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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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

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

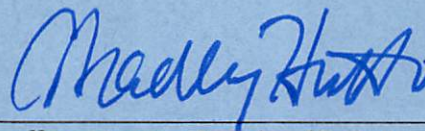
Joseph Ragsdale,.....Appellant

v.

South Carolina Criminal Justice Academy Respondent.

FINAL BRIEF OF APPELLANT

August 3, 2020



C. Bradley Hutto, Esquire (S.C. Bar 6436)
WILLIAMS & WILLIAMS LLC
1281 Russell Street
Post Office Box 1084
Orangeburg, SC 29115
Tel: (803) 534-5218
Email: cbhutto@williamsattys.com

Counsel for Appellant Joseph Ragsdale

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STATEMENT OF ISSUES ON APPEAL

- I. Did the Administrative Law Court err in determining that the finding of misconduct was supported by substantial evidence?
- II. Did the Administrative Law Court err in determining that the 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?

STATEMENT OF THE CASE

This case involves the ability of Appellant to be certified as a law enforcement officer in South Carolina. As a result of this case, the Law Enforcement Training Council declared Appellant permanently ineligible for a law enforcement certification in South Carolina based on a statement made in a phone call to a Lexington County Sheriff's Deputy.

On January 25, 2019, the South Carolina Criminal Justice Academy ("SCCJA") received a Personnel Change in Status ("PCS") Separation due to Misconduct for Joseph Ragsdale ("Appellant"), from the South Carolina Department of Public Safety ("SCDPS"). Appellant timely filed for a Contested Case hearing and a hearing was held on May 29, 2019, before the Honorable William C. Smith, appointed from the SCCJA as the Hearing Officer.

On August 19, 2019, the South Carolina Criminal Justice Academy's Law Enforcement Training Council ("Council") met and voted to accept the Hearing Officer's Recommendation ("Recommendation") dated July 1, 2019, that Appellant be permanently denied certification and eligibility for certification.

An appeal of the Final Agency Decision ("Decision") of the Council, dated September 15, 2019, to accept the Recommendation was filed with the Administrative Law Court. The ALJ issued his Final Order on January 27, 2020. This appeal was filed on February 24, 2020. Appellant was a Trooper with the South Carolina Highway Patrol ("SCHP") and was terminated January 23, 2019, after two and a half years of excellent service for alleged misconduct, which is defined in S.C. Code Ann. §23-23-150(A)(3)(g), as *"willfully making a 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."

The termination of Appellant by SCDPS is not at issue in this case. Subsequent to his termination, the Law Enforcement Training Council (LETC) initiated proceedings to permanently deny certification and eligibility for certification as a law enforcement officer in South Carolina, and that determination is at issue in this appeal.

STATEMENT OF THE FACTS

This case involves a statement made in a telephone call. On October 26, 2018, Appellant learned that a close friend had been detained on suspicion of shoplifting in Lexington County. Appellant then initiated telephone contact with a Lexington County Sheriff's deputy who was investigating the case. Over the phone in his conversation with Deputy Mitchum (Mitchum), Appellant referred to Caleb Farmer, who had been detained for shoplifting at the Palmetto State Armory (PSA), as his "little brother," or something to that effect. Caleb, and his family, were close friends of Appellant and Appellant considered him a "Brother in Christ" and often referred to him as his "little brother."

After his telephone call with Mitchum about Caleb, Appellant went to the PSA in civilian clothes and asked to speak with Caleb. Appellant, however, did not see or talk to Caleb. Appellant did speak in person to Mitchum about the matter and fully explained and clarified his relationship with Caleb and that Caleb was "like a brother." Appellant did not intend to interfere with the investigation by Deputy Mitchum, nor did he actually interfere with the shoplifting investigation.

The Council therefore concluded that Appellant committed misconduct by referring to Caleb as his little brother when Appellant spoke to Mitchum by phone. The Council then imposed the sanction of denial of certification without considering the seriousness of the alleged misconduct or any mitigating circumstances.

ARGUMENT

I. Appellant's actions did not constitute misconduct and the finding of misconduct is not supported by the evidence.

Phone call number 1: I understand that you have been dispatched to a shoplifting in Lexington County. The suspect being detained is a close family friend who is like a little brother to me. I am coming over to be there to support him.

Result: Nothing

Phone call number 2: I understand that you have been dispatched to a shoplifting in Lexington County. The suspect being detained is my brother. I am coming over to be there to support him.

Result: Permanent banishment from the ranks of law enforcement

What does it mean to say that one is your brother? Can referring to another as one's brother ever be misconduct? Is there any difference between "my brother just got arrested for shoplifting" and "a close friend of mine who is like a little brother to me just got arrested for shoplifting?"

Oh Brother, Where Art Thou garnered George Clooney a Golden Globe Award for Best Actor, and the movie was nominated for Best Motion Picture in 2000. But the movie wasn't about any "brothers". It was however directed by the Coen Brothers, Joel and Ethan.

In 1969, The Hollies released "*He Ain't Heavy, He's My Brother*" but it's not literally about brothers. Brother is used to express a feeling of a close relationship.

The Doobie Brothers weren't brothers, but apparently the members of the rock band had a fondness for marijuana cigarettes (doobies). On the other hand, The Isley

Brothers were in fact brothers as were The Everly Brothers and the Jonas Brothers, but not The Blues Brothers nor The Chemical Brothers.

The television miniseries *Band of Brothers* depicts action of Easy Company assigned to the 101st Airborne Division in World War II, but it's brothers in arms who are not real brothers.

Bus driver Ralph Kramden (Jackie Gleason) and sewer worker Ed Norton (Art Carney) were members of the Raccoon Lodge in Brooklyn, New York in "*The Honeymooners*". The lodge members referred to one another as "Brothers under the pelt". In "The Flintstones" movie, Fred is heard to say, "me and Barney are Lodge Brothers" (referring to Water Buffalo Lodge #26).

The word "brother" is used pervasively by college fraternities, and particularly fraternity members use the phrases "little brother" or "big brother" to refer to other members of the fraternity.

The International Brotherhood of Police Officers represents law enforcement officers throughout the United States. This is an organization of individuals who are not related by blood but refer to themselves as brothers. The same is true for the International Brotherhood of Teamsters.

In the Bible the word "brother" is used in multiples ways describing:

- a) an actual blood brother [Matthew 1:2; Luke 3:1; Luke 3:19]
- b) a near relation or cousin [Genesis 13:8; 14:6; Matthew 12:46; John 7:3; Acts 1:14; Galatians 1:19]
- c) a fellow countryman [Matthew 5:47; Acts 3:22; Hebrews 7:5]
- d) a disciple or follower [Matthew 25:40; Hebrews 2:11 Hebrews 2:12]
- e) one of the same faith [Amos 1:9; Acts 9:30; 11:29; 1 Corinthians 5:11]

- f) a colleague in office [Ezra 3:2; 1 Corinthians 1:1; 2 Corinthians 1:1]
- g) a fellow-man [Genesis 9:5; 19:7; Matthew 5:22; Matthew 5:23; Matthew 5:24; 7:5; Hebrews 2:17]
- h) one beloved or closely united with another in affection [2 Samuel 1:26; Acts 6:3; 1 Thessalonians 5:1]. Brethren of Jesus [Matthew 1:25; Matthew 12:46; Matthew 12:50; Mark 3:31; Mark 3:32; Galatians 1:19; 1 Corinthians 9:5, etc.] (biblestudytools.com)

Blood brother is a phrase with a literal and figurative meaning, which means it is sometimes used as an idiom. An idiom is a word, group of words, or phrase that has a figurative meaning that is not easily deduced from its literal definition. The first, literal definition of the term *blood brother* is a male sibling who is genetically related to another sibling, or a male sibling who is related to another sibling by birth. Most often, the term *blood brother* is used as an idiom to mean a male who one is emotionally close to but is not related to by genetics or by birth. This emotional relationship entails an oath of loyalty and devotion, whether formal or informal. The term refers to ceremonies performed over many cultures in which two men swear allegiance and fidelity to each other as brothers and seal the promise by making cuts in each of their bodies in order to mingle their blood. This practice goes back at least as far as the fourth century B.C. in Scythia, where men united as brothers by dripping their blood into wine, and then drinking it. Though rituals in which men became *blood brothers* were common in Asia, Europe, and Africa, it is the Native American ritual that inspired legions of boys living in the United States in the 1950s and 1960s to perform their own rituals making themselves *blood brothers*. (grammarist.com) The ritual is depicted in the children's novel *The Indian in the Cupboard*.

In this case, we don't know the exact language used, but it is clear that at the very least Appellant used the word "brother" as a descriptive term to suggest a close relationship to Caleb Farmer, a person who at the time was suspected of shoplifting. In a phone call to the investigating officer, Lexington County Deputy Mitchum, Appellant said something to the effect of "the shoplifting suspect at Palmetto State Armory, Caleb Farmer, is my little brother." The import of the conversation to the investigating officer was that Appellant had a close relationship to the suspect and that Appellant was concerned about the suspect's welfare. Did it really matter that Appellant was not a true sibling of the suspect? Would it have made any difference that instead of being an actual family member related by blood that the two were step-brothers or fraternity brothers or lodge brothers or brothers in arms or brothers in Christ? The only real information conveyed to Deputy Mitchum in Appellant's phone call was that Appellant had a close enough relation to the suspect that he was compelled to place the call. In other words, the information imparted to the Deputy was not deceitful.

So the Deputy deduced from the fact that Appellant had placed a call to him about Caleb Farmer and referred to him as his "little brother" that Appellant was expressing concern about someone with whom he had a close relationship and someone who was important to Appellant. The import of the information was accurate and the effect on the Deputy caused nothing to happen. Again, based on the phone call nothing happened that was inappropriate, improper, or illegal. In fact, the record states that "the deputy's testimony is that Mr. Ragsdale (Appellant) never asked for any special treatment"

(R p. 63) If Appellant's language had attempted to alter the investigation or influence the Deputy, Appellant could have been charged with a crime: obstruction of justice or

providing false information to a law enforcement officer. No such charges were filed because Appellant's actions were not criminal.

This statement was not made under oath, nor did it affect the outcome of an investigation.

Secondary to the phone call, Appellant went to scene of the alleged shoplifting in civilian clothes. He did not participate in the investigation. He did not talk to Caleb Farmer. His role was that of a citizen observer. It is quite common for a family member or friend to show up at the scene of an accident or incident. It is not illegal, improper, disallowed, or uncommon. That is all that happened in this case. But in this case, the person concerned about the suspect was an off-duty law enforcement officer.

Law enforcement officers are often rewarded for being deceitful. They use deceit in undercover investigations. Furthermore, one of the fundamental reasons for the seminal Miranda case was the recognition that during custodial interrogations, law enforcement personnel use deception. See Miranda v. Arizona, 384 U.S. 436 ,455 (1966): "When normal procedures fail to produce the needed result, the police may resort to deceptive stratagems such as giving false legal advice. It is important to keep the subject off balance, for example, by trading on his insecurity about himself or his surroundings. The police then persuade, trick, or cajole him out of exercising his constitutional rights."

But here, Appellant was not engaged in any deceitful activity. His choice of words have been exponentially blown out of proportion. What should have been a conversation that was forgotten without concern, as have been thousands of others heard by the Deputy when people discuss an investigation with him, has been now the subject of multiple hearings, briefs, and arguments. If the message conveyed to the Deputy had in anyway affected the course of the investigation or especially the outcome of the investigation, then

the words of Appellant would possibly be worthy of review. But as we know in this instance, because of Appellant's words nothing unusual, out of the ordinary, improper, or illegal happened in the case of the County of Lexington vs. Caleb Farmer. What is unusual here is that the use of a single word that was unremarkable on its merits have been used to underpin not just the termination of Appellant's employment from the Department of Public Safety, but his permanent, lifelong, irreversible suspension from being a licensed law enforcement officer in South Carolina. The use of one word, "brother"; a word with multiple meanings¹ is being used in only one context to support a finding that the moving party has proven by substantial evidence a finding of misconduct.

This Brief is Appellant's final opportunity to point out that the mere utterance of the words "my brother just got arrested for shoplifting" have been the sole basis of a finding of misconduct. The LETC, who was not a party to the conversation, subsequently made an interpretation of the meaning of "brother" that served as the only basis for a finding of misconduct. That this utterance would lead to a sanction in this case is overbroad, exorbitant, and extravagant to the point of being unreasonable, arbitrary, and capricious.

Could the interpretation of the use of the word "brother" in a sentence that had no effect on the underlying case ever serve to permanently disbar an attorney or expose a

¹ Merriam-Webster defines brother:

broth-er | \ 'brə-thər \

plural **brothers** also **brethren** \ 'breth-rən; 'bre-thə-rən , -thərn \

Definition of brother

1: a male who has the same parents as another or one parent in common with another

2: one related to another by common ties or interests

3: a fellow member —used as a title for ministers in some evangelical denominations

4: one of a type similar to another

5a: **KINSMAN**

b: one who shares with another a common national or racial origin *especially* : **SOUL BROTHER**

6a: *capitalized* : a member of a congregation of men not in holy orders and usually in hospital or school work

b: a member of a men's religious order who is not preparing for or is not ready for holy orders - a *lay brother*

physician to the lifelong suspension of his license to practice medicine? It appears to be the position of Respondent that the literal and strict view of a hearing officer's interpretation of "brother" can be twisted to the conclusion of Respondent, i.e. that Appellant engaged in a deliberate and willful lie; an intentionally deceitful use of the word "brother." Let's reflect: It is Respondent's conclusion in this case that a person can intentionally, with deceit in his heart, use a word that by definition means "male sibling" in such a nefarious way that without having any effect on the underlying case that it should serve as the basis for the permanent banishment of a licensed law enforcement officer from his profession. Is it metaphorically possible for the word "brother" to leave the lips of the speaker dripping with malice and cloaked in dishonesty and treachery? Or, is the interpretation of the use of one word that had no impact on the shoplifting case, in such a manner arbitrary and capricious to the point that it defies logic to suggest that the standard of "substantial evidence" has been met?

S. C. Code Section 1-23-380(5)(A) provides that the Administrative Law 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 (e) clearly erroneous in view of the reliable, probative, or substantial evidence on the whole record or (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. Appellant submits that a finding of misconduct predicated on the one time use of the word "brother" in a context that had no effect on any case and was subject to more than one interpretation is clearly erroneous as well as arbitrary and capricious. Ultimately the use of the word "brother" was not "willfully made" for the purpose of being "false, misleading, incomplete, deceitful, or incorrect". Appellant made the statement to convey that he was calling about someone close to him. That was true

under many meanings of the word and true in the context of the religious practices of Appellant which are protected by the state and federal constitutions. See Affidavits of Nathan Farmer and Joshua Farmer. (R pp. 51-54)

Appellant's use of the word "brother" was intended to truthfully convey to Deputy Mitchum that Appellant was calling about a person with whom he had a close relationship. That was not false, misleading, incomplete, deceitful, or incorrect. In other words, is the LETC really saying that if Appellant had said "brother in Christ" or "church brother" that there would be no case? The splitting of this hair in a conversation that had no impact on any law enforcement activity is the definition of being arbitrary and capricious.

This case clearly disturbed the Administrative Law Judge. (R p.7) Feeling that his hands were legally tied, he issued his ruling but not without calling out for a redress of the overt inequity being perpetrated on Appellant. To do so, this Court will have to determine either that there is no substantial evidence of misconduct or that the actions of Respondent were arbitrary and capricious.

In consideration of the lifelong banishment of a public servant with an exemplary record, can the reviewer's acts of finding misconduct reach this level of being arbitrary and capricious if the reviewer mistakenly assigns intent to a single word used in a sentence in a phone call that was legally irrelevant to an ongoing investigation of a third party? Here Respondent has unilaterally and without any factual basis determined that Appellant's utterance of the word "brother" was conniving, calculating, and duplicitous to the extent that it was deceitful. Was Appellant's verbalization of "brother" fabricated, concocted, or fraudulently made? It was not. However, Respondent has concluded that Appellant's use of the word "brother" was a sham, an underhandedly designed scheme to mislead the Deputy. Only the use of the word "brother" was not so spoken, and it did not

have any such effect. The Deputy was not faked out. When the Deputy heard Appellant describe the alleged shoplifter as his brother, he did not alter his approach to the investigation. Nothing happened because nothing had happened. In other words, no harm flowed to anyone from Appellant calling Caleb his 'little brother.' To conclude that Appellant used the word "brother" with such mendacity, insincerity, and unscrupulousness that it should underpin his dismissal from the ranks of law enforcement is in fact arbitrary and capricious.

What about the concept of no harm to foul? Or as we call it "harmless error." Have you ever seen multiple basketball players collide to the point that the floor is littered with uniformed cagers and no whistle is blown? Even in cases where the outcome of the game is altered? Here, Appellant told an investigating deputy that the suspect was his "little brother". The outcome of the game was not altered. The shoplifter was arrested. Law enforcement efforts proceeded unhampered. The victim was not affected, and the judicial process was not impacted. Can the misuse of a word in this context serve as the touchstone for discipline of the speaker resulting in the equivalent of the "death penalty" being levied without the case being rife with arbitrariness and capriciousness?

Of course, words matter. But here the words had no effect. Furthermore, the words were not under oath. The words affected no one. Justice was not altered, much less thwarted or stymied. Can a secondary reviewer elevate the words and assign value to them beyond the actual effect that the words had on the hearer in the primary case. It is the Respondent who has misinterpreted Appellant's use of the word "brother". Deputy Mitchum knew what Appellant was saying, in essence: "I am calling you about someone close to me." The words did not hinder the State's pursuit of criminal activity. Can they now serve as the basis for the extraction of the ultimate penalty against the speaker?

Appellant's use of the word "brother" in the context of his case was not misconduct, and a finding of misconduct is not supported by substantial evidence. This Court should reverse the decision of the Administrative Law Court.

II. The sanction of denial of certification was excessive, not warranted by the evidence, was arbitrary and capricious and an abuse of discretion.

Appellant does not concede that he engaged in deceitful conduct. But even if he did, the Law Enforcement Training Council is authorized to consider mitigating factors. S.C Code Regs. 37-025 (B) provides: "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." While the language of the regulation is permissive, it does recognize that there will be cases in which the context of the alleged misconduct should be considered. There will be cases in which mitigating factors should be weighed. If there ever was such as a case, this is it. If the Council will not consider mitigating circumstances in this case, then it seems apparent that the Council intends to act in a manner to suggest that the mitigation section is nonexistent. Failure to even consider the context of the statement here is arbitrary and capricious. This Court is not the first to be asked to review the actions of a law enforcement panel who has used rigidity in determining the fate of a fellow officer who made a trivial misstatement. The North Carolina case involving a missing hat is a recent example. See Weatherington v. NC Department of Public Safety (citation) 2020 WL 768835. In that case the North Carolina Court of Appeals noted Trooper Weatherington's excellent work history and tenure of service as well as the fact that his actions had resulted in no harm. The North Carolina Court found that the failure of the Department to consider the mitigating circumstances to be arbitrary and capricious.

There 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. No other licensing review panel issues permanent bans for seemingly trivial conduct. Most licensing boards have a hierarchy of sanctions from fines, suspension, probation, private and public reprimands, disbarment, etc. But in every case, there is the opportunity for reeducation and subsequent re-application for licensure. To allow the LETC to operate differently is a violation of due process and equal protection for those individuals who are certified law enforcement officers. As such, these draconian and extreme penalties are tantamount to being arbitrary and capricious. That is what the North Carolina Court of Appeals recognized in Weatherington. It is public record that law enforcement officers who use excess force, lie under oath in Court, speed on the highways, engage in chases that result in accidents, and commit numerous other legal violations do not permanently suffer the fate of permanent banishment from the profession. In fact, it is the retreading of rogue officers from department to department following instances of policy violations that often incites negative public sentiment toward law enforcement. But those officers are not permanently expelled from the ranks. How can it be anything but arbitrary and capricious when an officer uses one word, has it taken out of context by the LETC, and has it undergird banishment and exile from the brotherhood of law enforcement?

Appellant requests that this Court find that the sanction of denial of certification was excessive, not warranted by the evidence, and was arbitrary and capricious and an

abuse of discretion by the LETC. The Court should remand this case to the LETC for a new sanction in the same manner as the North Carolina Supreme Court remanded the Weatherington case. Appellant is seeking to have his law enforcement certification reinstated so that he can be certified in his chosen profession. A profession that he had admirably performed in for his entire career until he exercised his religious freedom to call a fellow church member his “brother.” A term that is true because Appellant and Caleb Farmer are brothers in the religion of their choosing.

CONCLUSION

This Court should determine that there is not substantial evidence to support the LETC's finding of misconduct. This Court should reverse the decision of the Administrative Law Court. In the alternative, this Court should remand this case to the LETC for a new sanction.



August 3, 2020

C. Bradley Hutto, Esquire (S.C. Bar 6436)
WILLIAMS & WILLIAMS LLC
1281 Russell Street
Post Office Box 1084
Orangeburg, SC 29115
Tel: (803) 534-5218
Email: cbhutto@williamsattys.com

Counsel for Appellant Joseph Ragsdale

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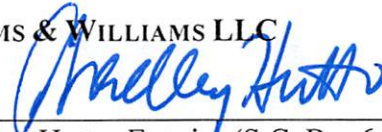
South Carolina Criminal Justice Academy, Respondent.

PROOF OF SERVICE

The undersigned of WILLIAMS & WILLIAMS, LLC, counsel for Appellant, 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.

James M. Fennell, Esquire
General Counsel, SCCJA
5400 Broad River Road
Columbia, SC 29212-3540

WILLIAMS & WILLIAMS LLC



C. Bradley Hutto, Esquire (S.C. Bar 6436)
1281 Russell Street
Post Office Box 1084
Orangeburg, SC 29115
Tel: (803) 534-5218
Email: cbhutto@williamsattys.com
Counsel for Appellant Joseph Ragsdale

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CERTIFICATE OF COUNSEL

The undersigned of WILLIAMS & WILLIAMS, counsel for Appellant, does certify that Appellant's Final Brief complies with Rule 211b, SCACR.



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C. Bradley Hutto, Esquire (S.C. Bar 6436)
WILLIAMS & WILLIAMS LLC
1281 Russell Street
Post Office Box 1084
Orangeburg, SC 29115
Tel: (803) 534-5218
Email: cbhutto@williamsattys.com

Counsel for Appellant Joseph Ragsdale

