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SC Court of Appeals

STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM ADMINISTRATIVE LAW COURT  
Administrative Law Judge S. Phillip Lenski

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Appellant Case No. 2020-000345  
Case No. 2019-ALJ-30-0344-AP

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Joseph Ragsdale, .....Appellant

v.

South Carolina Criminal Justice Academy, .....Respondent.

**FINAL BRIEF OF RESPONDENT**



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August 3, 2020

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## **STATEMENT OF ISSUES ON APPEAL**

1. THE ADMINISTRATIVE LAW COURT WAS CORRECT IN DETERMINING THAT LETC'S FINDING OF MISCONDUCT WAS SUPPORTED BY SUBSTANTIAL EVIDENCE.
2. THE ADMINISTRATIVE LAW COURT WAS CORRECT IN DETERMINING THAT LETC'S SANCTION OF DENIAL OF CERTIFICATION WAS NOT EXCESSIVE, WAS WARRANTED BY THE EVIDENCE, WAS NOT ARBITRARY AND CAPRIOUS, AND WAS NOT AN ABUSE OF DISCRETION.

## **STATEMENT OF THE CASE**

On January 25, 2019, the South Carolina Criminal Justice Academy (Academy) received a PCS of Separation (PCS) form for Joseph Ragsdale (Appellant) from the South Carolina Department of Public Safety (Agency). The Agency alleged that Appellant had committed law enforcement certification misconduct.

On February 7, 2019, Appellant was served the misconduct allegation. Appellant requested a contested case hearing on May 14, 2019. On May 21, 2019, a Contested Case Hearing Notice was sent to Appellant and Agency notifying them of a May 29, 2019 hearing date.

A contested case hearing was held on May 29, 2019. The Hearing Officer's Findings and Recommendation, hearing transcript and exhibits were sent to the parties on July 3, 2019. On August 1, 2019, Appellant's counsel filed a Motion in Opposition of the Hearing Officer's Recommendation. On August 8, 2019, the Agency filed a Motion in Support of the Hearing Officer's Recommendation. On August 9, 2019, the parties were notified that the Law Enforcement Training Council (LETC) would meet to render a Final Agency Decision in Appellant's case on August 19, 2019. On August 19, 2019, LETC met to discuss the Appellant's case and vote on a Final Agency Decision. Appellant was present at this meeting and addressed LETC. LETC voted to adopt the Hearing Officer's Recommendation and to permanently deny Appellant a law enforcement certification. On September 15, 2019, a Final Agency Decision was signed. On September 18, 2019, a certified letter was sent, which contained a copy of the Final Agency Decision, to Appellant. Appellant filed a Notice of Appeal with the ALC on October 17, 2019. The ALC issued its Final Order on January 27, 2020. This appeal was filed on February 25, 2020.

## **STATEMENT OF FACTS**

The parties, through counsel, stipulated that no witnesses would be called and that the Hearing Officer would view the exhibits and make a recommendation based upon the exhibits. (R. pgs. 26 – 38) The Exhibits entered into evidence, by stipulation, are State’s Exhibit Number 1, DVD of OPR Interview of Joseph Ragsdale of November 20, 2018 (Entire interview) and OPR Interview of Kevin Mitchum of November 14, 2018 (Excluding interview portion time stamped from 6:48 through 8:40 of indicated running time, also referenced as interview portion time stamped from 6:42 through 4:48 of indicated remaining time); State’s Exhibit Number 2, South Carolina Department of Public Safety, Office of Professional Responsibility (OPR) Summary of Interview of Joseph Ragsdale; and “Respondent’s Exhibit Number 1, Affidavit of Nathan M. Farmer and Affidavit of Joshua T. Farmer. The above referenced exhibits would replace witness testimony and be the basis of the Hearing Officer’s Recommendation. (R. pgs. 26 – 38) The specific facts for each issue on appeal are set forth in the appropriate section below.

## STANDARD OF REVIEW

The Law Enforcement Training Council (LETC) is the governing body of the South Carolina Criminal Justice Academy (Academy). S.C. Code Ann. § 23-23-20 (Supp. 2014). As the governing and adjudicative body of the Academy, an "agency" under the Administrative Procedures Act, the South Carolina Administrative Law Court (ALC) had jurisdiction to hear the appeal of a final decision of the LETC in a contested case. S.C. Code Ann. § 1-23-600 (D) (Supp. 2018) (directing administrative law judges to conduct appellate review in the same manner prescribed in § 1-23-380). Section 1-23-380 provides, in relevant part:

...The court may reverse or modify the decision [of an agency] if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions or decisions are:

- a) in violation of constitutional or statutory provisions;
- b) in excess of the statutory authority of the agency;
- c) made upon unlawful procedure;
- d) affected by other error of law;
- e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
- f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

S.C. Code Ann. § 1-23-380(5); see also Todd's Ice Cream, Inc. v. S.C. Employment Sec. Comm'n, 315 S.E.2d 373, 375 (Ct. App. 1984).

The standard to be applied by the reviewing court is that of substantial evidence. A decision is supported by substantial evidence when the record as a whole allows reasonable minds to reach the same conclusion as the agency. Friends of the Earth v. Pub. Serv. Comm'n of SC., 387 S.C. 360, 366, 692 S.E.2d 910, 913 (2010). The fact that the record, when considered as a whole, presents the possibility of drawing two inconsistent conclusions from the evidence does not prevent the agency's findings from being supported by substantial evidence. Waters v. S.C. Land Res. Conservation Comm'n, 321 S.C. 219, 226, 467 S.E.2d 913, 977 (1996). The evidence should

not be “viewed blindly from one side of the case.” Myers v. S.C. Dept. of HHS, 418 S.C. 608, 616, 795 S.E.2d 301, 305 (Ct. App. 2016)

When applying the substantial evidence rule, the factual findings of the administrative agency are presumed to be correct. Rodney v. Michelin Tire Co., 320 S.C. 515, 519, 466 S.E.2d 357, 359 (1996). Additionally, in applying the substantial evidence rule, when “determining whether the record contains substantial evidence to support an administrative agency’s findings, [the appellate court] cannot substitute its judgment on the weight of the evidence for that of the agency.” Myers, 418 S.C. at 615 – 616, 795 S.E.2d at 305. “[A] reviewing court will not overturn a finding of fact by an administrative agency 'unless there is no reasonable probability that the facts could be as related by a witness upon whose testimony the finding was based.'" Sea Pines Ass'n for Prot. of Wildlife, Inc. v. S.C. Dep't of Natural Res., 345 S.C. 594, 603-04, 550 S.E.2d 287, 292 (2001) (quoting Lark v. Bi-Lo, Inc., 276 S.C. 130, 136, 276 S.E.2d 304, 307 (1981)). Finally, the party challenging an agency action has the burden of proving convincingly that the agency's decision is unsupported by substantial evidence. Waters, 321 S.C. at 226, 467 S.E.2d at 917.

## ARGUMENT

### **1. THE ADMINISTRATIVE LAW COURT WAS CORRECT IN DETERMINING THAT LETC'S FINDING OF MISCONDUCT WAS SUPPORTED BY SUBSTANTIAL EVIDENCE.**

South Carolina Code Ann. § 23-23-150 (A)(3)(g) states that misconduct means “willfully making false, misleading, incomplete, deceitful, or incorrect statements to a law enforcement officer, a law enforcement agency, or a representative of the agency, except when required by departmental policy or by the laws of this State.”

Today, more than ever, society is demanding that law enforcement officers be held accountable for their actions, especially those actions involving misconduct. The Law Enforcement Training Council did exactly what is allowed by law and exactly what the public is demanding ... LETC held Appellant accountable for his misconduct.

In the present case, LETC based its decision upon the substantial evidence in the Record. The substantial evidence in the record of the hearing established that Appellant willfully made a false, misleading, incomplete, deceitful, or incorrect statement to a law enforcement officer, a law enforcement agency, or a representative of the agency, except when required by departmental policy or by the laws of this State, when Appellant told Deputy Mitchum that the shoplifting suspect was his brother, even though the suspect was not his brother and Appellant was fully aware of that fact at the time he falsely communicated information to the contrary to Deputy Mitchum. No further inquiry is necessary or relevant.

Appellant attempts to minimize his misconduct by arguing, among other things, that he was not deceitful, that his actions/words did not affect the outcome of the investigation, and that he was not under oath when he spoke with the deputy. These issues regarding his actions/words affecting the outcome of the investigation and the words were not spoken under oath are irrelevant in determining whether substantial evidence exists to support LETC's decision. A plain reading

of South Carolina Code Ann. § 23-23-150 (A)(3)(g) establishes that those are not elements of the allegation of misconduct. However, deceiving and/or misleading a law enforcement officer are elements and were proven by substantial evidence.

The term “brother” is defined as “[a] male who has one parent or both parents in common with another person.” [See, *Black's Law Dictionary* (11<sup>th</sup> ed. 2019)] Accordingly, Appellant’s statement to Deputy Mitchum, a law enforcement officer, that the shoplifting suspect detained at Palmetto State Armory (PSA) was his brother was intentionally false, misleading, incomplete, deceitful, or incorrect.

A review of the evidence, the recorded interview of Deputy Kevin Mitchum of the Lexington County Sheriff’s Office, conducted on November 14, 2018 by Investigator Brandon Bamberg of the South Carolina Department of Public Safety’s Office of Professional Responsibility (OPR), established that Appellant unequivocally stated in a phone call he made to Mitchum on October 26<sup>th</sup> that “my brother just got arrested for shoplifting” at Palmetto State Armory, the location to which Mitchum was responding at the time, and that Appellant’s statement left Mitchum “under the impression” that the person detained for shoplifting was in fact, Appellant’s brother. (R. p. 48, State’s Exhibit Number 1, Interview of Kevin Mitchum, time stamp 1:56-2:18) The interview further established that Mitchum, once on the scene at Palmetto State Armory, spoke with the detained shoplifting suspect who advised him that Appellant was not his brother but his friend. (R. p. 48, State’s Exhibit Number 1, Interview of Kevin Mitchum, time stamp 3:20-3:28) When confronted by Mitchum with the fact that the shoplifting suspect was not his brother, but a friend, Appellant only then admitted that the suspect was not really his brother but was “like a brother.” (R. p. 48, State’s Exhibit Number 1, Interview of Kevin Mitchum, time stamp 3:38-3:53)

A review of the recorded interview of Appellant, conducted on November 20, 2018 by Investigator Brandon Bamberg of the South Carolina Department of Public Safety's Office of Professional Responsibility (OPR), established that Appellant freely admitted in the interview to telling Deputy Mitchum that the suspected shoplifter detained at Palmetto State Armory was "his brother" although Appellant noted that the suspect was not his true brother. (R. p. 48, State's Exhibit Number 1, Interview of Joseph Ragsdale, time stamp 4:52-5:00, and also 10:17-10:19)

State's Exhibit Number 2, containing a summary of the November 20, 2018 interview of Appellant Prepared by the Office of Professional Responsibility (OPR) is consistent with the statements made by Appellant during his recorded interview, specifically that he "advised Deputy Mitchum that the shoplifter was his 'little brother'" and that only after Mitchum confronted Appellant with the fact that the suspect had indicated that they were not brothers did Appellant then "[clarify to] Deputy Mitchum that the shoplifter was not his brother, but that he was like a brother." (R. pgs. 49 - 50) Furthermore, it is especially important to note that Appellant did not initially volunteer, of his own free will, to explain or clarify his previous statements when he was confronted by Mitchum but, instead, undertook to recant his prior false, misleading, incomplete, deceitful, and incorrect statements to Mitchum, a law enforcement officer, only after he became aware that Mitchum was aware of the fact that the shoplifting suspect was not his brother. When Mitchum informed Appellant that a "brother" is not the same as "like my brother", Appellant acknowledged that he knew that. (R. p. 48, State's Exhibit Number 1, Interview of Kevin Mitchum, time stamp 9:20 – 10:00)

In this context, Appellant engaged in the functional equivalent of a retraction of his prior knowingly false statement to Mitchum only after "being caught in a lie". That retraction, however, did not obviate the fact of the prior falsehood or mitigate its wrongful nature. The net effect of

Appellant's behavior was to attempt to deceive Mitchum and only to recant once it became evident that Mitchum was aware of the falsity of Appellant's statement. Appellant's retraction can only be seen as a self-serving attempt to mitigate his potential culpability for the wrongful conduct, not to mitigate the nature or character of the conduct itself.

Importantly, prior to Appellant recanting his initial statement to Mitchum that the suspect was his "brother," Appellant's statement had left Mitchum, in his own words, "under the impression" that the person detained for shoplifting was, in fact, Appellant's brother. (R. p. 48, State's Exhibit Number 1, Interview of Kevin Mitchum, time stamp 1:56-2:18) When Mitchum arrived at PSA he met with Appellant and Mitchum said "let's walk on in and see what going on" because Mitchum was at that time clearly under the impression that Appellant was the suspect's brother, based on Appellant's own statement to Mitchum. (R. p. 48, State's Exhibit Number 1, Interview of Kevin Mitchum, time stamp 2:10 - 2:18)

Once inside PSA, however, the PSA manager told Mitchum that he didn't want Appellant going back to see the suspect. Mitchum then asked "Why is that, sir, he is family?" Mitchum then told Appellant to "wait out here and I will walk back and come out here and let you know what is going on." When Mitchum got to the back where the suspect was being detained there were a number of PSA employees who were assembled there and who were upset with Appellant. Mitchum, in apparent response to the assembled employees' concerns, stated to them "that's his brother and he just wants to know what is going on." The assembled employees, however, told Mitchum they didn't believe that Appellant and the suspect were brothers but, instead, just friends. Mitchum then asked the suspect if Appellant was his brother and the suspect stated that Appellant was not his brother, but a friend who was like a brother. Mitchum then returned to where the Appellant was waiting, and confronted him with the information that the suspect had stated to

Mitchum that Appellant and the suspect weren't brothers, but friends. (R. p. 48, State's Exhibit Number 1, Interview of Kevin Mitchum, time stamp 2:10 – 4:08) Only after Mitchum's confrontation did the Appellant "come clean" and acknowledge that the suspect was not, in fact, his brother as he had previously stated to Mitchum.

Although Respondent believes that Appellant's intent to interfere and/or to affect the outcome of the police investigation is irrelevant and immaterial to a finding of misconduct, Respondent would offer the statements of the Appellant with regards to his intentions at the time of his false statement regarding his relationship to the detained shoplifting suspect. Notably, Appellant stated "if they [PSA] took it that I was interfering with my [sic] investigation, I understand why they took it like that. I wasn't clear, I didn't identify myself properly, I didn't follow policy and I didn't do anything that was correct and I can see where they thought that I was trying to interfere." (R. p. 48, State's Exhibit Number 1, Interview of Joseph Ragsdale, time stamp 6:10 – 6:30)

Additionally, he stated that when he got dressed to go to PSA he "was wearing blue jeans and a t-shirt or something like that. I had my gun and badge visible and my radio visible." (R. p. 48, State's Exhibit Number 1, Interview of Joseph Ragsdale, time stamp 7:09 – 7:14) Appellant then admits to wearing handcuffs, and, as well, that all of the items of law enforcement equipment were visible. (R. p. 48, State's Exhibit Number 1, Interview of Joseph Ragsdale, time stamp 7:14 – 7:30) Clearly, Appellant's actions were intentional and were directed towards the effort of insuring that PSA would let Appellant back to see the shoplifting suspect. (R. p. 48, State's Exhibit Number 1, Interview of Joseph Ragsdale, time stamp 7:37 – 8:26)

Upon entering PSA, Appellant approached an employee and stated either "I am here for your fugitive" or "I am here for your shoplifter." Appellant states that he does not remember, but

believes it was the latter statement. (R. p. 48, State's Exhibit Number 1, Interview of Joseph Ragsdale, time stamp 12:54 – 13:39) Appellant admitted that he never asked the PSA employee for information about the alleged shoplifting incident and that would have been the best way to begin the conversation. (R. p. 48, State's Exhibit Number 1, Interview of Joseph Ragsdale, time stamp 14:00 – 14:52) Whether Appellant attempted to interfere with the investigation of the shoplifting incident at PSA or not his demeanor and presentation to PSA staff was clearly consistent with his intention to put forward his identity as a law enforcement officer having a legitimate need of access to the suspect and his false statement to Mitchum was clearly directed at deceiving Mitchum with regards to his relationship with the suspect for whatever unclear reason Appellant may have entertained at the time.

For the reasons herein stated, it has been established by substantial evidence that Appellant committed misconduct and he has failed to meet his burden of proving convincingly that the Final Agency Decision rendered by LETC is unsupported by substantial evidence.

**2. THE ADMINISTRATIVE LAW COURT WAS CORRECT IN DETERMINING THAT LETC'S SANCTION OF DENIAL OF CERTIFICATION WAS NOT EXCESSIVE, WAS WARRANTED BY THE EVIDENCE, WAS NOT ARBITRARY AND CAPRICIOUS, AND WAS NOT AN ABUSE OF DISCRETION.**

LETC "may deny certification based on evidence satisfactory to the Council that the candidate has engaged in misconduct. For purposes of this section, misconduct means: "willfully making false, misleading, incomplete, deceitful, or incorrect statements to a law enforcement officer, a law enforcement agency, or a representative of the agency, except when required by departmental policy or by the laws of this State." S.C. Code Ann. § 23-23-150 (A)(3)(g). LETC has the authority to impose various sanctions when an individual is found to have committed misconduct; one sanction being permanent denial of a law enforcement certification. S.C. Code Ann. Regs. 37-108(A)(1) (2015) LETC ordered that Appellant be "permanently ineligible for a

law enforcement certification in South Carolina.” (R. p. 9) S.C. Code Ann. Regs. 37-025(B) states that in “considering whether to deny certification based on misconduct, the Council may consider the seriousness, the remoteness in time and any mitigating circumstances surrounding the act or omission constituting or alleged to constitute misconduct.” (emphasis added)

“The use of the word ‘may’ signifies permission and generally means that the action spoken of is optional or discretionary unless it appears to require that it be given any other meaning in the present statute.” State v. Wilson, 274 S.C. 352, 356, 264 S.E.2d 414, 416 (1980). “The term ‘shall’ in a statute means that the action is mandatory.” Johnston v. S.C. Dept. of LLR, 365 S.C. 293, 296, 617 S.E.2d 363, 364 (2005)

In the present case, Appellant offered no circumstances as would make his misconduct any less severe and, accordingly, LETC was not required to consider mitigation. The verb “mitigate” denotes an action “[t]o make less severe or intense; to make less harmful, unpleasant, or seriously bad.” (See, *Black’s Law Dictionary*, 11<sup>th</sup> Ed, (2019), mitigate] Although Appellant argues that the punishment meted by LETC is too harsh and that it was required to consider mitigating circumstances he has offered no credible evidence that would make his behavior any less severe or harmful; only arguing that he should not be fully punished for the misconduct. Appellant argues “[f]ailure to even consider the context of the statement here is arbitrary and capricious.” (App. Br. p. 14) Again, however, no such mitigating evidence was produced by Appellant and accepting Appellant’s argument would result in the illogical result that an offender’s *mea culpa* after the fact should in some fashion ameliorate the consequences of the transgression. Appellant then argues “the alleged misconduct did not warrant the harshest sanction of permanent denial of certification.” (App. Br. p. 7)

Appellant proposes that the sanction imposed was overbroad, exorbitant, and extravagant to the point of being unreasonable, arbitrary and capricious.” (App. Br. p. 10) As already discussed above, however, the record contains abundant and substantial evidence of Appellant’s misconduct as would support the sanction of permanent denial of a law enforcement certification. LETC must evaluate each case, based on the evidence properly before it, with regards to whether the misconduct of the officer involved should render the officer permanently ineligible for certification or whether some lesser sanction is appropriate.

In the context of officer “dishonesty,” as has been proven in Appellant’s case, the ramifications for an employing agency and the law enforcement profession overall are clearly “serious” inasmuch as the making of false, misleading, incomplete, deceitful, or incorrect statements by a law enforcement officer, especially to another law enforcement officer or law enforcement agency, goes to the heart of the integrity South Carolina officers are expected to display in their dealings with members of the public and in the fair and equal enforcement of the law.

Appellant further proposes that the final agency decision rendered by LETC was arbitrary and capricious and constituted an abuse of discretion. A decision is arbitrary where it is founded on prejudice or preference rather than on reason or fact, is capricious where it is contrary to the evidence or established rules of law, and constitutes an abuse of discretion where it is grossly unsound, unreasonable, illegal, or unsupported by the evidence. [See, *Black’s Law Dictionary* (11th ed. 2019), arbitrary, capricious, abuse of discretion] <sup>11</sup>

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<sup>1</sup> *arbitrary* adj. (15c) 1. Depending on individual discretion; of, relating to, or involving a determination made without consideration of or regard for facts, circumstances, fixed rules, or procedures. 2. (Of a judicial decision) founded on prejudice or preference rather than on reason or fact. • This type of decision is often termed arbitrary and capricious.

*capricious* adj. (17c) 1. (Of a person) characterized by or guided by unpredictable or

No reasonable view of the evidence adduced in Appellant’s case could realistically lead to any conclusion other than that LETC weighed the evidence submitted by the parties and based on the weight it assigned to that evidence rendered a judgment that Appellant had committed misconduct and that the misconduct, inasmuch as it involved considerations of officer integrity, warranted permanent denial of certification.

In the present case, Appellant argues for the first time that “[t]here is also an element of the review of the Law Enforcement Training Council (LETC) in cases like this that continues to evade review. Because the LETC cannot determine matters related to the Constitution, those issues are never raised at those hearings. However, this Court has a duty to consider the due process and equal protection concerns that are inherently raised by the disparate way in which sanctions of law enforcement officers are administered.” (App. Br. p. 15) This issue was not preserved for appeal. “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 for appellate review.” Staubes v. City of Folly Beach, 339 S.C. 406, 412, 529 S.E.2d 543, 546 (2000) Additionally, it “is well settled that a constitutional question not raised or passed upon in the lower court cannot be raised for the first time on appeal.” Eagerton v. Eagerton, 285 S.C. 90, 96, 217 S.E.2d 146, 148 (1975); Grant v. S.C. Coastal Council, 319 S.C. 348, 356, 461 S.E.2d 388, 392 (1995) (“This appeal is Grant’s first mention of any deprivation of due process and, therefore, this issue is not preserved.”

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impulsive behavior; likely to change one's mind suddenly or to behave in unexpected ways. 2. (Of a decree) contrary to the evidence or established rules of law.

*abuse of discretion* (18c) 1. An adjudicator's failure to exercise sound, reasonable, and legal decision-making. 2. An appellate court's standard for reviewing a decision that is asserted to be grossly unsound, unreasonable, illegal, or unsupported by the evidence.

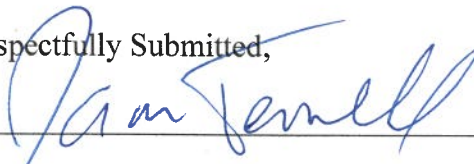
Appellant did not raise this issue in his “Motion in Opposition to the Hearing Officer’s Recommendation”, in his oral argument to LETC, or in his appeal to the ALC. (R. pgs. 71 – 105) Appellant had numerous occasions to raise this issue, but it doing so only now. Clearly, this issue has not been preserved and this Court must dismiss Appellant’s Constitutional argument.

Based upon the evidence adduced at Appellant’s hearing and for the reasons herein stated, that Appellant committed misconduct has been established by substantial evidence. Further, Appellant did not produce any credible evidence of circumstances that would serve to mitigate his behavior in this matter and he has failed to meet his burden of proving convincingly that LETC should have been required to consider any such mitigating circumstances even had he produced them, which he did not, or that LETC’s Final Agency decision in this matter could in any way be considered to have been arbitrary, capricious, or that it manifested an abuse of discretion.

## CONCLUSION

Based upon the evidence adduced at Appellant's hearing and for the reasons herein stated, Respondent asks this Court to affirm the Administrative Law Court's Final Order that affirmed LETC's final agency decision that Appellant should be permanently denied a law enforcement certification in the State of South Carolina. In the alternative, should this Court find error, Respondent would request that Appellant's case be remanded for a new contested case hearing to comply with this Court's Final Order.

Respectfully Submitted,



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August 3, 2020

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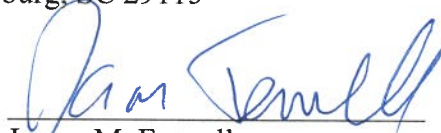
v.

South Carolina Criminal Justice Academy, .....Respondent.

**PROOF OF SERVICE**

The undersigned of the South Carolina Criminal Justice Academy, counsel for Respondent, does hereby certify that service of the FINAL BRIEF OF RESPONDENT in the above captioned matter was made upon all counsel of record by placing copies in the United States Mail, first class postage prepaid, at the below listed address clearly indicated on said envelope this 3rd day of August, 2020.

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