STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Clarence Frazier, Appellant, vs. South Carolina Department of Juvenile Justice, Respondent.	Docket No. 18-ALJ-30-0135-AP **FINAL ORDER**

STATEMENT OF THE CASE

This matter is before the Administrative Law Court (ALC or court) pursuant to an appeal filed by Clarence Frazier (Appellant) challenging the decision of the State Employee Grievance Committee (SEGC or Committee). The Committee upheld the Appellant's termination by the South Carolina Department of Juvenile Justice's (DJJ or Respondent) upon finding that the Appellant failed to establish that his termination prejudiced his substantial rights and met one or more of the elements contained in Section 8-17-340(E)(1) of the South Carolina Code (2019). After careful consideration of the parties' briefs, the record, and the applicable law, the Committee's Final Decision is affirmed.

BACKGROUND

The Appellant was employed by the Respondent as a Correctional Officer from January 5, 2004, until July 27, 2010, when he was terminated, retroactive to June 10, 2010[1], for an incident of alleged misconduct in violation of departmental policies. At the time of his termination, the Appellant held the rank of Sergeant and worked at the Special Management Unit (Santee Unit) at DJJ's Broad River Complex in Columbia.

On June 3, 2010, the date of the alleged misconduct, the Appellant was the Sergeant in charge of the Santee Unit. That day, he encountered two (2) officers, Sergeant William Sumter and Sergeant Moses McFadden, escorting a juvenile to the Santee Unit who had assaulted a Juvenile Correctional Officer (JCO), JCO Fleming, at another location within the Broad River

[1] As discussed *infra*, the Appellant's termination was made retroactive to the date DJJ initially suspended his employment pending investigation into the incident.

Complex. The juvenile reported that, prior to escorting him to the Santee Unit, Sergeant McFadden smashed his head on the ground, causing his mouth to bleed.[2] The juvenile was reportedly being disrespectful and combative with officers over the course of these events. At or around this time, then-JCO Damieon Moody and JCO Jamile Rorie undertook the transport of the juvenile. What transpired next is disputed, however, the juvenile alleged that after he was placed in a small cell and while still in handcuffs, the Appellant and JCO Moody assaulted him – apparently in retaliation for attacking JCO Fleming earlier that day – causing injuries in and around the juvenile's face and head. Shortly thereafter, the juvenile was evaluated by a nurse at the infirmary and was found to have a broken tooth (with fragments of the tooth still lodged in his gums), a fractured nose, and abrasions about his face or neck. The Appellant denied any involvement in the assault.

Following this incident, and per agency policy, DJJ's then-Deputy Director for Rehabilitative Services Jerry Adger contacted the South Carolina Law Enforcement Division (SLED) to request that the incident be investigated. SLED Lieutenant Freddie Pough was assigned to the case and, on June 10, 2010, the Appellant was suspended pending the outcome of the investigation.

In addition to interviewing the juvenile victim,[3] Lieutenant Pough obtained written statements from three (3) other officers who were in the cell with the juvenile, JCO Moody and the Appellant at the time the alleged assault occurred. These statements corroborated the juvenile's allegation that JCO Moody and the Appellant assaulted him. Lieutenant Pough also reviewed surveillance video footage from the Santee Unit. The footage showed the handcuffed juvenile arriving at the Santee Unit escorted by officers, being escorted to his cell by five (5) officers, and an officer carrying a mop and bucket into and out of the juvenile's cell.[4] As a result of his investigation, on July 22, 2010, Lieutenant Pough sought and obtained two (2) arrest warrants for the Appellant, one for Assault and Battery by Mob, 3rd degree, and the other for Misconduct in Office. The Appellant was subsequently indicted by the Richland County Grand Jury on those charges.

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[2] It is unclear from the record whether the juvenile was still bleeding or whether he had any blood on his clothing or person from the earlier event when he arrived at the Santee Unit.

[3] Lt. Pough also attempted to interview the Appellant and JCO Moody; however, they reportedly both invoked their right to remain silent. Therefore, they were not interviewed by Lt. Pough as a part of his investigation.

[4] According to witness statements, the mop and bucket were retrieved, allegedly at the juvenile's request, to clean the cell floor of blood that the juvenile had spit on the ground during the earlier alleged assault by Sergeant McFadden.

On July 27, 2010, Deputy Director Adger terminated the Appellant's employment with DJJ for conduct violative of departmental policy. Specifically, the Appellant's termination letter states that his actions during the June 3, 2010 incident violated DJJ Progressive Employee Discipline Policy B-3.15, Item 13, "[a]buse, neglect, and/or exploitation (physical or psychological) of a juvenile resulting in physical or mental injury"[5]; Item 32, "[e]xcessive and/or inappropriate use of physical force and/or chemical force"; Item 40, "[f]ailure to carry out job responsibilities in security or non-security setting (failure can be related to non-compliance with agency's training requirements)"; Item 42, "[a]ssault on juvenile or other employee or person"; and Item 58, "[w]illful violation of written rules, regulations, policies, and/or local procedural guidelines."[6] Additionally, the letter stated that his conduct was also violative of DJJ's Use of Physical Force Policy H-3.12 for "physical force against a juvenile in an aggressive/non-defensive manner, for aggressive/non-defensive reasons, and/or as a means of punishment."[7] Deputy Director Adger reached this conclusion upon review of the video footage and witness statements, SLED's investigation report, and the Appellant's criminal charges, which he found provided sufficient evidence to terminate the Appellant for abusing the juvenile. However, he did not conduct a hearing or meet with the Appellant to allow him an opportunity to respond to these findings prior to terminating his employment, in accordance with departmental policy.[8]

On July 30, 2010, the Appellant filed a grievance on his termination with the Respondent. Following a hearing on September 8, 2010, DJJ's grievance panel unanimously voted on

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[5] According to DJJ's Alleged Abuse and Neglect of a Juvenile Policy I-3.1, physical abuse is defined as "hitting, striking, slamming, chocking, biting, kicking, slapping, pulling hair, paddling, spanking, spitting, or subjecting to extreme temperatures."

[6] The respective sanctions for a first violation of these policies are as follows: suspension to termination for Item 13, first offense; written reprimand to termination for Item 32, first offense; written reprimand or termination for Item 40, first offense; termination for Item 42, first offense; and written reprimand to termination for Item 58, first offense. However, the Respondent's disciplinary policy states that "[e]xtremely serious offenses may call for termination even in the absence of prior disciplinary actions."

[7] According to DJJ's Use of Physical Force policy H-3.12, Section (F)(2), an "employee can be disciplined for policy violations up to and including termination without waiting for the court system to dispose of any criminal charges and without compromising the criminal case because of management review and a criminal investigation are two separate and distinct processes."

[8] DJJ Investigations Policy I-3.5 (F)(3), states that:

> Prior to the issuance of disciplinary action, management will meet with the employee and allow the employee an opportunity to respond to the findings. At this point, the employee will be given procedural due process and may offer any explanation or mitigating circumstances that he/she feels may have played a role in the incident. This is the employee's chance to offer anything in his/her defense, and the manager should hear whatever the employee has to say, as long as it is offered in an appropriate manner.

September 13, 2010, to recommended that the Appellant's termination be upheld. Thereafter, on September 14, 2010, then-DJJ Chief of Staff Margaret Barber accepted that recommendation and upheld the termination.

On October 8, 2010, the Appellant appealed the Respondent's final decision on his grievance to the State Division of Human Resources (SDHR), requesting a hearing before the Committee. On October 28, 2010, however, the Respondent requested the Appellant's grievance be held in abeyance due to the pendency of his related criminal charges. The Director of SDHR then held the Appellant's grievance in abeyance pending disposition of those charges.

Over six (6) years later, on or around May 4, 2017, the Appellant's grievance was finally allowed to proceed following confirmation that his State charges had been *nol prossed*[9] and that no federal charges were pending against him. Accordingly, on February 14, 2018, the Committee held a hearing to determine whether DJJ properly terminated the Appellant and whether that termination should be upheld. The Appellant and the Respondent were both represented by counsel at the hearing. Additionally, former-JCO Moody testified on behalf of the Appellant at the hearing, and Lieutenant Pough and Deputy Director Adger testified on behalf of DJJ. During the hearing, the Appellant sought to offer evidence demonstrating that the criminal charges levied against him following the incident were specifically *nol prossed*. However, the Respondent objected to any reference to the precise disposition of the Appellant's criminal charges, and the Appellant was only permitted to testify that the charges against him had been resolved.

Following the hearing, on February 20, 2018, the Committee unanimously voted to uphold the Appellant's termination. Thereafter, the Committee issued its written Final Decision reflecting the same on March 12, 2018. In its Final Decision, the Committee found that "[b]ased on the documents, video, and testimony presented at the hearing, . . . substantial evidence [supports DJJ's] decision to terminate the Appellant." Specifically, the Committee concluded that, "while the video footage does not specifically show [the] Appellant strike the juvenile, it also does not exonerate [the] Appellant." It noted that the video showed "that the juvenile was escorted into the Santee Unit in a compliant manner and with no visible blood on his shirt," yet, sometime after the juvenile was placed in the cell, a mop was retrieved to reportedly clean blood from the cell. The Committee

[9] When a case has been *nolle prossed*, the prosecution has made a formal declaration of its intent not to prosecute the case further. *See* BLACK'S LAW DICTIONARY, *Nolle Prosequi* (10th ed. 2014). "It is a judicial determination in favor of [the] accused and against his conviction, but it is not an acquittal, nor is it equivalent to a pardon." *Id.* (citing 22A C.J.S. *Criminal* § 49, at 1 (1989)).

further noted that, subsequent to those events, the juvenile "received emergency medical care for a chipped tooth that was extracted, a laceration to his chin, bruising to his eye, some pain in his nose and surrounding area, and an abrasion and some pain over his collar bone," and underwent a CT scan that "revealed a cracked tooth and a mild fracture of the nasal bones" as well. Accordingly, in light of that evidence and the totality of the circumstances, the Committee determined that "a reasonable mind would conclude that the juvenile was assaulted while in the cell."

To that point, the Committee found "that the statements from [JCO Rorie, Sgt. Sumter, and Sgt. McFadden,] the three other officers present at the incident, all indicate that Appellant and Mr. Moody struck the juvenile in the cell while he was handcuffed." It noted that the Committee found those "statements to be more credible than [the] Appellant's statement and testimony when considering the totality of the other evidence." Consequently, the Committee concluded "that the three statements along with the video footage of the event provide substantial evidence that [the] Appellant did strike the juvenile" during the incident. Since the sanction guidelines for Items 13, 32, 40, 42, 58 of DJJ's Progressive Employee Discipline Policy B-3.15, *supra*, each allow for discipline up to and including termination for a first offense, the Committee, therefore, determined that "[DJJ] acted within the guidelines of its policy in terminating [the] Appellant's employment."

While the Committee considered and conceded the Appellant's claim that "[DJJ] management did not meet with Appellant prior to his termination in accordance with its Investigations Policy," it determined that the violation was harmless. In reaching this conclusion, the Committee found that the apparent procedural deficiency was cured by affording the Appellant an opportunity to be heard by management during DJJ's internal grievance process and during his appeal before the Committee. Moreover, it reasoned that, given the unique circumstances involved and the evidence available at the time, "[DJJ] had enough evidence to immediately terminate Appellant's employment" and, furthermore, that allowing the Appellant to return "to work could potentially expose [DJJ] to another similar situation." Accordingly, the Committee concluded that the Appellant failed to establish that his termination by DJJ erred under Section 8-17-340, or otherwise warranted reversal, and that the termination should therefore be upheld.

Thereafter, on April 5, 2018, the Appellant timely filed a Notice of Appeal with this court.

ISSUES ON APPEAL

I. Did the Committee err in not permitting the Appellant to introduce evidence as to the precise

disposition of his criminal charges stemming from the incident (i.e. that they were *nol prossed*)?

II. Did the Committee err in holding that DJJ's failure to provide the Appellant with a pre-termination hearing, as required by its Departmental policy, was harmless?

STANDARD OF REVIEW

The court has jurisdiction over appeals from the State Employee Grievance Committee, as provided for in Sections 1-23-380(B) and 1-23-600(D) of the South Carolina Code. *See* S.C. Code Ann. § 8-17-340(F) (2019). In such cases, the court sits in its appellate capacity under the Administrative Procedures Act (APA). *See Id.*; S.C. Code Ann. § 1-23-600(D)-(E) (Supp. 2018). Absent alleged irregularities in agency procedure, the scope of the court's review in appellate cases is confined to the record. *See* S.C. Code Ann. § 1-23-380(4) (Supp. 2018); SCALC Rule 36(G).

Section 1-23-380(5) of the South Carolina Code provides the standard of review utilized by appellate bodies, including the ALC, when reviewing agency decisions:

> The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:
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> (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. Ann. § 1-23-380(5) (Supp. 2018); *see also* S.C. Code Ann. §1-23-600(E) (directing administrative law judges to conduct appellate review in the same manner as prescribed in Section 1-23-380).

Substantial evidence is "not a mere scintilla of evidence nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached . . . ." *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981) (citation omitted). 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. Conserv. 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). The limited substantial evidence standard of review is intended only to assure that the agency's action is properly supported and that, consequently, no abuse of delegated authority occurred. *Fast Stops, Inc. v. Ingram*, 276 S.C. 593, 596, 281 S.E.2d 118, 120 (1981) (citation omitted).

In applying the substantial evidence rule, the factual findings of the administrative agency are presumed to be correct. *Rodney v. Michelin Tire Corp.*, 320 S.C. 515, 519, 466 S.E.2d 357, 359 (1996) (*citing Kearse v. State Health & Human Servs. Fin. Comm'n*, 318 S.C. 198, 200, 456 S.E.2d 892, 893 (1995)); 73A C.J.S. *Public Administrative Law and Procedure* § 497 (2015). A reviewing court is prohibited from substituting its judgment for that of the agency as to the weight of the evidence on questions of fact for which there is room for a difference of intelligent opinion. *See Byerly Hosp. v. S.C. State Health & Human Servs. Fin. Comm'n*, 319 S.C. 225, 229, 460 S.E.2d 383, 386 (1995) (citation omitted). Thus, the court "will not overturn a finding of fact by an administrative agency 'unless there is no reasonable probability that the facts could be as related by a witness upon whose testimony the finding was based.'" *Sea Pines Ass'n for Prot. of Wildlife, Inc. v. S.C. Dep't of Nat. Res.*, 345 S.C. 594, 603-04, 550 S.E.2d 287, 292 (2001) (citation omitted). The party challenging an agency action on appeal has the burden of proving convincingly that the agency's decision is not supported by substantial evidence. *Waters*, 321 S.C. at 226, 467 S.E.2d at 917 (citation omitted).

If substantial evidence exists for an agency decision, the decision may not be disturbed absent a showing that the action was arbitrary, in excess of the statutory authority, or otherwise unlawful.[10] *See* S.C. Ann. § 1-23-380(5).

DISCUSSION

While the Appellant outlined several alleged factual inconsistencies in his brief, the Appellant does not specifically challenge the sufficiency of evidence supporting the Committee's determination. Rather, on appeal, the Appellant points to two (2) Committee actions[11] that he

[10] "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. S.C. State Bd. of Dentistry*, 286 S.C. 182, 184-5, 332, S.E.2d 539, 541 (Ct. App. 1985).

[11] For purposes of this order, actions by the Committee attorney are presumed to be those of the Committee, and are,

argues were erroneous as a matter of law and necessitate reversal. First, the Appellant contends that the Committee improperly excluded evidence at the hearing on the precise disposition of his criminal charges stemming from the incident. In his second assignment of error, the Appellant maintains that the Committee erred in finding that DJJ's violation of its policy concerning pre-termination hearings did not prejudice his substantial rights and was cured by the post termination hearings afforded to him.

The Exclusion of Evidence

The parties agree that Regulation 19-718.05(G) – and, more broadly, the South Carolina Rules of Evidence (SCRE) – controls the admissibility of evidence regarding the disposition of the Appellant's criminal charges. The regulation states that "[e]vidence of the dismissal, acquittal, or non-prosecution of the related criminal charges shall be inadmissible in the employee's appeal pursuant to applicable law." S.C. Code Ann. Regs. 19-718.05(G) (2019).

Argument Preservation

Initially, it is questionable whether the Appellant sufficiently preserved this argument for review. The Appellant cites to just two (2) instances where the admissibility of testimony on the charges' dispositions was discussed during the hearing. In the first instance, and the only time the issue was explicitly raised in the context of Regulation 19-718.05(G), counsel for the Appellant successfully argued that the regulation did not prohibit him from discussing the charges' dispositions in his opening statement to establish the background of the case because he was not making an evidentiary offer. (*See* R. at 29:10-31:5.) At the time, the Appellant did not argue that the applicable law supported admission of his testimony in this case, or even more broadly that the regulation does not or should not apply. (*See Id.*) The second time this issue was raised at the hearing came during the Appellant's direct testimony when counsel for the Appellant (not the Committee) interrupted the Appellant as he was preparing to discuss the dispositions and redirected his testimony.[12] (*See* R. at 123:17-124:4.) Again, the Appellant failed to assert at the time that the testimony is admissible under the applicable law, and, therefore, the regulation. (*See Id.*)

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thus, attributed to the Committee herein.

[12] While the Committee subsequently sustained this act of self-restraint, and affirmed its position on the issue more broadly, the restriction the Appellant now complains of was, contemporaneously at least, self-imposed. (*See* R. at 124:2-125:25.)

In fact, at no point during the entire hearing did the Appellant to offer any specific grounds in support of this argument at the hearing, or even generally challenge the Committee's application of the regulation to the testimony at issue. *See Buist v. Buist*, 410 S.C. 569, 766 S.E.2d 381, (2014) (citation omitted) ("It is well settled that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial court to be preserved."); *Medlock v. One 1985 Jeep Cherokee VIN 1JCWB7828FT129001*, 322 S.C. 127, 134, 470 S.E.2d 373, 378 (1996) (citation omitted) ("To preserve an issue for appeal, a contemporaneous objection is necessary and specific grounds must be clearly stated."). Instead, it seems that after the first instance the regulation was discussed, the Appellant merely accepted that the testimony would not be permitted for the remainder of the hearing. However, the Appellant never proffered the testimony he now claims was wrongfully excluded, so the precise content of the excluded testimony is uncertain. *See Jamison v. Ford Motor Co.*, 373 S.C. 248, 260, 644 S.E.2d 755, 761 (Ct. App. 2007) (citations omitted) ("The failure to make a proffer of excluded evidence will preclude review on appeal . . . . It is well settled that a reviewing court may not consider error claimed in the exclusion of testimony unless the record on appeal shows fairly what the rejected testimony would have been."). Consequently, in view of the apparent failure to challenge the ruling, raise any specific grounds in support of why the alleged exclusion was erroneous under the "applicable law," or proffer the excluded testimony, it does not appear that the Appellant sufficiently preserved this argument.

Admissibility Under the Applicable Law

Even if it were assumed, *arguendo,* that this issue was preserved, the Appellant failed to demonstrate that the Committee's decision to disallow evidence on the disposition of his charges, in accordance with Regulation 19-718.05(G), was erroneous as a matter of law. To demonstrate an error in the Committee's ruling, the Appellant must, among other things, "show that the proffered evidence was relevant." *See Recco Tape and Label Co., Inc. v. Barfield*, 312 S.C. 214, 216, 439 S.E.2d 838, 840 (1994) (citation omitted); *see also* Rules 401-403, SCRE. "'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Rule 401, SCRE.

Here, Regulation 19-718.05(G) unambiguously provides that such evidence "shall be inadmissible in the employee's appeal pursuant to applicable law." S.C. Code Ann. Regs. 19-718.05(G). The Appellant contends that, because neither the APA nor the SCRE prohibit such

testimony as a matter of course, the Committee erroneously found that it was inadmissible under the applicable law. However, the Appellant did not cite any case law or evidentiary rule in support of his contention that the evidence was relevant or that the applicable law favors admitting the evidence. Rather, the Appellant merely suggests that weighing the probative value of the testimony against the danger of unfair prejudice, in accordance with Rule 403, favors admissibility. *See* Rule 403, SCRE ("Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice . . . ."). Yet, while the Appellant correctly notes that Rule 403 provides a vehicle through which relevant testimony on the charges' dispositions may be admissible, it does not stand for the proposition that the excluded testimony was admissible or even relevant under the applicable law.

To the contrary, the applicable law explicitly deems evidence of non-prosecution of criminal charges irrelevant in related civil cases in other contexts. *See Brown v. Allstate Ins. Co.*, 344 S.C. 21, 24, 542 S.E.2d 723, 725 (2001) (citations omitted) (holding that "evidence of non-prosecution for criminal arson is irrelevant and immaterial in a civil case for fire insurance proceeds."); 37 C.J.S. *Forfeiture* § 16 n.7 (December 2018 Update) (citation omitted) ("The acquittal, or even [non-prosecution], of the owner on criminal charges is irrelevant as to the forfeitability of the property."). Likewise, from a practical standpoint, the decision to *nol pros* a charge is entirely at the discretion of the prosecuting officer, and may be done for any number of reasons completely unrelated to the validity or merits of the underlying charge.[13] *See Brown*, 344 S.C. at 25, 542 S.E.2d at 725 (citation omitted) ("[A] prosecutor's decision not to prosecute and a jury's decision to acquit in a criminal trial are based on different criteria than those that apply in a civil proceeding. 'In particular, a prosecutor's decision to *nol pros* may take into account many factors irrelevant in a civil suit, such as the higher standard of proof required for a criminal conviction. In any event, a prosecutor's opinion whether the [person charged committed the offense] is inadmissible since [it is] based on knowledge outside his personal experience.'"); *In re Brown*, 294 S.C. 235, 238, 363 S.E.2d 688, 690 (1988) (citations omitted) ("In this State, the entering of a nolle prosequi at any time before the jury is impaneled and sworn is within the discretion of the solicitor; the trial judge may not direct or prevent a nol pros at that time."); Op. S.C. Att'y Gen. (June 3, 1996), 1996 WL 452687 at *1 ("[A] prosecuting officer has virtually

[13] The record reflects that the prosecution *nol prossed* the Appellant's indictments due to its inability to locate the juvenile victim of the assault. (*See* R. at 347.)

unlimited authority to decide whether or not to prosecute a case in a given instance.") (citing *State v. Green*, 294 S.C. 235, 363 S.E.2d 688 (1988) & *State v. Simmons*, 264 S.C. 417, 215 S.E.2d 883 (1 975)).

Nevertheless, even if the law leaves room for doubt on whether such evidence is admissible, the court sees no reason to reject the Committee's interpretation of the applicable law. *See Bruning v. S.C. Dep't of Health and Envtl. Control*, 418 S.C. 537, 545, 795 S.E.2d 290, 294 (Ct. App. 2016) (citations omitted) ("If the statute or regulation 'is silent or ambiguous with respect to the specific issue,' the court then must give deference to the agency's interpretation of the statute or regulation, assuming the interpretation is worthy of deference."). Consequently, the Appellant has not shown that evidence of the subsequent discretionary decision to *nol pros* his criminal charges was relevant to the Respondent's initial decision to terminate his employment for the actions giving rise to those charges under the "applicable law," or that the Committee otherwise erred as a matter of law by excluding it under Regulation 19-718.05(G).

Prejudice from the Ruling

Even if the issue was preserved and that the Appellant demonstrated an error with the exclusion under the "applicable law," the Appellant still failed to show or even allege that he was prejudiced by the Committee's ruling. To show reversible error by the Committee in excluding the evidence in question, "the appellant must prove both the error of the ruling and the resulting prejudice, i.e., that there is a reasonable probability the [agency's decision] was influenced by the challenged evidence or the lack thereof." *See Fields v. Reg'l Med. Ctr. Orangeburg*, 363 S.C. 19, 26, 609 S.E.2d 506, 509 (2005) (citations omitted). Determining whether prejudice resulted from a ruling requires a two-step analysis:

> First, the court considers, *inter alia*, whether the error may be deemed harmless because equivalent or cumulative evidence or testimony was offered; the aggrieved party still managed to accomplish his primary objective, such as eliciting testimony about an issue or effectively cross-examining a witness; the jury's verdict or a proper court ruling rendered the wrongly excluded evidence moot because it was relevant to an issue that did not have to be reached; the aggrieved party failed to establish a claim or defense even when both the admitted and excluded evidence are considered; or the wrongly excluded evidence involved a generally known fact. Second, the appellate court considers whether, viewing a case as a whole, the wrongly excluded evidence or testimony was so crucial and important in proving the aggrieved party's claim or defense that its exclusion constitutes prejudicial error,

> i.e., the aggrieved party demonstrates there is a reasonable probability the jury's verdict was influenced by the lack of the challenged evidence.

See Id at 31-33, 609 S.E.2d at 512-13 (citations omitted); *accord Recco-Tape and Label Co., Inc.*, 312 S.C. at 217, 439 S.E.2d at 840 (1994); *Patterson v. I.H. Servs., Inc.*, 295 S.C. 300, 308, 368 S.E.2d 215, 220 (Ct. App. 1988) (citations omitted).

The court likewise finds no support in the record for the notion that prejudice to the Appellant resulted from the ruling. As stated *supra*, the excluded testimony was never proffered at the hearing, and the court cannot presume prejudice from the speculative impact of the Respondent's evidence on the Appellant's unknown excluded testimony. *See Greenville Mem'l Auditorium v. Martin*, 301 S.C. 242, 244, 391 S.E.2d 546, 547 (1990) (citations omitted) ("An alleged erroneous exclusion of evidence is not a basis for establishing prejudice on appeal in absence of an adequate proffer of evidence in the court below."). However, to the extent that the excluded evidence was merely that the charges were *nol prossed*, that limited information was offered to and accepted by the Committee in several ways. First, it appears that counsel for the Appellant was able to offer that information in his opening statement. (*See* R. at 31:20-23 (Counsel for the Committee: "I think you've made the point that the charges were nol-prossed. I think that's as far as I'm willing to let it go. You've gotten that into evidence.").) Second, Committee Exhibit 1 – which was admitted into evidence without objection from either party – contains multiple references to the fact that Appellant's charges stemming from the incident were subsequently *nol prossed*. (*See* R. at 20:18-21:4, 321-22, 325, 327, 333-37, 347-57); *see also* S.C. Code Ann. § 8-17-350 (2019) (setting forth the contents and procedures pertaining to "Committee Exhibit 1"). Accordingly, even if the Committee erred in prohibiting such evidence from the Appellant, the excluded evidence was not contradicted at the hearing and is cumulative to evidence already in the record.

Finally, even if the excluded evidence was not duplicative of evidence already in the record, the Appellant still failed to demonstrate that there is a reasonable probability that the exclusion influenced the Committee's Final Decision, or otherwise prevented it from being supported by substantial evidence. The Appellant concedes that the Committee was aware that his criminal matters had been resolved, yet there is nothing in the record indicating that the Appellant was ever tried for or convicted of his charges. Yet, in the absence of any contradictory evidence, it is unclear what material benefit could have been derived from the Committee's awareness of the precise

disposition of his charges. Moreover, though the Appellant challenges the ruling in conjunction with the Respondent's related evidence that was admitted, he does not suggest that it was somehow erroneous for the Committee to allow such evidence from the Respondent by itself. *Contra* S.C. Code Ann. Regs. 19-718.05(G) (prohibiting "[e]vidence of the dismissal, acquittal, or non-prosecution of the related criminal charges," but not on the arrest and indictment of the related charges). Likewise, unlike the entirely discretionary decision to *nol pros* a criminal charge, discussed *supra*, the process of obtaining a search warrant is subject to certain standards designed to safeguard the rights of the accused. *See In re Friday*, 263 S.C. 156, 158, 208 S.E.2d 535, 536 (1 974) ("The determination of existence of probable cause for the issuance of an arrest warrant is clearly a judicial function."); *State v. Cope*, 385 S.C. 274, 290, 684 S.E.2d 177, 185 (Ct. App. 2009) (citation omitted) ("In assessing probable cause, the court looks to whether the facts and circumstances are sufficient for a reasonable person to believe that a crime has been committed by the person to be arrested."). As such, evidence demonstrating that a neutral and detached magistrate found evidence sufficient for a reasonable person to believe that the Appellant committed elements of the crimes for which he was arrested is reasonably relevant to determining whether the Respondent was justified in terminating the Appellant at the time for the same conduct. *See S.C. Dep't of Motor Vehicles v. McCarson*, 391 S.C. 136, 145-46, 705 S.E.2d 425, 430 (2011) (citation omitted) ("Probable cause is defined as a good faith belief that a person is guilty of a crime when this belief rests upon such grounds as would induce an ordinarily prudent and cautious person, under the circumstances, to believe likewise."). Moreover, the Appellant did not cite – and the court is unaware of – any case law or evidentiary rule limiting the admissibility of such relevant evidence under the facts of this case. To the contrary, evidence establishing probable cause is liberally admissible under South Carolina jurisprudence. *See McCarson*, 391 S.C. at 147-48, 705 S.E.2d at 431 (citations omitted) (finding that courts in this State have even permitted "hearsay evidence to establish probable cause in the limited context of a preliminary hearing"). Thus, in the absence of conflicting authority, the Appellant did not show that the exclusion resulted in prejudice, even when considered with the related evidence offered by the Respondent.

In any event, substantial evidence supports the Committee's finding that the Appellant engaged in the misconduct for which he was terminated. Here, although the Appellant and Mr. Moody denied any involvement in the alleged assault, the Committee also considered, *inter alia*, witness statements indicating that the Appellant assaulted the juvenile in his jail cell out of view

of the cameras; video footage that circumstantially supported, or at least did not materially contradict, the theory posed in the witness statements; and testimony from both Mr. Adger and Mr. Pough explaining why they found the juvenile's allegation more credible than the Appellant's denial. (*See* R. at 143-280, 307-09, 312, 315-16, 325, 330-31, 333-35, 338, 347, 361-62, 369-466, 469-71; 485-93; Agency Exhibit 1.) In view of this evidence in the record, the Appellant failed to show that the alleged ignorance of the disposition of his charges warrants reversal of the Committee's Final Decision in this matter. *See Kearse*, 318 S.C. at 200, 456 S.E.2d at 893; *Lark*, 276 S.C. at 135, 276 S.E.2d at 306 (citation omitted).

In sum, even if this argument was preserved, the Appellant has not demonstrated an error in the Committee's ruling or, if the exclusion was erroneous, any resulting prejudice. The court is, therefore, compelled to conclude that any error in the Committee's ruling was harmless.

Failure to Hold a Pre-termination Hearing

Pursuant to the State Employee Grievance Procedure Act,

> 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:
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> ***
>
> (b) *The agency's disciplinary action was not within its established personnel policies*, procedures, and regulations . . . .

S.C. Code Ann. § 8-17-340(E)(1)(b) (2019) (emphasis added). With respect to the Respondent's pre-termination hearing requirements, DJJ's Investigations Policy I-3.5 (F)(3) states that:

> Prior to the issuance of disciplinary action, management will meet with the employee and allow the employee an opportunity to respond to the findings. At this point, the employee will be given procedural due process and may offer any explanation or mitigating circumstances that he/she feels may have played a role in the incident. This is the employee's chance to offer anything in his/her defense, and the manager should hear whatever the employee has to say, as long as it is offered in an appropriate manner.

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In sum, even if this argument was preserved, the Appellant has not demonstrated an error in the Committee's ruling or, if the exclusion was erroneous, any resulting prejudice. The court is, therefore, compelled to conclude that any error in the Committee's ruling was harmless.

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> Prior to the issuance of disciplinary action, management will meet with the employee and allow the employee an opportunity to respond to the findings. At this point, the employee will be given procedural due process and may offer any explanation or mitigating circumstances that he/she feels may have played a role in the incident. This is the employee's chance to offer anything in his/her defense, and the manager should hear whatever the employee has to say, as long as it is offered in an appropriate manner.

(R. at 418.) However, the Respondent's Investigations Policy I-3.5 (F)(1), also states that "[m]anagement staff may take employee disciplinary action pending the outcome of the investigation based on the seriousness of the incident."[14] (*Id.*)

Both parties concede that Investigations Policy I-3.5, required the Respondent to provide the Appellant with an opportunity to be heard prior to DJJ's decision to terminate his employment, and that no such opportunity was provided. Accordingly, in his second assignment of error, the Appellant contends that the Committee erred by concluding that DJJ had enough evidence to immediately terminate the Appellant's employment without allowing him to first present his side of the story, and that it was erroneous to allow the Respondent to use alleged policy violations to support the Appellant's termination while allowing the Respondent's policy violation in carrying out the termination to stand. Conversely, the Respondent argues that the Committee properly found, in accordance with established precedent in this State, that any pre-termination procedural deficiency in this matter was cured by affording the Appellant post-termination hearings with DJJ management during the Respondent's internal grievance process and during his appeal before the Committee. However, despite the Respondent's lengthy argument in support of this point, along with citations to relevant authority, the Appellant did not argue that the measures found by the Committee to have cured the Respondent's pre-termination hearing misstep were insufficient to remedy the harm. Rather, the Appellant argues that because the Respondent committed a violation of its policy when terminating the Appellant's employment, the Committee's decision should be reversed under Section 8-17-340. The court disagrees.

It is well established that a violation of a statutory or constitutional requirement for a pre-termination hearing can be cured by post-termination hearings. *See Rose v. Beasley*, 327 S.C. 197, 205-06, 489 S.E.2d 625, 629 (1997) (citations omitted); *Ross v. Med. Univ. of S.C.*, 328 S.C. 51, 67, 498 S.E.2d 62, 71 (1997) (citations omitted). Thus, "[a]s a general rule, a party must establish prejudice as the result of another's failure to follow mandatory statutory procedure." *Gardner v. S. C. Dep't of Revenue*, 353 S.C. 1, 14, 577 S.E.2d 190, 197 (2003) (citing *Rose, supra*). In *Rose*, the Governor removed the Director of the Department of Public Safety from office without a statutorily mandated pre-removal hearing. *See Rose*, 327 S.C. at 200-01, 489 S.E.2d at 626-27.

[14] As stated *supra*, the Appellant was terminated for violating Items 13, 32, 40, 42, and 58 of DJJ's Progressive Employee Discipline Policy. (R. at 361.) The Respondent's Discipline Guideline allows for termination for the first offense of each of those policies. (*See* R. at 390-93.)

Accordingly, the South Carolina Supreme Court considered whether Rose's post-removal hearing could cure the statutory violation that resulted from failing to provide a pre-removal hearing. *See Id.* at 205-06, 489 S.E.2d at 629. In holding that Rose's post-removal hearing could – and did – remedy the lack of a pre-removal hearing, the Court found that:

> Rose has failed to show any prejudice from the lack of a pre-removal hearing. At the hearing before the circuit court, he was represented by counsel and had the opportunity to introduce evidence, cross-examine adverse witnesses, and argue his case to the court. This post-removal procedure, which satisfied due process, sufficiently compensated for the lack of an oral pre-removal hearing. Accordingly, we find no error.

Id. (citations omitted). Likewise, in *Ross*, a tenured professor at the Medical University of South Carolina (MUSC) was denied an opportunity for a pre-termination hearing, despite having a constitutional right to such a hearing given his tenured status. *See Ross*, 328 S.C. at 66-67, 498 S.E.2d at 71. In affirming the holding from *Rose*, the *Ross* Court found that:

> [A]lthough the pretermination procedures afforded Dr. Ross did not comply with minimum due process requirements, the error was remedied by the subsequent Committee hearing. Dr. Ross received notice of a post-termination hearing, a written list of specific charges against him, and references to the sections in the faculty handbook and South Carolina Code his conduct was alleged to have violated. The hearing as originally scheduled was postponed at Dr. Ross' request. Thereafter, while represented by counsel, Dr. Ross fully participated in the seven-day hearing. He presented his own witnesses and evidence and cross-examined MUSC's witnesses. Any lack of opportunity to respond to charges in a pretermination hearing was clearly remedied by Dr. Ross' full and meaningful participation in the post-termination hearing.

See Id.

In this instance, while the Appellant was not afforded a pre-termination hearing, he was afforded two meaningful post-termination hearings wherein he was allowed to introduce evidence, cross-examine adverse witnesses, and argue his case. (*See generally* R. at 15-299; 437-51.) Moreover, at least during the hearing before the Committee, the Appellant was represented by counsel. (*See generally* R. at 16, 20:2-3.) To that end, the Appellant does not argue that he was not afforded a sufficient opportunity to be heard post-termination, or that he was specifically prejudiced by not being afforded an opportunity to be heard prior to his termination. It is likewise notable that Lieutenant Pough attempted to interview the Appellant during the course of his investigation to obtain his side of the story, but the Appellant invoked his right to remain silent.

(*See* R. at 425.) It seems doubtful that the Appellant would invoke his right to remain silent in the criminal investigation, and then divulge pertinent evidence in a pre-termination employee grievance dispute hearing shortly thereafter. Thus, the court finds no reversible error in the Committee's determination that DJJ's violation of its policy concerning pre-termination hearings did not prejudice the Appellant's substantial rights and was cured by the post termination hearings afforded to him.

Conclusion

In view of the foregoing, the court finds that even if the argument was preserved the Appellant did not demonstrate error in or prejudice from the Committee's ruling concerning the admissibility of evidence on the disposition of his criminal charges. The Appellant further failed to show that the Respondent's violation of their pre-termination hearing policy was not cured by the post-termination hearings afforded to him, or that he was otherwise prejudiced from the lack of a pre-termination hearing. Therefore, since the Committee's Final Decision is not affected by a reversible error, the Committee's decision must stand.

ORDER

THEREFORE, IT IS HEREBY ORDERED that the decision of the State Employee Grievance Committee is **AFFIRMED.**

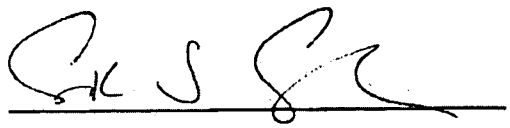
AND IT IS SO ORDERED.

January 21, 2019
Columbia, South Carolina

S. Phillip Lenski
Administrative Law Judge

CERTIFICATE OF SERVICE

I, Erika S. Easler, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).



Erika S. Easler
Judicial Law Clerk

January 29, 2019
Columbia, South Carolina

State Employee Grievance Committee

Final Decision

APPELLANT'S NAME:	Clarence Frazier
JOB CLASSIFICATION:	Correctional Officer II
AGENCY:	South Carolina Department of Juvenile Justice
DATE OF HEARING:	February 14, 2018 and February 20, 2018
NATURE OF CASE:	Termination

Based on documentary evidence and testimony presented at the hearing of Clarence Frazier v. South Carolina Department of Juvenile Justice (SCDJJ) held in Columbia, South Carolina on February 14th and February 20th, 2018, the State Employee Grievance Committee (Committee) finds:

FINDINGS OF FACT

1. Mr. Clarence Frazier (Appellant) was employed by SCDJJ from January 5, 2004, until his termination on June 10, 2010. At the time of his termination, Appellant was employed with SCDJJ as a Sergeant at the Broad River Road Complex. (Committee Exhibit #1, pp. 68-71.)

2. SCDJJ's Inspector General's (IG) Office received an Event Report indicating that, on June 3, 2010, a juvenile was assaulted by SCDJJ officers while being placed into a cell in SCDJJ's Santee Unit. The juvenile was later transported off-site for emergency medical care. In accordance with SCDJJ's Investigations Policy, I-3.5, the IG's Office reported this "'significantly serious incident"' to the South Carolina Law Enforcement Division (SLED) for assistance with a criminal investigation. Since Appellant was one of the officers implicated in the assault on the juvenile and based on the seriousness of the allegations, Appellant was suspended on June 10, 2010, pending an investigation for "abuse of a juvenile resulting in physical injury and excessive and/or inappropriate use of physical force against a juvenile." Appellant's suspension was in accordance with SCDJJ's Progressive Employee Discipline Policy, B-3.15. The record does not indicate Appellant filed a grievance concerning his suspension. (Committee Exhibit #1, pp. 11, 69-70, 78-94, 115-119, and 133.)

3. SLED's investigation resulted in the issuance of arrest warrants for Appellant on July 26, 2010, who was charged with the criminal offenses of "Assault/Assault & Battery by Mob, 3rd Degree (Bodily injury results)" and "Misconduct/Misconduct in office, malfeasance, misfeasance, or nonfeasance." (Appellant was indicted for the charge of "Misconduct/Misconduct in office, malfeasance, misfeasance, or nonfeasance" on March 13, 2013. The charge was subsequently "Nolle Prosequi" on August 31, 2016.) After the criminal portion of the investigation was concluded, the case was reassigned to the SCDJJ's Office of Compliance and Inspections for an administrative inquiry to determine if any SCDJJ policies were violated. (Committee Exhibit #1, pp. 33-34, 70, 76-77, and 122.)

4. By letter dated July 27, 2010, from Mr. Jerry Adger (Mr. Adger), SCDJJ's Deputy Director of Rehabilitative Services, Appellant's employment was terminated for violation of

SCDJJ's Progressive Employee Discipline Policy, B-3.15, Item 13, "Abuse, neglect, and/or exploitation (physical or psychological) of a juvenile resulting in physical or mental injury"; Item 32, "Excessive and/or inappropriate use of physical force and/or chemical force"; Item 40, "Failure to carry out job responsibilities in security or non-security setting (failure can be related to non-compliance with agency's training requirements)"; Item 42, "Assault on juvenile or other employee or person"; and Item 58, "Willful violation of written rules, regulations, policies, and/or local procedural guidelines." In addition, Appellant's employment was terminated for violation of SCDJJ's Use of Physical Force Policy, H-3.12. Mr. Adger's July 27, 2010 letter indicated that Appellant's termination was based on the June 3, 2010 incident and the resulting SLED investigation of that incident. (Committee Exhibit #1, pp. 74-75.)

5. On July 30, 2010, Appellant filed a grievance regarding his termination, in which he discusses the events of the June 3, 2010 incident. SCDJJ processed Appellant's grievance in accordance with its Employee Grievances Policy, B-3.10. (Committee Exhibit #1, pp. 137-139 and 153-166.)

6. During the Office of Compliance and Inspections's administrative inquiry, Juvenile Correctional Officer (JCO) Jamile Rorie (JCO Rorie), Sergeant William Sumter (Sgt. Sumter), and Sergeant Moses McFadden (Sgt. McFadden), all present at the time of the alleged abuse, gave statements indicating that, on June 3, 2010, Appellant and JCO Damieon Moody (JCO Moody) struck the juvenile while still in handcuffs. According to the Office of Compliance and Inspections's September 8, 2010 report, the video footage of the June 3, 2010 incident revealed that the juvenile, who was being led into the Santee Unit by two officers, appeared to be "calm and compliant and was not resisting in any way." Upon the juvenile entering his cell, there appeared to be "some kind of commotion, but the camera did not give a view inside the room." Later, an officer is seen bringing a mop bucket to be used inside the juvenile's cell. The juvenile was transported to receive emergency medical care. According to medical reports, the juvenile sustained a chipped tooth that was extracted, a laceration to his chin, bruising to his eye, and some pain in his nose and surrounding area. In addition, there was an abrasion and some pain over his collar bone. Further, a CT scan revealed a cracked tooth and a mild fracture of the nasal bones. The September 8, 2010 report by the Office of Compliance and Inspections concluded that, based on the witness statements provided by the officers present at the time of the incident and after a review of the video footage, Appellant was indicated for violation of SCDJJ's Alleged Abuse and Neglect of a Juvenile Policy, I-3.1, for Physical Abuse.(Committee Exhibit #1, pp. 70, 76-77, 121-135 and Agency Exhibit #1, 2, 3, and 4.)

7. During the hearing, Mr. Freddie Pough (Mr. Pough) testified that, at the time of the June 3, 2010 incident, he was a Lieutenant with SLED and had conducted the criminal investigation into the incident. As a part of the investigation conducted into the incident on June 3, 2010, Mr. Pough interviewed witnesses concerning the incident including the juvenile, Appellant, and JCO Moody. Mr. Pough testified that the juvenile had assaulted a JCO officer (JCO Fleming) earlier on the day of the incident. The juvenile's statement corroborates his assault on JCO Fleming. (Appellant Exhibit #1.) Mr. Pough testified he had viewed the video footage of the incident and felt it was unusual that five officers were escorting the handcuffed juvenile into the cell. Mr. Pough noted that none of the footage of the hallway indicates the juvenile had any blood on his clothing or that he was resistant in any way. Mr. Pough also testified that it was his opinion that the juvenile's account of what happened matched what was on the video footage. Finally, Mr. Pough testified that

his investigation found enough evidence to support the allegations that the juvenile was beaten or abused by Appellant.

8. According to the Office of Compliance and Inspections's September 8, 2010 report, Mr. Pough "attempted to interview [Appellant] and JCO Damien[sic] Moody, but they invoked their right to remain silent. Subsequent to this event, both were dismissed from the Department so they cannot be compelled to give a statement to this office as required by policy. Therefore, neither officer was interviewed as part of this inquiry." (Committee Exhibit #1, p. 125.)

9. During the hearing, Mr. Adger testified that when he was made aware of the June 3, 2010 incident, the matter was referred to SLED for an investigation in accordance with policy. Following SLED's investigation and the resulting criminal charges and after a review of the video footage of the incident, Mr. Adger concluded that Appellant had abused the juvenile. With regard to meeting with Appellant as indicated in SCDJJ Investigations Policy, I-3.5, (F) (3), Mr. Adger testified he did not meet with Appellant prior to the disciplinary action, but discussed the facts of the matter with SCDJJ's legal office in order to determine what policy was violated. Mr. Adger testified that he was also aware, at the time, of the sworn statements from the three witnesses in which they indicated they saw Appellant strike the juvenile. Further, Mr. Adger testified that he believed the assault on the juvenile by Appellant was in retaliation for the assault by the juvenile on JCO Fleming earlier that day.

10. Mr. Damieon Moody (Mr. Moody), formerly employed with SCDJJ as a JCO from 2002 until 2010, testified that he was present during the June 3, 2010 incident. Mr. Moody also testified that when the juvenile was brought in, he saw the juvenile was bleeding from his mouth. The juvenile also had blood on his clothing on the shoulder area and the front of his shirt. After the juvenile was taken to his cell, he gave the juvenile several verbal commands to change his clothing into the standard jumper issued to juveniles by SCDJJ. He testified that the juvenile refused to comply, became belligerent, and proceeded to spit blood onto Mr. Moody's uniform. He further testified that the juvenile said to another officer in the cell, "Sergeant McFadden, you didn't have to punch me in the mouth" on more than one occasion. According to Mr. Moody's testimony, Appellant asked him to leave the room because he was not being effective with the juvenile, and asked him to grab a mop and bucket to clean up blood that the juvenile spit on the floor. Mr. Moody testified that he was also terminated because he was one of the officers implicated in the assault. Mr. Moody indicated in his testimony that he did not strike or abuse the juvenile. In addition, he stated that the other three officers were not truthful in their statements.

11. Appellant testified that when the juvenile came to the Santee facility on June 3, 2010, he was escorted to his cell (F-Wing, room #9) by Appellant, Mr. Moody, and the three JCO's who gave statements to SLED during the investigation. Appellant also testified that the juvenile was known to be violent and waited until he was in the cell when he began to spit blood on the floor. Appellant further testified he heard the juvenile mention that Sgt. McFadden punched him in the mouth. Appellant contends that when his handcuffs were removed, the juvenile removed his shirt, spit blood into it, and threw it at Appellant. Appellant stated that he did not see anyone strike the juvenile, and that he did order the cell floor to be cleaned up because there was blood on the floor. Appellant contends that the video footage from June 3, 2010, proves he had nothing to do with the alleged abuse of the juvenile. In addition, the video footage of the incident reveals no evidence of

misconduct in office since any injuries inflicted on the juvenile would have occurred before the juvenile was in his custody.

12. Appellant testified that, prior to the events of June 3, 2010, he received good evaluations and was often called in to be part of special projects. Appellant also testified that he was promoted several times during his employment with SCDJJ. Since the criminal charges against him which led to his termination were dismissed years later, Appellant contends SCDJJ had no basis for the charges of abuse or policy violations. Appellant argued during the hearing that SCDJJ did not follow its Investigations Policy, I-3.5, specifically Section F (3) which indicates that agency management will meet with the employee and allow the employee to respond to its findings before issuing a disciplinary action. Appellant also argued that Mr. Adger did not meet with him prior to the termination and was not allowed an opportunity to respond to the findings in the SLED investigation.

13. SCDJJ Investigations Policy, I-3.5, (F) (3) states: "[p]rior to the issuance of disciplinary action, management will meet with the employee and allow the employee opportunity to respond to the findings. At this point, the employee will be given procedural due process and may offer any explanation or mitigating circumstances that he/she feels may have played a role in the incident. This is the employee's chance to offer anything in his/her defense, and the manager should hear whatever the employee has to say, as long as it is offered in an appropriate manner." (Committee Exhibit #1, p. 118.)

14. According to SCDJJ's Progressive Employee Discipline Policy, B-3.15, the sanction for violation of "Abuse, neglect, and/or exploitation (physical or psychological) of a juvenile resulting in physical or mental injury," first offense, ranges from suspension to termination. The sanction for violation of "Excessive and/or inappropriate use of physical and/or chemical force," first offense, ranges from written reprimand to termination. The sanction for violation of "Failure to carry out job responsibilities in security or non-security setting (failure can be related to non-compliance with agency's training requirements)," first offense, ranges from written reprimand to termination. The sanction for violation of "Assault on juvenile or other employee or person," first offense is termination. The sanction for violation of "Willful violation of written rules, regulations, policies, and/or local procedural guidelines," first offense, ranges from written reprimand to termination. (Committee Exhibit #1, pp. 78-94.) The Progressive Employee Discipline policy states, in part, that: "[e]xtremely serious offenses may call for termination even in the absence of prior disciplinary actions." (Committee Exhibit #1, p. 86.)

15. SCDJJ's Use of Physical Force Policy, H-3.12 (F)(2), Management Action section, states: "[t]he employee can be disciplined for policy violations up to and including termination without waiting for the court system to dispose of any criminal charges and without compromising the criminal case because management review and a criminal investigation are two separate and distinct processes." (Committee Exhibit #1, pp.115-119.)

16. SCDJJ's Alleged Abuse and Neglect of a Juvenile Policy, I-3.1, defines physical abuse as: "hitting, striking, slamming, choking, biting, kicking, slapping, pulling hair, paddling, spanking, spitting, or subjecting to extreme temperatures." (Committee Exhibit #1, p. 128.)

STATEMENTS OF POLICY AND CONCLUSIONS OF LAW

According to testimony given during the hearing, SCDJJ terminated Appellant's employment based on the video footage, the SLED investigation conducted, and the resulting criminal charges. Appellant contends that the video footage proves he had nothing to do with the alleged abuse of the juvenile. The Committee, however, noted that while the video footage does not specifically show Appellant strike the juvenile, it also does not exonerate Appellant. In the video footage, the Committee observed that the juvenile was escorted into the Santee Unit in a compliant manner and with no visible blood on his shirt. The Committee further observed that at some point, after the juvenile is in the cell, officers were seen getting mops. According to two of the witnesses' statements, the mops were used to clean up blood from the floor. Subsequent to the juvenile being placed in the cell, he received emergency medical care for a chipped tooth that was extracted, a laceration to his chin, bruising to his eye, some pain in his nose and surrounding area, and an abrasion and some pain over his collar bone. Further, a CT scan revealed a cracked tooth and a mild fracture of the nasal bones. Based on these events and the totality of the circumstances presented, the Committee finds that a reasonable mind would conclude that the juvenile was assaulted while in the cell.

The record reflects that the statements from the three other officers present at the incident, all indicate that Appellant and Mr. Moody struck the juvenile in the cell while he was handcuffed. In reviewing the statements provided by JCO Rorie, Sgt. Sumter, and Sgt. McFadden, the Committee finds these statements to be more credible than Appellant's statement and testimony when considering the totality of the other evidence. As such, the Committee finds that the three statements along with the video footage of the event provide substantial evidence that Appellant did strike the juvenile.

SCDJJ's Progressive Employee Discipline Policy, B-3.15, provides for a sanction of suspension to termination for violation of "Abuse, neglect, and/or exploitation (physical or psychological) of a juvenile resulting in physical or mental injury," first offense; a sanction of a written reprimand to termination for "Excessive and/or inappropriate use of physical and/or chemical force," first offense; a sanction of written reprimand to termination for violation of "Failure to carry out job responsibilities in security or non-security setting (failure can be related to non-compliance with agency's training requirements)," first offense; a sanction of termination for violation of "Assault on juvenile or other employee or person," first offense; and a sanction of a written reprimand to termination for violation of "Willful violation of written rules, regulations, policies, and/or local procedural guidelines," first offense. Therefore, the Committee finds that SCDJJ acted within the guidelines of its policy in terminating Appellant's employment.

Appellant contends that SCDJJ did not follow its Investigations Policy by failing to meet with him and allowing him to respond to its findings before issuing a disciplinary action. (Committee Exhibit #1, p. 118.) Specifically, Appellant argued that Mr. Adger did not meet with him prior to the termination and he was not allowed an opportunity to respond to the findings in the SLED investigation. While the Committee acknowledges that SCDJJ management did not meet with Appellant prior to his termination in accordance with its Investigations Policy, the Committee felt that, under these circumstances, SCDJJ had enough evidence to immediately terminate Appellant's employment. Mr. Adger stated that he felt there was enough evidence to terminate Appellant for abusing the juvenile. Moreover, the Committee felt that, given the evidence presented, returning Appellant to work could potentially expose SCDJJ to another similar situation. Though Appellant contends he was not afforded an opportunity to be heard by management prior to his termination, Appellant was heard in SCDJJ's processing of his grievance and during his appeal before this Committee. This alone, cures any perceived procedural deficiency.

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July 2016

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APR 16 2018

CROMER BABB PORTER & HICKS, LLC

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Clarence Frazier, Appellant, vs. South Carolina Department of Juvenile Justice, Respondent.	**NOTICE OF ASSIGNMENT** DOCKET NO. 18-ALJ-30-0135-AP

NOTICE IS GIVEN that a notice of appeal seeking review of agency action was filed on April 5, 2018. In accordance with S.C. Code Ann. § 1-23-570 (Supp. 2017), the **Honorable S. Phillip Lenski,** 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. Pursuant to SCALC Rule 4A, all future filings must be filed directly with the above assigned Judge and shall include the docket number.

FURTHER, NOTICE IS GIVEN that the parties are required to meet the following deadlines, unless otherwise ordered by the assigned Administrative Law Judge:

Record on Appeal	Due within forty-five (45) days of the date of this Notice **(to be filed by the agency)** 5/28/18 ✓
Appellant's Brief	Due within thirty (30) days after the Record on Appeal is filed 6/27/18
Respondent's Brief	Due within thirty (30) days after the Appellant's Brief is filed 7/27/18
Reply Brief	Due within ten (10) days after the Respondent's Brief is filed 8/06/18

The parties are directed to the relevant provisions of the Rules of Procedure regarding these deadlines and other requirements applicable to the appeal process. 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**.

This the thirteenth day of April 2018.

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

APR 13 2018

SC ADMIN. LAW COURT

Complaint

SC DJJ Deputy Director (Jerry Adger) violated their policy by not allowing me an exit Interview and refused to allow anyone from the management team to interview me.

SEGC did not allow the complete argument to be heard. The chair of the committee did not allow the criminal charges that were dismissed to be allowed to be submitted.
During the grievance hearing February 14, 2019, SC DJJ Director, Freddie Pough, was then The lead investigator with SLED. He admitted to being in charge of the investigation.
During the questioning from my attorney, Mr. Pough admitted to violating SLED policy and That he obtained an illegal arrest warrant, bringing criminal charges in bad faith.
Mr. Pough (SLED) disclosed my full address to the media, possibly placing my family and I In danger.
Mr. Pough had total control over the criminal investigation and as SCDJJ director, he made and allowed decisions about this case. It took the criminal investigation six years to complete and another two years to get grievance the hearing.

During a mediation, SCDJJ general counsel, Elizabeth Hill, admitted to my attorney and I, That Freddie Pough refused to release any funds and he withholding information. Ms. Hill stated that she didn't know that (Pough) was the arresting officer and that "now it all made sense to her."

Mr. Pough had a lot to gain. By Mr. Freddie Pough being over the criminal investigation, being the arresting officer and the SCDJJ director involved in the grievance process is a total conflict of interest.

Clarence Frazier

Clarence Frazier

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.

The grounds upon which the Committee Should change the agency's decision are found in § 8-17-340(E)(1)(a) the finding of abuse, neglect, exploitation or threat of the same is clearly erroneous as no evidence of any action on my part constituting any such conduct exists (see video) and 8-17-340(E)(1)(c) the agency's action was arbitrary and capricious because despite no evidence of wrongful conduct on my part, the agency made erroneous unsubstantiated conclusions and acted upon the same. These grounds are relevant to my appeal because they demonstrate the deficiencies in the evidence relied upon by the agency to justify its disciplinary action.

(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 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.

(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:~~ ~~Division of State Human Resources~~
~~8301 Parklane Road, Suite A220~~
~~Columbia, South Carolina 29223~~

~~Also, please send a completed copy of this document to the agency.~~

U.S. Department of Justice

Executive Office for United States Attorneys

Freedom of Information and Privacy Staff

Suite 7300, Bicentennial Building
600 E Street, NW
Washington, DC 20530

(202) 252-6020
FAX (202) 252-6047

April 12, 2017

Clarence A. Frazier
205 Jade Tree Drive
Hopkins, South Carolina 29061

Re: Request Number: FOIA-2017-00738 Date of Receipt: December 1, 2016
Subject of Request: Self (Frazier) - USAO South Carolina

Dear Mr. Frazier:

Your request for records under the Freedom of Information Act/Privacy Act has been processed. This letter constitutes a reply from the Executive Office for United States Attorneys, the official record-keeper for all records located in this office and the various United States Attorneys.

To provide you with the greatest degree of access authorized by the Freedom of Information Act and the Privacy Act, we have considered your request in light of the provisions of both statutes.

The records you seek are located in a Privacy Act system of records that, in accordance with regulations promulgated by the Attorney General, is exempt from the access provisions of the Privacy Act. 28 CFR § 16.81. We have also processed your request under the Freedom of Information Act and are making all records required to be released, or considered appropriate for release as a matter of discretion, available to you. This letter is a [x] partial [ ] full denial.

Enclosed please find:

_____page(s) are being released in full (RIF);
__2___page(s) are being released in part (RIP);
_____page(s) are withheld in full (WIF). **The redacted/withheld documents were reviewed to determine if any information could be segregated for release.**

The exemption(s) cited for withholding records or portions of records are marked below. An enclosure to this letter explains the exemptions in more detail.

(B)(5)
(B)(6)/(B)(7)(c)

[ ] In addition, this office is withholding grand jury material which is retained in the District.

[ ] A review of the material revealed:

[ ] Our office located records that originated with another government component. **These records were found in the U.S. Attorney's Office files.** These records will be referred to the following component(s) listed for review and direct response to you:

[ ] There are public records which may be obtained from the clerk of the court or this office, upon specific request. If you wish to obtain a copy of these records, you must submit a new request. These records will be provided to you subject to copying fees.

[ ] Please note that your original letter was split into separate files ("requests"), for processing purposes, based on the nature of what you sought. Each file was given a separate Request Number (listed below), for which you will receive a separate response:

[x] See additional information attached.

If you are not satisfied with my response to this request, you may administratively appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, DC 20530-0001, or you may submit an appeal through OIP's FOIAonline portal by creating an account on the following web site: https://foiaonline.regulations.gov/foia/action/public/home. Your appeal must be postmarked or electronically transmitted within ninety (90) days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

You may contact our FOIA Public Liaison at the telephone number listed above for any further assistance and to discuss any aspect of your request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001; e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Sincerely,

Kevin Krebs
Assistant Director

Enclosure(s)

EXPLANATION OF EXEMPTIONS

FOIA: TITLE 5, UNITED STATES CODE, SECTION 552

(b) (1) (A) specifically authorized under criteria established by and Executive order to be kept secret in the in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order;

(b)(2) related solely to the internal personnel rules and practices of an agency;

(b)(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(b)(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(b)(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(b)(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(b)(7) records or information compiled for law enforcement purposes, but only the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual.

(b)(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(b)(9) geological and geophysical information and data, including maps, concerning wells.

PRIVACY ACT: TITLE 5, UNITED STATES CODE, SECTION 552a

(d)(5) information complied in reasonable anticipation of a civil action proceeding;

(j)(2) material reporting investigative efforts pertaining to the enforcement of criminal law including efforts to prevent, control, or reduce crime or apprehend criminals;

(k)(1) information which is currently and properly classified pursuant to Executive Order 12356 in the interest of the national defense or foreign policy, for example, information involving intelligence sources or methods;

(k)(2) investigatory material complied for law enforcement purposes, other than criminal, which did not result in loss of a right, benefit or privilege under Federal programs, or which would identify a source who furnished information pursuant to a promise that his/her identity would be held in confidence;

(k)(3) material maintained in connection with providing protective services to the President of the United States or any other individual pursuant to the authority of Title 18, United States Code, Section 3056;

(k)(4) required by statute to be maintained and used solely as statistical records;

(k)(5) investigatory material compiled solely for the purpose of determining suitability eligibility, or qualification for Federal civilian employment or for access to classified information, the disclosure of which would reveal the identity of the person who furnished information pursuant to a promise that his identity would be held in confidence;

(k)(6) testing or examination material used to determine individual qualifications for appointment or promotion in Federal Government service the release of which would compromise the testing or examination process;

(k)(7) material used to determine potential for promotion in the armed services, the disclosure of which would reveal the identity of the person who furnished the material pursuant to a promise that his identity would be held in confidence.

Criminal Court Record Not in Court (SENSITIVE)

Defendant Details .PDF | Case Details .PDF | New Note To

USAO Number: 2010R01016
Caption: US v. [redacted]
Court: Not in Court
Victim: Yes
Forfeiture or Loss: (B)(6) (B)(7)(c)

Next Event:
Scheduled:
Lead AUSA: [redacted] (B)(6) (B)(7)(c)
Co-Counsel:

Court Record Status: Closed
Date Received: Aug 29, 2010
Filing Date:

Overview | Defendants | Forfeiture | Debt | Schedule | Review/Status Notes | Other Participants | Documents | USAO 2010R01016

Judge:
Court Contact:
Trial Date:
Court Trial Days: 0
Court Location:

Program Category:
- Civil Rights - Law Enforcement (05D)

Investigative Charge:
18 USC § 0C242 - Deprivation of rights under color of law

Operation Name:

☑ USAO Description:

☑ Brief Description of Court Record:

Court History Comment:

Last Filing Instrument:
Last Certified: Sep 23, 2014 [redacted] (B)(6) (B)(7)(c)

Indian Country Case: No
Location:

Agencies

Agency Role	Agency	Agency Case Number	Office	Point of Contact
Investigative Agency	[redacted]	282A-CO-32329		[redacted] (B)(6) (B)(7)(c)

Related Court Records

USAO Number	Caption	Court Number	Relationship	Lead AUSA

No data available in table

▼ Court Record Disposition more
Disposition: Declined (matters only)
Disposition Date: Oct 28, 2015
Disposition Reason: [redacted] (B)(5)

▼ Controlled Substance

Criminal Court Record Not in Court (SENSITIVE)

Defendant Details PDF | Case Details PDF | New Note To

USAO Number: 2010R01015
Caption: US [redacted]
Court: Not in Court
Victim: Yes
Forfeiture or Loss:

(B)(6)
(B)(7)(c)

Next Event:
Scheduled:
AUSA: [redacted]
Co-Counsel:

(B)(6)
(B)(7)(c)

Court Record Status: Closed
Date Received: Aug 25, 2010
Filing Date:

Overview | Defendants | Forfeiture | Staff | Schedule | Review/Status Notes | Other Participants | Documents | USAO 2010R01015

(B)(6)
(B)(7)(c)

Name	Open Counts or Disposition	Represented By
Frazier, Clarence Andre	Declined (matters only)	
[redacted]		

Clarence Andre Frazier

Identifiers | Charging Details

▶ Also Known As (AKA)

Citizenship Status: United States Citizen
Country: United States
Juvenile: No
Complexity:
Comments:

▼ Additional Identifiers more
Gender: Male
Date of Birth (DOB):
Social Security Number (SSN):
Alien Number:
Criminal History:
Arrest Date:
Court Trial Number:
U.S. Marshal Number:
Federal Bureau of Investigation (FBI) Number:
Police Department Identification (PDID) Number:

▼ Home Contact Information more
Address:
[redacted]
County:
Phone:
Email:
Fax:
Mobile Phone:

▶ Employment Information

Type: Individual
Role: Defendant
Defendant Number:
Primary Defendant Status:
Sentence Date:
Last Filing Instrument:

▶ Defendant Status
▶ Represented By
▶ Health Care Fraud
▶ Monetary Loss to the US Government
▶ Related Participants
▼ Disposition more
Disposition: Declined (matters only)
Disposition Date: Oct 28, 2013
Disposition Reason: [redacted] (B)(5)
▶ Court Ordered Disposition

ARREST WARRANT

I-908918

STATE OF SOUTH CAROLINA

[X] County/ [ ] Municipality of

Richland / Dutch Fork Magistrate

THE STATE

against

Clarence A. Frazier

Address:

Phone: SSN:

Sex: Race: Height: Weight:

DL State: DL #:

DOB: Agency ORI #: SCLED0000

Prosecuting Agency: Sled

Prosecuting Officer: Freddie Pough - FP

Offense: Misconduct / Misconduct in office, malfeasance, misfeasance, or nonfeasance

Offense Code: 0819

Code/Ordinance Sec: C/L, 17-25-0030

This warrant is CERTIFIED FOR SERVICE in the [ ] County/ [ ] Municipality of

The accused is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant Clarence Frazier on 7/26/10

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Dutch Fork Magistrate
1019 Beatty Road
Columbia, SC 29210

DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY

STATE OF SOUTH CAROLINA)
[X] County/ [ ] Municipality of)
Richland / Dutch Fork Magistrate)

AFFIDAVIT

DEFENDANT COPY

Form Approved by S.C. Attorney General April 21, 2003 SCCA 518

Personally appeared before me the affiant Freddie Pough who being duly sworn deposes and says that defendant Clarence A. Frazier did within this county and state on or about 06/03/2010 violate the criminal laws of the State of South Carolina (or ordinance of [X] County/ [ ] Municipality of Richland / Dutch Fork Magistrate) in the following particulars:

DESCRIPTION OF OFFENSE Misconduct / Misconduct in office, malfeasance, misfeasance, or nonfeasance

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

On or about June 3, 2010 the defendant along with a co-defendant did commit Misconduct in Office by committing an assault and battery on the victim, an inmate at the SC DJJ by striking the victim without color or authority of law thus constituting Misconduct in Office. The defendant and co-defendant were serving in the capacity of Juvenile Corrections officers at the time of incident.

Affiant and others are witness to prove same.

Signature of Affiant

STATE OF SOUTH CAROLINA)
[X] County/ [ ] Municipality of)
Richland / Dutch Fork Magistrate)

Affiant's Address P.O. Box 21398
Columbia 29221-

Affiant's Telephone

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on or about 6/3/2010 defendant Clarence A. Frazier did violate the criminal laws of the State of South Carolina (or ordinance of [X] County/ [ ] Municipality of Richland / Dutch Fork Magistrate) as set forth below:

DESCRIPTION OF OFFENSE: Misconduct / Misconduct in office, malfeasance, misfeasance, or nonfeasance

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me on 07/22/2010

(L.S.)

Signature of Issuing Judge

Mel Maurer

Judge Code: 5463

Judge's Address 1019 Beatty Road
Columbia, SC 29210-

Judge's Telephone (803)576-2540

Issuing Court: [X] Magistrate [ ] Municipal [ ] Circuit

DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

For Immediate Release
July 27, 2010

TWO FORMER DJJ CORRECTIONAL OFFICERS AND TEEN HOUSED AT DJJ CHARGED WITH ASSAULT

The South Carolina Law Enforcement Division (SLED) announces the arrest of a teen housed at the South Carolina (DJJ) and two Correctional Officers, all of which are accused of assault.

Evens Pierre, 17, of 3208 Broad River Road, Columbia, S.C., is charged with Assault and Battery of a High and Aggravated Nature. According to SLED arrest warrants Pierre put a large rock inside a sock and hit a Correctional Officer in his forehead causing a laceration. The officer required immediate medical attention.

Clarence A. Frazier, 42, of 205 Jade Tree Drive, Hopkins, S.C., and Damieon A. Moody, 35, of 1528 Hopkins Street, Cayce, S.C. are charged with Third Degree Assault and Battery by Mob and Misconduct in Office. Arrest warrants say the two former DJJ Correctional Officers assaulted Pierre while he was inside of a cell at the Department of Juvenile Justice on or about June 3, 2010 in Columbia, S.C.

Director Reggie Lloyd says, "This investigation was conducted at the request of the South Carolina Department of Juvenile Justice. Once made aware of the assaults by the DJJ Correctional Officers, the Department of Juvenile Justice notified SLED. We appreciate the cooperation shown by Judge Bill Byars and his staff in their efforts to assist with this investigation."

DJJ Director Bill Byars says "The Department of Juvenile Justice has had a long standing Memorandum of Understanding with SLED to insure that when there are allegations of abuse by staff they are investigated thoroughly and appropriately. We appreciate Director Reggie Lloyd's and SLED's quick response in investigating these allegations."

For booking photographs, call the Alvin S. Glenn Detention Center or visit www.richlandonline.com and look for "Inmate Inquiry" on the homepage.

For questions regarding the employment status of the DJJ Correctional Officers, please call Loretta S. Neal at DJJ at (803) 896-9518.

SLED Contact:
Jennifer Timmons Communications Director Office: (803) 896-7056 After Hours: (803) 737-9000

CASE HISTORY FOR CASE I908918

Frazier, Clarence A.

[redacted]

Age: 48
DL#:

DOB: [redacted]
SSN: [redacted]

CHARGE		VIOL. DATE	DISPOSITION	DISP. DATE
0819	Misconduct / Misconduct in office, malfeasance, misfeasance, or nonfeasance	6/3/2010	Nolle Prosequi Indicted	8/31/2016

ASE HISTORY FOR CASE I908916

razier, Clarence A.

Age: 48
DL#:

DOB: [redacted]
SSN: [redacted]

[redacted]

CHARGE		VIOL. DATE	DISPOSITION	DISP. DATE
3433	Assault / Assault & Battery by Mob, 3rd degree (Bodily injury results)	6/3/2010	Nolle Prosequi Indicted	8/31/2016

Richland County General Sessions

CASE HISTORY FOR CASE I908918

State of South Carolina vs Clarence A. Frazier

FILED DATE: 8/16/2010

CASE TYPE: GS

STATUS: Disposed

JUDGE: Maurer, Melvin Wayne

ARRESTING AGENCY: State Law Enforcement Division

CASE PARTIES:

Defendant Frazier, Clarence A.
[redacted]

Officer Pough, Freddie
P.O. Box 21398, Columbia, 29221

Defendant Attorney Eigenbrot, Megan Ashley
316 Sharebrook Lane, Columbia, SC 29212

Defendant Attorney Rutherford, James Todd
PO Box 1452, Columbia, SC 292021452

CASE HISTORY FOR CASE I908918

Frazier, Clarence A
[redacted]
[redacted]

Age: 48
DL#:

DOB: [redacted]
SSN: [redacted]

CHARGE		VIOL. DATE	DISPOSITION	DISP. DATE
0819	Misconduct / Misconduct in office, malfeasance, misfeasance, or nonfeasance	6/3/2010	Nolle Prosequi Indicted	8/31/2016

COST	ORIGINAL	BALANCE DUE	DISBURSED	PAY PRIORITY

Total:

DATE	TIME	EVENT DESCRIPTION
7/30/2010	3:59 PM	Motion/Discovery and Disclosure of Evidence
10/6/2014	4:19 PM	Order/Relieve Counsel relieve pd
8/31/2016	1:38 PM	Filing recorded: Disposition Entered
8/13/2013	2:27 PM	Filing recorded: Indictment/Indictment
8/13/2010	2:28 PM	Filing recorded: Filing/Case File
7/26/2010	2:28 PM	Filing recorded: Bond/Bond Paperwork
8/19/2010	12:00 AM	COCDABBS recorded the following Case Note: Includes Certificate of Service; Includes I908916
10/8/2014	12:00 AM	VIVODD recorded the following Case Note: Todd Rutherford acting as counsel

Print Date: 09/23/2016
Print Time: 9:36:33AM
Requested By: CS233104

Richland County General Sessions

CASE HISTORY FOR CASE I908916

State of South Carolina vs Clarence A. Frazier

FILED DATE: 8/16/2010 | CASE TYPE: GS | STATUS: Disposed

JUDGE: Maurer, Melvin Wayne

ARRESTING AGENCY: State Law Enforcement Division

CASE PARTIES:

Defendant Frazier, Clarence A.
[redacted]

Officer Pough, Freddie
P.O. Box 21398, Columbia, 29221

Bond Entity Frazier, Clarence A.
[redacted]

Defendant Attorney Eigenbrot, Megan Ashley
316 Sharebrook Lane, Columbia, SC 29212

Defendant Attorney Rutherford, James Todd
PO Box 1452, Columbia, SC 292021452

CASE HISTORY FOR CASE I908916

Frazier, Clarence A. [redacted]
[redacted]

Age: 48
DL#:

DOB: [redacted]
SSN: [redacted]

CHARGE		VIOL. DATE	DISPOSITION	DISP. DATE
3433	Assault / Assault & Battery by Mob, 3rd degree (Bodily injury results)	6/3/2010	Nolle Prosequi Indicted	8/31/2016

COST	ORIGINAL	BALANCE DUE	DISBURSED	PAY PRIORITY

Total:

DATE	TIME	EVENT DESCRIPTION
8/16/2010	10:22 AM	Filing recorded: Bond Comment To Notes Screen
8/17/2010	9:24 AM	Motion/Discovery and Disclosure of Evidence
5/13/2013	1:26 PM	Motion/Prosecutive Request for Discovery
5/13/2013	1:26 PM	Filing recorded: Request/ for Notice of Insanity Defense or Plea of Guilty
5/13/2013	1:27 PM	Filing recorded: Request/Prosecutive Request for Notice of Alibi Defense
5/13/2013	1:28 PM	Filing recorded: Request/for Notice of Intention to Offer a Necessity Defense

Print Date: 09/23/2016
Print Time: 9:37:37AM
Requested By: CS233104

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

MARK SANFORD
Governor

REGINALD I. LLOYD
Director

INVESTIGATIVE REPORT

August 24, 2010

TO:	File 32-10-0377
FROM:	Special Agent Freddie B. Pough
RE:	Frazier, Clarence A.
	Moody, Damieon
COUNTY:	Richland

Introduction

On June 4, 2010, Chief Investigator (Inv.) Daniel Johnson with the South Carolina Department of Juvenile Justice (DJJ) requested SLED investigate an in-custody assault at DJJ. Captain Paul Grant assigned Special Agent (S/A) Freddie Pough to investigate.

Summary

On June 7, 2010 Pough met with Inv. Johnson at DJJ and DJJ Inv. Decco Sampay and briefed on the incident. The following information was relayed: On the morning of June 3, 2010 inmate Evens Pierre was advised by DJJ staff that he was going to be reassigned to another dorm for housing. Pierre was told to gather his personal belongings and await staff's arrival to move him to his new assignment.

Pierre was met by Sergeant (Sgt.) Moses McFadden Jr. and instructed to follow him to Operations and await transportation to his new dormitory. McFadden walked out of Operations to get another Juvenile and without permission, Pierre followed behind and proceeded to walk with him after being told not to. McFadden, in an attempt to avoid a confrontation allowed Pierre to walk with him. When they walked into the vocation building, Pierre, who was armed with a large rock inside of a sock swung it and struck Officer (Ofc.) Kandeh Flemming in the forehead.

McFadden radioed for back up and advised officer down. McFadden restrained Pierre with the assistance of DJJ staff Leroy Hunt and James Maddox. Once restrained and handcuffed, Pierre was transported by McFadden and Sumter to Santee unit, also known as "lock-up". After arriving at lock-up, Pierre alleged he was placed in his cell and was assaulted by DJJ staff.

Pough obtained an original written statement from Inv. Sampay that was previously provided by Pierre (**Attachment 1**) as well as his allegation (**Attachment 2**) provided to his Social Worker Roseanne Brown. The statements provided the following information: Once at "lock-up" he was assaulted by staff after being pushed into his cell. As a result of being punched by officers, he lost a tooth and had severe bleeding from his mouth area.

On June 14, 2010, S/A Pough re-interviewed Pierre (**Attachment 3**) at DJJ and he reiterated the aforementioned.

While being briefed, Pough was also provided a video (**Attachment 4**) that showed Pierre's arrival at Santee Unit. The video shows Pierre being escorted by Sgt. Moses McFadden and Sgt. William Sumter into the unit and to his cell. In the video, Sgt. Clarence Frazier and Officer (Ofc.) Damieon Moody can be seen walking with Pierre. The video also depicts the presence of Ofc. Jamile Rorie already being on the wing.

On June 15, 2010, Pough obtained an oral statement (**Attachment 5**) from Officer Jamile Rorie that was prepared by S/A D. Horton that provided the following information: Rorie, along with Frazier, Moody, McFadden and Sumter escorted Pierre to his cell. When they got to the cell,

Frazier and Moddy "rushed" him inside the cell and began beating on him with closed fists all over his body while he was still handcuffed. The juvenile (Pierre) was fighting back to protect himself while asking, "why you doing this?" After the assault, Frazier told Rorie to get a mop and clean up the blood. Moody grabbed the mop from Rorie and hit Pierre with it. Officers took the mop from Moody and he went out onto the wing and started pacing, "appearing to try to calm himself down".

On June 15, 2010 Moses McFadden provided the following information in a statement (**Attachment 6**) typed by himself: On June 3, 2010, McFadden, along with Sumter transported Pierre to Santee Unit. Upon arrival, the two relinquished control of Pierre to Frazier, the unit supervisor. Frazier asked McFadden and Sumter to assist in escorting Pierre to the cell he was to be housed in. When they arrived at the doorway of Pierre's cell, McFadden saw Sgt. Frazier punch juvenile Pierre in the chest area and he saw Moody punch him on the shoulder area.

On June 25, 2010 Pough obtained a statement **(Attachment 7)** from William Sumter that provided the following information: He along with Moses McFadden had transported Pierre to Santee Unit. When they got Pierre to his cell and went to remove the handcuffs, Frazier struck Pierre in the mouth causing him to fall onto his bunk at which time Moody was hitting Pierre in the head. Sumter then proceeded to remove the handcuffs from Pierre. Sumter asked Pierre if he was he O.K. and exited the cell.

On June 15, 2010 Pough interviewed Clarence Frazier who provided the following information: On June 3, 2010, McFadden and Sumter transported Pierre to Santee Unit for assaulting a staff member. When Pierre arrived, he was already bleeding from his mouth. Frazier, along with McFadden, Sumter, Moody, and Rorie escorted Pierre to his cell. When they got to the cell they took the handcuffs off of Pierre and had him dress out into "lock-up" clothes. Frazier refused to provide a statement and advised if any more information was needed to contact his attorney.

I was interviewed for 1 hour 45 min and was told I was being the entire time.
CF

On June 15, 2010, Pough interviewed Damieon Moody who provided the following information: On June 3, 2010, Pierre assaulted a staff member on the yard and was restrained causing him to

bleed from the mouth. McFadden and Sumter transported him to Santee Unit and upon arrival Pierre was escorted to his cell. Pierre was given a "lock-up" uniform and told to change. Pierre was bleeding before he came to Santee. Moody refused to provide a statement and advised if any more information was needed, he wanted to speak with a lawyer first.

The following documents were obtained pertinent to this investigation.

- Evens Pierre Medical Records **(Attachment 8)**
- DJJ Event Report From McFadden **(Attachment 9)**
- DJJ Event Report From Social Worker **(Attachment 10)**
- Arrest Warrants **(Attachment 11)**

This report will be submitted to the proper prosecutorial authority for review.

S/A Freddie B. Pough

bleed from the mouth. McFadden and Sumter transported him to Santee Unit and upon arrival Pierre was escorted to his cell. Pierre was given a "lock-up" uniform and told to change. Pierre was bleeding before he came to Santee. Moody refused to provide a statement and advised if any more information was needed, he wanted to speak with a lawyer first.

The following documents were obtained pertinent to this investigation.

- Evens Pierre Medical Records **(Attachment 8)**
- DJJ Event Report From McFadden **(Attachment 9)**
- DJJ Event Report From Social Worker **(Attachment 10)**
- Arrest Warrants **(Attachment 11)**

This report will be submitted to the proper prosecutorial authority for review.

S/A Freddie B. Pough