officers? So the inmate, they was -- a lot of the inmates was at the door and they was pointing to the sally port. So when I popped -- when I opened the door, I went to the sally port area, and there was Officer Middleton and Officer Cobb.

Well, Officer Cobb was holding his head, and he was bleeding really bad from the back of his head. So I escorted him to the door, me and Officer Middleton, and -- escorted -- made sure that he got to medical.

We went back in. And I asked -- I said, well, Officer Middleton, where's the inmate, because there is -- a lot of inmates was still around, because like I said, they just started opening the door. They still hadn't even opened all the doors.

Then he point to the inmate. Well, low and behold, the inmate, he started yelling, yeah, y'all caused this shit, y'all caused this shit. And then he started swinging the lock with the string. And I'm like -- and I gave him several directives, sir, put the weapon down and turn around and be cuffed.

Well, the Inmate Doughty did not respond. He kept on swinging the lock. So what I did, I took my Mace out. It seemed like he was coming towards me, so I sprayed him. When I sprayed him, Officer Middleton already had his -- I guess he had his gas out, he sprayed him. Well, to no effect. It didn't even affect him. He steady -- he steady

was moving and swinging like if he's coming toward me. He's still not paying Officer Middleton any attention.

Anyway, we sprayed him again. It didn't even affect him. So as he was still approaching -- trying to approach me, I holler at Officer Middleton, because both of us was on RRT team and he know kind of basically what that signal mean, that mean he's coming -- he's coming toward me so he's not paying attention to you, you get him from the back, and that's what Officer Middleton did. There's very little he had to fight this man to get him down.

When we -- when we got him down, finally got him down, I cuffed him up. And one more thing -- well, plus I want to add this here, it was hot. There was no air condition. The floor was slippery. We trying to struggle. He's steady fighting us back. He's steady aggressive. He's fighting us back, fighting us back.

We trying to get him to the door. Now, mind you me, I'm blind. I'm really blind from the Top Cop. Officer Middleton blind from the Top Cop. We don't have any gas masks on. So the spray -- the Top Cop is affecting us just as -- I mean, but

it's not even affecting the inmate.

So we struggling and struggling. He's fighting and he's fighting because he don't want to go out. So when we got to the door, we pushing, pushing, we push him out the door. When we push him out the door, all three of us fell coming out the door -- I mean, you know, at the door, we fell.

Push him out the door, Officer Middleton fall, I fell because we had him on both sides. So when I pick -- when we picked him up, like I said, I hardly couldn't see, but it looked like I seen like one or two drip of blood, which that's what I stated on my report, on the report when I wrote -- when I came off of vacation and talked with Mr. Hamer when I did remember that we did fell coming out the door.

Anyway, and so when I picked him up, I'm trying to blink, blink, trying to see, so it looked like I seen Sergeant Wiggins come across the yard. When I -- when it looked like I seen Sergeant Wiggins come across the yard, I asked Officer Middleton, you got him, because a lot of the inmates -- now, we talking about at least about 80 inmates was out out of a hundred and something inmates. They trying to come out though because

they gagging, they -- and they, you know, gagging and coughing, everything else. They want some fresh air. So they cannot -- and I told them they need to back up because they cannot come on the yard with this man being cuffed.

So I asked -- like I said, I asked Officer Middleton. He said, yeah. I snatched his keys and then I took my keys and I locked the front door, and I told all the inmates to back up. So now the inmates done backed up.

I went and try to rinse my face. While I was trying to rinse my face to try to get some of the chemical out of my face from the water fountain, a lot of the other inmates bang on the door, and I'm like, well, what the heck they banging on the door for? They're still locked in.

Q. Was there anyone in the actual prison or yard supervising the inmates at the time that this was all going on or it was just you and Mr. Middleton and the yard fellow you spoke of?

A. Just -- just Sergeant Wiggins and Officer Middleton.

Q. Thank you. Go ahead.

A. At that time, now I'm here, I'm going around, around unlocking the doors, getting all the

inmates out of the cells, finishing up what they started. Now, once the yard was clear, I had to call up by telephone because for some reason, my radio went dead at that time. So I had to call by telephone, ask them if they already got the inmate off the yard. The resident told me yes, they had already got him off to medical.

So now, what I did, I opened that same front door, and I opened up the -- it's another fire escape type door that we got further up front, and I let all the inmates back on the yard. And that's pretty much what all took place that I know about.

Q. Was -- to your knowledge, was Inmate Doughty injured when he left your custody?

A. No, sir, not from my knowledge.

Q. Okay. At the time that this incident occurred, did you know why Inmate Doughty was in prison, at the time?

A. No, sir, I never did. I only -- I checked -- the only time I checked inmate records is if an inmate gave me problems on the yard. As long as they following the rules and regulations, I don't check their record. And I never had problems with Inmate Doughty.

Q. Okay.

A. Because really I never really knew Inmate Doughty until that -- until the incident started.

Q. But after this ordeal, you found out what Inmate Doughty was in the Ridgeland --

A. Right.

Q. -- Correctional Institute for?

A. Exactly, and through my attorney.

Q. Can you tell us what it was?

A. Inmate Doughty was in the institution for shooting a fellow friend of his with a shotgun because he didn't want to leave the friend house because he's trying to tell the friend and his daughter what to do, and they told -- and the friend of his told him to leave.

And then when Inmate Doughty got into prison, Inmate Doughty assaulted another sergeant at Allendale and render her disabled. And then through the report, Inmate Doughty went to Lieber and started a riot -- well, tried to start a riot. And from Lieber, if I'm not mistaken, Inmate Doughty came to Ridgeland Correctional -- excuse me, Ridgeland. So -- and that's through -- that's after I learned -- that was later on I learned about all that through my lawyer.

Q. But you have no ill will towards this man, correct?

A. I have no -- I have no -- no, sir, I have no ill will.

Q. Is it normal for an inmate to not respond to being maced?

A. No, that's not normal, no.

Q. Do you have any theories as to why he didn't respond?

A. I asked -- I asked the warden, I say -- when he questioned me about that, I asked him, I said -- well, I told him the same thing. I said, the man act like superman. He walked straight through the Mace. We had nothing else, nothing but hand. We had to literally fight this man. I asked him if he had -- if when Inmate Doughty was in the hospital, did they do any drug tests on this man.

MR. FLORIAN: Objection to the hearsay that's about to happen.

MR. GANJEHSANI: Well --

THE WITNESS: That's what I asked him.

MR. GANJEHSANI: -- he can testify what he asked him.

THE WITNESS: That's what I asked him.

MR. GANJEHSANI: The response, I will

reconsider your request if he wants to testify.

THE WITNESS: And the warden told me -- he looked at me like --

MR. FLORIAN: Objection.

MR. GANJEHSANI: Mr. Bryant --

THE WITNESS: Okay.

MR. GANJEHSANI: -- when I'm speaking --

THE WITNESS: I'm sorry.

MR. GANJEHSANI: -- you need to let me finish.

THE WITNESS: Okay.

MR. GANJEHSANI: When Mr. Florian's speaking, you need to let him finish.

THE WITNESS: Okay.

MR. GANJEHSANI: You will have an opportunity to tell your case.

THE WITNESS: Okay.

MR. GANJEHSANI: The objection's denied. You may continue, Mr. Bryant.

THE WITNESS: Okay. Well, like I said, the warden, he looked at me, he said -- he asked --

MR. FLORIAN: Objection.

MR. GANJEHSANI: Sustained. If you could rephrase the question.

BY MR. HORTON:

Q. We don't -- we don't (inaudible) warden about what he's told you right now.

A. Okay.

Q. How long after the incident until there was any sort of disciplinary proceedings against you?

A. Honestly, right now, might have been about two or three weeks because I went on vacation for about three weeks, maybe a month, because I went on vacation before I even knew I was suspended. I was on vacation for about a week or two. When I came back, that's when I went to see the warden, and that's when he told me he had to put me on suspension without pay.

Q. Is there any indication as to how long you'd be placed on suspension without pay?

A. He told me, say, it would only take ten to 15 days.

Q. Well, did it take ten to 15 days?

A. No, sir. It take almost four years.

Q. Okay. Did you have any criminal charges pressed against you because of this incident?

A. Yes. They charged me with aggravated assault with intent to kill and misconduct while in public office.

Q. Okay. And what are the status of those charges?

A. All dropped -- all charges were dropped.

Q. Okay. Did you enter into any PTI --

A. No.

Q. -- or program?

A. No, sir.

Q. Did you have to pay anything?

A. No, sir.

Q. Okay. To your knowledge, are the charges against Officer Middleton still pending?

A. To my knowledge, yes, sir.

Q. Okay. Was there any reason ever given to you for -- as to why you were kept on suspension without pay?

A. Yes, sir, there was a reason given. They told my first attorney that they going to keep me on suspension until Officer Middleton was cleared or I testify against Officer Middleton as to what happened.

Q. Are you currently certified as a corrections officer?

A. No, sir.

Q. What happened?

A. Because of the suspension, long-term

suspension, they now, the Academy of Savannah Police Department, I wasn't able to keep up my certification.

Q. Okay. Did you -- did you attempt on your own to keep up your certification?

A. Yes, sir, through Savannah Tech Police Academy.

Q. Okay.

A. I wanted to -- since they wasn't giving me any leeway or telling me anything after I was cleared of all charges, nobody wanted to answer any questions, so I was assuming at that point that, okay, I'm going to go ahead and try to get a job in Savannah as a police officer.

But I would take -- I would send my own self through the academy instead of going to the police academy, and which would be more cheaper and they would hire me more quicker. And upon doing that, they told me I can't because I still got this over my head with the South Carolina Department of Corrections.

Q. Do you remember approximately when you applied to the Savannah Technical College Police Officer Academy?

A. No, I can't remember exactly when.

Q. Okay. Do you remember what happened, though, when you did apply?

A. They denied me.

Q. And why was that?

A. Because I still was under suspension with south -- well, first, they sent a -- what do you call -- what they call -- a profile, they sent a profile stating that I was terminated. Then they was going to let me go through the academy.

Then they -- South Carolina Department turned around, they sent a formal letter saying -- stating that I was still under -- still under suspension without pay. Then that's when the director made a decision that he cannot let me go through the academy.

Q. Okay. So -- so it's clear, the -- you're saying is that the Department of Corrections represented to the Savannah Technical College that you were still actually employed with them?

A. Right.

Q. All right. Did you ever attempt to contact anyone at the Department of Corrections regarding your status?

A. Yes. I contact Ms. Morris. I contact Robin Gracien. I sent out various letters to ethic

committee and different people, even the director, and had no response. Well, the ethic committee said that they had nothing to do with it, they cannot even indulge or even -- they cannot even investigate or answer none of my questions. And they sent me my letter back along with another letter stating that.

And the director never answered. Robin Gracien, she kept telling me that, you know what happened, you know what happened. And that's basically about it.

Q. Mr. Bryant, is it possible for you to work as a corrections officer today as we speak because of what has happened here?

A. No. No, sir.

Q. Was it possible for you to find work as a corrections officer during the time that you were suspended without pay?

A. No, sir.

Q. Can you tell the Commission approximately how long you were put on suspension without pay?

A. I was put on suspension without pay for at least four years which is about 900 and something days.

Q. Okay. At some point, though, the

Department of Corrections did institute a termination procedure, correct?

A. Correct.

Q. Isn't it true that through your attorney you received notice to be at the Ridgeland Correctional Institute at a certain time and date to have a hearing regarding your employment? Is that correct?

A. That's correct.

Q. Can you tell the Commission what happened when you showed up on that date?

A. Okay. Me and my attorney, Marshall, showed up on time -- well, ahead of time. We went through the scanner. Talked to one of the corporals there. He scanned us to check us in.

Then the sergeant of arms in the control room, he said, Mr. Bryant, can you come to the window. I went to the window. He said, they don't have a problem with you coming upstairs, but your attorney, he cannot go upstairs with you.

So -- and so I asked him, I said, well, why? He said, they didn't give me any reason why, they just called down and told me that your attorney can't be present with you upstairs. I said, okay, well, I'm not going upstairs either

because I need my attorney to be present for my lead counsel. So -- and we turned around and we left.

Q. And at that time when the hearing had occurred, is it true that you actually had a lawsuit filed in Jasper County Circuit Court?

A. Yes.

MR. HORTON: Madam chair, I'm going to ask for a bit of guidance at this point. In the process of his testimony, we believe we've sort of discussed briefly and kind of went over documents which are actually included in the record already at this time.

If it's your so wish, I could formally introduce these into evidence under the Rules of Evidence and set the proper grounds and whatnot if you'd like. However, all of them have been loosely discussed, and we've kind of followed the documents that's been provided as a timeline more or less. And it's up to y'all, I can do this for the record if you'd like, but --

MR. GANJEHSANI: Mr. Horton, I'll address that. I'm the attorney for the Committee. The documents that you seek to introduce, are they already part of Committee Exhibit 1?

MR. HORTON: Yes.

MR. GANJEHSANI: Are there any documents that you want to introduce that are not already part of Committee Exhibit 1?

MR. HORTON: The -- not with Mr. Bryant. Later, I mean, the only document that I may attempt to introduce is for Warden Levern, just a certificate of service for a civil lawsuit. That's the only thing that hasn't been provided previous.

MR. GANJEHSANI: And I realize that the administrative arena is a little different than what most of us are used to in circuit court, so I'm with you there. Mr. Florian, feel free to chime in, but generally speaking, if something's already a part of Committee Exhibit 1, if there's not been a prior objection made, those documents are already before the Committee, so you don't need to formally introduce them. The only thing that you would need to formally introduce into the record are any documents that are not already part of Committee Exhibit 1.

So -- and I understand there -- I understand what's led up to this point. So -- there may be one or two things you're thinking of that I'm aware of that you may be referring to, but

if it's already in Committee Exhibit 1, then you don't need to reintroduce them, Mr. Horton.

MR. HORTON: I just want to make sure that the Committee has -- everything's properly before the Committee.

BY MR. HORTON:

Q. Mr. Bryant, I'm not going to have any further questions for you at this time, but is there anything that you wish to tell the Committee before Mr. Florian has the opportunity to ask you questions?

A. No, sir.

Q. If you'd answer any questions Mr. Florian has.

CROSS-EXAMINATION

BY MR. FLORIAN:

Q. Good morning, Mr. Bryant.

A. Good morning.

Q. So you're aware now although -- that Inmate Doughty was injured on August 17, 2008, right?

A. Yes.

Q. Were you aware that he had to be taken by ambulance to the hospital?

A. At that time, no, sir.

Q. But as of now, you are?

A. Yes, sir.

Q. Are you aware that blood and hair was found on the wall outside of that unit?

A. No, sir, not at that time, sir.

Q. But as of now you are?

A. Yes, sir.

Q. Are you aware that -- are you now aware that SLED, the South Carolina Law Enforcement Division, has confirmed that blood and hair -- the DNA from that matches Inmate Doughty?

A. At this time, yes, sir.

Q. I'd like to direct your attention to page 143 of the record which is in that book before you. Okay. So it is your position that you do not know how this injury occurred?

A. No, sir. I was shown this picture also with -- when I came back off of vacation by Associate Warden Burton and Lieutenant Housey was in my presence, and same thing I told Mr. Burton. Then I was shown this picture again with Warden Levern Cohen, and I told him the same thing, I do not know how this man got injured like this.

Q. All right. Previously, you stated that inmate -- the three of you fell as you were

exiting --

A. Yes.

Q. -- coming out the door?

A. Coming out the door, yes, sir.

Q. I'd like to hand you a document.

A. Okay.

Q. Can you identify that document? What is that?

A. It's an incident report.

Q. Is this -- is that your signature at the bottom of this incident report?

MR. HORTON: If I may, this is the first time either of us have seen this.

THE WITNESS: Yes.

MR. HORTON: So could we have a couple seconds to at least review it before Mr. Florian's question on this?

MS. KUDELKA: So this is not part of the Committee exhibit?

MR. FLORIAN: No, it isn't, ma'am.

MR. HORTON: It is?

MR. FLORIAN: It is not.

MR. GANJEHSANI: You can have a moment to confer with your client. Actually, why don't we do this. I don't want you to confer with your client

yet. I want you to take a look at the document. Generally what will happen is the witness can be asked to identify it.

If you have any objection to the document coming in, Mr. Horton, you can raise an objection, but I don't really think the appropriate mechanism to employ at this point would be for a conference with your client. You can certainly raise an objection.

Mr. Florian, if you would repeat your last question.

BY MR. FLORIAN:

Q. My question was: At the bottom of page 1, is that your signature?

A. It look like my signature, to be honest with you, but I don't even see where I made no -- my name is -- my last name. But it does look like my signature.

Q. Is this --

A. I can't say for sure, but it look like it.

Q. Is this incident report -- this is an incident report?

A. Uh-huh, this is an incident -- this is a summation of the incident report. This is the use of force part. This is -- this is just a minute of

what happened. This is not the actual incident report.

Q. Despite the fact that it says incident report at the top?

A. This is not that. This is the report that you -- like I said, it's a summation. It's a synopsis of the actual incident report. This is not the incident report that I wrote. This is what we have to put in evidence because if you -- if you put the whole incident report in, you have about three or four, five pages of the incident report.

MR. FLORIAN: I'd like to introduce this document into evidence.

MR. GANJEHSANI: Before you get up, let me -- I'd like to take a look at it. But before ruling, Mr. Horton, you'll certainly have an opportunity --

MR. HORTON: I'll object just on the basis of a foundation. I mean, he hasn't even been asked if he wrote this or exactly how his signature came to be on this or whether or not these are -- these are his words. I mean, I don't --

MR. GANJEHSANI: Well, Mr. Bryant, we're discussing it right now. I understand you may want to add something. I mean, Mr. Horton, the witness

has said that this looks like his signature. The witness has identified this as a summation of the incident report. So I don't think there's a question as to the -- there's two issues here: has the witness sufficiently identified it for it to be introduced. I think he has.

You know, if you want to -- if your concern is with the substance of what's in it, then that obviously can be brought out through the testimony of the witnesses that are to come whose observations went into the making of this report, but I don't mean to do all the talking. Is that -- is that the gist of your objection or is there something else you want to add?

MR. HORTON: Yeah. You know, I'm just going to withdraw the objection. I don't want to keep anything out of the record.

MR. GANJEHSANI: Well, you have a right to keep something -- to try to keep something out of the record if you don't think it belongs in the record. I'm not -- I'm not trying to steer you one way or another. I just want to --

MR. HORTON: I think the proper vehicle is cross -- or to cross my own client or redirect my own client on this and figure out what this is.

MR. GANJEHSANI: All right. The objection's withdrawn. The document is entered into evidence as Agency 1.

MR. FLORIAN: Yes.

(Agency 1 was marked for identification.)

BY MR. FLORIAN:

Q. On page 3 of this document, this incident report or, as you characterize it, summation of an incident report, it does not mention the three of you falling through the door, does it?

A. No, sir.

Q. The report does not mention you seeing any blood on Inmate Doughty, does it?

A. No, sir.

Q. And the report doesn't mention the blood and the hair that was found five feet up on the wall in Beaufort B dorm, does it?

A. No, sir.

Q. At no place in this report does it say you left Inmate Doughty alone with Officer Middleton, does it?

A. No, sir.

Q. In fact, it says, we then escorted Inmate Doughty to the outside of the unit where Sergeant J. Wiggins assumed control of the inmate.

Is that correct?

A. Yes, sir.

Q. Okay. I'd like to show you another document.

MR. HORTON: I'd just like a couple seconds to read this before we get started again.

MR. GANJEHSANI: Sure.

MR. HORTON: Okay.

MR. GANJEHSANI: All right.

BY MR. FLORIAN:

Q. Can you identify that?

A. Yes, sir.

Q. What is it?

A. This is a voluntary statement when Mr. Hamer, Investigator Hamer, interviewed me and he asked me for a voluntary statement.

Q. And is that your signature at the bottom?

A. Yes, sir, this is my signature.

MR. FLORIAN: I move that this document be admitted into evidence.

MR. GANJEHSANI: Mr. Horton.

MR. HORTON: No objections.

MR. GANJEHSANI: Without objection, the document is marked as Agency 2.

(Agency 2 was marked for identification.)

BY MR. FLORIAN:

Q. So this statement does say that the three of you fell through the door?

A. Yes, sir.

Q. That is not something mentioned in the previous incident report we reviewed, correct?

A. No. No, sir. No, sir.

Q. But this statement does not say you left Inmate Doughty alone with Officer Middleton either, does it?

A. No, it don't. Yes, it does. If you read the last -- if you read that last sentence, you can see, I, Sergeant Bryant, ran into the unit to rinse -- what -- my facial area and continue unlocking the unit.

Q. Before that sentence, does it not say, we pick Inmate Doughty up, Sergeant Wiggins assumed control of Inmate Doughty?

A. It does say that.

Q. And then it says you ran inside to rinse?

A. Okay, right.

Q. In this statement, it says you saw one or two drops of blood, correct?

A. Right.

Q. It doesn't mention the blood and the hair

found on the wall?

A. No, sir.

Q. So it's your position that at this time there were approximately 80 inmates?

A. Yes, sir, it's a hundred and something inmates -- it's a hundred and 20 something -- 150 inmates, somewhere around that area. At that time, I don't know how much it was in Beaufort B particularly at that time because it was four years ago.

But I know it was over a hundred and something -- I know it was over 120 something inmates in that unit. Now, in that area at that time, I know it been at least approximately 80, 80 to probably a hundred inmates that wasn't even -- that was in that area because, like I say, quite a few doors was still locked.

Q. You're saying that these 80 to a hundred were not locked down?

A. Right. They was in -- in the area when it took place, when everything took place.

Q. Okay. And finally, is it correct that you were criminally indicted as a result?

A. Indicted?

Q. Criminally indicted as a result of this

incident?

A. No. All charges was cleared, sir.

Q. I'd like to direct your attention to page 35 of the record.

A. 35.

Q. On the left-hand side of this page, does this not reflect that this was true billed, as they say?

A. Yes, they sent -- they sent down a true bill.

Q. Okay.

A. Uh-huh.

Q. You were charged with misconduct in office and assault and battery --

A. All charges was dropped, sir.

Q. -- and assault and battery with intent to kill?

A. Right.

Q. That's all I have. Thank you.

A. Okay.

MS. KUDELKA: Do you have follow-up?

MR. HORTON: Yes, ma'am.

MS. KUDELKA: Okay. You may proceed.

REDIRECT EXAMINATION

BY MR. HORTON:

Q. Briefly, Mr. Bryant. Let's -- let's look at the incident report. What is this?

A. This is a summation incident report that as you see, Lieutenant Buoy name is down here, and Lieutenant Buoy did a summation of what I wrote, what Officer Middleton wrote, and what I believe Sergeant Wiggins probably wrote. I'm not sure, but definitely I know she did a summation of what me and officer -- Officer Middleton wrote.

Q. Okay. Did you type this?

A. No, sir.

Q. Okay. Maybe this will -- this will help me out. Can you -- can you give us just a brief summary of if there's a use of force incident, the various steps that have to be taken in order to do whatever that they --

A. And that's exactly what this is, a use of force report.

Q. Well, start from step one so we can understand what this is.

A. I have to write a report -- I have to write a report. Officer Middleton have to write a report. We have to turn it in to lieutenant or either the captain, whichever one is there at that time. Then they do a summation, which is, you

know, of the incident report, and then they send it up to -- to major, which is Major Fellow (phonetic) at that time. And Major Fellow look over it, then Major Fellow send it to the warden upstairs. Well, no, I take that back. He send it to Associate Warden Burton, then they send it to Warden Cohen.

Q. Do you remember signing this document?

A. No, sir, I don't remember signing this document.

Q. Okay. Generally speaking, if you ever sign an incident report like this, would you be the last one to sign it or would you be the first one to sign it?

A. Well, I'd be -- I'd be the first one to sign it, this report. I mean, it doesn't matter really because --

Q. I'm trying to ask because the two other signatures -- there's a signature here on August 17th and there's a signature here on August 19th and then your written statement's August 20th.

A. Right, I'd be the first one to sign it.

Q. Okay. I guess you already testified you don't remember signing this?

A. I don't remember signing it, so --

Q. Do you believe that it would have been your custom or habit to have read carefully the incident report before signing this?

A. Yes, sir.

Q. Okay. I know they -- I'll ask the question that I'm sure we're wondering. On the incident report that undated -- dated sometime in August, it says that the first responder -- give me a second here.

Is there any -- anywhere on this incident report that I'm missing that says that you had observed that Inmate Doughty was injured on his head?

A. No, sir.

Q. Okay. Is there anything in this incident report that you contest is untrue or not compatible with what you said?

A. I don't remember signing this, but --

MR. GANJEHSANI: Is this Agency 1 or 2, Mr. Horton, that you're referring to?

MR. HORTON: Oh, I believe it's Agency 1, the incident report as opposed to -- I'm sorry, incident report as opposed to the voluntary statement.

BY MR. HORTON:

Q. I'll do it another way. If you could sign this -- again, if you could have written this, would you have changed anything in this report? And take your time because I'm going over this too.

A. Yes, sir, I mean, in this report.

Q. What would you have changed?

A. I would change and put everything that I put down on my original report or even on the voluntary report (inaudible) so -- but like I say, the way they do a use of force, they do not put everything down on the use of force. They -- they do a summation, a synopsis of what happened. Instead of putting everything, they just do a synopsis of it. They don't put everything down on use of force, and this is a use of force paper.

Q. Okay.

A. But they supposed to attach my original incident report along with this voluntary statement with the use of force.

Q. Have you seen your original incident report? Let's just say have you seen your original incident report in the last two years?

A. No, sir.

Q. Okay. Is either of these two documents, Agency 1 or 2, your original incident report?

A. No, sir.

Q. Okay. Have you seen the documents -- incident report Agency 1 in the last two years?

A. No, sir.

Q. Have you ever seen this?

A. Like I say, I don't -- I don't remember seeing it.

Q. Okay. And then Agency 2, the voluntary statement?

A. I remember -- I remember this report.

Q. Have you seen a copy since you've written it, though?

A. No, sir.

Q. So not since 2008?

A. No, sir.

MR. HORTON: I have no further questions.

MR. FLORIAN: If I might just briefly.

RECROSS-EXAMINATION

BY MR. FLORIAN:

Q. And I apologize I didn't have extra copies of this. I hand that to you.

A. What is this supposed to be?

Q. Can you identify that?

A. No, sir. What is this supposed to be?

MR. HORTON: Can I see a copy of that,

please?

MR. FLORIAN: I apologize. I have no more.

MS. KUDELKA: Are you planning to introduce that?

MR. FLORIAN: If he can't identify it, I'm not going to move to introduce it at this time.

BY MR. FLORIAN:

Q. One other document. Again, I apologize, Mr. Horton, for --

Can you identify that document?

A. No, sir.

Q. Okay. Fair enough.

Is it correct that you said you used the phone to call out to see if the inmate was off the yard, Inmate Doughty?

A. Yeah, the phone.

Q. Can you not see the entrance to medical from that position?

A. You can see the entrance from medical from that position, but why would I -- I mean, I did not look from the yard --

Q. So you just --

A. -- to see -- to make sure that the inmate was clear, because as I told you, I went back in,

locked the door after the inmate to disperse back from where the chemical -- where we dispersed the chemicals was at, and plus, I was -- I rinsed my face. I was unlocking doors as well. So for me to be standing there looking to see if the inmate was cleared, I had to use the telephone because, like I say, my radio was dead.

Q. And one follow-up question about the 80 to a hundred inmates who were out.

A. Okay.

Q. Is it your position that these inmates assaulted Inmate Doughty?

A. My position?

Q. Yes.

A. Like I said, I don't know what happened to the inmate.

Q. Okay. I don't think I have anything further.

A. Okay.

MR. HORTON: Chris, can I see the document that would have been 3?

MR. FLORIAN: Sure.

MR. HORTON: Can I see both of them?

REDIRECT EXAMINATION

BY MR. HORTON:

Q. I just want to ask you a couple questions about this document here. We only have one copy, so -- is that your handwriting?

A. Doesn't look like it.

Q. Is this something that you would have -- would have filled out?

A. Yeah, this is an incident report that I would have began to start, but --

Q. Do you have any idea why it's not signed or dated?

A. That's -- that's the point. That's why I said it look like my handwriting, but --

Q. Well, I want you to review that and then tell us if there's anything in there that you disagree or anything in there that you wouldn't -- that you would change or wouldn't say.

MR. GANJEHSANI: Mr. Horton, I'll let you ask this line of questioning, but that document's not coming into evidence, so I mean, your client stated -- he didn't identify it before. I'm not going to give you an opportunity to ask him again if he can identify it. I mean, if he can't identify it, it's not coming into evidence.

You're more than welcome -- I mean, I'm going to allow you to entertain whatever this line

of questioning you have coming up, I'm just saying that document's not coming into evidence. I don't see how it can come in at this point.

I mean, unless your client wants to -- unless your client wants to say that he does now recognize it, which is -- I don't know if that's -- I don't know if that's what you want to hear at this point. I mean, please tell me if you can think of some way to introduce it when he's already said that he can't identify it. What would it be offered to prove?

MR. HORTON: Well, it's a tough situation because he's giving these documents I haven't seen before prior.

MR. GANJEHSANI: I understand.

MR. HORTON: I mean --

MR. GANJEHSANI: You certainly have a right to look at it. You certainly have a right to explore to some extent what is or isn't on the document, but I'm just wondering out loud to what end is that document going to be put if it cannot be introduced into evidence. And if you can devise a way to introduce -- if you want to propose a way, I'll entertain it, but I'm just sort of thinking out loud, and perhaps I shouldn't be.

MR. HORTON: Well, how about this, as opposed to introducing this document into evidence, I would like to ask my client to read this -- well, first read it and decide whether or not that he has any -- has an issue with anything he said here and then maybe I'll have him read it out loud being that this is the third statement that would collaborate his previous story.

MR. GANJEHSANI: But if he can't recognize it, what difference does it make if he can't authenticate it? I mean, perhaps somebody that will be testifying today can authenticate it. I'm not saying that document can never come in, but I just fail to see how your client is going to lay the foundation for a document that he's already stated he did not recognize, and if I'm mischaracterizing what he said, please tell me otherwise.

MR. HORTON: No, you're dead on. It's just bizarre -- it's a bizarre document. It's handwritten but not signed.

MR. GANJEHSANI: Well, and that's why -- not to belabor this, but I understand -- I think I know where you're going with this. I think you're entitled to ask him -- in terms of establishing how

documentation -- his experience with how documentation is and is not done, and if you want to use that as a demonstrative means of exploring that issue, I will let you do that.

But if what you're doing is an attempt to ultimately tender that document into evidence, I don't think -- I don't think I can -- I don't think the foundation's going to let you do that, but I'm trying to give you some latitude within the confines of what we have here.

MR. HORTON: I understand, and I can't say I disagree with you. Maybe what the best thing to do is at break I'll get a copy of this and maybe I can introduce this --

MR. GANJEHSANI: I mean, you can certainly keep a copy of it, and you may be able to mine what you need to out of it or what you'd like to out of it through some other witness, but I don't think your witness is going to be the one to do it.

MR. HORTON: Yeah. Well -- okay. I think that's the best thing. Thank you.

MR. GANJEHSANI: Sure.

MR. HORTON: Let me hand that document -- I don't have any further questions.

MS. KUDELKA: Does the Committee have any

questions?

UNIDENTIFIED COMMITTEE MEMBER: I've got a couple questions just for clarification on the timeline on a couple of these. Mr. Bryant, you said you went on vacation after the incident.

THE WITNESS: Yes, sir.

UNIDENTIFIED COMMITTEE MEMBER: Do you know -- I'm just trying to chronologically lay this out. The incident happened on what date again? It was August -- I see August 2000 there. I was trying to read through the document again -- or if anybody can help me on the exact date of the -- just so I can lay out my timeline in my head of when the incident happened with the inmate. August 7th?

UNIDENTIFIED COMMITTEE MEMBER: 17th.

UNIDENTIFIED COMMITTEE MEMBER: 17th, okay. So we had August 17th is when the incident occurred, and then you went on vacation. Do you remember the date you started vacation?

THE WITNESS: No, sir, I do not. It's been four years.

UNIDENTIFIED COMMITTEE MEMBER: It's been four years, I understand. And then you were suspended on August 25th of that year. Is that

correct? Okay.

THE WITNESS: I believe, yeah, around that time. And came back.

UNIDENTIFIED COMMITTEE MEMBER: I believe that's all I have.

MS. KUDELKA: Any other questions? Okay. All right. You may be excused.

THE WITNESS: Okay.

MS. KUDELKA: At this time we're going to take about a ten-minute break, so we'll be back at ten minutes 'til 11.

(A recess transpired.)

MS. KUDELKA: I remind you that you're under oath.

THE WITNESS: Yes, ma'am.

MS. KUDELKA: And if you will make sure you speak up so that our recording picks you up.

THE WITNESS: Yes, ma'am.

MS. KUDELKA: Okay.

DIRECT EXAMINATION

BY MR. FLORIAN:

Q. If you would just introduce yourself to the Committee, please.

A. My name is Lieutenant John Wiggins, Jr., and I'm currently employed with the South Carolina

Department of Corrections, Ridgeland Department of -- Ridgeland Institution.

Q. What do you do at Ridgeland?

A. Currently I'm a -- the supervisor over contraband area.

Q. And on August 17, 2008, what were you -- what was your role at Ridgeland?

A. I was assigned at the special management unit. I was part of the responder. I heard the main control room activate a first response down to Beaufort unit. I responded down there.

Upon approaching the unit, I seen Officer Middleton escorting Inmate Doughty out of the unit. I retrieved the inmate from Officer Middleton near the front entrance, near the front entrance near the sally port area of the unit, and I seen Mr. Bryant here, Sergeant Bryant. He was near the Beaufort B wing entrance wing door.

I spoke with Inmate Doughty very briefly. I asked him could he walk to medical. His head was split and he was bleeding a lot. He said he could walk, so I walked him to our medical department. And Nurse Sullivan examined him. During that time, she told myself and Captain Eichelberger that the inmate needed to go out, meaning go out to outside

facility to be further examined.

Q. If you could, just sort of since you have the ability to know how the institution's laid out and the panel doesn't have that same thing, can you kind of describe physically where the central -- the front door of the unit is versus the side door to Beaufort B wing?

A. If you standing in front of the unit, Beaufort B wing is to your right, the entrance door is also to your right, and the sally port door is directly in front of the unit.

And that was -- like I say, I received the inmate from Officer Middleton in that area near that front entrance near the sally port area of the unit, a horseshoe area of the unit, and escorted him to our medical department, which is in our -- well, it's part of our administrative building.

Q. And you were -- you said you were able to see Mr. Bryant from where you --

A. Yes, sir. Yes, sir. Like I say, he was -- he was -- Mr. Bryant was assigned to the yard that day. He was the supervisor on the yard. As a matter of fact, myself and him was the only responders because the shift was short that day.

So we responded, and like I said, I

observed him near that B -- Beaufort B wing door standing there. I guess he was -- I'm thinking maybe he was giving directives to the inmate, maybe report to the unit or, you know, to further examine what was the problem on the wing as being the supervisor.

Q. That's all the questions I have. If you would answer any questions that Mr. Horton has.

A. Okay.

CROSS-EXAMINATION

BY MR. HORTON:

Q. We've never met. I'm Marshall Horton.

A. Pleasure to meet you.

Q. Pleasure to meet you too.

I just have a couple quick questions for you. When did you start working over at the institute?

A. Back in 1999.

Q. 1999. So you started with Mr. Bryant?

A. Yes, sir.

Q. Okay. Did y'all start at the same rank?

A. Yes, sir. Yes, sir.

Q. Were you the same rank in August 17, 2008?

A. Yes, sir, both of us were sergeants.

Q. Okay. Do y'all work together well?

A. Yes, sir. Yes, sir.

Q. The -- wait a second here. Did you actually see anyone cause the injury to Doughty?

A. No, sir.

Q. Okay. Did you give a written report at the time regarding the injury to Doughty?

A. I gave a report to Investigator Hamer, a short statement.

Q. Was this a written report?

A. Yes, sir.

Q. Okay. Do you know who would be in possession of that written report?

A. Investigator Hamer might have a copy.

Q. Okay. The -- was there anyone else involved in handling Inmate Doughty besides for yourself, Bryant, and Middleton?

A. During that time, sir, no, sir.

Q. Okay.

A. I received Inmate Doughty from Officer Middleton. Officer Middleton escort -- was escorting the inmate out of the unit during the time I was responding to the unit.

Q. Okay. I'm just following you. Where was Mr. Bryant at?

A. Bryant was near -- like I say, he was near

that Beaufort B wing door.

Q. Okay. Was he trying to -- what was he doing?

A. I -- I really don't know. I mean, look, I mean, maybe giving directives to, you know, the inmates that was on the wing because the inmates was inside the wing -- on the wing outside their cells. We still have to keep order during an emergency situation.

Q. I can imagine.

Were you charged with any misconduct in this action?

A. No, sir.

Q. Okay. Do you have any personal knowledge whatsoever as to who caused the injuries to Inmate Doughty?

A. No, sir.

Q. Okay.

A. I did not conduct the investigation, therefore I do not know, and I never entered the -- entered that wing.

Q. All right. Just a second here. I'm going to have you refer to that red binder there. That's our record.

A. Yes, sir.

Q. And I'm going to ask you to turn to page 25. Have you ever seen this document before?

A. No, sir.

Q. Okay. I'm going to ask you to turn to the next page and go down to the bottom, and I'm asking about this document only because it appears in the very bottom paragraph that Inmate Glenn Brown, and I'm not going to put words in his mouth here, but the last sentence says, Doughty also hit his head outside when Wiggins came up to get him. What's he talking about?

A. I do not know, sir.

Q. Okay. Is your testimony that Doughty did not hit his head when you came up to get him?

A. That's my testimony, no, sir.

Q. Okay.

A. When I received the inmate from Officer Middleton, the inmate was standing.

Q. All right. Give me one second.

I don't have any further questions. Thank you.

A. Yes, sir.

MR. FLORIAN: I don't believe I have anything further.

MS. KUDELKA: Does anybody on the

Committee have any questions? Can this witness be excused?

MR. FLORIAN: Yes, ma'am.

MS. KUDELKA: Who's your next witness?

MR. FLORIAN: I would next call Mr. Hamer.

MS. KUDELKA: Just remind you you're under oath.

THE WITNESS: Yes, ma'am.

DIRECT EXAMINATION

BY MR. FLORIAN:

Q. Please introduce yourself.

A. Frederick R. Hamer, investigator with South Carolina Department of Corrections, Internal Affairs, Columbia, South Carolina.

Q. What was your role in this case?

A. To conduct an investigation into -- into an officer and a possible inmate being injured.

Q. And is that Inmate Doughty -- Doughty?

A. Yes, Inmate Doughty and Officer Cobb at the time.

Q. When did you first become involved in this case?

A. It was Sunday afternoon on August the -- the date of August I think 17th, if I'm not mistaken, but it was on a Sunday afternoon about --

I guess it was approximately around five or so p.m. when myself and another investigator arrived at the Ridgeland Correctional Institution.

Q. And when you arrived at the institution, what did you learn of the incident?

A. The preliminaries as we arrived, we was briefed shortly by the captain which was on duty, which is now major. Captain Eichelberger was on duty at the time. We was briefed just briefly that had an officer that was possibly injured by an inmate that was -- officer was on his way to the hospital and that inmate that had been injured was also on his way to the hospital.

Q. All right. What was your next step in the investigation?

A. Our next step as we proceeded to start the preliminary of the investigation, started to gather what reports or any information that was reported from the incident that had taken place, and as we started to go over the reports, we had obtained information -- we had information according to the captain on duty that possibly due to the inmate was injured by other inmates and that the inmates were upset because Officer Cobb had gotten injured by Inmate Doughty.

And so we did not know -- even at the end of the evening, at the end of that Sunday evening, we did not know whether the inmate would return back to the institution or not. The Officer Cobb returned back, which we was able to interview him that evening. He returned back. He received some stitches to the back of his head.

And we learned that the Coastal Medical Center was keeping the inmate overnight for observation. We learned that through medical, but we did not know what the extent of his injuries were. We were taking -- pretty well took medical's word that if they were keeping an inmate for observation, then they were keeping him for observation. They didn't go into the extent of to what the injuries or so forth were. So we left it at that for that particular evening and all that the inmate was being kept at the medical center for observation.

And when we spoke with Officer Cobb, he advised us about how that he had gotten struck in the back of the head by an inmate with the lock in the sock, Inmate Doughty, and that he explained that what Doughty was supposed to have been upset about and that he attempted to try to take Doughty

into custody, he and Officer Middleton, and that when he attempted to go in on him, he -- he tried to go in from the side on him, dug low, but Inmate Doughty was able to strike him -- the way he was swinging that lock or so on the string, he was able to strike him in the back of the head.

And so they had gotten him -- they managed to -- when Sergeant Bryant and Officer Middleton -- they removed him from the situation, and he was escorted up to medical to be attended to. And he -- he doesn't know -- he didn't know of anything took place after that in the unit because he was removed from the unit.

And that's pretty well we -- pretty well where we went with most everything on that particular Sunday evening.

Q. At some point, were you able to review a handwritten incident report by Mr. Bryant?

A. Yes. Yes, we did.

MR. HORTON: I'm just going to object at this point because I think we're talking about hearsay. And I have no problem with the background information or whatever, but the hearsay problem with him talking about a statement by my client gave out of court or out of this hearing.

MR. GANJEHSANI: Mr. Florian.

MR. FLORIAN: At this point I'm just asking if he reviewed a handwritten statement by Mr. Bryant, the contents of that statement.

MR. GANJEHSANI: Okay. So your question is so limited, then I'll overrule the objection.

MR. HORTON: I might be early on this anyways, but --

MR. GANJEHSANI: Well, Mr. Florian was as well, so --

BY MR. FLORIAN:

Q. Did you have an opportunity to review a handwritten statement by Mr. Bryant?

A. Yes, we did.

Q. Okay. And do you recognize the document I've just handed to you?

A. Yes, sir.

Q. And can you identify that document?

A. This is a report that myself and Investigator Orr -- a report that we received in the form of Sergeant Bryant's statement.

Q. And why do you believe that that statement comes from Sergeant Bryant?

A. Because we met with him and -- we met with him and Officer Middleton the next day and stuff,

and as we had gathered up reports that evening, we met with him and Officer Middleton the next day.

Q. And as a result of that meeting, why did -- how did this incident report connect with that meeting?

A. When we met with them and after we had to -- we had further information as to the extent of the inmate's injuries and that -- some other information we had from the captain that -- that inmates had injured Inmate Doughty, the information was not adding up, the fact -- the information wasn't panning out. It wasn't adding up.

And so therefore there was nothing -- there was nothing indicating what we had received from Sergeant Bryant and Officer Middleton, and therefore we had a meeting with them to inquire about what happened to the inmate.

Q. And at that meeting, was this handwritten incident report discussed?

A. Yes, sir, it was discussed, and we explained to them that -- that -- that someone has to know, and we need -- we need everything that happened from the time they arrived on the scene until that inmate was turned over to the yard officer, whoever was the yard officer, which was

Sergeant Wiggins, and we had received his report.

Q. Was there any question at that time that this handwritten report was from Mr. Bryant?

A. There was no question in our mind, no, sir.

MR. FLORIAN: We would ask that this report be moved into evidence.

MR. GANJEHSANI: Mr. Horton.

MR. HORTON: No objection.

MR. GANJEHSANI: With no objection, document marked Agency 3.

(Agency 3 was marked for identification.)

BY MR. FLORIAN:

Q. So this handwritten report, it didn't mention any injury, then? Did it mention any injury to Inmate Doughty?

A. I'm reading over it again, but from our initial -- from our initial meeting with him is that it didn't mention any injuries to Inmate Doughty other than the use -- the use of gas, that Inmate Doughty had been sprayed or so. But I don't see any indication that -- that Inmate Doughty was -- any other injuries other than being gassed.

Q. Did it mention anything about the three of them falling through the door?

A. No mention of them falling through the door.

Q. And did it mention Mr. Bryant leaving the inmate alone in the custody of Officer Middleton?

A. No mention of them leaving alone with Officer Middleton.

Q. All right. So you talked about this meeting. What happened after this meeting?

A. Both of them left our presence. We had interviewed them separate. Both of them left our presence, and we waited approximately -- excuse me. We waited approximately an hour and a half to two hours, and then we began to check to see where -- where they may have been to see how far along they have come with writing their incident reports, writing their -- or writing their statements.

We did manage to locate them and get them back into the office, and then that's when we -- we received additional -- received a little further additional information.

Q. How long had they been away since the first meeting when you met with them again?

A. They was -- well, we first initially met with them, like I said, approximately an hour and a half to two hours because we waited and waited and

we -- that's when we began to -- we began to look for them, and we were able to find them and get them back into the office.

MS. KUDELKA: Thank you for your patience.

THE WITNESS: Yes, ma'am.

MS. KUDELKA: Thank you.

THE WITNESS: You're welcome. No problem.

BY MR. FLORIAN:

Q. So when you met with them again after those one or two hours, did they have -- had they produced an additional incident report at that time?

A. Yes, sir, they did.

Q. And I'm handing you a copy of what's already been admitted as Committee -- or as Agency 1, Agency Exhibit 1. Is that the incident report that you're referring to?

A. Yes, sir, that along with a written -- some form of a written -- written statement.

Q. And I'm handing you what's been marked as Agency Exhibit 2. Is that the written statement you're talking about?

A. Yes, sir.

Q. Okay.

A. That's correct.

Q. Just by way of background, can you explain what an incident report is supposed to -- supposed to contain?

A. From the background of an incident report would contain, just like we were mentioning, from the beginning of from the time you responded to an incident all of the actions, everything that you did, you document what you actually did from -- and as best you can recall from the beginning of the incident all the way through -- through the -- through when the crisis is over.

And -- and that's why most of the time you want it -- you want the incident report done and a statement that's done as soon as possible right after the incident has occurred while the -- while everything that happened, the incident that happened, while everything is still fresh in your mind.

Q. So an incident report, it's supposed to contain all the details of the incident?

A. It should have all the details in it, sir, yes.

Q. And I'm also handing you a document not yet before the Committee.

A. Okay.

Q. Can you identify what that document is?

A. This particular document here is a report on the use of force that is completed by -- each officer completes a report, and then the reports is turned in, and a use of force report goes up to the warden's area at each particular institution.

And it combines and has all of the information that it documented from each officer that is involved is included in the use of force report.

MR. HORTON: I'm sorry, I'm going to object to this only -- on the basis of hearsay. If the officers who actually had the personal knowledge contained in this report are here and I have the opportunity to cross-examine them and ask them questions about how they came to these conclusions, it would be a lot more fair.

And I don't want to keep anything from the Commission to be able to fairly decide this case, but Investigator Hamer wasn't there. These are not his firsthand recollection. These are the firsthand recollections of the officers who were in his presence, and Mr. Bryant has already said he doesn't know what this is. If there's other officers around who can talk about this --

MR. GANJEHSANI: Mr. Florian, you may respond. Investigator Hamer, are you finished?

THE WITNESS: Yes.

MR. GANJEHSANI: I didn't mean to cut you off.

MR. FLORIAN: If I may, I'm not offering this document as evidence to show the truth of the contents of the document. Instead, I'm offering this document to contrast it with the contents of what the incident report contains.

So basically I'm distinguishing the process for use of force report from the process of an incident report. In fact, I'm not even offering this document into evidence. I'm just asking that the process be explained.

MR. GANJEHSANI: The process that was employed or the process that's generally employed? I'm not sure what you mean by that, Mr. Florian.

MR. FLORIAN: That's just the general process for a use of force report versus an incident report and also the process that was employed in this case.

MR. GANJEHSANI: Okay. Well, if you're not offering it into evidence, then that takes care of the objection insofar as I think Mr. Horton's

anticipating the fact that you would offer this into evidence.

The problem is the witness is essentially lifting the contents of the report into evidence. So while you say you're not offering the document, if he's going to read the contents of it, then I think it potentially raises the concern that Mr. Horton has about the substance of this coming in.

MR. FLORIAN: Perhaps if I ask a different question.

MR. GANJEHSANI: Let's try that. The objection's -- well, the objection's mooted by the fact that you're not offering it into evidence. However, the objection's sustained to the extent that he's -- he's essentially lifting testimony from the document that you're not seeking to offer. So I'll allow you to continue and we can revisit this. Fair enough, Mr. Horton?

MR. HORTON: Yeah, I mean --

BY MR. FLORIAN:

Q. So you were explaining that use of force reports generally -- they're reviewed by an official. Is that correct?

A. Yes, that's correct.

Q. And they're -- is it correct that they're sort of -- they are a compilation of incident reports and statements by officers involved?

A. Yes, sir, it's compiled of all the incident reports, and like I said, they all go together, and the use of force report goes into when it goes up to the warden's area.

Q. Is that process different from the process for an incident report?

A. Yes, that process is different from an incident report because all the incident reports does not go into -- all of them doesn't go into the use of force. All these use of forces has to be -- that has to be documented and kept in a separate area.

Q. So Committee Exhibit 1 which is the incident report by Mr. Bryant?

A. Yes, sir.

Q. The typed incident report, is that a compilation or is that just Mr. Bryant's statement?

A. This -- this here is just his -- his incident report, and sometimes officers use the incident report as their statement, but it -- it's supposed to be from A to Z. It's supposed to be the whole incident of what took place. This is

actually an incident report of this Exhibit 1.

Q. Right. And this incident report is not -- let me strike that and start over.

Mr. Bryant's incident report should only contain material that Mr. Bryant observed, correct?

A. Yes, sir. What he observed, what -- all of his actions should be contained within that report.

MR. HORTON: I'm going to object to this. Mr. Bryant already testified that he didn't write -- didn't type this report. Not that it's not consistent with any other reports, but --

MR. GANJEHSANI: Wait a minute. Mr. Horton, what report are you referring to?

MR. HORTON: The incident report that we're looking at right here.

MR. FLORIAN: This is Agency 1, I believe.

MR. HORTON: Yeah, Agency 1.

MR. GANJEHSANI: Well, I mean, the witness doesn't have to testify consistent with what your witness testified to. That's a determination for the Committee to make. And that document's already in evidence, so I'll overrule the objection.

MR. HORTON: All right.

BY MR. FLORIAN:

Q. So if an inmate -- if the inmate had been -- had fallen through the door, should that detail have been put in this incident report?

A. Yes, it should have been contained within that report.

Q. And if Mr. Bryant had left Inmate Doughty alone in the custody of Officer Middleton, should that have been contained in this incident report?

A. Yes, it should -- it should have been contained in there.

Q. And is it -- does this incident report contain any mention of either one of those things?

A. It did not -- did not contain either one of -- either one of these things. It did not contain that.

Q. All right. And next I'd like to turn to the voluntary statement, the handwritten statement, which is Committee -- or rather Agency Exhibit 2.

Is it correct that this handwritten statement was later typed out?

A. Yes, it was later typed up.

Q. And I'm handing you a document. And is that document the typed statement from the handwritten statement?

A. Yes, sir, I would -- correct, it is.

Q. And it's in the -- I move that this document be admitted into evidence simply for readability.

MR. GANJEHSANI: Would you like a moment to have your client review it, Mr. Horton?

MR. HORTON: Let me just -- give me a second to actually read this thing.

MR. GANJEHSANI: Sure.

MR. HORTON: I mean, I can't imagine objecting to it, but let me just make sure it actually does say what it's supposed to say.

MR. GANJEHSANI: Sure.

MR. HORTON: All right. I have absolutely no objections.

MR. GANJEHSANI: No objection. Agency 4.

(Agency 4 was marked for identification.)

BY MR. FLORIAN:

Q. In this statement, is this the first time that Mr. Bryant mentioned falling, three of them falling when exiting the door?

A. This is -- excuse me. This is the first time that it was mentioned.

Q. And is this the first time it was mentioned him seeing any blood?

A. First time it was mentioned.

Q. Now, as a result of your investigation, did that lead to any criminal charges against Mr. Bryant?

A. Excuse me. Yes, sir, it did. It led to us having to -- having to proceed forward with the information that throughout the investigation and the information that we had, we did not have any information that led to -- that the inmates had actually assaulted Inmate Doughty.

We did not have any information that -- or facts leading to that -- the yard officer, Sergeant Wiggins, was very specific each time, that when he received the inmate, the condition of the inmate, and who he received the inmate from.

So with the combination of what we had and with the reports that was written and the reports that were typed, they were still -- information was missing. The facts were missing as to how -- we had no information of how Inmate Doughty had gotten injured.

And we had -- at one point, we have Sergeant Bryant being with Officer Middleton. At some point, you had -- you had the information that he wasn't with him. So we were left with, when presenting the case and I went before the judge,

having two warrants issued for Sergeant Bryant and two warrants issued for Officer Middleton.

We had -- we had also charged the inmate with assault on Officer Cobb. Then the inmate was charged also in criminal court. And so that's where -- and after the warrants being issued and served, bond hearings being held, then later on, the preliminary hearings and they were bound over to general sessions, then went before the grand jury where both officers were indicted by the grand jury, and that's where the case remained.

And it was a solicitor's decision as to the discussion about dismissing of charges against Sergeant Bryant, but he also left on the table -- the solicitor left on the table dismiss without prejudice whereby he could reindict.

He was -- my understanding from the solicitor, that there was some discussion about the truth that would be told about what all that took place with Inmate Doughty on that particular day, and so therefore, charges are still pending against Officer Middleton.

My understanding was that there would possibly be some -- some discussion with -- some further future discussion with Sergeant Bryant, but

that is something that the solicitor's office handled, and -- and that's -- that's our position on that.

Q. At some point in this case, did DNA evidence become involved?

A. Yes, it did. As we continued to work on this -- work on this, we didn't realize until a day or so later right after the incident occurred that there was a blood stain because we were being -- we were actually -- as investigators, we -- we were being misled to some degree.

And so we actually -- we actually received information that there was possibly a blood stain on the windowsill, and the windows -- the windows are kind of -- they kind of slim and they got these brick pillows in between. We had actually received the information that there was blood staining on one of the windowsills.

So we went and checked it out closer, and this was the -- a day or two later. And as we checked it, we photographed it, and I had a couple of head hairs that was in -- that was in the blood stain, head hairs that was outside the -- that was actually in the blood stain.

We -- they were collected. I took those

to SLED, and at maybe -- maybe about couple of months later, I traveled up to -- the inmate had been transferred -- excuse me -- up to -- I think it was Tiger River, if I'm not mistaken, but I traveled up to Tiger River to collect some known hair samples from him because when he was -- and actually when he was released from the hospital, they -- I didn't -- we didn't know about the -- we didn't collect any hair because we didn't know about the blood stain.

And so his head had been shaved at some point, so like I said, about a couple of months later, I collected some known hair, head hair, and took it to SLED also.

And at some -- and it was logged into SLED DNA lab, and at some point later on, the -- the DNA analysis came back, and it gives that number, that quadrillion -- of it being one in that quadrillion number that almost -- that it couldn't be anyone else's hair except for that particular person. And so that's what the DNA revealed, yes, sir.

Q. Just to cover a couple points. I'd like to direct your attention to page 145 in that red binder. And --

A. Yes, sir.

Q. Does that depict the area where you found the blood stain?

A. Yes, sir.

Q. All right. I'd just like to hand you a staple to the document. And is this -- does this appear to be the response you received from SLED?

A. Yes, sir, it is.

Q. And under the DNA analysis heading on the top right-hand corner, it says, December 29, 2010, correct?

A. Yes, sir, that's correct.

MR. FLORIAN: We'd ask that this document be admitted into evidence.

MR. GANJEHSANI: Mr. Horton.

MR. HORTON: Just to protect the record, I have to object. I mean, this is pretty much textbook hearsay. If Forensic Scientist Humbert was willing to show up here and testify to it -- to his findings, I don't think there's anything that could have stopped him from being here.

I mean, we certainly don't -- we're more than willing to concede that was Inmate Doughty's hair on the wall and blood. I mean, it seems irrefutable, but I mean, this is a hearsay statement.

MR. GANJEHSANI: I agree, Mr. Horton. The document is not admitted into evidence. I'm just saying.

BY MR. FLORIAN:

Q. So why did you believe that Mr. Bryant was responsible?

A. The reason we believed that Sergeant Bryant and Officer Middleton was responsible is is that the combination of the facts, combination of the reports, that they had a brief report, very short, nothing detailed in it about any injuries, whether the inmates had caused the injuries to Inmate Doughty or if Doughty had actually gotten injured when they took him down to the floor inside the unit or even if Doughty had gotten injured when they brought him out the door, there was no indication in their report.

The information of how -- how serious and severe the damages to Inmate Doughty's head that say that there was only -- even at some point when the statement changed from -- from very short to there was maybe a drop or so of blood and that the inmate's head was pouring blood according to the officer that received him.

We also had information whereby Sergeant

Bryant and Officer Middleton, when they had disappeared -- when they went to redo their statements, redo their incident reports, that we had to interview a couple other officers that assisted with doing those reports.

And when they were questioned about the reports, their responses were they didn't even really know what was in the reports, that they went and had someone to do.

That's -- and the inmate himself was able to say, I was wrong, I hit the other officer, I accept my charges, and I kept swinging the lock. They gassed me, they handcuffed me, I was conscious, they escorted me out the door, and when they -- once they got me out the door, they put my head into that brick wall. And he --

MR. HORTON: Y'all, I got to object. I mean, this is hearsay. What the inmate said or not said, there's no reason why he can't be here.

MR. GANJEHSANI: Sustained. Sustained.

THE WITNESS: All right. Well, okay. And so based -- based upon the investigation that the inmate was injured outside of the unit, he wasn't injured inside the unit, the inmate was actually -- best we -- facts and what we could show was that

the inmate was handcuffed in the custody -- in the custody of Sergeant Bryant and Officer Middleton, and somehow the injuries -- somehow that inmate ended up with those injuries.

BY MR. FLORIAN:

Q. And I'd just like to ask you about the testimony today that we heard that 80 to a hundred inmates were loose in the dorm.

A. Yes, sir.

Q. Had you heard anything to that effect while you were doing your investigation?

A. No, sir. We -- we -- that's why we were saying at the very beginning that we -- we were being somewhat misled because when we was first briefed when we arrived on -- when we arrived at the institution, that -- that the inmates had done this, and then we were not able to determine -- we didn't find any information that the inmates were out and able to do this and that they had took Inmate Doughty into custody and then turned him over to the two officers.

And even being misled, if the inmates had done this, then we would -- we would have been given some information, hopefully documented in a report, that we would have been looking for the

inmates that were responsible for what happened to Inmate Doughty.

Q. That's all the questions I had. If you would answer any questions of Mr. Horton.

A. Yes, sir.

CROSS-EXAMINATION

BY MR. HORTON:

Q. Again, I'm Marshall Horton. It's nice to meet you.

A. Yes, sir, pleasure to meet you.

Q. I'm just going to be brief. Where were you on March 17th, let's see, was it? August 17th, the date the incident occurred?

A. I -- best I remember, I had a -- I left home. I had attended church. If I'm not mistaken, that was on a Sunday afternoon.

Q. Okay. So you have no personal knowledge as to what happened at all?

A. No, sir.

Q. Okay. I just -- I just wanted to make sure that I understand your testimony correctly. The -- you've come to the conclusion that Officer Bryant caused this injury because there's no evidence. Is that -- is that about right? Doesn't -- you have -- is there any evidence

whatsoever that Mr. Bryant did this?

A. The evidence that Sergeant Bryant and Officer Middleton had custody and control of that inmate.

Q. Okay. The -- I'm going to ask you to turn to 25 on your book. Have you seen this document before?

A. No, sir. I think that is something that the division -- the Division of Investigations sends to the wardens at each particular institution in what they call a red folder.

And it -- that is something where (inaudible) communicates with the -- with the wardens as to -- that's administrative actions. I couldn't exactly tell you what's in that unless you want me to read it over.

Q. Yeah, I do. The reason is because it -- what it appears to me is that it's a summary of your investigation, of your and I guess Officer Orr.

A. Investigator Orr?

Q. Yeah.

A. Okay.

Q. So if you want to just breeze it over real quick.

A. Okay. Yes, sir.

Q. I'm going -- I'm going to refer you to page 26.

A. Okay.

Q. Just at the interviews that I suppose you did. Did you actually interview this -- the first one which I guess is Inmate Lorenzo Anderson?

A. Lorenzo Anderson.

Q. Yes.

A. Yes, sir, we did.

Q. Okay. And is this an accurate summary of your investigation or interview with him, that he saw Inmate Doughty hit Officer Cobb with a lock and a string and that he didn't see any of the officers fall down; however, when he went outside he saw plenty of blood?

A. His statement may have been a little longer, but like you said, it could have been shortened down and put in this report.

Q. Well, do you remember him saying anything different than that? I'm just trying to get down to, you know, what the investigation entailed.

A. I don't think it said anything different than that.

Q. Okay. All right. The next one, Bason

stated that he saw Doughty hit Officer Cobb in the head with a lock and a string. Bason said that Doughty was being escorted from the unit, did not see any blood. Bason sent me outside approximately five minutes later. He saw blood outside of the unit on the rock.

Is that, to your knowledge, an accurate representation of your interview with him?

A. Yes, sir.

Q. Okay. Next one, Brown, officer -- Doughty charge Officer Cobb, strike him in the back of the head with a padlock. Brown believes that Doughty head hit the bench on the rock when he was taken to the floor. Brown stated that Doughty was still resisting and stumbling when he fell against the wall. Doughty also hit his head on the unit when Wiggins came to get -- I really want to talk about this. Did you actually do this interview with Brown?

A. Yes, sir.

Q. Okay. And the actual statement obviously would have been a lot longer than this, right?

A. Yes, sir, a little bit longer.

Q. Okay. The -- what was Brown talking about when said that Doughty hit the bench -- hit the

bench on the rock when he was taken to the floor? Do you have any idea?

A. See, that's where he -- the bench on the rock is inside the unit where initially where Cobb got hit inside the unit, and the rock is where they all -- is a general population area where they all sit on the rock, and there's televisions up there where they all just sit and watch -- they sit on the benches and watch television.

Q. It's not actually a rock, though, right? Is it like a -- just a sitting area or what is it?

A. It's just a sitting area. They call it the rock. That's where they sit and watch television up on -- on what they call the rock.

Q. Okay. So is what he's saying is that he thought that Doughty's head hit the rock when he was taken down?

A. Hit the bench. That's what he was saying. And then -- and then just like you're reading in there where he says, and then also of a head hitting the wall outside.

And that's why I said, if his head hit the bench going down inside the unit and with the damage to that inmate's head, I just couldn't even tell you what you would have had inside that unit,

and if it -- if his head would have hit that bench. But even if it had hit the bench, there was no indication in the report of the bleeding -- of the blood. And then once again, as you -- as you read there, it said his head -- he was still stumbling or so and his head hit the wall outside. There's two different possible his head hit the wall outside by that same inmate.

Q. So do you think -- do you think Inmate Brown might not be credible as a witness? Is that what you're saying?

A. That's -- once again, that would be left up to the courts, but I just was documenting what he had to say.

Q. Okay.

A. Yes, sir.

Q. Well, I'm not so interested in this last sentence, that Doughty also hit his head outside of the unit when Wiggins came up to get him. What was he talking about there?

A. Once again, just as you're reading it there, whatever's indicated in Brown's statement of possibly hitting his head on the bench on the rock inside the unit and then once again of possibly hitting his head outside the unit when Wiggins --

Sergeant Wiggins came to get him.

Q. Okay. Did you investigate Sergeant Wiggins at all about -- about his head, Doughty also hit his head outside the unit when Wiggins came to get him?

A. Yes, sir.

Q. Okay. What did you find?

A. He stated that when he received -- and just like when he -- when you interviewed him, when you spoke with him, that when he received the inmate, that he asked the inmate a question or two, if the inmate could stand up, because he indicated to us time and time again, and we asked him over and over again that -- he said that inmate head was pouring blood when he received him.

Q. Has Mr. Bryant ever given you a statement that was outright false? If he did, I want to know when and where.

A. When you say outright false --

Q. He said the sky was green when it was blue. I mean a lie.

A. I could -- you know, I'm not sure of what question you're asking about is his statement -- did he give me a statement that was false, did he -- did he give us all of what took place.

Q. I mean, it's a simple question. Did he lie to you?

A. Yes, sir, we believe he lied.

Q. Okay. Where?

A. Somewhere in there where the inmate was injured.

Q. Okay. Do you have any -- any evidence to support that whatsoever?

A. Do we have any evidence to support that he --

Q. Do you have someone who's going to say anything, and I'll open it up, hearsay, speculation, anyone who's going to say here's how this happened, which is -- which differs from this testimony that -- or the investigation and statements that you got from Mr. Bryant? I say I don't run the red light and you have evidence that says I do, do you have anything like that?

A. Well, we -- there's still criminal proceedings that are to take place.

Q. No, they're not. It's not, but there's -- I'm not going to get into it.

I'll say it another way. You've given a couple reports. Can you point out to anything that Mr. Bryant wrote that was false? And I'll give you

all the statements if you like that we've testified to.

A. Well, you ask a question. His first statement didn't indicate that he seen any blood. His second statement or so indicates that he seen a drop or two. Is that -- is that the truth?

Q. You're on the right path. So the first one, did he actually say he didn't see any blood or did he just not write it? Here. I'm going to give you the statements I have so you can -- I don't want to try to (inaudible) I'm trying to surprise you here. Here.

A. Well, maybe he didn't --

Q. There are four of them.

A. Okay. Maybe he didn't write it in his first statement that I read, and when we first talked to him, there was no indication of any blood, so would that just be something you omit?

Q. So your beef is what he didn't say, not what he said?

A. My beef is what he didn't say?

Q. Yeah. I'm not trying to put words in your mouth. You understand what I'm getting at. I mean, I'm trying to say this man is accused of lying and giving a false official statement.

You're the man who did the investigation and I guess knows a lot about these -- the procedures and whatnot. I just want you to pinpoint what he said that was false.

A. Well, you know, you've got a -- we have a serious -- seriously injured individual, and you know, you're the supervisor in that particular area, and you are right on the scene, and there's nothing indicated in your first report about what happened to that individual?

Documentation is one of the most important -- and being in law enforcement or any profession that I can pretty well think, documentation is the most -- is very important.

And to go further, we -- if we knew -- if it was indicated or written as to how that inmate got injured, even in resisting, it would not have -- it would not have been in a criminal aspect.

Q. Okay. Why did you investigate Bryant and Middleton and not Wiggins?

A. Well, Wiggins was investigated too. Everybody that -- everybody that, once again, had custody or had contact with that inmate, so --

Q. Spell it out for me, because obviously

Bryant and Middleton are in trouble and Wiggins is not. How did that happen? Who made that decision and why?

A. I made the decision -- everything was presented to the judge, and --

Q. I don't care about the criminal case. I mean what in the actual investigation that we're talking about here?

A. Well, when you -- the criminal case is -- the criminal case is what internal affairs is involved in.

Q. Okay. Was Wiggins ever -- were there ever charges forwarded to the solicitor on behalf of Wiggins?

A. No. No, sir.

Q. Okay. Who made the decision to not forward the situation with Wiggins to the solicitor?

A. The whole case was presented, and if Wiggins -- if Sergeant Wiggins needed to be charged, he would, and if needed to be later, he would have been.

Q. Are you saying that a judge made the decision not to charge Wiggins?

A. No, the decision -- the decision was made

that -- the decision was made through myself through investigations, what the investigation revealed so far. Now, it was still open. If we had any further information that Sergeant Wiggins was involved, then he could be charged.

Q. Okay. And I'm really not trying to give you a hard time. I just want to --

A. No, sir. That's fine.

Q. You went forward against two, didn't go forward against one. What was the reason that you didn't go forward against one?

A. Because the one kept -- his statement always remained the same: I received him and his head was pouring blood.

Q. Okay.

A. Even though you -- you know, you had two others, Sergeant Bryant and Officer Middleton, and their statements kept changing from time to time, and then you had the statement of the inmate, but Sergeant Wiggins' statement was the same each time.

Q. Can I -- is it fair that I can say that your testimony is that you made a judgment call that Wiggins was telling the truth?

A. A judgment --

Q. You used your discretion and you said

Wiggins is telling the truth to where these two have been shady. Is that what happened? Can I summarize?

A. Well, what -- his -- his statement seemed to be -- his statement seemed consistent, and it never seemed to waiver. It never seemed to change. So that's why -- and once again, if further -- if he had needed to be charged, he would be.

Q. All right. Let's see if I have any other questions for you. I appreciate your patience with me. I don't have any more. Thank you.

A. No, sir, that's fine.

MS. KUDELKA: Do you have any redirect?

MR. FLORIAN: Just briefly.

REDIRECT EXAMINATION

BY MR. FLORIAN:

Q. Did you feel like Mr. Bryant's statements were consistent through this investigation process?

A. No, sir. Sergeant Bryant's and -- Sergeant Bryant and Officer Middleton's statements, they weren't -- they weren't consistent.

Q. And some of the changes you noticed -- what would be some of the changes?

A. The very -- the very short statement, the initial statement, and then to the second statement

of actually seeing blood, actually from the falling through the door, the -- the very, very profound things that -- things that actually would have occurred that needed to be put and you would actually be able to recollect and put those in your initial statement of what took place as soon as it had happened.

So it -- there was more added in the second or third statement, more added, and then about -- about seeing the blood drops, about falling through the door and so forth.

Q. Why do you feel that these -- these additional details got added as the case went on?

A. They -- they knew that -- they know that we were not going to be continuously misled, that we were going to keep -- keep on it and keep on it until we find out -- to have somebody -- some of the facts about what took place in this particular incident.

So they knew that they -- whereby where they went and got with someone to do an additional report to add further information to the report, that it was possibly not only going to be administratively, but in a criminal aspect that may be involved.

Q. Do you feel that an omission -- omitting certain details, could that pronounce a false statement if a person omits details about something or omits that it happened?

A. Yes, sir. Yes, sir, you know, and just like when his attorney asked, you know, when he asked about lying, these are very important facts, and documentation of what took place, once again, if it's not put down on paperwork, documented or so forth, is that -- like I said, this whole matter would have -- whatever use of force that needed to be used, document it.

But undocumented and omitting as you have asked is -- once again, we were left with -- we were being -- facts was being left out and we were being misled that -- to find out what actually happened to this inmate and stuff. Yes, sir, omitting the -- the facts was being omitted.

MR. FLORIAN: That's all the questions I have.

MS. KUDELKA: Do you have anything else?

MR. HORTON: No, ma'am. Thank you.

MS. KUDELKA: Does the Committee have any questions?

UNIDENTIFIED COMMITTEE MEMBER: Yeah, I

have one. Investigator Hamer, can you tell us when the -- the two statements was -- the handwritten and the typed, can you give us a date on the two, when you had the handwritten and then when the type was transferred over?

MR. GANJEHSANI: Agency Exhibits 2 and 4 are the documents he's referring to.

THE WITNESS: Let's see. Yes, sir, August the -- let's see. August the 20th, 2008, is when that written -- when that written statement that was given to us because also, therefore, when we went over it with them, that's where you see my -- Investigator Orr's signature as the witness and my signature on it. And then -- and you said the typed one?

UNIDENTIFIED COMMITTEE MEMBER: Yes, sir, Exhibit 4.

THE WITNESS: And that's whereby -- it's the same of whereby at some point later, and it may have been two or three days later after this, that I was typing up some of my report of this investigation, that I type up reports, and then I actually type in -- because there's a page 1 of -- there should be a page 1 because -- because you see where -- at the top where it says Bryant interview

continued?

UNIDENTIFIED COMMITTEE MEMBER: Uh-huh.

THE WITNESS: All right. I type up what we discuss in the interview and then what was actually written in his written statement. That's the portion you see there in the quotation marks is what -- is just the transcribing of what I typed up, what was written on this paper and stuff.

See there, there's like a page 1 like when you're doing your initial interview, and so -- and you're taking notes, and even when you're going over the statement, you're taking some notes of what -- what they -- what they -- person had to say.

UNIDENTIFIED COMMITTEE MEMBER: Okay. So you typed this?

THE WITNESS: Yes, sir, I typed that. Yes, sir.

UNIDENTIFIED COMMITTEE MEMBER: Thank you.

UNIDENTIFIED COMMITTEE MEMBER: I got just a couple. Based on your testimony there, I just want to make sure I got this right. When you first arrived in -- the same day of the incident, you got there that evening, you met with a major and a captain on duty was the first folks you said you

talked to?

THE WITNESS: The captain, which is now a major, Captain Eichelberger.

UNIDENTIFIED COMMITTEE MEMBER: Same person, got you.

THE WITNESS: Yes, sir.

UNIDENTIFIED COMMITTEE MEMBER: All right. And then you mentioned -- I'm trying to understand the statements that you guys continue to talk about are the written statements, or are they also included verbal statements that you guys had? Like do you interview people? But the documentation are the statements you're referring to?

THE WITNESS: Yes. There was a -- the very -- the very small, short incident report are statements because sometime the officer use -- they want to use the incident report as their statement, and so there was a very -- we had collected those that particular Sunday evening, yes, sir.

UNIDENTIFIED COMMITTEE MEMBER: Okay. And then you also mentioned there were reports that inmates may have been injured by other inmates. Was that -- that was part of that document we read earlier or was there other statements you had received from the major or --

THE WITNESS: That -- that was that -- that was that general briefing that we received from the major --

UNIDENTIFIED COMMITTEE MEMBER: Okay.

THE WITNESS: -- and stuff, and that's where I said we initially -- and as we tried to follow up -- follow up with that, we were initially somewhat being misled from the beginning.

And as we went back and checked, even when we went back a day or two, next day and two days later and talked with the major, which was captain at the time, to find out how he relayed this information to us, him being the -- him being the supervisor, he was the -- as they said, the duty warden, because the captain was the one that was in control of the institution on that particular day, on that Sunday, and so where did he get this information from that -- that the inmates had done this and all. So that's -- that's -- we wanted to cover all angles of it.

UNIDENTIFIED COMMITTEE MEMBER: Okay.

THE WITNESS: Yes.

UNIDENTIFIED COMMITTEE MEMBER: All right. I have a question. There's been so much talk about the different reports. You know, for those of us

who aren't at SCDC, it might be a bit confusing, and it is to me.

Can we walk through just kind of the process? You have an event that happened like this, and then the people involved have to write an incident report. That's the first thing, right?

THE WITNESS: Yes, ma'am.

UNIDENTIFIED COMMITTEE MEMBER: Okay. So they write the report. How did we get from those reports being written to Mr. Bryant doing additional statements?

THE WITNESS: Okay. The initial report, that's why when any incident happen, especially in a crisis, is -- that's why as soon as the crisis is over, is for the officers to write an incident report, each particular officer that was involved.

It doesn't matter if they were there together, but each particular officer is to document what -- what happened while it's still fresh in their mind.

And then as we collect these reports and if we're conducting an investigation, then we sit down at some point with the officers to find out what happened, you know, to go over their report with them and find out what happened.

And that's why it went from a very short report to the lengthy reports, and then -- and then when -- and when you have an investigation, then it -- you also end up doing a statement and all. In addition to just a report, you may end up doing a written statement.

UNIDENTIFIED COMMITTEE MEMBER: Okay.

THE WITNESS: Yes, ma'am.

UNIDENTIFIED COMMITTEE MEMBER: Thank you so much.

THE WITNESS: You're welcome.

MS. KUDELKA: Okay. No more questions? Okay. May this witness be excused?

MR. FLORIAN: Yes, ma'am.

MS. KUDELKA: Okay. How many witnesses do you have left?

MR. FLORIAN: I have two witnesses left.

MS. KUDELKA: Okay.

MR. FLORIAN: One is present and the other I'll need to contact. She's about 20 minutes away.

MS. KUDELKA: Okay. The one who is here, is it going to take very long, do you think, or you don't know?

MR. FLORIAN: Potentially. He's the reprimanding authority.

MS. KUDELKA: Okay. Well, then, I would suggest that we go ahead and take a lunch break now, then, so you can get your other witness here.

MR. FLORIAN: I appreciate that.

MS. KUDELKA: And it's 12:15, so 1:15, does that give everybody enough time? 1:15. I'm sorry?

UNIDENTIFIED COMMITTEE MEMBER: We got an agency conference call about the hurricane at one o'clock, so maybe one -- just give an extra five minutes if I'm not here.

MS. KUDELKA: Well, we can come back at 1:30, and if you're not here, we'll wait. Is that good?

UNIDENTIFIED COMMITTEE MEMBER: Shoot for 1:15, if I'm not back --

MS. KUDELKA: Then we'll wait. Okay. That's fine. We understand.

(A lunch recess was taken.)

MR. JONES: Do you swear or affirm that the testimony you're about to give today is the whole truth and nothing but the truth?

MR. COHEN: I do.

MR. JONES: Thank you.

MS. KUDELKA: If you'll just speak up

because it is being recorded --

MR. COHEN: Okay.

MS. KUDELKA: -- so we'll get your voice.

DIRECT EXAMINATION

BY MR. FLORIAN:

Q. Would you please introduce yourself to the Committee?

A. My name is Levern Cohen. I'm the warden at Ridgeland Correctional Institution.

Q. And how long have you been employed by SCDC?

A. 23 years.

Q. All right. And how long have you been the warden at Ridgeland?

A. Six years.

Q. All right. In this case involving Mr. Bryant, what was your role in this case?

A. I was the reprimanding authority.

Q. Okay. Why did you decide -- what documents did you look at to decide the corrective action that was appropriate in this case?

A. The investigative report that was submitted by our internal affairs division from Investigator Hamer.

Q. All right. And did you -- did you speak

with anyone else when providing corrective action?

A. Investigator Hamer and our employee relations division, Robin Gracien, as far as the charges that were recommended.

Q. All right. I'd like to just kind of go through each charge individually.

A. Okay.

Q. Why did you conclude that it was appropriate to charge him with unnecessary or excessive use of force?

A. Due to the nature of the injuries that the inmate received, I think there were eight sutures that closed and 37 staples to close the scalp, that, to me, was very excessive.

Q. Were you aware of any forensic evidence that was --

A. Yes, we had forensic evidence from SLED. There are some blood samples five feet in the air, and that was a match to the inmate.

Q. Did Mr. Bryant have any -- had you had any prior issues with him in uses of force?

A. I recall a physical confrontation that Mr. Bryant had with an inmate, I think it was on the yard, in which his glasses were broken during the confrontation. I remember signing off on

paperwork to replace his glasses.

Q. And one thing I'd like you to just -- if you could kind of speak to the Department of Corrections' rule with regard to the inmates and protectiveness.

A. It is our job to protect the welfare and the safety of the inmates. We don't use excessive force had -- if your life is in immediate danger, a threat to your life or another inmate's life or another employee's life, then you have to do what you have to do to save that individual's life.

We're trained in emergency procedures on how to respond to emergencies such as this, and in this case, excessive force was used due to the nature of the injuries.

Q. All right. I'd like to move next to the falsification charges. Why did you conclude that Mr. Bryant had falsified documents and made false statements during the investigation?

A. From the synopsis of the investigative report submitted by Mr. Hamer, it indicated that the officers had the inmate taken -- had taken him down, handcuffed him, and our procedures are to handcuff him in the back. So they had -- it was two officers, so they had control of the man

bringing him out of the building.

At no time did it indicate that his head hit the wall, at least not hit the wall five feet in the air. At no time did it -- stated that there was an excessive amount of blood or hair anywhere in their reports.

Q. All right. I'd like to direct your attention in that red book, which is the record we're using, to page 80. And do you recognize what that is?

A. Yes. It's the employee corrective action policy for the Department of Corrections.

Q. All right. And for the charge of falsification of official documents which is Offense 180, what was the range of sanctions available to you?

A. Written warning up to termination.

Q. All right. And for Offense 250, which is use of unnecessary or excessive force, the range -- what's the range of sanctions for that?

A. A one- to ten-day suspension up to termination.

Q. And for Offense 260, making false statements during an investigation, what's the range on that one?

A. Written warning up to termination.

Q. All right. I'd also like to direct your attention to page 71. On that page, there's several bullet points broken out on subsection 3.4. Do you recognize what those are?

A. The seriousness of the violation, prior corrective actions against the employee, the employee's work record, length of service, and job performance, and multiple violations associated with a single incident, and they warrant most severe corrective action and a single violation.

Q. Based on those bullet points that you're supposed to consider, what were some -- what were some factors you felt weighed in favor of termination in this case?

A. The seriousness of the violation that -- again, the nature of the injuries that the inmate sustained during -- during the incident, the falsification of the records, not stating that there were any blood, the inmate's head did not hit the wall. When you look at the wall and five feet in the air, how no one can answer how that inmate's blood and hair get five feet in the air and he was handcuffed from behind. I'm certain that he didn't run and jump up five feet and hit his head. So no

one could explain that to me. So we looked at that falsification of documents there because it was not stated.

Q. All right. I think that's all the questions I have. Would you please answer any questions Mr. Horton has.

CROSS-EXAMINATION

BY MR. HORTON:

Q. Mr. Cohen, my name's Marshall Horton. I represent Mr. Bryant.

So we're clear, you didn't actually witness or have a firsthand information regarding the events that happened between Mr. Bryant and Mr. -- Inmate Doughty, correct?

A. Only the information from the investigative report.

Q. Okay. And the investigative report, did you rely solely on the investigative report from Investigator, I'm sorry, Hamer?

A. Hamer.

Q. Yes.

A. Yes.

Q. Did you review any other documents or do any other independent investigation on your own?

A. No, sir.

Q. Okay. Are you familiar with this case?
A. With this case?
Q. Yeah.
A. Yes, sir.
Q. Okay. Is there any information whatsoever -- were you made of any information whatsoever that would indicate which officer struck Inmate Doughty?
A. No, sir.
Q. Okay. Were you ever given any explanation whatsoever for the blood on the wall?
A. The inmate was taken down in the dorm. The report said they came through, they fell through the door. They didn't state that they fell down. So they both -- both of them had custody of the inmate.
Q. But no one ever said this is how it happened, correct?
A. Based on the investigative report.
Q. Okay. This prior confrontation that you spoke of where an inmate's glasses were broken, is there any documents or was there any report made of this?
A. I'm almost certain because I had to sign off on the documentation to replace his glasses.

Q. Okay. Was Mr. Bryant reprimanded or was there any action taken against him at that time?

A. There was an incident report given -- written by Mr. Bryant.

Q. Okay. All right. Turning to the suspension, were you aware that Mr. Bryant was placed on suspension without pay for approximately 950 days?

A. Yes, sir.

Q. Okay. Is that normal procedure for the institution to place employees on suspension without pay for that length of time?

A. Again, we always confer with our division of operations and our employee -- employee -- inmate relations or Robin Gracien, and they make the recommendations to us. And we confer with them, say, these are the charges and are these appropriate, and we go from there.

Q. Okay. Whose decision was it to place Mr. Bryant on suspension without leave -- or without pay?

A. Ultimately, mine.

Q. Okay. At any time, as the years passed and this man was on suspension without pay, did you do any sort of review? Was there any sort of

further investigation? What was happening while this man was on suspension without pay?

A. Well, the investigation was in the hands of internal affairs.

Q. Okay. Who at internal affairs?

A. Our investigator, Mr. Hamer.

Q. Okay. I'm going to direct your attention to a document that's in your book, and I'll find it for myself. It's actually the investigative report of Investigator Hamer that I'm looking for. I'm sorry, Warden. My thing has disappeared.

Start on page 25. Are you familiar with this document?

A. Yes, sir, I am.

Q. Okay. Does -- if you want to review it, you can, but I'm going to ask you, does this document represent the extent of the investigation that was conducted against Mr. Bryant?

A. Do you have the results from SLED? Because it was attached. It also had -- the results from SLED was attached to my copy.

Q. I just want to know --

A. Yeah, that's amended.

Q. I'm asking you what were the -- what was the investigation that occurred against Mr. Bryant,

and if this is it. If there's more, tell me.

A. Yeah, this is it. This is it. This is it.

Q. Okay. On page 27, appears as though the last notation was on October 27, 2008, that the cases were basically sent over to general sessions in criminal court. Was there any investigation conducted in your institution after this?

A. Not that I know of because once we turn it over to internal affairs, it's in their hands.

Q. Okay.

UNIDENTIFIED MAN: Is that an earthquake?

(Off-the-record discussion.)

MS. KUDELKA: Are you ready to get back?

BY MR. HORTON:

Q. I'll ask you just a general question. The -- was Investigator Hamer the individual who was really in charge of coming up with the facts that would lead you to make the decision that you did?

A. Yes, he and his division.

Q. Okay. Were you aware that the charges -- criminal charges against Mr. Bryant were dropped in May of 2009?

A. Yes, sir.

Q. Okay. Why did your institution take no action regarding his employment at that time?

A. Well, once this is turned over into employee relations, we wait -- await their decision to direct the institution.

Q. Okay. In terms of hierarchy, are these -- is internal affairs a division under your purview or are these people who kind of come from Columbia or something?

A. From Columbia, but Mr. Hamer has an office in the institution, but he works for the division of internal affairs.

Q. Okay. What led to this case being finalized -- let's see -- in March of 2011? Do you have any idea?

A. Well, the -- the investigation had come to a close. The process had been going on for a while, had been ongoing for a while, and I was directed by employee relations to go proceed -- proceed with the corrective action.

Q. Were you aware that the notice for an employee corrective action was created on the exact same date that your institution was served with a civil lawsuit?

A. No.

Q. Okay. Would you be surprised if that was the case?

A. No, sir.

Q. Okay.

MS. KUDELKA: Would you hold on just a second?

(Off-the-record discussion.)

MS. KUDELKA: Okay. Let's try it again.

BY MR. HORTON:

Q. Warden, to pretty much summarize, is what happened that you were given the report or recommendation by Officer Hammond -- Hamer, and then you made the decision to put Mr. Bryant on suspension without pay? Is that correct?

A. That's correct.

Q. And then from there, you were pretty much waiting on internal affairs to do what they were supposed to do in order to take further action?

A. That's correct.

Q. Okay. The -- one brief question. Why wasn't Mr. Bryant allowed counsel during the corrective action meeting?

A. Our policy, corrective action policy, does not allow.

Q. Okay. So it's in the policy?

A. It's in the policy, yes, sir.

Q. I appreciate your time. Thank you very much.

A. Thank you very much.

REDIRECT EXAMINATION

BY MR. FLORIAN:

Q. I'd like to ask you just a few more questions.

A. (Inaudible) out the building.

Q. I don't blame you at all.

Earlier there was some confusion I'm hoping you might be able to clear up between the difference between an incident report and a use of force report.

A. Okay.

Q. Could you kind of distinguish between those two?

A. An incident report is generated at the time of the incident. For example, in this incident, at the time of that report when the altercation happened between the inmate and the officers, an incident report is generated immediately after that. As soon as things get settled, the officers can sit down and write a report. In that report, a use of force is

generated based on the amount of force that was used to get the inmate into compliance, and we have to use that to assess whether any excessive force was used.

Q. Is it -- when a person drafts an incident report, is it -- what is it supposed to contain?

A. It contains date, approximate time, the employees involved, the location of the incident, signatures, any evidence that was created during the incident, any witnesses.

Q. If there's an important event that occurred, is it expected that --

A. An incident report is generated, yes.

Q. Okay. Okay. Are incident reports created -- does anybody else have to approve the fact that a person wrote an incident report or can a person just write an incident report to document something that happened?

A. Yes, a person can write a -- incident reports can be for an action or for information only, but all incident reports that are generated are turned in to the shift supervisor, it's given a number, and if it's to charge a person or charge an inmate, it's given a number. The shift supervisor sends it forward for processing so it's documented.

Q. Okay. I'm handing you a document that's been marked as Agency Exhibit 1.

A. Okay.

Q. Is this an incident report or a use of force report?

A. This is an incident report.

Q. And since the reporting official on this incident report is Mr. Bryant?

A. Yes, sir.

Q. Is it fair to say that this reflects Mr. Bryant's account of the event?

A. That is correct.

Q. Okay. I don't have anything further. Thank you.

A. Thank you.

MS. KUDELKA: Do any of the Committee members have any? I forgot to ask you, did you have anything?

MR. HORTON: Oh, no, absolutely. Thank you for your time.

MS. KUDELKA: All right. Can this witness be excused, then?

MR. FLORIAN: Yes, ma'am.

MS. KUDELKA: Okay. You're free to go.

THE WITNESS: Thank you very much.

MS. KUDELKA: Thank you. Is Ms. Gracien next?

MR. FLORIAN: She is next, yes. She should be downstairs.

MS. KUDELKA: Okay.

MR. JONES: Will you raise your right hand for us?

MS. GRACIEN: Sure.

MR. JONES: Do you swear or affirm that the testimony you will give today is the whole truth and nothing but the truth?

MS. GRACIEN: I do.

DIRECT EXAMINATION

BY MS. JOHNSON:

Q. Can you please state your name and title with the Department of Corrections, please?

A. Yes. It's Robin Gracien. I'm the employee relation branch chief or HR manager too for you State titles.

Q. Okay. How long have you held that position?

A. I have been in this position for 11 years, but I've been with the agency for 24.

Q. Okay. And --

A. All in HR.

Q. Thank you.

A. Uh-huh.

Q. And generally, what are your responsibilities with that position?

A. As the employee relations branch chief, I coordinate all areas including the corrective action process, the grievance and appeals procedure, in addition to many other things, sexual harassment, (inaudible), kind of all of those, but mainly for this purpose, the corrective action and the grievance.

Q. Okay. Using that book there, can you direct your attention to page 71 of the record?

A. Okay.

Q. Are you there?

A. Uh-huh.

Q. Okay. Are you familiar with the process for a corrective action meeting?

A. Yes.

Q. Okay. The grievance at issue with not allowing his attorney to come into the corrective action meeting, can you address the policy and the reason for not allowing legal representation within that meeting?

A. Sure. And I think it's in the -- on this

particular page, it's under 3.2, and of course the last sentence of this paragraph, the employee may not be represented by counsel at this meeting. And that's our agency policy and procedure. We do not allow representation during that proceeding.

Of course that's considered their due process where they have a meeting with the reprimanding authority, and those reprimanding authorities are not legal counsel or attorneys, so therefore it wouldn't be appropriate for an employee to be able to bring representation to that process. They are allowed of course in the grievance and appeals procedures.

Q. And has this been a consistent practice of SCDC?

A. Yes, it has been for as long as I've been in the agency.

Q. Okay. Thank you.

A. Uh-huh.

Q. Now can you turn to page 75 of the exhibit for the record further?

A. Sure.

Q. Okay. Will you address SCDC's policy regarding the length of time an employee can be placed on administrative suspension, please?

A. Sure. And I believe on this particular page it is under the definitions on ten giving you a little paragraph there in reference to administrative suspensions, that they may exceed 15 calendar days, and they most always will exceed 15 calendar days, workdays, calendar days.

It's not uncommon for the agency to have individuals that can be out for an extended period of time, lots of circumstances, whether it be ongoing investigations, specifically some criminal charges that we have no control over, but that is not uncommon and very -- I probably have 12 to 15 individuals out on administrative suspension in any -- at any one given time.

Q. Can you shed some light as to why this particular grievant was on suspension for that particular amount of time?

A. Yes. I think that -- I'm sure y'all probably have discussed that today, but the -- the -- at the beginning, of course, he was placed out pending some criminal charges and further investigation into the matter.

And then as time went on and there was some action on the part with his particular charges, but there was still some other things

unsaid and not addressed with the other employee that was also administratively suspended for this same action, and the procedure was that they were really waiting for some clarification and some completion of that process to be able to really take administrative action.

When that did not seem to move and move along and we were not able to get any information or closure on that from the solicitor's office, that the agency felt was necessary to go ahead and proceed and take some type of -- complete the investigative process and take administrative action.

Q. Okay. I want to show you -- it's a stack of documents. Excuse me.

A. Okay. There's cords here.

Q. There you are. Can you tell me what that first page represents?

A. This appears to be notification from the Horton Law Firm in reference to legal matter of a lawsuit that they have initiated.

Q. Okay. I just -- I want to address the closeness of the date grievant was terminated compared to the date that the lawsuit was filed. Can you tell me the date that is listed there?

A. Yes. It appears that this particular document was received on March the 23rd, 2011.

Q. Okay. And did the -- did the process for terminating grievant begin before we received notice of that civil lawsuit?

A. Yes, it certainly did. There was communication as far back as the end of 2010 and then as trying to get additional information even from SLED, and then soon thereafter, I mean even as early as the beginning of March, there was some communication with the division of investigations in preparing the documentation the reprimanding authority would need, which I believe even was dated like March 21st. And then of course it takes time because they have to prepare the paperwork, serve it, send it, send it certified. So I think the timing really had nothing to do with the day of receipt.

Q. So it is safe to say that our decision to terminate the grievant wasn't a result of retaliation for the lawsuit?

A. Exactly, it was not.

Q. Okay. Thank you. That's all I have.

MR. GANJEHSANI: I believe this is already in evidence. Are you moving to introduce this into

evidence? The complaint is part of Committee Exhibit 1.

MS. JOHNSON: We just wanted to give that to her so she can --

MR. GANJEHSANI: Okay. I just wanted to make sure.

MR. HORTON: I have seen this before.

MR. GANJEHSANI: I know you've seen it before. I didn't know if your cover letter was in evidence. That's for purposes of timing of receipt and notice issues like that, but I think we've already established -- I didn't mean to interrupt you, Mr. Horton. If there's any dispute over when they received the timing, I'm sure you'll bear that out in cross.

CROSS-EXAMINATION

BY MR. HORTON:

Q. Ms. Gracien, nice to see you again, twice a month -- in one month.

Just real briefly, the -- we've discussed the -- Mr. Bryant being on suspension without leave for approximately 950 days. Is that right? Is it your testimony here today that -- that this suspension was in accordance with South Carolina Department of Corrections procedures?

A. Yes.

Q. Okay. And is it your position today that your office didn't do anything wrong or illegal or against your own guidelines concerning his suspension, correct?

A. Correct.

Q. Okay. You had said briefly that his suspension drug on because there was something unsaid or unaddressed -- I actually wrote the words down while you were talking -- in the -- from the solicitor. What were you talking about?

A. There was a -- like I said, there was another individual that was charged in this matter -- I think we're all aware of that. I believe the record will reflect that -- is that there was some indication that we were waiting for some closure on that particular case for a final determination to be made on the whole incident.

Q. Okay. The -- do you disagree with the fact that Mr. Bryant was kept on administrational suspension to secure his testimony regarding Officer Middleton?

A. Do I disagree -- I disagree with that.

Q. Okay. So if a representative of your office or the Department of Corrections had said

that, they would be -- they would be saying that incorrectly. Is that right?

A. If a representative said that -- what now?

Q. That Mr. Bryant was being kept on administrational suspension because they needed him to testify against Officer Middleton.

A. I'm not aware of that.

Q. Okay. Okay. Would that be -- be an error if someone said that?

A. It would be against any understanding I had of the case.

Q. Would it be against South Carolina Department of Corrections policy?

A. I don't know that we have that addressed in policy.

Q. Your understanding of the policy -- well, let me put some background and -- are you familiar with the policies?

A. Yes.

Q. Did you write the policies?

A. Some.

Q. Yeah, I kind of figured you did. How long have you been working with these policies?

A. Well, I've been in the agency 24 years.

Q. Is there anyone in South Carolina or the

world who would probably be more acquainted with these policies in the South Carolina Corrections than you?

A. Oh, well, goodness, I don't know. I'm sure there's probably some equally acquainted.

Q. I'm not one of them.

Okay. So you would be able to speak with some authority on what is permitted and what's not permitted on South Carolina Department of Corrections administrational guidelines and --

A. For administrative suspension, right.

Q. Yes. Okay. Would it be acceptable under the South Carolina Department of Corrections administration guidelines and rules to place an officer on suspension pending his testimony against another officer?

A. We wouldn't place somebody on suspension solely for that purpose, and that was not the case here.

Q. Theoretically, would that be against the procedure?

A. I don't know if it would be against the procedures, but that is not -- I don't think that applies here.

Q. I hate to do this to you, but yes or no.

MR. GANJEHSANI: I understand. If the question is a yes-or-no question, you can answer it yes or no. If yes or no doesn't tell the whole story, you can then explain.

THE WITNESS: Yeah. Okay. Well, ask your question again, then.

BY MR. HORTON:

Q. All right. Is it against the -- we're just going to call them the policy, all right, because I'm just --

A. This policy?

Q. This policy.

A. Okay.

Q. The South Carolina Department of Corrections policy and procedure, the ADR -- ADM dash whatever, which I'm butchering these things, the names of these things.

Is it against the policy to place an officer on suspension without pay pending his testimony against another officer?

A. I would say no, it's not against policy. It's not addressed in policy.

Q. All right. All right. I'm going to direct your attention to the investigative report which was done by internal affairs and Officer

Hamer which I've been using all day. We started out on page 25 of the red (inaudible).

On the last page, page 27, the last notation is October 27, 2008. To your knowledge, what investigation was ongoing after that date?

A. What would be ongoing is to -- for a determination to be made in reference to the pending criminal charges against another individual that was involved in the case which was not completed.

Q. Okay. So it didn't have anything to do with Mr. Bryant's pending charges?

A. Not his pending criminal charges, no.

Q. Okay. So did it have anything to do with the charges pending against Officer Middleton?

A. Yes, and the agency's determination to proceed with administrative action for either one of the individuals involved.

Q. Okay. What did the administration do after October 27, 2008?

A. What did who do?

Q. The administration, you, your office.

A. Okay. My office wouldn't be involved in the investigative process at that point. My office keeps track of the folks that are out on

administrative suspension and coordinates with the other individual offices that may be responsible for, for instance, an investigation. So my office would not be responsible for any further investigation.

Q. Okay. What is your office responsible for?

A. My office is responsible for ensuring that the -- once you get to the corrective action process, they're complete and consistent, the grievance process. Those are processes once action is taken.

Q. Okay. Okay. I was going to ask you about Bryant's charges being dropped on May 14, 2009, but that's irrelevant because what we're talking about here is the other officer, correct?

A. Well, what we're saying is just because a person's criminal charges are dropped does not mean that the agency would not initiate and feel the need to take administrative action for some wrongdoing or policy violations regardless of the outcome of the criminal charges.

Q. Okay. I don't think I'm asking this correctly. I want to know what was going on between October 27, 2008, and the date that the

agency decided to actually make some sort of corrective action against Mr. Bryant.

A. I think that's probably -- we've already said that, is that what was going on was waiting for further outcome of the entire case that involved both of these individuals, waiting for further information in reference to DNA analysis of things that were -- that were taken from the scene, those types of things. I think that that's probably been addressed.

Q. Okay. Well, to your knowledge, are charges still pending against Officer Middleton?

A. To my knowledge.

Q. Okay. Was the case still ongoing in criminal court to your knowledge? I just asked you that, I'm sorry.

A. To my knowledge, yes.

Q. Well, then, what prompted the decision to take corrective action against Mr. Bryant?

A. I think that we already said that, is that the action was prompted when we felt like we were getting no response from the solicitor's office in reference to that they were going to complete that process, so as it continued to linger on is that the agency felt if they're not going to do that,

then the agency will go ahead and initiate action since there did not appear to be any movement on that end.

Q. Okay. I'm telling you why I'm asking these questions. After 900 -- exactly about 947 days, someone -- did this come up on someone's calendar? Was there like a red card system? How did -- did someone just wake up one day and say we need to deal with the Bryant case?

A. No. There -- I don't -- I don't believe so. I think I said we talked -- this had been ongoing. I'm sure -- I'm sure the investigator attested to that as well.

But as far as involvement that I am totally aware of even back from, you know, late 2010, is there is documentation that goes out on a regular basis to the agency managers of the individuals that are out on administrative suspension.

And of course, that would go to inspector general, HR director, all these different individuals that there would be concern for us to be kind of checking on these things, so that's how it's processed so other people will see that list and will know that there's some interest in trying

to resolve some of the cases that have been out there a while.

Q. Okay. In your office, is there any sort of paper trail that would document the actual actions and phone calls, that sort of thing, that occurred on Mr. Bryant's case?

A. Not in my office. Phone calls with who?

Q. You had mentioned that you were trying to get in touch with the solicitor, the attorney --

A. Not me personally, but other individuals, yes, other individuals in the division of investigations, the HR director at the time, and those would not have been made by me, so no, I don't have a record of all the contacts and calls of what was done.

Q. Well, list for me who would.

A. I don't know if anybody's going to have a list. Everybody probably keeps track of their own.

Q. No, I mean, not telling me their lists.

A. Yeah.

Q. Tell me who -- who would be working on this case during the three years that he was suspended.

A. Investigations, division of investigations, okay, would be working on the case.

And other involved in that, inspector general, HR director.

Q. Who is the HR director?

A. The HR director at that time was Robert Peterson who's since retired.

Q. Who's the new one?

A. Joe Larson.

Q. Okay. Do you work for that individual?

A. I do.

Q. Okay. Is there anyone at HR who would be actually in charge of the Bryant file? I mean, is there a case manager who works on this file?

A. On his file for investigations, no. His personnel file is kept in HR, but other than that, no.

Q. Okay. Who made the decision to move forward with the termination proceedings?

A. It was a corrective action proceeding, and the decisions were made to initiate the report, as you can see from the documentation I guess in record that in March, the reprimanding authority, which was the warden, received that information, and which he cannot proceed until he has that information, so therefore once he received that information, then he was able to proceed.

Q. All right. I'm just going to go get some documents together. This is going to take (inaudible). I'm sorry.

Okay. I don't have the number in the red file on this. The -- I can get it if you want. In Mr. Bryant's verified grievance report dated April 13, 2010, he included an Exhibit B. Okay. And I represent to you that these were the documents that he had received in connection with the proceeding that we --

MR. GANJEHSANI: I believe that's 22.

MR. HORTON: 22?

MR. GANJEHSANI: Let me double-check.

THE WITNESS: Page 22?

MR. GANJEHSANI: Page 22 of Committee Exhibit 1.

BY MR. HORTON:

Q. Yeah, it's page 22 (inaudible). I don't represent the truth of that, but he had represented these were the documents that he received in connection with the proceeding. The first one is a certified return receipt mail dated March 23, 2011. The second one is a report dated March -- South Carolina Department of Corrections received detail message report dated 3/23/11, and then the third is

the investigative -- investigative memorandum that we've discussed at length.

A. Uh-huh.

Q. Is there any other documents that the -- that the warden would have needed to go forward besides for these particular documents?

A. No.

Q. Okay. Why is the investigative memorandum dated March 21, 2011, yet the last entry in terms, of any sort of work that was done in this file was October 27, 2008? Just fill in the details there.

A. The date -- the current date there is because the director of the division of investigation is required to give the reprimanding authority some information, and of course when she is to that point, then there of course would give it a current date whenever she initiates the synopsis. So that's a common practice for her to put a current date whenever she is ready to prepare --

Q. Who's she?

A. The person it's from, Deborah Barnwell.

Q. Okay. And you may not know the answer to this, but looking at this document, I mean, what changed from October 27, 2008, to March 21, 2011,

that spurred this report being generated and giving it to the warden?

A. I think we said this several times is that the determination to proceed because the agency was unable to receive information from the solicitor's office to initiate any -- to find out if there was going to be any further action with the other criminal charge that involved this whole incident, and that that's what prompted our completion of this because there was no movement on any, and we received additional information from the SLED analysis, from the DNA analysis, so we felt that it was appropriate to go ahead and complete this process given that it did not appear the other was going to be and still has not had any movement.

Q. Who made that decision to proceed?

A. That -- to proceed probably would be maybe the inspector general, division of investigations, and HR director I'm sure that were all involved.

Q. Okay. The -- do you know who made the decision to proceed or are you guessing?

A. No, those individuals would have been involved in the decision, and our office also would have been communicated with and would have agreed that, yes, it's time to move forward.

Q. Who from your office?

A. Me.

Q. Okay. Did you in fact have that conversation?

A. Yes.

Q. All right. Who were you speaking to?

A. I just said, we were speaking with the inspector general, the division director, the division of investigation director, HR director.

Q. All right.

A. And warden.

Q. In your conversations from these folks, what was going on with the solicitor's office to where these charges against Middleton wasn't moving forward?

A. What was your question?

Q. What was going on with the solicitor's office that held up the charges against Middleton?

A. I don't know.

Q. Okay. Who, if any, made the decision to keep Mr. Bryant on suspension even though the charges were dropped against him pending Middleton's trial or outcome?

A. That would be the decision of probably several -- probably similar that we already alluded

to.

Q. Be specific. Tell me.

A. Okay. Our -- my office, myself, investigations, inspector general, and most likely the warden.

Q. Was there any consideration whatsoever giving -- given to Mr. Bryant's ability to make a living and sustain himself in keeping him on suspension without pay while the charges against him had been dropped? Was this even a consideration?

A. Of course. We're not heartless souls. But we understand that we have -- there's things that we need to do. We wouldn't prevent him from finding other employment. Many do during that process.

Q. As correction officers?

A. No.

MR. HORTON: I don't think I have any further questions. Thank you.

MS. KUDELKA: Does the Committee have any questions? Can this witness be excused?

MR. FLORIAN: Yes, please, ma'am.

MS. KUDELKA: Closing arguments, you have the choice to go first or last.

MR. GANJEHSANI: And you can have a moment.

MS. KUDELKA: Oh, yeah, we'll take a break, but I just want to find out.

MR. HORTON: Go last.

MS. KUDELKA: Go last. Okay. Well, let's take ten-minute break, five-minute break. Will that give you enough time?

MR. FLORIAN: That will be fine. Thank you.

MS. KUDELKA: Okay. All right.

UNIDENTIFIED MAN: Five 'til?

MS. KUDELKA: Five 'til, yeah.

(A recess transpired.)

MR. FLORIAN: All right. Well, some things jumped out at me during Mr. Horton's opening. I wrote it down. He said that Bryant said exactly what he's been saying the whole time. Well, I think if you read Mr. Bryant's incident report alone, you might see nothing wrong with this case. The problem is is the incident report doesn't begin to tell the whole story.

Sometime after Officer Cobb was injured, sometime before the inmate was turned over to officer -- or Sergeant Wiggins, someone basically

gashed this inmate's head against the wall. It's clear it happened. We have the forensic evidence. No dispute that it happened. There's not a word about it in the incident report or any statement from Mr. Bryant.

Let's look at the evidence to support each charge in this case. Use of excessive unnecessary force. Inmate Doughty was restrained by these officers. You heard from the warden the procedures to restrain, handcuff him behind his back.

There were two officers escorting him. By the time when Sergeant Wiggins takes custody, the inmate's head, for some reason it's gashed against the wall and it's just not explained.

Now, Mr. Bryant claims he left the inmate with Officer Middleton to go back inside the dorm. The problem with that is it's not the way the incident report is written, and the incident report says, we escorted Inmate Doughty to the outside of the unit where Sergeant Wiggins assumed control of the inmate. It's not written to there being any gap there where he's left alone with Officer Middleton.

It's not what he told Investigator Hamer either. In his voluntary statement, he says, I,

while escorting Inmate Doughty outside, fell coming out, along with Inmate Doughty, the exit door because Inmate Doughty was still resisting. We pick Inmate Doughty up. Sergeant Wiggins assumed control of the inmate. When Inmate Doughty lowered his head, I, Sergeant Bryant, noticed one or two drops of blood.

Again, there's no gap in there. There's no period where he leaves him alone with Officer Middleton and goes back inside the dorm. So that's the excessive unnecessary use of force.

Then you have the falsification of official documents. You have an incident report dated August 17, 2008. It's just not consistent with forensic evidence, not consistent with the fact this inmate's blood is found five feet up on the wall. It's not consistent with his statement to investigators later on, his voluntary statement you guys have in evidence now. The fact is is there's no mention in that incident report of anybody falling through a door.

What about false statements during the investigation? Well, again, his statements have just been inconsistent. Initially he didn't see any blood, then he said I saw one or two drops of

blood. Doesn't match the forensic evidence. Sergeant Wiggins told you when he saw this inmate coming across the yard, he was basically -- it's not one or two drops of blood, it was a significant amount of blood involved.

During the hearing, I wrote down a few moments of testimony that I really felt like were important. You know, Mr. Bryant called his incident report a summation, a summary report, basically I felt trying to distance himself from it.

Investigator Hamer explained officers are responsible for their own incident reports. They're supposed to document important details, document what occurred. If an inmate fell going through the door while three officers were trying to go through the door, that would be something you would document. If you saw blood on the inmate, that would be something you would document in that report. You don't see either one of those things on the incident report.

You heard from Investigator Hamer. I mean, he's a seasoned -- he's an experienced investigator. Bryant, Middleton had custody of this inmate, and while in their custody, this

inmate gets injured, there's this blood stain on the wall, and the fact is is he felt throughout his investigation he was being misled, felt like he couldn't get the complete story, and the fact is is that's how we get to this point today. We don't have anybody that I can put up here to tell you the complete story. No one's saying I know who did it and this is who it is. Instead, we have to look at what the evidence was that we have to come to a conclusion based on that.

The other thing I wrote down from Warden Cohen, you know, he just -- it seemed important to him I think that there was no blood in that incident report. There's no mention of any blood despite the fact that there's this stain on the wall, and you know, it's clear the inmate didn't jump up five feet and bang his head against the wall. Somebody did this. No one's owning up to that responsibility.

Now, Inmate Doughty, I acknowledge, I think everybody in this room would acknowledge, this is not a good guy. This is not an inmate you would say is a model inmate by any means. We have detailed accounts on this incident about just about everything. We have Inmate Doughty being out of

control, swinging this lock on a string, striking Officer Cobb, Cobb leaving with the injury, Middleton and Bryant bringing him to the ground and restraining him.

The missing piece, the part we never hear about is when they escort him outside, did they fall through the door? We don't know because the story changed. But the key questions, how did the inmate end up with these injuries and how did this forensic evidence, this blood and hair, end up smeared on the wall? Nobody wants to answer those questions.

But even with that missing piece, the overall picture is clear in this case. There were two officers with Inmate Doughty and Bryant was one of them. When Sergeant Wiggins took custody, Inmate Doughty's head had been gashed. You can look at the picture -- it's in the record -- if you have any doubt. The gash is just not explained by Mr. Bryant. It's not consistent with falling on the floor. I don't think there's any dispute about that.

Mr. Bryant is claiming that he left the inmate with Middleton. The incident report's not written that way, and it's not what he told the

investigator.

We would ask that the corrective action be upheld in this case. Thank you.

MS. KUDELKA: Are you ready?

MR. HORTON: Yeah. Yes. Yes, ma'am. Just briefly to frame this issue regarding the importance of this job to my client, this is his chosen profession. He has a college degree in this, working on his master (inaudible) certification in this. I look at it the same as what I've been through to be an attorney and how I would feel if my ability to try cases was taken from me.

And certainly the callous and arbitrative nature in which his career was discarded I found to be offensive. Hamer pretty much said it, you know, word for word when I was trying to ask him what evidence he had against my client, he said, you have to understand, there's a serious injury to an inmate, so I just forward it to the solicitor and figure that they'll do an investigation, and in the meantime simply destroy his career, which is a pretty accurate statement for where his career is right now.

Now, talk about evidence, (inaudible) they

didn't do anything wrong, none. And there's a bunch of different ways that Doughty gets a head on his gash. One is that the inmates did it, which is what they had first discussed happened, and to be perfectly honest, I never really got a satisfactory answer as to why that isn't a possibility and why it wasn't thoroughly investigated.

The second one -- the second one is that Middleton did it. Frankly, Middleton is the one facing charges now. My client had his charges dropped against him. I don't know what the solicitor knows, but Middleton's the one who's still facing charges in this thing.

And then there's Wiggins who, to be perfectly honest, I mean, there's an inmate statement saying that Wiggins put the guy up against the wall, but it was never investigated because Hamer just took the guy at his word. You know, respectfully, I understand that investigative work is very tough and I have to do some of this too, but I don't understand why there was no scrutiny towards Officer Wiggins. I just don't.

I'm sitting here, not one person brought here, not one person can say with certainty what happened except for Mr. Bryant, and Mr. Bryant

testified, because he was the only one here, he was the only eyewitness to this event, and you know, I know y'all see this a lot, and I do a lot of trial work, and the idea that I'm going to be walking in blind with my client giving a statement first and that there's going to be statements that my client had given prior three years ago that may be inconsistent is a pretty scary -- scary thing, and I apologize if I over-objected to some of the statements coming in, but you know, in reviewing them, I can't believe it, they're exactly consistent with what he's saying.

So the three years that's passed with the opportunity to work on his story to try to minimize what he did or whatever, what he said to y'all today was exactly the same as the statements, which, you know, we got kind of trial by ambushed on. That being said, they're not inconsistent. It just says what he says, and what he said happened is his story, and that's what happened.

You know, in conclusion, the -- it seems pretty obvious exactly what happened here, and that is there was an inmate that was hurt. Someone in the division of investigation made the decision that heads needed to roll, and Mr. Bryant just

happened to have a head in the wrong place.

You know, I don't know what was more frustrating for me listening to was witness after witness coming up here and saying that they didn't know what happened to Inmate Doughty, but, hey, let's fire Bryant or just the absolute heartless and callous treatment shown by HR to where they're basically just willing to put this man's life on hold and keep him from being a productive member of society just indefinitely regarding something that didn't have anything to do with him, a whole other officer. I mean, it was just brutal -- retract brutal, it's gross negligence, which is why I'm here with him being pro se. But thank you very much, and I appreciate y'all also giving us your time.

MS. KUDELKA: Thank you.

MR. GANJEHSANI: I'll now advise the Committee on the controlling law and provide instructions for it to follow in rendering its decision. South Carolina Code Section 8-17-340E2 governs the Committee's role in this proceeding and provides that the Committee may not offer or overrule an agency's decision unless the covered employee establishes that the agency's decision

prejudices substantial rights of his and is one or more of the following: A, a violation of constitutional or statutory provisions; B, an 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 of the whole record; or F, arbitrary and capricious or characterized by abusive discretion or clearly unwarranted exercise of discretion.

The decision is arbitrary if it is without a rational basis, is based alone on one's will, not upon any course of reasoning, an exercise of judgment, is made of pleasure without adequately determining principles or is governed by no fixed rules or standards.

An agency need not exercise its discretion identically in every case. A penalty that is within the authority of the agency is not rendered invalid in this particular case because it is more severe than sanctions imposed in other cases, and mere unevenness in the application of the sanction does not render its application in this particular case unwarranted in law.

Standard employee grievance proceedings

are governed by the State Administrative Procedures Act which establishes a substantial evidence standard or review for agency decisions. Under this standard, the factual findings of the agency are presumed correct and can be set aside only if unsupported by substantial evidence.

Substantial evidence is not a mere scintilla evidence, nor is it evidence viewed blindly from one side, rather it is evidence which when considering the record as a whole will allow reasonable minds to reach the conclusion that the agency reached in order to justify its actions.

The possibility of drawing two inconsistent conclusions from the evidence does not prevent an agency's conclusion from being supported by substantial evidence. The burden is on the employee to prove convincingly that the agency's decision is unsupported by the evidence.

To determine if the employee has carried his burden of proof, the Committee must look to the entire record including the testimony presented and all written policies and procedures of the agency. Considering the record, the Committee may not overturn an administrative agency's finding of fact unless there is no reasonable probability that the

facts could be as related by a witness upon whose testimony the finding was based.

The Committee is the sole judge of the credibility and believability of the witnesses who have testified in this case. When determining the credibility of a witness, the Committee may consider any manner that has a reasonable tendency to prove or disprove the truthfulness of the witness' testimony including the witness' demeanor, the consistency or inconsistency of the witness' testimony, whether the witness had any cause to bias or prejudice in the testimony given, whether the witness had an interest in the outcome of the proceeding, and whether the witness' testimony was made stronger or weaker by other testimony in evidence.

In weighing conflicting testimony, the Committee may believe that testimony which convinces it more heavily toward one view of facts as opposed to the other view. The Committee is not bound to decide the facts based on the number of witnesses produced for one side as opposed to the number of witnesses produced by the other. The final test is not the number of witnesses but the relative convincing force of the evidence. The

Committee is free to accept a portion of the witness' testimony and reject a portion of the witness' testimony.

Are there any additional instructions requested or objections to the ones I've given?

MR. HORTON: No.

MR. FLORIAN: No, sir.

MR. GANJEHSANI: Madam chair.

MS. KUDELKA: At this time, the Committee will excuse the parties and continue in executive session to deliberate. No votes will be taken while the Committee is in executive session. The parties may wait for the deliberations to be concluded, but we do not know when the deliberations will be completed. A written decision will be provided within 20 calendar days of the conclusion of the hearing.

Are there any questions?

MR. HORTON: No, ma'am.

MR. FLORIAN: No, ma'am.

MS. KUDELKA: Okay. The Committee attorney will remain to provide legal advice, but all other parties are asked to leave the hearing room.

(The Committee entered into executive

session.)

MS. KUDELKA: Okay. I will now entertain any motions from the Committee. Okay. We've got to come out of executive session.

UNIDENTIFIED COMMITTEE MEMBER: That's what I was going to say. Nope, that's right. You're right. I'm sorry. (Inaudible.)

MS. KUDELKA: Oh, okay. So I'll entertain any motions to come out of executive session. Okay. So I'll now entertain any motions from the Committee to come out of executive session.

UNIDENTIFIED COMMITTEE MEMBER: I move that this Committee come out of executive session.

MS. KUDELKA: Do I have a second?

UNIDENTIFIED COMMITTEE MEMBER: I second.

MS. KUDELKA: Okay. All in favor, say aye. Okay.

Okay. We are out of executive session. No votes were taken while we were in executive session. Is there any discussion?

I will now entertain motions from the panel.

UNIDENTIFIED COMMITTEE MEMBER: Madam chair, I move that the Committee find that the agency decision was supported by substantial

evidence, that the agency decision was not in violation of 8-17-340 section E2 A, B, C, D, E or F.

MS. KUDELKA: Do I have a second? Do I have a second? Your motion fails.

UNIDENTIFIED COMMITTEE MEMBER: Madam chairwoman, I move that the Committee find that the grievant has established by convincing evidence that the agency decision was not supported by substantial evidence in this matter and was arbitrary or capricious or characterized by abusive discretion or clearly unwarranted exercise of discretion.

MS. KUDELKA: Do I have a second?

UNIDENTIFIED COMMITTEE MEMBER: Second.

MS. KUDELKA: All in favor, say aye. That's four in favor of the motion and one opposed.

You guys will receive a written decision within 20 calendar days. We're done.

(Whereupon the proceeding concluded.)

CERTIFICATE OF REPORTER

I, Gina M. Smith, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

February 13, 2012

Gina M. Smith

Gina M. Smith
Notary Public,
State of South Carolina at Large.
My Commission expires
July 23, 2013.

South Carolina Department of Corrections

NIKKI R. HALEY, Governor
WILLIAM R. BYARS, JR., Director

August 18, 2011

Via Fax to (843) 757-6191
Marshall L. Horton, Esq.
P.O. Box 3766
Bluffton, SC 29910

Re: Johnnie L. Bryant v. S.C. Department of Corrections

Dear Mr. Horton:

The following is a list of witnesses the Department may call during the employee grievance hearing regarding the above captioned matter scheduled for August 23, 2011:

- Warden Levern Cohen
- Robin Gracien
- Investigator Frederick Hamer
- John Middleton
- Investigator Anthony Orr
- Sergeant John Wiggins Jr.

The Department also reserves the right to amend this list at a later date if necessary.

Sincerely,

Christopher Florian
Staff Attorney

cc: Ms. Heather Keever (by email)

South Carolina Department of Corrections

NIKKI R. HALEY, Governor
WILLIAM R. BYARS, JR., Director

August 18, 2011

Via Fax to (843) 757-6191
Marshall L. Horton, Esq.
P.O. Box 3766
Bluffton, SC 29910

Re: Johnnie L. Bryant v. S.C. Department of Corrections

Dear Mr. Horton:

The following is a list of representatives for the Department in the employee grievance hearing regarding the above captioned matter. The Department reserves the right to amend this list prior to the hearing

- Christopher Florian
- Investigator Frederick Hamer
- Shanika Johnson

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,

Christopher Florian
SCDC Staff Attorney

cc: Ms. Heather Keever (by email)

EXHIBIT SHEET

Date of Hearing: August 23, 2011
Appellant: Johnnie L. Bryant
Agency: S.C. Department of Corrections
Disciplinary Action: Termination

Chairperson: Lesia Kudelka
Secretary: Leroy Taylor
Committee Attorney: Warren Ganjehsani

EXHIBITS AND EXHIBIT NUMBERS				DESCRIPTION/IDENTIFYING INFORMATION	
COMMITTEE EXHIBIT I				Pages to	
AGENCY EXHIBITS		APPELLANT EXHIBITS			
Introduced	For Identification Only	Introduced	For Identification Only		
1				SCDC INCIDENT REPORT PAGES 2&2	2
2				SCDC DIVISION of INVESTIGATION (VOLUNTARY STATEMENT	1
3				SCDC INCIDENT REPORT PAGE #1	1
4				CASE NUMBER 92-0243/91-0162. BRYANT INTERVIEW CONTINUE	1

Baggott, Terry



From: Grievance [grievance@ohr.sc.gov]
Sent: Wednesday, June 08, 2011 8:30 PM
To: Miller, Joseph
Subject: FW: State Appeal Form

From: grievance@ohr.sc.gov[SMTP:GRIEVANCE@OHR.SC.GOV]
Sent: Wednesday, June 08, 2011 8:30:07 PM
To: Grievance
Subject: State Appeal Form
Auto forwarded by a Rule

STATE EMPLOYEE GRIEVANCE PROCEDURE
STATE APPEAL FORM

TO APPEAL THE DECISION OF THE AGENCY CONCERNING A GRIEVANCE UNDER THE STATE EMPLOYEE GRIEVANCE PROCEDURE ACT TO THE STATE HUMAN RESOURCES DIRECTOR, THE EMPLOYEE AND/OR REPRESENTATIVE INITIATING THE APPEAL MUST COMPLETE THIS FORM AND RETURN IT TO THE STATE OFFICE OF HUMAN RESOURCES.

EMPLOYEE'S NAME: Johnnie L. Bryant

JOB CLASSIFICATION: Corrections Officer II (Sergeant)

AGENCY: South Carolina Department of Corrections

HOME ADDRESS: 48 Bryant Road, Hilton Head, SC 29926

TELEPHONE: Home, (843) - 757-6190 Office; (843) - 757-6190 Cell: (843) - 860-9424

1. Has the employee completed twelve (12) months of satisfactory service with the state? Yes

2. What disciplinary action taken against the employee is being appealed? Termination of Employment

3. Has the employee received a final decision from the agency? No

4. What date did the employee receive the final decision? __

5. If the employee has not received a final decision from the agency, what date did the employee initiate the grievance within the agency's internal grievance procedure? April 15, 2011

APPEAL

Please specify why the employee contends that the agency's decision concerning the grievance is unfair and state relevant facts and issues to support that position (continue on additional pages if necessary):

NATURE OF GRIEVANCE 1. A hearing was held on March 30, 2011 at the Ridgeland Correctional Institute regarding Mr. Bryantâ€™s employment. At this hearing, Mr. Johnnie L. Bryantâ€™s employment as Corrections Officer II (Sergeant II) was terminated. 2. A civil lawsuit, Case No.: 2011-CP-27-0150 was filed with the Jasper County Court of Common Pleas on March 9, 2011, and served shortly there afterward, which states claims for Wrongful Discharge and Negligence against the above mentioned Respondents. This civil lawsuit directly addresses issues identical to this current Grievance. A copy of this lawsuit is attached hereto as â€œExhibit Aâ€ and is incorporated verbatim into this Verified Grievance Report. a. Mr. Bryant was not afforded due process at the March 30, 2011 hearing. 3. Mr. Bryant and his undersigned counsel, Marshall L. Horton, Esq.,

arrived at the Ridgeland Correctional Institute at approximately 8:20 am in an effort to attend the hearing. 4. Upon arriving at the Ridgeland Correctional Institute, Mr. Bryant and his attorney were informed that Warden LaVern Cohen would not allow Mr. Bryantâ€™s attorney to attend the hearing and that Mr. Bryant must attend the hearing unrepresented. 5. Due to the fact that Mr. Bryant was going to be deprived of his right to counsel if he attended the hearing, Mr. Bryant and his attorney left the Ridgeland Correctional Institute. 6. Upon information and belief, it is inconceivable that South Carolina law would allow Warden Cohen authority to require Mr. Bryant to give a statement regarding a filed and served lawsuit without his counsel of record present. 7. Furthermore, in addition to the fact that Warden Cohen attempted to deprive Mr. Bryant his right to counsel, Mr. Bryant was not sufficiently informed of the nature of the evidence (if any) that Warden Cohen planned to introduce at this hearing. Prior to the March 30, 2011 hearing, Mr. Bryant was supplied with documents which detailed the â€œInvestigative Memorandumâ€ which detailed the investigation conducted in this case, and these documents are attached hereto as â€œExhibit B.â€ The Memorandum does not seem to contain any incriminating information against Mr. Bryant, and it must be inferred that Warden Cohen decided to terminate Mr. Bryantâ€™s employment was based on evidence that was not disclosed prior to the March 30, 2011 hearing. b. Warden Cohenâ€™s suspension of Mr. Bryantâ€™s employment without pay was unlawful. 8. Mr. Bryant was suspended without pay on August 25, 2008 pursuant to SCDC Employee Policy ADM-11.04 and was informed of this via correspondence dated August 25, 2008 (attached hereto as â€œExhibit Câ€). 9. According to Warden Cohen, Mr. Bryant was suspended without pay for 947 days (Mr. Bryant reserves any argument based upon the actual date of firing). 10. Upon information and belief, the SCDC Employee Policy ADM-11.01, et seq. does not flatly authorize suspensions without pay. Warden Cohen was not authorized to create this punishment for Mr. Bryant. While it may be the case that SCDC Employee Policy ADM-11.04.4.4.3 authorizes administrative â€œsuspension without pay pending investigation,â€ any pending investigation in this case ended on or before October 27, 2008. See Exhibit B, Page 5. 11. Upon information and belief, even in the event that Warden Cohen was authorized to suspend Mr. Bryant without pay, which Mr. Bryant vehemently disputes, SCDC Employee Policy ADM-11.04, Attachment 1-A (Sanctions and Violations) virtually never authorize suspensions longer than 10 days. 12. During Mr. Bryantâ€™s 947 day suspension without pay, he was unable to seek further employment or enroll in vocational education programs (i.e. Police Academy) because the Ridgeland Correctional Institute continued to insist, in written official statements, that Mr. Bryant was still an employee. Please refer to document located in â€œExhibit Dâ€ for examples of this conduct. c. Mr. Bryantâ€™s conduct did not justify any corrective action. 13. Mr. Bryant was initially disciplined for Use of Unnecessary and/or Excessive Force. He did not use excessive force on the inmate in question, and Mr. Bryant gives his account of the facts of this case in the attached Verified Complaint attached hereto as â€œExhibit A.â€ Simply, he did not act in any way short of honorably in his rescue of a fellow corrections officer from a vicious attack. 14. Mr. Bryantâ€™s issues were referred to the Solicitor of the 14th Circuit of South Carolina for criminal charges to be pressed. The Solicitorâ€™s Office had the opportunity to review this matter and subsequently entered a Nolle Prosse against all criminal charges against Mr. Bryant (see â€œExhibit Eâ€). Mr. Bryant did not plea to a lesser crime, Mr. Bryant did not pay a fine, and Mr. Bryant did not enter into any pre-trial Intervention program; upon review of the matter, the Solicitorâ€™s Office dropped all charges. While this Nolle Prosse is not legally binding in this case, it is illustrative as to the weak nature of any allegations of wrongdoing against Mr. Bryant. 15. Mr. Bryant, at a point in time unknown, was also charged with some variety of making a false statement. There is no known evidence of any false statement that Mr. Bryant gave. 16. Simply, Mr. Bryant has not done anything to justify any corrective action against him.

Please specify the relief that the employee is seeking by this appeal:

RELIEF SOUGHT Mr. Bryant seeks back pay based on his rate of pay as of August 25, 2008. He also seeks the cash value of the benefits he was receiving during this time (i.e. health insurance, retirement, etc.). Mr. Bryant seeks future wages (front pay) in a reasonable amount. Mr. Bryant seeks any further relief which may be sought pursuant to law, including punitive damages, attorneysâ€™ fees, trebel damages, any other legally recognizable recoverable relief.

Date: Jun 8, 2011

Office of Human Resources
1201 Main Street, Suite 800
Columbia, South Carolina 29201

Based on Form GC101-Revised 10/01/96

HORTON LAW FIRM, LLC

PHYSICAL ADDRESS
17 LAWTON STREET
BLUFFTON, SOUTH CAROLINA 29910

TELEPHONE: (843) 757-6190
FACSIMILE: (843) 757-6191
www.hortonlawfirmllc.com

MAILING ADDRESS
POST OFFICE BOX 3766
BLUFFTON, SOUTH CAROLINA 29910

Writer's Email Address: mlh@hortonlawfirmllc.com

MARSHALL L. HORTON

June 8, 2011

VIA OVERNIGHT MAIL AND CERTIFIED MAIL RETURN RECEIPT REQUESTED
Attn: Alternative Dispute Resolution Program
Office of Human Resources
8301 Parklane Road, Suite A220
Columbia, South Carolina 29223

Re: *Johnnie L. Bryant v. South Carolina Department of Corrections, Ridgeland Correctional Institute*
Case No. 2011-CP-27-150

Dear Alternative Dispute Resolution Program:

This law firm represents Mr. Jonnie L. Bryant against the South Carolina Department of Corrections. Mr. Bryant filed an employee grievance on April 15, 2011, and has not received an agency decision. As such, please find the following documents:

(a) **Mr. Bryant's Grievance Report Form dated April 13, 2011**
(b) **Mr. Bryant's Verified Grievance Report with Attachments A – E dated April 13, 2011**
(c) **Letter from SCDOC dated April 19, 2011**

Thank you for your attention to this matter. If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

Marshall L. Horton

MLH/
Enclosures

South Carolina Department of Corrections
Division of Human Resources

GRIEVANCE REPORT

TO: Employee Relations Branch

FROM: Johnny L. Bryant (Name) Correctional officer II. (Sergeant) (Position)

DATE April 13, 2011 Ridgeland Correctional Inst. (Work Location)

Work Telephone Number: 912 / 631 . 1056

Home Telephone Number: ( ) ____ - ____

The subsequent grievance/appeal is submitted under the provisions of applicable SCDC policies and procedures

NATURE OF GRIEVANCE

Give an explanation of your grievance. Include specific details concerning the action imposed and why you feel it was inappropriate. You may attach additional sheets to this form if necessary.

Please see attached

RELIEF SOUGHT

In your opinion, how can your grievance be solved? Be as specific as possible

Please see attached

S/ Johnnie Bryant
Employee (Grievant)

Home Address: 48 Bryant Rd., Hilton Head, SC 29926

_____ Zip _____

In compliance with SCDC Policy ADM-11.02, "Employee Grievance and Appeals Procedures," this form must be completed and submitted to the Employee Relations Branch within 14 calendar days from the effective date of the grievable action

Date: April 13, 2011

S/ Johnnie Bryant

Distribution: White Employee Relations
Yellow Employee

SCDC 16-33 (Revised Aug 2005)

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT CIVIL ACTION NO.: 2011-CP-27-150
JOHNNIE L. BRYANT, Claimant, vs. SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, SOUTH CAROLINA BUDGET AND CONTROL BOARD Respondents.	VERIFIED GRIEVANCE REPORT

TO: SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, DIVISION OF HUMAN RESOURCES:

Mr. Johnnie L. Bryant, by and through his attorneys, hereby provide the above referenced Respondents with the following Verified Grievance Report:

NATURE OF GRIEVANCE

1. A hearing was held on March 30, 2011 at the Ridgeland Correctional Institute regarding Mr. Bryant's employment. At this hearing, Mr. Johnnie L. Bryant's employment as Corrections Officer II (Sergeant II) was terminated.

2. A civil lawsuit, Case No.: 2011-CP-27-0150 was filed with the Jasper County Court of Common Pleas on March 9, 2011, and served shortly there afterward, which states claims for Wrongful Discharge and Negligence against the above mentioned Respondents. This civil lawsuit directly addresses issues identical to this current Grievance. A copy of this lawsuit is attached hereto as "Exhibit A" and is incorporated verbatim into this Verified Grievance Report.

a. Mr. Bryant was not afforded due process at the March 30, 2011 hearing.

3. Mr. Bryant and his undersigned counsel, Marshall L. Horton, Esq., arrived at the Ridgeland Correctional Institute at approximately 8:20 am in an effort to attend the hearing.

4. Upon arriving at the Ridgeland Correctional Institute, Mr. Bryant and his attorney were informed that Warden LaVern Cohen would not allow Mr. Bryant's attorney to attend the hearing and that Mr. Bryant must attend the hearing unrepresented.

5. Due to the fact that Mr. Bryant was going to be deprived of his ***right*** to counsel if he attended the hearing, Mr. Bryant and his attorney left the Ridgeland Correctional Institute.

6. Upon information and belief, it is inconceivable that South Carolina law would allow Warden Cohen authority to require Mr. Bryant to give a statement regarding a filed and served lawsuit without his counsel of record present.

7. Furthermore, in addition to the fact that Warden Cohen attempted to deprive Mr. Bryant his right to counsel, Mr. Bryant was not sufficiently informed of the nature of the evidence (if any) that Warden Cohen planned to introduce at this hearing. Prior to the March 30, 2011 hearing, Mr. Bryant was supplied with documents which detailed the "Investigative Memorandum" which detailed the investigation conducted in this case, and these documents are attached hereto as "Exhibit B." The Memorandum does not seem to contain any incriminating information against Mr. Bryant, and it must be inferred that Warden Cohen decided to terminate Mr. Bryant's employment was based on evidence that was not disclosed prior to the March 30, 2011 hearing.

b. Warden Cohen's suspension of Mr. Bryant's employment without pay was unlawful.

8. Mr. Bryant was suspended without pay on August 25, 2008 pursuant to SCDC Employee Policy ADM-11.04 and was informed of this via correspondence dated August 25, 2008 (attached hereto as "Exhibit C").

9. According to Warden Cohen, Mr. Bryant was suspended without pay for 947 days (Mr. Bryant reserves any argument based upon the actual date of firing).

10. Upon information and belief, the SCDC Employee Policy ADM-11.01, *et seq.* does not flatly authorize suspensions without pay. Warden Cohen was not authorized to create this punishment for Mr. Bryant.[1]

11. Upon information and belief, even in the event that Warden Cohen was authorized to suspend Mr. Bryant without pay, which Mr. Bryant vehemently disputes, SCDC Employee Policy ADM-11.04, Attachment 1-A (Sanctions and Violations) virtually never authorize suspensions longer than 10 days.

12. During Mr. Bryant's 947 day suspension without pay, he was unable to seek further employment or enroll in vocational education programs (i.e. Police Academy) because the Ridgeland Correctional Institute continued to insist, in written official statements, that Mr. Bryant was still an employee. Please refer to document located in "Exhibit D" for examples of this conduct.

c. ***Mr. Bryant's conduct did not justify any corrective action.***

13. Mr. Bryant was initially disciplined for Use of Unnecessary and/or Excessive Force. He did not use excessive force on the inmate in question, and Mr. Bryant gives his account of the facts of this case in the attached Verified Complaint attached hereto as "Exhibit A." Simply, he did not act in any way short of honorably in his rescue of a fellow corrections officer from a vicious attack.

14. Mr. Bryant's issues were referred to the Solicitor of the 14th Circuit of South Carolina for criminal charges to be pressed. The Solicitor's Office had the opportunity to review this matter and subsequently entered a *Nolle Prosse* against all criminal charges against Mr. Bryant (see

[1] While it may be the case that SCDC Employee Policy ADM-11.04.4.4.3 authorizes administrative "suspension without pay pending investigation," any pending investigation in this case ended on or before October 27, 2008. See Exhibit B, Page 5.

"Exhibit E"). Mr. Bryant did not plea to a lesser crime, Mr. Bryant did not pay a fine, and Mr. Bryant did not enter into any pre-trial Intervention program; upon review of the matter, the Solicitor's Office dropped all charges. While this *Nolle Prosse* is not legally binding in this case, it is illustrative as to the weak nature of any allegations of wrongdoing against Mr. Bryant.

15. Mr. Bryant, at a point in time unknown, was also charged with some variety of making a false statement. There is no known evidence of any false statement that Mr. Bryant gave.

16. Simply, Mr. Bryant has not done anything to justify any corrective action against him.

RELIEF SOUGHT

17. Mr. Bryant seeks back pay based on his rate of pay as of August 25, 2008. He also seeks the cash value of the benefits he was receiving during this time (i.e. health insurance, retirement, etc.).

18. Mr. Bryant seeks future wages (front pay) in a reasonable amount.

19. Mr. Bryant seeks any further relief which may be sought pursuant to law, including punitive damages, attorneys' fees, trebel damages, any other legally recognizable recoverable relief.

HORTON LAW FIRM, LLC

Marshall L. Horton, Esquire
17 Lawton Street
Post Office Box 3766
Bluffton, SC 29910
(843) 757-6190
(843) 757-6191 - *fax*
ATTORNEYS FOR THE PLAINTIFF

Bluffton, South Carolina
This 13th Day of April, 2011

STATE OF SOUTH CAROLINA)
) VERIFICATION
COUNTY OF BEAUFORT)

PERSONALLY APPEARED BEFORE ME, JOHNNIE L. BRYANT, who, upon being duly sworn, deposes and says that he is a party to the foregoing action, he has read the foregoing VERIFIED GRIEVANCE, that the allegations contained therein are true, except as to matters contained therein as being upon information and belief, and as to those matters he believes them to be true.

JOHNNIE L. BRYANT

Sworn to and subscribed before me
this 13th day of April, 2011

Notary Public for South Carolina
My Commission expires: Sept 8, 2015

EXHIBIT A

STATE OF SOUTH CAROLINA)
)
COUNTY OF JASPER)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2011-CP - 27- 150

JOHNNIE L. BRYANT,
Plaintiff(s)

vs.

SSOUTH CAROLINA DEPARTMENT OF CORRECTIONS, RIDGELAND CORRECTIONAL INSTITUTE,
Defendant(s)

(Please Print)
Submitted By: Marshall L. Horton, Esq.
Address: Post Office Box 3766
Bluffton, South Carolina 29910

SC Bar #: 73891
Telephone #: (843) 757-6190
Fax #: (843) 757-6191
Other:
E-mail: mlh@hortonlawfirmllc.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (*Check all that apply*)

*If Action is Judgment/Settlement do not complete

☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (*Check One Box Below*)

Contracts
- ☐ Constructions (100)
- ☐ Debt Collection (110)
- ☒ Employment (120)
- ☐ General (130)
- ☐ Breach of Contract (140)
- ☐ Other (199)

Torts - Professional Malpractice
- ☐ Dental Malpractice (200)
- ☐ Legal Malpractice (210)
- ☐ Medical Malpractice (220)

Previous Notice of Intent Case # 20___-CP-___-_____
- ☐ Notice/ File Med Mal (230)
- ☐ Other (299)

Torts - Personal Injury
- ☐ Assault/Slander/Libel (300)
- ☐ Conversion (310)
- ☐ Motor Vehicle Accident (320)
- ☐ Premises Liability (330)
- ☐ Products Liability (340)
- ☐ Personal Injury (350)
- ☐ Wrongful Death (360)
- ☐ Other (399)

Real Property
- ☐ Claim & Delivery (400)
- ☐ Condemnation (410)
- ☐ Foreclosure (420)
- ☐ Mechanic's Lien (430)
- ☐ Partition (440)
- ☐ Possession (450)
- ☐ Building Code Violation (460)
- ☐ Other (499)

Inmate Petitions
- ☐ PCR (500)
- ☐ Mandamus (520)
- ☐ Habeas Corpus (530)
- ☐ Other (599)

Judgments/Settlements
- ☐ Death Settlement (700)
- ☐ Foreign Judgment (710)
- ☐ Magistrate's Judgment (720)
- ☐ Minor Settlement (730)
- ☐ Transcript Judgment (740)
- ☐ Lis Pendens (750)
- ☐ Transfer of Structured Settlement Payment Rights Application (760)
- ☐ Other (799)

Administrative Law/Relief
- ☐ Reinstate Driver's License (800)
- ☐ Judicial Review (810)
- ☐ Relief (820)
- ☐ Permanent Injunction (830)
- ☐ Forfeiture-Petition (840)
- ☐ Forfeiture—Consent Order (850)
- ☐ Other (899)

Appeals
- ☐ Arbitration (910)
- ☐ Magistrate-Civil (910)
- ☐ Magistrate-Criminal (920)
- ☐ Municipal (930)
- ☐ Probate Court (940)
- ☐ SCDOT (950)
- ☐ Worker's Comp (960)
- ☐ Zoning Board (970)
- ☐ Administrative Law Judge (980)
- ☐ Public Service Commission (990)
- ☐ Employment Security Comm (991)
- ☐ Other (999)

Special/Complex /Other
- ☐ Environmental (600)
- ☐ Automobile Arb (610)
- ☐ Medical (620)
- ☐ Other (699)
- ☐ Pharmaceuticals (630)
- ☐ Unfair Trade Practices (640)
- ☐ Out-of State Depositions (650)
- ☐ Sexual Predator (510)

Submitting Party Signature: _____ Date: 3/6/11

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY
Allendale, Anderson, Beaufort, Colleton, Florence, Greenville,
Hampton, Horry, Jasper, Lexington, Pickens (Family Court Only), and Richland

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.

2. The initial ADR conference must be held within 300 days after the filing of the action.

3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)

4. Cases are exempt from ADR only upon the following grounds:

   a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;

   b. Requests for temporary relief;

   c. Appeals

   d. Post Conviction relief matters;

   e. Contempt of Court proceedings;

   f. Forfeiture proceedings brought by governmental entities;

   g. Mortgage foreclosures; and

   h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.

5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.

6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF JASPER	)	CIVIL CASE NO: 2011-CP-27-_____
	)	
JOHNNIE L. BRYANT,	)	
	)	
Plaintiff,	)	SUMMONS
	)	(Non-Jury)
vs.	)	
	)	
SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, RIDGELAND CORRECTIONAL INSTITUTE,	)	
	)	
Defendants.	)	

TO: THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint on the subscriber at his office of Horton Law Firm, LLC, 17 Lawton Street, Post Office Box 3766, Bluffton, South Carolina 29910, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for a judgment by default for the relief demanded in this Complaint.

HORTON LAW FIRM, LLC

Marshall L. Horton, Esq.
Post Office Box 3766
Bluffton, SC 29910
(843) 757-6190
(843) 757-6191 – fax
ATTORNEY FOR PLAINTIFF

Bluffton, South Carolina
This 07 day of March, 2011

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF JASPER	)	CIVIL ACTION NO.: 2011-CP-27-_____
JOHNNIE L. BRYANT,	)	
	)	
Plaintiff,	)	
	)	COMPLAINT
vs.	)	(Wrongful Discharge, Negligence)
	)	(Jury Trial Demanded
SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, RIDGELAND CORRECTIONAL INSTITUTE,	)	
	)	
Defendants.	)	
	)	

THE PLAINTIFF, JOHNNIE L. BRYANT, through his undersigned attorneys, complaining of Defendants, South Carolina Department of Corrections and Ridgeland Correctional Institute, would respectfully show unto this Honorable Court as follows:

PARTIES AND JURISDICTION

1. That Plaintiff, Johnnie L. Bryant, is and was at all times relevant herein a resident of Beaufort County, South Carolina, and is a former employee of the Defendants.

2. That Defendant South Carolina Department of Corrections is a department of the State of South Carolina located in Jasper County, South Carolina.

3. That Defendant, Ridgeland Correctional Institute is a department of the State of South Carolina located in Jasper County, South Carolina.

4. That this civil action arises out of events concerning the Plaintiff's employment with the Defendants, an employment that occurred in Jasper County, South Carolina.

5. That Plaintiff is informed and believes that Defendant South Carolina Department of Corrections, at all times herein mentioned, pursuant to the powers and responsibilities granted to

this agency by law, had substantial control over Defendant Ridgeland Correctional Institute; that said State Ridgeland Correctional Institute as set forth herein failed to fulfill its duties and responsibilities under South Carolina law.

6. That Plaintiff is informed and believes that Defendant South Carolina Department of Corrections and Defendant Ridgeland Correctional Institute are now, and were at all times herein set forth, agencies, political subdivisions, government entities and/or municipal corporations within the meaning of the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10, *et seq.*, and that the Defendants were, at all relevant times herein mentioned, acting by and through their employees and/or agents who were acting in the course and scope of his, her, or their employment and/or agency relationship(s).

7. The actions of the Defendants have prevented the Plaintiff from instituting a timely grievance under the South Carolina Grievance Procedure, S.C. Code Ann. § 8-17-310, *et seq.* by failing to inform the Plaintiff that his employment was terminated.

8. That this Honorable Court has jurisdiction over all matters herein, and venue is proper.

FOR A FIRST CAUSE OF ACTION
(Wrongful Discharge – against all Defendants)

9. Each and every allegation set forth above is fully incorporated herein.

10. Plaintiff was employed as a corrections officer by Defendant Ridgeland Correctional Institute, a prison facility owned and operated by the State of South Carolina.

11. Defendant Ridgeland Correctional Institute is designated a "Level 2" prison facility and houses many dangerous felons.

12. Correctional officers who are employed at Defendant Ridgeland Correctional Institute are highly trained professionals who frequently deal with dangerous situations.

13. Plaintiff was hired as a correctional officer in October of 1999.

14. Plaintiff has been certified as a correctional officer through the South Carolina Department of Corrections' Training Academy since December 7, 2005.

15. During the years that Plaintiff was employed at the Ridgeland Correctional Institute, he performed his duties in an outstanding manner, as he received several promotions and was named "Correctional Officer of the Year, 2002."

16. In August of 2008, Plaintiff held the title of Corrections Officer II (Sergeant II) and earned a base salary of $33,255.00 per year.

17. In August of 2008, when an armed inmate attacked another correctional officer and Plaintiff came to that officer's aid, Plaintiff entered into hand to hand combat with the attacking inmate. Plaintiff risked life and limb and successfully saved the distressed officer, but in the process, the inmate may have been injured (the extent of the inmate's injuries, if any, are unknown).

18. The inmate involved, Mr. Thomas Dougherty, was convicted of attempting to murder a correctional officer in the Allendale Correctional Institute in approximately 2003.

19. For reasons unknown, Plaintiff's supervisors vigorously disciplined Plaintiff for this action, placing him on administrative suspension without pay on August 25, 2008 and forwarding the matter to the county solicitor for the 14th Judicial Circuit for criminal prosecution.

20. Upon reviewing the matter, the county solicitor's office dropped all charges against Plaintiff.

21. Despite the resolution of all matters involved with any alleged wrongdoing on the part of Plaintiff, he remained on unpaid suspension indefinitely. This suspension lasted at least two years; however, since neither Defendant has ever communicated directly to Plaintiff that his employment had been terminated, it is unknown as to when Plaintiff was actually fired.

22. Plaintiff received written confirmation that Plaintiff was no longer employed by the Ridgeland Correctional Institute on September 22, 2010. This confirmation was delivered through his attorneys' office.

23. September 22, 2010 was the first time that Plaintiff had received notice from the Defendants indicating that his employment had been terminated. Even with this notice, it is unknown as to when the Plaintiff was actually fired.

24. Plaintiff attempted on numerous occasions to determine if he was still employed or if his job was still secure, and he was unable to secure any information past the fact that he had been placed on administrative suspension without pay.

25. Since he was still considered "employed" by the Ridgeland Correctional Institute, Plaintiff was prevented from finding employment in any manner consistent with his training and certifications in correctional facility work.

26. Since the Ridgeland Correctional Institute refused to allow Plaintiff to participate in the required continued training, Plaintiff has since lost his South Carolina Department of Corrections' Training Academy certification.

27. In March of 2010, Plaintiff attempted to enroll in the Savannah Technical College Peace Office Academy. However, Plaintiff was denied admission to this academy when a representative of the Defendants represented that Plaintiff was employed by the Ridgeland Correctional Institute.

28. In correspondence dated March 18, 2010, Patricia S. Thrailkill of the Division of Human Resources, South Carolina Department of Corrections, addressed to the Savannah Technical College Peace Office Academy, states: "Mr. Bryant was suspended on August 28, 2008, and remains on suspension status at this time with the South Carolina Department of Corrections."

29. Upon information and belief, Plaintiff should have been allowed to return to work at the Ridgeland Correctional Institute.

30. The actions of the Defendants have wrongfully, illegally, and needlessly destroyed Plaintiff's career as a corrections officer along with any means Plaintiff has to earn a living wage.

31. The Defendants owe the Plaintiff wages for the time that he was still employed by the Defendants but on suspension.

32. In discharging Plaintiff, the Defendants have wrongfully deprived Plaintiff of the wages and benefits of his employment with the Defendants and Plaintiff is informed and believes that he is entitled to damages sustained as a result of Defendants' wrongful termination of Plaintiff's employment.

FOR A SECOND CAUSE OF ACTION
(Negligence/ Gross Negligence –against all Defendants)

33. Each and every allegation set forth above is fully incorporated herein.

34. The Defendants breached the duty of care they owed the Plaintiff, and were negligent, negligent per se, reckless, willful, wanton and grossly negligent in one or more of the following particulars, to wit:

a. The Defendants failed to take reasonable steps to ensure that his employment status was properly represented to prospective employees and/or educational institutions.

b. The Defendants failed to take reasonable steps to ensure that the Plaintiff was not placed on administrational suspension without pay for more than two years.

c. The Defendants failed to take reasonable steps to ensure that investigations of any alleged misconduct on the part of the Plaintiff were handled properly.

d. The Defendants failed to take reasonable steps to ensure that the Plaintiff was aware of his employment status.

e. In other such particulars as the evidence produced in discovery and at trial may show.

35. Any or all of the above stated acts or omissions of negligence, recklessness, willfulness, wantonness and gross negligence were the direct and proximate cause of injuries and damages sustained by the Plaintiff, and these injuries would have not occurred but for one, some, or all of the above acts and/or omissions by the Defendants.

36. As the direct and proximate result of the aforesaid negligence of the Defendants, the Plaintiff has suffered damage in the form of lost past wages, lost future wages, loss of employment opportunity, loss of certifications, and loss of educational opportunity.

37. By reason of the acts and omissions of the Defendants as set forth above, the Plaintiff is informed and believes that he is entitled to an award of actual damages in an amount sufficient to fully compensate him for his injuries and losses, together with the costs of this action.

WHEREFORE, the Plaintiff prays for judgment against the Defendants in a fair and reasonable amount, for actual damages and is further entitled to special damages in addition thereto for his losses, for the costs and disbursements of this action, and for such further and other relief as this Honorable Court may deem just and equitable, all in an amount to be determined by a jury.

[signature page to follow]

HORTON LAW FIRM, LLC

Marshall L. Horton, Esquire
17 Lawton Street
Post Office Box 3766
Bluffton, SC 29910
(843) 757-6190
(843) 757-6191 - fax
ATTORNEYS FOR THE PLAINTIFF

Bluffton, South Carolina
This 6th Day of March, 2011

EXHIBIT B

Certified Mail/Return Receipt

March 23, 2011

Johnnie Bryant
48 Bryant Rd.
Hilton Head Is., SC 29926

Dear Mr. Bryant;

This letter serves as your official notification of an Employee Corrective Action meeting scheduled for March 30, 2011 in the Warden's Office at Ridgeland Correctional Institution at/8:30 am. You are being charged in accordance with SCDC Policy Adm-11.04 Employee Corrective Action, violation #250-Use of Unnecessary and/or Excessive Force and #260-Making False Statements During the Course of an Official Investigation and #180-Falsification of Official Documents. Your failure to appear at this meeting will result in the meeting being conducted in your absence.

LeVern Cohen, Warden
Ridgeland Correctional Institution

Attachments: SCDC Form 16-50/Employee Notice of Review
Supportive Documentation

MMFI110D SOUTH CAROLINA DEPARTMENT OF CORRECTIONS 03/23/11
TSMMFA RECEIVE MESSAGE - DETAIL ROWLAND

MESSAGE ID: BURTONC 0570 SUBJECT: EMPLOYEE CORRECTIVE ACTION
FROM USERID: BURTONC CREATED: 03/23/11 SENT: 03/23/11 RECEIVED: 03/23/11
FROM USER..: BURTON,CHARLES A DELETE DATE: 03/30/11
SEND TIME: 9:31

INVESTIGATOR FRED HAMER FROM THE DIVISION OF INVESTIGATIONS CONCUCTED AN INVESTIGATION INTO AN ALLEGED ASSAULT ON INMATE THOMAS DOUGHTY BY SGT JOHNNIE BRYANT AND OFC JOHN MIDDLETON. BASED ON THE SYNOPSIS OF THE INVESTIGATION, I RECOMMEND SGT BRYANT AND OFC MIDDLETON BE REPRIMANDED IN ACCORDANCE WITH AGENCY POLICY ADMIN 11.04 EMPLOYEE CORRECTIVE ACTION, VIOLATIONS 250 USE OF UNNECESSARY AND/OR EXCESSIVE FORCE, 260 MAKING FALSE STATEMENTS DURING THE COURSE OF AN OFFICIAL INVESTIGATION AND 180 FALSIFICATION OF OFFICIAL DOCUMENTS.

TONY BURTON
A/W/O
RIDGELAND

PRINT ROUTING? N (END)

USER MESSAGE DISPLAYED. PRESS CLEAR TO RETURN TO MENU.
F1=HELP F3=REPLY F4=COPY F5=FORWARD F6=VIEW ROUTE PF9=NEXT MSG F12=PRINT
1 Sess-1 167.7.50.33 SCDC1629 21/67

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
DIVISION OF INVESTIGATIONS

INVESTIGATIVE MEMORANDUM

TO: LeVern Cohen, Warden
Ridgeland Correctional Institution

FROM: Debra G. Barnwell
Division Director

SUBJECT: Sergeant Johnnie Bryant, EMPL #028937, B/M
Correctional Officer John Middleton, EMPL #038033
Inmate Thomas Doughty, SCDC #238012, W/M
(91-0162)

DATE: March 21, 2011

On August 17, 2008, Investigators Fred Hamer and Anthony Orr were advised that inmate Thomas Doughty had assaulted C/O Kenneth Cobb (see case #92-0243). C/O Cobb was taken to Coastal Medical Center for a cut to the back of the head area. It was noted that inmate Doughty had to be transported by ambulance to Coastal Medical Center. It was initially alleged that other inmates had assaulted inmate Doughty; however, it was later alleged that Sgt. Johnnie Bryant and C/O John Middleton had assaulted Doughty.

Investigators Hamer and Orr interviewed Officer Kenneth Cobb after he returned to the institution from the hospital. Officer Cobb stated that he was hit in the back of the head by inmate Doughty who was swinging a lock on the string and received eleven (11) staples. Officer Cobb stated that he was escorted out of the Unit once he had gotten hit in the head.

On August 20, 2008, Investigators Hamer and Orr interviewed inmate Doughty who admitted striking Officer Cobb with a lock on the string. Doughty stated that he failed to follow directives by Officer Cobb to return to his cell and kept swinging the lock after hitting Officer Cobb. Doughty stated that he was gassed numerous times, taken to the floor and handcuffed. Doughty stated that as he was escorted outside the Unit by Officer Middleton where he (Middleton) "bulldogged his head into the side of the Unit." Doughty stated that the blood started coming down and he got weak on his feet. Doughty stated that he remembers very little after that point. Doughty believes that he was "somewhat knocked out on his feet."

INVESTIGATIVE MEMORANDUM
PAGE 2

Sgt. Bryant stated that when he arrived he noted that Officer Cobb was injured and bleeding from the back of the head. Officer Cobb was escorted from the Unit to receive medical attention. Sgt Bryant stated that he and Officer Middleton continued to gas inmate Doughty, trying to gain control. Sgt Bryant stated that they managed to take Doughty to the floor. Sgt Bryant stated that Doughty was handcuffed and he and Officer Middleton escorted Doughty outside the Unit where he was turned over to Sgt Wiggins, the Yard Officer. Sgt Bryant stated that he, Officer Middleton and inmate Doughty fell through the door going to the outside.

Officer Middleton stated that inmate Doughty was out of control, swinging a lock on a string and hit Officer Cobb in the back of the head. Sgt. Bryant responded to assist in getting Doughty under control. Officer Middleton stated that they continued to gas Doughty and managed to take Doughty to the floor. Officer Middleton stated that they handcuffed Doughty and escorted Doughty outside the Unit where they turned him over to Sgt Wiggins. Officer Middleton initially stated that he did not see any blood; however, in his written statement, he stated that he and Sgt. Bryant saw the laceration on Doughty's head when they were lifting him to his feet after they had placed the cuffs on him inside the Unit. Officer Middleton stated that he did not know what all is in his written statement because he had another Officer (Lt. Washington) write his statement for him.

Sgt. John Wiggins was interviewed by Investigators Hamer and Orr and stated that he responded to the front of the Unit where he received inmate Doughty from Officer Middleton. Sgt Wiggins stated that Doughty was bleeding from the head area and leaning over forward when he took possession of him. Sgt Wiggins stated that he took Doughty by the arm and escorted him to Medical. Medical personnel took one look at the injury and told him to call #911. Sgt Wiggins stated that Doughty was transported to Coastal Medical Center by ambulance and admitted to the hospital.

Inmate Lorenzo Anderson, SCDC #291861, stated that he saw inmate Doughty hit Officer Cobb with the lock on the string. Anderson stated hat he did not see the officers or the inmate fall down; however, when he went outside he saw plenty of blood.

Inmate Andrew Bason, SCDC #255311, stated that he saw Doughty hit Officer Cobb in the head with the lock on a string. Bason stated that as Doughty was being escorted from the unit he did not see any blood. Bason stated that when he went outside approximately five minutes later he saw "a nice bit of blood" on the outside of the Unit on the walkway.

Inmate Glenn Brown, SCDC #310492, stated that he saw Doughty charge at Officer Cobb, striking him in the back of the head with the padlock. Brown believes that Doughty's head hit the bench on the rock when he was taken to the floor. Brown stated that Doughty was still resisting and stumbled and fell against the wall. Doughty also hit his head outside the Unit when Wiggins came up to get him.

INVESTIGATIVE MEMORANDUM
PAGE 3

Inmate Billy Watson, SCDC #249854, stated that both officers took inmate Doughty out the door and Doughty fell down outside the Unit. Watson stated that there was a lot of blood approximately five steps from the exit door, outside. The officers did not have a good grip and Doughty went down head first.

Samples were taken from a blood/hair stain on the wall outside the Unit approximately five feet up from the ground and taken to SLED for analysis. SLED confirmed that the blood/hair was a match for inmate Doughty.

The evidence indicates that inmate Doughty struck the unit wall. Neither Officer Middleton nor Sgt. Bryant stated that Doughty hit the wall at any time while they were escorting him.

Nurse Davis stated that inmate Doughty received approximately 37 staples to the outside of the head area and approximately eight (8) stitches to the inside of the head area. Davis stated there was a possibility of nerve damage.

On September 24, 2008, Judge Brantley issued warrants for Sgt Johnnie Bryant and Officer John Middleton for Assault and Battery with Intent to Kill and Misconduct in Office in reference to their alleged assault of inmate Doughty.

On September 25, 2008, the Jasper County Sheriff's Office served the warrants on Sgt. Johnnie Bryant. He was booked into the Detention Center and a bond hearing held.

On September 29, 2008, the Jasper County Sheriff's Office served the warrants on Officer John Middleton. He was booked into the Detention Center and a bond hearing held.

On October 27, 2008, Judge Brantley held preliminary hearings for Sgt Johnnie Bryant and Office John Middleton. Both cases were bound over for General Sessions Court.

S/Debra G. Barnwell

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

EMPLOYEE CORRECTIVE ACTION

Employee Name: Jeannie Bryant SS#: [redacted]

Division/Institution: Pickaland Correctional

REVIEW MEETING

Meeting Date: March 10, 2011 Time: 9:00 am Location: Warden's Office

Alleged Violation: 250-Use of Unnecessary and/or Excessive Force, 260-Making False Statements During the Course of an Official Investigation, 180-Falsification of Official Documents Date of Incident: August 17, 2009

Charging Party: C. Anthony Burton, S/W Operations Date: March 23, 2011

Reprimanding Authority: Lavern Cohen, Warden Date: March 23, 2011

Receipt of Notification
Employee Signature _____ Date _____

_____ I choose to waive the 24-hour advanced notice of the review meeting.
Employee Signature: _____ Date _____

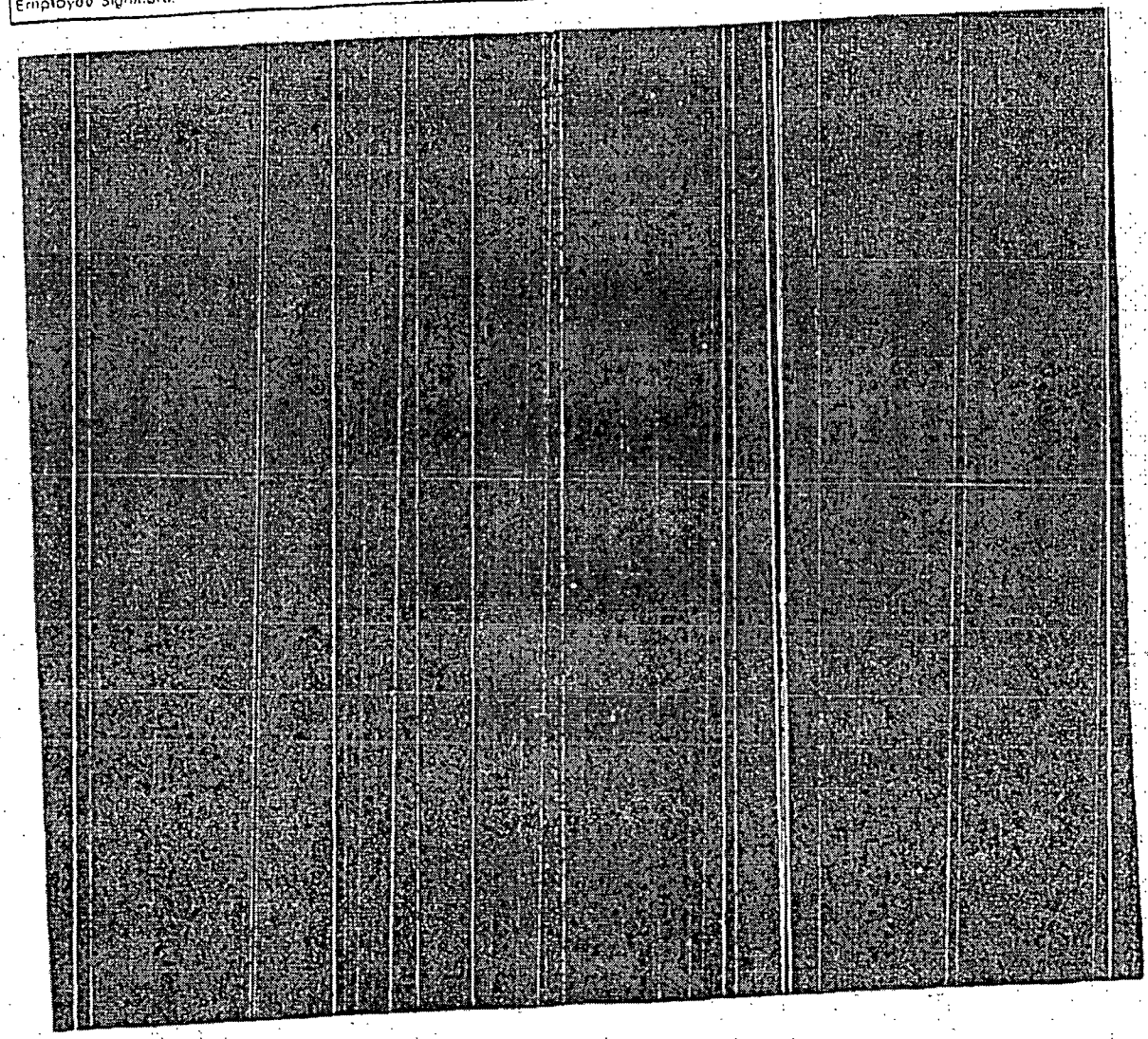


EXHIBIT C

South Carolina Department of Corrections

MARK SANFORD, Governor
JON OZMINT, Director

August 25, 2008

Johnny Br nt
48 Bryant l.
Hilton Hea ls., SC 29926

I have rec ved notification from the Division of Investigations that you are currently being inve gated for an alleged possible violation(s) of SCDC Policy. You are currently being inve igated for violation of Agency Policy ADM-11.04, Employee Corrective Action, U: of Unnecessary and/or Excessive Force. Due to the serious nature of the allegation(and in accordance with SCDC Policy Adm-11.04, Suspensions, I have no alternative ut to administratively suspend you without pay effective immediately in accordanc with the aforementioned policy.

You are r ponsible for notifying the Agency immediately upon any change in your residence phone number. Until the investigation is finalized, you will also need to make you lf available to be interviewed by the Division of Investigations or the State Law Enfor ment Division. When results are completed, you will be notified.

If you ch se to appeal this action through the Agency's Employee Grievance and Appeals p ocess you will need to contact the Office of Employee Relations within fourteen (1) calendar days from receipt of this letter.

If you hav any further questions, please contact Human Resources or the Division of Investigati ns.

LeVern Cohen, Warden

CC: Em loyee Relations
Hu an Resources
Fil

S/ Johnny Bryant

Date/ 8-28-08

EXHIBIT D

South Carolina Department of Corrections

MARK SANFORD, Governor
JON OZMINT, Director

March 18, 2010

Ms. Claire Pimentel
Savannah Technical College
The Peace Officer Academy
5717 White Bluff Road
Goodman Hall, Room 1125
Savannah, Georgia 31405

Dear Ms. Pimentel:

As per our telephone conversation today and based on the signed authorization for release of information from Mr. Johnnie Lee Bryant, the following information is provided regarding Mr. Bryant's employment.

Mr. Bryant was hired with the South Carolina Department of Corrections October 11, 1999 and is currently employed in the capacity of a Correctional Officer II (Sergeant II) at our Ridgeland Correctional Institution. However, Mr. Bryant was suspended August 28, 2008, and remains on suspension status at this time with the South Carolina Department of Corrections.

Mr. Bryant was certified through the South Carolina Department of Corrections' Training Academy December 7, 2005, however, his certification is currently out of date due to his suspension and not being able to attend required classes to maintain his certification status.

I hope this information will be of assistance to you. Please do not hesitate to contact me if you have additional questions.

Sincerely,

Patricia S. Thrailkill
Assistant Director
Division of Human Resources

pst

RECEIVED
MAR 22 2010
C Pimentel

P.O. Box 21787 - 4444 Broad River Road - Columbia, SC 29221-1787 - Telephone (803) 896-8555

SAVANNAH TECHNICAL COLLEGE

SCANNED

March 23, 2010

Mr. Johnnie Lee Bryant
50 Bryant Road
Hilton Head, SC 29926

Dear Mr. Bryant:

There continue to be problems regarding the processing of your Georgia P.O.S.T. *Council Pre-Service Application for Certification*. Pursuant to a request to the South Carolina Department of Corrections, regarding the status of your certification in South Carolina, I am in receipt of a letter (copy attached) which states that you are currently employed by the Ridgeland Correctional Institution. However, the letter also states that you were suspended in August, 2008, and that you remain "on suspension status at this time". Accordingly, I am unable to recommend your attendance to P.O.S.T. in the Basic Law Enforcement Certification training program until such time as your suspension status has been cleared.

I am sorry for any inconvenience this may have caused but, the obvious problem which exists between you and your employer, must be resolved before the process can move forward.

Sincerely,

Larry J. Stubbs
Director
The Peace Officer Academy

EXHIBIT E

WITNESSES

mer/SCDOC

EST WARRANT NUMBER

752

ION OF GRAND JURY

TRUE BILL
NO BILL
FOREMAN
DATE 1/27/09

person of Grand Jury

DICT

Person of Petit Jury

DOCKET NO. 2008GS2700700

The State of South Carolina

County of Jasper

COURT OF GENERAL SESSIONS

January Term 2009

THE STATE

vs.

5/14/2009

Johnnie Bryant

Indictment for

Public / Public official, misconduct in office

SC Code: 08-01-0080
CDR Code:0115

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I

Hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

TRUE COPY
MARGARET BOSTICK
CLERK OF COURT
JASPER COUNTY, SC
BY:
DATE

RECEIVED
APR 25 2011
BY:

South Carolina Department of Corrections

NIKKI R. HALEY, Governor
WILLIAM R. BYARS, JR., Director

April 19, 2011

CERTIFIED MAIL 7008 2810 0001 6302 3254

Marshall L. Horton
Attorney at Law
PO Box 3766
Bluffton, South Carolina 29910

RE: Johnnie L. Bryant

Dear Mr. Horton:

This is to confirm receipt of Johnnie Bryant's Grievance Report, received in the Employee Relations Branch on April 15, 2011, via facsimile, in which he is appealing his termination.

In compliance with the SCDC Employee Grievance and Appeals Policy, his grievance has been forwarded to the Office of General Counsel for an investigative review. The attorney assigned to his case will contact your office to schedule a personal interview and will conduct a non-adversarial fact-finding conference, as provided by policy. The investigating attorney will forward a summary report and recommendation to the Director, Division of Operations. A determination will be made to uphold, reverse or modify the action taken.

If the decision does not resolve the matter to his satisfaction, you may contact the Employee Relations Branch, within five (5) calendar days from receipt of the response and request the grievance be referred to the Director, South Carolina Department of Corrections. The Director's response is the Agency's final decision of the appeal.

Should the matter not be resolved to his satisfaction at the Agency level, you may appeal to the State level within ten (10) calendar days of receipt of the Director's decision or after forty-five (45) calendar days or before fifty-five (55) calendar days of the initial filing of the grievance. Failure to comply with these time limits will result in forfeiture of his rights for further appeal at the State level (refer to SCDC Policy ADM-11.02, "Employee Grievances and Appeals").

The Agency is to complete its internal grievance process within forty-five (45) calendar days from receipt of the grievance report. However, if you do not receive a response within that period of time, consider it an adverse decision. To appeal an adverse decision, you must proceed to the State level by contacting the Alternative Dispute Resolution program with the Office of Human Resources, 8301 Parkland Road, Suite A220, Columbia, South Carolina 29223.

All grievance correspondence should be sent "Certified Mail-Return Receipt Requested". This verifies compliance with deadlines. It is your responsibility to provide a current mailing address and take any action necessary to ensure that he is properly notified of the Agency's finding at each step of the grievance process. Missing a deadline or failing to meet with the Agency's attorney will not be excused if you neglect to provide the Agency a current address or failed to retrieve certified mail.

If you have any questions pertaining to the SCDC Grievance and Appeals Policy which you received when provided the Grievance Report, or if we can be of further assistance, please contact the Employee Relations Branch, at (803) 896-8527.

Sincerely,

Robin M. Graeten
Employee Relations Branch
Division of Human Resources

cc: Robert Ward
Bart Vincent
LeVern Cohen
Johnnie L. Bryant
Grievance File #1148

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

MEMORANDUM

TO: Barton Vincent, Deputy General Counsel

FROM: Robin M. Gracien, Employee Relations Branch Chief
Division of Human Resources

SUBJECT: Appeal of Johnnie L. Bryant, #1148

DATE: April 19, 2011

In compliance with the SCDC Policy ADM-11.02, "Employee Grievance and Appeals Procedures," attached is the Grievance Report filed by Johnnie L. Bryant, a former Correctional Officer at Ridgeland Correctional Institution. Mr. Bryant is appealing his termination.

The investigative review with summary report and recommendation should be forwarded to Robert Ward, Director of Operations within twenty-five (25) days, which will be May 10, 2011. All correspondence to be sent outside the agency is to be "Certified Mail."

Please let me know if you need for me to request the personnel file for your review during this process.

S/ Robin M. Gracien

Attachment

cc: Robert Ward
LeVern Cohen
[redacted]
Grievance File #1148

NIKKI R. HALEY, CHAIR
GOVERNOR

CURTIS M. LOFTIS, JR.
STATE TREASURER

RICHARD ECKSTROM, CPA
COMPTROLLER GENERAL



SC BUDGET AND CONTROL BOARD

Human Resources Division
Samuel L. Wilkins
DIRECTOR

803-896-5300
FAX 803-896-5050

HUGH K. LEATHERMAN, SR.
CHAIRMAN, SENATE FINANCE
COMMITTEE

DANIEL T. COOPER
CHAIRMAN, HOUSE WAYS AND MEANS
COMMITTEE

ELEANOR KITZMAN
EXECUTIVE DIRECTOR

June 9, 2011

Ms. Robin Gracien, Chief
Human Resources Branch
South Carolina Department of Corrections
Post Office Box 21787
Columbia, South Carolina 29221-1787

Johnnie L. Bryant
Appellant's Name

Corrections Officer II
Job Classification

Dear Ms. Gracien:

The appellant has appealed to the State Human Resources Director concerning a grievance arising from employment with your agency. Grounds for the appeal are contained in the enclosed copy of the State Employee Grievance Procedure State Appeal Form.

Please send us the documents concerning this appeal, including a brief summary of your position, a brief list of the appellant's employment record, copies of performance appraisals if applicable, and a copy of your findings and determination at each step of your grievance procedure. Any supporting documents that might serve to clarify the specific issues in the appeal should be included. You should also specifically state which policy or policies were used as a basis for the action, and include a copy of those policies. These might be either internal policies and/or State policies. If a policy was not violated, state on what criteria the action was based.

The requested information and materials must be returned to the Human Resources Division/Grievance and Mediation Services within fifteen (15) calendar days. Also, any future correspondence sent to the Human Resources Division, excluding the appellant's record, should be copied to the other party involved.

Sincerely,

Joseph C. Miller
Alternative Dispute Resolution Program

Enclosure
c: Mr. William R. Byars, Jr. (without enclosure)

NIKKI R. HALEY, CHAIR
GOVERNOR

CURTIS M. LOFTIS, JR.
STATE TREASURER

RICHARD ECKSTROM, CPA
COMPTROLLER GENERAL



SC BUDGET AND CONTROL BOARD

Human Resources Division
Samuel L. Wilkins
DIRECTOR

803-896-5300
FAX 803-896-5050

HUGH K. LEATHERMAN, SR.
CHAIRMAN, SENATE FINANCE
COMMITTEE

DANIEL T. COOPER
CHAIRMAN, HOUSE WAYS AND MEANS
COMMITTEE

ELEANOR KITZMAN
EXECUTIVE DIRECTOR

June 9, 2011

Mr. Marshall L. Horton
The Horton Law Firm, L.L.C.
Post Office Box 3766
Bluffton, South Carolina 29910

Re: Johnnie L. Bryant v. South Carolina Department of Corrections (SCDC)

Dear Mr. Horton:

The Human Resources Division has received Mr. Bryant's Employee Grievance Procedure State Appeal Form and has requested the employing agency to send the documents relating to the appeal. Once these documents have been received and reviewed, you will be contacted. Also, all future correspondence sent to the Human Resources Division should be copied to the employing agency.

Every effort is being made to process Mr. Bryant's appeal as quickly as possible.

Sincerely,

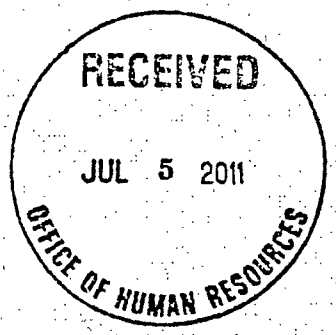
Joseph C. Miller
Alternative Dispute Resolution Program

8301 PARKLANE ROAD, SUITE A220 • COLUMBIA, SOUTH CAROLINA 29223 • WWW.OHR.SC.GOV

South Carolina Department of Corrections

NIKKI R. HALEY, Governor
WILLIAM R. BYARS, JR., Director

July 1, 2011



CERTIFIED MAIL: 7008 2810 0001 6304 4112

Ms. Heather Keever
Office of Human Resources
Alternative Dispute Resolution Program
8301 Parkland Road, Suite A220
Columbia, South Carolina 29223

RE: Appeal of Johnnie L. Bryant

Dear Ms. Keever:

In reference to the appeal filed by Johnnie Bryant, former Correctional Officer at Ridgeland Correctional Institution, the information and documents attached are submitted for your consideration.

Mr. Bryant was hired by the Department on October 11, 1999. On August 25, 2008, he was placed on administrative suspension without pay pending an investigation into allegations that he used excessive force on Inmate Thomas Doughty during an incident at Ridgeland on August 17, 2008. Mr. Bryant was arrested for Assault & Battery with Intent to Kill and Misconduct in Office. The internal investigation revealed that Inmate Doughty sustained a severe head wound that required hospitalization, 37 staples and possible nerve damage while you and Mr. Middleton were assisting during the incident.

The criminal charges were eventually dropped; however, the investigative findings support the corrective action charge of Use of Unnecessary and/or Excessive Force and Making False Statements During the Course of an Official Investigation. Mr. Bryant as well as Mr. Middleton, the other employee involved, were both terminated. It is the Department's position that the action was appropriate and consistent with established policy/procedures.

For additional information requested, please refer to the attachments listed below.

Attachment 1. South Carolina Department of Corrections Personnel File Information
- (a) Employment application
- (b) Notice of Administrative Suspension
- (c) Corrective Action
- (d) Termination notification

Attachment 2. South Carolina Department of Corrections Policies and Procedures
- (a) ADM-11.02, "Employee Grievance and Appeals Procedures"
- (b) ADM-11.04, "Employee Corrective Action"
- (c) OP-22.01 , "Use of Force"

P.O. Box 21787 - 4444 Broad River Road - Columbia, SC 29221-1787 - Telephone (803) 896-8555

Attachment 3. South Carolina Department of Corrections' Grievance and Appeals Process
(a) Grievance report received April 15, 2011
(b) Letter to Mr. Bryant's attorney acknowledging receipt dated April 19, 2011
(c) Letter to Mr. Bryant's attorney scheduling review dated April 26, 2011
(d) Letter to Mr. Bryant's attorney from Mr. Ward dated June 2, 2011 upholding the action
(e) UPS Tracking delivered June 4, 2011

If you need additional information, please contact my office at 896-1927.

Sincerely,

Robin M. Gracien
Employee Relations Branch Chief
Division of Human Resources

Attachments

cc: Division of Operations (without attachments)
LeVern Cohen (without attachments)
Christopher Florian
Grievance File #1148

ATTACHMENT #1

SOUTH [illegible]LINA DEPARTMENT OF COR[illegible]IONS
P.O. Box 21787/4444 Broad River Road
Columbia, South Carolina 29221-1787

PLEASE TYPE OR PRINT IN INK

EMPLOYMENT APPLICATION

Application Date	Social Security Number	Minimum Pay Amount	Date Available
09-21-99	[redacted]	$	- -

Name: Last	Suffix	First	Middle	Maiden Name
BRANT	JR.	JOANNE	L	

Address: Street/Route	Apt. #	City	State
PO BOX 94		SENBROOK	SC

County	Zip	Driver's License Number	State	Class (Circle one)
ST	29540-	008045959	SC	A (B) C D E F M G

Are you a S.C. Resident? Yes ☑ No ☐
Are you a U.S. Citizen? Yes ☑ No ☐ *
* Security positions require U.S. citizenship.
If no, type of Visa and Number
Visa:
Number:

Telephone Number
H: 843-846-1875
W: 843-525-4271

Are you 21 years of age or older? Yes ☑ No ☐

Current SCDC Employee? Yes ☐ No ☑

Check the source which led you to apply at South Carolina Department of Corrections

01 ☐ College Recruitment	09 ☑ Rehire, Not from Leave	17 ☐ Transfer from another State Agency
02 ☐ State Job Service	10 ☐ Newspaper Ad	18 ☐ Elected or Appointed
03 ☐ Employment Agency	11 ☐ Radio Ad	19 ☐ RIF - Rehire
04 ☑ Employee	12 ☐ Television Ad	20 ☐ Voluntary Transfer
05 ☐ Division of Human Resource Management	13 ☐ Trade Journal Ad	21 ☐ Involuntary Transfer
06 ☐ Unsolicited Application	14 ☐ Field Recruiting	22 ☐ Military Referral Services
☐ Return from Leave	15 ☐ Unknown	23 ☐ Dial-A-Job
☐ Return from Military	16 ☐ Referred from Voc. Rehab.	24 ☐ Private Employment Agency

Name of Last High School Attended:	Last Grade Completed and Year	Graduate Yes ☑ No ☐
T. E. McCracken High School	Grade 12 Year 81	Diploma ☑ G.E.D. ☐ Certificate ☐

Address of Last High School Attended: Street/P.O. Box	City	State	Zip
16 Prichard St / Burnt Church Rd.	Bluffton	SC	29910

Name of First College:	Graduate? Yes ☑ No ☐	Degree: Computer/Business	Major Computer/Business
Technical College of the Low Country	No. Years Completed: 03	Date Rec'd.	Minor CAD
	Last Year Attended: 93		

Address of First College: Street/P.O. Box	City	State	Zip
P. Island Rd	Beaufort	SC	299

Name of Last College: (N/A if same as above)	Graduate? Yes ☐ No ☑	Degree: Elementary Ed.	Major Elementary Ed
Kristin Atlantic University	No. Years Completed: 1 1/2	Date Rec'd.	Minor
	Last Year Attended: 94		

Address of Last College: Street/P.O. Box	City	State	Zip
Abercorn Expressway	Savannah	GA	

Name of Other Schools: (Technical, Commercial, Business, etc.)	Graduate? Yes ☑ No ☐	Degree: Diploma Cashier/Checkout/Scan	Major cashier/checkout/scan
C. Clements Job Corps.	No. Years Completed: 02	Date Rec'd.	Minor
	Last Year Attended: 85		

Address of Other Schools: Street/P.O. Box	City	State	Zip
Morganfield	Kentucky		

EQUAL OPPORTUNITY EMPLOYER

Name: Johnnie L. Bryant Jr. **Social Security No.:** [redacted]5-

Please list all periods of employment, including volunteer, part-time, temporary, self-employment and military jobs. Start with your most recent job and continue back to your first job. Include each position held and major responsibilities. Show dates from the present to the time you left school. All periods of unemployment should be clearly shown or indicated. Include full addresses.

Complete Work History Is Required
If Additional Space Is Needed, Request a Supplemental Sheet.

1. Current or Most Recent Employer	(May We Contact?)	From: Month/Year	To: Month/Year	Weekly Hours F/T / P/T
Lowcountry Ed. Center	Yes ☑ No ☐	3/97	5/99	M-F /

Address: Old Beaufort Creek Rd
Position: Professional Bus Driver
Last Salary (Annual): ~~Darryl Owens~~
No/Route / Street:
Department: Driver
Supervisor: Darryl Owens
City: Beaufort State: SC Zip:
Description of Duties: Transporting students to and from school
REASON FOR LEAVING:
CODE: 005

2. Previous Employer	From: Month/Year	To: Month/Year	Weekly Hours F/T / P/T
Wal-Mart	3/95	5/99	5 days /

Address: William Hilton Parkway
Position: Cashier/Clerk/TLE stock, etc.
Last Salary (Annual):
No/Route / Street:
Department: 10
Supervisor: Bill Spann
State: S.C. Zip: 29928
Description of Duties: Writing service orders
Checking customers after the job has been performed
Stocking merchandise
REASON FOR LEAVING:
CODE: 005

3. Previous Employer	From: Month/Year	To: Month/Year	Weekly Hours F/T / P/T
Beaufort County School District	3/97	6/98	M-F /

Address: King Street
Position: Sub-Teacher
Last Salary (Annual): ~~Velda Vaughn~~
No/Route / Street:
Department: Beaufort County Area
Supervisor: Velda Vaughn
City: Beaufort State: SC Zip:
Description of Duties:
REASON FOR LEAVING:
CODE: 005

Are you willing to work in an institution? Yes ☑ No ☐
Are you interested in temporary employment? Yes ☐ No ☑

Circle the shift (s) you can work:

First Shift	Second Shift	Third Shift	12 Hour Shift
12 midnight - 8 am	8 am - 4 pm	4 pm - 12 midnight	

JB
A (all shifts)

Can you work all days of the week? Yes ☑ No ☐ If no, explain JB

310 0300

Name: JOHNNIE L. Bryant JR. **Social Security No.:** [redacted]

4. Previous Employer: Beaufort County School District
From: Month/Year: 10/98 To: Month/Year: 6/99
Weekly Hours F/T: M-F Weekly Hours P/T: 2
Address: W. Ribaut Rd
Position: One on one Teaching Last Salary (Annual):
No/Route Street
Department: M.E. M.S. Cracken Middle School Supervisor: Ann Miller
City: B.H. State: SC Zip: 29928
Description of Duties: Shaperon student to and from his classes.
REASON FOR LEAVING
CODE: 005

5. Previous Employer: The Island Packet
From: Month/Year: 1/93-97 To: Month/Year: 1/97
Weekly Hours F/T: M-S Weekly Hours P/T:
Address: 2 Pope Ave
Position: Carrier Last Salary (Annual):
No/Route Street
Department: Routing Supervisor: M. Ke Murrell
City: H.H. State: SC Zip: 29928
Description of Duties: Transporting newspapers to customers.
REASON FOR LEAVING
CODE: 005

6. Previous Employer: Hyatt
From: Month/Year: [redacted] To: Month/Year: 1-87
Weekly Hours F/T: M-S Weekly Hours P/T: 3
Address: Palmetto Dunes
Position: [redacted] Cook Last Salary (Annual):
No/Route Street
Department: Kitchen Supervisor: Benny Young
City: H.H. State: SC Zip: 29928
Description of Duties: Food Serv.
REASON FOR LEAVING
CODE:

7. Previous Employer:
From: Month/Year: To: Month/Year:
Weekly Hours F/T: Weekly Hours P/T:
Address:
Position: Last Salary (Annual):
No/Route Street
Department: Supervisor:
State: Zip:
Description of Duties:
REASON FOR LEAVING: 311
CODE:

0301

Name: _____ **Social Security No.:** ☐☐☐-☐☐-☐☐☐☐ -47-

8. Previous Employer | From: Month/Year | To: Month/Year | Weekly Hours F/T _____ Weekly Hours P/T _____

Address | Position | Last Salary (Annual)

No/Route Street | Department | Supervisor

City State Zip | Description of Duties:

REASON FOR LEAVING | CODE ☐☐☐

9. Previous Employer | From: Month/Year | To: Month/Year | Weekly Hours F/T _____ Weekly Hours P/T _____

Address | Position | Last Salary (Annual)

No/Route Street | Department | Supervisor

City State Zip | Description of Duties:

REASON FOR LEAVING | CODE ☐☐☐

10. Previous Employer | From: Month/Year | To: Month/Year | Weekly Hours F/T _____ Weekly Hours P/T _____

Address | Position | Last Salary (Annual)

No/Route Street | Department | Supervisor

City State Zip | Description of Duties:

REASON FOR LEAVING | CODE ☐☐☐

1. Previous Employer | From: Month/Year | To: Month/Year | Weekly Hours F/T _____ Weekly Hours P/T _____

Address | Position | Last Salary (Annual)

No/Route Street | Department | Supervisor

State Zip | Description of Duties:

EASON FOR LEAVING | CODE ☐☐☐

312

0302

Read the following and place your initials in either the "Yes" or "No" space. If you leave it blank, it will delay the processing of your application.

	Yes	No
Do you currently have a court ordered restraining order against you with regard to family members or cohabitant?		JB
Have you ever been arrested?	JB	JB
Have you ever been charged with a crime?		JB
Have you ever been convicted of a crime?		JB

Read the following and place your initials at the end.

Examples of crimes, other than minor traffic violations, that must be reported are: Driving under the influence of intoxicating beverages or other drugs; fraudulent or bad checks; disturbing the peace; leaving the scene of an accident. You must list arrest(s) and conviction(s) even if you were pardoned, paroled, had a suspended sentence/probation, or the charges were dropped or dismissed. This information may not disqualify you, but it must be listed regardless of date or type of offense. Please be advised that if you were convicted of a crime with a maximum allowable sentence of over one year or a fine of $1,000 we may not employ you as a Correctional Officer. An arrest or being charged with a crime includes being fingerprinted or simply having had a warrant issued. Regarding disclosure of arrest record, Pre-trial intervention program participants who have received an Order of Expungement from a court of competent jurisdiction are not required to list/report such arrests. Background checks will be made to include an FBI check. Please ask the Personnel representative for clarification if you are unsure if you were arrested.

I HAVE READ AND UNDERSTAND THE ABOVE. JB JB

ANY FALSE STATEMENT OR OMISSION OF FACTS, MAY BE CAUSE FOR TERMINATION.

Charge	Arresting Authority and Location (City & State)	Disposition	Disposition Date (Month/Year)	Convicted (Yes or No)

Have you ever been fingerprinted? Yes ☑ No ☐ If yes, please give approximate date(s) and reason. _____

Have you or any relative ever been an inmate in a SCDC Institution? Yes ☐ No ☑ If yes, who, relationship, charge, dates, where and type of sentence. _____

Do you have a relative working for this agency? Yes ☐ No ☑ If yes, who, relationship (to include degree of cousin) and where: _____

Have you or any member of your family ever been a victim of a crime committed by an inmate who is incarcerated at SCDC? Yes ☐ No ☑ If yes, name of inmate, dates and location of crime: _____

Have you or any member of your immediate family ever testified in a case involving an inmate incarcerated at SCDC? Yes ☐ No ☑ If yes, name of inmate, dates and location of trial: _____

If presently employed by the state, do you plan to continue working for another agency in addition to the Department of Corrections? Yes ☐ No ☑ If yes, a Dual Employment Agreement is required before employment can be committed.

Have you ever been denied employment by this agency or any other employer? Yes ☐ No ☑ If yes, explain: _____

Through the Family Independence Act of 1995, state agencies are actively recruiting welfare and food stamp recipients. Are you currently receiving AFDC benefits or food stamps? Yes ☐ No ☑ If yes, I authorize the Department of Corrections to request verification of benefits from the Department of Social Services.

_____ (Name)

MILITARY SERVICE - VETERANS MUST INCLUDE COPY(S) OF DD214 INDICATING ALL MILITARY SERVICE

JB

Branch of Service	Date of Entry	Date of Discharge	Rank

Type of Discharge: Honorable ☐ Under Honorable Conditions ☐ Other ☐

If other than honorable, explain (will not necessarily disqualify): _____

National Guard/Active Reserve: Are you a member? Yes ☐ No ☐ Give specifics. Unit: _____

0303

State law Section 59-111-50 prohibits employment with the State to people who have defaulted on certain student loans. Such loans are: National Direct Student Loan, National Defense Student Loan, Guaranteed Federally Insured Student Loan, Nursing Student Loan, Health Professional Student Loan, and Law Enforcement Educational Loan.

Have you ever received a loan under any program listed above? Yes ☐ No ☑ If yes, how was the loan satisfied? _____ Date _____

If you have not satisfied the loan completely, documentation must be provided that you are currently in compliance with the repayment schedule and loan guidelines. Date satisfaction will occur. _____

County Work Preference: (Use code(s) listed below.)
Location of existing or proposed facilities

27	03							

02 Aiken	08 Berkeley	18 Dorchester	23 Greenville	29 Lancaster	40 Richland	43 Sumter
03 Allendale	10 Charleston	19 Edgefield	24 Greenwood	31 Lee	42 Spartanburg	46 York
	14 Clarendon	21 Florence	27 Jasper	33 McCormick		
			28 Kershaw	35 Marlboro		

You may list up to four (4) preferences or indicate 99999 preference for all locations. You also may identify one (1) location exclusion. Location Code information will be provided, please use it to complete this section.

LOCATION PREFERENCE: ☐☐☐☐☐ ☐☐☐☐☐ ☐☐☐☐☐ ☐☐☐☐☐

LOCATION EXCLUSION: ☐☐☐☐☐

POSITION NUMBER OR JOB CLASS

After reviewing the SC Department of Corrections vacancy announcements or the Job Opportunities Book, indicate those position numbers or job classifications you are interested in and qualify for in the space below. The maximum job classifications that can be listed at any time is three (3). Please print clearly.

POSITION NUMBER	JOB TITLE

JOB CLASS	JOB TITLE
1. SD 30	CO
2.	
3.	

APPLICANT SKILLS INVENTORY

Please indicate in the space below those skills you have acquired through education and/or work experience. A skills code listing is available at SCDC institutions, Job Service offices or the Recruiting and Employment office.

TYPING WORDS PER MINUTE: 60 **SHORTHAND WORDS PER MINUTE:** _____

Skill Code (4 digits)	Experience Years/Months	Skills Name	Date Certified
Example: 1011	3/2	Teller	
1500	2/6	OFFICE Machines	1985
2000	3	Microcomputers	1986
5260	3	Food Service	1980
315			0305

READ THE FOLLOWING CONDITIONS OF EMPLOYMENT AND CHECK ALL BLOCKS TO INDICATE YOUR UNDERSTANDING OF THE CONDITIONS SET FORTH.

ALL EMPLOYEES:

1. ☑ I agree that as a condition of employment, I will voluntarily consent for myself and personal vehicle to be thoroughly searched on a random basis to insure compliance with South Carolina Law 24-3-950, of the South Carolina Code of Laws, amended 1976. If employed, I understand that any employee furnishing any inmate with contraband will be prosecuted. A list of contraband items is conspicuously posted in every institution. Personal possession or possession of contraband in a personal vehicle on state property shall be grounds for termination. Any employee refusing to submit to such searches shall be terminated.
2. ☑ I agree that as a condition of employment, I will report to the Director of Human Resources any and all arrests within five (5) work days of the occurrence. Minor traffic violations need not be reported, however offenses such as driving under the influence of intoxicating beverages, drugs, fraudulent or bad checks, disturbing the peace, leaving the scene of an accident and robbery must be reported.
3. ☑ I agree that anything issued to me by the South Carolina Department of Corrections must be returned before a final paycheck is received at time of separation from the agency.
4. ☑ In accepting employment, I understand that I will be working in a prison setting. I further understand that potential hazards and a degree of personal risk will be involved. It is understood the South Carolina Department of Corrections will provide, as a new employee, an orientation to this correctional setting and will provide continuous supervision of inmates. I cannot absolutely guarantee my personal safety and that I may possibly experience personal hazards. I indicate my willingness to work under said conditions by affixing my signature to this application.
5. ☑ As a new employee, I understand that I may be required to attend an orientation class the first week of employment. If a waiver is granted, I understand that I must attend orientation within 90 days from my hire date.
6. ☑ I agree to take a physical examination and I understand that I must pass it as a condition of employment.
7. ☑ I understand and further authorize a complete background check as a condition of employment.
8. ☑ As a new employee I understand that the agency has a policy regarding the work-related effects of substance abuse by employees and as a condition of employment I agree to abide by the guidelines established therein, and adhere to the State's Drug Free workplace policy.
9. ☑ I understand that I will accept an initial duty assignment (post, duties, tasks) and workdays/shift assignments (day off/hours of work) required by my job description as may be needed to accomplish the mission of the Department of Corrections. During my new hire twelve months probationary period, both my duty and workday/shift assignment may be frequently changed to meet training needs and evaluation requirements. Upon obtaining permanent status, the institution/division head may approve involuntary changes in my workday/shift assignment with written notice of the impending change at least 14 calendar days prior to the change.
10. ☑ I affirm, agree and/or understand that all information entered on the Applicant Skills Inventory are true and accurate; any misrepresentation or omission of facts may result in my being disqualified or, if employed by the South Carolina Department of Corrections, may be cause for termination.
11. ☑ I understand if accepted for employment in a position which requires the wearing of a uniform, I agree to wear the prescribed uniform and abide by agency dress and appearance regulations.

CERTIFIED POSITIONS ONLY:

1. ☑ I understand that as a condition of employment in an essential position, I must provide evidence of a working telephone at my residence.
2. ☑ If applying for a security position and certain designated non-security positions, I agree that during the first six months of my employment I shall attend a training certification program to be completed at the SCDC Training Academy when scheduled to attend. I realize that failure to complete the program, which includes unarmed Defense Training, will be grounds for termination.

ATTENTION APPLICANT: This application must be filled out in detail. Failure to complete all sections, or to sign the application may result in it being returned, causing delay or disqualification. A resume may be attached but not substituted for the completed application. Required documents (applicant must furnish original and notorized true copies) High School Diploma, GED certificate, DD214 and College/Technical College Transcripts, Teacher Certification, Nursing License, (If applicable), work visa (If applicable) and Student Loan compliance.
All statements on this employment application are true and correct to the best of my knowledge and belief. I understand, if employed by the Agency that I must update my application to reflect any and all arrests or charges that may be brought against me after filing this application. I further understand complete background checks will be made; and, if employed, any false statements or omissions of facts on this application or employment physical examination may be cause for termination.

APPLICANT'S SIGNATURE [signature] DATE 8-21-99
(Application Will Not Be Processed Without Signature)

EEO REPORTING AND PERSONNEL RESEARCH

Social Security No.: [redacted]

THIS SECTION MUST BE COMPLETED

This information is **not** referred to selecting officials or used in **any** selection process. It is required for EEO reporting and personnel research only

Race (Circle one): (W) White (B) Black (O) Hispanic (C) Asian or Pacific Islander (I) American Indian or Alaskan Native

SCDC DHR

Sex (Circle one): (M)

Date of Birth 01-04-64

Place of Birth Pompano Beach FLA.
316 City State

Marital Status (Circle one): (Single) Married

DATE 9/13/99
NCIC Clear
SDL Clear
NAT US

Height: 5'6" Weight: 170306

-52-

South Carolina Department of Corrections

MARK SANFORD, Governor
JON OZMINT, Director

August 25, 2008

Johnny E ant
48 Bryan Rd.
Hilton H d Is., SC 29926

I have re ived notification from the Division of Investigations that you are currently being inv stigated for an alleged possible violation(s) of SCDC Policy. You are currently being in stigated for violation of Agency Policy ADM-11.04, Employee Corrective Action, U e of Unnecessary and/or Excessive Force. Due to the serious nature of the allegatio s) and in accordance with SCDC Policy Adm-11.04, Suspensions, I have no alternativ but to administratively suspend you without pay effective immediately in accordan with the aforementioned policy.

You are sponsible for notifying the Agency immediately upon any change in your residence r phone number. Until the investigation is finalized, you will also need to make you self available to be interviewed by the Division of Investigations or the State Law Enfo cement Division. When results are completed, you will be notified.

If you c ose to appeal this action through the Agency's Employee Grievance and Appeals ocess you will need to contact the Office of Employee Relations within fourteen (4) calendar days from receipt of this letter.

If you ha e any further questions, please contact Human Resources or the Division of Inve stiga ns.

LeVern Cohen, Warden

CC: Em ployee Relations
Hu nan Resources
Fi

S/ Johnny Bryant
Johnny ryant

Date/ 8-28-08

Certified Mail/Return Receipt

March 23, 2011

Johnnie Bryant
48 Bryant Rd.
Hilton Head Is., SC 29926

Dear Mr. Bryant;

This letter serves as your official notification of an Employee Corrective Action meeting scheduled for March 30, 2011 in the Warden's Office at Ridgeland Correctional Institution at 8:30 am. You are being charged in accordance with SCDC Policy Adm-11.04 Employee Corrective Action, violation #250-Use of Unnecessary and/or Excessive Force and #260-Making False Statements During the Course of an Official Investigation and #180-Falsification of Official Documents. Your failure to appear at this meeting will result in the meeting being conducted in your absence.

LeVern Cohen, Warden
Ridgeland Correctional Institution

Attachments: SCDC Form 16-50/Employee Notice of Review
Supportive Documentation

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:

Johnnie Bryant
48 Bryant Rd.
Hilton Head Is, SC
29926

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X Bruce Y Bryant ☐ Agent ☐ Addressee

B. Received by (Printed Name) Bruce Y Bryant C. Date of Delivery 3-25

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 s 7010 0290 0001 7752 3637

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	$ .61
Certified Fee	2.80
Return Receipt Fee (Endorsement Required)	2.30
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	$5.71

7010 0290 0001 7752 3637

Sent To Johnnie Bryant
Street, Apt. No.; or PO Box No. 48 Bryant Rd
City, State, ZIP+4 Hilton Head Is SC 29926

PS Form 3800, August 2006 See Reverse for Instructions

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

-55-

EMPLOYEE CORRECTIVE ACTION

Employee Name: Johnnie Bryant SS#: [redacted]

Division/Institution: Ridgeland Correctional

REVIEW MEETING

Meeting Date: March 30, 2011 Time: 8:00 am Location: Warden's Office

Alleged Violation: 250-Use of Unnecessary and/or Excessive Force, 260-Making False Statements During the Course of an Official Investigation, 180-Falsification of Official Documents Date of Incident: August 17, 2008

Charging Party: C. Anthony Burton, A/W Operations Date: March 23, 2011

Reprimanding Authority: LeVern Cohen, Warden Date: March 23, 2011

Receipt of Notification: Certified Mail 70100290000177523637

Employee Signature: [signature] Date: 3/29/11

Witness: [signature] 3/29/11

_____ I choose to waive the 24-hour advanced notice of the review meeting.

Employee Signature: Date:

INFORMAL RESOLUTION

_____ INFORMAL RESOLUTION: (Original corrective action imposed) Violation: _____

Action: _____ Effective Date: _____

In consideration of the reduced corrective action listed below, I agree to waive my appeal rights. I voluntarily agree to enter into Informal Resolution and I understand that I have seven (7) calendar days from this date to reconsider my decision by certified letter to the Reprimanding Authority at which time the original procedure violation/corrective action listed above will be restored.

Employee Signature: Date:

VIOLATION CHARGE

Procedure Violation: Code: 250/260/180

Use of Unnecessary and/or Excessive force / Making False Statements, Falsification of Official Documents

CORRECTIVE ACTION

_____	Written Warning				
_____	Probation	Effective Date: _____	No. of days: _____		
_____	Suspension	Effective Date:	No. of hours:	Return On:	
_____	Demotion	Effective Date: _____		From	To
		_____ Without Salary Reduction		Position	
		_____ With Salary Reduction		Location	
	Reassignment	From: $	To: $	Band/Level	
✓	Termination	Effective Date: 3/30/11		Concurrence/Approval	Date
Justification for Termination: Refuse to follow Statement given by Excessive force and falsification of DOC Official Documents Investigative Memorandum dated 3/21/11				General Counsel Signature:	3/31/11
				Employee Relations Signature:	3/30/11
_____	No action imposed (give reason). _____				
_____	Oral counseling only (not to be placed in employee's personnel file).				
	Referral to SCDC Employee Assistance Program (EAP).				

SIGNATURES

I acknowledge receipt of this action and understand that this information will be placed in my personnel file unless no action is imposed. I also understand that repeat violation(s) may result in termination of my employment. If I choose to appeal a grievable action and I have not agreed to Informal Resolution, I must contact the Employee Relations Branch within 14 calendar days of the effective date of the action to file an appeal.

Employee: Refuse to Attend / Showed up w/ Attorney Date:

Reprimanding Authority: [signature] Date: 3/30/11

Witness: [signature] [signature]

Original – Employee Personnel File Pink – Employee Relations Yellow – Employee White – Employee Notice of Review

SCDC 16-50(July 2004)

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

RIDGELAND CORRECTIONAL INSTITUTION

MEMORANDUM

TO: Robin Gracien, Branch Chief Employee Relations

FROM: LeVern Cohen, Warden

SUBJECT: **TERMINATION RECOMMENDATION**
JOHNNIE BRYANT (249-39-1923)

DATE: March 30, 2011

Please be advised that I am recommending the termination of employment for Johnnie Bryant, Sergeant, effective March 30, 2011, based on the synopsis of an investigation conducted by Fred Hamer from the Division of Investigations regarding the alleged assault on Inmate Thomas Doughty. A corrective action meeting was held on this date and Officer Middleton is in direct violation of ADM-11.04, Employee Correction Action, #250-Use of Unnecessary and/or Excessive Force, #260-Making False Statements During the Course of an Official Investigation, and #180 Falsification of Official Documents.

LeVern Cohen

Cc: Jackie Moss, Human Resource Manager
File

Counsel of attorney Middleton in Absence

Certified Mail/Return Receipt

March 23, 2011

Johnnie Bryant
48 Bryant Rd.
Hilton Head Is., SC 29926

Dear Mr. Bryant;

This letter serves as your official notification of an Employee Corrective Action meeting scheduled for March 30, 2011 in the Warden's Office at Ridgeland Correctional Institution at 8:30 am. You are being charged in accordance with SCDC Policy Adm-11.04 Employee Corrective Action, violation #250-Use of Unnecessary and/or Excessive Force and #260-Making False Statements During the Course of an Official Investigation and #180-Falsification of Official Documents. Your failure to appear at this meeting will result in the meeting being conducted in your absence.

LeVern Cohen, Warden
Ridgeland Correctional Institution

Attachments: SCDC Form 16-50/Employee Notice of Review
Supportive Documentation

MMFI110D SOUTH CAROLINA DEPARTMENT OF CORRECTIONS 03/23/11
TSMMFA RECEIVE MESSAGE - DETAIL ROWLAND

MESSAGE ID: BURTONC 0570 SUBJECT: EMPLOYEE CORRECTIVE ACTION
FROM USERID: BURTONC CREATED: 03/23/11 SENT: 03/23/11 RECEIVED: 03/23/11
FROM USER..: BURTON,CHARLES A DELETE DATE: 03/30/11
SEND TIME- 9:31

INVESTIGATOR FRED HAMER FROM THE DIVISION OF INVESTIGATIONS CONCUCTED AN INVESTIGATION INTO AN ALLEGED ASSAULT ON INMATE THOMAS DOUGHTY BY SGT JOHNNIE BRYANT AND OFC JOHN MIDDLETON. BASED ON THE SYNOPSIS OF THE INVESTIGATION, I RECOMMEND SGT BRYANT AND OFC MIDDLETON BE REPRIMANDED IN ACCORDANCE WITH AGENCY POLICY ADMIN 11.04 EMPLOYEE CORRECTIVE ACTION, VIOLATIONS 250 USE OF UNNECESSARY AND/OR EXCESSIVE FORCE, 260 MAKING FALSE STATEMENTS DURING THE COURSE OF AN OFFICIAL INVESTIGATION AND 180 FALSIFICATION OF OFFICIAL DOCUMENTS.

TONY BURTON
A/W/O
RIDGELAND

PRINT ROUTING? N (END)

USER MESSAGE DISPLAYED. PRESS CLEAR TO RETURN TO MENU.
F1=HELP F3=REPLY F4=COPY F5=FORWARD F6=VIEW ROUTE PF9=NEXT MSG F12=PRINT
4-c 1 Sess-1 167.7.50.33 SCDC1629 21/67

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
DIVISION OF INVESTIGATIONS

INVESTIGATIVE MEMORANDUM

TO: LeVern Cohen, Warden
Ridgeland Correctional Institution

FROM: Debra G. Barnwell
Division Director

SUBJECT: Sergeant Johnnie Bryant, EMPL #028937, B/M
Correctional Officer John Middleton, EMPL #038033
Inmate Thomas Doughty, SCDC #238012, W/M
(91-0162)

DATE: March 21, 2011

On August 17, 2008, Investigators Fred Hamer and Anthony Orr were advised that inmate Thomas Doughty had assaulted C/O Kenneth Cobb (see case #92-0243). C/O Cobb was taken to Coastal Medical Center for a cut to the back of the head area. It was noted that inmate Doughty had to be transported by ambulance to Coastal Medical Center. It was initially alleged that other inmates had assaulted inmate Doughty; however, it was later alleged that Sgt. Johnnie Bryant and C/O John Middleton had assaulted Doughty.

Investigators Hamer and Orr interviewed Officer Kenneth Cobb after he returned to the Institution from the hospital. Officer Cobb stated that he was hit in the back of the head by inmate Doughty who was swinging a lock on the string and received eleven (11) staples. Officer Cobb stated that he was escorted out of the Unit once he had gotten hit in the head.

On August 20, 2008, Investigators Hamer and Orr interviewed inmate Doughty who admitted striking Officer Cobb with a lock on the string. Doughty stated that he failed to follow directives by Officer Cobb to return to his cell and kept swinging the lock after hitting Officer Cobb. Doughty stated that he was gassed numerous times, taken to the floor and handcuffed. Doughty stated that as he was escorted outside the Unit by Officer Middleton where he (Middleton) "bulldogged his head into the side of the Unit." Doughty stated that the blood started coming down and he got weak on his feet. Doughty stated that he remembers very little after that point. Doughty believes that he was "somewhat knocked out on his feet."

INVESTIGATIVE MEMORANDUM
PAGE 2

Sgt. Bryant stated that when he arrived he noted that Officer Cobb was injured and bleeding from the back of the head. Officer Cobb was escorted from the Unit to receive medical attention. Sgt Bryant stated that he and Officer Middleton continued to gas inmate Doughty, trying to gain control. Sgt Bryant stated that they managed to take Doughty to the floor. Sgt Bryant stated that Doughty was handcuffed and he and Officer Middleton escorted Doughty outside the Unit where he was turned over to Sgt Wiggins, the Yard Officer. Sgt Bryant stated that he, Officer Middleton and inmate Doughty fell through the door going to the outside.

Officer Middleton stated that inmate Doughty was out of control, swinging a lock on a string and hit Officer Cobb in the back of the head. Sgt. Bryant responded to assist in getting Doughty under control. Officer Middleton stated that they continued to gas Doughty and managed to take Doughty to the floor. Officer Middleton stated that they handcuffed Doughty and escorted Doughty outside the Unit where they turned him over to Sgt Wiggins. Officer Middleton initially stated that he did not see any blood; however, in his written statement, he stated that he and Sgt. Bryant saw the laceration on Doughty's head when they were lifting him to his feet after they had placed the cuffs on him inside the Unit. Officer Middleton stated that he did not know what all is in his written statement because he had another Officer (Lt. Washington) write his statement for him.

Sgt. John Wiggins was interviewed by Investigators Hamer and Orr and stated that he responded to the front of the Unit where he received inmate Doughty from Officer Middleton. Sgt Wiggins stated that Doughty was bleeding from the head area and leaning over forward when he took possession of him. Sgt Wiggins stated that he took Doughty by the arm and escorted him to Medical. Medical personnel took one look at the injury and told him to call #911. Sgt Wiggins stated that Doughty was transported to Coastal Medical Center by ambulance and admitted to the hospital.

Inmate Lorenzo Anderson, SCDC #291861, stated that he saw inmate Doughty hit Officer Cobb with the lock on the string. Anderson stated hat he did not see the officers or the inmate fall down; however, when he went outside he saw plenty of blood.

Inmate Andrew Bason, SCDC #255311, stated that he saw Doughty hit Officer Cobb in the head with the lock on a string. Bason stated that as Doughty was being escorted from the unit he did not see any blood. Bason stated that when he went outside approximately five minutes later he saw "a nice bit of blood" on the outside of the Unit on the walkway.

Inmate Glenn Brown, SCDC #310492, stated that he saw Doughty charge at Officer Cobb, striking him in the back of the head with the padlock. Brown believes that Doughty's head hit the bench on the rock when he was taken to the floor. Brown stated that Doughty was still resisting and stumbled and fell against the wall. Doughty also hit his head outside the Unit when Wiggins came up to get him.

INVESTIGATIVE MEMORANDUM
PAGE 3

Inmate Billy Watson, SCDC #249854, stated that both officers took inmate Doughty out the door and Doughty fell down outside the Unit. Watson stated that there was a lot of blood approximately five steps from the exit door, outside. The officers did not have a good grip and Doughty went down head first.

Samples were taken from a blood/hair stain on the wall outside the Unit approximately five feet up from the ground and taken to SLED for analysis. SLED confirmed that the blood/hair was a match for inmate Doughty.

The evidence indicates that inmate Doughty struck the unit wall. Neither Officer Middleton nor Sgt. Bryant stated that Doughty hit the wall at any time while they were escorting him.

Nurse Davis stated that inmate Doughty received approximately 37 staples to the outside of the head area and approximately eight (8) stitches to the inside of the head area. Davis stated there was a possibility of nerve damage.

On September 24, 2008, Judge Brantley issued warrants for Sgt Johnnie Bryant and Officer John Middleton for Assault and Battery with Intent to Kill and Misconduct in Office in reference to their alleged assault of inmate Doughty.

On September 25, 2008, the Jasper County Sheriff's Office served the warrants on Sgt. Johnnie Bryant. He was booked into the Detention Center and a bond hearing held.

On September 29, 2008, the Jasper County Sheriff's Office served the warrants on Officer John Middleton. He was booked into the Detention Center and a bond hearing held.

On October 27, 2008, Judge Brantley held preliminary hearings for Sgt Johnnie Bryant and Office John Middleton. Both cases were bound over for General Sessions Court.

S/Debra G. Barnwell

South Carolina Department of Corrections

NIKKI R. HALEY, Governor
WILLIAM R. BYARS, JR., Director

March 31, 2011

CERTIFIED MAIL: 7008 2810 0001 6302 3056

Mr. Johnnie L. Bryant
48 Bryant Road
Hilton Head, South Carolina 29226

RE: Termination of Employment

Dear Mr. Bryant:

On August 25, 2008, you were placed on administrative suspension without pay pending allegations of excessive use of force on Inmate Thomas Doughty during an incident at Ridgeland Correctional Institution on August 17, 2008. You were subsequently arrested and charged with Assault and Battery with Intent to Kill and Misconduct in Office. The internal investigation revealed that Inmate Doughy sustained a severe head wound that required hospitalization, 37 staples and possible nerve damage.

You indicated in your official statements that Inmate Doughty was unruly and you and Officer Middleton took him to the ground where he was restrained. You also stated that may have been one drop of blood on the outside of the unit, however, the evidence does not support your claim. Samples of blood/hair recovered from the wall outside of unit appropriately five (5) feet up from the ground were taken to SLED for analysis. SLED confirmed that the blood/hair was a match for Inmate Doughty.

While the Agency is aware that your criminal charges were eventually dropped, the investigative findings support need for administrative action. Therefore, you were served with corrective action for violation of SCDC Policy ADM-11.04, "Employee Corrective Action," Item 250, Use of Unnecessary and/or Excessive Use of Force, Item 260, Making False Statements During the Course of an Official Investigation, and Item180, Falsification of Official Documents. Since you refused to participate in the corrective action review meeting it was held in your absence with Warden Cohen on March 30, 2011. Given the serious nature of your actions, termination was recommended.

I must inform you that your employment with the South Carolina Department of Corrections is terminated effective close of business March 30, 2011. If you choose to appeal this action through the employee grievance and appeals process, you must contact the Employee Relations Branch at 803.896.8527 to file an appeal within 14 calendar days from receipt of this letter.

You must contact the Human Resources Office at Ridgeland to initiate proper clearance procedures in order to receive your final paycheck.

Sincerely,

Robin M. Gracien
Employee Relations Branch Chief
Division of Human Resources

cc: LeVern Cohen, Warden, Ridgeland
Jackie Moss, HR Manager, Ridgeland
Leave Section
Benefits Section
Payroll Branch
File

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ATTACHMENT #2

South Carolina Department of Corrections

SCDC POLICY/PROCEDURE

NUMBER: ADM-11.02

TITLE: EMPLOYEE GRIEVANCE AND APPEALS PROCEDURES

ISSUE DATE: March 1, 2008

RESPONSIBLE AUTHORITY: DIVISION OF HUMAN RESOURCES

OPERATIONS MANUAL: ADMINISTRATION

SUPERSEDES: ADM-11.02 (July 1, 2004)

RELEVANT SCDC FORMS/SUPPLIES: 16-33

ACA/CAC STANDARDS: *4-ACRS-7E-07, 4-4048*

STATE/FEDERAL STATUTES: State Employee Grievance Procedure Act, § 8-17-110 et seq.

THE LANGUAGE USED IN THIS POLICY/PROCEDURE DOES NOT CREATE AN EMPLOYMENT CONTRACT BETWEEN THE EMPLOYEE AND THE AGENCY. THIS POLICY/PROCEDURE DOES NOT CREATE ANY CONTRACTUAL RIGHTS OR ENTITLEMENTS. THE AGENCY RESERVES THE RIGHT TO REVISE THE CONTENTS OF THIS POLICY/PROCEDURE, IN WHOLE OR IN PART. NO PROMISES OR ASSURANCES, WHETHER WRITTEN OR ORAL, WHICH ARE CONTRARY TO OR INCONSISTENT WITH THE TERMS OF THIS PARAGRAPH CREATE ANY CONTRACT OF EMPLOYMENT.

PURPOSE: To outline the establishment and administration of a formal grievance and appeals system whereby covered state employees may file a complaint when they feel they have been subjected to unfair treatment.

POLICY STATEMENT: In order to uphold the professional integrity of the Department, the Agency will establish an employee grievance and appeals system whereby covered state employees may file a written complaint. Under no circumstances will any employee be subjected to reprisal, prejudice, corrective action, or retaliation as a result of exercising his/her grievance and appeals rights under this policy/procedure. *(4-ACRS-7E-07, 4-4048)*

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7. CORRESPONDENCE
8. REPRESENTATION BY COUNSEL
9. DEFINITION(S)

SPECIFIC PROCEDURES:

1. DEVELOPMENT AND RESPONSIBILITY: The Division Director of Human Resources will be

responsible for the development, implementation, management, and administration of an Employee Grievance and Appeals System (EGAS) applicable to all covered employees of the South Carolina Department of Corrections (SCDC). The system must be reviewed and approved for procedural correctness by the South Carolina Office of Human Resources prior to system-wide implementation. *(4-ACRS-7E-07, 4-4048)*

2. **GRIEVABLE AND APPEALABLE ACTIONS:** The following actions are considered grievable and/or appealable under the Agency's EGAS:

- Terminations, demotions, and suspensions (disciplinary and administrative);
- Salary decreases based on performance evaluations;
- Reclassifications are considered grievable if the Department, or appealable if the State Human Resources Director, determines there is a material issue of fact that the action is a punitive reclassification;
- Reductions-in-force are considered grievable if the Department, or appealable if the State Human Resources Director, determines there is a material issue of fact that the Department inconsistently and/or improperly applied the Agency's reduction-in-force plan or policy; (See SCDC Policy/Procedure ADM-11.05, "Reduction-in-Force," for information.)
- Involuntary reassignments of an employee greater than 30 miles from his/her current work location to another work location;
- Promotions are not adverse employment actions which may be considered grievable or appealable except in instances where the Agency or, in the case of appeals, the State Human Resources Director, determines that there is a material issue of fact as to whether or not the Agency has considered a qualified covered employee for a position for which the employee formally applied or would have applied if the employee had known of the promotional opportunity. (However, when the Agency promotes an employee one organizational level above the promoted employee's former level, that action is not grievable or appealable for any other qualified covered employee. Failure to be selected for a promotion is not considered an adverse employment action which can be considered for a grievance or an appeal.)

3. **NON-GRIEVABLE ACTIONS:** The following actions are not grievable and/or appealable under the Agency's EGAS:

- Written warnings or disciplinary probation periods;
- EPMS appraisals;
- Reclassifications, reassignments, and transfers within the same pay band;
- Demotions when an employee is demoted prior to serving six (6) months of satisfactory service in the higher class (band) with a higher state salary range, and provided the demotion is not to a lower class (band) with a lower state salary range than the class from which the employee was promoted; and
- Voluntary reassignments or resignations. [**NOTE:** An employee's failure to report to duty for three (3) consecutive days without contacting the Agency is considered job abandonment and a voluntary resignation.]

If it is determined that the matter is not grievable, the covered employee will be advised in writing by the Division Director of Human Resources or a designee, normally within five (5) calendar days of receipt of the grievance. Such determination will be a final decision within the Agency which may then be appealed to the State Human Resources Director.

4. **GRIEVANCE AND APPEAL PROCESS:** The following procedures will be followed for all covered employee grievances and appeals. An employee may not proceed to another level without first exhausting his/her agency remedies in the order presented below. An employee may appeal to the State Human Resources Director when all administrative remedies to secure relief within the Agency have been exhausted.

4.1 Any covered employee of the SCDC may file a grievance concerning a legitimate grievable action. SCDC Form 16-33, "Grievance Report," must be fully completed by the employee and returned (or, if mailed, postmarked) to the Division Director of Human Resources, Employee Relations Branch, within 14 calendar days of the effective date of the action to be considered. Upon receipt of the form, the Division Director of Human Resources, or an approved designee *may*:

- Confer with the responsible appropriate Director's staff member or designee to determine if the grievance can be resolved informally by overturning or reducing the severity of the corrective action taken.

- If the grievance cannot be resolved informally by the responsible appropriate Director's staff member or designee, forward the form to the Office of General Counsel within five (5) calendar days.

4.2 General Counsel Review: Upon receipt, an attorney from the Office of General Counsel will be assigned the grievance and will be responsible for conducting an investigative review of all pertinent documentation and related SCDC policies/procedures. A summary report of facts will be prepared and a recommendation will be forwarded to the appropriate Director's staff member within 25 calendar days. If necessary, a non-adversarial fact-finding conference may be scheduled by the Office of the General Counsel and may include the grievant, relevant witnesses, the reprimanding authority, and any other individuals deemed necessary by the attorney assigned the grievance. The following guidelines may apply to such hearing:

- each individual may be called to testify separately and alone;
- testimony may not be made under oath and will not be recorded;
- cross-examination will not be allowed;
- a grievant may be represented by counsel; (However, such representation will be at the grievant's own expense.)
- the grievant may ask Agency employees to submit statements, present personal testimony, or otherwise participate in the grievance process. However, unless the employee is issued an official directive and/or subpoena, the employee has the right to refuse to participate. In addition, the appropriate Director's staff member, Division Director, or Warden has the right to limit the number of employee and Agency witnesses asked to testify if participation in the grievance process poses a staffing and/or security problem or other hardship on the division or facility, provided that the specified number of witnesses are equal for both the Agency and the employee.

Upon conclusion of the conference, a summary report of facts will be made and forwarded as described in Section 4.2, above.

4.3 The Director's Staff Review: The appropriate Director's staff member receiving the summary report will be responsible for reviewing the facts and for making a determination to uphold, reverse, or modify the grievance action. The appropriate Director's staff member's response will be made in writing to the grievant within five (5) calendar days. The grievant may grieve the Director's staff member's decision to the Agency Director within five (5) calendar days of his/her receipt of the response from the appropriate Director's staff member.

4.4 Agency Director Review: The Agency Director will respond in writing to the grievant indicating a final decision within five (5) calendar days from receipt of the grievance. The Agency Director's response represents the Agency's final ruling concerning the grievance.

4.5 External Appeal: The grievant may appeal the Agency's final ruling to the State Budget and Control Board, Office of Human Resources, State Human Resources Director, within ten (10) calendar days of his/her receipt of the Agency Director's response or within 55 calendar days from the initial date the grievance was filed within the Agency, whichever is later.

5. TIME PERIODS: The Agency should complete its internal grievance process including the Director's final decision on any grievances within 45 calendar days from receipt of Form 16-33, "Grievance Report," to the Division of Human Resources, Employee Relations Branch. Failure to act within 45 days will be considered a decision against the grievant from which s/he may appeal to the State Human Resources Director, State Budget and Control Board, Office of Human Resources. The 45 day calendar period for internal departmental action may only be waived by a signed mutual agreement. Internal time periods for the Agency's internal grievance process (Section 4., above) are guidelines for the convenience of the Agency and are not binding upon the Agency. In the event that an internal time period lapses, the grievant should proceed to the next level of the grievance process.

6. LEAVE: Any time away from normal job duties during the grievance or appeal process will be charged to the employee as time worked if the employee is involved in official grievance or appeal business such as, but not limited to, scheduled meetings with the Division of Human Resources, Employee Relations Branch, Office of General Counsel, or Office of Human Resources. Any time used to handle official grievance or appeal business during scheduled work hours must be approved by the employee's supervisor and is subject to verification by the

Division Director of Human Resources or designee. Furthermore, any time away from normal job duties during scheduled work hours for the purpose of general follow-up, or unscheduled meetings to inquire as to the status of a grievance or appeal, will be charged to the employee as annual leave. All annual leave must be approved in accordance with SCDC Policy/Procedure ADM-11.08, "Employee Leave."

7. **CORRESPONDENCE**: All original grievance correspondence, transfer of records, and relative memoranda addressed to inter-department individuals/offices will be "hand carried" from one office/individual to another. Grievance correspondence to individuals/offices outside the Agency (to include correspondence to the grievant) will be sent U.S. Mail, Certified, Return Receipt Requested. (All copies of the receipt information will be maintained on file by the sender.) A copy of the correspondence will be forwarded to the Division of Human Resources, Employee Relations Branch. An employee who files a grievance and misses a deadline or fails to meet with the Agency's attorney for an investigative review will not be excused because s/he neglects to provide the Agency with a current address or fails to retrieve his/her certified mail.

8. **REPRESENTATION BY COUNSEL**: A grievant may be represented by counsel; however, such counsel will be at the grievant's expense. Upon notification that a grievant is represented by counsel, the Division Director of Human Resources or designee will inform the South Carolina Department of Corrections General Counsel and all interested parties within the Agency so as to ensure that all material and information pertinent to the case are forwarded to counsel for the grievant collaterally as it is presented to the grievant. Such correspondence will be sent to the employee's attorney by U.S. Mail, Certified, Return Receipt Requested. (All copies of the receipt information will be maintained on file by the sender.) A copy of all such correspondence will be forwarded to the Division of Human Resources, Employee Relations Branch.

9. **DEFINITION(S):**

Appropriate Director's Staff Member refers to the Director of Office of Budget and Resource Management, ***Director of*** Programs and Services, ***Director of*** Health Services, the General Counsel, the Inspector General, the ***and the Division Director of Operations.***

EMPLOYEE OR GRIEVANT as used throughout this policy/procedure refers to a covered state employee who has successfully completed a probationary period in a full-time equivalent position with the South Carolina Department of Corrections or another South Carolina state agency.

SIGNATURE ON FILE

s/Jon E. Ozmint, Director

ORIGINAL SIGNED COPY MAINTAINED IN THE DIVISION OF POLICY DEVELOPMENT.

South Carolina Department of Corrections

SCDC POLICY/PROCEDURE

Change 1 to ADM-11.04: Attachment I-A

NUMBER: ADM-11.04

TITLE: EMPLOYEE CORRECTIVE ACTION

ISSUE DATE: September 1, 2007

RESPONSIBLE AUTHORITY: DIVISION OF HUMAN RESOURCES

OPERATIONS MANUAL: ADMINISTRATION

SUPERSEDES: ADM-11.04 (August 1, 2004)

RELEVANT SCDC FORMS/SUPPLIES: 16-5, 16-50

ACA/CAC STANDARDS: 4-ACRS-7E-07, 4-4048

STATE/FEDERAL STATUTES: State Office of Human Resources Regulations

THE LANGUAGE USED IN THIS POLICY/PROCEDURE DOES NOT CREATE AN EMPLOYMENT CONTRACT BETWEEN THE EMPLOYEE AND THE AGENCY. THIS POLICY/PROCEDURE DOES NOT CREATE ANY CONTRACTUAL RIGHTS OR ENTITLEMENTS. THE AGENCY RESERVES THE RIGHT TO REVISE THE CONTENTS OF THIS POLICY/PROCEDURE, IN WHOLE OR IN PART. NO PROMISES OR ASSURANCES, WHETHER WRITTEN OR ORAL, WHICH ARE CONTRARY TO OR INCONSISTENT WITH THE TERMS OF THIS PARAGRAPH CREATE ANY CONTRACT OF EMPLOYMENT.

PURPOSE: To establish uniform guidelines for the application and administration of corrective action for employees who have committed rules infractions.

POLICY STATEMENT: In order to maintain a staff committed to *integrity and* professionalism, the Agency will develop and administer uniform employee corrective action procedures for the processing of employees who have committed rules infractions. Such procedures will be designed to encourage positive behavioral changes and to improve employee conduct. (4-ACRS-7E-07, 4-4048)

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SPECIFIC PROCEDURES:

1. GENERAL:

1.1 The specific procedures contained herein are applicable to all Agency personnel in covered positions, and may be applicable to contract personnel, if stipulated in the employment contract.

1.2 Employees attending the Basic Officer Certification Class may be terminated by the Director of Training for academic failure or violation of Agency/Academy rules or regulations. Employees failing to qualify under *Continuing Law Enforcement Education (CLEE)* requirements will be terminated by the applicable Warden or Division Director. In these cases, the termination provisions of this policy/procedure are not required.

1.3 *All security and non-security* employees may be terminated, as directed by the Division Director of Human Resources, for the following:

- defaulting on the repayment of certain guaranteed government student loans;
- workers' compensation cases which prevent the employee from returning to work and performing the essential functions of their positions;
- absences for any employee which cause them to exceed leave requirements of the State of South Carolina;
- indictment of a crime that carries a potential sentence of one year or more;
- *conviction of a Felony,*
- *conviction of a DUI (i.e. Driving Under the Influence, Driving While Impaired, Driving While Intoxicated, etc.),*
- *conviction of any crime which is serious enough in nature to create a substantial security risk or pose a threat to the Agency or the Agency's image, or,*
- *failure to report arrests and dispositions or restraining orders in a timely manner as required by policy.*

NOTE: Employees who are arrested, but not convicted, of a DUI or a felony prior to the effective date of this policy, and whose job does not require them to be certified, will not be terminated for these reasons.

1.3.1 In addition, security employees may be terminated by the Division Director of Human Resources if convicted of crimes that would cause their de-certification as a Class I or II Officer for any reason as directed by the State Criminal Justice Academy. In the above listed cases, the termination provisions of this policy are not required.

1.4 *This policy does not apply* to probationary status employees who may be disciplined and terminated, at the discretion of the Agency.

2. EMPLOYEE REVIEW MEETINGS:

2.1 Employees suspected of committing a rules infraction(s) will be afforded the opportunity to have his/her case heard by the Reprimanding Authority to review the information concerning each case; to determine whether the employee has committed a violation; to properly characterize the violation; and, if necessary, to assess corrective action.

2.2 Employees will be notified at least 24 hours in advance of their scheduled Review Meeting with the Reprimanding Authority. This notification may be served on the employee by the Reprimanding Authority, any supervisor in their chain of command; *the Human Resources Manager or designee;* or by certified mail as stated in Section 4.2. SCDC Form 16-50, "Employee Corrective Action," will be used for this purpose. In some cases, however, circumstances (i.e., employee incarceration, out of state, illness/injury, etc.) may prevent a formal scheduled review meeting. *These exceptions will require the approval of the Division Director of Human Resources or designee.* Documentation of the employee's receipt of this notification should include the employee's signature, certified mail receipt, or a signature of a witness (if the employee refuses to sign). The 24-hour notice of the review meeting may be waived by the employee. The waiver must be noted on SCDC Form 16-50, "Employee Corrective Action."

2.3 A review meeting *is not* required for employees charged with violation 270 – Positive Drug Test Results and

280 - Failure to Submit to a Drug ***or Alcohol*** Test. Upon notification of the positive test result, the Reprimanding Authority will immediately place the employee on suspension. If the employee requests a reconfirmation test, s/he will remain on suspension until the results are confirmed. If no reconfirmation test is requested, the Reprimanding Authority will proceed with the termination process.

3. REVIEW MEETING PROCESS:

3.1 Employee Review Meetings should be conducted within ten (10) calendar days after the employee has been notified of the meeting ***or*** within 15 calendar days from the date that the investigative report/summary is received by him/ her.

3.2 The Employee Review Meeting will be convened at the appointed date and time, and the employee will, again, be advised of the alleged violation. Should the employee fail to appear as scheduled, the Reprimanding Authority may conduct the meeting in the employee's absence. All participants will be advised that the issues being addressed are confidential in nature and should not be discussed outside the meeting. The employee may NOT be represented by counsel at this meeting.

3.3 The Reprimanding Authority will allow the employee the opportunity to respond to the allegation(s), present a defense on his/her behalf, and present pertinent supportive documentation relating to the allegation. (**NOTE**: Supportive documentation used by the Reprimanding Authority may include written documentation, statements, investigative reports/summaries, incident reports, and any other material available to the Reprimanding Authority concerning the allegation. If such information is used, the information or a summary ***should*** be provided to the employee prior to the meeting. Based upon the available information, the Reprimanding Authority must determine if an alleged violation did, in fact, occur. The review meeting will also serve to determine the proper characterization of the violation. (For example, employees may have been notified that they were suspected of "negligence," but at the review meeting, it was determined they were asleep on their duty post. The characterization of the violation would then be changed to "sleeping on duty.")

3.4 If the Reprimanding Authority determines that a violation has occurred, s/he will complete SCDC Form 16-50, "Employee Corrective Action." The guidelines described in ***Attachment 1-A*** to these procedures have been established to assist the Reprimanding Authority in identifying the violation and imposing appropriate corrective action. The Reprimanding Authority will then arrive at a decision for corrective action based on the following:

- the seriousness of the violation;
- prior corrective actions against the employee (when considering such disciplinary matters, the Reprimanding Authority will give consideration to the amount of time that has elapsed since the employee's last corrective action);
- the employee's work record, length of service, and job performance; and
- multiple violations, associated with a single incident, may warrant more severe corrective action than a single violation.

3.5 Where an employee is found to have committed multiple violations, associated with a single incident, all the violations should be listed on SCDC Form 16-50, "Employee Corrective Action." The corrective action imposed should be in accordance with the range of corrective actions recommended for the most serious violation listed.

3.6 For any case heard by the Reprimanding Authority that results in no corrective action being imposed, the Reprimanding Authority **must** record his/her decision and reason in the "NO ACTION IMPOSED" space on SCDC Form 16-50, "Employee Corrective Action." The form should be retained at the work site, but not placed in the employee's personnel file.

3.7 Office of Record: All original signed SCDC Forms 16-50, "Employee Corrective Action" will be placed in the employee's personnel file with copies to the Employee Relations Branch. Records of all corrective actions will be maintained by the Employee Relations Branch to be used in all matters relating to the employee. All corrective actions, with support documentation from both the employee and the Reprimanding Authority, will be forwarded

to the Employee Relations Branch within five (5) workdays after final action is taken. Employee corrective action information will also be entered on the mainframe Automated Employee Disciplinary System by the Reprimanding Authority or designee immediately after final action has been taken.

3.8 Informal Resolution: At the discretion of the Reprimanding Authority, and after the employee has been informed of the corrective action, s/he may be offered the opportunity to voluntarily accept a lesser action as an informal resolution of the charge. (NOTE: Informal resolution cannot be used when the employee does not come to the review meeting nor when termination is the only option.)

3.9 When an employee accepts the informal resolution, the employee agrees to waive any available appeal rights. The employee must sign and date the informal resolution section on SCDC Form 16-50, "Employee Corrective Action."

3.10 An employee may, within seven (7) calendar days, by certified letter to the Reprimanding Authority, reconsider his/her decision to accept informal resolution and have the original corrective action restored.

4. CORRECTIVE ACTION GUIDELINES:

4.1 General: All corrective actions must be documented on SCDC Form 16-50, "Employee Corrective Action," and, if possible, should be signed by the employee. (Refer to Section 4.2, below.) All corrective actions will become a permanent part of the employee's official personnel file, except written warnings. The employee may request that written warnings be removed from his/her file after a 24 month period if no additional corrective actions of any kind have been issued ***and the Reprimanding Authority has no objection to it being removed.*** **(NOTE: Written warnings issued for violation of the following policies/procedures are permanent documents and may not be removed from the record):**

- ***SCDC Policy/Procedure ADM-11.32,* "Sexual Harassment;"**
- ***SCDC Policy/Procedure ADM-11.34,* "Employee-Inmate Relations," and**
- ***SCDC Policy/Procedure ADM-11.06, "Employee Performance Management System."***

4.2 In lieu of the employee's signature on SCDC Form 16-50, "Employee Corrective Action," the following documentation will serve to verify the employee's receipt of the form or the inability to serve the form:

4.2.1 If certified mail was used to notify the employee of the corrective action, "CERTIFIED MAIL" and the number assigned to the certified mail receipt will be written in the employee's signature space by the Reprimanding Authority. The Reprimanding Authority and one (1) witness must sign the form.

4.2.2 If the employee refuses to sign, "REFUSED TO SIGN" will be entered in the employee signature space by the Reprimanding Authority. The Reprimanding Authority and one (1) witness must sign the form.

4.2.3 In the case of inability to serve the form, "Unavailable for Signature," will be entered in the employee's signature space. The Reprimanding Authority and one (1) witness must sign the form.

4.3 Reprimanding Authorities are required to discuss the procedural actions ***with the employee*** that can be taken for repeated infractions as well as recommendations for improvement ***(See Attachment 2-A).***

4.4 Corrective Actions: The appropriate corrective action(s) will be determined after the particular circumstances of the case have been considered. The Sanctions/Violations (see Attachment 1-A) should only be used as a guide and are intended to be ***adjusted to address the severity of the offense*** except when termination is the only option. Corrective actions imposed outside the Sanctions/Violations (see Attachment 1-A) must be approved by the Employee Relations Branch, appropriate member of the Director's staff, and/or the Agency Director. Attachment 2-A is intended to be used as a guide for the Reprimanding Authority to ensure that the appropriate approvals are obtained and forms are completed based on action taken. Corrective action should be progressive in nature when possible. It is the Agency's position that each situation requiring corrective action is unique. Thus, the Reprimanding Authority should consider the totality of the circumstances and identify any aggravating or

mitigating factors when determining an appropriate course of corrective action. The factors which should be considered by the Reprimanding Authority include, but are not limited to the following:

- Employee's work history;
- Previous disciplinary history;
- Employee Performance Management System (EPMS) appraisals;
- Action inadvertent or intentional; and
- Security, safety, or mission of the institution/division jeopardized.

The Reprimanding Authority may impose the following actions: (NOTE: These actions will be documented on SCDC Form 16-50, "Employee Corrective Action.")

4.4.1 Written Warning; *A* disciplinary probation may be added at the discretion of the reprimanding authority to indicate the severity of the offense.

4.4.2 Suspension; (See Attachment *1-A*) The Reprimanding Authority is to contact the Employee Relations Branch for additional guidance.

4.4.3 Termination: A termination is the most severe type of corrective action. The Reprimanding Authority will determine if termination of an employee is warranted with the concurrence of the Office of General Counsel and the Branch Chief, Employee Relations Branch or designee. Justification for termination must be documented on SCDC Form 16-50, "Employee Corrective Action." The Reprimanding Authority is responsible for submitting SCDC Form 16-50 with supporting documents and a termination recommendation to the Employee Relations Branch for approval and final action. Prior to final approval of termination by the Employee Relations Branch, the Reprimanding Authority may take one of the following actions:

- temporary job change to another position;
- voluntary use of annual leave by mutual consent; and/or
- administrative suspension without pay pending investigation.

The Employee Relations Branch is responsible for:

- preparing and forwarding a letter of termination to the employee, and forwarding a copy to the appropriate institution/division and to the Division of Human Resources' Payroll Branch.

The institution/division is responsible for:

- completing payroll documentation (SCDC Form 16-5, "Personnel Advice") and forwarding the completed form, and all other pertinent documents, i.e., personnel file, leave file, etc., to the Division of Human Resources, Payroll Branch. **(4-ACRS-7E-07,4-4048)**

4.4.4 Demotion, Reassignment, or Other Appropriate Action may also be implemented to address undesirable conduct or a disciplinary offense. A demotion and/or reassignment may be used as an alternative to suspension or termination in some cases. The Reprimanding Authority ***should*** contact the Employee Relations Branch for additional guidance.

4.4.5 Temporary Assignment: In addition to the above, but not necessarily as a corrective action, the Reprimanding Authority may deem it in the best interest of the Agency, or the individual, to temporarily reassign (less than 90 days) the employee from one position to another in order to limit contact with inmates or other employees. In such cases, the following actions will be taken in the order listed:

- Work the employee in a non-contact position in the unit/department;
- Coordinate with the Warden, Division Director, or appropriate members of the Director's staff to temporarily move the employee to another unit/department; and/or

- Coordinate through the Employee Relations Branch, if necessary.

4.4.6 Employee Assistance Program (EAP): An employee may be given the opportunity to participate in the EAP as outlined in SCDC Policy/Procedure ADM-11.19, "Employee Assistance Program."

4.5 The Reprimanding Authority may place an employee on administrative suspension (a period of suspension without pay that may exceed 15 workdays) if the alleged violation ***or circumstances*** requires that an employee not be allowed to return to work pending the outcome of an internal/external investigation or when the presence of an employee presents a perceived threat or danger to the health and/or safety of other employees or to the operation or security of an office or institution. (NOTE: If an employee is authorized to return to work, reimbursement for back pay may or may not be approved by the Division Director of Human Resources based on the circumstances of the administrative suspension.)

5. JOB ABANDONMENT: Any employee absent for three (3) consecutive workdays, regardless of his/her work schedule (7.5, 8, or 12 hours), without notifying his/her unit/department supervisor or a supervisor in his/her chain-of-command or other Agency official designated by his/her Warden or Division Director, will be considered to have voluntarily resigned his/her employment. This is an administrative procedure and will not be reported as a corrective action, nor will it be a grievable action. Upon notification from the employee's work location, the Employee Relations Branch will be responsible for forwarding a certified letter to the employee accepting his/her voluntary resignation in these cases.

6. SUBSTANDARD JOB PERFORMANCE: Action issued for "Substandard Job Performance" will be in accordance with all SCDC policies/procedures related to the employee performance management system and must be coordinated through the Employee Relations Branch. Final approval on measures taken in these cases must have the concurrence of the Division Director of Human Resources. ***For further information see Agency Policy/Procedure ADM-11.06, "Employee Performance Management System."***

7. RESIGNATION IN LIEU OF CORRECTIVE ACTION/TERMINATION:

7.1 If an employee voluntarily resigns in lieu of corrective action/termination, the following notation must be made on SCDC Form 16-5, "Payroll Advice Form": "Resigned in Lieu of Corrective Action/Termination." The Employee Relations Branch is responsible for preparing a letter accepting the employee's resignation and sending the letter to the employee acknowledging his/her voluntary resignation by certified mail. See Attachment 2-A for additional information.

7.2 An employee will be considered to have resigned in lieu of corrective action if s/he was:

- Notified in writing that an Employee Review Meeting would be conducted for a suspected rules violation and the employee opts to resign before the meeting; or
- Charged with an allegation, but resigned before the appropriate Division Director/Warden rendered a decision in the matter; or
- Charged with other disciplinary infractions and resigned before any corrective action could be completed.

7.3 Resignations will not be accepted for the following:

- Positive drug test results;
- Failure to submit to a drug ***or alcohol*** test; and
- Sexual misconduct with an inmate.

7.4 No-Rehire Statement: If applicable, the appropriate Reprimanding Authority may prepare a "No-Rehire Statement" and attach it to the SCDC Form 16-50, "Employee Corrective Action" to recommend that the employee be considered as unsuitable for rehire. **(4-ACRS-7E-07, *4-4048*)**

8. RESIGNATION WHILE UNDER INVESTIGATION:

8.1 Employees who are the subject of an on-going investigation by federal, state, local, or Agency officials, and elect to resign before the investigation is completed will be considered to have resigned while under investigation. ***See section 7.3 for reasons a resignation will not be accepted.*** Refer to Attachment 2-A.

8.2 The following notation, "Resigned While Under Investigation," will be placed on the "Payroll Advice Form" (SCDC 16-5). The Employee Relations Branch is responsible for preparing a letter accepting the employee's resignation and sending the letter to the employee acknowledging his/her voluntary resignation by certified mail.

8.3 No-Rehire Statement: If applicable, the appropriate Reprimanding Authority may prepare a "No-Rehire Statement" and attach it to the SCDC Form 16-50, "Employee Corrective Action" to recommend that the employee be considered as unsuitable for rehire. **(4-ACRS-7E-07, *4-4048*)**

9. EMPLOYEE GRIEVANCE PROCEDURE: Corrective actions may be grieved pursuant to the provisions of SCDC Policy/Procedure ADM-11.02, "Employee Grievance and Appeals," provided the action is grievable under provisions of the State Employee Grievance Act. Terminations can be grieved only after the effective date of the corrective action rendered by the Reprimanding Authority. **(4-ACRS-7E-07, *4-4048*)**

10. DEFINITIONS:

Administrative Suspension refers to a period of suspension without pay that may exceed 15 workdays if the alleged violation ***or circumstances*** requires that an employee not be allowed to return to work pending the outcome of an internal/external investigation or when the presence of an employee presents a perceived threat or danger to the health and/or safety of other employees or to the operation or security of an office or institution. (NOTE: If an employee is authorized to return to work, reimbursement for back pay may or may not be approved by the Division Director of Human Resources based on the circumstances of the administrative suspension.)

Aggravating Factor refers to the existence of facts that make the offense worse or more serious.

Appropriate Director's Staff Member refers to the Division Director of Office of Budget and Resource Management, Programs and Services, Operations, Health Services; the Chief of Staff; the Inspector General; and the General Counsel.

Charging Party refers to the supervisor making the initial charge allegation. (If a Warden, Division Director, or an appropriate member of the Director's staff is the charging party, s/he may also serve as the Reprimanding Authority. If s/he does not wish to serve as the Reprimanding Authority, s/he will consult with his/her supervisor, who may serve as the Reprimanding Authority or may select another Warden, Division Director, or appropriate member of the Director's staff, or higher authority to serve as the Reprimanding Authority.)

Date of Corrective Action refers to the effective date of the corrective action entered by the Reprimanding Authority on the "Employee Corrective Action Form."

Demotion refers to the movement of an employee from one position to another position having a lower pay band.

Disciplinary Probation refers to corrective action imposed by the Reprimanding Authority upon an employee for a period of 30 to 180 calendar days. Disciplinary probation may be imposed as the only corrective action for an offense; however, disciplinary probation may also be included as a part of the corrective action if ***a written warning,*** suspension, or demotion is imposed. Multiple disciplinary probations will be served consecutively, not concurrently. In determining the starting date for disciplinary probation, the following guidelines are established:

- If an individual is not currently on disciplinary probation, the disciplinary probation period will start on the effective date of the corrective action as determined by the Reprimanding Authority. Disciplinary probation periods must not be back dated to the date of the violation, nor should the effective date be postponed in order for the employee to receive a pay increase, promotion, etc.

- While on disciplinary probation, an employee may not be recommended for or receive a performance pay increase, salary adjustment/reclassification, voluntary demotion, or voluntary promotion. Employees on disciplinary probation will receive legislated cost-of-living increases, merit increases, and class reallocation increases as authorized by the State Office of Human Resources.
- If an individual is currently serving a period of disciplinary probation, any subsequent period of disciplinary probation will start the calendar day after the current disciplinary probation period ends.
- Following the initial period of suspension, any time an employee's disciplinary probation period is interrupted due to removal from the payroll for any reason, upon the employee's return to work, the amount of time off the payroll will be added to the ending date of his/her disciplinary probation period.

Dual Supervision refers to situations in which an employee is accountable to both the security and technical (e.g., food service, support services, and prison industries) lines of authority. Should it become necessary to impose corrective action upon a dual supervision employee, the following guidelines for determining the appropriate Reprimanding Authority must be followed:

- If the violation is technical in nature (e.g., food service, support services, and prison industries), the technical line of authority may issue the corrective action with communication and notification to the security supervisor prior to administering the action to the employee.
- If the violation is general in nature, or security related, the security line of authority may issue the corrective action, with communication and notification to the technical supervisor prior to administering the action to the employee.

Employee Review Meeting refers to a meeting between the Reprimanding Authority and the employee to determine if a violation occurred; to determine the proper classification of the violation; and to assess whether corrective action is warranted.

Mitigating Factor refers to the existence of facts that lessen the severity of the offense.

Probationary Status ***refers to an initial working test period of employment in a full time employment with the State of South Carolina of not more than 12 months duration for non-instructional personnel or the academic year duration for instructional personnel except for that at State technical colleges, or of not more than two (2) full academic years' duration for faculty at State technical colleges. An employee who receives an unsatisfactory performance evaluation during the probationary period must be terminated before becoming a covered employee.***

Reassignment refers to an assignment of a position in one class to another class which is the result of a natural or an organizational change in duties or responsibilities.

Reprimanding Authority refers to an individual occupying a position who has been empowered to impose corrective action upon employees in accordance with the procedures outlined in these guidelines. Individuals temporarily filling these positions may administer corrective action commensurate with the position during their tenure. The following positions are designated as Reprimanding Authorities:

- Agency Director;
- Appropriate Director's Staff member or designee;
- Wardens or designee (i.e., the Warden may elect to designate the Associate Warden when imposing a written warning as indicated in Attachment 2-A) or;
- Associate Wardens (In official absence of the Warden); and
- Division Directors or designee (i.e., the Division Director may elect to designate the Assistant Division Director when imposing a written warning) or the Assistant Division Director in the official absence of the Division Director as indicated in Attachment 2-A.

Rules Infraction refers to one (1) or more of the violations listed in this directive, or any rule or regulation of the Agency, or the provisions of any proper order or orders. An infraction may consist of, but is not limited to, any of the following:

- Engaging in the specified behavior;
- Attempting to engage in the specified behavior;
- Conspiring to engage in the specified behavior; and/or
- Aiding others in conspiring to or attempting to engage, or actually engaging in the specified behavior.

Subsequent Violations refers to a process whereby violations are considered cumulative in nature and subsequent violations must result in additional corrective action being imposed. Subsequent violations will be considered in the following manner:

- Prior violations, regardless of the previous number of violations, that resulted in the employee receiving a "Written Warning" will be considered for *at least* two (2) years from the date the Reprimanding Authority imposed corrective action ***and may only be removed in accordance with section 4.1.***
- Prior violations, regardless of the previous number of violations, which resulted in the employee receiving a "Reprimand other than a Written Warning" (e.g., suspension, probation, etc.) will be considered for three (3) years from the date the Reprimanding Authority imposed corrective action;
- For repeated infractions, the employee should receive the recommended corrective action for a second, third, or fourth offense, depending on the circumstances.

Support(ive) Documentation refers to all written material submitted to and used by Reprimanding Authorities in arriving at their decision in the case.

Suspension refers to action taken to remove the employee from pay status. Periods of suspension for corrective action may be from 1 to 15 workdays depending upon the violation. To ensure uniformity throughout the SCDC and for all work schedules, each day of suspension will equal 8.0 hours for those employees working a 40 hour work week or 28 day cycle, and 7.5 hours for those employees working a 37.5 work week.

Use of Force refers to any physical contact with an inmate, or application of chemical agents, or mechanical physical restraints, or electronic stun devices to modify the inmate's behavior or anticipated behavior. The SCDC authorizes the minimum reasonable use of force to promote the safety and security of the inmate, other inmates, and staff members; as a precaution against escape; to prevent self injury or injury to others; and/or to prevent property damage. For the purposes of this policy/procedure, use of force does not include the use of restraints for the movement or transportation of inmates based on their custody level. Refer to SCDC Policy/Procedure OP-22.01, "Use of Force," for more information.

Violation Codes refers to numbers and descriptions used to define the rules violation and the method used to establish recommended corrective action for the violations listed.

Written Warning refers to a written document that outlines the rules infraction(s) committed by an employee and informs him/her of future corrective action if similar rules infractions occur.

SIGNATURE ON FILE

s/Jon E. Ozmint, Director

ORIGINAL SIGNED COPY MAINTAINED IN THE DIVISION OF POLICY DEVELOPMENT.

ATTACHMENT 1-A

SANCTIONS/VIOLATIONS

(**NOTE:** Accumulation of any three (3) offenses of any type in a 90-day period where the first offense calls for a written warning may result in corrective action of a suspension up to termination on the third offense.)

Written Warning up to Termination

#	VIOLATION	1st OFFENSE	2nd OFFENSE	3rd OFFENSE	4th OFFENSE
010	Inappropriate Behavior - Conduct Unbecoming a SCDC Employee (may be related to poor judgment in the performance of duties or interaction with employees and/or managers)	Written Warning up to 5 day Suspension	Written Warning up to 10 day Suspension	1 to 10 day Suspension up to Termination	Termination
020	Unprofessional Conduct, Incompatible Activities, Malicious Profanity, Unethical Conduct, or Other Employee Behavior Having Potential or Actual Detriment to the Agency or State Operations or Their image (conduct can occur on/off the job)	Written Warning up to Termination	1 to 10 day Suspension or up to Termination	Termination	
030	Sleeping or Inattentiveness while on Duty (Failure to provide a quick response to circumstances while on duty)	Written Warning up to *10* day Suspension	***10 to 15*** day Suspension ***up to termination***	***Suspension up to Termination***	
040	Negligence in Carrying Out Job Responsibilities	Written Warning up	1 to 10 day Suspension	5 to 15 day Suspension	Termination

	in a Security or Non-Security Setting	to Termination	up to Termination	up to Termination	
050	Violation of Written Rules, Regulations, or Policies	Written Warning up to Termination	1 to 10 day Suspension up to Termination	Termination	
060	Refusal to Carry Out Oral or Written Direction of Supervisor	Written Warning up to Termination	1 to 10 day Suspension up to Termination	Termination	
070	Reporting for Work Late, Failure to Observe Assigned Work Hours or Changing Work Schedule without Authorization	Written Warning	Written Warning up to 5 day Suspension	1 to 10 day Suspension up to Termination	Termination
080	Excessive Use and/or Abuse of Sick Leave	Written Warning	Written Warning up to 5 day Suspension	5 to 10 day Suspension up to Termination	Termination
090	Unauthorized Absence From Work (Does not report for work; does not obtain approval for authorized leave; does not report for scheduled training; and will not be paid for day(s) of absence)	Written Warning	1 to 5 day Suspension	5 to 10 day Suspension up to Termination	Termination
100	Substandard Job Performance (This violation will not be used for progressive corrective actions. See SCDC Policy/Procedure ADM-11.06, "Employee Performance Management System," for additional information on the appropriate procedures for addressing substandard performance.)	Written Warning	Written Warning		
110	Gambling on State Property	Termination			
120	Sexual Harassment (See SCDC Policy/Procedure ADM-11.32, Sexual Harassment, for additional information)	Written Warning up to Termination	1-10 day Suspension up to Termination	Termination	
130	Gross Misconduct and Intentional Improper Behavior (occurs when conduct of employee evidences willful or wanton disregard of employer's interest as in deliberate violations; ***affiliation with or a member of a gang;*** or disregard of standards of behavior which employer has a right to expect;	1-10 day Suspension up to Termination	Termination		

	improper actions can occur on/off the job)			
140	Employee/Inmate Relations (See SCDC Policies/Procedures ADM-11.34, "Employee-Inmate Relations," for additional information)	1-10 day Suspension up to Termination	Termination	
150	Staff Sexual Misconduct with Inmates (See ADM-11.39, "Staff Sexual Misconduct with Inmates," for additional information)	1-10 day Suspension up to Termination		
160	Harassment of a non-sexual nature to an Employee or Inmate related to Gender, Race, Color, Religious Preference, National Origin, Age or Disability	Written Warning to 5 day Suspension	1 to 10 day Suspension up to Termination	Termination
170	Insubordination, Failure to be Cooperative With Supervisor. (Consideration should be given as to how insubordination was expressed, who witnessed the insubordination, e.g., inmates, and circumstances giving rise to the insubordination.)	Written Warning ***up to Termination***	***5 to 10 day Suspension up to Termination***	Termination
180	Falsification of Official Documents	Written Warning up to Termination	1-10 day Suspension up to Termination	Termination
200	Leaving a Security Post Without Authorization	Written Warning up to Termination	Termination	
210	Reporting to Work Under the Influence of Alcohol or the Consumption of Alcohol Immediately Prior to or During the Employee's Scheduled Regular Work Hours **(EAP Referral Mandatory)**	1 day Suspension ***up to Termination***	5 day Suspension up to Termination	Termination
220	Introduction or Possession of Contraband; Drugs, Alcohol, ~~***cellular telephones,***~~ or Firearms/Weapons into a Prison Unit or onto State Property; ***or introduction of and/or possession of a cellular telephone into an Institution. (Amended Change Memo #1 dated October 1, 2007.)***	1-10 day Suspension up to Termination	Termination	

230	Possession of ***Contraband***/Unauthorized Items Other than Drugs, Alcohol, and/or Firearms	Written Warning up to 5 day Suspension	1 to 10 day Suspension up to Termination	Termination	
240	Failure to Comply with Agency Training Requirements	Written Warning up to 5 day Suspension	1 to 10 day Suspension	5 to 15 day Suspension	Termination
250	Use of Unnecessary and/or Excessive Force	1 to 10 day Suspension up to Termination	10 to 15 day Suspension up to Termination	Termination	
260	Making False Statements During the Course of an Official Investigation in a Work-Related Matter, Refusal to Cooperate with an Official Investigation, or Destroying Evidence	Written Warning up to Termination	Written Warning up to Termination	Termination	
270	Positive Drug Test Results (Note: See SCDC Policy/ Procedure GA-03.02, "Drugfree Workplace Program," for additional information.)	Termination			
280	Failure to Submit to a Drug ***or Alcohol*** Test	Termination			
290	Fighting	Written Warning up to Termination	Written Warning up to Termination	Termination	
300	Failure to Turn in all Evidence Seized (consideration should be given to nature of evidence, e.g., cash or drugs would merit termination on first offense)	Written Warning to Termination	1 to 10 day Suspension up to Termination	Termination	
310	Falsification of Employment Information, i.e., Employment Application, Medical History, Failure to Report an Arrest and/or Disposition or Restraining Order.	Written Warning up to Termination	Written Warning up to Termination		

320	Threatening Another Employee or Inmate (Consideration should be given to the specificity of threat, or ability to carry out threat, or circumstances under which threat was made)	Written Warning up to Termination	1-10 day Suspension up to Termination	Termination	
330	Stealing	Written Warning up to Termination	Written Warning up to Termination	Termination	
340	Conviction of a Crime Requiring De- certification if in a Position that Necessitates Certification	Termination			
350	Unauthorized Solicitation, Sales, or Distribution of Written or Printed Material of Any Kind on State Property Without Written Permission	Written Warning	Written Warning up to 5 day Suspension	1 to 10 day Suspension up to Termination	Termination
360	Improper or Untidy Uniform or Failure to Follow Grooming Standards	Written Warning	Written Warning up to 5 day Suspension	1 to 10 day Suspension up to Termination	Termination
370	Excessive Use of Working Hours for Personal Matters	Written Warning	Written Warning up to 10 day Suspension	5 to 10 day Suspension up to Termination	Termination
380	Unauthorized Use or Destruction of State Equipment or Property to include using Agency computer or software for non-agency related business or the use of Agency computer and software for non-authorized purposes, e.g., accessing information without a bona fide reason; unauthorized use of personal software on Agency computer. NOTE: Some inappropriate uses of Agency computers may be prosecutable, which is separate from and in addition to administrative responses to violation.	Written Warning up to Termination	5 to 10 day Suspension up to Termination	Termination	
390	Failure to Report Incident (s) of Sexual Misconduct, Sexual Abuse, or Sexual Harassment Between Employees and Inmates or Knowingly or Willfully Submitting Inaccurate or Untruthful Information Concerning Sexual	1-10 day Suspension up to Termination	Termination		

	Misconduct. (See SCDC Policy/Procedure ADM-11.39, Staff Sexual Misconduct with Inmates, for additional information)				

ATTACHMENT 2-A

GUIDELINES FOR EMPLOYEE CORRECTIVE ACTION

TYPE OF ACTION	REPRIMANDING AUTHORITY	CONCURRENCE REQUIRED	REVIEW MEETING WITH EMPLOYEE REQUIRED	DOCUMENTATION REQUIRED	DOCUMENTATION RETENTION
Written Warning	Warden/Division Director, or any designated supervisor	Warden/Division Director	Yes	Corrective Action Form (SCDC 16-50)	Retain in personnel file; employee request removal after *2 yrs.* with no further disc. actions
Administrative Suspension	Warden/Division Director, (or designee in the absence of)	Warden/Division Director, & Employee Relations	No	Letter to employee, copy to *Employee Relations, and* Human Resources, PA Form (SCDC 16-5)	Retain in personnel file until final action is taken or if an employee resigns while on administrative suspension
Disciplinary Suspension	Warden/Division Director, (or designee in the absence of)	Warden/Division Director *and Employee Relations*	Yes	Corrective Action Form (SCDC 16-50), PA Form (SCDC 16-5)	Permanent in personnel file
Transfer for Disciplinary Reasons	Warden/Division Director, (or designee in the absence of)	Warden/ Division Director, & *Employee Relations*	Yes	Corrective Action Form (SCDC 16-50), letter to employee with copy to Human Resources, Budget Unit Change Form, & PA Form (SCDC 16-5)	Permanent in personnel file
Demotion or Reassignment With or Without a Loss in Pay	Warden/Division Director, (or designee in the absence of)	Warden, Division Director, and Employee Relations	Yes	Corrective Action Form (SCDC 16-50), letter to employee with copy to Human Resources, PA Form (SCDC 16-5)	Permanent in personnel file
Disciplinary Probation	Warden/Division Director, (or designee in the absence of)	None	Yes	Corrective Action Form (SCDC 16-50)	Permanent in personnel file ~~with corrective action form~~
Termination – Permanent Status Employee	Warden/Division Director, (or designee in the absence of)	Warden/Division Director, Employee Relations, & *Office of General Counsel*	Yes	Corrective Action Form (SCDC 16-50), *and recommendation to Employee Relations, and* PA Form (SCDC 16-5) to Human Resources	Permanent in personnel file
Termination – Probationary Employee	Warden/Division Director, (or designee in the absence of)	Warden/Division Director and Employee Relations	No	Corrective Action Form (SCDC 16-50), *and recommendation to Employee Relations, and* PA Form (SCDC 16-5) to Human Resources,	Permanent in personnel file
Resignation in lieu of Termination or Corrective Action (Resignation not accepted for refusal to submit to a drug test or positive drug test or sexual misconduct with an inmate)	N/A	Warden/Division Director, and Employee Relations	N/A	*Notify Employee Relations Branch to prepare* letter to employee accepting resignation in lieu of termination	Permanent in personnel file

Resignation While Under Investigation	N/A	Warden/Division Director, and Employee Relations	N/A	*Notify Employee Relations Branch to prepare* letter to employee accepting resignation in lieu of termination while under investigation	Permanent in personnel file

Pages 340 to 354 have been redacted pursuant to the September 11, 2012 Order of Judge Shirley C. Robinson granting appellant's Motion to Seal.

ATTACHMENT #3

THE HORTON LAW FIRM, L.L.C.

PHYSICAL ADDRESS
17 LAWTON STREET
BLUFFTON, SOUTH CAROLINA 29910

TELEPHONE: (843) 757-6190
FACSIMILE: (843) 757-6191
www.hortonlawfirmllc.com

MAILING ADDRESS
POST OFFICE BOX 3766
BLUFFTON, SOUTH CAROLINA 29910

Writer's Email Address: mlh@hortonlawfirmllc.com

MARSHALL L. HORTON

April 14, 2011

VIA FACSIMILE (803.896.2726) AND OVERNIGHT MAIL
Attn: Employee Relations Branch
South Carolina Department of Corrections, Division of Human Resources
4444 Broad River Road
P.O. Box 21787
Columbia, SC 29221-1787

Re: *Johnnie L. Bryant v. South Carolina Department of Corrections, Ridgeland Correctional Institute*
Case No. 2011-CP-27-150

Dear Employee Relations Branch:

Enclosed please find the following documents:

(a) Mr. Bryant's Grievance Report Form dated April 13, 2011
(b) Mr. Bryant's Verified Grievance Report with Attachments A – E dated April 13, 2011

By copy of this letter I hereby serve all counsel of record of the above referenced documents via regular U.S. Mail.

Thank you for your attention to this matter. If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

Marshall L. Horton

MLH/
Enclosures
cc: Robert W. Achurch, III, Esq.
Mary Bass Lohr, Esq.
Mr. Johnnie L. Bryant (w/o encloures)

Recd via fax
4/15/11

South Carolina Department of Corrections
Division of Human Resources

GRIEVANCE REPORT

TO: Employee Relations Branch

FROM: Johnny L. Bryant (Name) Correctional Officer II (Sergeant) (Position)

DATE: April 13, 2011 Ridgeland Correctional Inst. (Work Location)

Work Telephone Number: 912 / 631 - 1056

Home Telephone Number: ( ) ____ - ____

The subsequent grievance/appeal is submitted under the provisions of applicable SCDC policies and procedures

NATURE OF GRIEVANCE

Give an explanation of your grievance. Include specific details concerning the action imposed and why you feel it was inappropriate. You may attach additional sheets to this form if necessary.

Please see attached

RELIEF SOUGHT

In your opinion, how can your grievance be solved? Be as specific as possible.

Please see attached

S/ Johnnie Bryant
Employee (Grievant)

Home Address: 48 Bryant Rd., Hilton Head, SC 29926

_____ Zip _____

In compliance with SCDC Policy ADM-11.02, "Employee Grievance and Appeals Procedures," this form must be completed and submitted to the Employee Relations Branch within 14 calendar days from the effective date of the grievable action.

Date: April 13, 2011

S/ Johnnie Bryant

Distribution: White Employee Relations
Yellow Employee

SCDC 16-83 (Revised July 2005)

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT CIVIL ACTION NO.: 2011-CP-27-150
JOHNNIE L. BRYANT, Claimant, vs. SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, SOUTH CAROLINA BUDGET AND CONTROL BOARD Respondents.	**VERIFIED GRIEVANCE REPORT**

TO: SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, DIVISION OF HUMAN RESOURCES:

Mr. Johnnie L. Bryant, by and through his attorneys, hereby provide the above referenced Respondents with the following Verified Grievance Report:

NATURE OF GRIEVANCE

1. A hearing was held on March 30, 2011 at the Ridgeland Correctional Institute regarding Mr. Bryant's employment. At this hearing, Mr. Johnnie L. Bryant's employment as Corrections Officer II (Sergeant II) was terminated.

2. A civil lawsuit, Case No.: 2011-CP-27-0150 was filed with the Jasper County Court of Common Pleas on March 9, 2011, and served shortly there afterward, which states claims for Wrongful Discharge and Negligence against the above mentioned Respondents. This civil lawsuit directly addresses issues identical to this current Grievance. A copy of this lawsuit is attached hereto as "Exhibit A" and is incorporated verbatim into this Verified Grievance Report.

a. Mr. Bryant was not afforded due process at the March 30, 2011 hearing.

3. Mr. Bryant and his undersigned counsel, Marshall L. Horton, Esq., arrived at the Ridgeland Correctional Institute at approximately 8:20 am in an effort to attend the hearing.

4. Upon arriving at the Ridgeland Correctional Institute, Mr. Bryant and his attorney were informed that Warden LaVern Cohen would not allow Mr. Bryant's attorney to attend the hearing and that Mr. Bryant must attend the hearing unrepresented.

5. Due to the fact that Mr. Bryant was going to be deprived of his ***right*** to counsel if he attended the hearing, Mr. Bryant and his attorney left the Ridgeland Correctional Institute.

6. Upon information and belief, it is inconceivable that South Carolina law would allow Warden Cohen authority to require Mr. Bryant to give a statement regarding a filed and served lawsuit without his counsel of record present.

7. Furthermore, in addition to the fact that Warden Cohen attempted to deprive Mr. Bryant his right to counsel, Mr. Bryant was not sufficiently informed of the nature of the evidence (if any) that Warden Cohen planned to introduce at this hearing. Prior to the March 30, 2011 hearing, Mr. Bryant was supplied with documents which detailed the "Investigative Memorandum" which detailed the investigation conducted in this case, and these documents are attached hereto as "Exhibit B." The Memorandum does not seem to contain any incriminating information against Mr. Bryant, and it must be inferred that Warden Cohen decided to terminate Mr. Bryant's employment was based on evidence that was not disclosed prior to the March 30, 2011 hearing.

b. Warden Cohen's suspension of Mr. Bryant's employment without pay was unlawful.

8. Mr. Bryant was suspended without pay on August 25, 2008 pursuant to SCDC Employee Policy ADM-11.04 and was informed of this via correspondence dated August 25, 2008 (attached hereto as "Exhibit C").

9. According to Warden Cohen, Mr. Bryant was suspended without pay for 947 days (Mr. Bryant reserves any argument based upon the actual date of firing).

10. Upon information and belief, the SCDC Employee Policy ADM-11.01, *et seq.* does not flatly authorize suspensions without pay. Warden Cohen was not authorized to create this punishment for Mr. Bryant.[1]

11. Upon information and belief, even in the event that Warden Cohen was authorized to suspend Mr. Bryant without pay, which Mr. Bryant vehemently disputes, SCDC Employee Policy ADM-11.04, Attachment 1-A (Sanctions and Violations) virtually never authorize suspensions longer than 10 days.

12. During Mr. Bryant's 947 day suspension without pay, he was unable to seek further employment or enroll in vocational education programs (i.e. Police Academy) because the Ridgeland Correctional Institute continued to insist, in written official statements, that Mr. Bryant was still an employee. Please refer to document located in "Exhibit D" for examples of this conduct.

c. Mr. Bryant's conduct did not justify any corrective action.

13. Mr. Bryant was initially disciplined for Use of Unnecessary and/or Excessive Force. He did not use excessive force on the inmate in question, and Mr. Bryant gives his account of the facts of this case in the attached Verified Complaint attached hereto as "Exhibit A." Simply, he did not act in any way short of honorably in his rescue of a fellow corrections officer from a vicious attack.

14. Mr. Bryant's issues were referred to the Solicitor of the 14th Circuit of South Carolina for criminal charges to be pressed. The Solicitor's Office had the opportunity to review this matter and subsequently entered a *Nolle Prosse* against all criminal charges against Mr. Bryant (see

[1] While it may be the case that SCDC Employee Policy ADM-11.04.4.4.3 authorizes administrative "suspension without pay pending investigation," any pending investigation in this case ended on or before October 27, 2008. See Exhibit B, Page 5.

"Exhibit E"). Mr. Bryant did not plea to a lesser crime, Mr. Bryant did not pay a fine, and Mr. Bryant did not enter into any pre-trial Intervention program; upon review of the matter, the Solicitor's Office dropped all charges. While this *Nolle Prosse* is not legally binding in this case, it is illustrative as to the weak nature of any allegations of wrongdoing against Mr. Bryant.

15. Mr. Bryant, at a point in time unknown, was also charged with some variety of making a false statement. There is no known evidence of any false statement that Mr. Bryant gave.

16. Simply, Mr. Bryant has not done anything to justify any corrective action against him.

RELIEF SOUGHT

17. Mr. Bryant seeks back pay based on his rate of pay as of August 25, 2008. He also seeks the cash value of the benefits he was receiving during this time (i.e. health insurance, retirement, etc.).

18. Mr. Bryant seeks future wages (front pay) in a reasonable amount.

19. Mr. Bryant seeks any further relief which may be sought pursuant to law, including punitive damages, attorneys' fees, trebel damages, any other legally recognizable recoverable relief.

HORTON LAW FIRM, LLC

Marshall L. Horton, Esquire
17 Lawton Street
Post Office Box 3766
Bluffton, SC 29910
(843) 757-6190
(843) 757-6191 - *fax*
ATTORNEYS FOR THE PLAINTIFF

Bluffton, South Carolina
This 13th Day of April, 2011

STATE OF SOUTH CAROLINA)
) **VERIFICATION**
COUNTY OF BEAUFORT)

PERSONALLY APPEARED BEFORE ME, JOHNNIE L. BRYANT, who, upon being duly sworn, deposes and says that he is a party to the foregoing action, he has read the foregoing VERIFIED GRIEVANCE, that the allegations contained therein are true, except as to matters contained therein as being upon information and belief, and as to those matters he believes them to be true.

JOHNNIE L. BRYANT

Sworn to and subscribed before me
this 13th day of April, 2011

Notary Public for South Carolina
My Commission expires: Sept 8, 2015

EXHIBIT A

STATE OF SOUTH CAROLINA)
)
COUNTY OF JASPER)
)
JOHNNIE L. BRYANT,)
Plaintiff(s))
)
vs.)
)
SSOUTH CAROLINA DEPARTMENT OF CORRECTIONS, RIDGELAND CORRECTIONAL INSTITUTE,)
Defendant(s))

-109-

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2011-CP - 27- 150

(Please Print)
Submitted By: Marshall L. Horton, Esq.
Address: Post Office Box 3766
Bluffton, South Carolina 29910

SC Bar #: 73891
Telephone #: (843) 757-6190
Fax #: (843) 757-6191
Other:
E-mail: mlh@hortonlawfirmllc.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (*Check all that apply*)

**If Action is Judgment/Settlement do not complete*

☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (*Check One Box Below*)

Contracts	Torts - Professional Malpractice	Torts – Personal Injury	Real Property
☐ Constructions (100)	☐ Dental Malpractice (200)	☐ Assault/Slander/Libel (300)	☐ Claim & Delivery (400)
☐ Debt Collection (110)	☐ Legal Malpractice (210)	☐ Conversion (310)	☐ Condemnation (410)
☒ Employment (120)	☐ Medical Malpractice (220)	☐ Motor Vehicle Accident (320)	☐ Foreclosure (420)
☐ General (130)	Previous Notice of Intent Case #	☐ Premises Liability (330)	☐ Mechanic's Lien (430)
☐ Breach of Contract (140)	20___-CP-____-_____	☐ Products Liability (340)	☐ Partition (440)
☐ Other (199)	☐ Notice/ File Med Mal (230)	☐ Personal Injury (350)	☐ Possession (450)
	☐ Other (299)	☐ Wrongful Death (360)	☐ Building Code Violation (460)
		☐ Other (399)	☐ Other (499)

Inmate Petitions	Judgments/Settlements	Administrative Law/Relief	Appeals
☐ PCR (500)	☐ Death Settlement (700)	☐ Reinsate Driver's License (800)	☐ Arbitration (900)
☐ Mandamus (520)	☐ Foreign Judgment (710)	☐ Judicial Review (810)	☐ Magistrate-Civil (910)
☐ Habeas Corpus (530)	☐ Magistrate's Judgment (720)	☐ Relief (820)	☐ Magistrate-Criminal (920)
☐ Other (599)	☐ Minor Settlement (730)	☐ Permanent Injunction (830)	☐ Municipal (930)
	☐ Transcript Judgment (740)	☐ Forfeiture-Petition (840)	☐ Probate Court (940)
	☐ Lis Pendens (750)	☐ Forfeiture—Consent Order (850)	☐ SCDOT (950)
	☐ Transfer of Structured Settlement Payment Rights Application (760)	☐ Other (899)	☐ Worker's Comp (960)
			☐ Zoning Board (970)
	☐ Other (799)		☐ Administrative Law Judge (980)
			☐ Public Service Commission (990)
			☐ Employment Security Comm (991)
			☐ Other (999)

Special/Complex /Other	
☐ Environmental (600)	☐ Pharmaceuticals (630)
☐ Automobile Arb. (610)	☐ Unfair Trade Practices (640)
☐ Medical (620)	☐ Out-of State Depositions (650)
☐ Other (699)	☐ Sexual Predator (510)

Submitting Party Signature: _____ Date: 3/6/11

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lexington, Pickens (Family Court Only), and Richland

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.

2. The initial ADR conference must be held within 300 days after the filing of the action.

3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)

4. Cases are exempt from ADR only upon the following grounds:

   a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;

   b. Requests for temporary relief;

   c. Appeals

   d. Post Conviction relief matters;

   e. Contempt of Court proceedings;

   f. Forfeiture proceedings brought by governmental entities;

   g. Mortgage foreclosures; and

   h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.

5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.

6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA COUNTY OF JASPER JOHNNIE L. BRYANT, Plaintiff, vs. SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, RIDGELAND CORRECTIONAL INSTITUTE, Defendants.	)	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT CIVIL CASE NO: 2011-CP-27-_____ **SUMMONS** (Non-Jury)

TO: THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint on the subscriber at his office of Horton Law Firm, LLC, 17 Lawton Street, Post Office Box 3766, Bluffton, South Carolina 29910, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for a judgment by default for the relief demanded in this Complaint.

HORTON LAW FIRM, LLC

Marshall L. Horton, Esq.
Post Office Box 3766
Bluffton, SC 29910
(843) 757-6190
(843) 757-6191 – fax
ATTORNEY FOR PLAINTIFF

Bluffton, South Carolina
This 6th day of March, 2011

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF JASPER	)	CIVIL ACTION NO.: 2011-CP-27-_____
JOHNNIE L. BRYANT,	)	
Plaintiff,	)	
vs.	)	COMPLAINT (Wrongful Discharge, Negligence) (Jury Trial Demanded
SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, RIDGELAND CORRECTIONAL INSTITUTE,	)	
Defendants.	)	

THE PLAINTIFF, JOHNNIE L. BRYANT, through his undersigned attorneys, complaining of Defendants, South Carolina Department of Corrections and Ridgeland Correctional Institute, would respectfully show unto this Honorable Court as follows:

PARTIES AND JURISDICTION

1. That Plaintiff, Johnnie L. Bryant, is and was at all times relevant herein a resident of Beaufort County, South Carolina, and is a former employee of the Defendants.

2. That Defendant South Carolina Department of Corrections is a department of the State of South Carolina located in Jasper County, South Carolina.

3. That Defendant, Ridgeland Correctional Institute is a department of the State of South Carolina located in Jasper County, South Carolina.

4. That this civil action arises out of events concerning the Plaintiff's employment with the Defendants, an employment that occurred in Jasper County, South Carolina.

5. That Plaintiff is informed and believes that Defendant South Carolina Department of Corrections, at all times herein mentioned, pursuant to the powers and responsibilities granted to

this agency by law, had substantial control over Defendant Ridgeland Correctional Institute; that said State Ridgeland Correctional Institute as set forth herein failed to fulfill its duties and responsibilities under South Carolina law.

6. That Plaintiff is informed and believes that Defendant South Carolina Department of Corrections and Defendant Ridgeland Correctional Institute are now, and were at all times herein set forth, agencies, political subdivisions, government entities and/or municipal corporations within the meaning of the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10, *et seq.*, and that the Defendants were, at all relevant times herein mentioned, acting by and through their employees and/or agents who were acting in the course and scope of his, her, or their employment and/or agency relationship(s).

7. The actions of the Defendants have prevented the Plaintiff from instituting a timely grievance under the South Carolina Grievance Procedure, S.C. Code Ann. § 8-17-310, *et seq.* by failing to inform the Plaintiff that his employment was terminated.

8. That this Honorable Court has jurisdiction over all matters herein, and venue is proper.

FOR A FIRST CAUSE OF ACTION
(Wrongful Discharge – against all Defendants)

9. Each and every allegation set forth above is fully incorporated herein.

10. Plaintiff was employed as a corrections officer by Defendant Ridgeland Correctional Institute, a prison facility owned and operated by the State of South Carolina.

11. Defendant Ridgeland Correctional Institute is designated a "Level 2" prison facility and houses many dangerous felons.

12. Correctional officers who are employed at Defendant Ridgeland Correctional Institute are highly trained professionals who frequently deal with dangerous situations.

13. Plaintiff was hired as a correctional officer in October of 1999.

14. Plaintiff has been certified as a correctional officer through the South Carolina Department of Corrections' Training Academy since December 7, 2005.

15. During the years that Plaintiff was employed at the Ridgeland Correctional Institute, he performed his duties in an outstanding manner, as he received several promotions and was named "Correctional Officer of the Year, 2002."

16. In August of 2008, Plaintiff held the title of Corrections Officer II (Sergeant II) and earned a base salary of $33,255.00 per year.

17. In August of 2008, when an armed inmate attacked another correctional officer and Plaintiff came to that officer's aid, Plaintiff entered into hand to hand combat with the attacking inmate. Plaintiff risked life and limb and successfully saved the distressed officer, but in the process, the inmate may have been injured (the extent of the inmate's injuries, if any, are unknown).

18. The inmate involved, Mr. Thomas Dougherty, was convicted of attempting to murder a correctional officer in the Allendale Correctional Institute in approximately 2003.

19. For reasons unknown, Plaintiff's supervisors vigorously disciplined Plaintiff for this action, placing him on administrative suspension without pay on August 25, 2008 and forwarding the matter to the county solicitor for the 14th Judicial Circuit for criminal prosecution.

20. Upon reviewing the matter, the county solicitor's office dropped all charges against Plaintiff.

21. Despite the resolution of all matters involved with any alleged wrongdoing on the part of Plaintiff, he remained on unpaid suspension indefinitely. This suspension lasted at least two years; however, since neither Defendant has ever communicated directly to Plaintiff that his employment had been terminated, it is unknown as to when Plaintiff was actually fired.

22. Plaintiff received written confirmation that Plaintiff was no longer employed by the Ridgeland Correctional Institute on September 22, 2010. This confirmation was delivered through his attorneys' office.

23. September 22, 2010 was the first time that Plaintiff had received notice from the Defendants indicating that his employment had been terminated. Even with this notice, it is unknown as to when the Plaintiff was actually fired.

24. Plaintiff attempted on numerous occasions to determine if he was still employed or if his job was still secure and he was unable to secure any information past the fact that he had been placed on administrative suspension without pay.

25. Since he was still considered "employed" by the Ridgeland Correctional Institute, Plaintiff was prevented from finding employment in any manner consistent with his training and certifications in correctional facility work.

26. Since the Ridgeland Correctional Institute refused to allow Plaintiff to participate in the required continued training, Plaintiff has since lost his South Carolina Department of Corrections' Training Academy certification.

27. In March of 2010, Plaintiff attempted to enroll in the Savannah Technical College Peace Office Academy. However, Plaintiff was denied admission to this academy when a representative of the Defendants represented that Plaintiff was employed by the Ridgeland Correctional Institute.

28. In correspondence dated March 18, 2010, Patricia S. Thrailkill of the Division of Human Resources, South Carolina Department of Corrections, addressed to the Savannah Technical College Peace Office Academy, states: "Mr. Bryant was suspended on August 28, 2008, and remains on suspension status at this time with the South Carolina Department of Corrections."

29. Upon information and belief, Plaintiff should have been allowed to return to work at the Ridgeland Correctional Institute.

30. The actions of the Defendants have wrongfully, illegally, and needlessly destroyed Plaintiff's career as a corrections officer along with any means Plaintiff has to earn a living wage.

31. The Defendants owe the Plaintiff wages for the time that he was still employed by the Defendants but on suspension.

32. In discharging Plaintiff, the Defendants have wrongfully deprived Plaintiff of the wages and benefits of his employment with the Defendants and Plaintiff is informed and believes that he is entitled to damages sustained as a result of Defendants' wrongful termination of Plaintiff's employment.

FOR A SECOND CAUSE OF ACTION
(Negligence/ Gross Negligence -against all Defendants)

33. Each and every allegation set forth above is fully incorporated herein.

34. The Defendants breached the duty of care they owed the Plaintiff, and were negligent, negligent per se, reckless, willful, wanton and grossly negligent in one or more of the following particulars, to wit:

a. The Defendants failed to take reasonable steps to ensure that his employment status was properly represented to prospective employees and/or educational institutions,

b. The Defendants failed to take reasonable steps to ensure that the Plaintiff was not placed on administrational suspension without pay for more than two years.

c. The Defendants failed to take reasonable steps to ensure that investigations of any alleged misconduct on the part of the Plaintiff were handled properly,

d. The Defendants failed to take reasonable steps to ensure that the Plaintiff was aware of his employment status,

e. In other such particulars as the evidence produced in discovery and at trial may show.

35. Any or all of the above stated acts or omissions of negligence, recklessness, willfulness, wantonness and gross negligence were the direct and proximate cause of injuries and damages sustained by the Plaintiff, and these injuries would have not occurred but for one, some, or all of the above acts and/or omissions by the Defendants.

36. As the direct and proximate result of the aforesaid negligence of the Defendants, the Plaintiff has suffered damage in the form of lost past wages, lost future wages, loss of employment opportunity, loss of certifications, and loss of educational opportunity.

37. By reason of the acts and omissions of the Defendants as set forth above, the Plaintiff is informed and believes that he is entitled to an award of actual damages in an amount sufficient to fully compensate him for his injuries and losses, together with the costs of this action.

WHEREFORE, the Plaintiff prays for judgment against the Defendants in a fair and reasonable amount, for actual damages and is further entitled to special damages in addition thereto for his losses, for the costs and disbursements of this action, and for such further and other relief as this Honorable Court may deem just and equitable, all in an amount to be determined by a jury.

[signature page to follow]

HORTON LAW FIRM, LLC

Marshall L. Horton, Esquire
17 Lawton Street
Post Office Box 3766
Bluffton, SC 29910
(843) 757-6190
(843) 757-6191 - *fax*
ATTORNEYS FOR THE PLAINTIFF

Bluffton, South Carolina
This 6th Day of March, 2011

EXHIBIT B

Certified Mail/Return Receipt

March 23, 2011

Johnnie Bryant
48 Bryant Rd.
Hilton Head Is., SC 29926

Dear Mr. Bryant;

This letter serves as your official notification of an Employee Corrective Action meeting scheduled for March 30, 2011 in the Warden's Office at Ridgeland Correctional Institution at 8:30 am. You are being charged in accordance with SCDC Policy Adm-11.04 Employee Corrective Action, violation #250-Use of Unnecessary and/or Excessive Force and #260-Making False Statements During the Course of an Official Investigation and #180-Falsification of Official Documents. Your failure to appear at this meeting will result in the meeting being conducted in your absence.

LeVern Cohen, Warden
Ridgeland Correctional Institution

Attachments: SCDC Form 16-50/Employee Notice of Review
Supportive Documentation

MMFI110D SOUTH CAROLINA DEPARTMENT OF CORRECTIONS 03/23/11
TSMMFA RECEIVE MESSAGE - DETAIL ROWLAND

MESSAGE ID: BURTONC 0570 SUBJECT: EMPLOYEE CORRECTIVE ACTION
FROM USERID: BURTONC CREATED: 03/23/11 SENT: 03/23/11 RECEIVED: 03/23/11
FROM USER..: BURTON,CHARLES A DELETE DATE: 03/30/11
SEND TIME- 9:31

INVESTIGATOR FRED HAMER FROM THE DIVISION OF INVESTIGATIONS CONCUCTED AN INVESTIGATION INTO AN ALLEGED ASSAULT ON INMATE THOMAS DOUGHTY BY SGT JOHNNIE BRYANT AND OFC JOHN MIDDLETON. BASED ON THE SYNOPSIS OF THE INVESTIGATION, I RECOMMEND SGT BRYANT AND OFC MIDDLETON BE REPRIMANDED IN ACCORDANCE WITH AGENCY POLICY ADMIN 11.04 EMPLOYEE CORRECTIVE ACTION, VIOLATIONS 250 USE OF UNNECESSARY AND/OR EXCESSIVE FORCE, 260 MAKING FALSE STATEMENTS DURING THE COURSE OF AN OFFICIAL INVESTIGATION AND 180 FALSIFICATION OF OFFICIAL DOCUMENTS.

TONY BURTON
A/W/O
RIDGELAND

PRINT ROUTING? N (END)

USER MESSAGE DISPLAYED. PRESS CLEAR TO RETURN TO MENU.
F1=HELP F3=REPLY F4=COPY F5=FORWARD F6=VIEW ROUTE PF9=NEXT MSG F12=PRINT
4-[illegible] 1 Sess-1 167.7.50.33 SCDC1629 21/67

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
DIVISION OF INVESTIGATIONS

INVESTIGATIVE MEMORANDUM

TO: LeVern Cohen, Warden
Ridgeland Correctional Institution

FROM: Debra G. Barnwell
Division Director

SUBJECT: Sergeant Johnnie Bryant, EMPL #028937, B/M
Correctional Officer John Middleton, EMPL #038033
Inmate Thomas Doughty, SCDC #238012, W/M
(91-0162)

DATE: March 21, 2011

On August 17, 2008, Investigators Fred Hamer and Anthony Orr were advised that inmate Thomas Doughty had assaulted C/O Kenneth Cobb (see case #92-0243). C/O Cobb was taken to Coastal Medical Center for a cut to the back of the head area. It was noted that inmate Doughty had to be transported by ambulance to Coastal Medical Center. It was initially alleged that other inmates had assaulted inmate Doughty; however, it was later alleged that Sgt. Johnnie Bryant and C/O John Middleton had assaulted Doughty.

Investigators Hamer and Orr interviewed Officer Kenneth Cobb after he returned to the Institution from the hospital. Officer Cobb stated that he was hit in the back of the head by inmate Doughty who was swinging a lock on the string and received eleven (11) staples. Officer Cobb stated that he was escorted out of the Unit once he had gotten hit in the head.

On August 20, 2008, Investigators Hamer and Orr interviewed inmate Doughty who admitted striking Officer Cobb with a lock on the string. Doughty stated that he failed to follow directives by Officer Cobb to return to his cell and kept swinging the lock after hitting Officer Cobb. Doughty stated that he was gassed numerous times, taken to the floor and handcuffed. Doughty stated that as he was escorted outside the Unit by Officer Middleton where he (Middleton) "bulldogged his head into the side of the Unit." Doughty stated that the blood started coming down and he got weak on his feet. Doughty stated that he remembers very little after that point. Doughty believes that he was "somewhat knocked out on his feet."

INVESTIGATIVE MEMORANDUM
PAGE 2

Sgt. Bryant stated that when he arrived he noted that Officer Cobb was injured and bleeding from the back of the head. Officer Cobb was escorted from the Unit to receive medical attention. Sgt Bryant stated that he and Officer Middleton continued to gas inmate Doughty, trying to gain control. Sgt Bryant stated that they managed to take Doughty to the floor. Sgt Bryant stated that Doughty was handcuffed and he and Officer Middleton escorted Doughty outside the Unit where he was turned over to Sgt Wiggins, the Yard Officer. Sgt Bryant stated that he, Officer Middleton and inmate Doughty fell through the door going to the outside.

Officer Middleton stated that inmate Doughty was out of control, swinging a lock on a string and hit Officer Cobb in the back of the head. Sgt. Bryant responded to assist in getting Doughty under control. Officer Middleton stated that they continued to gas Doughty and managed to take Doughty to the floor. Officer Middleton stated that they handcuffed Doughty and escorted Doughty outside the Unit where they turned him over to Sgt Wiggins. Officer Middleton initially stated that he did not see any blood; however, in his written statement, he stated that he and Sgt. Bryant saw the laceration on Doughty's head when they were lifting him to his feet after they had placed the cuffs on him inside the Unit. Officer Middleton stated that he did not know what all is in his written statement because he had another Officer (Lt. Washington) write his statement for him.

Sgt. John Wiggins was interviewed by Investigators Hamer and Orr and stated that he responded to the front of the Unit where he received inmate Doughty from Officer Middleton. Sgt Wiggins stated that Doughty was bleeding from the head area and leaning over forward when he took possession of him. Sgt Wiggins stated that he took Doughty by the arm and escorted him to Medical. Medical personnel took one look at the injury and told him to call #911. Sgt Wiggins stated that Doughty was transported to Coastal Medical Center by ambulance and admitted to the hospital.

Inmate Lorenzo Anderson, SCDC #291861, stated that he saw inmate Doughty hit Officer Cobb with the lock on the string. Anderson stated hat he did not see the officers or the inmate fall down; however, when he went outside he saw plenty of blood.

Inmate Andrew Bason, SCDC #255311, stated that he saw Doughty hit Officer Cobb in the head with the lock on a string. Bason stated that as Doughty was being escorted from the unit he did not see any blood. Bason stated that when he went outside approximately five minutes later he saw "a nice bit of blood" on the outside of the Unit on the walkway.

Inmate Glenn Brown, SCDC #310492, stated that he saw Doughty charge at Officer Cobb, striking him in the back of the head with the padlock. Brown believes that Doughty's head hit the bench on the rock when he was taken to the floor. Brown stated that Doughty was still resisting and stumbled and fell against the wall. Doughty also hit his head outside the Unit when Wiggins came up to get him.

INVESTIGATIVE MEMORANDUM
PAGE 3

Inmate Billy Watson, SCDC #249854, stated that both officers took inmate Doughty out the door and Doughty fell down outside the Unit. Watson stated that there was a lot of blood approximately five steps from the exit door, outside. The officers did not have a good grip and Doughty went down head first.

Samples were taken from a blood/hair stain on the wall outside the Unit approximately five feet up from the ground and taken to SLED for analysis. SLED confirmed that the blood/hair was a match for inmate Doughty.

The evidence indicates that inmate Doughty struck the unit wall. Neither Officer Middleton nor Sgt. Bryant stated that Doughty hit the wall at any time while they were escorting him.

Nurse Davis stated that inmate Doughty received approximately 37 staples to the outside of the head area and approximately eight (8) stitches to the inside of the head area. Davis stated there was a possibility of nerve damage.

On September 24, 2008, Judge Brantley issued warrants for Sgt Johnnie Bryant and Officer John Middleton for Assault and Battery with Intent to Kill and Misconduct in Office in reference to their alleged assault of inmate Doughty.

On September 25, 2008, the Jasper County Sheriff's Office served the warrants on Sgt. Johnnie Bryant. He was booked into the Detention Center and a bond hearing held.

On September 29, 2008, the Jasper County Sheriff's Office served the warrants on Officer John Middleton. He was booked into the Detention Center and a bond hearing held.

On October 27, 2008, Judge Brantley held preliminary hearings for Sgt Johnnie Bryant and Office John Middleton. Both cases were bound over for General Sessions Court.

S/Debra G. Barnwell

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

EMPLOYEE CORRECTIVE ACTION

Employee Name: Tobato Bryant SS#: [redacted]

Division/Institution: Ridgeland Correctional

REVIEW MEETING

Meeting Date: March 10, 2011 Time: 9:00 am Location: Warden's Office

Alleged Violation: 250-Use of Unnecessary and/or Excessive Date of Incident: August 17, 2009
Force, 260-Making False Statements During the Course of an Official Investigation,
190-Falsification of Official Documents

Charging Party: C. Anthony Burton, A/W Operations Date: March 23, 2011

Reprimanding Authority: Travis Cohen, Warden Date: March 23, 2011

Receipt of Notification
Employee Signature: _____ Date: _____

_____ I choose to waive the 24-hour advanced notice of the review meeting
Employee Signature: Date:

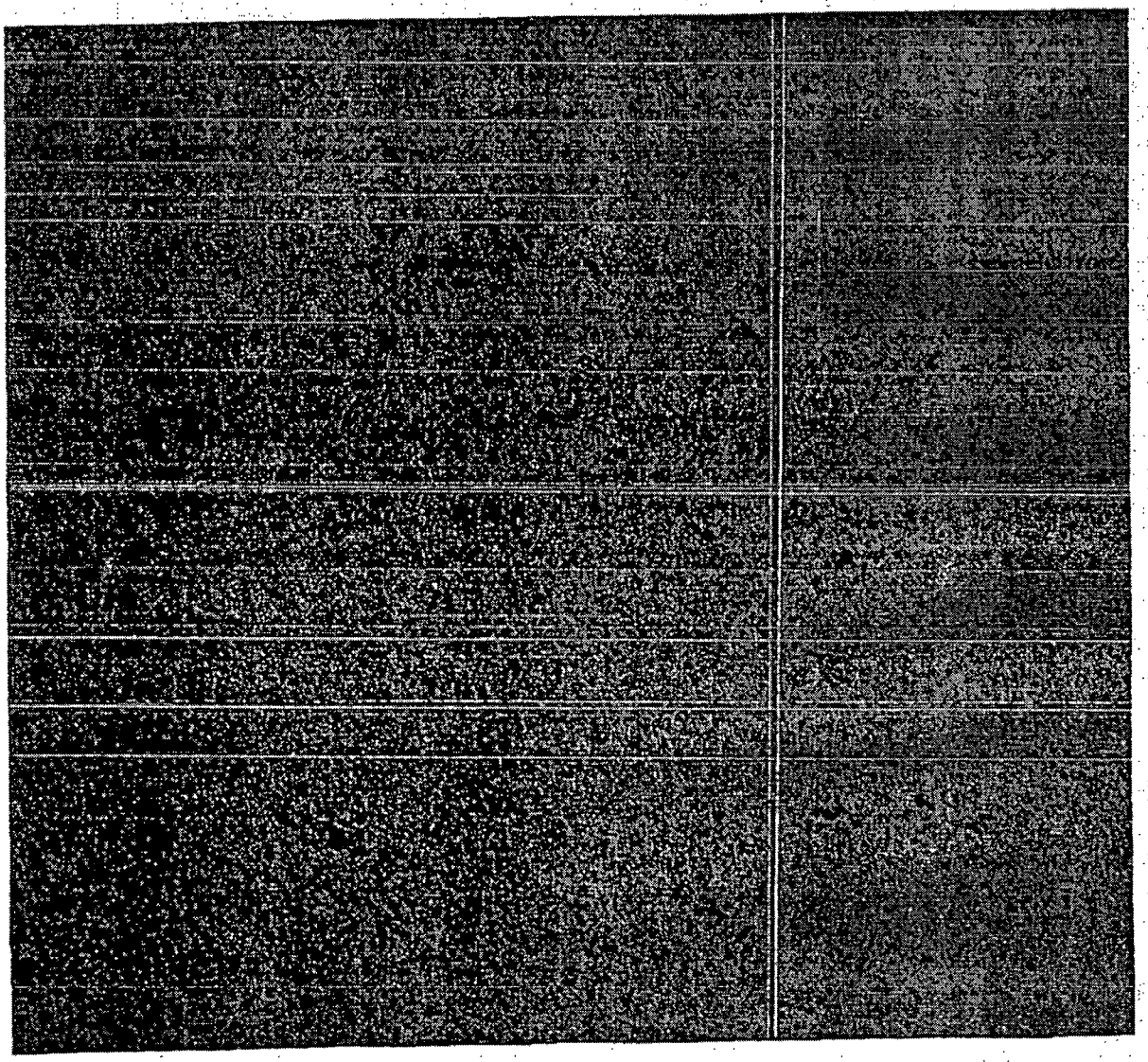


EXHIBIT C

South Carolina Department of Corrections

MARK SANFORD, Governor
JON OZMINT, Director

August 25, 2008

Johnny Br nt
48 Bryant . l.
Hilton Hea Is., SC 29926

I have rec ved notification from the Division of Investigations that you are currently being inve gated for an alleged possible violation(s) of SCDC Policy. You are currently being inve igated for violation of Agency Policy ADM-11.04, Employee Corrective Action, U: of Unnecessary and/or Excessive Force. Due to the serious nature of the allegation(and in accordance with SCDC Policy Adm-11.04, Suspensions, I have no alternative ut to administratively suspend you without pay effective immediately in accordanc with the aforementioned policy.

You are r ponsible for notifying the Agency immediately upon any change in your residence phone number. Until the investigation is finalized, you will also need to make your lf available to be interviewed by the Division of Investigations or the State Law Enfor ment Division. When results are completed, you will be notified.

If you ch se to appeal this action through the Agency's Employee Grievance and Appeals p cess you will need to contact the Office of Employee Relations within fourteen (1) calendar days from receipt of this letter.

If you hav any further questions, please contact Human Resources or the Division of Investigati ns.

LeVern Cohen

LeVern Cohen, Warden

CC: Em loyee Relations
Hu an Resources
Fil

S/ Johnny Bryant
Johnny I yant

Date/ 8-28-08

EXHIBIT D

South Carolina Department of Corrections

MARK SANFORD, Governor
JON OZMINT, Director

March 18, 2010

Ms. Claire Pimentel
Savannah Technical College
The Peace Officer Academy
5717 White Bluff Road
Goodman Hall, Room 1125
Savannah, Georgia 31405

Dear Ms. Pimentel:

As per our telephone conversation today and based on the signed authorization for release of information from Mr. Johnnie Lee Bryant, the following information is provided regarding Mr. Bryant's employment.

Mr. Bryant was hired with the South Carolina Department of Corrections October 11, 1999 and is currently employed in the capacity of a Correctional Officer II (Sergeant II) at our Ridgeland Correctional Institution. However, Mr. Bryant was suspended August 28, 2008, and remains on suspension status at this time with the South Carolina Department of Corrections.

Mr. Bryant was certified through the South Carolina Department of Corrections' Training Academy December 7, 2005; however, his certification is currently out of date due to his suspension and not being able to attend required classes to maintain his certification status.

I hope this information will be of assistance to you. Please do not hesitate to contact me if you have additional questions.

Sincerely,

Patricia S. Thrailkill

Patricia S. Thrailkill
Assistant Director
Division of Human Resources

pst

RECEIVED
MAR 22 2010
C Pimentel

-DRAFT W SC DOC-

-131-

SAVANNAH TECHNICAL COLLEGE

SCANNED

March 23, 2010

Mr. Johnnie Lee Bryant
50 Bryant Road
Hilton Head, SC 29926

Dear Mr. Bryant:

There continue to be problems regarding the processing of your Georgia P.O.S.T. *Council Pre-Service Application for Certification.* Pursuant to a request to the South Carolina Department of Corrections, regarding the status of your certification in South Carolina, I am in receipt of a letter (copy attached) which states that you are **currently** employed by the Ridgeland Correctional Institution. However, the letter also states that you were suspended in August, 2008, and that you **remain** "on suspension status at this time". Accordingly, I am unable to recommend your attendance to P.O.S.T. in the Basic Law Enforcement Certification training program until such time as your suspension status has been cleared.

I am sorry for any inconvenience this may have caused but, the obvious problem which exists between you and your employer, must be resolved before the process can move forward.

Sincerely,

Larry J. Stubbs
Director
The Peace Officer Academy

EXHIBIT E

WITNESSES

amer/SCDOC

384

EST WARRANT NUMBER

752

ON OF GRAND JURY

TRUE BILL
NO BILL
FOREMAN
DATE 11/27/09

erson of Grand Jury

ICT

erson of Pelit Jury

0888

DOCKET NO. 2008GS2700700

The State of South Carolina

County of Jasper

COURT OF GENERAL SESSIONS

January Term 2009

THE STATE

vs.

5/14/2009
Johnnie Bryant

Indictment for

Public / Public official, misconduct in office

SC Code: 08-01-0080
CDR Code:0115

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I

Hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

TRUE COPY
MARGARET BOSTICK
CLERK OF COURT
JASPER COUNTY, SC
BY:
DATE:

1331

South Carolina Department of Corrections

NIKKI R. HALEY, Governor
WILLIAM R. BYARS, JR., Director

April 19, 2011

CERTIFIED MAIL 7008 2810 0001 6302 3254

7008 2810 0001 6302 3254

Marshall L. Horton
Attorney at Law
PO Box 3766
Bluffton, South Carolina 29910

RE: Johnnie L. Bryant

Dear Mr. Horton:

This is to confirm receipt of Johnnie Bryant's Grievance Report, received in the Employee Relations Branch on April 15, 2011, via facsimile, in which he is appealing his termination.

In compliance with the SCDC Employee Grievance and Appeals Policy, his grievance has been forwarded to the Office of General Counsel for an investigative review. The attorney assigned to his case will contact your office to schedule a personal interview and will conduct a non-adversarial fact-finding conference, as provided by policy. The investigating attorney will forward a summary report and recommendation to the Director, Division of Operations. A determination will be made to uphold, reverse or modify the action taken.

If the decision does not resolve the matter to his satisfaction, you may contact the Employee Relations Branch, within five (5) calendar days from receipt of the response and request the grievance be referred to the Director, South Carolina Department of Corrections. The Director's response is the Agency's final decision of the appeal.

Should the matter not be resolved to his satisfaction at the Agency level, you may appeal to the State level within ten (10) calendar days of receipt of the Director's decision or after forty-five (45) calendar days or before fifty-five (55) calendar days of the initial filing of the grievance. Failure to comply with these time limits will result in forfeiture of his rights for further appeal at the State level (refer to SCDC Policy ADM-11.02, "Employee Grievances and Appeals").

The Agency is to complete its internal grievance process within forty-five (45) calendar days from receipt of the grievance report. **However, if you do not receive a response within that period of time, consider it an adverse decision.** To appeal an adverse decision, you must proceed to the State level by contacting the Alternative Dispute Resolution program with the Office of Human Resources, 8301 Parklane Road, Suite A220, Columbia, South Carolina 29223.

All grievance correspondence should be sent "Certified Mail-Return Receipt Requested". This verifies compliance with deadlines. It is your responsibility to provide a current mailing address and take any action necessary to ensure that he is properly notified of the Agency's finding at each step of the grievance process. Missing a deadline or failing to meet with the Agency's attorney will not be excused if you neglect to provide the Agency a current address or failed to retrieve certified mail.

If you have any questions pertaining to the SCDC Grievance and Appeals Policy which you received when provided the Grievance Report, or if we can be of further assistance, please contact the Employee Relations Branch, at (803) 896-8527.

Sincerely,

Robin M. Gracien
Employee Relations Branch
Division of Human Resources

cc: Robert Ward
Bart Vincent
LeVern Cohen
Johnnie L. Bryant
Grievance File #1148

South Carolina Department of Corrections

NIKKI R. HALEY, Governor
WILLIAM R. BYARS, JR., Director

Office of the Director for Operations

June 2, 2011

RECEIVED
JUN 03 2011
EMPLOYEE RELATIONS

CERTIFIED MAIL – 7008 2810 0001 6302 6736
Mr. Marshall L. Horton, Esquire
Attorney at Law
Post Office Box 3766
Bluffton, South Carolina 29910

RE: Employee Grievance of Johnnie L. Bryant, Grievance #1148

Dear Mr. Horton:

This is in response to your client's Johnnie L. Bryant, grievance which was filed on April 15, 2011, via facsimile with the Employee Relations Branch, concerning his termination from his Correctional Officer II (Sergeant) position with Ridgeland Correctional Institution for violations of SCDC Policy ADM-11.04 (OP), Employee Corrective Action, Code Level Number 250, Use of Unnecessary and/or Excessive Force, Code Level Number 260, Making False Statements during the Course of an Official Investigation and Code Level Number 180, Falsification of Official Documents.

As required by the South Carolina Department of Corrections' Employee Grievance and Appeals Policy, Mr. Bryant's grievance was referred to the SCDC General Counsel's Office for an Investigative Review. The purpose of the Office of General Counsel's review was to provide me, the Director for Operations, with a summary report and recommendation. At the same time, said grievance was forwarded to my office for review as I await the General Counsel's findings.

The Office of General Counsel has now reviewed all the facts in this matter and has provided me with the aforementioned report. Their review revealed that your client's termination was within SCDC Policy and State Human Resources regulations. Specifically, even though it appears that your client was outside with a clear view of the inmate, your client failed to provide a statement to explain how a significant amount of Inmate Doughty's blood and hair was smeared against the wall. Additionally, your client's explanation for the inmate's head injury—that Doughty was injured either during takedown or as he accidentally fell through the dorm's door—is simply not consistent with photographs of the injury and the location of the blood.

South Carolina Department of Corrections

NIKKI R. HALEY, Governor
WILLIAM R. BYARS, JR., Director

April 26, 2011

CERTIFIED MAIL
RETURN RECEIPT

Marshall L. Horton, Esq.
P.O. Box 3766
Bluffton, S.C. 29910

RE: **EMPLOYEE: Johnnie L. Bryant**
EMPLOYEE GRIEVANCE #1148
INSTITUTION: Ridgeland C I

Dear Mr. Horton:

Please be advised that an investigative review meeting in the matter of the above referenced Employee Grievance has been scheduled for **May 5, 10:00 a.m. at S.C. Department of Corrections, Room 311, Headquarters Administration Complex, 4444 Broad River Road, Columbia, SC.**

Sincerely,

Christopher Florian

CF/db

cc: Robert Ward
Robin Gracien
E/G File #1148

RECEIVED
APR 28 2011
EMPLOYEE RELATIONS

NIKKI R. HALEY, CHAIR
GOVERNOR

CURTIS M. LOFTIS, JR.
STATE TREASURER

RICHARD ECKSTROM, CPA
COMPTROLLER GENERAL

HUGH K. LEATHERMAN, SR.
CHAIRMAN, SENATE FINANCE
COMMITTEE

W. BRIAN WHITE
CHAIRMAN, HOUSE WAYS AND MEANS
COMMITTEE

ELEANOR KITZMAN
EXECUTIVE DIRECTOR

BCB

SC BUDGET AND CONTROL BOARD

Human Resources Division
Samuel L. Wilkins
DIRECTOR

803-896-5300
FAX 803-896-5050

July 11, 2011

Mr. Marshall L. Horton
Horton Law Firm, L.L.C.
Post Office Box 3766
Bluffton, South Carolina 29910

Ms. Robin M. Gracien, Chief
Employee Relations Branch
Division of Human Resources
S.C. Department of Corrections
4444 Broad River Road
Columbia, South Carolina 29210

Re: Johnnie L. Bryant v. South Carolina Department of Corrections (SCDC)

Dear Mr. Horton and Ms. Gracien:

The State Human Resources Director has determined that jurisdictional requirements have been met under the State Employee Grievance Procedure Act concerning the appeal of Johnnie L. Bryant v. SCDC. A hearing is scheduled before the State Employee Grievance Committee on **August 23, 2011, at 9:00 AM, 8301 Parklane Road, 3rd Floor Hearing Room, Columbia, South Carolina.** A mediator who has been assigned by the State Human Resources Director will meet with both parties prior to the hearing in an effort to resolve the appeal, avoiding the additional time and costs that a hearing requires. To accomplish a timely resolution at this stage, it is essential that the parties or their representatives attending a mediation conference have full authority to negotiate and recommend settlement.

The mediation effort should not interfere with the timely preparation and exchange of necessary information leading to the date of the hearing before the Committee. The State Employee Grievance and Appeal Regulations contain specific time frames for submitting documents, requesting subpoenas, and exchanging witness lists. These regulations have the force and effect of law and both parties must comply with them, regardless of the ongoing attempt to resolve the appeal by mediation. Therefore, the appeal process leading up to the scheduled hearing date does not stop unless a mediation agreement is signed by both parties prior to the hearing date.

If the appeal is not resolved through mediation, the employee has the burden to establish, at the hearing before the Committee, that the agency's decision to discipline the employee is improper based upon §8-17-340(E) of the S.C. Code of Laws of 1976, as amended.

The Administrative Procedures Act in §1-23-320 of the S.C. Code of Laws requires that both parties to an appeal be afforded a statement of the matters asserted. This letter is intended to comply with that law.

Mr. Bryant contends:

1.) he was not afforded due process at the March 30, 2011 corrective action hearing held at the Ridgeland Correctional Institute (RCI);
2.) he arrived at RCI with his attorney on March 30, 2011, and was told by Warden LaVern Cohen that his attorney would not be permitted to attend the corrective action hearing;
3.) both he and his attorney left RCI because he was going to be deprived of his right to counsel;
4.) he was not sufficiently informed of the nature of the evidence that Warden Cohen planned to introduce at the corrective action hearing;
5.) he did not use excessive force on an SCDC inmate;
6.) he acted honorably in his rescue of a fellow corrections officer from a vicious attack;
7.) there is no evidence he provided any false statements;
8.) the Solicitor's Office entered a *Nolle Prosse* for all criminal charges against him; and
9.) he has not done anything to justify any corrective action being taken against him.

SCDC contends:

1.) on August 25, 2008, Mr. Bryant was placed on administrative suspension without pay pending allegations of excessive use of force on an SCDC inmate during an incident at RCI on August 17, 2008;
2.) Mr. Bryant was subsequently arrested and charged with Assault and Battery with Intent to Kill and Misconduct in Office;
3.) the internal SCDC investigation revealed that the SCDC inmate sustained a severe head wound that required hospitalization, 37 staples, and possible nerve damage;
4.) while the criminal charges against Mr. Bryant were eventually dropped, the investigative findings support the need for administrative action;
5.) Mr. Bryant was served with corrective action for violation of SCDC Policy ADM-11.04, "Employee Corrective Action," Item 250, Use of Unnecessary and/or Excessive Use of Force, Item 260, Making False Statements During the Course of an Official Investigation, and Item 180, Falsification of Official Documents;
6.) given the serious nature of Mr. Bryant's actions, termination was recommended; and
7.) Mr. Bryant was terminated effective close of business March 30, 2011.

Prior to the hearing the employee is requested to identify and state why, on the enclosed Grounds for Appeal Form, which portions of §8-17-340(E) (see enclosure) would require the Committee to change the agency's disciplinary action. The Grounds for Appeal Form should be returned to the Human Resources Division, 8301 Parklane Road, Suite A220, Columbia, South Carolina 29223 and received no later than seven calendar days before the date of the Committee hearing.

All documents submitted concerning this appeal, which could possibly include polygraph examination results, will be forwarded to the Committee for review approximately one week prior to the hearing date. All objections raised by either party to these documents before transmittal to the Committee, including objections to any polygraph examination results, must be made to this office prior to that time. This time frame, however, will not preclude appropriate evidentiary objections from being raised by either party at the hearing.

Please refer to our website at www.ohr.sc.gov/OHR/OHR-commappeal.phtm for further information regarding the State Employee Grievance Procedure Act; the State Employee Grievance and Appeal Regulations; a copy of the Witness and Representative forms; a copy of the Grounds for Appeal form; a flowchart for the steps in the Grievance Committee process; and a sample opening statement. If you do not have internet access, please contact Mr. Joseph Miller at (803) 896-5088 for a copy of the State Employee Grievance Procedure Act, the State Employee Grievance and Appeal Regulations, and the forms listed above.

Please call me if you have any questions.

Sincerely,

Terry M. Baggott
Managing Partner
Alternative Dispute Resolution Program

Enclosure

c: Judge William R. Byars, Jr. (without enclosure)

STATE EMPLOYEE GRIEVANCE COMMITTEE

~Grounds for Appeal Form~

Please identify which ground(s) listed below from §8-17-340(E) of the S.C. Code of Laws you contend would require the Committee to change the agency's decision. In addition, state why these grounds are relevant to your appeal.

_____

_____

_____

_____

_____

_____

(E) The committee may sustain, reject, or modify a grievance hearing decision of an agency as follows:

(1) In cases involving actual or threatened abuse, neglect, or exploitation, to include those terms as they may be defined in Section 43-35-10 or 20-7-490, of a patient, client, or inmate by an employee, the agency's decision must be given greater deference and may not be altered or overruled by the committee, unless the covered employee establishes that:

(a) The agency's finding that the covered employee abused, neglected, or exploited or threatened to abuse, neglect, or exploit a patient, client, or inmate is clearly erroneous in view of reliable, probative, and substantial evidence;

(b) The agency's disciplinary action was not within its established personnel policies, procedures, and regulations; or

(c) The agency's action was arbitrary and capricious.

(2) In all other cases, the committee may not alter or overrule an agency's decision, unless the covered employee establishes that the agency's decision is one or more of the following and prejudices substantial rights of the covered employee:

(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.

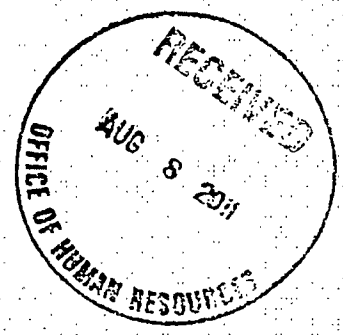
Please return this from to: Human Resources Division
8301 Parklane Road, Suite A220
Columbia, South Carolina 29223

Also, please send a completed copy of this document to the agency.

South Carolina Department of Corrections

NIKKI R. HALEY, Governor
WILLIAM R. BYARS, JR., Director

August 8, 2011



Hand-Delivered
State Employee Grievance Committee Chairman
c/o Ms. Heather Keever
8301 Parklane Road
Suite A220
Columbia, SC 29223

Re: Johnnie L. Bryant v. S.C. Department of Corrections

Dear Committee Chairman:

Please find enclosed additional documents which SCDC respectfully requests be included in Committee Exhibit 1 in the above referenced case. I am also enclosing a CD containing a digital copy so the images can be presented in color to the committee. Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,

Christopher Florian
SCDC Staff Attorney

cc: Marshall Horton (via fax to (843)757-6191 and US mail)

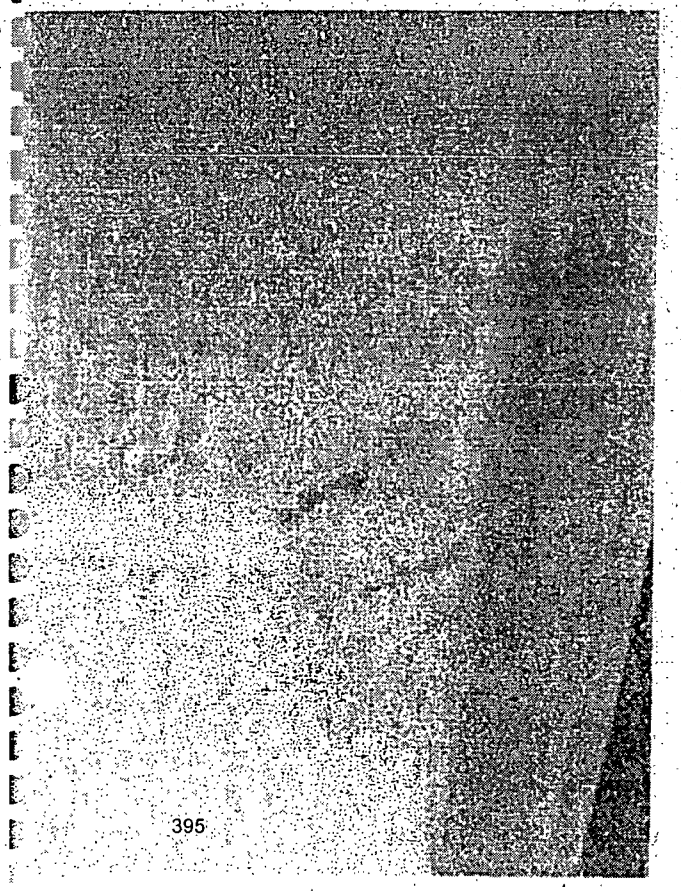


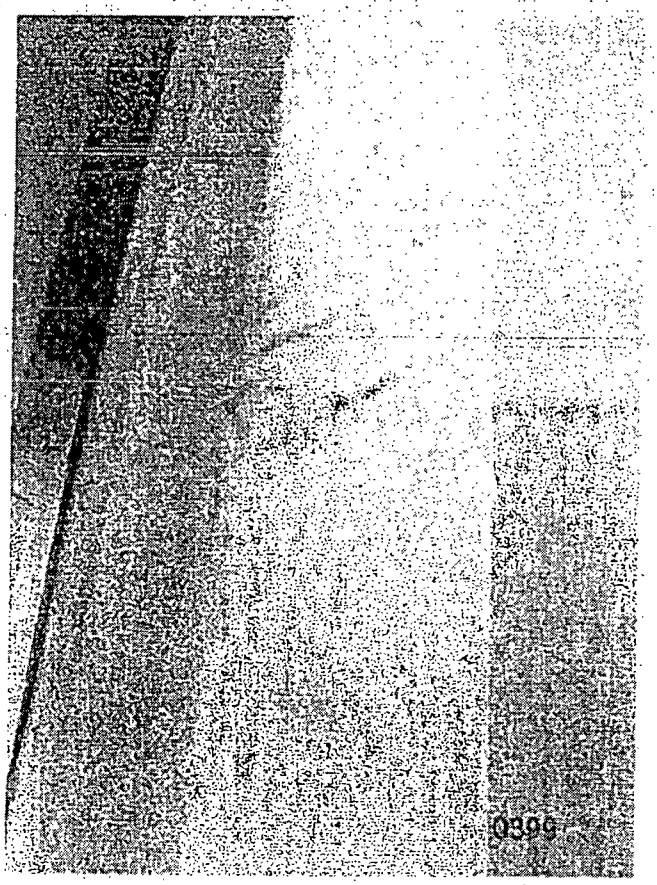


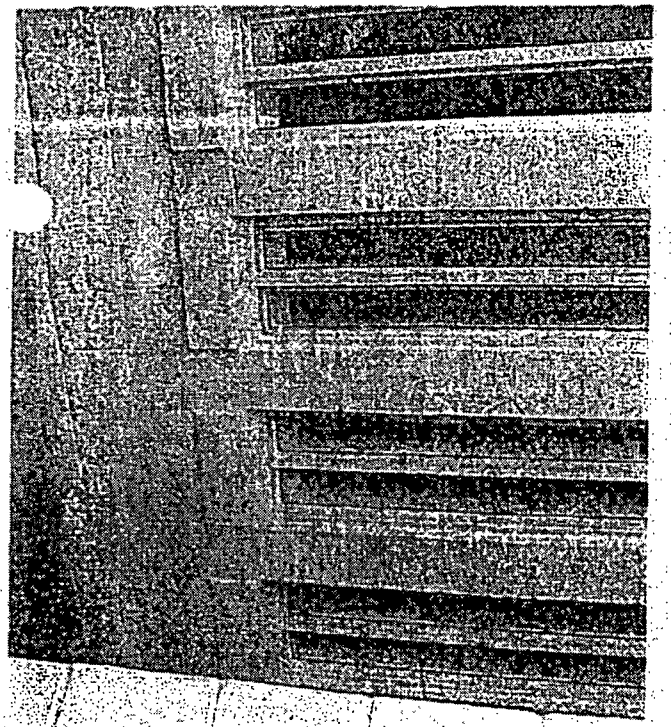




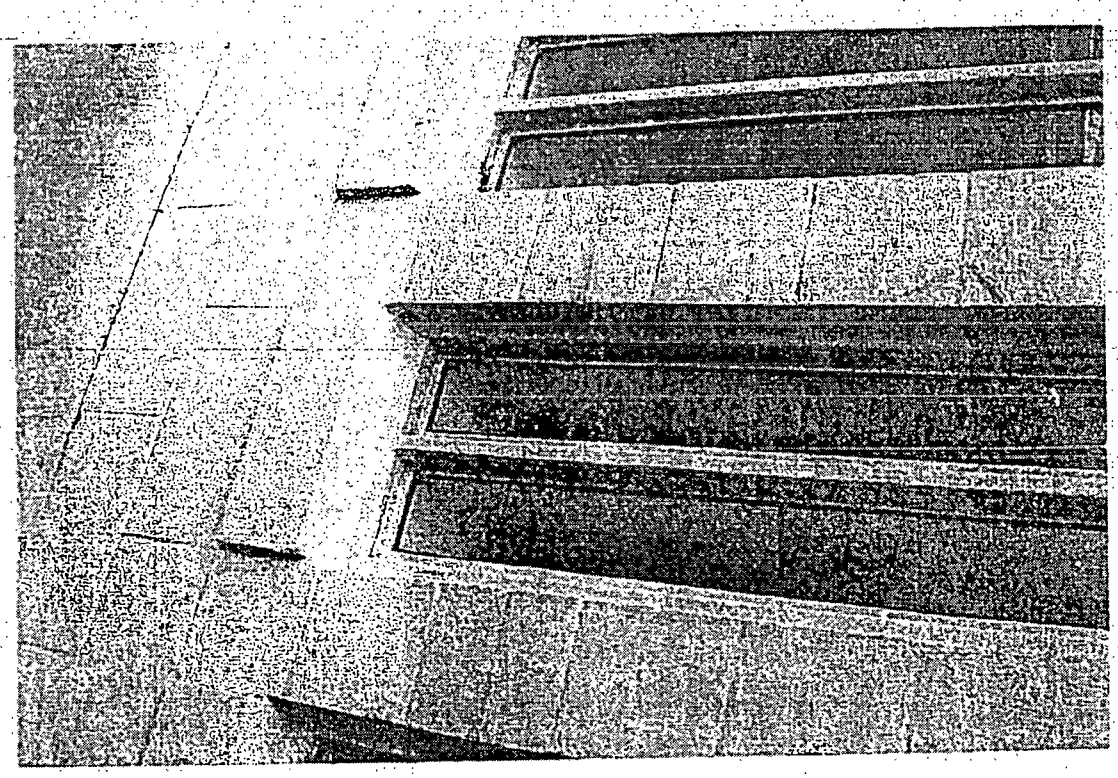


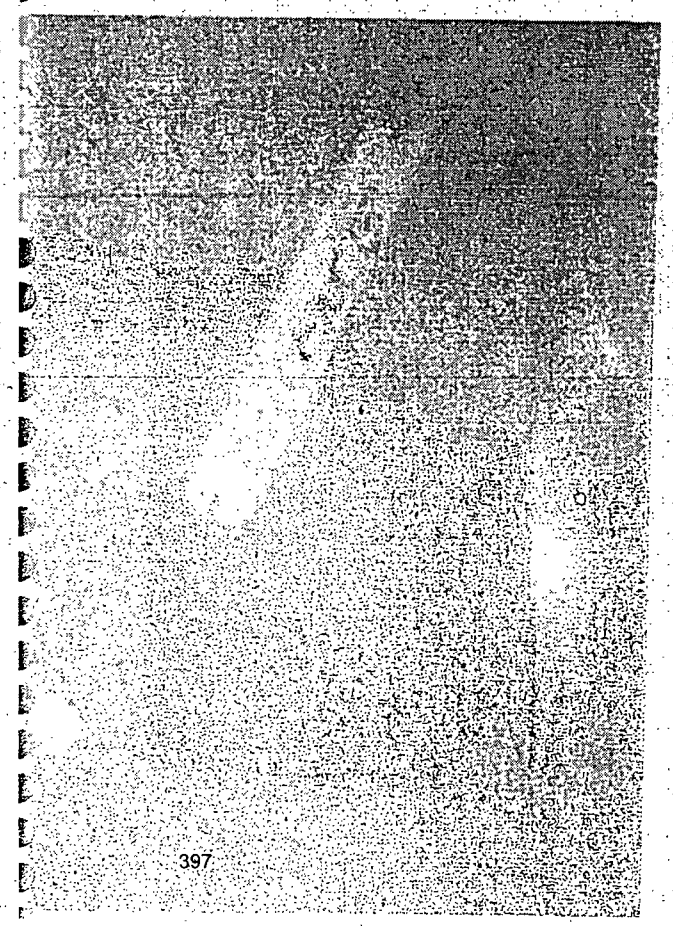












AGENCY'S EXHIBIT 1

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INCIDENT REPORT

008-08-088

Page 1 of 2

Institution/Center: RIDGI AND CORRECTIONAL INSTITUTION	Date of Report: 08-17-08
Reporting Official (Full N ne): JOHNNIE BRYANT, SGT.	Time of Report: 6:30PM
Employee ID #: 028937	Date of Incident: 08-17-08
Location of Incident: BE/ IFORT "B" WING	Time of Incident: APPROX. 4:30PM

Inmate(s)/Resident: SCI	:#	Age	Sex	Race	Employee(s)/Witnesses Involved:
1. DOUGHTY, THOMA	238012		M	W	1. OFC. MIDDLETON, JOHN
2.					2. OFC. COBB, KENNETH
3.					3. SGT. WIGGINS, JOHN
4.					4.
5.					5.

On the above date and a roximate time: I, SGT. J. BRYANT RESPONDED TO THE BEAUFORT "B" WING AS A FIRST RESPONDER AND OBSI VED OFC. K. COBB BLEEDING FROM THE BACK OF HIS HEAD. I TOLD OFC. K. COBB TO REPORT TO MEDIC/ . I THEN OBSERVED INMATE DOUGHTY, THOMAS W/M #238012 SWINGING A STRING WITH A PAD LOCK TIEI O ONE END. I GAVE INMATE DOUGHTY SEVERAL DIRECTIVES TO DROP THE WEAPON. INMATE DOUGHTY REI SED ALL DIRECTIVES AND CONTINUED TO SWING THE WEAPON WHILE AGGRESSIVELY APPROACHING ME AND TELLING, "Y'ALL CAUSED THIS SHIT!" I THEN ADMINISTERED ONE SHORT BURST OF TOP COP CHEMICAL MU ITIONS FROM CANISTER #813 TO THE FACIAL AREA OF INMATE DOUGHTY. INMATE DOUGHTY STILL CONTI UED WITH HIS AGGRESSIVE BEHAVIOR. OFC. J. MIDDLETON THEN ADMINISTERED A SHORT BURST OF TOP C CHEMICAL MUNITION TO INMATE DOUGHTY'S FACIAL AREA. INMATE DOUGHTY STILL DID NOT CEASE H ACTIONS. AT THAT TIME, I AND OFC. J. MIDDLETON KNEW THE CHEMICAL MUNITIONS WERE INEF CTIVE AGAINST INMATE DOUGHTY. I THEN MAINTAINED EYE CONTACT WITH INMATE DOUGHTY TO (VE OFC. J. MIDDLETON THE OPPORTUNITY TO GO AROUND TO THE RIGHT SIDE OF INMATE DOUGHTY, WH E I REMAINED ON THE LEFT SIDE OF INMATE DOUGHTY. INMATE DOUGHTY KEPT HIS EYES ON ME WHILE TILL SWINGING THE WEAPON AND DID NOT SEE OFC. J. MIDDLETON APPROACHING HIM FROM THE RIGHT S E.

Signature: Johnnie Br ont Title: SGT.

Evidence:

Disposition of Evidence:

Supervisor's Comments: ursued to Major Sabb
For Doughty was rested in regards to Fo
was transported Coastal Carolina Medical
Printed Name: Buzy Wand Center For Treatment

Signature: T e: Date/Time: 8/17/08 7pm
Buzy Wands
Major/Responsible Authority: 7pm
For enforcem
forward to I D. Homer for further
investigation.
rinted Name: Christop rfebb
ignature: Fi Date:
Major 8/19/08

STG Related – Refer to STG Committee
( ) Yes ( ) No ( ) Unknown

This incident is DRUG related
( ) Yes ( ) No ( ) Unknown

Responsible Authority / Action Taken
( ) Informal Resolution
( ) Administrative Resolution
( ) Refer to Disciplinary Hearing

DC 19-29A (Rev. January 2005

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INCIDENT REPORT SUPPLEMENT

Institution/Center:	RI	GELAND CORRECTIONAL INSTITUTION			Date of Report:	08-17-08
Reporting Official:		SGT. JOHNNIE BRYANT			Date of Incident:	08-17-08
Location of Incident:		BEAUFORT "B" WING			Time of Incident:	APPROX. 4:30PM
Inmate(s)/Resident(s)		SCDC#	Age	Race Sex	Employee(s) Involved	
1. DOUGHTY, THOMA		238012		W M.	1.OFC. JOHN MIDDLETON	
2					2.OFC. KENNETH COBB	
3.					3.SGT. JOHN WIGGINS	

Details of Incident: JRING THE TAKEDOWN PROCEDURE, OFC. J. MIDDLETON APPROACHED INMATE DOUGHTY FROM THE R iHT REAR AND I APPROACHED INMATE DOUGHTY FROM THE LEFT SIDE. AFTER OFC. J. MIDDLETON GOT CONT OL OF INMATE DOUGHTY'S RIGHT ARM, I GAINED CONTROL OF THE LEFT ARM AND WE SIMULTANEOUSLY PLA ED INMATE DOUGHTY TO THE FLOOR. I, SGT. J. BRYANT, THEN PLACED THE HANDCUFFS ON INMAT DOUGHTY. WE THEN ESCORTED INMATE DOUGHTY TO THE OUTSIDE OF THE UNIT WHERE SGT. J. WIGGIN ASSUMED CONTROL OF THE INMATE. INMATE DOUGHTY WAS ESCORTED TO MEDICAL FOR TREATMENT OF IN JRIES SUSTAINED DURING THE TAKEDOWN. BEGINNING WEIGHT OF CHEMICAL MUNITIONS CANISTER 13 WAS 142 GRAMS, ENDING WEIGHT WAS 118 GRAMS, TOTAL CHEMICAL MUNITIONS USED WAS 24 GRAMS.

Case# 92-024

AGENCY'S EXHIBIT 2

South Carolina Department of Correction
Division of Investigation
(Voluntary Statement)

Page ___ of ___

Statement Of Johnnie Bryant
Address or Living Ass ignment 50 Bryant Road H-H SC 29924
Home Phone # 843 681 5323 Work Phone # 803 726 6885
I can or cannot read o write.
This statement had be written by Johnnie Bryant (CST)

This statement is give on August 20, 2008 in my present.
At Ridgeland Correctional Institution (Date) at 11:49 Am (Time)
(Location)

(JB) On August 12, 2008 at Ridgeland Correctional Institution at approximately 4:30 pm I CST Johnnie Bryant responded to the Confinement "B" Wing and observed OFC Kenneth Cobb bleeding from the back of his head. I told OFC K. Cobb to report to medical. I then escorted Inmate Thomas Doughty W/M # 238012 serving a 5 year sentence from the "B" Wing with a Padlock tied to one end. I gave several directives to drop the weapon. Inmate Doughty refused all directives and continued to swing the weapon while approaching me and yelling "Y'all cowards". This shift, I Thomas Johnson #811 carried one sharp instrument of Top Cop Chemical Munitions from Johnson #811 with his aggressive behavior. OFC Johnson #811 could be shot by one of Top Cop Chemical Munitions. I sprayed Inmate Doughty's face with a one second burst of Top Cop Chemical Munitions from OFC J. Riddle #811. I then Inmate Doughty to the floor to restrain him. Inmate Doughty did not cease his actions. I and Inmate Doughty continued to struggle. Inmate Doughty pushed OFC Riddle, fell backwards and Inmate Doughty pushed him to the floor. Inmate Doughty was successfully restrained. I and OFC Riddle escorted Inmate Doughty outside. Following behind Inmate Doughty. While escorting Inmate Doughty outside, I noticed Inmate Doughty was still in possession of the padlock. I CST Bryant ordered Inmate Doughty to drop the padlock. Inmate Doughty complied with my directive by dropping the padlock. I CST Bryant ordered the unit Sergeant to escort Inmate Doughty to the unit shower. I CST Bryant escorted Inmate Doughty to the unit shower. I CST Bryant observed drops of blood on the floor. I CST Bryant escorted Inmate Doughty to the unit shower. I CST Bryant observed drops of blood on the floor. I CST Bryant escorted Inmate Doughty to the unit shower. I CST Bryant observed drops of blood on the floor.

I have read each page of this statement consisting of ___ Page(s), each page of which bears my signature, and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct.
This statement was com ted on the 20 day of August 20 08.

Johnnie Bryant (CST)
Signature of person giving voluntary statement

SWORN TO AND SUB CRIBE TO BEFORE
THIS 20 DAY O August, 20 08
NOTARY PUBLIC FOR SOUTH CAROLINA
My commission Expires January 31, 2012
I certify that I have been given a copy of this statement consisting of ___ page(s)

WITNESS: _____
WITNESS: _____

Signature Acknowledgin Receiving Copy

AGENCY'S EXHIBIT 3

#7A-P245

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INCIDENT REPORT

Institution/Center: Ridgeland Correctional Institution	Date of Report: 8-17-08
Reporting Official: Bryant, Johnnie (SGT)	Time of Report: 6 30 P Approx.
Employee ID #: 028937	Date of Incident: 8-17-08
Location of Incident: Beaufort-B Wing	Time of Incident: 4 30 P Approx
Inmate(s)/Resident: SCDC# Age Race Sex	Employee(s) Witnesses Involved:
1. Doughty, Thomas 238012 W M	1. Middleton, John (OFC)
2.	2. Cobb, Kenneth (OFC)
3.	3.
4.	4.
5.	5.

On the above date and approximate time: I Sgt Johnnie Bryant respond to Beaufort-B Wing an observe OFC Kenneth cobb bleeding from the rear of his head. I told OFC cobb to exit the Beaufort-B Wing and go to medical. I then observe Inmate Thomas Doughty #238012 W/m with a sock swinging it (with a lock inside). I gave Inmate Doughty several directive to drop the sock (with the lock inside) and turn to be cuff. Inmate refuse and began to approach me (Sgt Bryant). I pulled my Tap Cap #813 an administed one burst to the Facial Area. Inmate Doughty continued his actions and refused. (Inmate Doughty) appeared to be on some type of Narcotics. Inmate Doughty look wild. I Sgt Bryant and OFC middleton place the Inmate Doughty on the floor. I cuff Inmate Doughty and Escort the Inmate Doughty out the Unit.

Signature: Title:

Evidence:

Disposition of Evidence:

Supervisor's Comments:

Printed Name:

Signature: Title: Date/Time:

Major/Responsible Authority:

Printed Name:

Signature: Title: Date:

STG Related-Refer to STG Committee

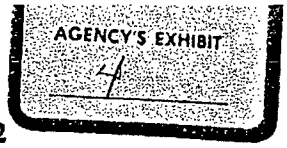
( ) Yes ( ) No ( ) Unknown

This Incident is DRUG related

( ) Yes ( ) No ( ) Unknown

Responsible Authority Action Taken

( ) Informal Resolution
( ) Administrative Resolution
( ) Refer to Disciplinary Hearing



CASE NUMBER: 92-0243/91-0162
BRYANT INTERVIEW, CONTINUED

Sergeant Bryant provided a written statement.

"On August 17, 2008 at Ridgeland Correctional Institution at approximately 4:30 pm. I Sgt Johnnie Bryant responded to the Beaufort "B" Wing as a First Responder and observed OFC Kenneth Cobb bleeding from the back of the head. I told OFC K. Cobb to report to medical. I then observed Inmate Thomas Doughty W/M #238012 swinging a string with a Padlock tied to one end. I gave Inmate Doughty several directives to drop the weapon. Inmate Doughty refused all directives and continued to swing the weapon while aggressively approaching me and yelling, "Y'all caused this shit!" I then administered one short burst of Top Cop chemical munitions from canister #813 to the facial area of Inmate Doughty. Inmate Doughty still continued with his aggressive behavior. OFC John Middleton then administered a short burst of Top Cop chemical munition to Inmate Doughty's facial area. Inmate Doughty did not cease his actions. I and OFC J. Middleton the lowered Inmate Doughty to the floor to restrain him. Inmate Doughty resisted being placed in restraints. After a brief struggle, Inmate Doughty was successfully restrained. I and OFC Middleton while escorting Inmate Doughty outside, Fell coming out of (along with Inmate Doughty) the exit door, because Inmate Doughty still was resisting. We pick Inmate Doughty up Sgt John Wiggins assumed control of Inmate Doughty. When Inmate Doughty lowered his head, I Sgt Bryant notice one or two drops of blood. I Sgt Bryant ran into the Unit to rinse by Facial Area and to finish unlocking the unit."

Signed: Johnnie Bryant (SGT)

THE STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

The Honorable Shirley C. Robinson, Administrative Law Judge

Case No. 2012-ALJ-30-0014-AP

South Carolina Department of Corrections,

Appellant,

vs.

Johnnie L. Bryant,

Respondent.

CERTIFICATE OF SERVICE

I, Molly Crum, Assistant General Counsel of the South Carolina Budget and Control Board, Office of General Counsel, do hereby certify that I have this day served a copy of the attached Record on Appeal on the parties listed below by causing same to be deposited in the United States mail, postage pre-paid, and addressed as follows:

Mr. Marshall L. Horton
The Horton Law Firm
Post Office Box 3766
Bluffton, South Carolina 29910

Mr. Christopher Florian
Deputy General Counsel
S.C. Department of Corrections
4444 Broad River Road
Columbia, South Carolina 29210

Molly Crum

Columbia, South Carolina
July 13, 2012

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge Shirley C. Robinson

Case No.: 12-ALJ-30-0014-AP

South Carolina Department of Corrections,.....Appellant,

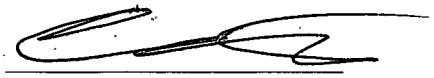
v.

Johnnie L. Bryant,.....Respondent.

CERTIFICATE OF SERVICE

I hereby certify that I have served respondent a copy of the Record on Appeal by depositing a copy of same in the United States Mail, postage prepaid, on January 31, 2014, addressed to the respondent as follows:

Mr. Marshall L. Horton
The Horton Law Firm
Post Office Box 3766
Bluffton, South Carolina 29910



Christopher D. Florian
Deputy General Counsel
S.C. Dept. of Corrections
P.O. Box 21787
Columbia, SC 29221-1787
Attorney for Appellant

CERTIFICATE OF COMPLIANCE

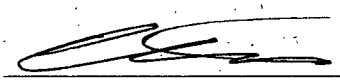
I certify that this Record on Appeal contains only material proposed to be included by the parties and not any other material. The undersigned further certifies that the Record on Appeal complies with the Supreme Court's order of August 13, 2007.

Dated: January 31, 2014

Respectfully submitted,

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

Attorney for Appellant



Christopher Florian
Deputy General Counsel
S.C. Dept. of Corrections
P.O. Box 21787
Columbia, SC 29221
(803) 896-8508