RECEIVED
Jul 28 2021
SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM ADMINISTRATIVE LAW COURT
The Honorable Ralph King Anderson, III, Administrative Law Judge

---

Appellate Case No.: 2020-00849

Kristin Cosby,

Appellant

v.

South Carolina Criminal Justice Academy,

Respondent

RECORD ON APPEAL
VOLUME I

Courtney C. Atkinson
Metcalfe & Atkinson, LLC
1395 S. Church Street
Greenville, SC 29605
(864) 214-2319
catkinson@malawfirmsc.com
Attorney for Appellant, Kristin Cosby

Other Counsel of record:
James M. Fennell
5400 Broad River Road
Columbia, SC 29212-3540
Attorney for Respondent South Carolina Criminal Justice Academy

INDEX

NOTICE OF APPEAL DATED JUNE 1, 2020.....1

ORDER OF ADMINISTRATIVE LAW JUDGE DATED MAY 6, 2020.....18

NOTICE OF ASSIGNMENT FILED NOVEMBER 14, 2019.....32

NOTICE OF APPEAL TO ADMINISTRATIVE LAW COURT AND PROOF OF SERVICE DATED NOVEMBER 8, 2019.....34

FINAL AGENCY DECISION DATED OCTOBER 3, 2019.....49

RESPONSE TO MOTION IN OPPOSITION TO HEARING OFFICER'S FINDINGS AND RECOMMENDATIONS DATED AUGUST 18, 2019.....61

MOTION IN OPPOSITION TO HEARING OFFICER'S RECOMMENDATION DATED AUGUST 8, 2019.....115

HEARING OFFICER RECOMMENDATION DATED JULY 25, 2019.....154

REQUEST FOR CONTESTED CASE HEARING DATED JANUARY 28, 2018.....169

TRANSCRIPT OF CONTESTED CASE HEARING DATED MAY 15, 2019.....170

CONTESTED CASE HEARING EXHIBITS.....404

TRANSCRIPT OF LAW ENFORCEMENT TRAINING COUNCIL MEETING, SEPTEMBER 16, 2019.....466

LAW ENFORCEMENT TRAINING COUNCIL MEETING MINUTES, SEPTEMBER 16, 2019.....548

OTHER MATERIALS OR DOCUMENTS

A. NOTICE OF CONTESTED CASE HEARING.....551

B. NOTICE OF RESCHEDULED CONTESTED CASE HEARING.....556

C. NOTICE OF SEPTEMBER 16, 2019 LETC MEETING FOR THE FINAL AGENCY DECISION.....557

D. LETTER SENDING FINAL AGENCY DECISION DATED OCTOBER 11, 2019.....558

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM ADMINISTRATIVE LAW COURT

The Honorable Ralph King Anderson, III, Administrative Law Judge

---

Case No. 2019-ALJ-30-0389-AP

Kristin Cosby

Appellant,

v.

South Carolina Criminal Justice Academy

Respondent.

RECEIVED
JUN 04 2020
SC Court of Appeals

NOTICE OF APPEAL

Kristin Cosby hereby appeals from the order of the Administrative Law Court, by the Honorable Ralph King Anderson, III Administrative Law Judge, dated and entered on May 6, 2020, affirming the Final Decision of the Respondent Agency. Written notice of this Order was received by Appellant on May 8, 2020. A copy of the May 6, 2020 order is attached hereto and incorporated herein.

Respectfully submitted,

Courtney C. Atkinson

Courtney C. Atkinson, SC Bar No. 71992
METCALFE & ATKINSON, LLC
1395 S. Church Street
Greenville, South Carolina 29605
(864) 214-2319

Other Counsel of Record:
James M. Fennell
5400 Broad River Road
Columbia, SC 29212-3540
Attorney for Respondent

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM ADMINISTRATIVE LAW COURT

The Honorable Ralph King Anderson, III, Administrative Law Judge

---

Case No. 2019-ALJ-30-0389-AP

Kristin Cosby

Appellant,

v.

South Carolina Criminal Justice Academy

Respondent

RECEIVED
JUN 04 2020
SC Court of Appeals

CERTIFICATE OF SERVICE

I certify that on June 1, 2020, I served Appellant's Notice of Appeal on the Respondent and the South Carolina Administrative Law Court, as required by Rule 203(b)(6), by placing a copy into the U.S. Mail, postage prepaid, addressed to the South Carolina Administrative Law Court and Respondent's counsel of record as follows:

The Honorable Jana E. Shealy
Clerk of Court, Administrative Law Court
1205 Pendleton Street, Suite 224

James M. Fennell
5400 Broad River Road
Columbia, SC 29212-3540
Columbia, SC 29201

Courtney C. Atkinson

Courtney C. Atkinson, SC Bar No. 71992
METCALFE & ATKINSON, LLC
1395 S. Church Street
Greenville, South Carolina 29605
(864) 214-2319

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Kristin Cosby, Appellant, vs. South Carolina Criminal Justice Academy, Respondent.	)	Docket No. 19-ALJ-30-0389-AP **ORDER**

RECEIVED
JUN 04 2020
SC Court of Appeals

This matter comes before the South Carolina Administrative Law Court (ALC or Court) pursuant to an appeal by Kristin Cosby (Appellant) from the decision of the Law Enforcement Training Council (LETC), which permanently denied Appellant's law enforcement certification in the State of South Carolina. The ALC has jurisdiction to hear this matter pursuant to section 23-23-150 of the South Carolina Code (Supp. 2019) and section 1-23-600(E) of the South Carolina Code (Supp. 2019). Upon consideration of the briefs and Record, the LETC's decision is affirmed.

BACKGROUND

Appellant worked for the South Carolina Department of Probation, Parole, and Pardon Services (Department) for ten years and seven months. She also served in the Air Force Security Services for five years. As a result of her service in the military, she suffers from Post-Traumatic Stress Disorder (PTSD), anxiety, and depression. She receives treatment for those conditions. In 2006, she went to work for the Department but left in 2010 to work for the Greenville County Sheriff's Office. Appellant applied to return to the Department in 2012 but was told at that time that "[the Department] wanted a male for the position and not a female." The Equal Employment Opportunity Commission (EEOC) filed a gender discrimination lawsuit against the Department on her behalf and, as a result, in 2012, she was rehired by the Department and put in charge of the sex offender team.

In March 2018, Appellant recommended to Chadwick Gambrell (Gambrell), the Agent-in-Charge of the Department's Greenville County Office, that Agent Christina Worthy be appointed to her sex offender team. Gambrell told Appellant he felt she had "more than a professional relationship" with Agent Worthy, which Appellant denied. Gambrell testified he had concerns

FILED
May 6, 2020
SC ADMIN LAW COURT

and wanted to clarify that the relationship was purely professional before moving Agent Worthy to Appellant's team. He further testified he had concerns regarding what he felt were inappropriate relationships that Appellant was having "with people in the office under her supervision," and he had previously counselled Appellant regarding those concerns. Gambrell also spoke to the Regional Director about his concerns and was told that a disciplinary inquiry would not be initiated.

On November 8, Gambrell spoke with Appellant's subordinate, Agent Nicole Albany (Albany).[1] After speaking with Albany, he had further concerns "that there may have been an inappropriate relationship between [Albany] and [Appellant]." He then typed up his notes from his conversation with Albany and forwarded them to the Regional Director but when he did not hear back, he contacted the Department Director and explained his concern that Appellant's relationships could be "misconduct." Nevertheless, Gambrell testified that at the time that he expressed his concerns about relationships with subordinates, there was no departmental policy prohibiting such relationships or specifically proscribing those relationships as being misconduct. However, Gambrell believed having a sexual relationship with a subordinate violated the Department's "professionalism policy" because Gambrell considered such behavior to be "morally and ethically improper." Honeycutt, who was also involved in investigating this issue, testified "there was a lot of discussion why she was spending so much time with some of her subordinates."

Jeffrey Harmon (Harmon), the Director of the Department's Office of Professional Responsibility, was directed by the Director of the Department in late November 2018 to initiate an investigation into allegations that Appellant and a subordinate employee engaged in a sexual relationship in May 2015. The allegations involved conduct alleged to have occurred 3½ years prior his investigation and, at the time the alleged conduct took place, such a relationship would not have constituted a violation of Department policy. Harmon first spoke with Albany before he interviewed Appellant. Harmon also interviewed other agents. He started the interview with Appellant by providing her "Garrity" warnings. Furthermore, he began the interview with a statement from the Department Director that "no one had ever been terminated for an allegation

---

[1] During this timeframe, Appellant also filed a complaint with the Department in which she alleged sexual harassment by her then Agent in-Charge (Gambrell) and Assistant Agent-in-Charge, Robert Honeycutt (Honeycutt),on October 19, 2018. However, Gambrell testified Appellant never told him she felt she was being harassed by him or Honeycutt. In fact, Gambrell did not learn about the allegations until November 7, 2018. Ultimately, Appellant's allegations were investigated and determined to be "unfounded."

of consensual sexual relationships with a subordinate, and that she should be honest and truthful about the relationship and that if she [was] found to be untruthful and [lied], then she would be subject to disciplinary actions." Harmon asked Appellant if she had a sexual relationship with a subordinate named Nicole Albany and Appellant answered "No." He advised Appellant "that she could take some time to think about her statement and, if she had further information to offer, she could do that."

Appellant was then offered a polygraph examination. However, prior to the polygraph examination, Appellant contacted Harmon and stated that Albany had sent her photos but that she could not recall if any of the advances were physical. Harmon testified Appellant told him there was never "any other sexual conduct" with a subordinate. However, the following Monday, Appellant amended her statement again, indicating Albany had tried to initiate physical contact with her during a cookout and that a friend who was present told Albany that she was "being too aggressive." Appellant stated she was able "to kind of brush off" the physical contact. She also said Albany had "sexually come onto [Appellant] 3½ years prior" and that she had filed a complaint with her then Agent-in-Charge regarding those advances and asked that Albany be reassigned. Appellant testified she told Harmon that Albany had attempted oral sex on her, but Appellant had "stopped it."

A polygraph was then scheduled and administered to Appellant. Bryan Jones (Jones), the Chief Polygraph Examiner for the South Carolina Law Enforcement Division (SLED) State of South Carolina, contacted Harmon regarding conducting the polygraph examination. On December 17, 2018, he provided Appellant a "Consent to Interview with Polygraph" form, which she reviewed and signed. Jones testified he completed a pre-polygraph examination sheet for Appellant and Appellant told him she suffered from PTSD and was taking several medications at the time. He also testified he went over the questions to be asked of Appellant before the polygraph examination was administered and neither the pre-interview nor post-interview questions posed to Appellant were recorded.

Prior to starting the polygraph exam, Jones asked Appellant whether she had engaged in sexual activity with a subordinate to which she responded "No." After conducting the exam, he asked Appellant the same question to which she then admitted to having engaged in sexual activity with Albany. Appellant then described a scenario in which she had been at Albany's house in a room near the kitchen. Appellant said Albany was "coming onto her, trying to pull at her pants

and unzip her pants, and [Albany] was able to get [her] zipper down, pulled her pants down slightly and then performed oral sex on [Appellant]." Appellant further explained this consensual sexual encounter also involved another a male who had come into the room and put his penis in Appellant's hand. Afterwards, Appellant provided a handwritten statement to Harmon and he prepared a summary of the findings for the Office of Professional Responsibility's investigation of Appellant.

Albany testified she previously had a sexual relationship with Appellant and she had told both her Assistant Agent-in-Charge, Chad Gambrell, and Jeff Harmon about the relationship. She also said the relationship was consensual and that on May 2015 she and Appellant were involved in an encounter at her home in which "[w]e both went in there and were kissing, and one of my friends came in and [Appellant] performed oral on sex on him. . . . But, me coming on to her, no. It was mutual." She also explained the sexual relationship between her and Appellant consisted of the May 2015 incident and another incident prior to that time when she and Appellant kissed in public.

Albany further testified she did not "come on" to Appellant and, after that incident, Appellant began "correcting or changing a lot of documents that [Albany] would hand in to her" and was "trying to intimidate and use her authority over [her]" to make Albany feel like a lesser agent. When Albany asked Appellant questions, Appellant would tell her that she needed to do what she was told because Appellant was her supervisor. Albany later told Appellant she wanted to leave her team, and was eventually moved to another team and no longer interacted with Appellant. [2] Albany testified that after Gambrell approached her regarding her relationship with the Appellant, she made a report because "[Gambrell] knew that I never reported it officially in the beginning because of [the] environment of the office." Albany therefore "chose to . . . bring light to the situation when [Gambrell] asked [her]" about it on November 18, 2018.

Appellant resigned from her position with the Department on December 19, 2018. On January 3, 2019, the South Carolina Criminal Justice Academy (CJA) received a Personnel Change in Status Report Notification of Separation (PCS) form for Appellant from LCSO. LCSO asserted Appellant committed misconduct by making false statements to her employer. At Appellant's request, a contested case hearing was held on May 15, 2019. The Hearing Officer found

---

[2] That move occurred before Chad Gambrell became Agent-in-Charge of the Greenville Office.

misconduct and recommended Appellant be granted eligibility for certification with probation or with any additional requirements deemed just and proper. The Hearing Officer also recommended the Council consider mitigating circumstances. On September 16, 2019, the Law Enforcement Training Council (LETC) adopted the Hearing Officer's recommendation with the modification that appellant be permanently denied law enforcement certification in the State of South Carolina. On October 3, 2019, a Final Agency Decision was issued.

ISSUES ON APPEAL

1. Does substantial evidence support the Law Enforcement Training Council's final agency decision?
2. Does the Law Enforcement Training Council's final agency decision rely on the incorrect standard as to what constitutes "willful conduct?"
3. Is the Law Enforcement Training Council's final agency decision arbitrary and capricious, constituting an abuse and/or unwarranted exercise of discretion?

STANDARD OF REVIEW

Section 23-23-150 of the South Carolina Code (Supp. 2019) sets forth that the LETC enters the final agency decision. "Review by an administrative law judge of a final decision in a contested case, heard in the appellate jurisdiction of the Administrative Law Court, must be in the same manner as prescribed in Section 1-23-380 for judicial review of final agency decisions . . . ." S.C. Code Ann. § 1-23-600(E) (Supp. 2019). Section 1-23-380(5) of the South Carolina Code (Supp. 2019) provides the standard used by appellate bodies to review agency decisions. *See* § 1-23-600(D) (directing administrative law judges to conduct appellate review in the same manner prescribed in section 1-23-380). That section states:

> 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.

§ 1-23-380(5).

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 S.C.*, 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, 917 (1996). In applying the substantial evidence rule, "a reviewing court will not overturn a finding of fact by an administrative agency 'unless there is no reasonable probability that the facts could be as related by a witness upon whose testimony the finding was based.'" *Sea Pines Ass'n for Prot. of Wildlife, Inc. v. S.C. Dep't of Natural Res.*, 345 S.C. 594, 603-04, 550 S.E.2d 287, 292 (2001) (quoting *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 136, 276 S.E.2d 304, 307 (1981)). 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). Furthermore, the reviewing court is prohibited from substituting its judgment for that of the agency as to the weight of the evidence on questions of fact. *Grant v. S.C. Coastal Council*, 319 S.C 348, 353, 461 S.E.2d 388, 391 (1995). Finally, the party challenging an agency action has the burden of proving convincingly that the agency's decision is unsupported by substantial evidence. *Waters*, 321 S.C. at 226, 467 S.E.2d at 917.

DISCUSSION

Substantial Evidence

Appellant argues the LETC's "decision is not supported by substantial evidence that Appellant engaged in the certification misconduct alleged by willfully providing incorrect or incomplete statements to the Department." Rather, Appellant asserts that she provided complete and accurate statements to the Department and that the "whole record in this matter clearly evidences the fact that, Appellant told the Department about Albany's attempt at performing oral sex on her in May of 2015 on three separate occasions prior the December 2018 polygraph."

Regulation 37-025 of the South Carolina Code of Regulations (Supp. 2019) provides that that LETC may deny law enforcement certification "based on evidence satisfactory to the Council that the candidate has engaged in misconduct." Misconduct means "[t]o willfully make false, misleading, incomplete, deceitful or incorrect statements to a law enforcement officer, a law

enforcement agency, or a representative, except when required by departmental policy or by the laws of this State during the course of an investigation." *Id.* If misconduct is found, the LETC has the authority to impose a number of sanctions; one such sanction being the permanent denial of a law enforcement certification. S.C. Code Ann. Regs. 37-108(A)(1) (2015 & Supp. 2019).

Here, the LETC found Appellant committed misconduct by "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) (Supp. 2019). The evidence in the record reflects that Appellant engaged in a sexual relationship with her subordinate and Appellant was thereafter untruthful to her supervisors when asked about the relationship on several occasions. Specifically, Harmon testified "a pattern developed of [Appellant] not telling the truth and then modifying the truth and then, finally, becoming truthful with the written statement of a consensual relationship with [Albany]." His testimony accurately summarized Appellant's conduct.

The record reflects Appellant was given every opportunity to tell the truth. Harmon began his investigation into the misconduct allegations by informing Appellant that "no one had ever been terminated for an allegation of consensual sexual relationships with a subordinate, and that she should be honest and truthful about the relationship and that if she [was] found to be untruthful and [lied], then she would be subject to disciplinary actions." Yet, Appellant told Harmon she did not engage in a sexual relationship with a subordinate, which was clearly untruthful. Subsequently, Appellant changed her story and stated that Albany had sent her photos but she could not recall if any of the advances were physical. This was another untruthful statement. Appellant also told Harmon that Albany had tried to initiate physical contact with her during a cookout but that she "brush[ed] off" the physical contact. Appellant further testified Albany had "sexually come onto [her] 3 ½ years prior" and she advised Harmon that she had filed a complaint with her then Agent-in-Charge at that time regarding Albany's advances and asked that Albany be reassigned.

However, Albany testified she did not "come on" to Appellant and that another incident took place where she and Appellant kissed. Moreover, Albany explained she was the one who told Appellant she wanted to get off her team. Furthermore, there was no evidence to support Appellant's testimony that she disclosed Albany's advances to her AIC in 2015; indeed, her testimony was contradicted by the other agents' testimonies.

Additionally, prior to the polygraph, Appellant was given the chance to be completely honest, but she was not. The "Consent to Interview" form was provided to her before the polygraph examination and the purpose of the exam was stated as being to determine "[w]hether or not you engaged in any sexual activity with Nicole Albany." Thus, the record reflects that Appellant knew what Jones was asking of her and she should have been truthful. However, it was not until after the polygraph was conducted that Appellant gave a complete and accurate statement to the Department that she engaged in consensual sexual relations with Albany.

Based upon the evidence in the Record, a reasonable person could conclude, like the LETC, that Appellant provided incorrect statements to the Department. Therefore, I find substantial evidence supports the LETC's finding that Appellant was untruthful to the Department. *See Friends of the Earth*, 387 S.C. at 366, 692 S.E.2d at 913 (holding a decision is supported by "substantial evidence" when the record as a whole allows reasonable minds to reach the same conclusion as the agency).

Willful Conduct

Appellant argues the "[f]inal Decision is erroneous in that the factual findings of the hearing officer, which were adopted by the Agency, specifically acknowledge the lack of substantial evidence to establish willful conduct under the correct legal standard." She further argues the LETC's "decision fails to include any discussion and/or reference to any such 'willful' conduct on Appellant's part." Appellant claims "those errors resulted in substantial prejudice to the Appellant, including a finding that she had engaged in the certification misconduct alleged – specifically that she had willfully made false, misleading and/or incorrect statements to the Department –and that she was being permanently denied law enforcement certification as a result." S.C. Code Ann. Regs. 37-107(C) & (D) (Supp. 2019) provide that:

> C. In order for a candidate/officer/operator to have a final decision issued finding that they did commit misconduct pursuant to R.37-025, R.37-026, R.37-073 and/or R.37-074, the Council must find misconduct has been proven by substantial evidence.
>
> D. The Council shall issue a final decision based on the evidence accepted during the contested case hearing and the applicable statutes and regulations. The Council **may** consider the hearing officer's recommendation. The Council's final decision must include the following:
>
> 1. Findings of Fact;
>
> 2. Conclusions of Law; and

3. If appropriate, sanction(s) pursuant to R.37-108.

The Council **may** adopt the hearing officer's recommendation as the Council's final decision.

(emphasis added). Pursuant to section 23-23-150(A)(3)(g) of the South Carolina Code (Supp. 2019), misconduct includes "**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." (emphasis added). "A voluntary act becomes willful, in law, only when it involves conscious wrong or evil purpose on the part of the actor, or at least inexcusable carelessness, whether the act is right or wrong." WILLFUL, Black's Law Dictionary (11th ed. 2019).

Here, in the Hearing Officer's analysis, he expounded that "incomplete or incorrect statements could have come about as a result of Appellant's 'inexcusable carelessness.'" His analysis also concluded that Appellant's statements were "more likely, due to her medical afflictions and medication usage during the course of the investigation." He went on to say that "(n)o evidence adduced at the hearing . . . appears to support that [Appellant] entertained any 'conscious wrong or evil purpose'" Appellant contends these statements in the Hearing Officer's analysis establish that "the agency's factfinder found that there was no evidence that Appellant acted willfully." Appellant also argues that willfulness is a required element of the alleged misconduct and the "Agency fails to discuss what standard they applied but rather, the only discussion thereof by the Agency is the erroneous standard contained in the hearing officer's findings and recommendation."

Appellant misapprehends the relationship of the Hearing Officer's statements to the LETC's findings. The Hearing Officer did not include these statements in either his findings of fact or his conclusions of law. Rather, these statements were made as part of his Analysis, which was not adopted by the LETC and is not included in the final agency decision. Moreover, the Hearing Officer's recommended conclusions of law stated that a "review of the record in the matter discloses that there does exist substantial evidence that [Appellant] provided incorrect or incomplete statements, such as would constitute misconduct pursuant to S.C. Code Ann. § 23-23-150(A)(3), as reported by the Department[.]" The LETC's decision adopted the Hearing Officer's recommended findings of fact but did not adopt his recommended disposition of the case or include the hearing officer's analysis in its decision. The LETC found the record supported the allegation that Appellant committed misconduct pursuant to section 23-23-150(A)(3) just as the Hearing

Officer did in his conclusions of law. Importantly, as quoted above, this statute provides that misconduct includes **willfully** making incomplete statements. *See* § 23-23-150(A)(3)(g) (emphasis added). Therefore, the LETC implicitly found Appellant had **willfully** made false, misleading, and/or incorrect statements to the Department when it found a violation of this statute. *See id.* Thus, the LETC did not rely on an incorrect legal standard and the LETC did not abuse its discretion.

Appellant also argues that even if she did provide incomplete or incorrect statements to the Department, her conduct only rises to "the level of the certification misconduct alleged if done so **willfully**." Initially, the Court has difficulty understanding how Appellant could give so many misstatements regarding a simple issue and not be willful in giving them. Indeed, the record reflects that Appellant was asked the same question multiple times by different supervisors and she changed her answer numerous times. Appellant testified her memory of the incident referenced in May 2015 was not clear because she does not "have a very good memory." However, she was able to give Jones a detailed account of that day after the polygraph was conducted; thus, it is difficult to believe her memory is not good, especially when that incident occurred more than three years earlier. Appellant also claims she did not understand the scope of the question Jones asked. Nevertheless, the record reflects Jones explained what was being asked of her and the purpose of the polygraph. Moreover, Appellant was truthful after the polygraph was conducted without needing further clarification.

Altogether, there is evidence in the record by which the LETC could find Appellant's actions rose the level of consciously making "false, misleading, incomplete, deceitful, or incorrect" statements to the Department. *See* § 23-23-150(A)(3)(g); WILLFUL, Black's Law Dictionary (11th ed. 2019) (defining an act as willful, in part, when it involves "conscious wrong"). Therefore, I find the LETC's decision is supported by substantial evidence. *See Friends of the Earth*, 387 S.C. at 366, 692 S.E.2d at 913 (holding a decision is supported by "substantial evidence" when the record as a whole allows reasonable minds to reach the same conclusion as the agency); *Waters*, 321 S.C. at 226, 467 S.E.2d at 917 (holding 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).

Abuse of Discretion

Appellant contends the Department's final decision is "both arbitrary and capricious and represents an abuse and/or unwarranted exercise of discretion, especially in light of the fact that the Agency adopted all factual findings of the hearing officer, but failed to adopt his recommendations regarding dispensation of the case that were based on his actual findings." Appellant also argues the "Agency provided no basis for taking the harshest action it could against Appellant, even where the Agency's fact-finder noted the lack of evidence of willfulness and the presence of various mitigating circumstances." Respondent argues "there are no mitigating circumstances present in this case" and that "LETC adhered to the statutes and regulations that pertain to its ability to make a final agency decision, which established that its decision was not arbitrary and capricious."

An abuse of discretion occurs when a factfinder determination "is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." *State v. Douglas*, 411 S.C. 307, 316, 768 S.E.2d 232, 237 (Ct. App. 2014) (quoting *State v. Pittman,* 373 S.C. 527, 570, 647 S.E.2d 144, 166–67 (2007)). Therefore, "the abuse of discretion standard of review does not allow [the appellate] court to reweigh the evidence or second-guess the [factfinder's] assessment of witness credibility." *Id.* at 316, 768 S.E.2d at 237-38. "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, 184–85, 332 S.E.2d 539, 541 (Ct. App. 1985)

The LETC found Appellant committed misconduct pursuant to section 23-23-150(A)(3). When considering whether to permanently deny certification for misconduct, regulation 37-025(B) provides that "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). Furthermore, as stated above, "[t]he Council **may** adopt the hearing officer's recommendation as the Council's final decision." S.C. Code Ann. Regs. 37-107(D) (Supp. 2019) (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). In contrast, "[t]he 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 other words, the LETC has

discretion and **may** consider the mitigating circumstances and **may** adopt the hearing officer's recommendation but it is not required to do so.

In this case, based on the evidence, the Hearing Officer **recommended** that certain factors should lessened the penalty for Appellant's acts. The LETC adopted the Hearing Officer's recommended findings of fact but disagreed with his conclusion as to the appropriate sanction as a result of those findings. As set forth in regulation 37-025(B), the LETC was not **required** to consider these mitigating circumstances.

Here, the LETC did not commit and error of law and, as the Court has thoroughly discussed in the previous sections, substantial evidence supports the LETC's conclusions and sanction in this case. Therefore, I do not find the LETC committed and abuse of discretion; nor do I find that its decision was arbitrary or capricious. *See Douglas*, 411 S.C. at 316, 768 S.E.2d at 237 (holding an abuse of discretion occurs when a factfinder determination "is based on an error of law or, when grounded in factual conclusions, is without evidentiary support"); *Deese*, 286 S.C. at 184–85, 332 S.E.2d at 541 ("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.").

Appellant also cites to case law in her reply brief to assert that deference should have been given to the Hearing Officer's findings and recommendations and that the "Respondent fails to address the Agency's complete disregard for the factual findings of its hearing officer regarding willfulness and its failure to articulate its reason for doing so." At the outset, deference was not raised in Appellant's initial brief as an issue and therefore is not properly before the Court. *See Hunter v. Staples,* 335 S.C. 93, 103, 515 S.E.2d 261, 267 (Ct. App.1999) (finding that appellant was precluded from asserting an argument for the first time in its reply brief). Furthermore, even if the issue was properly raised, there was no abuse of discretion by the LETC. Here, the LETC was the finder of fact in this case and as such, it was not required to adopt the hearing officer's disposition or explain its reasonings in detail for its deviation. Instead, the LETC must find misconduct has been proven by substantial evidence and the final decision must include findings of fact, conclusions of law, and, if appropriate, sanctions. The LETC abided these requirements in this case. *See* S.C. Code Regs. Ann. 37-107(C) & (D). Although the LETC could have given deference to the Hearing Officer's recommendations, it was not required to do so.

In conclusion, the record does not reflect that LETC's decision was unreasonable in light of the record as a whole or that it failed to properly utilized its discretion when it came to a different conclusion, as to the disposition, than the Hearing Officer. I find there is substantial evidence in the record, including substantial testimony by Appellant's superiors, that supports the LETC's conclusion that Appellant was dishonest on numerous occasions, and that dishonesty was willful. *See Friends of the Earth*, 387 S.C. at 366, 692 S.E.2d at 913.

CONCUSION

For the reasons stated above, the LETC's decision to permanently deny Appellant's law enforcement certification for the State of South Carolina is supported by substantial evidence.

ORDER

IT IS THEREFORE ORDERED that the LETC's decision is **AFFIRMED**.

AND IT IS SO ORDERED.

Ralph King Anderson, III
Chief Administrative Law Judge

May 6, 2020
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Stephanie Michelle Perez, 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).

Stephanie Michelle Perez
Judicial Law Clerk

May 6, 2020
Columbia, South Carolina

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Kristin Cosby, Appellant, vs. South Carolina Criminal Justice Academy, Respondent.	)	Docket No. 19-ALJ-30-0389-AP **ORDER**

This matter comes before the South Carolina Administrative Law Court (ALC or Court) pursuant to an appeal by Kristin Cosby (Appellant) from the decision of the Law Enforcement Training Council (LETC), which permanently denied Appellant's law enforcement certification in the State of South Carolina. The ALC has jurisdiction to hear this matter pursuant to section 23-23-150 of the South Carolina Code (Supp. 2019) and section 1-23-600(E) of the South Carolina Code (Supp. 2019). Upon consideration of the briefs and Record, the LETC's decision is affirmed.

BACKGROUND

Appellant worked for the South Carolina Department of Probation, Parole, and Pardon Services (Department) for ten years and seven months. She also served in the Air Force Security Services for five years. As a result of her service in the military, she suffers from Post-Traumatic Stress Disorder (PTSD), anxiety, and depression. She receives treatment for those conditions. In 2006, she went to work for the Department but left in 2010 to work for the Greenville County Sheriff's Office. Appellant applied to return to the Department in 2012 but was told at that time that "[the Department] wanted a male for the position and not a female." The Equal Employment Opportunity Commission (EEOC) filed a gender discrimination lawsuit against the Department on her behalf and, as a result, in 2012, she was rehired by the Department and put in charge of the sex offender team.

In March 2018, Appellant recommended to Chadwick Gambrell (Gambrell), the Agent-in-Charge of the Department's Greenville County Office, that Agent Christina Worthy be appointed to her sex offender team. Gambrell told Appellant he felt she had "more than a professional relationship" with Agent Worthy, which Appellant denied. Gambrell testified he had concerns

FILED
May 6, 2020
SC ADMIN. LAW COURT

and wanted to clarify that the relationship was purely professional before moving Agent Worthy to Appellant's team. He further testified he had concerns regarding what he felt were inappropriate relationships that Appellant was having "with people in the office under her supervision," and he had previously counselled Appellant regarding those concerns. Gambrell also spoke to the Regional Director about his concerns and was told that a disciplinary inquiry would not be initiated.

On November 8, Gambrell spoke with Appellant's subordinate, Agent Nicole Albany (Albany).[1] After speaking with Albany, he had further concerns "that there may have been an inappropriate relationship between [Albany] and [Appellant]." He then typed up his notes from his conversation with Albany and forwarded them to the Regional Director but when he did not hear back, he contacted the Department Director and explained his concern that Appellant's relationships could be "misconduct." Nevertheless, Gambrell testified that at the time that he expressed his concerns about relationships with subordinates, there was no departmental policy prohibiting such relationships or specifically proscribing those relationships as being misconduct. However, Gambrell believed having a sexual relationship with a subordinate violated the Department's "professionalism policy" because Gambrell considered such behavior to be "morally and ethically improper." Honeycutt, who was also involved in investigating this issue, testified "there was a lot of discussion why she was spending so much time with some of her subordinates."

Jeffrey Harmon (Harmon), the Director of the Department's Office of Professional Responsibility, was directed by the Director of the Department in late November 2018 to initiate an investigation into allegations that Appellant and a subordinate employee engaged in a sexual relationship in May 2015. The allegations involved conduct alleged to have occurred 3½ years prior his investigation and, at the time the alleged conduct took place, such a relationship would not have constituted a violation of Department policy. Harmon first spoke with Albany before he interviewed Appellant. Harmon also interviewed other agents. He started the interview with Appellant by providing her "Garrity" warnings. Furthermore, he began the interview with a statement from the Department Director that "no one had ever been terminated for an allegation

---

[1] During this timeframe, Appellant also filed a complaint with the Department in which she alleged sexual harassment by her then Agent in-Charge (Gambrell) and Assistant Agent-in-Charge, Robert Honeycutt (Honeycutt),on October 19, 2018. However, Gambrell testified Appellant never told him she felt she was being harassed by him or Honeycutt. In fact, Gambrell did not learn about the allegations until November 7, 2018. Ultimately, Appellant's allegations were investigated and determined to be "unfounded."

of consensual sexual relationships with a subordinate, and that she should be honest and truthful about the relationship and that if she [was] found to be untruthful and [lied], then she would be subject to disciplinary actions." Harmon asked Appellant if she had a sexual relationship with a subordinate named Nicole Albany and Appellant answered "No." He advised Appellant "that she could take some time to think about her statement and, if she had further information to offer, she could do that."

Appellant was then offered a polygraph examination. However, prior to the polygraph examination, Appellant contacted Harmon and stated that Albany had sent her photos but that she could not recall if any of the advances were physical. Harmon testified Appellant told him there was never "any other sexual conduct" with a subordinate. However, the following Monday, Appellant amended her statement again, indicating Albany had tried to initiate physical contact with her during a cookout and that a friend who was present told Albany that she was "being too aggressive." Appellant stated she was able "to kind of brush off" the physical contact. She also said Albany had "sexually come onto [Appellant] 3½ years prior" and that she had filed a complaint with her then Agent-in-Charge regarding those advances and asked that Albany be reassigned. Appellant testified she told Harmon that Albany had attempted oral sex on her, but Appellant had "stopped it."

A polygraph was then scheduled and administered to Appellant. Bryan Jones (Jones), the Chief Polygraph Examiner for the South Carolina Law Enforcement Division (SLED) State of South Carolina, contacted Harmon regarding conducting the polygraph examination. On December 17, 2018, he provided Appellant a "Consent to Interview with Polygraph" form, which she reviewed and signed. Jones testified he completed a pre-polygraph examination sheet for Appellant and Appellant told him she suffered from PTSD and was taking several medications at the time. He also testified he went over the questions to be asked of Appellant before the polygraph examination was administered and neither the pre-interview nor post-interview questions posed to Appellant were recorded.

Prior to starting the polygraph exam, Jones asked Appellant whether she had engaged in sexual activity with a subordinate to which she responded "No." After conducting the exam, he asked Appellant the same question to which she then admitted to having engaged in sexual activity with Albany. Appellant then described a scenario in which she had been at Albany's house in a room near the kitchen. Appellant said Albany was "coming onto her, trying to pull at her pants

and unzip her pants, and [Albany] was able to get [her] zipper down, pulled her pants down slightly and then performed oral sex on [Appellant]." Appellant further explained this consensual sexual encounter also involved another a male who had come into the room and put his penis in Appellant's hand. Afterwards, Appellant provided a handwritten statement to Harmon and he prepared a summary of the findings for the Office of Professional Responsibility's investigation of Appellant.

Albany testified she previously had a sexual relationship with Appellant and she had told both her Assistant Agent-in-Charge, Chad Gambrell, and Jeff Harmon about the relationship. She also said the relationship was consensual and that on May 2015 she and Appellant were involved in an encounter at her home in which "[w]e both went in there and were kissing, and one of my friends came in and [Appellant] performed oral on sex on him. . . . But, me coming on to her, no. It was mutual." She also explained the sexual relationship between her and Appellant consisted of the May 2015 incident and another incident prior to that time when she and Appellant kissed in public.

Albany further testified she did not "come on" to Appellant and, after that incident, Appellant began "correcting or changing a lot of documents that [Albany] would hand in to her" and was "trying to intimidate and use her authority over [her]" to make Albany feel like a lesser agent. When Albany asked Appellant questions, Appellant would tell her that she needed to do what she was told because Appellant was her supervisor. Albany later told Appellant she wanted to leave her team, and was eventually moved to another team and no longer interacted with Appellant.[2] Albany testified that after Gambrell approached her regarding her relationship with the Appellant, she made a report because "[Gambrell] knew that I never reported it officially in the beginning because of [the] environment of the office." Albany therefore "chose to . . . bring light to the situation when [Gambrell] asked [her]" about it on November 18, 2018.

Appellant resigned from her position with the Department on December 19, 2018. On January 3, 2019, the South Carolina Criminal Justice Academy (CJA) received a Personnel Change in Status Report Notification of Separation (PCS) form for Appellant from LCSO. LCSO asserted Appellant committed misconduct by making false statements to her employer. At Appellant's request, a contested case hearing was held on May 15, 2019. The Hearing Officer found

---

[2] That move occurred before Chad Gambrell became Agent-in-Charge of the Greenville Office.

misconduct and recommended Appellant be granted eligibility for certification with probation or with any additional requirements deemed just and proper. The Hearing Officer also recommended the Council consider mitigating circumstances. On September 16, 2019, the Law Enforcement Training Council (LETC) adopted the Hearing Officer's recommendation with the modification that appellant be permanently denied law enforcement certification in the State of South Carolina. On October 3, 2019, a Final Agency Decision was issued.

ISSUES ON APPEAL

1. Does substantial evidence support the Law Enforcement Training Council's final agency decision?
2. Does the Law Enforcement Training Council's final agency decision rely on the incorrect standard as to what constitutes "willful conduct?"
3. Is the Law Enforcement Training Council's final agency decision arbitrary and capricious, constituting an abuse and/or unwarranted exercise of discretion?

STANDARD OF REVIEW

Section 23-23-150 of the South Carolina Code (Supp. 2019) sets forth that the LETC enters the final agency decision. "Review by an administrative law judge of a final decision in a contested case, heard in the appellate jurisdiction of the Administrative Law Court, must be in the same manner as prescribed in Section 1-23-380 for judicial review of final agency decisions . . . ." S.C. Code Ann. § 1-23-600(E) (Supp. 2019). Section 1-23-380(5) of the South Carolina Code (Supp. 2019) provides the standard used by appellate bodies to review agency decisions. *See* § 1-23-600(D) (directing administrative law judges to conduct appellate review in the same manner prescribed in section 1-23-380). That section states:

> 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.

§ 1-23-380(5).

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 S.C.*, 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, 917 (1996). In applying the substantial evidence rule, "a reviewing court will not overturn a finding of fact by an administrative agency 'unless there is no reasonable probability that the facts could be as related by a witness upon whose testimony the finding was based.'" *Sea Pines Ass'n for Prot. of Wildlife, Inc. v. S.C. Dep't of Natural Res.*, 345 S.C. 594, 603-04, 550 S.E.2d 287, 292 (2001) (quoting *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 136, 276 S.E.2d 304, 307 (1981)). 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). Furthermore, the reviewing court is prohibited from substituting its judgment for that of the agency as to the weight of the evidence on questions of fact. *Grant v. S.C. Coastal Council*, 319 S.C 348, 353, 461 S.E.2d 388, 391 (1995). Finally, the party challenging an agency action has the burden of proving convincingly that the agency's decision is unsupported by substantial evidence. *Waters*, 321 S.C. at 226, 467 S.E.2d at 917.

DISCUSSION

Substantial Evidence

Appellant argues the LETC's "decision is not supported by substantial evidence that Appellant engaged in the certification misconduct alleged by willfully providing incorrect or incomplete statements to the Department." Rather, Appellant asserts that she provided complete and accurate statements to the Department and that the "whole record in this matter clearly evidences the fact that, Appellant told the Department about Albany's attempt at performing oral sex on her in May of 2015 on three separate occasions prior the December 2018 polygraph."

Regulation 37-025 of the South Carolina Code of Regulations (Supp. 2019) provides that that LETC may deny law enforcement certification "based on evidence satisfactory to the Council that the candidate has engaged in misconduct." Misconduct means "[t]o willfully make false, misleading, incomplete, deceitful or incorrect statements to a law enforcement officer, a law

enforcement agency, or a representative, except when required by departmental policy or by the laws of this State during the course of an investigation." *Id.* If misconduct is found, the LETC has the authority to impose a number of sanctions; one such sanction being the permanent denial of a law enforcement certification. S.C. Code Ann. Regs. 37-108(A)(1) (2015 & Supp. 2019).

Here, the LETC found Appellant committed misconduct by "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) (Supp. 2019). The evidence in the record reflects that Appellant engaged in a sexual relationship with her subordinate and Appellant was thereafter untruthful to her supervisors when asked about the relationship on several occasions. Specifically, Harmon testified "a pattern developed of [Appellant] not telling the truth and then modifying the truth and then, finally, becoming truthful with the written statement of a consensual relationship with [Albany]." His testimony accurately summarized Appellant's conduct.

The record reflects Appellant was given every opportunity to tell the truth. Harmon began his investigation into the misconduct allegations by informing Appellant that "no one had ever been terminated for an allegation of consensual sexual relationships with a subordinate, and that she should be honest and truthful about the relationship and that if she [was] found to be untruthful and [lied], then she would be subject to disciplinary actions." Yet, Appellant told Harmon she did not engage in a sexual relationship with a subordinate, which was clearly untruthful. Subsequently, Appellant changed her story and stated that Albany had sent her photos but she could not recall if any of the advances were physical. This was another untruthful statement. Appellant also told Harmon that Albany had tried to initiate physical contact with her during a cookout but that she "brush[ed] off" the physical contact. Appellant further testified Albany had "sexually come onto [her] 3 ½ years prior" and she advised Harmon that she had filed a complaint with her then Agent-in-Charge at that time regarding Albany's advances and asked that Albany be reassigned.

However, Albany testified she did not "come on" to Appellant and that another incident took place where she and Appellant kissed. Moreover, Albany explained she was the one who told Appellant she wanted to get off her team. Furthermore, there was no evidence to support Appellant's testimony that she disclosed Albany's advances to her AIC in 2015; indeed, her testimony was contradicted by the other agents' testimonies.

Additionally, prior to the polygraph, Appellant was given the chance to be completely honest, but she was not. The "Consent to Interview" form was provided to her before the polygraph examination and the purpose of the exam was stated as being to determine "[w]hether or not you engaged in any sexual activity with Nicole Albany." Thus, the record reflects that Appellant knew what Jones was asking of her and she should have been truthful. However, it was not until after the polygraph was conducted that Appellant gave a complete and accurate statement to the Department that she engaged in consensual sexual relations with Albany.

Based upon the evidence in the Record, a reasonable person could conclude, like the LETC, that Appellant provided incorrect statements to the Department. Therefore, I find substantial evidence supports the LETC's finding that Appellant was untruthful to the Department. *See Friends of the Earth*, 387 S.C. at 366, 692 S.E.2d at 913 (holding a decision is supported by "substantial evidence" when the record as a whole allows reasonable minds to reach the same conclusion as the agency).

Willful Conduct

Appellant argues the "[f]inal Decision is erroneous in that the factual findings of the hearing officer, which were adopted by the Agency, specifically acknowledge the lack of substantial evidence to establish willful conduct under the correct legal standard." She further argues the LETC's "decision fails to include any discussion and/or reference to any such 'willful' conduct on Appellant's part." Appellant claims "those errors resulted in substantial prejudice to the Appellant, including a finding that she had engaged in the certification misconduct alleged – specifically that she had willfully made false, misleading and/or incorrect statements to the Department –and that she was being permanently denied law enforcement certification as a result." S.C. Code Ann. Regs. 37-107(C) & (D) (Supp. 2019) provide that:

> C. In order for a candidate/officer/operator to have a final decision issued finding that they did commit misconduct pursuant to R.37-025, R.37-026, R.37-073 and/or R.37-074, the Council must find misconduct has been proven by substantial evidence.
>
> D. The Council shall issue a final decision based on the evidence accepted during the contested case hearing and the applicable statutes and regulations. The Council **may** consider the hearing officer's recommendation. The Council's final decision must include the following:
>
> 1. Findings of Fact;
>
> 2. Conclusions of Law; and

3. If appropriate, sanction(s) pursuant to R.37-108.

The Council **may** adopt the hearing officer's recommendation as the Council's final decision.

(emphasis added). Pursuant to section 23-23-150(A)(3)(g) of the South Carolina Code (Supp. 2019), misconduct includes "**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." (emphasis added). "A voluntary act becomes willful, in law, only when it involves conscious wrong or evil purpose on the part of the actor, or at least inexcusable carelessness, whether the act is right or wrong." WILLFUL, Black's Law Dictionary (11th ed. 2019).

Here, in the Hearing Officer's analysis, he expounded that "incomplete or incorrect statements could have come about as a result of Appellant's 'inexcusable carelessness.'" His analysis also concluded that Appellant's statements were "more likely, due to her medical afflictions and medication usage during the course of the investigation." He went on to say that "(n)o evidence adduced at the hearing . . . appears to support that [Appellant] entertained any 'conscious wrong or evil purpose'" Appellant contends these statements in the Hearing Officer's analysis establish that "the agency's factfinder found that there was no evidence that Appellant acted willfully." Appellant also argues that willfulness is a required element of the alleged misconduct and the "Agency fails to discuss what standard they applied but rather, the only discussion thereof by the Agency is the erroneous standard contained in the hearing officer's findings and recommendation."

Appellant misapprehends the relationship of the Hearing Officer's statements to the LETC's findings. The Hearing Officer did not include these statements in either his findings of fact or his conclusions of law. Rather, these statements were made as part of his Analysis, which was not adopted by the LETC and is not included in the final agency decision. Moreover, the Hearing Officer's recommended conclusions of law stated that a "review of the record in the matter discloses that there does exist substantial evidence that [Appellant] provided incorrect or incomplete statements, such as would constitute misconduct pursuant to S.C. Code Ann. § 23-23-150(A)(3), as reported by the Department[.]" The LETC's decision adopted the Hearing Officer's recommended findings of fact but did not adopt his recommended disposition of the case or include the hearing officer's analysis in its decision. The LETC found the record supported the allegation that Appellant committed misconduct pursuant to section 23-23-150(A)(3) just as the Hearing

Officer did in his conclusions of law. Importantly, as quoted above, this statute provides that misconduct includes **willfully** making incomplete statements. *See* § 23-23-150(A)(3)(g) (emphasis added). Therefore, the LETC implicitly found Appellant had **willfully** made false, misleading, and/or incorrect statements to the Department when it found a violation of this statute. *See id.* Thus, the LETC did not rely on an incorrect legal standard and the LETC did not abuse its discretion.

Appellant also argues that even if she did provide incomplete or incorrect statements to the Department, her conduct only rises to "the level of the certification misconduct alleged if done so **willfully**." Initially, the Court has difficulty understanding how Appellant could give so many misstatements regarding a simple issue and not be willful in giving them. Indeed, the record reflects that Appellant was asked the same question multiple times by different supervisors and she changed her answer numerous times. Appellant testified her memory of the incident referenced in May 2015 was not clear because she does not "have a very good memory." However, she was able to give Jones a detailed account of that day after the polygraph was conducted; thus, it is difficult to believe her memory is not good, especially when that incident occurred more than three years earlier. Appellant also claims she did not understand the scope of the question Jones asked. Nevertheless, the record reflects Jones explained what was being asked of her and the purpose of the polygraph. Moreover, Appellant was truthful after the polygraph was conducted without needing further clarification.

Altogether, there is evidence in the record by which the LETC could find Appellant's actions rose the level of consciously making "false, misleading, incomplete, deceitful, or incorrect" statements to the Department. *See* § 23-23-150(A)(3)(g); WILLFUL, Black's Law Dictionary (11th ed. 2019) (defining an act as willful, in part, when it involves "conscious wrong"). Therefore, I find the LETC's decision is supported by substantial evidence. *See Friends of the Earth*, 387 S.C. at 366, 692 S.E.2d at 913 (holding a decision is supported by "substantial evidence" when the record as a whole allows reasonable minds to reach the same conclusion as the agency); *Waters*, 321 S.C. at 226, 467 S.E.2d at 917 (holding 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).

Abuse of Discretion

Appellant contends the Department's final decision is "both arbitrary and capricious and represents an abuse and/or unwarranted exercise of discretion, especially in light of the fact that the Agency adopted all factual findings of the hearing officer, but failed to adopt his recommendations regarding dispensation of the case that were based on his actual findings." Appellant also argues the "Agency provided no basis for taking the harshest action it could against Appellant, even where the Agency's fact-finder noted the lack of evidence of willfulness and the presence of various mitigating circumstances." Respondent argues "there are no mitigating circumstances present in this case" and that "LETC adhered to the statutes and regulations that pertain to its ability to make a final agency decision, which established that its decision was not arbitrary and capricious."

An abuse of discretion occurs when a factfinder determination "is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." *State v. Douglas*, 411 S.C. 307, 316, 768 S.E.2d 232, 237 (Ct. App. 2014) (quoting *State v. Pittman,* 373 S.C. 527, 570, 647 S.E.2d 144, 166–67 (2007)). Therefore, "the abuse of discretion standard of review does not allow [the appellate] court to reweigh the evidence or second-guess the [factfinder's] assessment of witness credibility." *Id.* at 316, 768 S.E.2d at 237-38. "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, 184–85, 332 S.E.2d 539, 541 (Ct. App. 1985)

The LETC found Appellant committed misconduct pursuant to section 23-23-150(A)(3). When considering whether to permanently deny certification for misconduct, regulation 37-025(B) provides that "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). Furthermore, as stated above, "[t]he Council **may** adopt the hearing officer's recommendation as the Council's final decision." S.C. Code Ann. Regs. 37-107(D) (Supp. 2019) (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). In contrast, "[t]he 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 other words, the LETC has

discretion and **may** consider the mitigating circumstances and **may** adopt the hearing officer's recommendation but it is not required to do so.

In this case, based on the evidence, the Hearing Officer **recommended** that certain factors should lessened the penalty for Appellant's acts. The LETC adopted the Hearing Officer's recommended findings of fact but disagreed with his conclusion as to the appropriate sanction as a result of those findings. As set forth in regulation 37-025(B), the LETC was not **required** to consider these mitigating circumstances.

Here, the LETC did not commit and error of law and, as the Court has thoroughly discussed in the previous sections, substantial evidence supports the LETC's conclusions and sanction in this case. Therefore, I do not find the LETC committed and abuse of discretion; nor do I find that its decision was arbitrary or capricious. *See Douglas*, 411 S.C. at 316, 768 S.E.2d at 237 (holding an abuse of discretion occurs when a factfinder determination "is based on an error of law or, when grounded in factual conclusions, is without evidentiary support"); *Deese*, 286 S.C. at 184–85, 332 S.E.2d at 541 ("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.").

Appellant also cites to case law in her reply brief to assert that deference should have been given to the Hearing Officer's findings and recommendations and that the "Respondent fails to address the Agency's complete disregard for the factual findings of its hearing officer regarding willfulness and its failure to articulate its reason for doing so." At the outset, deference was not raised in Appellant's initial brief as an issue and therefore is not properly before the Court. *See Hunter v. Staples,* 335 S.C. 93, 103, 515 S.E.2d 261, 267 (Ct. App.1999) (finding that appellant was precluded from asserting an argument for the first time in its reply brief). Furthermore, even if the issue was properly raised, there was no abuse of discretion by the LETC. Here, the LETC was the finder of fact in this case and as such, it was not required to adopt the hearing officer's disposition or explain its reasonings in detail for its deviation. Instead, the LETC must find misconduct has been proven by substantial evidence and the final decision must include findings of fact, conclusions of law, and, if appropriate, sanctions. The LETC abided these requirements in this case. *See* S.C. Code Regs. Ann. 37-107(C) & (D). Although the LETC could have given deference to the Hearing Officer's recommendations, it was not required to do so.

In conclusion, the record does not reflect that LETC's decision was unreasonable in light of the record as a whole or that it failed to properly utilized its discretion when it came to a different conclusion, as to the disposition, than the Hearing Officer. I find there is substantial evidence in the record, including substantial testimony by Appellant's superiors, that supports the LETC's conclusion that Appellant was dishonest on numerous occasions, and that dishonesty was willful. *See Friends of the Earth*, 387 S.C. at 366, 692 S.E.2d at 913.

CONCUSION

For the reasons stated above, the LETC's decision to permanently deny Appellant's law enforcement certification for the State of South Carolina is supported by substantial evidence.

ORDER

IT IS THEREFORE ORDERED that the LETC's decision is **AFFIRMED**.

AND IT IS SO ORDERED.

Ralph King Anderson, III
Chief Administrative Law Judge

May 6, 2020
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Stephanie Michelle Perez, 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).

Stephanie Michelle Perez
Judicial Law Clerk

May 6, 2020
Columbia, South Carolina

NOA.AP.OTH
July 2016

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Kristin Cosby, Appellant, vs. South Carolina Criminal Justice Academy, Respondent.	**NOTICE OF ASSIGNMENT (Appeal)** DOCKET NO. 19-ALJ-30-0389-AP

NOTICE IS GIVEN that a notice of appeal seeking review of agency action was filed on November 12, 2019. In accordance with S.C. Code Ann. § 1-23-570 (Supp. 2018), the **Honorable Ralph King Anderson, III,** Chief 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)**
Appellant's Brief	Due within thirty (30) days after the Record on Appeal is filed
Respondent's Brief	Due within thirty (30) days after the Appellant's Brief is filed
Reply Brief	Due within ten (10) days after the Respondent's Brief is filed

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 fourteenth day of November 2019.

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

NOV 14 2019

SC ADMIN. LAW COURT

myCaseLoad

Case Number

Actions | Search | Generate | Tools | Accounts Receivable

Cash Receipt

Number: CR1911-0204
Till:
Posted: Yes
Dated: 11-13-2019
Total Paid $150.00

Void Information

Void Method:
Void Posted: No
Void Explanation:
Voided: No

Generate

Generate

▷ Checklists (0) Go to top

◢ Invoices (1) Go to top

Show: 40

Date	Number	Item Type	Customer	Paid
11-13-2019	NV1911-0204	Case Filing Fee	~~Metclafe~~ & Atkinson, LLC Metcalfe	$150.00

◢ Payments (1) Go to top

Show: 40

Payment Method	Reference	Paid
Check	~~Metclafe~~ & Atkinson, LLC, Check #3887 Metcalfe	$150.00

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Kristin Cosby, Appellant, vs. South Carolina Law Enforcement Training Counsel and South Carolina Department of Probation, Parole and Pardon Respondents.	Case No.: _____ **NOTICE OF APPEAL FROM AGENCY ACTION**

Kristin Cosby, represented by undersigned counsel, hereby files this Notice of Appeal, pursuant to SC ALC Rule 33, seeking review of a Final Agency Decision issued by the South Carolina Law Enforcement Training Counsel (hereinafter "the Agency"), dated October 3, 2019 and received by the Appellant on October 17, 2019. A copy of the Final Agency Decision at issue is attached hereto as Exhibit A. The bases for this appeal, as will be briefed more fully to this Court, are as follows: (1) the Final Agency Decision is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; (2) the Final Agency Decision is arbitrary, capricious and represents an abuse and/or clearly unwarranted exercise of discretion in light of the recommendation of the Agency's Hearing Officer; (3) the Final Agency Decision is in violation of clearly established law regarding what constitutes willful conduct; and (4) the Final Agency Decision is affected by other error of law. These errors in the Agency's Final Decision have prejudiced the substantial rights of the Appellant and warrant a reversal of the Final Agency Decision at issue.

The contact information for Appellant's undersigned counsel is below and Appellant's contact information is as follows:

FILED
NOV 12 2019
SC ADMIN. LAW COURT

Kristin Cosby
307 Marsh Creek Drive
Mauldin, South Carolina 29662
(864) 320-2358

The contact information for Respondents' counsel is as follows:

James M. Fennell
5400 Broad River Road
Columbia, SC 29212-3540
Counsel for the South Carolina Criminal Justice Academy

Octavia Wright
2221 Devine Street, Suite 600
Columbia, SC 29205
Counsel for the South Carolina Department of Probation, Parole and Pardon

This Notice of Appeal is also accompanied by a Proof of Service hereof on Respondents, pursuant to SC ALC Rule 33(E). A copy of the transcript has already been received by undersigned counsel.

Respectfully submitted,

METCALFE & ATKINSON, LLC

Courtney C. Atkinson

Courtney C. Atkinson, SC Bar# 71992
1395 S. Church Street
Greenville, South Carolina 29605
864-214-2319
864-214-3067 (fax)
catkinson@malawfirmsc.com

November 8, 2019
Greenville, South Carolina

EXHIBIT A

STATE OF SOUTH CAROLINA

Before the South Carolina Law Enforcement Training Council

In the Matter of the Law Enforcement Certification of Kristin Cosby	)	Docket Number 2019-CJA-01-01
	)	**FINAL AGENCY DECISION**

Kristin Cosby ("Officer"), in response to allegations of certification misconduct reported by the South Carolina Department of Probation, Parole, and Pardon Services ("Department") to the South Carolina Criminal Justice Academy ("Academy"), pursuant to the requirements of S.C. Code Ann. § 23-23-150 (B) and S.C. Code Ann. Regs. 37-023, timely requested a contested case hearing to address the allegations of misconduct filed against her. Notice of the contested case hearing was communicated to the Officer and the Department, in accordance with the requirements of S.C. Code Ann. § 23-23-150 (D), and the matter was properly set for hearing on May 15, 2019.

On September 21, 2019, the South Carolina Law Enforcement Training Council met to, among other things, discuss this case and take a vote. Prior to September 21, 2019, the Training Council received and reviewed the transcript, exhibits, and Hearing Officer's Recommendation. Counsel for both parties were present at the September 21, 2019 meeting and presented oral arguments. The Training Council voted to adopt the Hearing Officer's Recommendation with modification.[1]

II. ALLEGATIONS OF MISCONDUCT

The Department's Personnel Change in Status Report (Notification of Separation Due to Misconduct) dated January 3, 2019, hereinafter "PCS," alleged that Kristin Cosby had committed misconduct, as defined in S.C. Code Ann. § 23-23-150 (A) (3) (g), by "[w]illfully making false, misleading, incomplete, deceitful, or incorrect statements to a law enforcement officer, a law enforcement agency,

[1] Chief Keel, Director Boyles, Sheriff Foster, Sheriff Faile, Director Thomas, and Chief Taylor, voted to adopt the Hearing Officer's Recommendation, with modification. Attorney General Wilson, Director Smith, Director Stirling, Director Adger, and Captain Gallam were not present and did not vote.

or a representative of the agency, except when required by departmental policy or by the laws of this State" and that she had been terminated from her employment with the Department. (*Id.* at p. 1)

Factually, the Department's allegations referenced an internal investigation conducted by its Office of Professional Responsibility (OPR) into allegations that Cosby had been involved in a consensual sexual encounter with a subordinate Department employee that occurred in May 2015 and that Cosby had made false statements to departmental representatives in the course of the internal investigation of the encounter. The Department's description in the PCS of the underlying "misconduct" alleged of Cosby stated, in part, as follows:

> On 11/30/2018 AIC Chad Gambrell contacted Director Jerry Adger and informed him about a misconduct in the Greenville County Office involving Team Leader Kristen Cosby. Director Adger advised OPR Director Jeff Harmon to open an investigation regarding the misconduct allegations and to begin immediately. On 12/03/2018 a PPP employee, to remain anonymous, was interviewed by OPR Director Harmon and the employee admitted to having a consensual sexual relationship with Team Leader Kristen Cosby, who was the employee's supervisor at the time. (*Id.* at p. 2)

III. DOCUMENTARY AND TESTIMONIAL EVIDENCE

A. Documentary Evidence

The following documentation was accepted into evidence at the May 15th hearing and made a part of the record:

Council Exhibit Number 1: [Personnel Change in Status Report (Notification of Separation Due to Misconduct) and Correspondence of Criminal Justice Academy]

State's Exhibit Number 1: S.C. Department of Probation, Parole and Pardon Services Policy and Procedure No. 1802 (Internal Investigations)
State's Exhibit Number 2: "Voluntary Statement" of Kristin Cosby (December 17, 2018)
State's Exhibit Number 3: S.C. Department of Probation, Parole and Pardon Services, Office of Professional Responsibility "Summary of Findings" (Internal Investigation #20181130-23)
State's Exhibit Number 4: S.C. Department of Probation, Parole and Pardon Services "Citizen/Personnel Formal Complaint Form" filed by Kristin Cosby (October 19, 2018)
State's Exhibit Number 5: **EXHIBIT WITHDRAWN**
State's Exhibit Number 6: S.C. Law Enforcement Division "Consent to Interview with Polygraph" (December 17, 2018)

Respondent's Exhibit Number 1: DVD containing audio interview of December 7, 2018 (4:10-4:31) and audio interview of December 12, 2018 (1:45-3:00)
Respondent's Exhibit Number 2: S.C. Law Enforcement Division "Polygraph Examination Pre-Test Worksheet" (December 17, 2018)
Respondent's Exhibit Number 3: Polygraph Examination Pre-Test Questions

Respondent's Exhibit Number 4: Timeline of Events and Recommendations (Chadwick A. Gambrell) (December 4, 2018)
Respondent's Exhibit Number 5: Letter of Resignation of Kristin Cosby (December 19, 2018)
Respondent's Exhibit Number 6: Acceptance of Letter of Resignation of Kristin Cosby (Chadwick A. Gambrell) (December 19, 2018)

B. Testimonial Evidence

The following testimony was accepted into evidence at the May 15th hearing and made a part of the record:

1. Testimony of Jeffrey Harmon, S.C. Department of Probation, Parole and Pardon Services
2. Testimony of Bryan Jones, S.C. Law Enforcement Division
3. Testimony of Nicole Albany, S.C. Department of Probation, Parole and Pardon Services
4. Testimony of Chadwick Gambrell, S.C. Department of Probation, Parole and Pardon Services
5. Testimony of Robert Honeycutt, S.C. Department of Probation, Parole and Pardon Services
6. Testimony of Kristin Cosby

Testimony of Jeffrey Harmon:

Harmon testified that he is currently assigned as the Director of the Office of Professional Responsibility for the South Carolina Department of Probation, Parole, and Pardon Services, that he was directed by the Director of the Department to initiate an investigation into allegations that Cosby had a consensual sexual relationship with her subordinate employee, that the Director had provided him specific questions to be asked of Cosby, that after each investigative activity that Harmon conducted the Director of the Department "wanted a follow-up informational session so he could help direct the investigation," that the Department Director couldn't "detach himself from the investigative process... so he could help direct the investigation," and that the Department's Policy 1802 set forth policy guidelines for Office of Professional Responsibility internal investigations and provides that such investigations will address "[c]omplaints of misconduct by the Department employees involving violations of policy, code of ethics, State or federal law, or other recognized standards of conduct." (Transcript, pp. 23-27, 30-passim)

Harmon further testified that he interviewed Cosby after first providing her "Garrity" warnings, that he began his interview with Cosby with a statement from the Department Director who required Harmon to "tell Ms. Cosby that no one had ever been terminated for an allegation of consensual sexual relationships with a subordinate, and that she should be honest and truthful about the relationship and that if she [was] found to be untruthful and [lied], then she would be subject to disciplinary actions,"

that he asked Cosby if she had a sexual relationship with a subordinate named Nicole Albany and that Cosby answered "No," that Cosby was offered a polygraph examination but prior to the polygraph examination Cosby contacted Harmon and stated that Albany had made sexual advances towards her and had sent her photos but that she could not recall if any of the advances were physical, that Cosby stated to Harmon that there was never "any other sexual conduct" with a subordinate but that Cosby subsequently amended her statement to Harmon indicating that Albany had tried to initiate physical contact with her during a cookout and that a friend who was present told Albany that she was "being too aggressive" and that Cosby stated that she was able "to kind of brush off" the physical contact. (Transcript, pp. 35-42)

Harmon testified that a polygraph was scheduled and administered for Cosby, that after the polygraph exam concluded Cosby provided a handwritten statement to Harmon, that Harmon then prepared a summary of the findings of the Office of Professional Responsibility investigation of Cosby, that during his investigation Harmon interviewed Cosby on two different occasions and received a written statement from Cosby, that "a pattern developed of [Cosby] not telling the truth and then modifying the truth and then, finally, becoming truthful with the written statement of a consensual relationship with [Albany]," that on October 19, 2018 Cosby had filed a complaint with the Department in which she alleged sexual harassment by her then Agent-in-Charge and Assistant Agent-in-Charge, and that Cosby's harassment allegations were investigated by the Department and determined to be "unfounded." (Transcript, pp. 43-49, 63-68)

On cross-examination, Harmon testified that he opened an investigation into allegations of Cosby engaging in a sexual relationship with a subordinate because the Department Director indicated to him on November 30, 2018 that Cosby's then Agent-in-Charge had asked that an investigation be opened, that on October 19, 2018 Cosby had reported concerns she had regarding her then Agent-in-Charge and Assistant Agent-in-Charge in which she stated that she was afraid to go to work because of the actions of the two, and that Cosby's then Agent-in-Charge requested that Cosby be investigated for the alleged prior sexual relationship only after Cosby had reported her concerns on October 19, 2018 at which time Harmon initiated the investigation into Cosby's alleged sexual relationship, that the allegations regarding the sexual relationship Harmon was directed to investigate involved conduct alleged to have occurred 3 ½ years prior to the allegations being filed, that at the time Cosby was alleged to have engaged in a sexual relationship with her subordinate such a relationship would not have constituted a violation of

Department policy, that on December 7, 2018 Harmon interviewed Cosby who then stated to him that she had not had "a sexual relationship with Nicole Albany," that he advised Cosby "that she could take some time to think about her statement and, if she had further information to offer, she could do that," that on December 12, 2018 Cosby approached Harmon and provided an amended statement in which she stated that Albany had "sexually come onto [Cosby] 3 ½ years prior" and also advised Harmon that she had filed a complaint with her then Agent-in-Charge at that time regarding Albany's advances and asked that Albany be reassigned, that on December 12, 2018 Cosby did not mention to Harmon that Albany had attempted to perform oral sex on Cosby, and that neither Harmon's "Summary of Findings" from his investigation of Cosby nor information from the summary was ever provided to Cosby. (Transcript, pp. 76-84, 92-94, passim)

In response to inquiry by the hearing officer to clarify his earlier testimony, Harmon confirmed that the OPR investigation of Cosby which he was directed to initiate was not in regards to any allegation of misconduct by Cosby or in regards to Cosby's violation of Department policy but, instead, in regards to an employment related complaint that Cosby's alleged behavior, which was said to have occurred prior to December 2015, was improper, that on November 30, 2018 Harmon had been advised by the Department Director that an encounter between Cosby and a subordinate employee had allegedly occurred in 2015 and Harmon was directed to engage in a fact finding investigation regarding the same, that Harmon was not provided factual information regarding when and to whom the report regarding the alleged incident between Cosby and the subordinate was made prior to the initiation of his investigation and that he did not address the same in his investigation, and that all he was told was "that an incident occurred, and [he needed] to investigate it." (Transcript, pp. 101-111, passim)

Testimony of Bryan Jones:

Jones testified that he is the lieutenant in charge of the polygraph unit of the South Carolina Law Enforcement Division (SLED) and also the Chief Polygraph Examiner for the State of South Carolina, that he was asked by his Assistant Chief at SLED to assist the Department of Probation, Parole and Pardon Services in conducting a polygraph examination, that he contacted Jeff Harmon regarding the same, that on December 18, 2018 he provided Cosby a "Consent to Interview with Polygraph" form which she reviewed and signed, that prior to the conduct of the polygraph exam he asked Cosby whether she had engaged in sexual activity with a subordinate to which she responded "No,", that after conducting the polygraph exam he asked Cosby the same question in response to which she then admitted to having

engaged in sexual activity with Nicole Albany, that Cosby then described a scenario in which she had been at Albany's house in a room near the kitchen and Albany was "coming onto her, trying to pull at her pants and unzip her pants, and [Albany] was able to get [her] zipper down, pulled her pants down slightly and then performed oral sex on [Cosby]" and that a male had come into the room and "pulled out his penis and put it in [Cosby's] hand," and that the encounter was consensual. (Transcript, pp. 116-117, 119-122)

On cross-examination, Jones testified that he completed a pre-polygraph examination sheet for Cosby, that Cosby stated to him that she suffered from PTSD and was taking several medications at the time, and that he went over the questions to be asked of Cosby before the polygraph examination was administered, and that neither the pre-interview nor post-interview questions posed to Cosby were recorded. (Transcript, pp. 124-133)

On re-cross examination, Jones testified that Cosby did not mention to him having taken any affirmative action towards Albany on the date of the incident at Albany's house and only described "what Nicole Albany did to her" and that a man "pulled out his penis and put it in [Cosby's] hand." (Transcript, p. 139)

In response to questioning by the hearing officer to clarify his prior testimony, Jones testified that when he was asked to assist in conducting the polygraph examination he was told by Harmon that the incident regarding which the polygraph exam was to be conducted, and regarding which he asked Cosby both pre-interview and post-interview questions, had occurred outside the workplace. (Transcript, pp. 140-141)

Testimony of Nicole Albany:

Albany testified that she is an agent with the Department of Probation, Parole, and Pardon Services, that Kristin Cosby had been her supervisor, that she had a sexual relationship with Cosby, that she told both her Assistant Agent-in-Charge, Chad Gambrell, and Jeff Harmon about the relationship, that the relationship was mutual and consensual, that in or about May 2015 she and Cosby were involved in an encounter described by Cosby as having taken place in Albany's home in which they were mutually touching and kissing each other, that she did not "come on" to Cosby, that after that incident Cosby began "correcting or changing a lot of documents that [Albany] would hand in to her" and was "trying to intimidate and use her authority over [her]" to make Albany feel like a lesser agent, that when she asked Cosby questions Cosby would tell her that Albany needed to do what she was told because Cosby

was her supervisor, that she told Cosby she wanted to get off her team, and that eventually she was moved to another team and no longer interacted with Cosby, and that she had been moved to the other team before Chad Gambrell became Agent-in-Charge of the Greenville Office. (Transcript, pp. 143-150)

On cross-examination, Albany testified that when the May 2015 incident involving Cosby occurred at her house she had been drinking that evening, that she made a complaint against Cosby based on the May 2015 incident in November 2018, and that only two incidents constituted the sexual relationship between her and Cosby, one in May 2015 and another incident prior to that time when she and Cosby kissed in public. (Transcript, pp. 150-153)

On redirect examination, contrary to her earlier testimony on direct examination, Albany testified that the matter of her relationship with Cosby was brought up by her Agent-in-Charge, Gambrell, not by her. (Transcript, p. 157)

On re-cross examination, again contrary to her earlier testimony on direct examination, Albany acknowledged that she did not actually make the complaint against Cosby in November 2018 as she had previously stated but that she had been approached by Gambrell who asked her for information about her relationship with Cosby "to make a report" because "[Gambrell] knew that [Albany] never reported it officially in the beginning because of [the] environment of the office," but that Albany "chose to... bring light to the situation when [Gambrell] asked [her]" about it on November 18, 2018. (Transcript, pp. 157-158)

On redirect examination, Albany testified that when Gambrell spoke with her on November 8, 2018 he stated to her that "he had had other complaints that he was looking into in reference to [Cosby]." (Transcript, p. 158)

In response to questioning by the hearing officer to clarify her prior testimony, Albany testified that after the incident in May of 2015 involving Cosby she had never felt threatened in the workplace or harassed by Cosby. (Transcript, p. 159)

Testimony of Chadwick Gambrell:

Gambrell testified that he is the Agent-in-Charge of the Greenville County Office of the South Carolina Department of Probation, Parole, and Pardon Services, that in December 2017 he was becoming acclimated to the office and the staff, that in March 2018 he spoke with Cosby regarding her recommendation for appointment of an agent to a sex offender team, that Cosby made a recommendation and Gambrell stated to her that he felt that Cosby had "more than a professional

relationship" with the person she recommended, which Cosby denied, that Gambrell had concerns regarding what he felt were "inappropriate relationships that Cosby was having [with] people in the office under her supervision," that he counselled Cosby regarding those concerns, and that Cosby never told him that she felt that she was being harassed by him or the Assistant Agent-in-Charge, Honeywell. (Transcript, pp. 162-167, passim)

Gambrell further testified that he spoke with Nicole Albany, that after speaking with Albany he had a concern "that there may have been an inappropriate relationship between [Albany] and [Cosby]," that he typed up his notes from his conversation with Albany and forwarded them to the Regional Director but when he did not hear back he contacted the Department Director, and that he believed Cosby's relationships could be considered "misconduct." (Transcript, pp. 168-171)

On cross-examination, Gambrell testified that at the time that he had expressed his concerns about relationships with subordinates no departmental policy prohibited such relationships and no policy prohibited what Gambrell described as being misconduct on Cosby's part but that Gambrell considered Cosby's having a sexual relationship with a subordinate to be "immoral" and that in his view the behavior would have been in violation of the Department's "professionalism policy" because Gambrell considered Cosby's behavior to be "morally and ethically improper" although acknowledging that it was not specifically prohibited by policy, that Gambrell went to Nicole Albany and asked about her relationship with Cosby the day after he learned that Cosby had filed a complaint against him, and that on December 19, 2018 Cosby resigned from the Department. (Transcript, pp. 168-172, 175-180, passim)

Testimony of Robert Honeycutt:

Honeycutt testified that he is the Assistant Agent-in-Charge of the Greenville County Office of the South Carolina Department of Probation, Parole, and Pardon Services, that he was Cosby's supervisor, and that what he noticed with respect to Cosby that he would define as "misconduct" was that Cosby "wasn't communicating to [him]... her work hours, when she was working and when she was out doing stuff," (Transcript, p. 186)

On cross-examination, Honeycutt testified that he was not involved in the investigation of Cosby conducted by Harmon, and that he was not a part of any questioning of Cosby. (Transcript, pp. 186-187)

Testimony of Kristin Cosby:

Cosby testified that she worked for the South Carolina Department of Probation, Parole, and Pardon Services for ten years and seven months, that she served in the Air Force Security Services for five years, that as a result of her service in the military she suffers from Post-Traumatic Stress Disorder (PTSD), anxiety, and depression and receives treatment and takes medication for those conditions, that beginning in 2006 she went to work for the Department but left the Department in 2010 to work for the Greenville County Sheriff's Office, that she applied to return to the Department in 2012 but was not selected and was told at that time that "[The Department] wanted a male for the position and not a female," that the Equal Employment Opportunity Commission (EEOC) filed a gender discrimination lawsuit against the Department on her behalf, that she prevailed in the EEOC lawsuit and in 2012 was rehired by the Department, that in September and October of 2018 she was the subject of an investigation conducted by Gambrell and Honeycutt which ended with a direction from the Department's Deputy Director that no disciplinary action was to be taken against her, that in December 2018 she was the subject of an investigation conducted by Jeff Harmon related to a sexual incident in May 2015 between her and Nicole Albany, that she was not engaged in a sexual relationship with Albany, that her memory of the incident referenced in May 2015 was not clear because she does not "have a very good memory," that Harmon did not ask her "specific questions about what [she] did or... details of what had happened" regarding the May 15th incident, that she requested that Albany be moved to another team because "she was becoming angry and a little bit hostile because [Cosby] was not accepting her advances," that she resigned her position with the Department on December 19, 2018. (Transcript, pp. 191-193, 194-199, passim)

On cross-examination, Cosby testified that when Harmon first asked her on December 7th if she had a sexual relationship with Nicole Albany she stated "No," that on December 10th she stated to Harmon that Albany had attempted oral sex on her but that Cosby had "stopped it," and that in her pre-polygraph interview she was asked if she had engaged in any sexual relationship with Albany and she stated no "[b]ecause it was asked if [she] engaged in any sexual relationships with [Albany], and [she] wrote in [her] statement that [Albany] is the one that engaged [her] in [sexual conduct]," that in the "Consent to Interview" form provided her before the polygraph examination the purpose of the exam was stated as being to determine "[w]hether or not you engaged in any sexual activity with Nicole Albany," and that she wrote in her statement following the polygraph examination that she engaged in consensual sexual relations with Albany. (Transcript, pp. 214-221, passim)

FINDINGS OF FACT

Based on the Hearing Officer's Recommendation, Hearing Transcripts, Hearing Exhibits, motions, and oral arguments we find as a fact:

1. The allegations of misconduct against Kristin Cosby, as reported in the "PCS Separation Due to Misconduct" (PCS) provided to the Criminal Justice Academy (Academy) by the Department of Probation, Parole, and Pardon Services (Department), are supported by the evidence presented by the Department at the contested case hearing on May 15, 2019; and

2. The Department has established by "substantial evidence" that Cosby provided incorrect or incomplete statements, as charged in the Department's PCS forwarded to the Academy.

CONCLUSIONS OF LAW

Based on the Hearing Officer's Recommendation, Hearing Transcripts, Hearing Exhibits, motions, and oral arguments we conclude as a matter of law:

1. Pursuant to S.C. Code Ann. § 23-23-80 (6), the South Carolina Law Enforcement Training Council ("Council") is authorized, *inter alia*, to "provide for suspension, revocation, or restriction" of law enforcement certification in accordance with the regulations promulgated by the Council;

2. Pursuant to S.C. Code Ann. Regs. 37-025, Council may deny law enforcement certification "based on evidence satisfactory to the Council that the candidate has engaged in misconduct," may "[i]n considering whether to deny certification based on misconduct, [consider] the seriousness, the remoteness in time and any mitigating circumstances surrounding the act or omission constituting or alleged to constitute misconduct."

3. Pursuant to S.C. Code Ann. Regs. 37-108 (A) (1), Council may sanction an officer, who is found to have committed misconduct with a permanent denial and/or revocation (withdrawal) of certification;

4. The substantial evidence in the record established that Kristin Cosby provided incorrect or incomplete statements, and constitute misconduct pursuant to S.C. Code Ann. § 23-23-150 (A) (3), as reported by the Department; and

5. The misconduct allegations against Kristin Cosby reported by the Department of Probation, Pardon, and Parole Services are supported by substantial evidence.

SANCTION

THEREFORE, IT IS ORDERED: Ms. Cosby is permanently denied a certification as a law enforcement officer in South Carolina.

AND IT IS SO ORDERED.

Chief Mark Keel, Chairman
Law Enforcement Training Council
On Behalf of the Law Enforcement Training Council

October 3, 2019

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Kristin Cosby, Appellant, vs. South Carolina Law Enforcement Training Counsel and South Carolina Department of Probation, Parole and Pardon, Respondents.	)	Case No.: _____ **PROOF OF SERVICE**

I hereby certify that I have served the Notice of Appeal in the above-captioned matter by depositing it in the United State Mail, postage prepaid, on November 8, 2019 to the below named parties at their address of record:

Kristin Cosby
307 Marsh Creek Drive
Mauldin, SC 29662

James M. Fennell, Esq.
5400 Broad River Road
Columbia, SC 29212-3540

Octavia Wright, Eq.
2221 Devine Street, Suite 600
Columbia, SC 29205

Amy Butlers
Amy Butlers
1395 South Church Street
Greenville, SC 29605

FILED
NOV 12 2019
SC ADMIN. LAW COURT

STATE OF SOUTH CAROLINA

Before the South Carolina Law Enforcement Training Council

In the Matter of the Law Enforcement Certification of Kristin Cosby	)	Docket Number 2019-CJA-01-01
	)	**FINAL AGENCY DECISION**

Kristin Cosby ("Officer"), in response to allegations of certification misconduct reported by the South Carolina Department of Probation, Parole, and Pardon Services ("Department") to the South Carolina Criminal Justice Academy ("Academy"), pursuant to the requirements of S.C. Code Ann. § 23-23-150 (B) and S.C. Code Ann. Regs. 37-023, timely requested a contested case hearing to address the allegations of misconduct filed against her. Notice of the contested case hearing was communicated to the Officer and the Department, in accordance with the requirements of S.C. Code Ann. § 23-23-150 (D), and the matter was properly set for hearing on May 15, 2019.

On September 21, 2019, the South Carolina Law Enforcement Training Council met to, among other things, discuss this case and take a vote. Prior to September 21, 2019, the Training Council received and reviewed the transcript, exhibits, and Hearing Officer's Recommendation. Counsel for both parties were present at the September 21, 2019 meeting and presented oral arguments. The Training Council voted to adopt the Hearing Officer's Recommendation with modification.[1]

II. ALLEGATIONS OF MISCONDUCT

The Department's Personnel Change in Status Report (Notification of Separation Due to Misconduct) dated January 3, 2019, hereinafter "PCS," alleged that Kristin Cosby had committed misconduct, as defined in S.C. Code Ann. § 23-23-150 (A) (3) (g), by "[w]illfully making false, misleading, incomplete, deceitful, or incorrect statements to a law enforcement officer, a law enforcement agency,

[1] Chief Keel, Director Boyles, Sheriff Foster, Sheriff Faile, Director Thomas, and Chief Taylor, voted to adopt the Hearing Officer's Recommendation, with modification. Attorney General Wilson, Director Smith, Director Stirling, Director Adger, and Captain Gallam were not present and did not vote.

or a representative of the agency, except when required by departmental policy or by the laws of this State" and that she had been terminated from her employment with the Department. (*Id.* at p. 1)

Factually, the Department's allegations referenced an internal investigation conducted by its Office of Professional Responsibility (OPR) into allegations that Cosby had been involved in a consensual sexual encounter with a subordinate Department employee that occurred in May 2015 and that Cosby had made false statements to departmental representatives in the course of the internal investigation of the encounter. The Department's description in the PCS of the underlying "misconduct" alleged of Cosby stated, in part, as follows:

> On 11/30/2018 AIC Chad Gambrell contacted Director Jerry Adger and informed him about a misconduct in the Greenville County Office involving Team Leader Kristen Cosby. Director Adger advised OPR Director Jeff Harmon to open an investigation regarding the misconduct allegations and to begin immediately. On 12/03/2018 a PPP employee, to remain anonymous, was interviewed by OPR Director Harmon and the employee admitted to having a consensual sexual relationship with Team Leader Kristen Cosby, who was the employee's supervisor at the time. (*Id.* at p. 2)

III. DOCUMENTARY AND TESTIMONIAL EVIDENCE

A. Documentary Evidence

The following documentation was accepted into evidence at the May 15th hearing and made a part of the record:

Council Exhibit Number 1: [Personnel Change in Status Report (Notification of Separation Due to Misconduct) and Correspondence of Criminal Justice Academy]

State's Exhibit Number 1: S.C. Department of Probation, Parole and Pardon Services Policy and Procedure No. 1802 (Internal Investigations)
State's Exhibit Number 2: "Voluntary Statement" of Kristin Cosby (December 17, 2018)
State's Exhibit Number 3: S.C. Department of Probation, Parole and Pardon Services, Office of Professional Responsibility "Summary of Findings" (Internal Investigation #20181130-23)
State's Exhibit Number 4: S.C. Department of Probation, Parole and Pardon Services "Citizen/Personnel Formal Complaint Form" filed by Kristin Cosby (October 19, 2018)
State's Exhibit Number 5: **EXHIBIT WITHDRAWN**
State's Exhibit Number 6: S.C. Law Enforcement Division "Consent to Interview with Polygraph" (December 17, 2018)

Respondent's Exhibit Number 1: DVD containing audio interview of December 7, 2018 (4:10-4:31) and audio interview of December 12, 2018 (1:45-3:00)
Respondent's Exhibit Number 2: S.C. Law Enforcement Division "Polygraph Examination Pre-Test Worksheet" (December 17, 2018)
Respondent's Exhibit Number 3: Polygraph Examination Pre-Test Questions

Respondent's Exhibit Number 4: Timeline of Events and Recommendations (Chadwick A. Gambrell) (December 4, 2018)
Respondent's Exhibit Number 5: Letter of Resignation of Kristin Cosby (December 19, 2018)
Respondent's Exhibit Number 6: Acceptance of Letter of Resignation of Kristin Cosby (Chadwick A. Gambrell) (December 19, 2018)

B. Testimonial Evidence

The following testimony was accepted into evidence at the May 15th hearing and made a part of the record:

1. Testimony of Jeffrey Harmon, S.C. Department of Probation, Parole and Pardon Services
2. Testimony of Bryan Jones, S.C. Law Enforcement Division
3. Testimony of Nicole Albany, S.C. Department of Probation, Parole and Pardon Services
4. Testimony of Chadwick Gambrell, S.C. Department of Probation, Parole and Pardon Services
5. Testimony of Robert Honeycutt, S.C. Department of Probation, Parole and Pardon Services
6. Testimony of Kristin Cosby

Testimony of Jeffrey Harmon:

Harmon testified that he is currently assigned as the Director of the Office of Professional Responsibility for the South Carolina Department of Probation, Parole, and Pardon Services, that he was directed by the Director of the Department to initiate an investigation into allegations that Cosby had a consensual sexual relationship with her subordinate employee, that the Director had provided him specific questions to be asked of Cosby, that after each investigative activity that Harmon conducted the Director of the Department "wanted a follow-up informational session so he could help direct the investigation," that the Department Director couldn't "detach himself from the investigative process... so he could help direct the investigation," and that the Department's Policy 1802 set forth policy guidelines for Office of Professional Responsibility internal investigations and provides that such investigations will address "[c]omplaints of misconduct by the Department employees involving violations of policy, code of ethics, State or federal law, or other recognized standards of conduct." (Transcript, pp. 23-27, 30-passim)

Harmon further testified that he interviewed Cosby after first providing her "Garrity" warnings, that he began his interview with Cosby with a statement from the Department Director who required Harmon to "tell Ms. Cosby that no one had ever been terminated for an allegation of consensual sexual relationships with a subordinate, and that she should be honest and truthful about the relationship and that if she [was] found to be untruthful and [lied], then she would be subject to disciplinary actions,"

that he asked Cosby if she had a sexual relationship with a subordinate named Nicole Albany and that Cosby answered "No," that Cosby was offered a polygraph examination but prior to the polygraph examination Cosby contacted Harmon and stated that Albany had made sexual advances towards her and had sent her photos but that she could not recall if any of the advances were physical, that Cosby stated to Harmon that there was never "any other sexual conduct" with a subordinate but that Cosby subsequently amended her statement to Harmon indicating that Albany had tried to initiate physical contact with her during a cookout and that a friend who was present told Albany that she was "being too aggressive" and that Cosby stated that she was able "to kind of brush off" the physical contact. (Transcript, pp. 35-42)

Harmon testified that a polygraph was scheduled and administered for Cosby, that after the polygraph exam concluded Cosby provided a handwritten statement to Harmon, that Harmon then prepared a summary of the findings of the Office of Professional Responsibility investigation of Cosby, that during his investigation Harmon interviewed Cosby on two different occasions and received a written statement from Cosby, that "a pattern developed of [Cosby] not telling the truth and then modifying the truth and then, finally, becoming truthful with the written statement of a consensual relationship with [Albany]," that on October 19, 2018 Cosby had filed a complaint with the Department in which she alleged sexual harassment by her then Agent-in-Charge and Assistant Agent-in-Charge, and that Cosby's harassment allegations were investigated by the Department and determined to be "unfounded." (Transcript, pp. 43-49, 63-68)

On cross-examination, Harmon testified that he opened an investigation into allegations of Cosby engaging in a sexual relationship with a subordinate because the Department Director indicated to him on November 30, 2018 that Cosby's then Agent-in-Charge had asked that an investigation be opened, that on October 19, 2018 Cosby had reported concerns she had regarding her then Agent-in-Charge and Assistant Agent-in-Charge in which she stated that she was afraid to go to work because of the actions of the two, and that Cosby's then Agent-in-Charge requested that Cosby be investigated for the alleged prior sexual relationship only after Cosby had reported her concerns on October 19, 2018 at which time Harmon initiated the investigation into Cosby's alleged sexual relationship, that the allegations regarding the sexual relationship Harmon was directed to investigate involved conduct alleged to have occurred 3 ½ years prior to the allegations being filed, that at the time Cosby was alleged to have engaged in a sexual relationship with her subordinate such a relationship would not have constituted a violation of

Department policy, that on December 7, 2018 Harmon interviewed Cosby who then stated to him that she had not had "a sexual relationship with Nicole Albany," that he advised Cosby "that she could take some time to think about her statement and, if she had further information to offer, she could do that," that on December 12, 2018 Cosby approached Harmon and provided an amended statement in which she stated that Albany had "sexually come onto [Cosby] 3 ½ years prior" and also advised Harmon that she had filed a complaint with her then Agent-in-Charge at that time regarding Albany's advances and asked that Albany be reassigned, that on December 12, 2018 Cosby did not mention to Harmon that Albany had attempted to perform oral sex on Cosby, and that neither Harmon's "Summary of Findings" from his investigation of Cosby nor information from the summary was ever provided to Cosby. (Transcript, pp. 76-84, 92-94, passim)

In response to inquiry by the hearing officer to clarify his earlier testimony, Harmon confirmed that the OPR investigation of Cosby which he was directed to initiate was not in regards to any allegation of misconduct by Cosby or in regards to Cosby's violation of Department policy but, instead, in regards to an employment related complaint that Cosby's alleged behavior, which was said to have occurred prior to December 2015, was improper, that on November 30, 2018 Harmon had been advised by the Department Director that an encounter between Cosby and a subordinate employee had allegedly occurred in 2015 and Harmon was directed to engage in a fact finding investigation regarding the same, that Harmon was not provided factual information regarding when and to whom the report regarding the alleged incident between Cosby and the subordinate was made prior to the initiation of his investigation and that he did not address the same in his investigation, and that all he was told was "that an incident occurred, and [he needed] to investigate it." (Transcript, pp. 101-111, passim)

Testimony of Bryan Jones:

Jones testified that he is the lieutenant in charge of the polygraph unit of the South Carolina Law Enforcement Division (SLED) and also the Chief Polygraph Examiner for the State of South Carolina, that he was asked by his Assistant Chief at SLED to assist the Department of Probation, Parole and Pardon Services in conducting a polygraph examination, that he contacted Jeff Harmon regarding the same, that on December 18, 2018 he provided Cosby a "Consent to Interview with Polygraph" form which she reviewed and signed, that prior to the conduct of the polygraph exam he asked Cosby whether she had engaged in sexual activity with a subordinate to which she responded "No,", that after conducting the polygraph exam he asked Cosby the same question in response to which she then admitted to having

engaged in sexual activity with Nicole Albany, that Cosby then described a scenario in which she had been at Albany's house in a room near the kitchen and Albany was "coming onto her, trying to pull at her pants and unzip her pants, and [Albany] was able to get [her] zipper down, pulled her pants down slightly and then performed oral sex on [Cosby]" and that a male had come into the room and "pulled out his penis and put it in [Cosby's] hand," and that the encounter was consensual. (Transcript, pp. 116-117, 119-122)

On cross-examination, Jones testified that he completed a pre-polygraph examination sheet for Cosby, that Cosby stated to him that she suffered from PTSD and was taking several medications at the time, and that he went over the questions to be asked of Cosby before the polygraph examination was administered, and that neither the pre-interview nor post-interview questions posed to Cosby were recorded. (Transcript, pp. 124-133)

On re-cross examination, Jones testified that Cosby did not mention to him having taken any affirmative action towards Albany on the date of the incident at Albany's house and only described "what Nicole Albany did to her" and that a man "pulled out his penis and put it in [Cosby's] hand." (Transcript, p. 139)

In response to questioning by the hearing officer to clarify his prior testimony, Jones testified that when he was asked to assist in conducting the polygraph examination he was told by Harmon that the incident regarding which the polygraph exam was to be conducted, and regarding which he asked Cosby both pre-interview and post-interview questions, had occurred outside the workplace. (Transcript, pp. 140-141)

Testimony of Nicole Albany:

Albany testified that she is an agent with the Department of Probation, Parole, and Pardon Services, that Kristin Cosby had been her supervisor, that she had a sexual relationship with Cosby, that she told both her Assistant Agent-in-Charge, Chad Gambrell, and Jeff Harmon about the relationship, that the relationship was mutual and consensual, that in or about May 2015 she and Cosby were involved in an encounter described by Cosby as having taken place in Albany's home in which they were mutually touching and kissing each other, that she did not "come on" to Cosby, that after that incident Cosby began "correcting or changing a lot of documents that [Albany] would hand in to her" and was "trying to intimidate and use her authority over [her]" to make Albany feel like a lesser agent, that when she asked Cosby questions Cosby would tell her that Albany needed to do what she was told because Cosby

was her supervisor, that she told Cosby she wanted to get off her team, and that eventually she was moved to another team and no longer interacted with Cosby, and that she had been moved to the other team before Chad Gambrell became Agent-in-Charge of the Greenville Office. (Transcript, pp. 143-150)

On cross-examination, Albany testified that when the May 2015 incident involving Cosby occurred at her house she had been drinking that evening, that she made a complaint against Cosby based on the May 2015 incident in November 2018, and that only two incidents constituted the sexual relationship between her and Cosby, one in May 2015 and another incident prior to that time when she and Cosby kissed in public. (Transcript, pp. 150-153)

On redirect examination, contrary to her earlier testimony on direct examination, Albany testified that the matter of her relationship with Cosby was brought up by her Agent-in-Charge, Gambrell, not by her. (Transcript, p. 157)

On re-cross examination, again contrary to her earlier testimony on direct examination, Albany acknowledged that she did not actually make the complaint against Cosby in November 2018 as she had previously stated but that she had been approached by Gambrell who asked her for information about her relationship with Cosby "to make a report" because "[Gambrell] knew that [Albany] never reported it officially in the beginning because of [the] environment of the office," but that Albany "chose to... bring light to the situation when [Gambrell] asked [her]" about it on November 18, 2018. (Transcript, pp. 157-158)

On redirect examination, Albany testified that when Gambrell spoke with her on November 8, 2018 he stated to her that "he had had other complaints that he was looking into in reference to [Cosby]." (Transcript, p. 158)

In response to questioning by the hearing officer to clarify her prior testimony, Albany testified that after the incident in May of 2015 involving Cosby she had never felt threatened in the workplace or harassed by Cosby. (Transcript, p. 159)

Testimony of Chadwick Gambrell:

Gambrell testified that he is the Agent-in-Charge of the Greenville County Office of the South Carolina Department of Probation, Parole, and Pardon Services, that in December 2017 he was becoming acclimated to the office and the staff, that in March 2018 he spoke with Cosby regarding her recommendation for appointment of an agent to a sex offender team, that Cosby made a recommendation and Gambrell stated to her that he felt that Cosby had "more than a professional

relationship" with the person she recommended, which Cosby denied, that Gambrell had concerns regarding what he felt were "inappropriate relationships that Cosby was having [with] people in the office under her supervision," that he counselled Cosby regarding those concerns, and that Cosby never told him that she felt that she was being harassed by him or the Assistant Agent-in-Charge, Honeywell. (Transcript, pp. 162-167, passim)

Gambrell further testified that he spoke with Nicole Albany, that after speaking with Albany he had a concern "that there may have been an inappropriate relationship between [Albany] and [Cosby]," that he typed up his notes from his conversation with Albany and forwarded them to the Regional Director but when he did not hear back he contacted the Department Director, and that he believed Cosby's relationships could be considered "misconduct." (Transcript, pp. 168-171)

On cross-examination, Gambrell testified that at the time that he had expressed his concerns about relationships with subordinates no departmental policy prohibited such relationships and no policy prohibited what Gambrell described as being misconduct on Cosby's part but that Gambrell considered Cosby's having a sexual relationship with a subordinate to be "immoral" and that in his view the behavior would have been in violation of the Department's "professionalism policy" because Gambrell considered Cosby's behavior to be "morally and ethically improper" although acknowledging that it was not specifically prohibited by policy, that Gambrell went to Nicole Albany and asked about her relationship with Cosby the day after he learned that Cosby had filed a complaint against him, and that on December 19, 2018 Cosby resigned from the Department. (Transcript, pp. 168-172, 175-180, passim)

Testimony of Robert Honeycutt:

Honeycutt testified that he is the Assistant Agent-in-Charge of the Greenville County Office of the South Carolina Department of Probation, Parole, and Pardon Services, that he was Cosby's supervisor, and that what he noticed with respect to Cosby that he would define as "misconduct" was that Cosby "wasn't communicating to [him]... her work hours, when she was working and when she was out doing stuff," (Transcript, p. 186)

On cross-examination, Honeycutt testified that he was not involved in the investigation of Cosby conducted by Harmon, and that he was not a part of any questioning of Cosby. (Transcript, pp. 186-187)

Testimony of Kristin Cosby:

Cosby testified that she worked for the South Carolina Department of Probation, Parole, and Pardon Services for ten years and seven months, that she served in the Air Force Security Services for five years, that as a result of her service in the military she suffers from Post-Traumatic Stress Disorder (PTSD), anxiety, and depression and receives treatment and takes medication for those conditions, that beginning in 2006 she went to work for the Department but left the Department in 2010 to work for the Greenville County Sheriff's Office, that she applied to return to the Department in 2012 but was not selected and was told at that time that "[The Department] wanted a male for the position and not a female," that the Equal Employment Opportunity Commission (EEOC) filed a gender discrimination lawsuit against the Department on her behalf, that she prevailed in the EEOC lawsuit and in 2012 was rehired by the Department, that in September and October of 2018 she was the subject of an investigation conducted by Gambrell and Honeycutt which ended with a direction from the Department's Deputy Director that no disciplinary action was to be taken against her, that in December 2018 she was the subject of an investigation conducted by Jeff Harmon related to a sexual incident in May 2015 between her and Nicole Albany, that she was not engaged in a sexual relationship with Albany, that her memory of the incident referenced in May 2015 was not clear because she does not "have a very good memory," that Harmon did not ask her "specific questions about what [she] did or... details of what had happened" regarding the May 15th incident, that she requested that Albany be moved to another team because "she was becoming angry and a little bit hostile because [Cosby] was not accepting her advances," that she resigned her position with the Department on December 19, 2018. (Transcript, pp. 191-193, 194-199, passim)

On cross-examination, Cosby testified that when Harmon first asked her on December 7th if she had a sexual relationship with Nicole Albany she stated "No," that on December 10th she stated to Harmon that Albany had attempted oral sex on her but that Cosby had "stopped it," and that in her pre-polygraph interview she was asked if she had engaged in any sexual relationship with Albany and she stated no "[b]ecause it was asked if [she] engaged in any sexual relationships with [Albany], and [she] wrote in [her] statement that [Albany] is the one that engaged [her] in [sexual conduct]," that in the "Consent to Interview" form provided her before the polygraph examination the purpose of the exam was stated as being to determine "[w]hether or not you engaged in any sexual activity with Nicole Albany," and that she wrote in her statement following the polygraph examination that she engaged in consensual sexual relations with Albany. (Transcript, pp. 214-221, passim)

FINDINGS OF FACT

Based on the Hearing Officer's Recommendation, Hearing Transcripts, Hearing Exhibits, motions, and oral arguments we find as a fact:

1. The allegations of misconduct against Kristin Cosby, as reported in the "PCS Separation Due to Misconduct" (PCS) provided to the Criminal Justice Academy (Academy) by the Department of Probation, Parole, and Pardon Services (Department), are supported by the evidence presented by the Department at the contested case hearing on May 15, 2019; and

2. The Department has established by "substantial evidence" that Cosby provided incorrect or incomplete statements, as charged in the Department's PCS forwarded to the Academy.

CONCLUSIONS OF LAW

Based on the Hearing Officer's Recommendation, Hearing Transcripts, Hearing Exhibits, motions, and oral arguments we conclude as a matter of law:

1. Pursuant to S.C. Code Ann. § 23-23-80 (6), the South Carolina Law Enforcement Training Council ("Council") is authorized, *inter alia*, to "provide for suspension, revocation, or restriction" of law enforcement certification in accordance with the regulations promulgated by the Council;

2. Pursuant to S.C. Code Ann. Regs. 37-025, Council may deny law enforcement certification "based on evidence satisfactory to the Council that the candidate has engaged in misconduct," may "[i]n considering whether to deny certification based on misconduct, [consider] the seriousness, the remoteness in time and any mitigating circumstances surrounding the act or omission constituting or alleged to constitute misconduct."

3. Pursuant to S.C. Code Ann. Regs. 37-108 (A) (1), Council may sanction an officer, who is found to have committed misconduct with a permanent denial and/or revocation (withdrawal) of certification;

4. The substantial evidence in the record established that Kristin Cosby provided incorrect or incomplete statements, and constitute misconduct pursuant to S.C. Code Ann. § 23-23-150 (A) (3), as reported by the Department; and

5. The misconduct allegations against Kristin Cosby reported by the Department of Probation, Pardon, and Parole Services are supported by substantial evidence.

SANCTION

THEREFORE, IT IS ORDERED: Ms. Cosby is permanently denied a certification as a law enforcement officer in South Carolina.

AND IT IS SO ORDERED.

Chief Mark Keel, Chairman
Law Enforcement Training Council
On Behalf of the Law Enforcement Training Council

October 3, 2019

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Kristin Cosby, Appellant, vs. South Carolina Law Enforcement Training Counsel and South Carolina Department of Probation, Parole and Pardon, Respondents.	)	Case No.: _____ **PROOF OF SERVICE**

I hereby certify that I have served the Notice of Appeal in the above-captioned matter by depositing it in the United State Mail, postage prepaid, on November 8, 2019 to the below named parties at their address of record:

Kristin Cosby
307 Marsh Creek Drive
Mauldin, SC 29662

James M. Fennell, Esq.
5400 Broad River Road
Columbia, SC 29212-3540

Octavia Wright, Eq.
2221 Devine Street, Suite 600
Columbia, SC 29205

Amy Butlers
Amy Butlers
1395 South Church Street
Greenville, SC 29605

FILED
NOV 12 2019
SC ADMIN. LAW COURT

STATE OF SOUTH CAROLINA

Before the South Carolina Law Enforcement Training Council

In the Matter of the Law Enforcement Certification of Kristin Cosby [S.C. Department of Probation, Parole, and Pardon Services]	Docket Number 20019-CJA-01-01 **RESPONSE TO MOTION IN OPPOSITION TO HEARING OFFICER'S FINDINGS AND RECOMMENDATIONS**

The South Carolina Department of Probation, Parole, and Pardon Services (hereinafter, the "Department"), by and through its undersigned counsel, does hereby submit this Response to Motion in Opposition to the Findings and Recommendations of Hearing Officer, filed in the above-referenced matter of August 9, 2019 following the Findings and Recommendations that were filed on July 29, 2019. These matters were filed following the May 15, 2019 contested case hearing held before the South Carolina Law Enforcement Training Council. Specifically, the Department opposes the Motion in Opposition to the Findings and Recommendations of the Hearing Officer that has been filed.

PROCEDURAL HISTORY

In December 2017, Chad Gambrell became the Agent-in-Charge of Greenville County. Upon his arrival, he was aware of concerns regarding inappropriate conduct and relationships of Kristin Cosby. Tr. p. 159, ll. 3-8, p. 165, ll. 15-20) While conducting an internal investigation of this conduct, he discovered that there were allegations regarding an incident involving sexual relations between Cosby, who was a supervisor, and one of her subordinates that he believed violated the department's professionalism policy and code of ethics. (Tr. p. 76, ll. 3-6). He approached an employee who had been under Cosby's supervision, Nicole Albany, to inquire

whether there was any truth to the allegations he previously discovered. She told him that there was. After discovering this, Gambrell reported this information to the Director. (Tr. p. 168, ll. 13-25 & p. 169, ll. 1-5)

Once the Director was advised of this, he initiated an investigation through the OPR office and in accordance with Policy. At the outset, Cosby was advised that she should tell the truth and that she would not encounter discipline for doing so if she had in fact had a consensual sexual relationship with a subordinate. (Tr., p. 36; lls. 15-22, p. 95, ll. 6-12) Nevertheless, Cosby initially denied that the incident occurred with Albany *twice*. (Tr., p. 37; lls. 15-18 and Tr., p. 41; lls. 9-11). Then, she changed her story to state that Albany "had tried to initiate contact", but she stopped it from happening. (Tr., p. 42, lls. 11-18; p. 62, ll. 15-25, p. 63, ll.1-5, p. 96, ll. 10-21). Since OPR had received two different accounts of what happened from Cosby, the Director wanted to obtain the truth. Thus, he had Cosby sent for a polygraph test, which was held on December 17, 2018. (p. 136, ll. 19-21, p.137, ll. 11-17). Since Cosby had previously requested to be off on the day of the polygraph, he had her two supervisors, Assistant Agent in Charge Rob Honeycutt and Agent in Charge Chad Gambrell, escort her from Greenville to Columbia for the exam. He also did this so that he would be able to retain the agency's equipment from her upon making an immediate determination on how to proceed.

It is common that many employees who are ordered to participate in a polygraph are upset and anxious. Cosby was no exception. Prior to the exam, SLED's Lt. Bryan Jones, the polygraph examiner, told her the parameters of the exam and went over it line by line as noted in State's Exhibit 6. She initialed by each statement to indicate her understanding and that despite admitting her past issues with PTSD and depression, she was under no duress. She fully

understood that the purpose of the exam was to obtain the truth of what had occurred. (Tr. p. 119, ll. 17-25, p. 120, ll. 1-5, 8-13)

Despite these parameters, Cosby continued to choose to be dishonest. Prior to the exam, Lt. Jones asked Cosby whether she had participated in any sexual activity. She denied it flatly. Upon learning the results of the polygraph, Cosby then changed her story again. (p. 121, ll. 10-22). She told Lt. Jones that there was activity, but that it had been initiated by Albany. Lt. Jones then requested that she place her statement in writing. Within State's Exhibit 2, Cosby clearly states that activity did occur between her and Albany.

By the time that the exam was over, it was approximately 4:30 p.m. (Tr., p. 48, ll. 14). Jeff Harmon, the OPR Director and Investigator, had to wait until Lt. Jones completed his final report to submit. Once he received that report from him, it was approximately 5:30 p.m. Harmon immediately called the Director, who advised him to write it up in OPR's separate findings and submit it to him. (Tr., p. 49, ll. 7-11, State's Exhibit 3).

The Director told him to finish his report and submit it to him. Upon reviewing his report, the Director noted that his recommendation based upon his findings was a termination for misconduct pursuant to policy on December 18, 2018 as noted in State's Exhibit #3. (Tr., p. 49, ll. 20-25; Tr., p. 61, ll. 22-25; p. 62, ll. 1-2). He then advised HR to submit the PCS for his signature and to send it on to the Academy.

ARGUMENT

The Department objects to the arguments made in the Motion and states that it did in fact meet its burden to establish substantial evidence that Cosby made incomplete or incorrect statements or exhibited dishonesty and that she did so willfully to constitute misconduct as defined by the South Carolina statutes, regulations, and under the department's own policies.

1. *The Department met its burden to establish that Cosby was dishonest, unprofessional, and unethical.*

During the May 15, 2019 Academy hearing, the Department presented the sworn testimony of four witnesses: OPR Director Jeff Harmon, SLED's Lt. Bryan Jones, Agent Nicole Albany, and AIC Chad Gambrell. These witnesses all told the truth both prior to, during, and up to the conclusion of the OPR Investigation launched by the agency's Director to determine the truth. There was no deviance at any point in any of their independent statements and they stayed consistent throughout the entire process, which helped the Director to reach his ultimate conclusion as their statements corroborated each other as substantial evidence of Kristin Cosby's misconduct.

In order to overcome this evidence, the Academy would have to overlook the testimonies of these four witnesses in favor of Cosby, who provided no such substantial evidence to support why the Academy should not view her false and misleading statements as misconduct or dishonesty. In accordance with Elkin v. South Carolina Criminal Justice Academy, 2017 WL 6508871, the S.C. Court of Appeals stated that "the Academy may deny certification based on evidence satisfactory to the Academy proving the candidate has engaged in *misconduct*, which is defined in part as, *dishonesty or untruthfulness* with respect to one's employer." (Emphasis added.)

Instead, Cosby appears to want the Academy to overlook the fact that she constantly lied throughout the Department's OPR investigation even when she was told that lying would lead to termination *prior* to providing her initial statement. Then, she attempted to shift the burden of the blame of the action back upon her former subordinate, Albany. This was part of the pattern of deception that Harmon testified to when he stated she would "...not tell the truth, then modify

the truth, and then finally become truthful with her written statement of a consensual relationship [with Albany after she took the polygraph exam]." See Tr. p. 63, ll. 15-25, p. 64, ll. 1-5.

Despite these facts, Cosby tries to parse words about "relations", "relationship", "activity", "encounter", "incident", "conduct", which is indicative of what the Hearing Officer denounced and later compared to Bill Clinton's "splitting of hairs on what a word means" in an attempt to explain her confusion with understanding clear questions. Tr. p. 221, ll. 12-14. On cross examination, Cosby *admitted* that she understood that the purpose of the polygraph exam was to get to the truth of whether any sexual activity had occurred between her and Albany *before* taking the exam. Tr. p. 217, ll. 17-22; Tr. p. 218, ll. 3-8. Also, see State's Exhibit 6. (Emphasis added.) This fact reflects the pattern of deception that she consistently displayed in which Harmon testified about.

SC Regulation 37-025(A) defines what misconduct means. In particular, (6) states "*misrepresentation* of employment-related information, (7) states "*dishonesty* with respect to his/her employer", and (8) states "*untruthfulness* with respect to his/her employer." Clearly, this is the definition that the Department relied upon in finding that Cosby had committed misconduct as stated herein. (Emphasis added.)

"Dishonesty" is, by definition, a " 'disposition to *lie*, cheat, or steal.' (citing *Random House College Dictionary* 380 (abr. ed.1973); *see also Webster's New Twentieth Century Dictionary* 525 (2d ed.1983) (defining "dishonesty" as [*deception*]") *See also Gregory v. State,* 616 A.2d 1198, 1204 (Del.1992) (defining the term "dishonesty" as "the act or *practice of lying, deceiving*, cheating...or defrauding.") 'In common human experience[,] acts of deceit, fraud, cheating... are universally regarded as conduct which reflects adversely on a man's honesty and integrity,'" State v. Al-Amin, Ct. of App. Of S.C., 353 S.C. 405, 425 (2003).

Through the substantial evidence of misconduct that was outlined by the Department in Council's Exhibit 1 and further substantiated by the Hearing Officer's Findings, it is clear that Cosby's constant pattern of deception caused the impact of adverse action upon her own honesty and integrity. "The general principle of evidence law states that the factfinder is entitled to consider a party's dishonesty about a material fact as affirmative evidence of guilt," Silver v. Carolinas Medical Alliance, U. S. Dist. Ct., D.S.C., Florence Div., Feb. 13, 2019, 2019 WL 580978.

In regards to Cosby's other arguments, they revolve around the mitigating factors that the Hearing Officer alluded to in (B) of his Recommended Disposition but they do not provide any proof to overcome the facts that prove Cosby's misconduct and dishonesty. Once again, the Academy would have to discredit the highly valid, credible, and sworn testimony of four law enforcement officers in order to not find substantial evidence of misconduct based upon Cosby's sole testimony with no proof or verification of her allegations. "The Academy may consider mitigating factors when deciding whether to deny recertification based on misconduct; however, the Academy is *not required* to consider those mitigating factors." See S.C. Reg. 37-025(B). Elkin v. South Carolina Criminal Justice Academy, S.C. Ct. of App., 2017 WL 6508871.

Finally, the OPR investigation was initiated to get at the truth of what happened. Pursuant to the Department's Policy 1802, the investigation was commenced to "uncover allegations or complaints of misconduct by Department employees involving *violations of policy, codes of ethics, state or federal law, or other recognized standards of conduct.*" See State's Exhibit 1. The complaint of misconduct had to do with AIC Gambrell's report that Cosby not only had consensual sex with Albany, but that their relationship turned hostile afterwards, and her pay and performance was affected. Tr., p. 25, ll. 11-18. Thus, the allegations of misconduct were not

just confined to fraternization, but professionalism, sexual harassment, and retaliation. Tr. p. 34, ll. 2-5. These are allegations of violations of not only department policy but state and federal law. Underneath the language regarding the Garrity Warning that is given in all investigations on page 5 of the policy, it states "Department disciplinary action, including dismissal, may be undertaken if an employee refuses to answer or *fails to reply fully and truthfully*." Tr. p. 35, ll. 24-25, p. 36, ll. 6-11. Therefore, the characterization of the underlying behavior that caused the OPR investigation did in fact involve allegations of misconduct. As noted in Harmon's Findings listed in State's Exhibit 3, Cosby made false statements not only to him during the investigation, but to Lt. Jones. As such, she violated Policy 1802 and the department's Professionalism Policy 210, which states that "employees are *expected to be honest* and shall conduct themselves ethically at all times."

CONCLUSION

Based upon the substantial evidence that has been summarized herein, the Department respectfully requests that the Council find that the Department did in fact meet its burden of establishing that Cosby engaged in misconduct as defined by S.C. Reg 37-025 and ultimately uphold the Hearing Officer's Finding of Facts, Recommended Conclusions of Law, and (A) of his Recommended Disposition based upon the facts and law as presented herein.

Respectfully submitted,

Octavia Y. Wright
Legal Counsel
South Carolina Department for Probation, Parole, and Pardon Services
P. O. Box 50666
Columbia, SC 29250
(803) 734-9265
octavia.wright@ppp.sc.gov

August 18, 2019
Columbia, South Carolina

STATE OF SOUTH CAROLINA

Before the South Carolina Law Enforcement Training Council

In the Matter of the Law Enforcement Certification of Kristin Cosby [S.C. Department of Probation, Parole, and Pardon Services]	)	Docket Number 20019-CJA-01-01 **CERTIFICATE OF SERVICE**

This is to certify that I have served the applicable parties with a copy of the foregoing Response to Motion in Opposition this 18th day of August, 2019 by electronic message as follows:

Courtney C. Atkinson, Esq.
catkinson@malawfirmsc.com

Octavia Y. Wright, Esq.

Columbia, South Carolina

STATE'S TRANSCRIPT EXHIBIT

REDIRECT EXAMINATION OF NICOLE ALBANY

BY MS. WRIGHT:

Q So -- so when AIC Gambrell asked you about this relationship on November the 8th, were -- did he also make you aware of the larger context of what was going on? why he was asking you about that?

A That he had had other complaints that he was looking into in reference to her.

Q Okay.

MS. WRIGHT: I have no further questions.

HEARING OFFICER SMITH: All right. At this opportunity, I have a couple of quick questions.

WITNESS ALBANY: Okay.

EXAMINATION OF NICOLE ALBANY

BY HEARING OFFICER SMITH:

Q Ms. Albany, is it your testimony here today that, after the incident in May of 2015 in which you were involved with Ms. Cosby, that you felt threatened in the workplace or harassed or . . .

A No. I didn't feel threatened or --

Q Okay.

A -- harassed. Just a -- a little intimidating and feeling like I was not capable of doing my job as a seasoned agent.

Q Okay.

Worthy and Cosby were at the office together sometime in the evenings, and sometime, Worthy -- if Cosby was at --

Q Okay. Okay. I'm going to --

HEARING OFFICER SMITH: (To Ms. Wright) Yeah. Let's --

Q I'm going to --

HEARING OFFICER SMITH: -- shift gears and get to what --

MS. WRIGHT: Yeah.

HEARING OFFICER SMITH: -- we're here for.

MS. WRIGHT: Yes, sir.

HEARING OFFICER SMITH: Okay.

MS. WRIGHT: Okay.

Q So in essence, you became -- there were concerns that you had about what you felt were inappropriate relationships that Cosby was having?

A Yes. With --

Q Okay.

A -- people in the office under her supervision.

Q Okay. Did you begin to specifically launch an -- kind of an internal -- you know, within the office staff -- an investigation into those concerns? Did you . . .

A Yes.

going on because, you know, I want to investigate this if this is happening." And she began to -- to tell me that it was more of a -- a communication issue and she didn't like the -- the idea that her supervisors had confronted her about sexual conduct with a subordinate.

Q All right. And I believe that answer is in regard to the complaint Kristin Cosby made in October, but I'm asking you about the investigation that was opened into allegations against Kristin Cosby engaging in a sexual relationship with a subordinate.

So in regard to those specific allegations, did you become involved with that investigation, as you testified earlier, because the director indicated to you that the agent in charge had called him --

A Yes, ma'am.

Q -- to open --

A Yes, ma'am.

Q -- an investigation?

A Yes, ma'am.

Q Okay. And is that the same agent in charge whom Kristin Cosby had previously filed a complaint against?

that an incident occurred, and I need to investigate it.

Q Okay. But it was -- were you made aware in the course of your investigation of the facts that stated that it occurred in December 2015?

A Yes, sir.

Q Okay. And how were those facts established? Who stated that it occurred then and when was it reported to the Agency?

A Well, you said not to say hearsay.

Q I'm not asking you to tell me what they said.

A Oh.

Q I'm asking you to tell me --

A Oh, okay. Okay.

Q -- when it was reported, so there's a difference.

A When it was reported.

Q Yeah.

A Okay. It was reported to me November 30th.

Q When was it reported to the Agency?

A I don't have the director's notes of when it was reported to him.

Q Okay.

A I can go back and look at my notes to see if in my conversation with him if I -- if I recorded when AIC Gambrell reported it to Director Adger.

treated unfairly. She asked if she could move upstairs -- she asked someone else at the time if she could move upstairs -- she told me all about that -- to get away from Cosby, and she did state that it was a sexual relationship.

Q Okay. And so after finding that out, what did you do with that information?

A Typed up my note from the conversation and forwarded it, that day, to my boss, which is our regional director, Gerald Black.

Q Okay. So what caused you to contact the director, Adger, directly about this?

A That conversation with Nicole was on November the 8th, and then Mr. Black said that they would get back to me on this. Did not hear anything back, so I guess it was late November, I called, actually, Mr. Harmon first and asked him about it, as well as this allegation on the -- on the -- the 19th, "What's -- what's going on? Why haven't they been in my office?"

HEARING OFFICER SMITH: (To Ms. Wright) Okay. I'm going to interject for the last time here. We have developed, through multiple witnesses, that there was an encounter between Ms. Cosby and the lady who testified earlier. What the

cooperate because it's not a criminal matter. And, if it was a criminal matter, I would stop the proceedings immediately because we do not -- we would not want the internal investigation to jeopardize the criminal investigation that would occur. A part of that Garrity warning advises them that they must cooperate fully and that they should be truthful and that they must remain -- all the information that's spoken about should be confidential at all times. I always interject with that, as well.

And then I go into what the nature of the allegations are. And, with this investigation in particular, I started out the investigation with a statement from Director Adger to Ms. Cosby. And Director Adger required me to tell Ms. Cosby that no one had ever been terminated for an allegation of consensual sexual relationships with a subordinate, and that she should be honest and truthful about the relationship, and that if she is found to be untruthful and lie, then she would be subject to disciplinary actions.

Q Okay. So you -- you did, in fact, ask Ms. Cosby about those allegations?

A Yes, ma'am.

the audio portion of the first interview that you had with Ms. Cosby on, I believe that was, December the 7th during your investigation into those allegations. Within the portion of the audio, particularly segments four -- four ten through four thirty-one, do you recall telling Ms. Cosby that -- that, as far as you were aware the -- the -- or -- or -- or what the director told you was that employees typically aren't -- aren't terminated for having such relations with their subordination but would be terminated for lying; is that correct?

A Yes, ma'am.

MS. ATKINSON: I object to the -- to the leading form of that question. This is directing her witness --

MS. WRIGHT: Can -- can we --

HEARING OFFICER SMITH: Yeah. Yeah. Please don't lead. I'm going to allow it this time --

MS. WRIGHT: Uh-huh.

HEARING OFFICER SMITH: -- but you need to stop leading your witness, okay?

MS. WRIGHT: Okay. All right.

HEARING OFFICER SMITH: I'll -- I'll overrule that.

Q Okay.
A Once I made that statement, Direct Adger clearly wanted me to just make -- make it very, very concise. All our investigations, in scope, are very narrow. All our investigations are not search expeditions. We don't go after extraneous information. We keep very narrow to our -- to our scope, and I tell everyone that -- that I interview that the scope is very narrow. Of course, I always have a ending question, "Is there anything else you'd like to tell me about the situation or the -- or the allegations?" And that's their chance to tell me anything that I may've missed, but what I ask is very simple, very narrow.

And the question I asked was has she had a sexual relationship with a subordinate, and that subordinate named Nicole Albany.

She said, "No."

Q Okay. All right. So, after -- after -- after Ms. Cosby told you no, were there -- were there any other times that you asked her the same question? And -- and, if so, what was her response?
A After she told me no, Director Adger advised me that, if she said yes, to get her statement and then give him a call.

and then she moved with her AIC to have her removed from her team. I asked her what the nature of the advances were. She said that Ms. Albany had sent her photos.

I asked, "Was there any physical advances?"

The answer was, "No," but then stated that she could not remember if -- if there were any physical advances.

And I asked, "Was there ever any other sexual conduct with a subordinate?"

And she said, "No. Never."

Q Okay. So what was your next step in the investigation?

A Well, it was wait until Monday to determine if she was going to agree to a polygraph or not. I also -- you know, at that time, I -- you know, I wanted her time to think about it over the weekend, her statement, because, you know, in my investigation, I know that when you make these -- when these allegations come up, it gets the blood pressure going. It gets that -- that panic mode sets in, that these great allegations are made towards someone. And my training has always stated that, once you give somebody a sleep period, they can recall memory a lot better. So I advised her -- I

let her know that Monday, when she told me she -- she would or would not participate in a polygraph, that she had until Monday at that time to amend any statement that she had made previously to me. I wanted her to give -- you know, give her plenty of opportunity to review her -- her memory records or memory files because it was three years ago at that time.

And then, on that Monday, she did -- stated that she wanted to amend her statement. And, at that time, she amended her statement from no physical contact whatsoever, that she now stated that -- that Nicole tried to initiate physical contact with her, and that it was during a cookout, and a friend said, "Hey, you're being too aggressive," and -- and Ms. Cosby was able to kind of brush off the physical contact with Nicole Albany.

And I asked her if that was all she wanted to make a statement -- all the amendment, and she said, "Yes." I advised her, at that time, that the polygraph would continue, would be scheduled, and, of course, the polygraph was scheduled.

Q Okay. So, on the day that the polygraph was scheduled, did you observe the exam being

that they could include it on documentation to the Academy. But I did not know what that document was called.

Q Okay.

A "PCS" document.

Q Okay. All right. Okay. I don't -- I won't go into --

A Okay.

Q I don't have any further questions about that at this time.

So, at the conclusion of your investigation, was there -- was there any particular theme that developed?

A Through the course of the investigation, just with my interview, just with Cosby -- of course, you know, I interviewed her on two different occasions and received also a written statement -- a pattern developed of not telling the truth and then modifying the truth and then, finally, becoming truthful with the written statement of a consensual relationship with -- with the complainant. December 17th -- December 7th she said there was no sexual interaction whatsoever, and then the 10th, she stated that, "Well, she" -- the complainant tried, but then she brushed her off. So -- and

then, of course, her written statement was that it was a consensual relationship. That it was wanted by her and the complainant, which led me to make the determination that the previous statements were false.

Q Okay.

MS. WRIGHT: (To the hearing officer) I would also -- I just want to show her this real quick. It's a few other -- a few other things.

MS. ATKINSON: Uh-huh.

MS. WRIGHT: Okay?

THE EXAMINATION BY MS. WRIGHT CONTINUES.

Q Could you please identify this document?

A This is the Department OPR 1332, "Citizen/Personnel Complaint" form.

Q Okay. And so, what was that complaint about?

A This was a complaint that was created by Ms. Kristin Cosby on October the 19th of 2018, 11:02 a.m., and was e-mailed to the Department.

Q Okay. And so in the -- in the context of that complaint, what were those -- what were those allegations that were -- were brought out?

A According to her own statement in -- in the document, it says that "AIC Gambrell and AAIC

Honeycutt created a hostile working environment for me," which is Kristin Cosby and some members of her team to the point where she is "afraid to come to work, not for physical reasons, but psychological reasons. I feel as though I'm being harassed, repeatedly counseled for things I -- and I am not explained how to fix, and some things I have not been trained.

"The harassment has extended to members of my team to where one of them perceived a threat by AIC Honeycutt on one occasion, based off a statement that was made. My agents had been made to feel as though they are not trusted and do not know how to proceed with me, making my job extremely difficult.

"I have felt attacked how AIC Honeycutt approached me with issues working off of wrong information or misinformation of the information without gathering the facts before addressing the situation with me."

Q Okay.

A And there's another paragraph --

Q That's --

A -- that goes along with it.

Q That's fine.

HEARING OFFICER SMITH: Okay. (To Ms. Wright)

Q Okay. Secondly, going back to what Ms. Atkinson asked you on cross earlier in regards to the -- to the conversation you had with Ms. Cosby on December the 12th, in terms of what Ms. Cosby told you then, is -- within that statement, it's -- it -- it was noted that a change in statement -- or a change of Ms. Cosby's statement was made at that time, right?

A Yes, ma'am.

Q Okay. And -- and -- and did -- did Ms. Cosby take any responsibility for the allegation at that point?

A No. What Ms. Cosby said was maybe -- maybe she was going to try oral sex. She did not know. She was going to try something, and then, as she progressed through the interview, I asked the statement again, was there any sexual conduct that occurred between her and the subordinate, and she again stated, "No."

Q Okay. So it was a continual denial?

A Yes.

Q I have no -- no further questions.

HEARING OFFICER SMITH: All right. A housekeeping matter here. We've had statements and testimony about the audio exhibit. Is the State going to

want him to look at Respondent's 2?

MS. WRIGHT: Just -- yes, sir. Briefly.

HEARING OFFICER SMITH: Thank you.

Q So as you testified to earlier about the fact that Ms. Cosby disclosed her conditions, is it -- is it known that -- within your expertise as a polygraph examiner, those conditions, do they typically affect the outcome of it -- of --

MS. ATKINSON: I'm going to object to that question. I think we're getting into --

HEARING OFFICER SMITH: And you're --

MS. ATKINSON: -- the polygraph at this point.

HEARING OFFICER SMITH: And you're also asking him to speculate.

MS. WRIGHT: Okay.

HEARING OFFICER SMITH: So I'll sustain the objection.

MS. WRIGHT: All right.

Q So in essence, what was your understanding about -- from -- from why you were being asked to -- to do this polygraph exam for Ms. Cosby?

A Jeff Harmon had told me that they had an allegation --

MS. ATKINSON: I'm going to object to it. I think we're getting -- getting ready to get

into hearsay testimony here.

HEARING OFFICER SMITH: Well, he's already --

MS. WRIGHT: Mr. Harmon --

HEARING OFFICER SMITH: He's already testified.

MS. WRIGHT: -- did testify earlier.

MS. ATKINSON: Okay.

HEARING OFFICER SMITH: So I'm going to allow her to continue. Overrule the objection.

MS. WRIGHT: (To Witness Jones) Go ahead.

A And they're looking into an allegation that Ms. Cosby had gotten involved in a sexual relationship with a subordinate at the time and wanted to verify whether or not they had engaged in sexual activity because Nicole Albany was saying they had, and Kristin Cosby was saying that there was never any sexual activity that took place.

Q Okay.

MS. WRIGHT: All right. I have no further questions at this time.

HEARING OFFICER SMITH: All right. Any recross?

MS. ATKINSON: Just one question.

HEARING OFFICER SMITH: Okay.

RECROSS-EXAMINATION OF BRYAN JONES

BY MS. ATKINSON:

Q Okay.
A This document is our consent form for the use of the polygraph.
Q Okay. And so that -- that is a form that is a SLED form; is that right?
A Yes. That's correct.
Q Okay. And so -- so is this something that you -- you gave to or that you went over with Ms. -- I mean, with Ms. Cosby prior to the polygraph?
A Yes. Yes. I did.
Q Okay. And could you tell us those -- those two subheadings right there and there on the -- on -- that are underlined portion there and there --
A Okay.
Q -- what it states on it?
A So the first -- the first section here is -- basically says your rights. "You have the right to refuse to take the polygraph test. If you agree to take the polygraph test, you have the right to stop the test at any time. If you agree to the polygraph test, you have the right to refuse to answer any additional questions."

And then the -- the second section says, "I've read the statement of rights and understand what my rights are. I voluntarily agree to be examined by

means of polygraph during this interview. I understand and know what I'm doing. Neither threats nor promises have been made to me to obtain my consent for use to -- for the use of the polygraph. I understand the examination room does contain observation devices and the examination may be monitored or recorded."

Q Okay. And those look like initials along the -- the side of the form there. Can you tell us whose initials those are?

A Sure. Those are Kristin's initials. I witnessed her initial those, saying that she understood them as we -- after we went over them.

Q Okay. And could you tell us the date that on --

A Sure.

Q -- of that, when that was signed?

A December 17th of 2018.

Q Okay.

MS. WRIGHT: I would ask that this be moved into evidence and marked, please --

HEARING OFFICER SMITH: Okay. Any objections?

MS. ATKINSON: No objections.

HEARING OFFICER SMITH: All right.

MS. WRIGHT: -- as State's exhibit.

HEARING OFFICER SMITH: That'll be -- is that

State 6?

THE COURT REPORTER: Six.

HEARING OFFICER SMITH: Okay. Without objection. Okay. I see that.

State Exhibit Number 6, "Consent To Interview with Polygraph."

Q Do you recall if Jeff Harmon was present on the day of the exam?

A He was.

Q Okay. Prior to the exam, did you ask Ms. Cosby if she engaged in sexual activity with a subordinate?

A Yes. I did.

Q And what was her response?

A No.

Q After the exam, did you ask her again whether she had engaged in sex with Ms. Cosby?

A Yes. Or with Ms. Albany?

Q Yes.

A Yes.

Q And what was her response?

A She changed it to admitting to engaging in sexual activity with her.

Q Okay. All right. At this part -- point, I would like to show you what's already been marked into evidence, I believe as State's Exhibit 2.

a terrible person to misspell words. I told her what that word of consensual -- how it was spelled, and she made her own written statement in regards to what she had just told the polygraph examiner.

Q Okay. And, at the bottom of that statement, is that your signature there?

A It is my signature as being the witness.

Q Okay.

A Polygraph examiner was not in the room when she gave her voluntary statement. It was just myself and Ms. Cosby.

Q Okay. And can you tell us the date that -- that that was signed?

A December 17th, 2018, at 4:30 p.m.

Q Okay. All right. Thank you. Give this back to you.

A Thank you.

Q Uh-huh. Okay.

MS. WRIGHT: (To Hearing Officer Smith) So, if I could just ask on the record because, essentially, what I would like to have him identify is a copy of the polygraph report.

HEARING OFFICER SMITH: (Shakes head from side to side.)

MS. WRIGHT: Okay.

HEARING OFFICER SMITH: Not going to do it.

MS. WRIGHT: Okay. All right.

Q So, after receiving Ms. Cosby's voluntary statement, what happened next in your investigation?

A Upon completion of the polygraph and the written statement from Ms. Cosby, of course, it was the end of the day. Of course, I did update Director Adger of the proceedings; went home. The next day, come back into the office and began to write up the -- the official OPR Investigative Report.

Q Okay.

MS. WRIGHT: (To Ms. Atkinson) I'm going to present this. This is the summary of findings.

MS. ATKINSON: Okay.

MS. WRIGHT: Okay.

Q Could you identify that, please?

A This is the summary of findings from the Office of Professional Responsibility. This was the report that was submitted for the approval of the director and his chief deputy, and, of course, their note on this date, December 18th, 2018, the actions in which they recommend on behalf of the investigation.

contained in that. Do you need to look at it again?

MS. WRIGHT: Well, I was going to ask him to take a look at it.

HEARING OFFICER SMITH: All right. This is what was marked as Council Exhibit 1, and I'll hand that to your witness.

MS. WRIGHT: Yes, sir. And -- and that -- that has been put into evidence?

HEARING OFFICER SMITH: It's in evidence, but those are allegations on there. It's not proof of anything. It's just the fact that jurisdictionally we can proceed --

MS. WRIGHT: Okay.

HEARING OFFICER SMITH: -- with the hearing.

MS. WRIGHT: Okay.

THE EXAMINATION BY MS. WRIGHT CONTINUES.

Q So, Mr. Harmon, in -- in relation to the -- the PCS that is attached to the Academy's letter that was submitted by the Department, did you -- did you have anything to do with the creation of that PCS?

A On completion of my -- my "Summary of Findings" to the director, I think it was maybe a day later he asked me to make sure that I gave a summary statement to the director of human resources so

that they could include it on documentation to the Academy. But I did not know what that document was called.

Q Okay.

A "PCS" document.

Q Okay. All right. Okay. I don't -- I won't go into --

A Okay.

Q I don't have any further questions about that at this time.

So, at the conclusion of your investigation, was there -- was there any particular theme that developed?

A Through the course of the investigation, just with my interview, just with Cosby -- of course, you know, I interviewed her on two different occasions and received also a written statement -- a pattern developed of not telling the truth and then modifying the truth and then, finally, becoming truthful with the written statement of a consensual relationship with -- with the complainant. December 17th -- December 7th she said there was no sexual interaction whatsoever, and then the 10th, she stated that, "Well, she" -- the complainant tried, but then she brushed her off. So -- and

HEARING OFFICER SMITH: All right. Any redirect?

MS. ATKINSON: Just one or two.

HEARING OFFICER SMITH: Okay.

REDIRECT EXAMINATION OF MS. COSBY

BY MS. ATKINSON:

Q You were previously asked by the agents whether you engaged in a sexual relationship with Nicole Albany; is that correct?

A Yes.

Q Did you and Nicole Albany ever have a sexual relationship?

A No.

Q Okay. And what you related in this voluntary statement, do you term that a "brief incident" in that document?

A Yes.

Q Okay. Other than that brief incident, was there ever any other sexual contact from Nicole Albany towards you?

A No.

Q Okay. And did you previously report the sexual advance from Nicole Albany to you to the Agency?

A Yes.

Q All right. No further questions.

HEARING OFFICER SMITH: Okay. Do we have re-cross? No?

MS. WRIGHT: Yes, sir.

HEARING OFFICER SMITH: Okay. I'll hand State's 6 to the witness.

WITNESS COSBY: Okay.

MS. WRIGHT: Okay.

Q All right. I'm going to give you a quick minute to look that over. Can you identify for us what that is?

A Consent to interview with polygraph.

Q Okay. And so isn't it true that Lieutenant Jones gave you this form in the -- in the pre-interview part of the exam?

A Yes.

Q Okay. And so you -- you do -- can -- can you read for us what it says is the reason for the polygraph that's handwritten at the top?

A "Whether or not you engaged in any sexual activity with Nicole Albany."

Q Okay. So from that, it was your understanding at the beginning of the polygraph that the whole purpose of it was to get to the truth of whether that occurred or not?

MS. ATKINSON: I object to that question. She asked her --

HEARING OFFICER SMITH: What's the objection?

MS. ATKINSON: -- if it was her understanding. She can testify what the document said, but --

HEARING OFFICER SMITH: Well, she can testify to her understanding, also. I'm going to overrule the objection.

MS. ATKINSON: Okay.

Q Could you answer the question, please?

A Yes.

Q Okay. So again, continuing to look at this form, where it states your rights and the waiver and consent, are these your -- are these, in fact, your initials along the side of the form?

A Yes.

Q Okay. So each initial you were essentially noting that you, in fact, had read those instructions; is that correct?

A Yes.

Q Okay. All right. I'd like to -- you can give that back to the hearing officer at this point.

HEARING OFFICER SMITH: Thank you. Do you -- do you want her to read --

MS. WRIGHT: Well, I'm -- I'm not quite finished. I have a few more questions. I'm sorry.

HEARING OFFICER SMITH: Okay. Well, I -- I --

Q Okay. In regards to today's hearing, Director Adger, who is the director of the Department -- he did, in fact, authorize you to initiate an investigation into allegations concerning Ms. Cosby today, correct?
A Yes, ma'am.
Q Can you please tell us what those allegations consisted of?
A Director Adger received a call from AIC, Chad Gambrell. And, in that conversation, according to Director Adger, he stated that Mr. Gambrell stated that an employee had came forward and noted that Kristin Cosby and this employee, who was a subordinate of hers, had had a consensual sexual relationship, that upon its ending of that relationship turned hostile and affected her pay, also affected her job performance, and I was to open an investigation in regards to that matter.
Q Okay. And so, as you -- as you begin -- as you began to open up the investigation, could you tell us about your -- your methodology?
A All right. All investigations, as part of our department policy, are approved and authorized by the director. With our director, he has a extensive history in -- in Inspector General -- he

of my training as a nationally certified internal investigator, part of the rules of a sexual harassment claim or -- or part of that investigative action should always be to see if there's any other witnesses to the allegation, did the person tell anyone else of the -- the offense that occurred against them. Because of that training that I had received, I -- I initially asked Ms. Albany, "Did -- was -- did -- was there any witnesses to -- to the incident?"

Of course, she said, "There was friends there, but there were no direct witnesses."

I said, "Well, who did you tell in regards to" --

MS. ATKINSON: At this time --

HEARING OFFICER SMITH: Okay. Okay.

MS. ATKINSON: -- I'm going to object. I think we are --

WITNESS HARMON: Yeah.

MS. ATKINSON: -- going into hearsay --

HEARING OFFICER SMITH: We're getting back --

MS. ATKINSON: -- at this point.

HEARING OFFICER SMITH: -- in the hearsay thing. (To Ms. Wright) Your witness can testify as to whether or not there were others

agent in charge at the time of the incident. "kel-SAY" Terrence -- or "KEL-see" Terrence. I don't know exactly how she pronounces her name, so I apologize --

Q Okay.

A -- if I mispronounced her name. And I also spoke with Michael Abney, as well. I believe -- and, of course, in the -- in -- in the course of the investigation, spoke with, also, AIC Gambrell and Assistant AIC Honeycutt. Those would be all the -- the people I spoke to in regards to investigation -- and, of course, Director Adger, who I spoke with on a daily basis in the course of the investigation.

Q Okay. So, among those names, approximately how many of those folks were being supervised by Ms. Cosby at the time?

A I believe, at that time, the only people that were being supervised by Ms. Cosby was Isaac McKenzie and Christina Worthy.

Q Okay. So, when you spoke with Ms. Cosby, can you tell us about how that conversation went?

A How the -- how I usually start with all investigations -- of course, I do the Garrity warning, letting them know that they have to

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

CONSENT TO INTERVIEW WITH POLYGRAPH

PLACE: SLED Headquarters
Columbia, SC

DATE: 12/17/18 TIME: 13 : 33 AM/PM

BEFORE WE BEGIN AN EXAMINATION BY MEANS OF THE POLYGRAPH CONCERNING:

whether or not you engaged in any sexual activity with Nicole Albany

YOU MUST UNDERSTAND YOUR RIGHTS.

YOUR RIGHTS

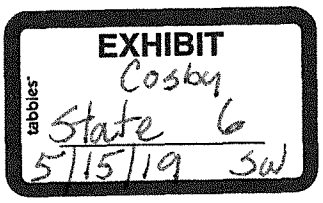
KMC. YOU HAVE THE RIGHT TO REFUSE TO TAKE THE POLYGRAPH TEST.

KMC. IF YOU AGREE TO TAKE THE POLYGRAPH TEST, YOU HAVE THE RIGHT TO STOP THE TEST AT ANYTIME.

KMC. IF YOU AGREE TO TAKE THE POLYGRAPH TEST, YOU HAVE THE RIGHT TO REFUSE TO ANSWER ANY INDIVIDUAL QUESTIONS.

WAIVER AND CONSENT

KMC. I HAVE READ THIS STATEMENT OF MY RIGHTS AND I UNDERSTAND WHAT MY RIGHTS ARE. I VOLUNTARILY AGREE TO BE EXAMINED BY MEANS OF THE POLYGRAPH DURING THIS INTERVIEW. I UNDERSTAND AND KNOW WHAT I AM DOING. NEITHER THREATS NOR PROMISES HAVE BEEN MADE TO ME TO OBTAIN MY CONSENT FOR THE USE OF THE POLYGRAPH. I UNDERSTAND THE EXAMINATION ROOM DOES CONTAIN AN OBSERVATION DEVICE AND THE EXAMINATION MAY BE MONITORED OR RECORDED.



SIGNED: _____ (EXAMINEE)

_____ (WITNESS)

CASE #- P18-0264 DATE: 12/17/18 EXAMINER: BCJ

CASE #_____

LEAD #_____

VOLUNTARY STATEMENT

LAST NAME	FIRST NAME	MIDDLE NAME	AGE	D.O.B.
Cosby	Kristin	Marie		

NICKNAME/AKA	M ☐ F ☐	SSN	STREET ADDRESS

CITY	STATE	ZIP	MAILING ADDRESS IF DIFFERENT

HOME TELEPHONE	WORK TELEPHONE	CELL TELEPHONE	OCCUPATION

EMPLOYER	EMPLOYER ADDRESS

DRIVER'S LICENSE NUMBER/STATE	DATE AND TIME OF INTERVIEW

LOCATION OF INTERVIEW			
INTERVIEWING AGENT	DEPARTMENT	INTERVIEWING AGENT	DEPARTMENT

I, _____ understand I do not have to say anything, and I volunteer the following information of my own free will, for whatever purposes it may serve. I can cannot read and write and completed the _____ grade in school.

Regarding consenual sexual relations w/ Nicole Albany, at a barbecue at her house, there was a brief interaction with her and a male friend of hers. I was at a barbecue at her house w/ her friends and we had been drinking most of the day. Later in the night I ended up inside her house near or inside her kitchen and she came inside. She started coming onto me and trying to pull at my pants and unzip my pants. She was able to get ~~my~~ my ~~pepper~~ down and pull my pants down slightly. Next thing I know, she's either on her knees or crouched down and started performing oral sex. Soon thereafter a male friend of hers came over to where we were and told her to chill out and stop being so aggressive. Not sure what he said after, but he pulled out his penis and put it in my hand. I don't recall what else was ~~said~~ said. We heard someone walk in the sliding glass door and then another male came over to us to see what we were doing. We then went outside and I left shortly thereafter. The interaction was consenual and never happened again.

I have read each page of this statement consisting of 1 page(s), each page of which bears my signature, and corrections, if any, bears my initials, and I certify that the facts contained herein are true and correct.

Date: 12/17/2018 Time: 4:30pm

_____
Signature of person giving voluntary statement

WITNESS: _____ WITNESS: _____

I certify that I have been given a copy of this statement consisting of 1 pages.

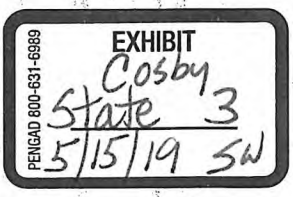
Form # CF-002 (Rev. 7-24-06)
CALEA 1.2.1/44.2.3

EXHIBIT
Cosby
State 2
5/15/19 SW
PENGAD 800-631-6989

Doc#13

South Carolina Department of Probation Parole and Pardon Services
Office of Professional Responsibility

SUMMARY OF FINDINGS



To: Jerry B. Adger, Director

From: Jeff Harmon, OPR Director

Date: 12/18/2018

Re: Internal Investigation #20181130-23

INTRODUCTION

On 11/30/2018 AIC Chad Grambrel contacted Director Jerry Adger and informed him about a misconduct in the Greenville County Office involving Team Leader Kristen Cosby. Director Adger advised OPR Director Jeff Harmon to open an investigation regarding the misconduct allegations and to begin immediately

SUMMARY

On 12/3/2018 Agent Nicole Albany was interview by OPR Director Harmon [redacted].

On 12/7/2018 OPR Director Harmon and Risk Manager Supervisor Allison Avinger interviewed Team Leader Kristen Cosby and asked if the allegation was true. Team Leader Cosby denied the allegation of any sexual activity. Team Leader Cosby was advised that a polygraph would be on 12/10/2018 and she could amend her statement prior to taking the polygraph.

On 12/10/2018 Team Leader Cosby texted OPR Director Harmon that she would submit to the polygraph and she wanted to amend her original statement.

On 12/12/2018 OPR Director Harmon and Risk Manager Supervisor Allison Avinger interviewed Team Leader Cosby who stated that Agent Nicole Albany attempted to have a sexual encounter with her, but no encounter happened because Agent Albany was interrupted in her attempt.

On 12/17/2018 a polygraph was conducted by SLED Polygraph Examiner Lieutenant (Lt.) Bryan C. Jones. Lt. Bryan C. Jones asked Team Leader Cosby several times before the polygraph if she had engaged in sexual activity with Nicole Albany. Team Leader Cosby denied the allegation each time. During the polygraph Team Leader Cosby again was asked if she had engaged in sexual activity with Nicole Albany and again she denied. At the conclusion of the polygraph, Lt. Jones advised Team Leader Cosby [redacted] Team Leader Cosby then admitted that the allegation was true. After Lt. Jones completed his interview, OPR Director Harmon received a written statement from Cosby in which she admitted to having oral sex with Agent Nicole Albany (see attached).

FINDINGS

Team Leader Kristen Cosby made false statements to OPR Director Jeff Harmon on 12/7/2018 and again on 12/12/2018 in the course of an Internal Investigation #20181130-23. Team Leader Cosby made false statements to Lt. Bryan C. Jones of the State Law Enforcement Division concerning matters related to this investigation before [redacted] the polygraph. This action is a direct violation of the recognized standards required of employees to respond to internal investigations, to promote public confidence in the Department's dependability and integrity noted in Policy and Procedure 1802 Internal Investigations. This is also a violation of Policy and Procedure 210 Professionalism "employees are expected to be honest and shall conduct themselves ethical at all times."

South Carolina Department of Probation Parole and Pardon Services
Office of Professional Responsibility

SUMMARY OF FINDINGS

ACTION

☐ No further action needed ☑ Action needed - Recommendation:

Termination from the Department

APPROVAL SIGNATURES	DATE
[signature]	12/18/18
[signature]	12/18/18

Form OPR4 (Template)

South Carolina Criminal Justice Academy



January 7, 2019

Kristin Cosby
307 Marsh Creek Drive
Mauldin, SC 29662

2019-CJA-01-01

Hand Delivery Only

RE: Allegation of certification misconduct and right to contested case hearing

Dear Ms. Cosby:

The South Carolina Department of Probation, Parole, & Pardon Services has filed an allegation of certification misconduct against you. In particular, 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. You cannot be employed as a law enforcement officer or as a telecommunications operator; have the authority of a law enforcement officer; perform any duties of a law enforcement officer, including those duties involving the control and direction of member of the public, detainees, or prisoners; or exercise the power of arrest, while this allegation of misconduct is pending.

A person against whom an allegation of misconduct has been received by the academy may request a contested case hearing. The request must be made within three years after receipt of the allegation of misconduct and the service of the allegation on the officer, whichever is later. **A person who fails to request a contested case hearing within the time allowed shall be deemed to have waived his right to a contested case hearing. The Law Enforcement Training Council shall proceed to enter a final agency decision to deny the person his law enforcement certification or telecommunications certification for a specified time period, up to a permanent denial.** Hearings must be scheduled and conducted expeditiously and efficiently, consistent with the needs and rights of the parties to obtain a fair hearing and a complete record. The academy shall schedule a contested hearing within sixty days of receiving a request for a hearing, however, a continuance may be granted for cause. S.C. Code Section 23-23-150 (D) (emphasis added).

If you wish to dispute the allegations of certification misconduct, you must file the Request for Contested Case Hearing form, which is enclosed.

Please be advised that you are entitled to have an attorney represent you at this hearing. Should you hire an attorney to represent you, please have the attorney send a notice of appearance to James M. Fennell 5400 Broad River Road, Columbia, South Carolina 29212. If you have any questions or concerns, please do not hesitate to contact Mr. Fennell at 803-896-7722.

Sincerely,

Lewis J. Swindler, Jr.

Lewis J. Swindler, Jr.
Director

I have received the allegation of certification misconduct and my right to a contested case hearing. I acknowledge that I have three (3) years to request a contested case hearing. If I do not request the contested case hearing within three (3) years, I understand that I will have waived my right to having one. Additionally, the Law Enforcement Training Council will proceed to enter a final agency decision, against me, to deny me a law enforcement certification for specified time period, up to permanent denial. Finally, I acknowledge that I cannot be employed as a law enforcement officer or telecommunications operator until this allegation of misconduct is favorably resolved.

Kristin Cosby
Print Name

Signature

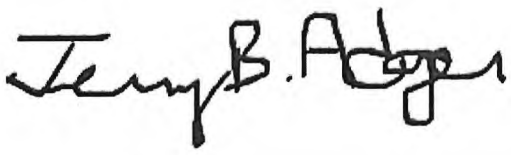
11/7/19
Date

Witness

Witness Signature

1-7-19
Date

PCS Separation Due to Misconduct

Submission Date	01-03-2019 11:38:33
Reporting Department	SC Probation, Parole & Pardon Services
Agency Email	barbara.bright@ppp.sc.gov
Agency Phone #	(803) 734-9047
Today's Date	01-03-2019
Officer's Name	Kristin Cosby
Academy ID #	0917-7486
Home Telephone #	(864) 320-2358
Officer's Current Home Address	307 Marsh Creek Drive Mauldin South Carolina 29662
Certification Type	Class 1 LE
Date of Separation	12-19-2018
Separation Action	Termination INVOLVING MISCONDUCT as defined in S.C. Code Section 23-23-150
Please indicate the nature of the misconduct by selecting the appropriate choice below:	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;
Employing Agency Head (Chief, Sheriff, Director)	
Date	01-03-2019
Name (Chief, Sheriff, Director)	Jerry B Adger
Official Title (Chief, Sheriff, Director)	Director
Officer's Name	Kristin Cosby

CJA ID	0917-7486
Employing Agency's Contact Person (for more information)	Ms. Barbara Bright
Contact Telephone Number	(803) 734-9047
Type description of the alleged misconduct	On 11/30/2018 AIC Chad Gambrell contacted Director Jerry Adger and informed him about a misconduct in the Greenville County Office involving Team Leader Kristen Cosby. Director Adger advised OPR Director Jeff Harmon to open an investigation regarding the misconduct allegations and to begin immediately. On 12/03/2018 a PPP employee, to remain anonymous, was interviewed by OPR Director Harmon and the employee admitted to having a consensual sexual relationship with Team Leader Kristen Cosby, who was the employee's supervisor at the time. On 12/07/2018 OPR Director and Risk Manager Supervisor interviewed Team Leader Kristin Cosby and asked if the allegation was true. Team Leader Cosby denied the allegation of any sexual activity. Team Leader Cosby was advised that a polygraph would be on 12/10/2018 and she could amend her statement prior to taking the polygraph. On 12/10/2018 Team Leader Cosby texted OPR Director Harmon that she would submit to the polygraph and she wanted to amend her original statement. On 12/12/2018 OPR Director and Risk Manager Supervisor interviewed Team Leader Cosby who stated that the PPP employee attempted to have a sexual encounter with her (Team Leader Cosby), but no encounter happened because the employee was interrupted in her attempt. On 12/17/2018 a polygraph was conducted by SLED Polygraph Examiner Lieutenant Bryan C. Jones. Lt. Jones asked Team Leader Cosby several times before the polygraph if she had engaged in sexual activity with PPP employee. Team Leader Cosby denied the allegation each time. During the polygraph Team Leader Cosby again was asked if she had engaged in sexual activity with PPP employee and again she denied. At the conclusion of the polygraph, Lt. Jones advised Team Leader Cosby that she was being deceptive and failed the polygraph. Team Leader Cosby then admitted that the allegation was true. After Lt. Jones completed his interview, OPR Director Harmon received a written statement from Cosby in which she admitted to having sexual relations with the PPP employee. Team Leader Kristen Cosby made false statements to OPR Director Jeff Harmon on 12/07/2018 and again on 12/12/2018 in the course of an internal investigation#20181130-23. Team Leader Cosby made false statements to Lt. Bryan C. Jones of the State Law Enforcement Division concerning matters related to this investigation before and during the polygraph.
Criminal Charges Filed	NO
Employing Agency Head (Chief, Sheriff, Director)	

Date	01-03-2019
Name (Chief, Sheriff, Director)	Jerry B Adger
Official Title (Chief, Sheriff, Director)	Director

EXHIBIT
Cosby
State 1
5/15/19 SW
PENGAD 800-631-6989

Division: Executive Division
Subject: Office of Professional Responsibility
Topic: Internal Investigations

Policy & Procedure No. 1802
Page 1 of 7

Related Forms and Templates: 1276, 1277, 1332, 1335, 1336, 1337, 1338, 1339, 1340, 1341, 1342, 1494, Miranda Warning, Investigation Status Log

NOTICE OF DISCLAIMER:
THE LANGUAGE USED IN THIS DOCUMENT DOES NOT CREATE AN EMPLOYMENT CONTRACT BETWEEN THE EMPLOYEE AND THE SOUTH CAROLINA DEPARTMENT OF PROBATION, PAROLE AND PARDON SERVICES (SCDPPPS). THIS DOCUMENT DOES NOT CREATE ANY CONTRACTUAL RIGHTS OR ENTITLEMENTS. SCDPPPS RESERVES THE RIGHT TO REVISE THE CONTENT OF THIS DOCUMENT, IN WHOLE OR IN PART. NO PROMISES OR ASSURANCES, WHETHER WRITTEN OR ORAL, WHICH ARE CONTRARY TO OR INCONSISTENT WITH THE TERMS OF THIS PARAGRAPH CREATE ANY CONTRACT OF EMPLOYMENT.

CALEA STANDARDS: 26.2.2, 26.2.3, 26.3.3, 35.1.9

POLICY:

The Director of the Office of Professional Responsibility (OPR) is designated by and will directly report to the Agency Director. The OPR Director shall conduct internal investigations of alleged misconduct by Department employees as authorized by the Director. The purpose of these investigations is to uncover, fully develop, and objectively report all facts and circumstances surrounding allegations or complaints of misconduct by Department employees involving violations of policy, codes of ethics, state or federal law, or other recognized standards of conduct. All investigations will be managed in accordance with Policy 205 (Progressive Discipline).

Investigations should not exceed 90 days from the receipt of the complaint or authorization to investigate. Extensions must be authorized by the Agency Director and will only be authorized in 30 day increments.

All records of complaints and internal investigations will be kept in a secure area in order to protect the confidentiality of those records.

PROCEDURE:

Investigative Authority

Upon request from the Department's Director, the Director of OPR has the authority to:

- Require an employee to respond orally and/or in writing to material and relevant questions related to the performance of their official duties or to any question related to the Department's recognized standards of conduct.
- Require an employee to produce and/or grant access to all official records and any other related

documents or material.

- Require an employee to produce and/or grant access to all official Department funds and transaction records.
- Require an employee to produce and/or grant access to all government property including communications and law enforcement equipment.
- Require an employee to appear at any reasonable location designated by the Director of OPR in connection with an official inquiry.
- Direct an employee to keep confidential any investigation-related conversation or information concerning an investigation learned through any contact with the OPR to the extent that such directive neither prohibits nor infringes upon the employee's right to legal counsel.
- Request an employee to submit to a polygraph test in connection with an official inquiry.

Reporting Incidents for Investigation

Internal investigations may be initiated by the following three methods:

- Supervisory staff: When a member of the supervisory chain of command recognizes that a personnel matter may result in a serious disciplinary action above a written warning, the matter must be referred to their respective Divisional Manager, Regional Director, or Supervisor. Based on the severity of the situation, the matter will be staffed with the Director and may become part of the Department's Personnel Early Warning System (See Policy 239 – Personnel Early Warning System). Activities discovered that may be violations of law must be referred to the Director through the appropriate chain of command. Based on the seriousness of the information, the Agency Director will staff the situation with the OPR Director, and upon the Agency Director's authorization, an internal investigation will be coordinated with the appropriate law enforcement agency.
- Complaint: If the complaint received is punishable by any suspension without pay up to termination (first offense), the Deputy Director/Divisional Manager will staff the situation with the Agency's Director, and upon the Director's authorization, an internal investigation will be initiated by OPR.
- Director's Request: The Director has the discretion to authorize/initiate any internal investigation.

Administrative Investigations

Investigations will be conducted as expeditiously as possible and will address all allegations against any Department employee. Each investigation has a direct bearing on any decision to impose disciplinary action or adverse action and will be carefully and completely documented. All investigations will be thoroughly planned to ensure objectivity. Planning will include exploring every reasonable facet of the allegations, all reasonable explanations, and minimization of unnecessary apprehension and injury to the employee's reputation.

The OPR's responsibility goes beyond presenting a preponderance of evidence and must establish that an allegation was found to be:

- Unfounded
- Not Sustained
- Exonerated
- Sustained - Internal Disciplinary
- Sustained - Criminal Charge

The Office of Professional Responsibility will avoid creating an inference of guilt on the part of the employee during the investigation. The OPR investigator will question witnesses and make other contacts as may be required in an objective, unbiased manner.

Where appropriate, the OPR investigator will address supervisory responsibility in relation to the lack of appropriate supervision and its impact upon the circumstances giving rise to the investigation. If deemed appropriate, the Director of OPR will staff the facts with the Director regarding the need for a separate investigation into supervisory responsibility. The original investigation which uncovers supervisory inadequacy will not be unduly delayed pending the investigation of the role of the supervisor.

Criminal Investigations

Whenever information, allegations, or complaints indicate that an employee may have committed a crime, the investigator will advise the Director as soon as possible. The Director will then instruct the Director of OPR to contact the appropriate investigating authority with jurisdiction over the violation and to provide all applicable Department information to that authority. Upon referral for criminal prosecution, the Department will suspend any further investigation and/or interviewing of the employee with respect to the area of suspected criminality or will coordinate with the prosecuting authority to ensure that the criminal investigation or prosecution is not jeopardized. To avoid prejudicing the criminal investigation or prosecution, any disciplinary or adverse action against the employee will be coordinated with the prosecuting authority.

Employee Responsibility

All employees are responsible for promoting public confidence in the Department's dependability and integrity through conduct that reflects favorably on themselves and the Department and that will not bring the employees or the Department into disrepute.

All employees must cooperate with the Office of Professional Responsibility during investigations. Failure on the part of an employee to cooperate with an OPR investigator during an official investigation or failure to keep confidential any investigative-related conversation or information concerning an investigation may subject the employee to disciplinary action up to and including termination from employment with the Department in accordance with Policy 205 (Progressive Discipline).

All employees are responsible for promptly reporting any activity or situation the employee believes to be improper, illegal, or otherwise in violation of any of the Department's rules, policies, or procedures directly to the Director of OPR.

The Director of OPR will hold in confidence all complaints or allegations reported except when essential to administrative or legal proceedings, to the extent that a substantive investigation or an integrity or security matter is not adversely affected or restricted.

However, the Director of OPR will provide the accused employee with information concerning the allegations against him unless it is determined by the Director of OPR that providing the information could compromise the investigation.

Any employee who gains knowledge of any investigation or complaint filed with the Department must hold the matter in strict confidence.

Interviews

The source of the allegation and other persons having knowledge of the alleged violation will be interviewed, and written statements will be obtained when appropriate. Such statements will be taken immediately after the interview. Audio and/or video recordings of interviews may occur.

In every investigation where it is appropriate, the employee who is the subject of the investigation will be interviewed, and a signed statement will be obtained. The purpose of the employee interview is to allow the employee the opportunity to explain or refute the allegations.

The OPR investigator will conduct employee interviews in an objective manner, allowing the employee to present any facts or other information which might have a bearing on the allegations. During the course of an employee interview, the OPR investigator will:

- State his/her identity and official position.
- Inform the employee of the purpose of the interview by setting forth the allegations against the employee and articulating the relationship between the allegations and his/her official duties.

When conducting an official inquiry, the OPR investigator must be able to establish the work-related basis for his/her questions. The general rule is that an employee's alleged misconduct must either involve his/her job performance or adversely impact the Department's operations and/or image.

Garrity Warnings

Because statements made during an interview can be admissible in criminal proceedings, the OPR investigator will give an employee warnings prior to questioning.

The OPR investigator must carefully consider the nature of the allegations, the existence of a criminal violation, and the effects of the interview on any possible subsequent criminal proceedings.

The OPR investigator will use the following procedures as a guideline when providing warnings to employees before the commencement of an interview:

- If there is no indication that the employee being interviewed is culpable in any criminal or administrative violation and is only considered a witness, it is not necessary to give any warnings to the employee. However, if the employee declines to respond, he/she must be reminded of the obligation as an employee to answer job-related questions, and it may be necessary to give the following warning:

    - The purpose of this interview is to obtain information which will assist in the determination of whether administrative action is warranted.
    - Employees will be asked a number of specific questions regarding the performance of their official duties.
    - Employees have a duty to respond to these questions truthfully and to the best of their ability.
    - Department disciplinary action, including dismissal, may be undertaken if an employee refuses to answer or fails to reply fully and truthfully.
    - The answers the employee furnishes and any resulting information or evidence may be used in the course of a Department disciplinary proceeding, which could result in a disciplinary action including dismissal.

- If sufficient facts have been developed prior to conducting the interview indicate a probable criminal violation, the matter should be presented to the appropriate prosecution authority before conducting an interview.

- A signed copy of the Garrity Warning will be placed into the investigation file after the warning is provided to the employee.

Criminal Warnings

If there is an indication that the employee being interviewed may be culpable in a criminal violation, but not enough facts are known to be certain prior to the interview, the OPR investigator should Mirandize the employee and give the following warning:

- You have the right to remain silent. If you do decide to answer questions or make a statement, you may stop answering at any time.

- Although you would normally be expected to answer questions regarding your official duties, in this instance, you are not required to do so. Your refusal to answer on the grounds that the answer may incriminate you will not subject you to disciplinary action by the Department.

- Any statement you furnish may be used as evidence against you in any future criminal proceedings or Department disciplinary proceedings or both.

If the employee refuses to make a statement on the basis of self-incrimination in a possible criminal violation, the interview must be terminated, and the advice of an appropriate prosecution authority must be sought.

If there is not an indication that an employee to be interviewed is culpable in any criminal violation, but there is an indication that he/she may be culpable in an administrative violation, the Garrity Warning should be provided to and signed by the employee.

If, at any time before or during the interview of the employee as it relates to a criminal investigation, the employee's freedom is restricted in any significant way or if the employee is taken into custody, full Miranda Warnings must be given to the employee.

An employee's right to counsel does not attach during the course of an interview, and an employee does not have a right to have counsel present during any stage of an interview. However, at their own expense, an employee may have an attorney/witness present during the interview as long as the witness does not interfere with the questioning or prolong the scheduling of the interview.

Employees accused of criminal wrongdoing are given all legal protections and are encouraged to exercise their legal rights to consult with and have counsel present during any interview or questioning regarding a violation of criminal law.

If information or circumstances not previously known or investigated are furnished during the course of an interview, the OPR investigator will continue the investigation toward the reasonable development of the new information or circumstances.

Investigative and Status Reports

Upon completion of the investigation, the investigative report will be forwarded to the Department's Director.

The investigative report will set forth in a standard format the specific allegation(s) and the results of the investigative effort in a concise, objective, and impartial manner. Statements which tend to indicate bias or prejudice will be avoided.

In addition to the completed investigative report, the Director may at any time request a status report on all active investigations. This report will convey the complaint or allegations, the name(s) of the employees involved, and the status of the investigation.

Disciplinary or Adverse Actions

Depending on the severity of a non-criminal case, the Director may elect to refer the matter back to the supervisory chain of command for their review and response prior to delivering any disciplinary or adverse action.

Continuing or Reopening an Investigation

If the Director determines that additional investigation of the original allegations is warranted, the Director shall return the report to the Office of Professional Responsibility with a memorandum ordering continued investigation. All investigations shall be officially closed by the Director, who may only delegate this authority under extreme circumstances (i.e. incapacitation). In order to properly close an investigation, the following should be completed:

- Reasonable facts and investigative leads have been thoroughly explored and reported.
- All requisite judicial, disciplinary, and adverse actions have been instituted and/or concluded.
- The employee has been officially informed of the disposition of the investigation.

If the employee voluntarily terminates his employment with the Department prior to the completion of the investigation, the Director will ensure prior to closure of the investigation that all available information has been gathered and that no further action such as criminal investigation referral is warranted.

In the event that allegations or evidence with a substantial bearing on a closed investigation surfaces, a new investigation may be conducted. Factual evidence developed during a prior investigation may be used to resolve the open inquiry. When an investigation has been officially closed, it will not be reopened without the written permission of the Director.

Investigative Report Files

After the completion of all disciplinary actions and appeals, a copy of the final investigative report shall be returned to the Director of OPR for retention. All closed files shall be maintained in a secure fashion under the control of OPR. Limited access to closed files shall be granted to those individuals who demonstrate a bona fide need-to-know as determined by the Director. All files will be maintained in accordance with State retention policies.

s/ Jerry B. Adger — October 3, 2018

Jerry B. Adger, Director — Issue Date

STATE OF SOUTH CAROLINA

Before the South Carolina Law Enforcement Training Council

In the Matter of the Law Enforcement Certification of Kristin Cosby [S.C. Department of Probation, Parole, and Pardon Services]	)	Docket Number 20019-CJA-01-01 **MOTION IN OPPOSITION TO HEARING OFFICER'S FINDINGS AND RECOMMENDATIONS**

Kristin Cosby, by and through her undersigned counsel, does hereby submit this Motion in Opposition to the Findings and Recommendations of Hearing Officer, filed in the above-referenced matter on July 29, 2019 following the May 15, 2019 contested case hearing held before the South Carolina Law Enforcement Training Council. Specifically, Cosby opposes the Hearing Officer's following recommended findings, conclusions of law and disposition:

(1) That "the allegations of misconduct against Kristin Cosby, as reported in the 'PCS Separation Due to Misconduct' (PCS) provided to the Criminal Justice Academy (Academy) by the Department of Probation, Parole, and Pardon Services (Department), are supported by the evidence presented at the contested case hearing on May 15, 2019."

(2) That "there does exist substantial evidence that Kristin Cosby provided incorrect or incomplete statements such as would constitute misconduct pursuant to S.C. Code Ann. § 23-23-150(A)(3), as reported by the Department;"

(3) That "(t)he misconduct allegations against Kristin Cosby reported by the Department of Probation, Parole, and Pardon Services should be deemed supported by substantial evidence;" and

(4) That the South Carolina Law Enforcement Training Council should "(i)ssue its final agency decision...finding that the allegations of misconduct reported against Kristin Cosby by the Department of Probation, Parole and Pardon Services have been proven by substantial evidence."

In regard to the above-referenced recommended findings, conclusions of law and disposition, and as set forth more fully below, Cosby disagrees with the Hearing Officer's findings and recommendations, and contends that the Department failed to establish through substantial evidence that (1) Cosby engaged in misconduct by providing incorrect and/or incomplete statements, or (2) that Cosby did so willfully. Accordingly, Cosby contends that the Council should enter a finding that the Department did not meet its burden of establishing that Cosby engaged in the misconduct alleged, approve Cosby for eligibility for law enforcement certification and expunge any records referencing the misconduct alleged by the Department.

APPLICABLE STANDARD

As set forth in the Hearing Officer's Findings and Recommendations, the South Carolina Department of Probation, Parole and Pardon Services (hereinafter "the Department") was required to establish by "substantial evidence" that Cosby engaged in the misconduct alleged in the Department's Notification of Separation Due to Misconduct. 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 the administrative agency reached in order to justify its action. *Frame v. Resort*

Servs., 357 S.C. 520, 528, 593 S.E.2d 491, 495 (Ct. App. 2004). Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 135, 276 S.E.2d 304, 307 (1981). In order for an administrative agency's finding to be upheld as supported by substantial evidence, the "finding may not be based upon surmise, conjecture, or speculation, but must be founded on evidence of sufficient substance to afford a reasonable basis for it." *Houston v. Deloach & Deloach*, 378 S.C. 543, 551, 663 S.E.2d 85, 89 (Ct. App. 2008) (emphasis added).

ARGUMENT

Cosby objects to the above-referenced recommended findings, conclusions and proposed disposition and contends that the Department failed to meet its burden of establishing through substantial evidence that Cosby made any incomplete or incorrect statements, and that she did so "willfully" so as to constitute misconduct as alleged by the Department and as defined under S.C. Code Ann. § 23-23-150(A)(3)(g).

1. The Department failed to meet its burden of establishing that Cosby made any incomplete or incorrect statements.

Cosby contends that the Department did not meet its burden of proving by "substantial evidence" that Cosby provided incorrect or incomplete statements as the Hearing Officer recommends in his Findings and Recommendations. As noted above, that burden requires the Department to produce and establish evidence of sufficient substance that, when viewed with the record as a whole, would allow reasonable minds to conclude that Cosby provided incorrect or incomplete statements to the Department as alleged. Cosby disagrees with the Hearing Officer that the Department met this burden at the contested hearing and, instead, contends that the substantial evidence presented at the contested hearing establishes that Cosby provided complete and accurate statements to the Department in regard to the different questions she was asked by

the Department at different times in December of 2018 regarding an alleged incident that occurred more than three and half years prior in May of 2015.

As a first matter, and as acknowledged by the Hearing Officer in his Findings and Recommendations, it is clear from the evidence presented at the contested hearing that Cosby was asked entirely different questions by different employees of the Department throughout its investigation into the incident that allegedly occurred between Cosby and her subordinate, Agent Nicole Albany, in May of 2015. When the incident was first raised to Cosby by Officer Harmon in December of 2018, Harmon specifically asked Cosby if she had ever "had a sexual relationship with a subordinate." *See* Transcript of Contested Hearing, attached hereto as **Exhibit A**, p.222, ll.6-12. She answered "no" because she had no such relationship with Albany. *Id.* at p.222, ll.6-12. Thereafter, and after Cosby had time to think about the incident in May of 2018, three and a half years prior, Cosby directly acknowledged to Officer Harm that Albany had attempted to engaged in sexual relations with her, specifically disclosing that Albany had attempted to perform oral sex on her in May of 2015. Weeks later, at the polygraph, Cosby was then asked a different question – whether "she engaged in sexual activity with a subordinate." *Id.* at p.220, ll.8-17. She answered "no" to that question due to her understanding that she was being asked whether she had engaged in any sexual activity with Albany, since she had not and because it was Albany who had attempted to perform oral sex on her. *Id.* at p.220, ll.8-17. She was then encouraged by Lieutenant Jones to provide a statement of what occurred in May of 2015, at which time she provided a written statement that again disclosed that Albany had pulled down her pants and attempted to perform oral sex on her at a party in May of 2015, a statement she believed was consistent with her previous disclosure to Harmon. *Id.* at p.205, ll.23-25 and p.206, ll.1-23 p.207, ll.11-14. The mere use of different wording about Albany "attempting" to

perform oral sex on Cosby, as previously reported to Harmon, and Albany "starting to perform oral sex" on Cosby before being stopped, as noted in the written statement, is not sufficient to establish and does not reasonably lead to a conclusion that Cosby made incorrect or incomplete statements.

Second, the Hearing Officer's Findings and Recommendations fail entirely to take into account the fact that all of the substantial evidence presented at the hearing established the exact opposite of the Department's claim that Cosby provided false information and withheld information from the Department about the May 2015 incident. In fact, the transcript from the contested hearing demonstrates that Cosby made an affirmative initial report of the May 2015 incident to her agent in charge around the time that it occurred in 2015. *Id.* at p.199, ll.9-19. Cosby also testified that, after being asked Officer Harmon in December of 2018 if she "had a sexual relationship with a subordinate," which she denied, she later advised Officer Harmon that Albany had attempted to perform oral sex on her in May of 2015. *Id.* at p.198, ll.6-25. While Harmon denied that Cosby made that disclosure, the recorded portion of said communication between Harmon and Cosby (between time stamp indicator 1:45 and 3:00), which was admitted by stipulation of the parties, clearly reflects that Harmon's testimony was not truthful and that Cosby had, in fact, told Harmon that "oral sex didn't happen but she tried." *Id.* at p.97, ll.19-25, p.86, ll.15-24. In fact, Cosby told the Department about Albany's attempt at performing oral sex on her in May of 2015 on three separate occasions prior to the December 2018 polygraph. *Id.* at p.200, ll.2-13. Accordingly, and given that all such statements are consistent with the statement she provided after the polygraph, Cosby contends there is no substantial evidence from which it can be reasonably concluded that she provided incorrect or incomplete information to the Department.

2. The Department also failed to meet its burden of establishing that Cosby acted willfully in making any incomplete or incorrect statements.

Even to the extent it is determined that the Department met its burden of establishing by substantial evidence that Cosby provided incorrect or incomplete statements to the Department, the Department still did not meet its burden of establishing that Cosby did so willfully as required for a finding of misconduct as alleged by the Department. As discussed in the Findings and Recommendations, the Department alleged that Cosby "had committed misconduct, as defined in S.C. Code Ann. § 23-23-150(A)(3)(g), by 'willfully making false, misleading, incomplete, deceitful, or incorrect statements to a law enforcement officer, a law enforcement agency, or a representative of the agency'." In fact, S.C. Code Ann. § 23-23-150(A)(3)(g) specifically provides that such conduct is deemed misconduct only when done so "willfully." Regardless, the Department failed to establish any willful conduct by Cosby through testimony or other evidence that Cosby acted intentionally or with any consciousness of wrongdoing.

In his Findings and Recommendations, the Hearing Officer defines "willful" conduct as conduct that "involves conscious wrong or evil purpose on the part of the wrongdoer…or at least inexcusable carelessness." Regardless, the Hearing Officer's Findings and Recommendations fails to acknowledge that South Carolina law generally requires "a showing of a consciousness of wrongdoing in order to prove willfulness." *State v. Garrard*, 390 S.C. 146, 149, 700 S.E.2d 269, 271 (Ct. App. 2010). In regard thereto, the South Carolina Court of Appeals has defined the term "willful" as follows:

> "proceeding from a **conscious motion** of the will; **voluntary**. **Intending the result** which actually comes to pass; **designed**; **intentional**; **not accidental or involuntary**."

Id. at 149-150 (emphasis added), *quoting Black's Law Dictionary* 1434 (5th edition 1979). More specifically, South Carolina law provides that a finding of willfulness requires evidence that the

individual whose conduct is at issue must be proven to have acted "voluntarily and intentionally." *Id.* at 151. In the instant action, there was no evidence presented at the contested hearing, let alone substantial evidence, from which it can be found that Cosby acted voluntarily and intentionally in making any allegedly incomplete or incorrect statements as required for finding that she acted willfully. Rather, the testimony established only that Cosby had no reason to not be truthful or hide anything, and that she believed she was testifying truthfully based on what she recalled about an incident that occurred more than three and a half year prior and based on her understanding of the questions she was being asked at different times in different ways.

In specific regard to her memory of that incident and her state of mind at the time of the polygraph, when she allegedly made the incomplete and/or incorrect statements noted in the Hearing Officer's Findings and Recommendations, Cosby testified that her memory of the incident was not good because she does not "have a very good memory." *See* Exhibit A, p.198, ll.2-5 and p.215, ll.9-22. She also testified that, at that time of the polygraph, she was suffering symptoms from PTSD for which she was taking medication. *Id.* at p.202, ll.18-24 and p.203, ll.1-24. She further testified that she was also very upset as she had been driven to the polygraph by two agents against who she had made a formal complaint just weeks prior and of whom she had reported being afraid. *Id.* at p.202, ll.4-17. Finally, she testified that the incident she was questioned about had taken place more than three and a half years prior and that she did not initially remember all details thereabout. *Id.* at p.215, ll.9-22.

In specific regard to what actually occurred in May of 2015 and the information she provided the Department thereabout, Cosby testified that she had provided her supervisor with basic information about the incident shortly after it happened in 2015, at which time she advised him about Albany making a sexual advance towards her and needing to move Albany to another

team. *Id.* at p. 199, ll.9-19. She also testified that, when asked by Officer Harmon in December of 2018 if she "had a sexual relationship with a subordinate," she answered "no" because she never had any such relationship with Albany. *Id.* at p.222, ll.6-12. Regardless, she later told him that Albany had attempted to perform oral sex on her on the one occasion in May of 2015 that she had previously reported to her supervisor. *Id.* at p.198, ll.6-25. In fact, Cosby testified that she told the Department about Albany's sexual advances in May of 2015 on three separate occasions prior to the polygraph performed in December of 2018. *Id.* at p.200, ll.2-13.

When asked by Lieutenant Jones, prior to the polygraph, if "she engaged in sexual activity with a subordinate," she stated "no" due to her understanding of the question, the fact that she had never engaged in any sexual activity with Albany and the fact that it was Albany who had attempted to perform oral sex on her. *Id.* at p.220, ll.8-17. The Department's counsel tried to argue with Ms. Cosby about her interpretation of Lieutenant Jones' question, but presented no evidence whatsoever that Ms. Cosby's interpretation was incorrect or unfounded. *Id.* p.220, ll.18-25 and p.221, ll.1-6. In fact, and of direct relevance on that issue, Lieutenant Jones acknowledged that he never asked Cosby whether Albany attempted to engage in sexual activity with her, which Cosby has always acknowledged to the Department that Albany did. *Id.* at p.130, ll.7-22. As to the statement Cosby provided after the polygraph, Lieutenant Jones testified that Cosby made the statement after he encouraged her to write it and provide more information about what had occurred in May of 2015. *Id.* at p.134, ll.4-18, p.204, ll.19-25 and p.205, ll.1-22. Lieutenant Jones also acknowledged Cosby's emotional state at the time, testifying that she was very emotional and crying. *Id.* at p.134, ll.21-25 and p.135, ll.1-4.

Regardless, Cosby testified to her belief that the information she provided in the written statement following the polygraph was substantially similar to the information she had

previously provided to the Department about Albany pulling down Cosby's pants and attempting to perform oral sex on her. *Id.* at p.205, ll.23-25, p.206, ll.1-23 and p.207, ll.11-14. She specifically testified that she was not intentionally trying to mislead the Department, to hide anything from the Department or to provide any incorrect information. *Id.* at p.206, ll.24-25, p.207, ll.1-4 and p.210, ll.12-18. Regarding same, the Department presented absolutely no evidence whatsoever to refute that testimony about her intentions or to show that she, in fact, had intentionally withheld or provided incorrect information to the Department as required to demonstrate that she acted willfully.

The actual testimony and evidence presented at the contested hearing establishes nothing more than the following: (1) Cosby's memory of an incident more than three and a half years prior was not good, (2) Cosby was highly emotional and laboring under the effects of PTSD, for which she was medicated, at the time of the polygraph and after having been driven there by two individuals of whom she was afraid, and (3) Cosby answered different questions based upon her understanding of what was being asked of her at different times, by different individuals, using different language. Regardless, absolutely nothing in her testimony or otherwise establishes that she acted intentionally in not answering completely or correctly in regard to the different questions she was asked by the Department. In fact, the evidence clearly establishes that there was no reason for Cosby not to testify truthfully and/or to not provide complete information given the acknowledged fact that the 2015 incident about which she was repeatedly questioned about more than three and half years later in 2018 was not even a violation of any policy, was not considered misconduct at that time, and did not even warrant disciplinary action. *Id.* at p.80, ll.16-25 and p.210, ll.19-25 and p.211, ll.1-5. Officer Harmon admitted as such in his testimony at the contested hearing and the Hearing Officer, seeming to find those facts troubling – so much

so that he discusses them multiple times his Findings & Recommendations, notes "concern with respect to the characterization of the underlying behavior...as misconduct," and also recommends that those facts be viewed as mitigating factors[1].

Notably, and in specific regard to the allegations of willfulness on the part of Cosby, the Hearing Officer expressly acknowledges in his Findings and Recommendations that "(n)o evidence adduced at the hearing...appears to support that Cosby entertained any 'conscious wrong or evil purpose.'" Regardless, the Hearing Officer goes on to state that, while Ms. Cosby's allegedly "incomplete or incorrect statements could have come about as a result of Cosby's 'inexcusable carelessness,'" any such statements were "more likely, due to her medical afflictions and medication usage during the course of he investigation." Regardless, neither "carelessness" nor involuntary action occasioned by "medical afflictions and medication usage" meets the requirement of showing actual conscious or intentional action on the part of Cosby in making the allegedly incorrect or incomplete statements as required for the Department to meet its burden of establishing that Cosby acted willfully, as that term is defined under South Carolina law, so as to establish misconduct. This is especially true in light of the fact that no actual evidence was presented to demonstrate that she had acted consciously and/or intentionally. *See Houston v. Deloach & Deloach*, 378 S.C. at 551, 663 S.E.2d at 89 (Ct. App. 2008) (noting that in order for agency's finding to be upheld as supported by substantial evidence, it "may not be based upon surmise, conjecture, or speculation, but must be founded on evidence of sufficient substance.") Accordingly, since willfulness is a required element of the misconduct alleged and

[1] The Hearing Officer did not, however, note as important the related fact that Harmon expressly admitted that the December 2018 investigation into the May 2015 incident, which was not a violation of any policy, was opened at the request of Cosby's agent in charge just days after he had been notified that Cosby had filed a complaint about him with the Department. *Id.* at p.74, ll.22-25, p.75, ll.1-18, p.76, ll.23-25, p.77, ll.1-25 and p. 78, l.1.

no "evidence of sufficient substance" was presented to establish same, any finding or recommendation of misconduct should be rejected as not proven by substantial evidence.

CONCLUSION

For all those reasons set forth above, Cosby respectfully requests that the Council find that the Department did not meet its burden of establishing through substantial evidence that Cosby engaged in the misconduct as alleged by the Department, approve Cosby for eligibility for law enforcement certification and expunge any records referencing the misconduct alleged by the Department.

METCALFE & ATKINSON, LLC

Courtney C. Atkinson

Courtney C. Atkinson, SC Bar No. 71992
1395 South Church Street
Greenville, South Carolina 29605
864-214-2319
catkinson@malawfirmsc.com
Attorneys for Kristin Cosby

August 8, 2019
Greenville, South Carolina

EXHIBIT A

HEARING OFFICER SMITH: All right. Any redirect?

MS. ATKINSON: Just one or two.

HEARING OFFICER SMITH: Okay.

REDIRECT EXAMINATION OF MS. COSBY

BY MS. ATKINSON:

Q You were previously asked by the agents whether you engaged in a sexual relationship with Nicole Albany; is that correct?

A Yes.

Q Did you and Nicole Albany ever have a sexual relationship?

A No.

Q Okay. And what you related in this voluntary statement, do you term that a "brief incident" in that document?

A Yes.

Q Okay. Other than that brief incident, was there ever any other sexual contact from Nicole Albany towards you?

A No.

Q Okay. And did you previously report the sexual advance from Nicole Albany to you to the Agency?

A Yes.

Q All right. No further questions.

HEARING OFFICER SMITH: Okay. Do we have re-cross? No?

Q And you'll note this is in your handwriting, isn't it?
A Yes.
Q Okay. So again, this was a statement that you -- that you filled out at -- at the conclusion of the exam, correct?
A Yes.
Q Okay. So wouldn't you agree that what you wrote here was markedly different than what you told Lieutenant Jones, as well as Jeff Harmon, prior to the exam?
A No.
Q Okay. In what way is it the same?
A Because it was asked if I engaged in any sexual relationships with her, and I wrote in my statement that she is the one that engaged me in any sexual conduct.
Q Okay. But beyond that, the -- the -- the -- the clear question that -- that Lieutenant Jones asked you prior to the -- as -- as stated in the prior consent to interview, you know, again it says, as you read into the record earlier, whether or not you engaged in any sexual activity with Nicole Albany.
A Right.

and that he was, you know, looking out for my best interests and trying to help me and provided scenarios as to what could've taken place at Nicole Albany's house. And that, you know, he's just trying to make sure that he's looking out for my best interest by telling me what could've happened so that way, you know, the information to Jeff Harmon is accurate.

Q Okay. So your testimony is that Lieutenant Jones was -- or was he encouraging you to provide a further statement, or what was --

A Yes.

Q -- what was going --

A He --

Q -- on?

A He was encouraging me to provide a statement saying that, you know, the sexual activity took place at her house because I was interested in trying something new or because I wanted to feel young again or because I liked the attention. So he was giving me examples of -- to use why I would have done the act.

Q Okay. Did you specifically provide a statement?

A Yes.

Q Okay. And is that the same statement, I believe,

that the State presented earlier?
A Yes.
Q Okay. In regard to the contents of that statement, I believe you indicated, again, that a brief encounter occurred with Nicole Albany; is that right?
A Yes.
Q Okay. And what happened on that occasion with Nicole Albany?
A That she attempted to pull my pants down and conduct oral sex.
Q Okay. And is that the same issue that you were trying to relate to Agent Harmon previously?
A Yes.
Q Okay. And is that the same sexual advance you had related to Agent Stewart --
A Yes.
Q -- years prior?
A Yes.
Q Okay. Okay. In providing that statement and in providing any statements to the Agency, did you ever knowingly provide any false information?
A No.
Q Okay. Did you ever intentionally try to mislead the Agency?

A No.
Q Okay. Were you attempting to hide anything from the Agency?
A No.
Q All right. Ms. Cosby, in that statement you indicate that she was either on her knees or crouched down and started performing oral sex. Was that statement true, that Nicole Albany had starting performing oral sex on you on that date?
A She attempted to.
Q Okay. And, again, is that consistent with the same statement you were making with Agent Harmon previously?
A Yes.
Q Okay. And I believe you were present when we questioned Agent Harmon about the second statement you gave him about that, and did you hear him deny that you told him on that date Nicole Albany had attempted oral sex?
A Yes.
Q Okay. Did you, in fact, tell him on December 12th, 2018, that Nicole Albany had attempted oral sex on you?
A Yes.
Q All right. Again, so I believe you testified that

questions.
Q Okay. So did Agent Harmon asking -- ask you any specific questions about what you did or what happened next or details of what had happened --
A No.
Q -- on that date?
Okay. Was that statement true?
A Yes.
Q Okay. Was this the first time you had disclosed to the Agency that Nicole Albany had made sexual advances to you?
A I discussed it with my agent in charge at the time, Greg Stewart, and I told him, you know, that she was making advances towards me, and that, you know, we needed to move her to another team because she was becoming angry and a little bit hostile because I was not accepting her advances. And so I told him that it would be in our best interest to have her moved to another team.
Q Okay. Was she upset about that -- or do you have any knowledge as to whether or not she was upset about that?
A I -- I don't.
Q Okay. And Mr. Stewart, was he your agent in charge at the time?

A I believe mostly everybody.
Q Okay. Were you having any -- was there any concern that you may not have remembered every single detail from 3 1/2 years prior?
A Yes. I don't have a very good memory.
Q Okay. But subsequent to the first meeting, I believe, were you here when Agent Harmon testified that he gave you the option to come back and provide him with more information following your first meeting?
A Yes.
Q And did you, in fact, come back and give him with -- further information?
A Yes.
Q Okay. And what, specifically, did you advise him during that meeting?
A That Nicole Albany attempted to provide oral sex to me, but that it did not happen.
Q Okay. Did you get into the specifics of what happened during that second meeting with Agent Harmon?
A No. I just told him that I was at her house, that she -- we'd been drinking, that she was intoxicated, that she tried to pull my pants to conduct oral sex. But there was no follow-up

introduce that as five, or is that going to be Respondent's Exhibit, or how are you going to do it, since obviously you want me to review it?

MS. ATKINSON: If you'd like to put it in, I know I asked about it first, so it could be Respondent's Exhibit Number 1.

HEARING OFFICER SMITH: Either -- either way. However y'all want to do it.

MS. WRIGHT: That's fine.

HEARING OFFICER SMITH: -- I just need to make sure that it's -- that it's in the record.

MS. ATKINSON: And for the sake of clarification, there are two separate recordings, so perhaps the -- the December 12th, 2018 --

HEARING OFFICER SMITH: Are they all on one disk?

MS. ATKINSON: They are.

HEARING OFFICER SMITH: Okay. So there are two dates. What are the dates again?

MS. ATKINSON: That's right. The first -- the one that I introduced is from December the 12th, 2018.

HEARING OFFICER SMITH: And that's -- what's the time bracket on that?

MS. ATKINSON: The time bracket on that one I want --

HEARING OFFICER SMITH: One forty-five to three minutes?

MS. ATKINSON: That's right.

I do have it --

HEARING OFFICER SMITH: You can play it right here.

MS. ATKINSON: Great.

HEARING OFFICER SMITH: Yeah. I'll step out and I'll just ask Chris or Ethan to come get me when y'all have had a chance to look at it. You know, if you can stipulate to it, that's fine. If not, then we will do what we need to do when we get back.

(Off the record from 11:44 a.m. until 12:07 p.m.)

HEARING OFFICER SMITH: All right. Let's go -- let's get back in the flow then. Go ahead.

MS. ATKINSON: Okay. To get back in and, just for the record, I believe we have stipulated to the admissibility of the recorded -- or the recording of the questioning of Kristin Cosby by Jeff Harmon on December 12th, 2018, and specifically in regard to that segment, appearing at one minute and forty-five seconds until shortly after three minutes. And again, I believe the State has stipulated to that being on that date.

THE EXAMINATION BY MS. ATKINSON CONTINUES.

A Yes.
Q Okay. All right. So, Ms. Cosby, were -- how many times do you think you represented to the Agency or told the Agency that Nicole Albany had made sexual advances towards you prior to your giving a polygraph?
A As far as during this investigation?
Q Or at any time.
A Well, the one conversation with Jeff on the 12th, and then I probably had two conversations with my agent in charge at the time.
Q Okay. And that was Agent Stewart, again?
A Yes.
Q All right. All right. So following the question with Agent Harmon, after your first, meeting did he ask you to take a polygraph?
A Yes.
Q All right. And did you agree to submit to the polygraph?
A Yes.
Q Where was that held?
A At the SLED building in Columbia on Broad River.
Q Okay. And how did you get to the polygraph exam?
A I was driven by the agent in charge and assistant agent in charge.

HEARING OFFICER SMITH: That's fine. Go ahead and ask the question.

THE EXAMINATION BY MS. ATKINSON CONTINUES.

Q All right. So how did you get to the polygraph in Columbia?

A I was driven by AIC Gambrell and Assistant AIC Honeycutt.

Q Okay. And were those the two agents you had previously filed a complaint about to the Agency?

A Yes.

Q Okay. And, in that complaint, had you identified that you felt afraid going into the office because of those two agents?

A Yes.

Q Okay. Were you upset on the day that you were going to take the polygraph?

A Very.

Q Okay. And what -- in what way were you upset? How were you feeling that day?

A I was crying the entire ride down to the SLED building. I was crying during the entire time in the SLED office, a little bit more hysterical once I actually got into the office because it's a trigger for me --

Q Okay.

A -- with my PTSD.
Q Okay. So when you say you were "upset," were you upset because of the trigger of PTSD, or were you upset because you were worried that you'd done something wrong?
A The -- the trigger of my PTSD.
Q Okay. And can you explain just a little bit about that for us? I know that's hard to talk about, too.
A I witnessed my husband shoot himself while we were in the military, and after the police agency completed their investigation and cleared me, the Air Force conducted their own separate investigation and had one of my supervisors drive me to a building where I was given a polygraph.
Q Okay. So, on the date -- in December of 2018, being driven to that polygraph, did that bring up those memories?
A Yes.
Q Okay. Were you taking additional medication on that date as a result of this trigger of PTSD?
A Yes. For my --
Q Okay.
A -- PTSD and anxiety.
Q Okay. Prior to the polygraph being conducted --

A That she attempted oral sex.
Q Okay. But that you had stopped it, right?
A Yes.
Q Okay. So -- okay. So you do admit that there was a change in the -- the content of your denials between the 7th and the 12th?
A Yes.
Q Okay.
A Because when he spoke to me the first time, this came completely out of the blue and, again, it was 3 1/2, and I have no recollection of what he was talking about. And he told me to take his -- take my time because, like critical incidents, the memories are not going to come back and that you would need to be questioned at a later time. And when I thought about that night and what was going on is when I said, "Okay. I think I remember some things from that day, and I'd be willing to talk to you again," because, again, my memory is not very good --
Q Okay.
A -- and it was 3 1/2 years ago.
Q Okay. But -- but still, ultimately in that second conversation when you changed your statement, you still denied having the relationship; is that

Q That's -- that's the key of the question, isn't it?
A Yes.
Q Okay. So it doesn't ask whether or not -- who -- who started what. It just says whether there was sexual activity; isn't that correct?
A No.
HEARING OFFICER SMITH: Counsel, I -- I'm going to object. I think it's a matter of interpretation. We're getting to the point of splitting hairs here on what a word means --
MS. WRIGHT: Okay.
HEARING OFFICER SMITH: -- and I don't want to sound like Bill Clinton "what do you mean by 'is,'" so let's --
MS. WRIGHT: Okay.
HEARING OFFICER SMITH: -- wrap it up.
MS. WRIGHT: All right.
Q Well, so wouldn't you agree, in general, in summation, that the -- the statement that you provided does state that you did, in fact, have sexual relations with Nicole Albany?
A Would you -- would you like me to read it? I -- I stated that she engaged in a sexual encounter.
Q Okay. All right.
MS. WRIGHT: I have no further questions.

that you testified.

MS. ATKINSON: (To Ms. Wright) Did you enter that as Exhibit Number 6?

MS. WRIGHT: It wasn't --

HEARING OFFICER SMITH: The --

MS. WRIGHT: -- Exhibit --

HEARING OFFICER SMITH: -- Exhibit Number 6 is "Consent to Interview."

MS. ATKINSON: Okay.

MS. WRIGHT: Is that -- that's what you're talking about?

MS. ATKINSON: Would it be No. 7?

HEARING OFFICER SMITH: We don't have a State's 7.

MS. ATKINSON: Okay. I -- I believe previously did you ask him some questions about a written --

MS. WRIGHT: Yes.

MS. ATKINSON: -- statement?

MS. WRIGHT: That -- that was -- I think that's State Exhibit 2.

MS. ATKINSON: Okay.

MS. WRIGHT: The voluntary statement.

MS. ATKINSON: I'm sorry.

HEARING OFFICER SMITH: Okay.

A Right. And the statements --
Q And --
A -- and documents.
Q Okay. Following the polygraph that was conducted on Kristin Cosby, did you have further discussion with her -- and, again, I'm not going to ask you about what the results of that were --
A Sure.
Q -- or what you said to her about the results, but did you have any conversation with her about creating a statement or providing further information?
A Yes. We did have a conversation.
Q Okay. And did you encourage her to provide additional information to help?
A I encouraged her to tell what she was leaving out, and I -- I don't know what my -- my exact wording was but did not make any promises or coerce her --
Q Okay.
A -- in any way.
Q Do you recall her demeanor at that time, follow -- when you had that conversation after the polygraph?
A I believe she -- I -- I can't say for sure. Sorry. Okay?
Q Okay. So you wouldn't recall if she was crying or

and we're not going to get into the substance of what happened during the polygraph, but I believe you heard Lieutenant Jones was here earlier and testified about the pre-polygraph meeting. At that time, do you recall whether or not he noticed your state of mind or what your appearance was?

A Yes.

Q Okay. And what -- what can you tell us about that?

A He just asked me why I was upset, and I told him that it -- the -- driving to the polygraph was a trigger for my post-traumatic stress disorder because of what had happened in the military.

Q Okay. And, again, we're not going to talk about the questions that were asked or what happened, but, following the conclusion of the polygraph, did you have further conversation with Lieutenant Jones?

A Yes.

Q Okay. And what further conversation did you have with Lieutenant Jones -- excluding any specifics about the polygraph and whether you failed or passed -- but what -- what, if any, further conversation, outside of that, did you have with Lieutenant Jones?

A He just said that Jeff Harmon was going to walk in,

appeared to be --

A She -- she may --

Q -- overly upset?

A She may have been crying.

Q Okay.

A But I can't remember for certain.

Q Okay. All right.

MS. ATKINSON: No further questions at this time, Lieutenant Jones.

WITNESS JONES: Okay.

HEARING OFFICER SMITH: All right. (To Ms. Wright) Any redirect?

MS. WRIGHT: Just -- just a few questions --

HEARING OFFICER SMITH: Sure.

MS. WRIGHT: -- on redirect.

HEARING OFFICER SMITH: Okay.

REDIRECT EXAMINATION OF BRYAN JONES

BY MS. WRIGHT:

Q In regards to, I believe what the Respondent had admitted as the Respondent's Exhibit Number 2, this is the polygraph exam pre-test where --

HEARING OFFICER SMITH: Does he need to look at that again?

MS. WRIGHT: He -- he can. Yes, sir.

HEARING OFFICER SMITH: All right. Do you

MS. ATKINSON: It's fine. And I'll be happy to withdraw that question.

HEARING OFFICER SMITH: It's up to you.

MS. ATKINSON: I'm happy to withdraw that question. But I -- I don't think --

HEARING OFFICER SMITH: Okay.

MS. ATKINSON: -- there's any argument that the complaint made by this individual occurred 3 1/2 years after the time that she was concerned about it; is that correct?

HEARING OFFICER SMITH: And I think he -- he has acknowledged that.

WITNESS HARMON: That's correct.

HEARING OFFICER SMITH: Okay. Go ahead.

THE EXAMINATION BY MS. ATKINSON CONTINUES.

Q All right. At that time -- and I believe as you -- you advised Kristin Cosby an allegation of an -- or an agent having a sexual relationship with a subordinate was not a terminable offense; is that correct?

A Yes, ma'am.

Q Okay. In fact, having such a relationship at that time was not a violation of any Agency policy; is that correct?

A Yes, ma'am.

misconduct?
A Yes.
Q Okay. Were you, in fact, terminated from the Agency?
A No.
Q Okay. So do you believe the statement that the Agency provided was true or false?
A False.
Q Okay. Sitting here today, do you believe you committed misconduct?
A No.
Q Okay. Did you ever provide willful -- or willfully provide false information to the Agency?
A No.
Q Okay. Did you ever attempt to conceal anything from the Agency or provide information that wasn't correct?
A No.
Q Okay. I believe Agent Harmon testified earlier that he told you that having a relationship with a subordinate wasn't a violation of any policy, correct?
A Correct.
Q Okay. So did you have any reason to believe that, even if you'd had a relationship with Nicole

Albany, that you would've been terminated for that?
A No.
Q Okay. Did you have any reason to lie to the Agency?
A No.
Q All right. Ms. Cosby, as a result of the Agency's actions in reporting that -- reporting to the Academy that you had been terminated for willful misconduct, what's been the result to you?
A I was terminated from my job at the solicitor's office, my part-time job for drug court. And I've not been able to apply at any agent -- law enforcement agencies, whether it's in a law enforcement position or not. Couldn't even get a job as a loss-prevention officer at Walmart because of the fact that I would have to testify, and showing willful misconduct in my record would keep me from testifying. So I cannot get a job in any capacity of law enforcement.
Q Okay. Are you concerned about your ability to find future work?
A Yes.
Q Okay. How long have you worked in law enforcement, Ms. Cosby?
A Roughly, 16 years.

HEARING OFFICER SMITH: -- and stick with what's misconduct.

MS. WRIGHT: Okay.

HEARING OFFICER SMITH: Okay?

MS. WRIGHT: All right. So I'll withdraw --

HEARING OFFICER SMITH: All right.

MS. WRIGHT: -- having that moved into evidence.

MS. WRIGHT: So at that -- at this point, the -- the Department rests its case or rests its case with Mr. --

HEARING OFFICER SMITH: This witness? Okay.

MS. WRIGHT: -- with this particular witness.

HEARING OFFICER SMITH: All right. (To Ms. Atkinson) Would you like to cross-examine?

MS. ATKINSON: I would. Thank you, sir.

HEARING OFFICER SMITH: All right. Thank you.

CROSS-EXAMINATION OF JEFFREY HARMON

BY MS. ATKINSON:

Q All right. Is it Officer Harmon?

A Yes, ma'am.

Q All right. Officer Harmon, I believe you testified earlier that your involvement in this matter began by way of a call from the director who indicated that he had received a call from the agent in

charge of Kristin Cosby's office; is that correct?
A In regards to the matter of a sexual relationship with a subordinate, yes. But not in matters of how I became directly related into this issue with Cosby; that is a no. Because I originally had received her complaint form, and I can speak into that if you'd like for me to.
Q We can go back to that later.
A Okay.
Q Right now I'm just talking about the investigation that leads us here today and that was the investigation into the allegations about a sexual relationship with a subordinate.

So in regard to my questions about that, I believe my question was: Did you involvement begin when the director called you and said he had received a call from the agent in charge reporting allegations against Kristin Cosby?
A I may have to say no because the allegation of sexual conduct with a subordinate was actually brought up prior to that conversation when I spoke to -- with -- to Kristin about her complaint. When I was triaging her complaint about sexual harassment in the workplace, I met with her and said, "Tell me about the sexual harassment that's

going on because, you know, I want to investigate this if this is happening." And she began to -- to tell me that it was more of a -- a communication issue and she didn't like the -- the idea that her supervisors had confronted her about sexual conduct with a subordinate.

Q All right. And I believe that answer is in regard to the complaint Kristin Cosby made in October, but I'm asking you about the investigation that was opened into allegations against Kristin Cosby engaging in a sexual relationship with a subordinate.

So in regard to those specific allegations, did you become involved with that investigation, as you testified earlier, because the director indicated to you that the agent in charge had called him --

A Yes, ma'am.

Q -- to open --

A Yes, ma'am.

Q -- an investigation?

A Yes, ma'am.

Q Okay. And is that the same agent in charge whom Kristin Cosby had previously filed a complaint against?

A Yes, ma'am.
Q Okay. And did, in fact -- when specifically did -- when did you get the call from the director that he had heard from the agent in charge?
A That was November 30th.
Q Okay. And that was after Kristin Cosby had filed her complaint?
A Yes. Her complaint was triaged based on the Department policy about complaints and internal investigations. That complaint was triaged, staffed with the director, and the director decided that compliant would be remanded down to the divisional manager -- that's Deputy Director Mike Nichols -- and the regional director, Gerald Black, to handle that -- handle that complaint because the nature of the complaint went from sexual harassment to a communication issue. So, since it was not a sexual harassment issue, it was a communication issue with the supervisors, it was remanded down to the deputy director.
Q Okay. But, again, that's all related to the separate complaint that Kristin Cosby had previously filed against the agent in charge prior to the investigation that brings us here today; is that correct?

A Yes.
Q All right. And I believe you testified earlier that the agent-in-charge had called the director and indicated that Nicole Albany had reported having a consensual sexual relationship with Kristin Cosby; is that correct?
A Yes, ma'am.
Q Okay. Is it your understanding, per what was reported, that that relationship reported had actually or allegedly occurred 3 1/2 years prior?
A Yes, ma'am.
Q All right. I believe you also testified earlier -- you made some statement that perhaps Nicole Albany had reported sexual harassment or you referred to her report about Kristin Cosby as "sexual harassment."
A Yes, ma'am.
Q Is that correct?
Given that the incident that led to her complaint happened 3 1/2 years prior to this investigation being opened, would it not be -- be your understanding that the statute of limitations for a sexual harassment complaint had --
MS. WRIGHT: I'm -- I'm going to object --
Q -- long since passed?

STATE OF SOUTH CAROLINA

Before the South Carolina Law Enforcement Training Council

In the Matter of the Law Enforcement Certification of Kristin Cosby	)	Docket Number 20019-CJA-01-01
[S.C. Department of Probation, Parole, and Pardon Services]	)	**CERTIFICATE OF SERVICE**

This is to certify that I have served the applicable parties with a copy of the foregoing ***Motion in Opposition*** this 9th day of August, 2019 by electronic message as follows:

Octavia Wright, Esq.
Octavia.wright@ppp.sc.gov

Amy Ruttgers

Greenville, South Carolina

STATE OF SOUTH CAROLINA

Before the South Carolina Law Enforcement Training Council

In the Matter of the Law Enforcement Certification of Kristin Cosby [S.C. Department of Probation, Parole, and Pardon Services]	)	Docket Number 2019-CJA-01-01 **FINDINGS AND RECOMMENDATIONS OF HEARING OFFICER (Contested Case)**

Hearing Officer: William C. Smith
Hearing Date: May 15, 2019
Hearing Reporter: Susan A. Wyant, Southern Reporting, Inc.

Appearances
For Officer: Courtney Atkinson, Esquire
For Department: Octavia Y. Wright, Esquire

I. JURISDICTION AND AUTHORITY FOR HEARING

The undersigned, a member in good standing of the South Carolina Bar employed as an attorney by the South Carolina Criminal Justice Academy, was duly appointed by the South Carolina Law Enforcement Training Council ("Council"), pursuant to S.C. Code Ann. § 23-23-80 (10), to sit as hearing officer for the contested case hearing in this matter, pursuant to S.C. Code Ann. § 23-23-150 (D).

Kristin Cosby ("Officer"), in response to allegations of certification misconduct reported by the South Carolina Department of Probation, Parole, and Pardon Services ("Department") to the South Carolina Criminal Justice Academy ("Academy"), pursuant to the requirements of S.C. Code Ann. § 23-23-150 (B) and S.C. Code Ann. Regs. 37-023, timely requested a contested case hearing to address the allegations of misconduct filed against her. Notice of the contested case hearing was communicated to the Officer and the Department, in accordance with the requirements of S.C. Code Ann. § 23-23-150 (D), and the matter was properly set for hearing on May 15, 2019.

II. ALLEGATIONS OF MISCONDUCT

The Department's Personnel Change in Status Report (Notification of Separation Due to Misconduct) dated January 3, 2019, hereinafter "PCS," alleged that Kristin Cosby had committed misconduct, as defined in S.C. Code Ann. § 23-23-150 (A) (3) (g), by "[w]illfully 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" and that she had been terminated from her employment with the Department. (*Id.* at p. 1)

Factually, the Department's allegations referenced an internal investigation conducted by its Office of Professional Responsibility (OPR) into allegations that Cosby had been involved in a consensual sexual encounter with a subordinate Department employee that occurred in May 2015 and that Cosby had made false statements to departmental representatives in the course of the internal investigation of the encounter. The Department's description in the PCS of the underlying "misconduct" alleged of Cosby stated, in part, as follows:

> On 11/30/2018 AIC Chad Gambrell contacted Director Jerry Adger and informed him about a misconduct in the Greenville County Office involving Team Leader Kristen Cosby. Director Adger advised OPR Director Jeff Harmon to open an investigation regarding the misconduct allegations and to begin immediately. On 12/03/2018 a PPP employee, to remain anonymous, was interviewed by OPR Director Harmon and the employee admitted to having a consensual sexual relationship with Team Leader Kristen Cosby, who was the employee's supervisor at the time. (*Id.* at p. 2)

III. DOCUMENTARY AND TESTIMONIAL EVIDENCE

A. Documentary Evidence

The following documentation was accepted into evidence at the May 15th hearing and made a part of the record:

> Council Exhibit Number 1: [Personnel Change in Status Report (Notification of Separation Due to Misconduct) and Correspondence of Criminal Justice Academy]
>
> State's Exhibit Number 1: S.C. Department of Probation, Parole and Pardon Services Policy and Procedure No. 1802 (Internal Investigations)
> State's Exhibit Number 2: "Voluntary Statement" of Kristin Cosby (December 17, 2018)
> State's Exhibit Number 3: S.C. Department of Probation, Parole and Pardon Services, Office of Professional Responsibility "Summary of Findings" (Internal Investigation #20181130-23)
> State's Exhibit Number 4: S.C. Department of Probation, Parole and Pardon Services "Citizen/Personnel Formal Complaint Form" filed by Kristin Cosby (October 19, 2018)
> State's Exhibit Number 5: **EXHIBIT WITHDRAWN**
> State's Exhibit Number 6: S.C. Law Enforcement Division "Consent to Interview with Polygraph" (December 17, 2018)
>
> Respondent's Exhibit Number 1: DVD containing audio interview of December 7, 2018 (4:10-4:31) and audio interview of December 12, 2018 (1:45-3:00)
> Respondent's Exhibit Number 2: S.C. Law Enforcement Division "Polygraph Examination Pre-Test Worksheet" (December 17, 2018)

Respondent's Exhibit Number 3: Polygraph Examination Pre-Test Questions
Respondent's Exhibit Number 4: Timeline of Events and Recommendations (Chadwick A. Gambrell) (December 4, 2018)
Respondent's Exhibit Number 5: Letter of Resignation of Kristin Cosby (December 19, 2018)
Respondent's Exhibit Number 6: Acceptance of Letter of Resignation of Kristin Cosby (Chadwick A. Gambrell) (December 19, 2018)

B. Testimonial Evidence

The following testimony was accepted into evidence at the May 15th hearing and made a part of the record:

1. Testimony of Jeffrey Harmon, S.C. Department of Probation, Parole and Pardon Services
2. Testimony of Bryan Jones, S.C. Law Enforcement Division
3. Testimony of Nicole Albany, S.C. Department of Probation, Parole and Pardon Services
4. Testimony of Chadwick Gambrell, S.C. Department of Probation, Parole and Pardon Services
5. Testimony of Robert Honeycutt, S.C. Department of Probation, Parole and Pardon Services
6. Testimony of Kristin Cosby

Testimony of Jeffrey Harmon:

Harmon testified that he is currently assigned as the Director of the Office of Professional Responsibility for the South Carolina Department of Probation, Parole, and Pardon Services, that he was directed by the Director of the Department to initiate an investigation into allegations that Cosby had a consensual sexual relationship with her subordinate employee, that the Director had provided him specific questions to be asked of Cosby, that after each investigative activity that Harmon conducted the Director of the Department "wanted a follow-up informational session so he could help direct the investigation," that the Department Director couldn't "detach himself from the investigative process... so he could help direct the investigation," and that the Department's Policy 1802 set forth policy guidelines for Office of Professional Responsibility internal investigations and provides that such investigations will address "[c]omplaints of misconduct by the Department employees involving violations of policy, code of ethics, State or federal law, or other recognized standards of conduct." (Transcript, pp. 23-27, 30-passim)

Harmon further testified that he interviewed Cosby after first providing her "Garrity" warnings, that he began his interview with Cosby with a statement from the Department Director who required Harmon to "tell Ms. Cosby that no one had ever been terminated for an allegation of consensual sexual relationships with a subordinate, and that she should be honest and truthful about the relationship and that if she [was] found to be untruthful and [lied], then she would be subject to disciplinary actions,"

that he asked Cosby if she had a sexual relationship with a subordinate named Nicole Albany and that Cosby answered "No," that Cosby was offered a polygraph examination but prior to the polygraph examination Cosby contacted Harmon and stated that Albany had made sexual advances towards her and had sent her photos but that she could not recall if any of the advances were physical, that Cosby stated to Harmon that there was never "any other sexual conduct" with a subordinate but that Cosby subsequently amended her statement to Harmon indicating that Albany had tried to initiate physical contact with her during a cookout and that a friend who was present told Albany that she was "being too aggressive" and that Cosby stated that she was able "to kind of brush off" the physical contact. (Transcript, pp. 35-42)

Harmon testified that a polygraph was scheduled and administered for Cosby, that after the polygraph exam concluded Cosby provided a handwritten statement to Harmon, that Harmon then prepared a summary of the findings of the Office of Professional Responsibility investigation of Cosby, that during his investigation Harmon interviewed Cosby on two different occasions and received a written statement from Cosby, that "a pattern developed of [Cosby] not telling the truth and then modifying the truth and then, finally, becoming truthful with the written statement of a consensual relationship with [Albany]," that on October 19, 2018 Cosby had filed a complaint with the Department in which she alleged sexual harassment by her then Agent-in-Charge and Assistant Agent-in-Charge, and that Cosby's harassment allegations were investigated by the Department and determined to be "unfounded." (Transcript, pp. 43-49, 63-68)

On cross-examination, Harmon testified that he opened an investigation into allegations of Cosby engaging in a sexual relationship with a subordinate because the Department Director indicated to him on November 30, 2018 that Cosby's then Agent-in-Charge had asked that an investigation be opened, that on October 19, 2018 Cosby had reported concerns she had regarding her then Agent-in-Charge and Assistant Agent-in-Charge in which she stated that she was afraid to go to work because of the actions of the two, and that Cosby's then Agent-in-Charge requested that Cosby be investigated for the alleged prior sexual relationship only after Cosby had reported her concerns on October 19, 2018 at which time Harmon initiated the investigation into Cosby's alleged sexual relationship, that the allegations regarding the sexual relationship Harmon was directed to investigate involved conduct alleged to have occurred 3 ½ years prior to the allegations being filed, that at the time Cosby was alleged to have engaged in a sexual relationship with her subordinate such a relationship would not have constituted a violation of

Department policy, that on December 7, 2018 Harmon interviewed Cosby who then stated to him that she had not had "a sexual relationship with Nicole Albany," that he advised Cosby "that she could take some time to think about her statement and, if she had further information to offer, she could do that," that on December 12, 2018 Cosby approached Harmon and provided an amended statement in which she stated that Albany had "sexually come onto [Cosby] 3 ½ years prior" and also advised Harmon that she had filed a complaint with her then Agent-in-Charge at that time regarding Albany's advances and asked that Albany be reassigned, that on December 12, 2018 Cosby did not mention to Harmon that Albany had attempted to perform oral sex on Cosby, and that neither Harmon's "Summary of Findings" from his investigation of Cosby nor information from the summary was ever provided to Cosby. (Transcript, pp. 76-84, 92-94, passim)

In response to inquiry by the hearing officer to clarify his earlier testimony, Harmon confirmed that the OPR investigation of Cosby which he was directed to initiate was not in regards to any allegation of misconduct by Cosby or in regards to Cosby's violation of Department policy but, instead, in regards to an employment related complaint that Cosby's alleged behavior, which was said to have occurred prior to December 2015, was improper, that on November 30, 2018 Harmon had been advised by the Department Director that an encounter between Cosby and a subordinate employee had allegedly occurred in 2015 and Harmon was directed to engage in a fact finding investigation regarding the same, that Harmon was not provided factual information regarding when and to whom the report regarding the alleged incident between Cosby and the subordinate was made prior to the initiation of his investigation and that he did not address the same in his investigation, and that all he was told was "that an incident occurred, and [he needed] to investigate it." (Transcript, pp. 101-111, passim)

Testimony of Bryan Jones:

Jones testified that he is the lieutenant in charge of the polygraph unit of the South Carolina Law Enforcement Division (SLED) and also the Chief Polygraph Examiner for the State of South Carolina, that he was asked by his Assistant Chief at SLED to assist the Department of Probation, Parole and Pardon Services in conducting a polygraph examination, that he contacted Jeff Harmon regarding the same, that on December 18, 2018 he provided Cosby a "Consent to Interview with Polygraph" form which she reviewed and signed, that prior to the conduct of the polygraph exam he asked Cosby whether she had engaged in sexual activity with a subordinate to which she responded "No,", that after conducting the polygraph exam he asked Cosby the same question in response to which she then admitted to having engaged in sexual activity with Nicole Albany, that Cosby then described a scenario in which she had

been at Albany's house in a room near the kitchen and Albany was "coming onto her, trying to pull at her pants and unzip her pants, and [Albany] was able to get [her] zipper down, pulled her pants down slightly and then performed oral sex on [Cosby]" and that a male had come into the room and "pulled out his penis and put it in [Cosby's] hand," and that the encounter was consensual. (Transcript, pp. 116-117, 119-122)

On cross-examination, Jones testified that he completed a pre-polygraph examination sheet for Cosby, that Cosby stated to him that she suffered from PTSD and was taking several medications at the time, and that he went over the questions to be asked of Cosby before the polygraph examination was administered, and that neither the pre-interview nor post-interview questions posed to Cosby were recorded. (Transcript, pp. 124-133)

On re-cross examination, Jones testified that Cosby did not mention to him having taken any affirmative action towards Albany on the date of the incident at Albany's house and only described "what Nicole Albany did to her" and that a man "pulled out his penis and put it in [Cosby's] hand." (Transcript, p. 139)

In response to questioning by the hearing officer to clarify his prior testimony, Jones testified that when he was asked to assist in conducting the polygraph examination he was told by Harmon that the incident regarding which the polygraph exam was to be conducted, and regarding which he asked Cosby both pre-interview and post-interview questions, had occurred outside the workplace. (Transcript, pp. 140-141)

Testimony of Nicole Albany:

Albany testified that she is an agent with the Department of Probation, Parole, and Pardon Services, that Kristin Cosby had been her supervisor, that she had a sexual relationship with Cosby, that she told both her Assistant Agent-in-Charge, Chad Gambrell, and Jeff Harmon about the relationship, that the relationship was mutual and consensual, that in or about May 2015 she and Cosby were involved in an encounter described by Cosby as having taken place in Albany's home in which they were mutually touching and kissing each other, that she did not "come on" to Cosby, that after that incident Cosby began "correcting or changing a lot of documents that [Albany] would hand in to her" and was "trying to intimidate and use her authority over [her]" to make Albany feel like a lesser agent, that when she asked Cosby questions Cosby would tell her that Albany needed to do what she was told because Cosby was her supervisor, that she told Cosby she wanted to get off her team, and that eventually she was

moved to another team and no longer interacted with Cosby, and that she had been moved to the other team before Chad Gambrell became Agent-in-Charge of the Greenville Office. (Transcript, pp. 143-150)

On cross-examination, Albany testified that when the May 2015 incident involving Cosby occurred at her house she had been drinking that evening, that she made a complaint against Cosby based on the May 2015 incident in November 2018, and that only two incidents constituted the sexual relationship between her and Cosby, one in May 2015 and another incident prior to that time when she and Cosby kissed in public. (Transcript, pp. 150-153)

On redirect examination, contrary to her earlier testimony on direct examination, Albany testified that the matter of her relationship with Cosby was brought up by her Agent-in-Charge, Gambrell, not by her. (Transcript, p. 157)

On re-cross examination, again contrary to her earlier testimony on direct examination, Albany acknowledged that she did not actually make the complaint against Cosby in November 2018 as she had previously stated but that she had been approached by Gambrell who asked her for information about her relationship with Cosby "to make a report" because "[Gambrell] knew that [Albany] never reported it officially in the beginning because of [the] environment of the office," but that Albany "chose to... bring light to the situation when [Gambrell] asked [her]" about it on November 18, 2018. (Transcript, pp. 157-158)

On redirect examination, Albany testified that when Gambrell spoke with her on November 8, 2018 he stated to her that "he had had other complaints that he was looking into in reference to [Cosby]." (Transcript, p. 158)

In response to questioning by the hearing officer to clarify her prior testimony, Albany testified that after the incident in May of 2015 involving Cosby she had never felt threatened in the workplace or harassed by Cosby. (Transcript, p. 159)

Testimony of Chadwick Gambrell:

Gambrell testified that he is the Agent-in-Charge of the Greenville County Office of the South Carolina Department of Probation, Parole, and Pardon Services, that in December 2017 he was becoming acclimated to the office and the staff, that in March 2018 he spoke with Cosby regarding her recommendation for appointment of an agent to a sex offender team, that Cosby made a recommendation and Gambrell stated to her that he felt that Cosby had "more than a professional relationship" with the person she recommended, which Cosby denied, that Gambrell had concerns

regarding what he felt were "inappropriate relationships that Cosby was having [with] people in the office under her supervision," that he counselled Cosby regarding those concerns, and that Cosby never told him that she felt that she was being harassed by him or the Assistant Agent-in-Charge, Honeywell. (Transcript, pp. 162-167, passim)

Gambrell further testified that he spoke with Nicole Albany, that after speaking with Albany he had a concern "that there may have been an inappropriate relationship between [Albany] and [Cosby]," that he typed up his notes from his conversation with Albany and forwarded them to the Regional Director but when he did not hear back he contacted the Department Director, and that he believed Cosby's relationships could be considered "misconduct." (Transcript, pp. 168-171)

On cross-examination, Gambrell testified that at the time that he had expressed his concerns about relationships with subordinates no departmental policy prohibited such relationships and no policy prohibited what Gambrell described as being misconduct on Cosby's part but that Gambrell considered Cosby's having a sexual relationship with a subordinate to be "immoral" and that in his view the behavior would have been in violation of the Department's "professionalism policy" because Gambrell considered Cosby's behavior to be "morally and ethically improper" although acknowledging that it was not specifically prohibited by policy, that Gambrell went to Nicole Albany and asked about her relationship with Cosby the day after he learned that Cosby had filed a complaint against him, and that on December 19, 2018 Cosby resigned from the Department. (Transcript, pp. 168-172, 175-180, passim)

Testimony of Robert Honeycutt:

Honeycutt testified that he is the Assistant Agent-in-Charge of the Greenville County Office of the South Carolina Department of Probation, Parole, and Pardon Services, that he was Cosby's supervisor, and that what he noticed with respect to Cosby that he would define as "misconduct" was that Cosby "wasn't communicating to [him]... her work hours, when she was working and when she was out doing stuff," (Transcript, p. 186)

On cross-examination, Honeycutt testified that he was not involved in the investigation of Cosby conducted by Harmon, and that he was not a part of any questioning of Cosby. (Transcript, pp. 186-187)

Testimony of Kristin Cosby:

Cosby testified that she worked for the South Carolina Department of Probation, Parole, and Pardon Services for ten years and seven months, that she served in the Air Force Security Services for

five years, that as a result of her service in the military she suffers from Post-Traumatic Stress Disorder (PTSD), anxiety, and depression and receives treatment and takes medication for those conditions, that beginning in 2006 she went to work for the Department but left the Department in 2010 to work for the Greenville County Sheriff's Office, that she applied to return to the Department in 2012 but was not selected and was told at that time that "[The Department] wanted a male for the position and not a female," that the Equal Employment Opportunity Commission (EEOC) filed a gender discrimination lawsuit against the Department on her behalf, that she prevailed in the EEOC lawsuit and in 2012 was rehired by the Department, that in September and October of 2018 she was the subject of an investigation conducted by Gambrell and Honeycutt which ended with a direction from the Department's Deputy Director that no disciplinary action was to be taken against her, that in December 2018 she was the subject of an investigation conducted by Jeff Harmon related to a sexual incident in May 2015 between her and Nicole Albany, that she was not engaged in a sexual relationship with Albany, that her memory of the incident referenced in May 2015 was not clear because she does not "have a very good memory," that Harmon did not ask her "specific questions about what [she] did or... details of what had happened" regarding the May 15th incident, that she requested that Albany be moved to another team because "she was becoming angry and a little bit hostile because [Cosby] was not accepting her advances," that she resigned her position with the Department on December 19, 2018. (Transcript, pp. 191-193, 194-199, passim)

On cross-examination, Cosby testified that when Harmon first asked her on December 7th if she had a sexual relationship with Nicole Albany she stated "No," that on December 10th she stated to Harmon that Albany had attempted oral sex on her but that Cosby had "stopped it," and that in her pre-polygraph interview she was asked if she had engaged in any sexual relationship with Albany and she stated no "[b]ecause it was asked if [she] engaged in any sexual relationships with [Albany], and [she] wrote in [her] statement that [Albany] is the one that engaged [her] in [sexual conduct]," that in the "Consent to Interview" form provided her before the polygraph examination the purpose of the exam was stated as being to determine "[w]hether or not you engaged in any sexual activity with Nicole Albany," and that she wrote in her statement following the polygraph examination that she engaged in consensual sexual relations with Albany. (Transcript, pp. 214-221, passim)

IV. ANALYSIS

The Department was required to establish by substantial evidence that Cosby's statements regarding an alleged consensual sexual relationship with a subordinate employee which had transpired in May 2015 were made to a law enforcement officer, a law enforcement agency, or a representative of a law enforcement agency, and were willfully false, misleading, incomplete, deceitful, or incorrect and, accordingly, constituted "misconduct" as contemplated by S.C. Code Ann. § 23-23-150 (A) (3) (g).

"Substantial evidence" is more than a mere scintilla of evidence which, based on considering the record as a whole, would allow reasonable minds to reach the conclusion reached by an administrative agency to justify its action. (See, e.g., *South Carolina Department of Motor Vehicles v. Dover*, 423 S.C. 153, 813 S.E. 2d 532, (Ct. App. 2018)] Further, a showing of substantial evidence requires less than a showing of the weight of the evidence and the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence. [See, e.g., *Office of Regulatory Staff v. S.C. Pub. Serv. Comm'n*, 374 S.C. 46, 647 S.E.2d 223 (2007), citing *Palmetto Alliance, Inc. v. S.C. Pub. Serv. Comm'n*, 282 S.C. 430, 432, 319 S.E.2d 695, 696 (1984).]

Accordingly, to prove the allegations against Cosby, the evidence presented by the Department must have been such that, after consideration of the entire record in this matter, one could reasonably conclude that substantial evidence existed on the record that Cosby willfully made false, misleading, incomplete, deceitful, or incorrect statements to a law enforcement officer, a law enforcement agency, or a representative of a law enforcement agency. The term "willful" may be defined as follows:

> willful adj. (13c) Voluntary and intentional, but not necessarily malicious. A voluntary act becomes willful, in law, **only when it involves conscious wrong or evil purpose** on the part of the actor, or at least inexcusable carelessness, whether the act is right or wrong... [See, *Black's Law Dictionary* (10th ed. 2014)] (Emphasis supplied)

A "misleading" statement is one that is "deceptive." (See, https://www.dictionary.com/browse/misleading) Similarly, a "deceitful" statement, is one that is "intended to deceive" or is "misleading." (See, https://www.dictionary.com/browse/deceitful) An incomplete statement is one that is "lacking some part." (See, https://www.dictionary.com/browse/incomplete)

Characterization of the May 2015 Underlying Behavior

A review of the record in this matter raises some concern with respect to the characterization of the underlying behavior investigated by the Office of Professional Responsibility (OPR) as "misconduct."

While the characterization of the behavior does not void the Department's ultimate determination that Cosby engaged in misconduct by "[w]illfully making false, misleading, incomplete, deceitful, or incorrect statements" in this matter, it bears consideration in the context of mitigation of the circumstances.

The Department's PCS of January 3, 2019 stated that, on November 30, 2018, the Greenville County Office Agent-in-Charge, Chad Gambrell, contacted the Department Director and informed him "about a misconduct" involving Cosby. Based on Gambrell's report, OPR was directed "to open an investigation regarding the misconduct allegations." Throughout his testimony at hearing, however, Harmon noted that the alleged "misconduct" that he had been asked to investigate occurred in 2015 in an off-duty setting and further noted that the incident would not have involved conduct in violation of any Department policy at the time of its occurrence nor would it have been considered "misconduct" at that time. He also noted that at the time of the 2015 incident "having sex with a subordinate was not a violation of policy" and that the substance of what he investigated would have been considered an employment related issue and not a misconduct issue. (See, Transcript at pp. 101, 105, 109, passim)

While, as noted herein, the evidence at hearing did show that Cosby made inconsistent or incorrect statements regarding the May 2015 incident in her interviews before and after the conduct of the polygraph examination, but for the underlying investigation of conduct which was acknowledged by the Department's principal witness as not involving violation of policy or constituting misconduct, those interviews would not have taken place. In effect, the "misconduct" that the Department reported in its PCS came about as a secondary manifestation of an investigation into a matter that itself was not considered to involve misconduct at the time it took place.

The Department's own policy is instructive in the above regard. Policy 1802 (Internal Investigations), introduced as State's Exhibit Number 1, states in pertinent part as follows:

> The Director of the Office of Professional Responsibility (OPR) is designated by and will directly report to the Agency Director. **The OPR Director shall conduct internal investigations of alleged misconduct** by Department employees as authorized by the Director. **The purpose of these investigations is to uncover, fully develop, and objectively report all facts and circumstances surrounding allegations or complaints of misconduct by Department employees involving violations of policy, codes of ethics, state or federal law, or other recognized standards of conduct... When conducting an official inquiry, the OPR investigator must be able to establish the work-related basis for his/her questions. The general rule is that an employee's alleged misconduct must either involve his/her job performance or adversely impact the Department's operations and/or image**. (Emphasis supplied)

Harmon's first recorded interview of Cosby conducted on December 7, 2018, between time stamp indicator 4:10 and 4:31, the portion of the interview to which the parties stipulated admissibility (See, Transcript at p. 99), addressed Harmon's reading to Cosby the statement that he was required by the Department Director to read to her but does not provide any information related to the alleged sexual encounter between Cosby and Albany. (See, Transcript at p. 37)

Harmon's second recorded interview of Cosby conducted on December 12, 2018, between time stamp indicator 1:45 and 3:00, the portion of the interview to which the parties stipulated admissibility (See, Transcript at p. 99), reflects a statement made by Cosby to the effect that "I said oral sex didn't happen but she tried... she tried to make something happen with me," in apparent reference to the incident alleged to have occurred in May 2015 at Albany's home; which statement contradicted Harmon's testimony at hearing that "[o]ral sex was not brought up" during his interview with Cosby. (See, Transcript at p. 84)

The "Summary of Findings" for the OPR investigation (State's Exhibit Number 3) was, by Harmon's own testimony, never provided to Cosby, as contemplated by Policy 1802 which requires that for an internal affairs investigation to be closed the employee who is the subject of the investigation must be "officially informed of the disposition of the investigation." The summary noted that after Cosby's polygraph exam was concluded she stated to Lieutenant Jones that the allegation that she had "engaged in sexual activity with Nicole Albany" was true although Harmon noted that Cosby had denied doing so prior to the conduct of the polygraph exam.

It is important to note, from the perspective of parsing Cosby's statements involving the incident of May 2015, that throughout this matter the activity alleged to have transpired between Cosby and Albany was described variously as a "sexual encounter," "sexual relations," or "sexual activity" (See, e.g., Council Exhibit Number 1, at p. 2).

The term "sexual activity" is synonymous with the term "sexual relations," a term defined as follows:

> 1. Sexual intercourse; SEX (2). — Also termed carnalis copula. 2. **Physical sexual activity that does not necessarily culminate in intercourse. Sexual relations usu. involve the touching of another's breast, vagina, penis, or anus. Both persons (the toucher and the person touched) are said to engage in sexual relations**. — Also termed sexual activity; sex act. [*Black's Law Dictionary* (11th ed. 2019), "sexual relations"] (Emphasis supplied)

The admissible evidence produced at hearing showed that Cosby admitted to being involved in some type of "sexual activity" with Albany in May 2015, albeit her memory, after a lapse of more than three years since the incident allegedly occurred, was, by her own admission, not precise with regards to the exact parameters of what had transpired. Further, Cosby's affliction with Post Traumatic Stress Disorder (PTSD) and other medical disorders, as well as her use of numerous medications related to her medical condition during the course of the investigation and at the time of the polygraph examination, facts known to both OPR and the SLED polygraph examiner as noted on the pre-polygraph checklist (See, Respondent's Exhibit Number 2), is pertinent to evaluating her state of mind at the time she provided statements regarding the single event that had occurred more than 3 years before and as to how Cosby understood the concept of "sexual activity."

The admissible evidence produced at hearing did establish that prior to the administration of the polygraph examination by Lieutenant Jones on December 17, 2018, Cosby was asked by Jones "if she engaged in sexual activity with a subordinate," to which Cosby responded "No," but that after administration of the polygraph, in response to the same question again posed by Jones, Cosby "changed [her response] to admitting to engaging in sexual activity" and provided a written statement in which she noted that Albany had "started performing oral sex" on her, in apparent contradiction to her earlier statement given to Harmon that Albany had only "attempted" to perform oral sex on her. (See, Transcript at p. 122 and State's Exhibit Number 1) Accordingly, the statement Cosby made after the polygraph examination was, based on the evidence at hearing, incorrect as compared to the statement she provided prior to the polygraph examination.

The upshot of the foregoing is that, Cosby did make incorrect or incomplete statements to Lieutenant Jones incident to her pre- and post-polygraph interviews, acknowledging in the post-polygraph interview that Albany had in fact engaged in oral sex upon her whereas she had previously stated in the pre-polygraph interview that Albany had only "attempted" oral sex. In that respect, one could reasonably conclude that her statements were incorrect or incomplete, as contemplated under the misconduct statute. One could also reasonably contemplate that the incorrect or incomplete statements could have come about as a result of Cosby's "inexcusable carelessness" or, more likely, due to her medical afflictions and medication usage during the course of the investigation. No evidence adduced at hearing, however, appears to support that Cosby entertained any "conscious wrong or evil purpose" in making those statements; consideration given to her repeated statements that she did not

deem that she had been involved in "sexual activity" based on the fact that Albany, and not she, had initiated the encounter in May 2015.

Substantial evidence to support an agency's actions may be found to exist even where the possibility exists of drawing two inconsistent conclusions from the evidence. As such, Cosby's post-polygraph statement to Lieutenant Jones, under a standard of "substantial evidence," could be reasonably construed as a violation of S.C. Code Ann. § 23-23-150 (A) (3) (g) inasmuch as it differed from the pre-polygraph statement. Cosby's behavior in that regard, however, should be viewed in the context of numerous mitigating factors, not the least of which are the extreme delay in initiating the investigation of an incident that occurred in May 2015 and the corresponding effect that such a delay may have posed on Cosby's memory, the fact that the underlying May 2015 incident did not, according to OPR, involve violation of departmental policy, did not constitute misconduct, and did not warrant disciplinary action, and the fact that Cosby's recall of the incident and her corresponding responses may possibly have been affected by her various medical conditions, to include PTSD, and use of several medications for treatment of her medical conditions during the course of the investigation.

RECOMMENDED FINDINGS OF FACT

I recommend the following findings of fact:

1. The allegations of misconduct against Kristin Cosby, as reported in the "PCS Separation Due to Misconduct" (PCS) provided to the Criminal Justice Academy (Academy) by the Department of Probation, Parole, and Pardon Services (Department), are supported by the evidence presented by the Department at the contested case hearing on May 15, 2019; and
2. The Department has established by "substantial evidence" that Cosby provided incorrect or incomplete statements, as charged in the Department's PCS forwarded to the Academy.

RECOMMENDED CONCLUSIONS OF LAW

I recommend the following conclusions of law:

1. Pursuant to S.C. Code Ann. § 23-23-80 (6), the South Carolina Law Enforcement Training Council ("Council") is authorized, *inter alia*, to "provide for suspension, revocation, or restriction" of law enforcement certification in accordance with the regulations promulgated by the Council;
2. Pursuant to S.C. Code Ann. Regs. 37-025, Council may deny law enforcement certification "based on evidence satisfactory to the Council that the candidate has engaged in misconduct," may "[i]n considering whether to deny certification based on misconduct, [consider] the seriousness, the remoteness in time and any mitigating circumstances surrounding the act or omission constituting or alleged to constitute misconduct," and may also elect not to deny certification eligibility even upon a finding of misconduct, in accordance with S.C. Code Ann. Regs. 37-108 A;

3. A review of the record in this matter discloses that there does exist substantial evidence that Kristin Cosby provided incorrect or incomplete statements, such as would constitute misconduct pursuant to S.C. Code Ann. § 23-23-150 (A) (3), as reported by the Department; and
4. The misconduct allegations against Kristin Cosby reported by the Department of Probation, Pardon, and Parole Services should be deemed supported by substantial evidence.

RECOMMENDED DISPOSITION

Based on the evidence adduced at the contested case hearing of May 15, 2019, it is recommended that the South Carolina Law Enforcement Training Council:

A) Issue its final agency decision, pursuant to S.C. Code Ann. Regs. 37-107 D. finding that the allegations of misconduct reported against Kristin Cosby by the Department of Probation, Pardon, and Parole Services have been proven by substantial evidence; and
B) Consider the mitigating circumstances set forth in the record and in these findings arising from Cosby's background and medical condition, the remoteness in time of the underlying incident and, as well, the OPR characterization of the underlying behavior in this matter which prompted the OPR investigation initially as not involving misconduct, and pursuant to Council's authority, set forth at S.C. Code Ann. Regs. 37-108 A, either i) grant the Officer eligibility for certification with probation; or ii) grant the Officer eligibility for certification with any additional requirements deemed just and proper by the Council.

I SO FIND AND RECOMMEND:

William C. Smith
Contested Case Hearing Officer

Date: July 25, 2019

South Carolina Criminal Justice Academy

Christopher B. Brumlow, Investigator
Office of General Counsel
South Carolina Criminal Justice Academy
5400 Broad River Road
Columbia, South Carolina 29212
cbrumlow@sccja.sc.gov

I, Kristin Cosby, hereby:

☑ Request a Contested Case Hearing

If you are requesting a Contested Case Hearing, please provide the following contact information to assist with prompt scheduling of the hearing and other communications:

Mailing Address: 307 Marsh Creek Dr.
Mauldin, SC 29662

Phone Number: 864 320-2358 Home/Cell

E-Mail Address: kc.cosby@gmail.com

I understand that I am entitled to have an Attorney represent me at the Contested Case Hearing and during all proceedings from this point forward. I further understand that if I hire an Attorney to represent me in these proceedings that Attorney should send written notification of their representation of me to the South Carolina Criminal Justice Academy. Finally, I understand that my request for a contested case hearing must be served on the Academy within three (3) years after receipt of the written notice advising me of my right to a contested case hearing. If I fail to request a contested case, I understand that I will have waived my right to having one. Additionally, the Law Enforcement Training Council will proceed to enter a final agency decision, against me, to deny me a law enforcement certification for specified time period, up to permanent denial.

Respectfully,

Signature

1/28/19
Date

Kristin Cosby
Print Name

0917-7486
Academy ID or Social Security



Transcript of
Hearing

5/15/2019

In the Matter of the Law Enforcement Certification
of Kristin Cosby
2019-CJA-01-01

ORIGINAL

Southern Reporting, Inc.
Phone: 803.749.8100
Fax: 803.749.9991
Email: Depos@southernreporting.net

South Carolina Criminal Justice Academy

LETC Case Number: 2019-CJA-01-01

In the Matter of the Law Enforcement Certification of Kristin Cosby,	)	Transcript of Hearing

Date: May 15, 2019

Time: 10:14 a.m.

Location: South Carolina Criminal Justice Academy, 5400 Broad River Road, Columbia, South Carolina

Reported by
Susan A. Wyant

APPEARANCES

Presiding: Hearing Officer William C. Smith
South Carolina Criminal Justice Academy
Columbia, South Carolina

For Kristin Cosby: Courtney Atkinson, Esq.
Metcalfe & Atkinson, LLC
Greenville, South Carolina

For the State: Octavia Y. Wright, Esq.
S.C. Department of Probation, Parole & Pardon Services
Columbia, South Carolina

Also Present: Ethan Gray, Intern
Christopher Brumlow, Investigator

INDEX

Proceedings: 5

OPENING STATEMENTS
By the State: 19
By the Respondent: 20

EXAMINATION OF JEFFREY HARMON
Direct Examination by Ms. Wright: 23
Cross-Examination by Ms. Atkinson: 74
Redirect Examination by Ms. Wright: 94
Recross-Examination by Ms. Atkinson: 101
Examination by Hearing Officer Smith: 101

EXAMINATION OF BRYAN JONES
Direct Examination by Ms. Wright: 116
Cross-Examination by Ms. Atkinson: 123
Redirect Examination by Ms. Wright: 135
Recross-Examination by Ms. Atkinson: 137
Examination by Hearing Officer Smith: 140

EXAMINATION OF NICOLE ALBANY

Direct Examination by Ms. Wright:	143
Cross-Examination by Ms. Atkinson:	149
Redirect Examination by Ms. Wright:	157
Recross-Examination by Ms. Atkinson:	157
Redirect Examination by Ms. Wright:	159
Examination by Hearing Officer Smith:	159

EXAMINATION OF CHADWICK GAMBRELL

Direct Examination by Ms. Wright:	161
Cross-Examination by Ms. Atkinson:	171
Redirect Examination by Ms. Wright:	180

EXAMINATION OF ROBERT HONEYCUTT

Direct Examination by Ms. Wright:	182
Cross Examination by Ms. Atkinson:	186

EXAMINATION OF KRISTIN COSBY

Direct Examination by Ms. Atkinson:	190
Cross-Examination by Ms. Wright:	213
Redirect Examination by Ms. Atkinson:	222

CLOSING STATEMENTS

By the State:	224
By the Respondent:	227

EXHIBITS

Council Exhibit Number 1, Letter in reference to "Allegation of certification misconduct and right to contested case hearing." 18

State Exhibit Number 1, South Carolina Department of Probation, Parole and Pardon Services policy & procedure in reference to "Office of Professional Responsibility." 27

State Exhibit Number 2, Voluntary statement of Kristin Cosby. 46

State Exhibit Number 3, "Summary of Findings." 59

State Exhibit Number 4, "Citizen/Personnel Formal Complaint Form." 67

State Exhibit Number 5, Exhibit Withdrawn.

State Exhibit Number 6, "Consent To Interview with Polygraph." 121

Respondent Exhibit Number 1, Burned CD of two audio interviews. 115

Respondent Exhibit Number 2, "Polygraph Examination Pre-Test Worksheet." 128

Respondent Exhibit Number 3, Polygraph pre-test questions. 129

Respondent Exhibit Number 4, "Timeline of Events and Recommendations." 177

Respondent Exhibit Number 5, Letter of resignation from Kristin Cosby. 178

Respondent Exhibit Number 6, Acknowledgement of letter of resignation. 180

PROCEEDINGS

HEARING OFFICER SMITH: Okay. Good morning. My name is Bill Smith. I'm an attorney employed by the South Carolina Criminal Justice Academy, and I was appointed by the South Carolina Law Enforcement Training Council in accordance with South Carolina Code Section 23-23-80, set as the hearing officer for today's hearing. The hearing today is a certification contested case hearing for Kristin Cosby. Ms. Cosby timely requested today's hearing after being notified by the Criminal Justice Academy that certain allegations of misconduct had been filed against her by the South Carolina Department of Probation, Parole, and Pardon Services. Those allegations could affect Ms. Cosby's ability to be certified as a law enforcement officer in the State of South Carolina.

The purpose of today's hearing is to receive evidence that will allow the full Law Enforcement Training Council, after receipt and review of the evidence produced at the hearing today and my written recommendations and findings following completion of the hearing, to render what's referred to as a "final agency decision" as to whether Ms. Cosby is eligible for certification as

a law enforcement officer in South Carolina.

The case number for today's hearing is 2019-CJA-01-01. Ms. Cosby is represented at today's hearing by Courtney Atkinson, a member in good standing of the South Carolina Bar, and Ms. Cosby is present -- excuse me -- with her attorney for today's hearing. The Department is represented by Octavia Wright, also a member in good standing of the South Carolina Bar. (To Ms. Wright and Ms. Atkinson) At least, both of you were as of an hour ago when I looked at the Bar's website, okay?

Today's proceeding is being recorded by a court reporter. Anything said during the proceeding will be recorded so that a true and accurate transcript of the proceeding can be provided for the review of the Law Enforcement Training Council.

My role in today's proceeding is as a neutral hearing officer. I've been provided, prior to the hearing today, a copy of the Personnel Change in Status Report for Misconduct Form, which includes the allegations of misconduct made by the Department of Probation, Parole, and Pardon Services against Ms. Cosby, and documentation previously provided to Ms. Cosby by the Criminal

Justice Academy advising her of the misconduct allegations and of the availability of a contested case hearing regarding those allegations. Those documents provide the jurisdictional basis for today's hearing. I've given them to you just a few moments ago to take a look at, and in accordance with the Academy regulations, those will be taken judicial notice of pursuant to Rule 201 in the South Carolina Rules of Evidence.

I've received no other documentation or information related to the underlying circumstances of the allegations of misconduct made against Ms. Cosby, and I am not at this time familiar with any evidentiary aspects of the case. In other words, the total extent of what I know about the case is what's contained in these five pages right here and, again, those are allegations. That is -- that is not evidence.

In my role today, I'll preside over all procedural aspects of the hearing; ruling, as may be necessary; the admissibility of documentary and testimonial evidence offered by either party; and on any objections. Any offer of evidence that is irrelevant, immaterial, or unduly repetitious will not be accepted, and because today's hearing has

been convened solely to address the specific misconduct allegations made against Ms. Cosby by the Department, any offer of evidence, whether testimonial or documentary, that is extraneous to those allegations and for which no factual evidence can be shown will not be entertained.

In a nutshell, let me tell you what that means. The hearing today is not about any personnel action that may have transpired. It's not about the disciplinary proceeding with the Department. It is solely to address the allegations of misconduct, as that misconduct is identified either by statute or by regulation -- to identify the basis for that. So what that really means is that if we start getting "into the weeds," as I like to say, and we're going through the internal mechanism of the Department's disciplinary action proceeding, I'm going to pull you back onto the path. Please don't be offended by that, but we allot about two hours for these hearings, and we cannot get off into extraneous matters. So, if you have objection to my having done that, when you get the findings and recommendations, you'll have the opportunity to file a -- a motion in opposition to the findings and recommendations, but I won't allow

you to get off of the beaten path here. That's my job.

Because this is a contested case within the meaning of the South Carolina Administrative Procedures Act, the South Carolina Rules of Evidence, as applicable to proceedings before the Court of Common Pleas, will apply to today's hearing, as will the provisions of the South Carolina Code sections applicable to the evidentiary aspects of contested case hearings as contained in the Administrative Procedures Act. In accordance with the requirements of Academy Regulation 37-105, evidence offered by the Department and accepted will be labeled as a State's exhibit and numbered sequentially. Evidence offered by Ms. Cosby and accepted into evidence will be labeled as a Respondent's exhibit and also numbered sequentially. Evidence entered pursuant to judicial notice will be labeled as a Council exhibit, and there won't be any sequential numberings since there's only one of those -- or will only be one of those.

The burden in this case rests entirely upon the Department to prove the allegations of misconduct it has made against Ms. Cosby by a

standard of substantial evidence. There's no requirement that Ms. Cosby produce documentary or testimonial evidence in this matter, that she personally testify regarding the allegations, or that she be required to prove that she did not commit the act set forth in the allegations of misconduct. She's presumed at the outset of the hearing not to have committed the alleged misconduct, and that presumption remains with her until such time this Department has met its burden of proof. No adverse inference will be drawn should Ms. Cosby elect not to provide evidence at today's hearing or elect not to provide testimony.

The procedural order for today's hearing is as follows: The Department can provide an opening statement, followed by an opening statement by you, Ms. Atkinson, on behalf of your client, or you can defer until after the Department's presentation of its case in chief should you elect to do so. The Department will then present its case in chief, followed by Ms. Atkinson presenting Ms. Cosby's case in chief. The Department -- they may then offer rebuttal evidence, followed by any surrebuttal evidence Ms. Atkinson may have on behalf of Ms. Cosby. Then closing argument by the

Department and closing argument on behalf of Ms. Cosby.

I can dispense the significant amount of the following boiler plate, and that is basically that each of you will have an opportunity to call your witnesses, engage in direct examination, and any witness who is called to testify will be required to take an oath to tell the truth. That oath requirement will also apply to Ms. Cosby should she elect to testify today.

In the course of the presentation, as I just mentioned, when you call your witness, you engage in direct examination, and the opposing party will have the opportunity to cross-examine should the opposing party wish to do so. After cross-examination, limited redirect-examination may be permitted, as well as limited recross-examination after any redirect. No additional examination of witnesses will be allowed. As a hearing officer, I may also -- to elect -- elect to ask questions of any witness, to include Ms. Cosby should she elect to testify, if I deem that that is necessary to clarify the testimony that's been provided by the witness.

At the conclusion of today's hearing, I will

draft and provide to the full Law Enforcement Training Council, for its consideration and final determination, my recommendations based on the findings and fact and conclusions of law I deem to have been established by the evidence at the hearing today. I may also include a recommendation as to appropriate sanction, should that be appropriate, in accordance with my authority under Regulation 37-108. Importantly, my recommendations in this matter are not binding on the Law Enforcement Training Council, and the Council, in making its final agency decision regarding this case, is not obligated to accept the recommendations. It may elect, as it deems appropriate, to disregard them either in whole or in part. A copy of my recommendations will be provided to both parties either by certified mail, return receipt requested, or via electronic mail if agreed to by both parties, and we'll discuss that in just a moment. Excuse me.

Upon receipt of the findings and recommendations, either party will have the opportunity in accordance with South Carolina Code Section 23-23-150(e), as in "Echo," to follow motion in opposition to the recommendations within

15 working days of receipt of those recommendations. The opposing party will have the opportunity, in accordance with the same statutory provision, to file a response to the motion in opposition within ten working days of receipt of the motion in opposition.

If both parties today elect to receive the recommendations via e-mail, the filing deadlines will begin to run from the date and time that the e-mail notification is sent to me based upon the message timestamp as shown in my e-mail message. What that means, basically, is this: If you elect to receive this by e-mail -- which I cannot tell you to do, but I will tell you it's far more efficient and much quicker than waiting on certified mail -- once I have completed the findings and recommendations, I will send an e-mail to the addresses that you've provided, and attached to that, there will be a memo from Jimmy Fennell, who is also the general counsel here, who is also the legal advisor to the Training Council. And it will advise you of what you need to do if you wish to file a motion in opposition and if you -- or if you wish to file a response to the motion in opposition, and there will also be a link in that

e-mail that you will click on, and it will take you to the Academy's version of a Cloud server -- a data server, and you can download the documents from there. They'll all be produced in PDF format. Again, if you elect to do that, that's the form in which you'll have it.

If you elect to receive it by certified mail, then we'll package everything up. I will tell you depending upon the exhibits that they'll be -- if they are lengthy, they'll be reproduced on a DVD or a CD, and that will be included. And then, we will go to the postal service; they'll send out a horse and buggy, and we'll send it to you along with a green card so that we can calculate -- or Jimmy can calculate when the time begins to run on the motion in opposition.

Once again, if you elect to file a motion in opposition or a response, those will need to be done in accordance with the memo that's either attached to the -- the e-mail or that's provided in the certified mailing. If you should elect to file a motion in opposition and a -- a response to the motion, then the Council may elect to schedule oral arguments on any motion in opposition and any response to the motion in opposition if it deems

that argument's necessary.

Let me anecdotally add here, also, that after today, you will not see me again unless you represent other clients here or the Department appears again. As I mentioned a few moments ago, my recommendations are not binding on the Council, so the determination that they make is solely up to them. They don't consult me. They don't say, "Hey, what did you mean by this?" or anything else. Their advice will come from the Academy general counsel that regard. So, again, I know I've referenced it twice already, but pay particular attention to the memo so that you'll know that your motion or the response will need to go not to me, but to the general counsel here for forwarding to the Law Enforcement Training Council.

The Training Council will be provided with my recommendations, a copy of the written transcript from today's hearing, all exhibits entered into evidence today, and any motion in opposition or response that is timely filed. And I will add, also, that when I send you my findings, you'll have a copy of the transcript and the exhibits, as well, so that you can formulate a decision as to whether to oppose it, support it, or whatever you'd like to

do.

After receiving that documentation and becoming familiar with the facts of the case, the Council will vote to issue its final agency decision in writing as to whether Ms. Cosby is eligible to be certified as a law enforcement officer of the State of South Carolina. The final agency decision will be provided in writing to both parties, as required by South Carolina Code Section 23-23-150(e), as in "Echo."

Should Council's final agency decision be adverse to Ms. Cosby and should she wish to appeal that decision, she may do so in accordance with the procedures set forth in the Administrative Procedures Act at South Carolina Code Section 1-23-380 and 1-23-600(d), as in "Delta." Should Council's final agency decision be that the allegations of misconduct brought against Ms. Cosby have not been proven by substantial evidence, all records related to the misconduct allegations will be expunged by the Council within 30 days of the issuance of its final agency decision, as required by South Carolina Code Section 23-23-1509(m), as in "Michael."

All right. As a lead up to hearing case in

chief and testimony or presentation of evidence, let me just note for the record that the Department and Ms. Cosby, by respectively reporting the allegations of misconduct and by requesting today's contested case hearing and by being present here today, are deemed to have stipulated that today's hearing will be conducted in accordance with the requirements of the South Carolina Administrative Procedures Act as relate to contested case hearings. And, if you've had dealings in administrative matters before -- (to Ms. Wright) as I know that you have in particular, you work Human Affairs?

MS. WRIGHT: Yes.

HEARING OFFICER SMITH: Is that correct? Okay. -- then, you should be aware that's really, kind of, an idle statement, because if you don't stipulate to that, this doesn't go forward. This is a contested case, so I'm assuming, absent any rebellion here, that we will go forward with the -- the case based upon those provisions.

All right. Let me ask you now, revisiting what we mentioned earlier, whether you wish to receive documentation by certified mail or e-mail. On the behalf of Ms. Cosby, Ms. Atkinson, do you

wish to receive it by e-mail?
MS. ATKINSON: E-mail will be fine.
HEARING OFFICER SMITH: Okay. The e-mail address I have for you is catkinson@malawfirmsc.com.
MS. ATKINSON: That's correct.
HEARING OFFICER SMITH: Okay. Excuse me. And, Ms. Wright, you wish to receive electronically also?
MS. WRIGHT: Yes, sir.
HEARING OFFICER SMITH: Okay. And the e-mail address I have for you is octavia.wright@ppp.sc.gov.
MS. WRIGHT: That's correct, yes, sir.
HEARING OFFICER SMITH: Okay. Great. All right. All right. I mentioned this earlier, and you've had the opportunity to review it, but what I would ask the reporter to mark now is Council Exhibit 1 as the documentation you saw earlier consisting of five pages, which contains the letter from the Academy to Ms. Cosby and also the Personnel Change in Status document setting forth the allegations of misconduct, and those will be judicially noted as pursuant to Rule 201 of the Rules of Evidence.
Council Exhibit Number 1, Letter in reference to "Allegation of certification

misconduct and right to contested case hearing."

HEARING OFFICER SMITH: Okay. Are there any objections to proceeding with the hearing today? Ms. Wright?

MS. WRIGHT: No objection.

HEARING OFFICER SMITH: Ms. Atkinson?

MS. ATKINSON: No objection.

HEARING OFFICER SMITH: Okay. Are there any matters that we need to take up at this point in time before we begin taking evidence? Ms. Atkinson? Ms. Wright? Okay.

MS. WRIGHT: No, sir.

HEARING OFFICER SMITH: All right. Indicating in a negative. All right. Ms. Wright, would you like to make an opening statement on behalf of the Department?

MS. WRIGHT: Yes, sir.

HEARING OFFICER SMITH: Go ahead, please.

STATE'S OPENING STATEMENT

MS. WRIGHT: On behalf of the Department of Probation, Parole, and Pardon Services, the Department believes that there is substantial evidence, as you will hear through -- through the hearing proceeding today, to -- that -- that assisted the Department in reaching its conclusion that there had been

misconduct conducted by Ms. Kristin Cosby. As noted on the Council Exhibit 1 that's been previously admitted into evidence, essentially, the -- the misconduct here is defined as willfully making false, misleading statements, and -- and basically, throughout the facts of this hearing, you will hear a consistent pattern of -- of -- of Ms. Cosby's willful -- willfully making false -- or -- or basically, lying to law enforcement agencies from the -- from the beginning all the way until the end when she had the polygraph, and then, after the polygraph, submitting what ultimately did turn out to be the truth through her own written admission. So, with -- with that -- with that stated, we -- we believe that there will be substantial evidence that you will hear, and -- and we look forward to getting started with the hearing to be able to present that evidence in full.

HEARING OFFICER SMITH: Okay. Thank you. Ms. Atkinson, do you want to open now or do you want to defer?

MS. ATKINSON: I'll just be very brief.

HEARING OFFICER SMITH: Okay. Thank you.

RESPONDENT'S OPENING STATEMENT

MS. ATKINSON: Our position, obviously, would be that there will not be substantial evidence presented of

any willful intent to falsely mislead the Agency that we're here discussing today. Instead, I believe what the evidence will show is that the investigation that ultimately leads us here today was brought, not within a vacuum, but within a situation of other occurrences going on within the Agency that we'll hear more about, specifically in regard to the agent in charge who initiated the investigation and -- and, I believe, about why that investigation was initiated, including the fact that -- that the allegation being made against Ms. Cosby that led to that -- or led to the investigation was not even a violation of Agency policy.

But, regardless, Ms. Cosby is here to testify today regarding her cooperation with that investigation, the truthful statement she made, and, ultimately, the polygraph examination that she was given at the end of that investigation, at which time she was dealing with triggered PTSD, a pre-existing condition from military service, an issue that was, in fact, noted to the polygrapher on the date that the exam was given, and that the only difference in her statements to the Agency came at that -- or following the polygraph exam, at

the urging, at the encouragement, of the -- the agent administering the polygraph.

Regardless, I believe, again, there will not be substantial evidence of any willful intent on behalf of Kristin Cosby to present any false statements to the Agency. And, certainly, that's a -- a serious allegation given, that it affects Kristin Cosby's ability to work in the area that she has pretty much her entire life, including in her previous military service.

I think that there will also be issue with the report that the Agency has made to the Academy, specifically in regard to statements made by the Agency that are not in themselves accurate, including that Ms. -- Ms. Cosby's employment with the Agency was terminated, as her employment with the Agency was not, in fact, terminated. But we will deal with that, I believe, with the witnesses.

But, with all of that said, we are here today seeking a finding that there's no substantial evidence of willful misconduct and that Kristin Cosby should be properly certified to work in law enforcement.

HEARING OFFICER SMITH: Okay. Thank you. Ms. Wright, you can call your first witness.

MS. WRIGHT: Yes. The Department calls Mr. Jeff Harmon. And he's --

HEARING OFFICER SMITH: Okay.

MS. WRIGHT: He's here. Could you please state your name for the record?

HEARING OFFICER SMITH: Oh, he needs to be sworn first.

MS. WRIGHT: Oh, I'm sorry.

(The witness is sworn.)

DIRECT EXAMINATION OF JEFFREY HARMON

BY MS. WRIGHT:

Q Okay. Could you please state your name for the record?

A Jeffrey Harmon.

Q And what is your profession?

A I am currently the director of the Office of Professional Responsibility for the South Carolina Department of Probation, Parole, and Pardon Services.

Q Okay. And how long have you been employed in that capacity as well as employed by the Department?

A I have been the director of the Office of Professional Responsibility -- it will be -- it will be two years this fall, and I will be completing my 25th year in law enforcement on August the 29th of this year.

Q Okay. In regards to today's hearing, Director Adger, who is the director of the Department -- he did, in fact, authorize you to initiate an investigation into allegations concerning Ms. Cosby today, correct?
A Yes, ma'am.
Q Can you please tell us what those allegations consisted of?
A Director Adger received a call from AIC, Chad Gambrell. And, in that conversation, according to Director Adger, he stated that Mr. Gambrell stated that an employee had came forward and noted that Kristin Cosby and this employee, who was a subordinate of hers, had had a consensual sexual relationship, that upon its ending of that relationship turned hostile and affected her pay, also affected her job performance, and I was to open an investigation in regards to that matter.
Q Okay. And so, as you -- as you begin -- as you began to open up the investigation, could you tell us about your -- your methodology?
A All right. All investigations, as part of our department policy, are approved and authorized by the director. With our director, he has a extensive history in -- in Inspector General -- he

has certification in it, as -- as an Inspector General. He's worked as an Inspector General, so he -- he can't detach himself from the investigative process. And that's why the policy was written that way, where he would be, you know, conferenced on most of our investigations. And, in fact, in this investigation, he explicitly gave me exact questions that he wanted me to ask, exact statements that he wanted me to state to the accused. And then, according to him, after every investigative interview that I conducted in regards to this matter, he wanted a follow-up informational session so he could help direct the investigation.

Q Okay. I'm going to present to you the Department's OPR policy. I believe Ms. Atkinson already has a copy of this.

MS. ATKINSON: (To Hearing Officer Smith) I do. No objection.

MS. WRIGHT: Okay.

HEARING OFFICER SMITH: Okay. (To Ms. Wright) What is the document that you're offering? What's it called?

MS. WRIGHT: It's called "Policy 1802."

HEARING OFFICER SMITH: And what does it deal with?

MS. WRIGHT: It -- it deals with the -- the OPR --
HEARING OFFICER SMITH: Okay.
MS. WRIGHT: -- policy in terms of how that -- how his office --
HEARING OFFICER SMITH: Okay. That's --
MS. WRIGHT: -- conducts investigations.
HEARING OFFICER SMITH: That's -- go ahead.
MS. WRIGHT: I -- I would like to have this marked as State's Exhibit --
HEARING OFFICER SMITH: Okay. And no -- Ms. Atkinson, you have no objection to that; is that correct?
MS. ATKINSON: No objection.
HEARING OFFICER SMITH: Do you need him to identify it first?
MS. WRIGHT: Yes.
HEARING OFFICER SMITH: Okay.

Q Mr. Harmon, can you please identify that document for us?
A This is Policy 1802. This is the Office of Professional Responsibility's policy guidelines on internal investigations.
Q Okay.

HEARING OFFICER SMITH: Okay.

A I'm actually the -- the narrator and the -- and the writer of this policy.

Q Okay.

HEARING OFFICER SMITH: Okay. All right. (To Ms. Wright) Then your -- without objection, then, that will be marked as State's --

MS. WRIGHT: Okay.

HEARING OFFICER SMITH: -- Exhibit 1, and just have the reporter mark it --

MS. WRIGHT: Okay.

HEARING OFFICER SMITH: -- please.

State Exhibit Number 1, South Carolina Department of Probation, Parole and Pardon Services policy & procedure in reference to "Office of Professional Responsibility."

HEARING OFFICER SMITH: Let me just ask you -- I see you're handing it over. There's some highlighting on it. Is that in the original policy or --

MS. WRIGHT: Yes, sir.

HEARING OFFICER SMITH: Okay. So the highlighting is actually in the original policy itself, the yellow highlighting?

MS. WRIGHT: Yes, sir.

MS. ATKINSON: I --

MS. WRIGHT: It is.

MS. ATKINSON: I don't believe that I have been provided with a highlighted copy. I just have a plain copy of it here.

HEARING OFFICER SMITH: Okay.

MS. WRIGHT: That is correct.

HEARING OFFICER SMITH: It looks like it was made with a yellow highlighter or marker?

MS. WRIGHT: Yes. I just did it --

HEARING OFFICER SMITH: Okay.

MS. WRIGHT: -- prior to the hearing.

HEARING OFFICER SMITH: So these are your markings on here then?

MS. WRIGHT: Those are my markings --

HEARING OFFICER SMITH: Okay.

MS. WRIGHT: -- yes, sir.

HEARING OFFICER SMITH: (To Ms. Atkinson) Do you want to look at this? Any objection to it? I mean --

MS. ATKINSON: Just other than it being noted that was a highlighting --

HEARING OFFICER SMITH: Okay.

MS. ATKINSON: -- that highlighting made by Counsel.

HEARING OFFICER SMITH: All right. Then we'll just note for the record that State's Exhibit 1 does have yellow highlighting that's been added by Ms. Wright, okay?

MS. WRIGHT: Okay.

HEARING OFFICER SMITH: You wish to have your witness look at that?

MS. WRIGHT: Yes.

HEARING OFFICER SMITH: Okay.

THE EXAMINATION BY MS. WRIGHT CONTINUES.

Q Mr. Harmon, can you -- can you just briefly note the highlighted portions of the policy and -- and -- and read those into the record for us, please?

A Page 1, highlighted comment, starts, "Complaints of misconduct by the Department employees involving violations of policy, code of ethics, State or federal law, or other recognized standards of conduct. All investigations will be managed in accordance with Policy 205, Progressive Discipline."

Q Okay.

A That's Page 1.

Q All right.

A Page 2, last bullet statement, "Request an employee to submit to a polygraph test." Further down in

the document, under "Reporting incidents for investigation," three methods highlighted, "Internal investigations initiated by supervisory staff, complaint, or by the director's request," is the three methods for internal investigations to be initiated.

Q Okay.

A Page 3, last paragraph on the page, "Employee responsibility. Failure on the part of an employee to cooperate with an OPR investigator during" -- this part is not highlighted -- "during an official investigation or keep information confidential." And then it skips down to the highlighted parts. It says, "May subject the employee to disciplinary action up to and including termination from the Department, within the Department, in accordance with Policy 205, Progressive Discipline."

Q Okay.

A And there --

Q I believe that's the --

A -- is another set of highlighting. Page 6, the last paragraph, "Disciplinary or Adverse Actions" section, "Depending on the severity of a non-criminal case, the director may elect to refer the matter back to a supervisory chain of command for

their review and response prior to delivering any disciplinary or adverse action." And that is the end of the highlighted sections.

Q Okay. Thank you very much.

A You're welcome.

MS. WRIGHT: (To Hearing Officer Smith) Okay. I'd like to have this entered into evidence, please.

HEARING OFFICER SMITH: All right. That's already been accepted into evidence.

MR. WRIGHT: Okay.

HEARING OFFICER SMITH: All right.

Q So, as you began this investigation, who was the first person you spoke with?

A The first person I spoke with, of course, would be the director since he is the only one who could initiate an investigation.

Q Uh-huh.

A Upon speaking with him -- I was currently out of town -- he advised me that, as soon as I got back into -- into the state, to set up a meeting and -- and speak with the person who brought the allegation, which was Nicole Albany.

Q Okay. And so, after you spoke with Ms. Albany, how -- how did that -- you know, what -- what did she

tell you, in essence?

HEARING OFFICER SMITH: (To Ms. Wright) All right. I'm going to interject here.

MS. WRIGHT: Okay.

HEARING OFFICER SMITH: I realize that I'm a neutral, but I'm also a lawyer of 40 years.

MS. WRIGHT: Right. Uh-huh.

HEARING OFFICER SMITH: Is this witness going to be testifying here, or --

MS. WRIGHT: No.

HEARING OFFICER SMITH: -- or -- then you've got a hearsay issue.

MS. WRIGHT: Okay. All right.

HEARING OFFICER SMITH: So, unless you've an exception under the hearsay rule for that, I am not going to allow him to testify as to what a third-party told him, who is not present.

MS. WRIGHT: Okay. All right.

Q Okay. In regards to these -- these allegations that initiate this investigation, after speaking with Ms. Albany, was -- were there any other witnesses that you spoke with?

A Yes, ma'am. After I first spoke to the complainant in the matter, which was Nicole Albany -- as part

of my training as a nationally certified internal investigator, part of the rules of a sexual harassment claim or -- or part of that investigative action should always be to see if there's any other witnesses to the allegation, did the person tell anyone else of the -- the offense that occurred against them. Because of that training that I had received, I -- I initially asked Ms. Albany, "Did -- was -- did -- was there any witnesses to -- to the incident?"

Of course, she said, "There was friends there, but there were no direct witnesses."

I said, "Well, who did you tell in regards to" --

MS. ATKINSON: At this time --

HEARING OFFICER SMITH: Okay. Okay.

MS. ATKINSON: -- I'm going to object. I think we are --

WITNESS HARMON: Yeah.

MS. ATKINSON: -- going into hearsay --

HEARING OFFICER SMITH: We're getting back --

MS. ATKINSON: -- at this point.

HEARING OFFICER SMITH: -- in the hearsay thing. (To Ms. Wright) Your witness can testify as to whether or not there were others

that he interviewed, and it's -- you know, it's up to you whether you want to -- you know, lay the basis for how he came up with those. But I'm not going to let him get into what Ms. Albany, or whoever it was, said to him. That's hearsay unless you've got some exception you can point to.

MS. WRIGHT: Okay.

HEARING OFFICER SMITH: Okay.

Q All right. So, again, you -- you did -- I mean, clearly, there -- there were others that you spoke with?

A Yes, ma'am. And I can list those if necessary.

Q Can you tell us who else you spoke with?

A I spoke to Nicole Albany. I also spoke with, of course, Ms. Cosby. Also spoke with Isaac McKenzie. Also spoke with Christina Worthy. Also spoke with Katie Duncan. Also spoke with Allen Norfus. And I also spoke -- I have one other person that I spoke with. Let me get that person's name. I always mispronounce that person's name. I don't want to mispronounce it. You'll have to excuse me; I've got tons of notes.

Q Uh-huh.

A I also spoke with Jeremy Wendell, who was assistant

agent in charge at the time of the incident. "kel-SAY" Terrence -- or "KEL-see" Terrence. I don't know exactly how she pronounces her name, so I apologize --

Q Okay.

A -- if I mispronounced her name. And I also spoke with Michael Abney, as well. I believe -- and, of course, in the -- in -- in the course of the investigation, spoke with, also, AIC Gambrell and Assistant AIC Honeycutt. Those would be all the -- the people I spoke to in regards to investigation -- and, of course, Director Adger, who I spoke with on a daily basis in the course of the investigation.

Q Okay. So, among those names, approximately how many of those folks were being supervised by Ms. Cosby at the time?

A I believe, at that time, the only people that were being supervised by Ms. Cosby was Isaac McKenzie and Christina Worthy.

Q Okay. So, when you spoke with Ms. Cosby, can you tell us about how that conversation went?

A How the -- how I usually start with all investigations -- of course, I do the Garrity warning, letting them know that they have to

cooperate because it's not a criminal matter. And, if it was a criminal matter, I would stop the proceedings immediately because we do not -- we would not want the internal investigation to jeopardize the criminal investigation that would occur. A part of that Garrity warning advises them that they must cooperate fully and that they should be truthful and that they must remain -- all the information that's spoken about should be confidential at all times. I always interject with that, as well.

And then I go into what the nature of the allegations are. And, with this investigation in particular, I started out the investigation with a statement from Director Adger to Ms. Cosby. And Director Adger required me to tell Ms. Cosby that no one had ever been terminated for an allegation of consensual sexual relationships with a subordinate, and that she should be honest and truthful about the relationship, and that if she is found to be untruthful and lie, then she would be subject to disciplinary actions.

Q Okay. So you -- you did, in fact, ask Ms. Cosby about those allegations?

A Yes, ma'am.

Q Okay.
A Once I made that statement, Direct Adger clearly wanted me to just make -- make it very, very concise. All our investigations, in scope, are very narrow. All our investigations are not search expeditions. We don't go after extraneous information. We keep very narrow to our -- to our scope, and I tell everyone that -- that I interview that the scope is very narrow. Of course, I always have a ending question, "Is there anything else you'd like to tell me about the situation or the -- or the allegations?" And that's their chance to tell me anything that I may've missed, but what I ask is very simple, very narrow.

And the question I asked was has she had a sexual relationship with a subordinate, and that subordinate named Nicole Albany.

She said, "No."

Q Okay. All right. So, after -- after -- after Ms. Cosby told you no, were there -- were there any other times that you asked her the same question? And -- and, if so, what was her response?
A After she told me no, Director Adger advised me that, if she said yes, to get her statement and then give him a call.

HEARING OFFICER SMITH: Okay. Let -- let me -- let me stop this.

MS. WRIGHT: Okay.

HEARING OFFICER SMITH: (To Ms. Wright) I mean, I'm not --

MS. WRIGHT: Okay.

HEARING OFFICER SMITH: -- trying to tell you how to try your case.

MS. WRIGHT: Uh-huh.

HEARING OFFICER SMITH: (To Witness Harmon) But we're not here watching a puppeteer, okay? You need to testify as to what you asked the witness, and, if Director Adger has provided direction, that's all fine and dandy.

WITNESS HARMON: Okay.

HEARING OFFICER SMITH: But the point to be taken here is that you're conducting this investigation, and, at some point in time, if Mr. Adger is not going to be here, I'm going to interject that you're testifying as to hearsay.

WITNESS HARMON: Okay.

HEARING OFFICER SMITH: So you need to testify --

WITNESS HARMON: Sure.

HEARING OFFICER SMITH: -- as to what it is --
WITNESS HARMON: Sure.
HEARING OFFICER SMITH: -- that you did.
WITNESS HARMON: Sure.
HEARING OFFICER SMITH: Thank you.
MS. ATKINSON: And -- and I would make another brief objection. There seems to be a lot of leading going on of the witness, and I haven't objected prior for purposes of moving this forward.
HEARING OFFICER SMITH: I agree. Just --
MS. ATKINSON: But I would make that objection for the record.
HEARING OFFICER SMITH: All right. Noted. (To Ms. Wright) Please don't lead the witness.
MS. WRIGHT: Okay.
HEARING OFFICER SMITH: Thank you. Go ahead. I'm sorry.
MS. WRIGHT: Uh-huh.
WITNESS HARMON: (To Hearing Office Smith) Continue where I stopped?
HEARING OFFICER SMITH: Your counsel is conducting the investigation.
WITNESS HARMON: Okay.

THE EXAMINATION BY MS. WRIGHT CONTINUES.

Q Okay. All right. So, after Ms. Cosby denied participating in these allegations, was there -- were you contacted by her prior to the start of the polygraph exam?

A Yes, ma'am. Part of the investigation purposes -- and, of course, the policy clearly states that a polygraph can be -- can be initiated on the part of the Department, and employees must -- must agree to a polygraph, and that failure to agree with a polygraph could result in disciplinary actions. She was notified that a polygraph would be scheduled and that she would have till Monday to decide if she wanted -- this was Monday, so the subsequent day that we did the investigation on. She had till Monday to decide if she wanted to participate in the polygraph or to -- or to refuse. I told her that, at that time, if she refused, the Department would be seeking to terminate and that she would need to turn in her gear on that Monday, as well.

And then I asked her was there anything else she'd like to tell me about sexual conduct, that -- with regards to Ms. Albany. And she advised me, at that time, that Albany had made advances toward her

and then she moved with her AIC to have her removed from her team. I asked her what the nature of the advances were. She said that Ms. Albany had sent her photos.

I asked, "Was there any physical advances?"

The answer was, "No," but then stated that she could not remember if -- if there were any physical advances.

And I asked, "Was there ever any other sexual conduct with a subordinate?"

And she said, "No. Never."

Q Okay. So what was your next step in the investigation?

A Well, it was wait until Monday to determine if she was going to agree to a polygraph or not. I also -- you know, at that time, I -- you know, I wanted her time to think about it over the weekend, her statement, because, you know, in my investigation, I know that when you make these -- when these allegations come up, it gets the blood pressure going. It gets that -- that panic mode sets in, that these great allegations are made towards someone. And my training has always stated that, once you give somebody a sleep period, they can recall memory a lot better. So I advised her -- I

let her know that Monday, when she told me she -- she would or would not participate in a polygraph, that she had until Monday at that time to amend any statement that she had made previously to me. I wanted her to give -- you know, give her plenty of opportunity to review her -- her memory records or memory files because it was three years ago at that time.

And then, on that Monday, she did -- stated that she wanted to amend her statement. And, at that time, she amended her statement from no physical contact whatsoever, that she now stated that -- that Nicole tried to initiate physical contact with her, and that it was during a cookout, and a friend said, "Hey, you're being too aggressive," and -- and Ms. Cosby was able to kind of brush off the physical contact with Nicole Albany.

And I asked her if that was all she wanted to make a statement -- all the amendment, and she said, "Yes." I advised her, at that time, that the polygraph would continue, would be scheduled, and, of course, the polygraph was scheduled.

Q Okay. So, on the day that the polygraph was scheduled, did you observe the exam being

administered?
A Yes, ma'am. I arrived, had the corresponding interview with the polygraph examiner, and then he showed me where the observation room was so I could observe. Of course, I was very interested in how a polygraph was conducted. I'd never seen a polygraph be conducted, and I went to the observation room and watched the entire polygraph. I never left the observation room.
Q Okay. So, once you were in the observation room, can you tell us about what you observed?
HEARING OFFICER SMITH: (To Ms. Wright) I'm not going to let you get into that. We had this discussion at the outset.
MS. WRIGHT: Okay.
HEARING OFFICER SMITH: And demeanor of a witness during a polygraph test, as well as the content of a polygraph is, by law, not allowed in South Carolina.
MS. WRIGHT: Okay.
HEARING OFFICER SMITH: So direct your questioning elsewhere.
MS. WRIGHT: Okay.
Q Can you tell us the name of the polygraph examiner?
A I think I have it in my notes. Bryan C. Jones --

Lieutenant, excuse me.

Q Okay. All right. So, from your recollection on the day that the polygraph was given, do you recall what occurred at the conclusion of the exam?

A At the conclusion of the exam, Mr. Jones advised me that I probably needed to go back in and get a --

MS. ATKINSON: I'm going to object again. (To Hearing Officer Smith) I think we're getting into hearsay testimony again.

MS. WRIGHT: Okay.

HEARING OFFICER SMITH: (To Ms. Wright) Is he here?

MS. WRIGHT: He is here, sir.

HEARING OFFICER SMITH: Okay. You can let him testify to that. At this point in time, it's hearsay. Had he already testified, I'd allow that, but it's hearsay.

MS. WRIGHT: Okay. All right.

Q So let me -- if I can rephrase -- let me rephrase the question. After -- at the conclusion of the exam, did you receive a written statement from anyone?

A Yes, ma'am. At the conclusion of the exam, I went in to take a written statement from Ms. Cosby. This is a copy of the written statement that she

made in her own handwriting.

Q Oh, you have it?

A I do have it.

Q You have a copy of it?

A I do have the -- I have the -- the copy, and I have the -- it was a multi-copy document. I actually was unprepared to take a written statement that day. I -- I -- like I said, I've never been a part of polygraph. I didn't know how to be prepared for a written statement, so, therefore, this written statement -- voluntary statement was done on a SLED Form-C4-002, CALEA-accredited certified voluntary statement form, in which she stated that she did have consensual --

HEARING OFFICER SMITH: (To Ms. Wright) Okay. Has Ms. Atkinson seen this?

MS. ATKINSON: I have seen this document.

HEARING OFFICER SMITH: Okay. Thank you.

MS. WRIGHT: Yes. I was -- I was just getting ready to --

HEARING OFFICER SMITH: Okay.

MS. WRIGHT: -- present another copy of it.

HEARING OFFICER SMITH: Okay.

MS. WRIGHT: (To Ms. Atkinson) Which you said you have seen it, correct?

MS. ATKINSON: Just make sure it's the . . .
MS. WRIGHT: Okay. Although the witness does have another -- his own copy of it --
HEARING OFFICER SMITH: Uh-huh.
MS. WRIGHT: -- which you've already identified. (To Hearing Officer Smith) The -- the Department would like to move that that be admitted into evidence as State's Exhibit --
HEARING OFFICER SMITH: Okay. (To Witness Harmon) And this is Ms. Cosby's statement that you took?
WITNESS HARMON: Yes, sir. It is --
HEARING OFFICER SMITH: Okay.
WITNESS HARMON: -- her statement?
HEARING OFFICER SMITH: (To MS. Atkinson) Objection to that?
MS. ATKINSON: No objection.
HEARING OFFICER SMITH: Okay. No objection? All right. Without objection, that's State's Exhibit 2. (To Witness Harmon) And I'll have the reporter mark it and give it back to you if you need it.
State Exhibit Number 2, Voluntary statement of Kristin Cosby.

HEARING OFFICER SMITH: You need that back to refer to or --

WITNESS HARMON: No, sir. I have my own copy.

HEARING OFFICER SMITH: Okay. Well, assuming you have the same thing.

WITNESS HARMON: Yes, sir.

HEARING OFFICER SMITH: All right.

MS. WRIGHT: (To Hearing Officer Smith) Would you -- could -- could you show him, to make sure that --

HEARING OFFICER SMITH: Yeah. Why don't you reference --

WITNESS HARMON: Sure.

HEARING OFFICER SMITH: -- what's actually in evidence, sir?

WITNESS HARMON: Sure.

THE EXAMINATION BY MS. WRIGHT CONTINUES.

Q Okay.

A I received this written statement. This is Ms. Cosby's own handwriting. I advised her just to put into words what she had just told the polygraph examiner, and she put it into words.

Q Okay.

A The only thing she asked me was how to spell consensual. I looked it up on my phone because I'm

a terrible person to misspell words. I told her what that word of consensual -- how it was spelled, and she made her own written statement in regards to what she had just told the polygraph examiner.

Q Okay. And, at the bottom of that statement, is that your signature there?

A It is my signature as being the witness.

Q Okay.

A Polygraph examiner was not in the room when she gave her voluntary statement. It was just myself and Ms. Cosby.

Q Okay. And can you tell us the date that -- that that was signed?

A December 17th, 2018, at 4:30 p.m.

Q Okay. All right. Thank you. Give this back to you.

A Thank you.

Q Uh-huh. Okay.

MS. WRIGHT: (To Hearing Officer Smith) So, if I could just ask on the record because, essentially, what I would like to have him identify is a copy of the polygraph report.

HEARING OFFICER SMITH: (Shakes head from side to side.)

MS. WRIGHT: Okay.

HEARING OFFICER SMITH: Not going to do it.

MS. WRIGHT: Okay. All right.

Q So, after receiving Ms. Cosby's voluntary statement, what happened next in your investigation?

A Upon completion of the polygraph and the written statement from Ms. Cosby, of course, it was the end of the day. Of course, I did update Director Adger of the proceedings; went home. The next day, come back into the office and began to write up the -- the official OPR Investigative Report.

Q Okay.

MS. WRIGHT: (To Ms. Atkinson) I'm going to present this. This is the summary of findings.

MS. ATKINSON: Okay.

MS. WRIGHT: Okay.

Q Could you identify that, please?

A This is the summary of findings from the Office of Professional Responsibility. This was the report that was submitted for the approval of the director and his chief deputy, and, of course, their note on this date, December 18th, 2018, the actions in which they recommend on behalf of the investigation.

Q Okay. So that is, in fact, the -- the summary -- the summation of your findings that you wrote and submitted to the director?
A Yes, ma'am.
Q Okay.
A And, of course, you note on the -- the summary, the action that's taken upon the completion of the investigation, that is handwritten because that is all done after the investigation is submitted, and that is done by the director and the chief deputy.
Q Okay.

MS. ATKINSON: Hearing Officer, I would just note one brief objection. I believe there is reference in this document to the results of the polygraph.

HEARING OFFICER SMITH: Okay. (To Witness Harmon) And I'm also going to ask, before this is offered or I'll entertain any objection, is whether or not there's reference in your summary to any of the folks that you interviewed whose -- regarding whose testimony or statements to you I would not allow? In other words, is there reference to those hearsay-stricken witnesses?

WITNESS HARMON: No, sir.

HEARING OFFICER SMITH: Okay. (To Ms. Wright) As to -- since I have not seen this -- but, if there's a reference to the results of the polygraph, it's not admissible. You can strike it if you like, and you can offer it at that point in time. Or I will just, in my findings, indicate, but I prefer that you strike it because it's -- it is not --

MS. WRIGHT: Is that --

HEARING OFFICER SMITH: -- admissible even if there is -- even if there is a stipulation by parties that it should be admissible. Do you need a marker or --

MS. WRIGHT: Okay.

HEARING OFFICER SMITH: (To Witness Harmon) Could you pass that down, please?

WITNESS HARMON: Yes, sir. Thank you.

MS. WRIGHT: Okay. Do you --

HEARING OFFICER SMITH: And, Ms. Wright, I'd ask that you -- yeah -- show that to Ms. Atkinson.

MS. WRIGHT: (Complies.)

MS. ATKINSON: In addition to the objection about that, including -- I believe this document also includes the same hearsay that's

previously been excluded from this hearing. There are particular statements that --

HEARING OFFICER SMITH: (To Witness Harmon) My understanding was that you said that it was included in there.

WITNESS HARMON: Oh, you --

MS. ATKINSON: (To Hearing Officer Smith) I believe there is a specific statement in regard to statements made by Nicole Albany; is that not --

HEARING OFFICER SMITH: Okay. (To Ms. Wright) If it references substance of Nicole Albany's statements, then you cannot include it. If it merely references that he talked with a person, without any statement concerning the substance of the testimony, I'll allow that. But I'm not going to allow anything that's brought in that would've been hearsay had he testified to it.

MS. ATKINSON: And, just for clarification, I believe there's also a reference to statements made during the polygraph in the findings section at the very bottom of the first page of that document.

HEARING OFFICER SMITH: Okay. Let me propose

this --
MS. ATKINSON: Okay.
HEARING OFFICER SMITH: -- so we don't get too -- what's the word I'm looking for? -- bits and pieces of this. I'm going to recommend that we take about five minutes, and we'll go off record, and that y'all consult back and forth on this so that we don't go through on an ad hoc basis and mark it. And, when we come back in, we'll make a decision. So we'll go off record right now for about five minutes.
MS. WRIGHT: Okay.
MS. ATKINSON: Thank you.
(Off the record from 11:04 a.m. until 11:14 a.m.)
HEARING OFFICER SMITH: Okay. We're back on the record. Okay. When we went off record, you were -- I believe counsel was consulting about proposed State's Exhibit 3. Has there been some kind of resolution on that in terms of redaction or --
MS. WRIGHT: Well, somewhat. And then there's a question, because there's a statement that Ms. Atkinson has issue with under the

"Findings" section, and I just want to make sure: It's my understanding -- for my clarification -- that you are not admitting any polygraph results.

HEARING OFFICER SMITH: The polygraph test results are not admissible. And that would include such things as the demeanor of a person who's being polygraphed; that would include anything that is drawn from the polygraph findings, if you will.

So, in other words, were someone to state that, you know, "Person X's statements were determined to be deceptive," that's clearly not admissible.

MS. WRIGHT: Uh-huh.

HEARING OFFICER SMITH: What -- what is it in particular that -- rather than just commenting in the hypothetical?

MS. WRIGHT: Okay. Well, Mr. Harmon included a sentence about -- concerning matters related to the investigation before and during the polygraph about statements that --

HEARING OFFICER SMITH: Anything during the polygraph is not going to be admissible, as I had mentioned to you at the outset. There's

-- you know, barring objection from opposing counsel, there's no problem with a -- your polygraph examiner talking about the pre-polygraph interview --

MS. WRIGHT: Uh-huh.

HEARING OFFICER SMITH: -- post-polygraph questioning or anything else, but what is absolutely barred is what's in between and anything derived from it.

MS. WRIGHT: So before the polygraph is fine?

HEARING OFFICER SMITH: Assuming you don't have any hearsay problem or --

MS. WRIGHT: Uh-huh.

HEARING OFFICER SMITH: -- if you're talking -- your witness is talking about his discussion with Ms. Cosby, I mean, I'm -- I'm just -- from a hypothetical standpoint, stating I don't see that as problematic.

MS. WRIGHT: Okay. So -- and I'm going --

MS. ATKINSON: And our -- yeah, and our specific objection, just for the record and for --

HEARING OFFICER SMITH: Uh-huh.

MS. ATKINSON: -- had been that there was a statement included that said, "false

statements were made during the polygraph,"
and obviously that would be --
HEARING OFFICER SMITH: I would --
MS. ATKINSON: -- what we have objected to --
HEARING OFFICER SMITH: I would absolutely
sustain that objection --
MS. ATKINSON: -- as being included.
HEARING OFFICER SMITH: -- because it refers
to statements made during the polygraph.
MS. WRIGHT: Okay. But -- so statements made
before the polygraph, that's fine?
HEARING OFFICER SMITH: Pre and after --
MS. WRIGHT: Uh-huh.
HEARING OFFICER SMITH: -- statements. Do you
need -- do y'all need a couple of more
minutes?
MS. WRIGHT: No. I -- no. I think -- I think
we got it.
HEARING OFFICER SMITH: Okay.
MS. WRIGHT: So -- so -- so what I'm proposing
is to redact the portion -- the -- the two --
the two words "and during" of that sentence --
HEARING OFFICER SMITH: Okay. I'm -- again --
MS. WRIGHT: I'm sorry.
HEARING OFFICER SMITH: -- in the abundance of

caution, I'm going to go off record here for a couple of minutes. Y'all discuss it. Decide what you want to do with it.

MS. ATKINSON: I --

HEARING OFFICER SMITH: And if there's still an objection, I'll rule on it. But --

MS. ATKINSON: I think it'd be those four words --

HEARING OFFICER SMITH: Let me --

MS. ATKINSON: -- "and during the polygraph."

HEARING OFFICER SMITH: Hold on. I'm going to go off record for a couple of minutes. Y'all decide what you're going to do. And, Chris, you can come and get me whenever. But I -- I just -- I can't be part of that discussion.

(Off the record from 11:17 a.m. until 11:18 a.m.)

HEARING OFFICER SMITH: Okay. We're back on record. And y'all have discussed what needs to be redacted in State's Exhibit 3? Have you stipulated, agreed, or --

MS. WRIGHT: Yes, sir.

MS. ATKINSON: Right.

HEARING OFFICER SMITH: Okay. All right. And, Ms. Wright, I interrupted you earlier.

I'm sorry. Go right ahead, please.

MS. WRIGHT: Okay.

THE EXAMINATION BY MS. WRIGHT CONTINUES.

Q So, at -- at this point, I think we -- you -- you had already previously identified that, Mr. Harmon, correct, as your -- your findings?

A Yes, ma'am.

Q Okay. So could -- on Page 2 of that, could you tell us the date that -- again, that that was --

HEARING OFFICER SMITH: (To Ms. Wright) Okay. Has this been offered? You've had him authenticate it; do you want to offer it at this time or you want to ask him about it first?

MS. WRIGHT: I -- I do want to offer that into evidence as State's--

HEARING OFFICER SMITH: Okay. Any objections as redacted?

MS. WRIGHT: -- Exhibit --

MS. ATKINSON: No objections as redacted. I do believe it's previously been marked as State's Number 3. Is that incorrect?

HEARING OFFICER SMITH: Yeah. But I don't -- has it -- I don't think it's been admitted.

MS. WRIGHT: See -- yeah.

MS. ATKINSON: Okay.

MS. WRIGHT: Yes. No.

MS. ATKINSON: No objection to admission of that document.

HEARING OFFICER SMITH: Okay. Then let me go ahead and do that just in the interest of housekeeping --

MS. WRIGHT: Okay.

HEARING OFFICER SMITH: -- here and I'll ask the reporter. (To the court reporter) Without objection, this is State's Exhibit 3. And then I'll give that back to you, Mr. Harmon, okay?

State Exhibit Number 3, "Summary of Findings."

HEARING OFFICER SMITH: All right. Thank you. All right. It's now State's Exhibit 3.

THE EXAMINATION BY MS. WRIGHT CONTINUES.

Q Okay. All right. Mr. Harmon, could you look on Page 2 of that document and tell us who signed that document and the date that they signed it, please?

A That would be Director Jerry B. Adger, December 18th, 2018, and Jody Gallman, Chief Deputy, December 18th, 2018.

Q Okay. And -- and, you know, just -- just to be

clear, before that -- above that, under the "action" column, was that something that the director filled out, from your standpoint?

A Yes, ma'am. When I complete a "Summary of Findings," the "Action plan" or "Action of no further action" or "Action needed" recommendations is left blank by me intentionally so that, if they feel that the investigation was incomplete or another witness needed to be called, they would write that in there. That would become part of my written documentation, and then I would go -- proceed to do other -- other interviews. Or they would decide, at that point, that the investigation was over, "No further action needed," or what kind of action needed to take place. And, so, yes. That is what they put their comments on.

Q Okay. All right. Okay. I'm going to --

MS. WRIGHT: I don't have any further questions about this at this particular time.

HEARING OFFICER SMITH: Okay. Go ahead.

MS. WRIGHT: And I believe the -- the -- the Council's exhibit, that does have a copy of the PCS; is that correct?

HEARING OFFICER SMITH: Yes, ma'am. It does. It -- that's -- that's -- the allegations are

contained in that. Do you need to look at it again?

MS. WRIGHT: Well, I was going to ask him to take a look at it.

HEARING OFFICER SMITH: All right. This is what was marked as Council Exhibit 1, and I'll hand that to your witness.

MS. WRIGHT: Yes, sir. And -- and that -- that has been put into evidence?

HEARING OFFICER SMITH: It's in evidence, but those are allegations on there. It's not proof of anything. It's just the fact that jurisdictionally we can proceed --

MS. WRIGHT: Okay.

HEARING OFFICER SMITH: -- with the hearing.

MS. WRIGHT: Okay.

THE EXAMINATION BY MS. WRIGHT CONTINUES.

Q So, Mr. Harmon, in -- in relation to the -- the PCS that is attached to the Academy's letter that was submitted by the Department, did you -- did you have anything to do with the creation of that PCS?

A On completion of my -- my "Summary of Findings" to the director, I think it was maybe a day later he asked me to make sure that I gave a summary statement to the director of human resources so

that they could include it on documentation to the Academy. But I did not know what that document was called.

Q Okay.

A "PCS" document.

Q Okay. All right. Okay. I don't -- I won't go into --

A Okay.

Q I don't have any further questions about that at this time.

So, at the conclusion of your investigation, was there -- was there any particular theme that developed?

A Through the course of the investigation, just with my interview, just with Cosby -- of course, you know, I interviewed her on two different occasions and received also a written statement -- a pattern developed of not telling the truth and then modifying the truth and then, finally, becoming truthful with the written statement of a consensual relationship with -- with the complainant. December 17th -- December 7th she said there was no sexual interaction whatsoever, and then the 10th, she stated that, "Well, she" -- the complainant tried, but then she brushed her off. So -- and

then, of course, her written statement was that it was a consensual relationship. That it was wanted by her and the complainant, which led me to make the determination that the previous statements were false.

Q Okay.

MS. WRIGHT: (To the hearing officer) I would also -- I just want to show her this real quick. It's a few other -- a few other things.

MS. ATKINSON: Uh-huh.

MS. WRIGHT: Okay?

THE EXAMINATION BY MS. WRIGHT CONTINUES.

Q Could you please identify this document?

A This is the Department OPR 1332, "Citizen/Personnel Complaint" form.

Q Okay. And so, what was that complaint about?

A This was a complaint that was created by Ms. Kristin Cosby on October the 19th of 2018, 11:02 a.m., and was e-mailed to the Department.

Q Okay. And so in the -- in the context of that complaint, what were those -- what were those allegations that were -- were brought out?

A According to her own statement in -- in the document, it says that "AIC Gambrell and AAIC

Honeycutt created a hostile working environment for me," which is Kristin Cosby and some members of her team to the point where she is "afraid to come to work, not for physical reasons, but psychological reasons. I feel as though I'm being harassed, repeatedly counseled for things I -- and I am not explained how to fix, and some things I have not been trained.

"The harassment has extended to members of my team to where one of them perceived a threat by AIC Honeycutt on one occasion, based off a statement that was made. My agents had been made to feel as though they are not trusted and do not know how to proceed with me, making my job extremely difficult.

"I have felt attacked how AIC Honeycutt approached me with issues working off of wrong information or misinformation of the information without gathering the facts before addressing the situation with me."

Q Okay.

A And there's another paragraph --

Q That's --

A -- that goes along with it.

Q That's fine.

HEARING OFFICER SMITH: Okay. (To Ms. Wright)

Let me ask a question. What -- what is this form that he was reading from.

MS. WRIGHT: This is an OPR complaint form.

HEARING OFFICER SMITH: Okay. And it was -- the complaint was filed by whom?

MS. WRIGHT: It was filed by Ms. Cosby.

HEARING OFFICER SMITH: Okay. And this relates to sexual harassment in the workplace?

MS. WRIGHT: Well, that --

HEARING OFFICER SMITH: Or harassment or a hostile environment, speaking the lingo of SCHAC and that sort of thing?

MS. WRIGHT: Yes. Yes, sir.

HEARING OFFICER SMITH: How does that relate to misconduct?

MS. WRIGHT: Well, the Department believes that in -- in the findings of this -- of this investigation on this complaint that it continues to show that pattern that Mr. Harmon spoke about in terms of -- of -- of deceit and -- and -- and, you know, false statements being provided.

HEARING OFFICER SMITH: By -- by filing a complaint, it -- it shows deceit?

MS. WRIGHT: Well -- well, not -- not the

complaint itself, but upon different findings of the -- that were developed into -- as part of this -- this separate investigation.

MS. ATKINSON: I would state that -- that Ms. Cosby doesn't have an objection to the documents. Specifically, we would object to a grounds to say that is shows deceit, but we do believe that it is relevant to -- especially since the complaint there is made against her agent in charge and the assistant agent in charge, who are the ones that instigated this investigation that leads us here today, two weeks after she filed that complaint. We do believe that that is relevant to why we're here today at all.

HEARING OFFICER SMITH: Okay. I -- you know, my comments may be premature, because you haven't offered it yet, but go ahead.

MS. WRIGHT: Okay. The Department would like to move that this be admitted into evidence.

HEARING OFFICER SMITH: Okay. And, Ms. Atkinson, again --

MS. ATKINSON: No objection.

HEARING OFFICER SMITH: -- no objection?

MS. ATKINSON: No objection.

HEARING OFFICER SMITH: Okay. All right. (To the court reporter) Without objection, that's State's Exhibit 4.

State Exhibit Number 4, "Citizen/Personnel Formal Complaint Form."

HEARING OFFICER SMITH: Thank you. (To Mr. Harmon) Do you need this back?

WITNESS HARMON: No, sir. Unless I have to read from it. Then I --

MS. WRIGHT: No. I -- no.

HEARING OFFICER SMITH: No? Okay. All right. Thank you.

MS. WRIGHT: Yes. Okay.

THE EXAMINATION BY MS. WRIGHT CONTINUES.

Q Mr. Harmon, could you also identify this document?

A This is the "Summary of Findings by OPR," dated January the 8th, signature by Deputy Director Jody Gallman, and January 9th by Director Jerry B. Adger for the findings for Complaint Number 2018/10/19-23.

Q Okay. And so isn't it -- I mean, those are the findings from the complaint that Ms. Cosby filed?

A Yes, ma'am. That -- these are the "Summary of Findings" for the complaint that Ms. Cosby filed.

Q Okay. And what was the ultimate conclusion from that investigation of her complaint?
A Upon review by the director and chief deputy, they determined that the allegations were unfounded. "No further action needed."
Q Okay.
MS. WRIGHT: Mr. Smith, I'd like to have this document moved into evidence.
HEARING OFFICER SMITH: Okay. Would you please let Ms. Atkinson look at it?
HEARING OFFICER SMITH: And, again, just for my clarification because I'm having a hard time, you know, following the players here, this is the OPR investigation of the complaint we referenced a few moments ago, which was the subject of State's Exhibit 4, that complaint form?
MS. WRIGHT: Yes, sir.
HEARING OFFICER SMITH: You investigated that? And so these are the findings on essentially what -- what was, you know, for lack of a better description, a hostile work environment complaint?
MS. WRIGHT: Yes, sir.
HEARING OFFICER SMITH: And, again, my

question -- and I'll defer to Ms. Atkinson. I'm not trying to overly get involved in this, but my question is: What's the relevance to misconduct?

MS. WRIGHT: Well --

HEARING OFFICER SMITH: And I understand she may not have an objection to it, but I'm just asking: You know, I think it's within my purview to determine whether or not it's -- it's relevant to the misconduct issue.

To me, it sounds like it's pertinent to disciplinary action. It's pertinent to, you know, certainly some HR matter that, you know, you're obligated to investigate. But I don't see that it's pertinent to the allegations of misconduct. But I'll be glad to hear you on that.

MS. WRIGHT: Well, there were -- as -- as I do recall, Ms. -- Ms. Atkinson stating in her opening statement that --

HEARING OFFICER SMITH: Opening statement's not evidence.

MS. WRIGHT: Okay. Well, in -- in -- in general, I -- as, again, I will just say that, you know, the reason why I'm -- I'm asking

that this be admitted is because, again, it was an investigation that was initiated just prior to the -- and -- and it was through this initial investigation that really caused the creation of the misconduct investigation that ultimately -- that was a separate investigation, and ultimately these two merged into one investigation. And so --

HEARING OFFICER SMITH: A hostile work environment is merged into the --

MS. WRIGHT: Well --

HEARING OFFICER SMITH: -- investigation?

MS. WRIGHT: What I mean by that is: In -- as Mr. Harmon was talking to her supervisors through this investigation to try to get to what -- what she was alleging, that there was other historical information in terms of what was going on there and -- in Greenville -- in the Greenville office, and so it -- it caused some other issues that kind of bled into the ultimate secondary investigation that was initiated by Director Adger as a result of -- you know, of the -- that -- that led to the ultimate misconduct reason for separation.

HEARING OFFICER SMITH: Ms. Atkinson, I'll

hear you.
MS. ATKINSON: My response to that would be: It seems that the Agency in their response there is admitting that that became part of this investigation, which is concerning, which certainly appears to be retaliation against an individual, who filed a complaint. So, if that's what it's being offered for, then certainly we have no objection to that. But, to the extent it is being offered to prove misconduct and that being untruthful statements, my understanding is there is nothing in that document that refers to her being untruthful in regard to that complaint. So I don't believe that would be germane to that particular issue.
HEARING OFFICER SMITH: Okay. Let -- let me offer this then: My interest in not curtailing but addressing why these are necessary is we need to move this hearing along.
MS. WRIGHT: Yes, sir.
HEARING OFFICER SMITH: Okay?
MS. WRIGHT: Okay.
HEARING OFFICER SMITH: Your witness has been

testifying quite a while and doing a good job. But the fact of the matter is that we need to stay on the path. If you have no objection to it, I'll admit it. But understand that, when I write the findings here, I'll determine what's relevant and not relevant.

MS. WRIGHT: Okay.

HEARING OFFICER SMITH: So, notwithstanding the lack of an objection -- but I just want you to be aware of that because I'm not going to write findings that are based on something that is in my view -- which you, of course, can, you know, file a motion in opposition to -- is not pertinent to determining misconduct. And I will tell you right now: I don't see that that's pertinent to misconduct. Otherwise, you could take back steps, you know, to -- let's say she had a speeding violation in an Agency vehicle --

MS. WRIGHT: Uh-huh.

HEARING OFFICER SMITH: -- you know, would you allow that to be incorporated? And that's a hypothetical. So you just have an understanding. If you have no objection --

MS. ATKINSON: Well --

HEARING OFFICER SMITH: -- then that's fine.
MS. ATKINSON: And I guess, perhaps, I should clarify. We do have an objection to that document to the extent it is being admitted to show misconduct --
HEARING OFFICER SMITH: Okay. And I've already --
MS. ATKINSON: -- that we're here today.
HEARING OFFICER SMITH: -- addressed that I will --
MS. WRIGHT: Okay.
HEARING OFFICER SMITH: -- determine whether or not it's -- it's pertinent to that. So, proceed, and I'll try and keep my mouth shut.
MS. WRIGHT: Okay. Okay. Well, I appreciate your clarifying your stance on that. And with that understood, I will not ask that this be admitted into evidence.
HEARING OFFICER SMITH: Ms. -- Ms. Wright, I'm not trying to tell you how to try your case.
MS. WRIGHT: Yes.
HEARING OFFICER SMITH: That is not my authority. But I just want you to understand that we need to move this along --
MS. WRIGHT: Yes, sir.

HEARING OFFICER SMITH: -- and stick with what's misconduct.

MS. WRIGHT: Okay.

HEARING OFFICER SMITH: Okay?

MS. WRIGHT: All right. So I'll withdraw -- having that moved into evidence.

MS. WRIGHT: So at that -- at this point, the -- the Department rests its case or rests its case with Mr. --

HEARING OFFICER SMITH: This witness? Okay.

MS. WRIGHT: -- with this particular witness.

HEARING OFFICER SMITH: All right. (To Ms. Atkinson) Would you like to cross-examine?

MS. ATKINSON: I would. Thank you, sir.

HEARING OFFICER SMITH: All right. Thank you.

CROSS-EXAMINATION OF JEFFREY HARMON

BY MS. ATKINSON:

Q All right. Is it Officer Harmon?

A Yes, ma'am.

Q All right. Officer Harmon, I believe you testified earlier that your involvement in this matter began by way of a call from the director who indicated that he had received a call from the agent in

charge of Kristin Cosby's office; is that correct?
A In regards to the matter of a sexual relationship with a subordinate, yes. But not in matters of how I became directly related into this issue with Cosby; that is a no. Because I originally had received her complaint form, and I can speak into that if you'd like for me to.
Q We can go back to that later.
A Okay.
Q Right now I'm just talking about the investigation that leads us here today and that was the investigation into the allegations about a sexual relationship with a subordinate.

So in regard to my questions about that, I believe my question was: Did you involvement begin when the director called you and said he had received a call from the agent in charge reporting allegations against Kristin Cosby?
A I may have to say no because the allegation of sexual conduct with a subordinate was actually brought up prior to that conversation when I spoke to -- with -- to Kristin about her complaint. When I was triaging her complaint about sexual harassment in the workplace, I met with her and said, "Tell me about the sexual harassment that's

going on because, you know, I want to investigate this if this is happening." And she began to -- to tell me that it was more of a -- a communication issue and she didn't like the -- the idea that her supervisors had confronted her about sexual conduct with a subordinate.

Q All right. And I believe that answer is in regard to the complaint Kristin Cosby made in October, but I'm asking you about the investigation that was opened into allegations against Kristin Cosby engaging in a sexual relationship with a subordinate.

So in regard to those specific allegations, did you become involved with that investigation, as you testified earlier, because the director indicated to you that the agent in charge had called him --

A Yes, ma'am.

Q -- to open --

A Yes, ma'am.

Q -- an investigation?

A Yes, ma'am.

Q Okay. And is that the same agent in charge whom Kristin Cosby had previously filed a complaint against?

A Yes, ma'am.
Q Okay. And did, in fact -- when specifically did -- when did you get the call from the director that he had heard from the agent in charge?
A That was November 30th.
Q Okay. And that was after Kristin Cosby had filed her complaint?
A Yes. Her complaint was triaged based on the Department policy about complaints and internal investigations. That complaint was triaged, staffed with the director, and the director decided that compliant would be remanded down to the divisional manager -- that's Deputy Director Mike Nichols -- and the regional director, Gerald Black, to handle that -- handle that complaint because the nature of the complaint went from sexual harassment to a communication issue. So, since it was not a sexual harassment issue, it was a communication issue with the supervisors, it was remanded down to the deputy director.
Q Okay. But, again, that's all related to the separate complaint that Kristin Cosby had previously filed against the agent in charge prior to the investigation that brings us here today; is that correct?

A Yes.
Q All right. And I believe you testified earlier that the agent-in-charge had called the director and indicated that Nicole Albany had reported having a consensual sexual relationship with Kristin Cosby; is that correct?
A Yes, ma'am.
Q Okay. Is it your understanding, per what was reported, that that relationship reported had actually or allegedly occurred 3 1/2 years prior?
A Yes, ma'am.
Q All right. I believe you also testified earlier -- you made some statement that perhaps Nicole Albany had reported sexual harassment or you referred to her report about Kristin Cosby as "sexual harassment."
A Yes, ma'am.
Q Is that correct?
Given that the incident that led to her complaint happened 3 1/2 years prior to this investigation being opened, would it not be -- be your understanding that the statute of limitations for a sexual harassment complaint had --
MS. WRIGHT: I'm -- I'm going to object --
Q -- long since passed?

MS. WRIGHT: I'm going to object to that.
HEARING OFFICER SMITH: Yeah. I'm going to ask a question. When you're talking about "sexual harassment," you're talking about from a criminal standpoint or in terms of filing a civil action?
MS. ATKINSON: I am referring from the standpoint that he testified that an employee was making allegations of sexual harassment in the workplace.
HEARING OFFICER SMITH: I -- I understand that. But are you talking about -- with respect to the statute of limitations, that before an action -- civil action could be filed or --
MS. ATKINSON: That is --
HEARING OFFICER SMITH: -- an EOC investigation?
MS. ATKINSON: That is correct.
HEARING OFFICER SMITH: Okay. And the relevance of that to misconduct is? I mean, I will certainly allow it if you're talking about whether the statute of limitations on any type of criminal behavior, which there is not in South Carolina.

MS. ATKINSON: It's fine. And I'll be happy to withdraw that question.

HEARING OFFICER SMITH: It's up to you.

MS. ATKINSON: I'm happy to withdraw that question. But I -- I don't think --

HEARING OFFICER SMITH: Okay.

MS. ATKINSON: -- there's any argument that the complaint made by this individual occurred 3 1/2 years after the time that she was concerned about it; is that correct?

HEARING OFFICER SMITH: And I think he -- he has acknowledged that.

WITNESS HARMON: That's correct.

HEARING OFFICER SMITH: Okay. Go ahead.

THE EXAMINATION BY MS. ATKINSON CONTINUES.

Q All right. At that time -- and I believe as you -- you advised Kristin Cosby an allegation of an -- or an agent having a sexual relationship with a subordinate was not a terminable offense; is that correct?

A Yes, ma'am.

Q Okay. In fact, having such a relationship at that time was not a violation of any Agency policy; is that correct?

A Yes, ma'am.

Q Okay. All right. And regardless, an investigation was opened and you met with Kristin Cosby on multiple occasions about that, did you not?
A Two occasions.
Q Okay. And I believe the first occasion, was that December the 7th?
A Yes, ma'am.
Q All right. And I believe you testified earlier that on that date you said you had a very narrow question for her and asked if she had had a sexual relationship with Nicole Albany; is that correct?
A Yes, ma'am.
Q And I believe you testified that she said she did not have a sexual relationship with Nicole Albany, correct?
A Yes, ma'am.
Q Okay. All right. And I believe you also testified that you had specifically advised Ms. Cosby during that initial meeting on December the 7th that she could take some time to think about her statement and, if she had further information to offer, she could do that; is that correct?
A Yes, ma'am.
Q Okay. And I believe you testified that was because oftentimes a witness will be shocked by the

question and I think you referred to blood pressure and that sometimes they need time to think it through?

A Yes, ma'am.

Q Okay. And in this instance, the questions you had raised to Kristin Cosby during that meeting were about an incident that had happened 3 1/2 years prior; is that correct?

A Yes, ma'am.

Q All right. And did Kristin Cosby subsequently contact you and tell you she did want to provide a follow-up statement?

A Yes, ma'am.

Q Okay.

A She did state she wanted to amend her statement.

Q Okay. And did the -- she then meet with you again on December the 10th?

A Twelfth.

Q Okay. Excuse me, on December the 12th. And during that meeting on December the 12th, she did advise you at that time that the complaining individual, Nicole Albany, had, in fact, sexually come onto Kristin Cosby 3 1/2 years prior; is that not correct?

A That is correct.

Q Okay. Did she not also tell you during that time she had previously advised her agent in charge about Nicole Albany making sexual advances towards her?
A That's what she said. Yes, ma'am.
Q Okay. And did she also not tell you at that time that she had specifically asked for Nicole Albany to be reassigned due to her concerns about those sexual advances?
A She -- she did say that. Yes, ma'am.
Q Okay. All right. I don't believe -- do you recall specifically your conversation with Kristin Cosby on December the 12th, 2018?
A I do recall the conversation.
Q Okay. Do you recall her -- do you recall Kristin Cosby advising you that Nicole Albany had, in fact, tried to pull down Kristin Cosby's pants and had attempted to perform oral sex on her?
A She did not tell me that.
Q Okay.
A She stated that she came on to her and she brushed her off.
Q Okay.
A The only time that she stated that she attempted to pull down her pants was my observation during the

polygraph.
Q Okay. So your testimony today is: You don't recall Kristin Cosby providing you with any statement on December the 17th -- or, excuse me, December the 12th, that Nicole Albany tried to perform oral sex on Kristin Cosby?
A She stated that she came onto her and she brushed her off.
Q Okay. So is that a yes or no to my question about whether or not you recall Kristin Cosby telling you that Nicole Albany had tried to perform oral sex on her 3 1/2 years prior?
A Let me check my notes to make sure. No. Oral sex was not brought up at that time.
Q All right.
MS. ATKINSON: (To the hearing officer) We may need to take a break at this time. I think we have a recording that has been provided by the Agency in regard to the questioning that we may need to present.
HEARING OFFICER SMITH: Okay. And will you continue examination of this witness after that?
MS. ATKINSON: I will. So if -- if you would like, I can -- I can --

HEARING OFFICER SMITH: That's --
MS. ATKINSON: -- move forward and we come back to the issue --
HEARING OFFICER SMITH: No, no.
MS. ATKINSON: -- if that would expedite. I know that we are coming up --
HEARING OFFICER SMITH: No, no.
MS. ATKINSON: -- two hours.
HEARING OFFICER SMITH: No, no. That's -- it's not the two-hour thing that I'm worried about.
MS. ATKINSON: Okay.
HEARING OFFICER SMITH: I just need to make sure that, you know, we do this in an expedient fashion, because I actually have a couple of follow-up questions I wanted to ask the witness, as well, so --
MS. ATKINSON: Okay.
HEARING OFFICER SMITH: -- we can go off record, if you want to.
MS. ATKINSON: Okay. I am going to need to go get a computer out from my car and set it up --
HEARING OFFICER SMITH: For what?
MS. ATKINSON: -- so -- to play the recording.

I do have it --

HEARING OFFICER SMITH: You can play it right here.

MS. ATKINSON: Great.

HEARING OFFICER SMITH: Yeah. I'll step out and I'll just ask Chris or Ethan to come get me when y'all have had a chance to look at it. You know, if you can stipulate to it, that's fine. If not, then we will do what we need to do when we get back.

(Off the record from 11:44 a.m. until 12:07 p.m.)

HEARING OFFICER SMITH: All right. Let's go -- let's get back in the flow then. Go ahead.

MS. ATKINSON: Okay. To get back in and, just for the record, I believe we have stipulated to the admissibility of the recorded -- or the recording of the questioning of Kristin Cosby by Jeff Harmon on December 12th, 2018, and specifically in regard to that segment, appearing at one minute and forty-five seconds until shortly after three minutes. And again, I believe the State has stipulated to that being on that date.

THE EXAMINATION BY MS. ATKINSON CONTINUES.

Q So, Agent Harmon, again, your testimony here today is that on that date, on December 12th, 2018, Kristin Cosby did not tell you that Nicole Albany tried -- tried oral sex or said there was no oral sex but that Agent Albany tried.

A What she stated was, "There was no oral sex," paused, and then said "tried something."

Q Okay. So your -- your recollection of the video that we reviewed just now was not that she said, "There was no oral sex, but she tried"?

A Tried something.

HEARING OFFICER SMITH: Is this a video or an audio?

MS. ATKINSON: It's an audio.

HEARING OFFICER SMITH: Okay. All right.

MS. ATKINSON: All right.

A Because I can't --

Q So you don't -- you don't agree with my restatement of what that recording says?

A I -- I could not be definitive because she said "oral sex" and then said "tried something," so she didn't reaffirm oral sex. She said, "tried something."

HEARING OFFICER SMITH: Okay. Will that appear in the recording?

MS. ATKINSON: It will appear in the recording.

HEARING OFFICER SMITH: All right. Whatever was said.

MS. ATKINSON: All right.

HEARING OFFICER SMITH: Okay.

Q So I guess we can both agree that the hearing officer can listen to that recording and determine whether or not that was said; is that correct?

A Yes, ma'am.

Q All right. And if the recording did, in fact, say she -- if the recording did, in fact, have Kristin Cosby saying that Nicole Albany -- in regard to Nicole Albany that there was no oral sex but she tried, would it not be true that Kristin Cosby would've disclosed on that date that Nicole Albany had tried to perform oral sex?

MS. WRIGHT: Object, Your Honor. It calls for speculation.

HEARING OFFICER SMITH: I don't think he can -- I will sustain the objection. He can't speculate as to what she might have said or might not have said.

MS. ATKINSON: Well, my -- my question to him was specifically in regard to if -- if that's

-- if she says that "she tried," is that not her disclosing on that date, and I think that's highly relevant, and it's not speculative as to whether she said it or not. And I think it's highly relevant.

HEARING OFFICER SMITH: You can -- you can ask him if he said that -- if she said that. I'm sorry.

MS. ATKINSON: All right.

HEARING OFFICER SMITH: But I don't think he can speculate as to whether she would have said something different.

MS. ATKINSON: All right.

HEARING OFFICER SMITH: So to the -- the extent that you're asking speculation, I'll sustain the objection. Otherwise, if you'll just clarify it.

MS. ATKINSON: All right. Let me -- let me try to restate my question --

HEARING OFFICER SMITH: Please do. Thank you.

MS. ATKINSON: -- then if that would help.

HEARING OFFICER SMITH: No problem.

Q If her statement on that recording that the hearing officer is going to listen to is Kristin Cosby saying, "There was no oral sex, but she tried," is

that not Kristin Cosby disclosing that Nicole Albany had tried to perform oral sex on her?

A Well, the full statement is "she tried" and then paused and said, "tried something."

HEARING OFFICER SMITH: Okay. Just answer her question, please.

Q My question to you was if she said, "There was no oral sex, but she tried," would you not agree that that would be Kristin Cosby saying that Nicole Albany tried to perform oral sex?

A If she stopped at that statement, yes.

Q All right. Thank you.

HEARING OFFICER SMITH: Thanks. All right. Anything additional here?

MS. ATKINSON: Just a few -- not on that, but just a few additional questions.

HEARING OFFICER SMITH: Okay.

Q All right. And again, that December the 12th, 2018, questioning of Kristin Cosby was occasioned because she told you she had additional information to provide; is that correct?

A Said she needed to amend her statement.

Q Okay. And her telling you she wanted to amend her statement was after you had told her during her previous interview that, if she wanted to do that,

she could?
A Yes, ma'am.
Q Okay. And that was after your telling her that this -- this issue had been a long time prior to her questioning?
A Yes, ma'am.
Q Okay. And when she came back to you on December the 12th, 2018, and provided the amendment statement, did she not ask you some clarifying questions to determine the exact period of time you were questioning her about?
A Yes, ma'am.
Q Okay. All right. Agent Harmon, I believe you were presented with what was marked as State's Exhibit Number 3, which was "Summary of Findings." Do you have that document in front of you?
HEARING OFFICER SMITH: Where are the -- the --
THE COURT REPORTER: They were right here.
HEARING OFFICER SMITH: Where are the exhibits? Oh, I have them. Which -- which exhibit? I'm sorry.
MS. ATKINSON: It's State's Number 3.
HEARING OFFICER SMITH: Sure. Hold on one second here. Okay. Okay. I'm handing the

witness State's Exhibit 3. Okay. I also handed the witness State's Exhibit 1.

MS. ATKINSON: All right. Thank you.

Q Agent Harmon, looking at State's Exhibit Number 3, I believe that document is titled "Summary of Findings," and I believe you testified earlier this is the document you prepared for the director of the Agency; is that correct?

A Yes, ma'am.

Q Okay. And the date of this document is December the 18th, 2018, correct?

A Yes, ma'am.

Q And I believe it was your testimony that this had a statement about action that the director filled in about what action was needed following your investigation, correct?

A Yes, ma'am.

Q Are you aware as to whether or not this document was ever provided to Kristin Cosby?

A The "Summary of Findings"? This document?

Q (Nods head up and down.)

A No, ma'am. It was not.

Q Okay. Are you aware as to whether or not the Agency ever provided Kristin Cosby with information contained in that "Summary of Findings" and any

recommendations from that?
A No, ma'am.
Q Okay.
HEARING OFFICER SMITH: Is that a no?
WITNESS HARMON: No -- yes, sir. That's no.
Q All right. And then, Agent Harmon, I would direct your attention to Exhibit Number -- what was marked as State's Exhibit Number 4, please.
HEARING OFFICER SMITH: Okay. I'm handing the witness Exhibit 4. Can I place three back over here?
MS. ATKINSON: Yes. Thank you.
HEARING OFFICER SMITH: All right. Thank you.
Q All right. Agent Harmon, in regard to State's Exhibit Number 4, again I believe you testified that that was a complaint submitted by Kristin Cosby on October 19, 2018; is that correct?
A Yes, ma'am.
Q Okay. And in that document, Kristin Cosby is reporting specific concerns she has about her agent in charge and her assistant agent in charge; is that correct?
A Yes, ma'am.
Q Okay. And specifically in that document she notes that she feels afraid to go to work because of

those two individuals; is that correct?
A Yes, ma'am.
Q All right. And again, this complaint was filed prior to the investigation into Agent Cosby for this alleged relationship with Nicole Albany; is that correct?
A Yes, ma'am.
Q And again, just for clarification, is it the same agent in charge who is listed in that complaint noted in State's Number 4? Is that not the same agent in charge who began the investigation or requested the investigation into Kristin Cosby in November of 2018?
A Yes, ma'am.
Q All right. Thank you.
MS. ATKINSON: No further questions for this witness.
HEARING OFFICER SMITH: All right. (To Ms. Wright) Do you have any redirect?
MS. WRIGHT: Yes, sir.
HEARING OFFICER SMITH: Okay.
MS. WRIGHT: Just a -- just a couple of quick questions.

REDIRECT EXAMINATION OF JEFFREY HARMON

BY MS. WRIGHT:
Q Mr. Harmon, just to -- just to be clear, and -- and again, the counsels, we did stipulate to allowing

the audio portion of the first interview that you had with Ms. Cosby on, I believe that was, December the 7th during your investigation into those allegations. Within the portion of the audio, particularly segments four -- four ten through four thirty-one, do you recall telling Ms. Cosby that -- that, as far as you were aware the -- the -- or -- or -- or what the director told you was that employees typically aren't -- aren't terminated for having such relations with their subordination but would be terminated for lying; is that correct?

A Yes, ma'am.

MS. ATKINSON: I object to the -- to the leading form of that question. This is directing her witness --

MS. WRIGHT: Can -- can we --

HEARING OFFICER SMITH: Yeah. Yeah. Please don't lead. I'm going to allow it this time --

MS. WRIGHT: Uh-huh.

HEARING OFFICER SMITH: -- but you need to stop leading your witness, okay?

MS. WRIGHT: Okay. All right.

HEARING OFFICER SMITH: I'll -- I'll overrule that.

Q Okay. Secondly, going back to what Ms. Atkinson asked you on cross earlier in regards to the -- to the conversation you had with Ms. Cosby on December the 12th, in terms of what Ms. Cosby told you then, is -- within that statement, it's -- it -- it was noted that a change in statement -- or a change of Ms. Cosby's statement was made at that time, right?
A Yes, ma'am.
Q Okay. And -- and -- and did -- did Ms. Cosby take any responsibility for the allegation at that point?
A No. What Ms. Cosby said was maybe -- maybe she was going to try oral sex. She did not know. She was going to try something, and then, as she progressed through the interview, I asked the statement again, was there any sexual conduct that occurred between her and the subordinate, and she again stated, "No."
Q Okay. So it was a continual denial?
A Yes.
Q I have no -- no further questions.
HEARING OFFICER SMITH: All right. A housekeeping matter here. We've had statements and testimony about the audio exhibit. Is the State going to

introduce that as five, or is that going to be Respondent's Exhibit, or how are you going to do it, since obviously you want me to review it?

MS. ATKINSON: If you'd like to put it in, I know I asked about it first, so it could be Respondent's Exhibit Number 1.

HEARING OFFICER SMITH: Either -- either way. However y'all want to do it.

MS. WRIGHT: That's fine.

HEARING OFFICER SMITH: -- I just need to make sure that it's -- that it's in the record.

MS. ATKINSON: And for the sake of clarification, there are two separate recordings, so perhaps the -- the December 12th, 2018 --

HEARING OFFICER SMITH: Are they all on one disk?

MS. ATKINSON: They are.

HEARING OFFICER SMITH: Okay. So there are two dates. What are the dates again?

MS. ATKINSON: That's right. The first -- the one that I introduced is from December the 12th, 2018.

HEARING OFFICER SMITH: And that's -- what's the time bracket on that?

MS. ATKINSON: The time bracket on that one I want --

HEARING OFFICER SMITH: One forty-five to three minutes?

MS. ATKINSON: That's right.

HEARING OFFICER SMITH: And the other one is what?
MS. ATKINSON: The other one was December the 7th, 2018, and I think the time bracket identified by Ms. Wright was four minutes and ten seconds to four minutes --
HEARING OFFICER SMITH: To four thirty-one?
MS. ATKINSON: Four thirty-one.
MS. WRIGHT: Yes, sir.
HEARING OFFICER SMITH: All right. But those both appear on the same DVD --
MS. ATKINSON: They --
HEARING OFFICER SMITH: -- or CD, or whatever?
MS. ATKINSON: They do.
MS. WRIGHT: Yes, sir.
HEARING OFFICER SMITH: Ms. Wright, do you want to introduce that or -- it --it matters not to me. I just need to make sure we get it in the record.
MS. WRIGHT: Certainly. I mean, I -- I would like to introduce the evidence of the disk that was supplied by -- by Ms. Atkinson earlier. I believe that Mr. --
HEARING OFFICER SMITH: Brumlow?
MS. WRIGHT: -- Brumlow over there has that already, and he -- he did play that in recession.
HEARING OFFICER SMITH: Okay. So for clarification --

MS. WRIGHT: I'm sorry. Okay.
HEARING OFFICER SMITH: -- both of these interviews or commentaries appear on the same physical medium, okay?
MS. WRIGHT: Yes, sir.
HEARING OFFICER SMITH: And you had asked initially that the December 12th version be admitted from one forty-five to three, and you're asking that the December 7th version four ten to four thirty-one be admitted; is that right? We've agreed on those.
MS. ATKINSON: That's correct.
MS. WRIGHT: Yes, sir.
HEARING OFFICER SMITH: Okay. So again, it makes no difference to me who introduces it. I just need to be able to review it.
MS. ATKINSON: If you would like to put it as Respondent's Exhibit Number 1, I think that might be appropriate, since we asked --
HEARING OFFICER SMITH: Okay. Is that fine by you?
MS. WRIGHT: That's fine.
HEARING OFFICER SMITH: All right. Then, Chris, we have the DVD there?
MR. BRUMLOW: It's a flash drive, sir.
HEARING OFFICER SMITH: Pardon me?
MR. BRUMLOW: It's a flash drive.

HEARING OFFICER SMITH: It's a flash drive.
MR. BRUMLOW: Yes, sir.
MS. ATKINSON: And for the sake of clarification, there is a password for that drive that was provided by the State, and the copy of the document with the password is with --
HEARING OFFICER SMITH: All right. Here's what I'm going to do, if it's agreeable to you: Ethan or Chris, can you run back and get a DVD and burn whatever it is to the DVD because I'm not taking possession of a flash drive, okay? And if that's agreeable, we're on the record here that -- I don't know if y'all need to review it again, or I'll let you actually burn it to the DVD. That's what we will put in with the evidence, not the flash drive.
MS. WRIGHT: Okay.
HEARING OFFICER SMITH: Is that acceptable?
MS. ATKINSON: That's acceptable. Yes.
HEARING OFFICER SMITH: Okay. Pending Investigator Brumlow coming back with the DVD, any additional questions from y'all, because I have a couple of follow-up questions?
MS. ATKINSON: I did have one follow-up question --
HEARING OFFICER SMITH: Okay.
MS. ATKINSON: -- in follow-up to redirect.

HEARING OFFICER SMITH: Okay. Go ahead. Recross.

RECROSS-EXAMINATION OF JEFFREY HARMON

BY MS. ATKINSON:

Q My question, you were -- Agent Harmon, you were just asked about what Kristin Cosby specifically told you on December the 12th, 2018, and indicated that she noted that Nicole Albany had tried something. Did you ask any specific questions to determine what specifically Nicole Albany had tried?

A Specific questions? No, ma'am.

Q Okay. Thank you.

MS. ATKINSON: No further questions.

HEARING OFFICER SMITH: Okay. All right. I have a couple of follow-up questions just to clarify testimony that was given earlier.

EXAMINATION OF JEFFREY HARMON

BY HEARING OFFICER SMITH:

Q I believe on cross-examination you had testified that -- and correct me if I'm wrong here -- that you'd advised Ms. Cosby that having sex with a subordinate was not a violation of policy; is that correct?

A That's correct.

Q Okay. Then my follow-up question to that is that

through whatever mechanism, and I'm not going to get into what Director Adger said or didn't say, you were directed to initiate an investigation into OPR; is that correct?

A Yes, sir.

Q Was the direction to investigate based on a violation of policy?

A Direction to investigate was in response to the complaint by Nicole Albany.

Q Okay. Was it alleged to be misconduct or violation of policy? I'm trying to figure out why we're here.

A Originally, it was alleged that it was harassment because her -- her income was hurt by the ending of the relationship.

Q So is there a violation of policy or just a general, either quid pro quo or a hostile environment complaint? I just want to know why we're here.

A The nature would've been a hostile work environment if the relationship ended and also the income was hurt by the person who was in the relationship with a -- with a -- with a person that's in their chain of command.

Q Okay. So tell me if this is a correct statement,

and you can consult your counsel if you want to, but what I'm hearing you say is that, because of the allegation and the -- the employment outcome that resulted from the alleged behavior, the director of the Agency instructed you to initiate, or someone on his behalf instructed you to initiate an investigation; is that correct?

A Yes, sir.

Q So at the time that the investigation was initiated, it was into what could be classified, or I will characterize, as an EEOC-type matter as opposed to a misconduct matter?

A Yes, sir.

Q Is that correct?

MS. WRIGHT: Could -- could I have a moment --

HEARING OFFICER SMITH: You can't testify, but you can consult with him if you want to.

MS. WRIGHT: Can I consult with the --

HEARING OFFICER SMITH: Yes.

MS. WRIGHT: -- witness, please? Okay.

HEARING OFFICER SMITH: Okay?

MS. WRIGHT: Okay.

Q So my clarification, then, you consulted with your attorney. The initial investigation, or the investigation that you were directed to initiate --

OPR was directed to initiate was based on this what I've termed an "EEOC matter," and not an allegation of misconduct?

A It was a -- it -- it was really to find the truth, what was the facts in what the circumstances were.

Q All right. Are you stating this -- because that's contrary to what you stated earlier, are you stating this after consultation with counsel? Has she clarified it for you? I need you to be straightforward.

A She clarified.

Q What were you asked to investigate?

A She clarified it. It was -- it was to find the facts.

Q To find the facts?

A It was -- it's all a fact-finding mission.

Q But the facts were related to what I've clarified or what I've characterized as an EEOC-type issue?

A The facts were that she -- this person had supposedly had -- did not know if she had a sexual relationship with a subordinate, so a sexual relationship with a subordinate that led to a problem with employment would have been an EE -- EEOC issue.

Q Okay. But having sex with a subordinate is not a

violation of PPP policy, is it?
A No, sir.
Q That's what you testified to.
A No, sir.
Q So we weren't investigating a violation of policy?
A No, sir.
Q We're investigating someone's complaint saying that this behavior was inappropriate; is that correct?
A Yes, sir.
Q Okay. So it was not alleged that it was misconduct; is that correct?
A Yes, sir.
Q It was alleged that it was improper conduct in the context of, again, what I've characterized as an EEOC matter, correct?
A Yes, sir.
Q Okay. Just a couple of other follow-up questions in that regard. So at the point in time that you initiated the misconduct -- said this hearing officer with fingers making, whatever those are called --
A Uh-huh.
Q -- quotation marks -- "the misconduct investigation," there was no -- and correct me if I'm wrong in this statement: There was nothing

that you were investigation -- investigating that would have been classified as misconduct either under the Criminal Justice Academy regulations or the statute? Are you familiar with the definition of misconduct --

A Yes, sir.

Q -- under the statute and also the regulations?

A Yes, sir.

Q Okay. And this behavior that was being investigated occurred when? The allegation of seeking sexual contact or whatever, when did that occur?

A That supposedly occurred three years prior.

Q Okay. And what would that time frame have been? Ballpark it. Would it have occurred prior to May 15, 2018?

A That would have been before that.

Q So it occurred prior to, let's say, May of 2018, correct? Are we talking about 2015, 2016?

A I've got a timeline here. Let me look and see. Supposedly the incident occurred somewhere in the time frame of December '15 -- 2015.

Q So December '15 -- okay. W

When did your investigation conclude?

A Investigation concluded?

Q Yeah. Or let me ask -- let me back up.

When did you start your investigation -- the OPR investigation?

A The -- the investigation started when -- when I got the phone call.

Q Which was when?

A That is the date of the OPR investigation, reference number, which is --

Q Just tell me the date.

A -- State's -- I've got to go back and find my notes. 11/30/2018.

Q 11/30 of?

A 2018.

Q 2018. So this matter -- and I'm not sure I'm clear on this. When was the matter of the contact reported? This improper contact. Was that reported in December 2015?

A When was the matter of the contact reported to whom?

Q You apparently had a subordinate or someone who complained that Ms. Cosby had engaged in improper contact. When was that reported?

A I can't speak to when that was reported --

Q You don't know?

A -- because that's to someone else. All I got was

that an incident occurred, and I need to investigate it.

Q Okay. But it was -- were you made aware in the course of your investigation of the facts that stated that it occurred in December 2015?

A Yes, sir.

Q Okay. And how were those facts established? Who stated that it occurred then and when was it reported to the Agency?

A Well, you said not to say hearsay.

Q I'm not asking you to tell me what they said.

A Oh.

Q I'm asking you to tell me --

A Oh, okay. Okay.

Q -- when it was reported, so there's a difference.

A When it was reported.

Q Yeah.

A Okay. It was reported to me November 30th.

Q When was it reported to the Agency?

A I don't have the director's notes of when it was reported to him.

Q Okay.

A I can go back and look at my notes to see if in my conversation with him if I -- if I recorded when AIC Gambrell reported it to Director Adger.

Q Okay. So that's not something that you covered in the course of your investigation, when they --
A No, sir.
Q -- when it came to the Agency's notice?
A No, sir. No. I was told it would just be a --
Q Okay.
A -- it was factfinding adventure.
Q Okay. So in the course of your factfinding investigation into misconduct that we agree occurred in December of 2015, you're investigating something that was not under either the regulation or -- there was no statute at that time -- classified as misconduct; is that correct?
A Yes, sir.
Q So you're investigating, again, to use my characterization, an EEOC-type matter? Yes or no?
A Yes, sir.
Q And is it a true statement that, but for that non-misconduct investigation, we wouldn't be here today because the substance of what we're here about is the allegation that Ms. Cosby did not truthfully state information concerning the investigation; is that correct?
A No, sir. That would not be correct, because there was a --

Q All right Then why are we here today? What was the basis of the investigation?
A There was -- there was an initial complaint that was born as Ms. Cosby's complaint that --
Q I'm talking about your misconduct investigation. You investigated this woman sitting over here, correct?
A Yes, sir.
Q And the basis of that investigation is you apparently prepared some summary for your HR department was that she was not truthful; is that correct?
A Yes, sir. That's true.
Q Okay. And but for the fact that you had been investigating this prior EEOC-type characterization, there never would have been any interview of her which resulted in what you're claiming was non-truthfulness; is that correct?
A I did interview her before that investigation started.
Q The investigation that you conducted when you --
A For misconduct?
Q -- sent her for a polygraph -- yes for misconduct.
A Yes.
Q That's why we're here: misconduct.

When you sent her or told her that, you know, you're going to offer a polygraph, that investigation, but for your having offered that polygraph based on investigating this EEOC-type complaint, there never would have been an issue of her not stating the truth according to the allegations, correct?

A That would be correct.

Q That's correct.

HEARING OFFICER SMITH: Okay. I have no other questions. May this witness be excused?

MS. ATKINSON: I do have one follow-up question just for clarification. It -- I -- I believe, and I -- there may be a difference of the date of the incident, if I may be permitted to ask a -- or the witness one question about that.

HEARING OFFICER SMITH: Okay. First, let me ask: (To Ms. Wright) Do you want to redirect on that or -- but I'm not going to get into consultation again, because the witness testifies as to what he testifies to. We're 2 1/2 hours into this, and we need to move along.

MS. WRIGHT: Yes.

HEARING OFFICER SMITH: Do you have anything else you want to ask quickly?

MS. WRIGHT: Actually, I was going to clarify on the date of the actual incident as well so I --
MS. ATKINSON: Can we stipulate to that?
MS. WRIGHT: Yeah.
HEARING OFFICER SMITH: How can -- how would you clarify that? He is the investigator.
MS. WRIGHT: Well, I -- I think there might be a -- you mentioned that the incident occurred, I believe he testified to it occurring December of 2015. I -- I do believe it did occur in 2015, but I believe it may have occurred earlier than December of 2015. I -- I want to say May?
MS. ATKINSON: May of 2015.
MS. WRIGHT: Okay.
HEARING OFFICER SMITH: Okay.
MS. WRIGHT: Yes, sir.
HEARING OFFICER SMITH: All right. Well, counsel--
MS. ATKINSON: Yeah. We can stipulate to that.
MS. WRIGHT: Okay.
HEARING OFFICER SMITH: -- then we will just -- unless the -- this investigator has some different recollection, we will accept that it occurred prior to December 2015, but in all events, prior to May of 2018, which is the effective date under which she's been charged.

MS. WRIGHT: Uh-huh.
HEARING OFFICER SMITH: That's when the statute became effective, okay?
MS. WRIGHT: Okay. The statute of the misconduct you mean?
HEARING OFFICER SMITH: Yeah.
MS. WRIGHT: Okay.
HEARING OFFICER SMITH: That's what you charged her under is 23-150.
MS. WRIGHT Right.
HEARING OFFICER SMITH: It was not effective until May 18th of 2018, okay?
All right. Other questions of this witness? May he be --
MS. ATKINSON: No further --
HEARING OFFICER SMITH: -- excused permanently?
MS. ATKINSON: Yes, sir.
MS. WRIGHT: Can -- can I temporarily reserve the right to recall him?
HEARING OFFICER SMITH: You can recall him as a -- as a rebuttal witness.
MS. WRIGHT: Okay.
HEARING OFFICER SMITH: But I imagine he's probably tired of sitting here listening to me talk on and on. (To Witness Harmon) And you can acknowledge

that's true. That's all right.

(To Ms. Wright) So he can be excused at this point in time?

MS. WRIGHT: Yes.

HEARING OFFICER SMITH: Thank you, Investigator Harmon. All right. Who's the next witness?

MS. WRIGHT: The State's next witness is Lieutenant Bryan Jones.

HEARING OFFICER SMITH: Okay. And who is Lieutenant Bryan Jones?

MS. WRIGHT: He is the polygraph examiner who examined Ms. Cosby.

HEARING OFFICER SMITH: Okay. And just kind of as a --

MS. ATKINSON: Thank you very much.

HEARING OFFICER SMITH: -- as a matter in limine here --

MS. WRIGHT: Uh-huh.

HEARING OFFICER SMITH: -- let me just refresh your recollection. You're not testifying -- but everyone's recollection: I'm not going to allow him to testify to anything related to the polygraph exam itself. If you intend to offer him to testify about a pre-polygraph interview and then a post-polygraph discussion, that's fine But the moment we start getting into the polygraph itself, the results, demeanor of the witness at that point in

time, it's going to get cut off. So please keep that in mind.

MS. WRIGHT: Okay.

HEARING OFFICER SMITH: Okay.

MS. WRIGHT: The pre-polygraph and the post-polygraph?

HEARING OFFICER SMITH: That's what you can talk about.

MS. WRIGHT: Yes, sir. Okay.

MS. ATKINSON: Do we want to mark that?

HEARING OFFICER SMITH: Yeah. When we -- let me -- are we still on record here? Okay. I have the DVD that Investigator Brumlow has burned, so we'll go ahead and -- do we want to do that? Did we agree it's a Respondent's Exhibit, or do you want to do it as State's 5?

MS. ATKINSON: It's fine as a Respondent's exhibit.

HEARING OFFICER SMITH: All right. We'll mark that as Respondent's Exhibit 1 then, and that's without objection. All right. Great.

Respondent Exhibit Number 1, Burned CD of two audio interviews.

MS. WRIGHT: And I just have a question for off the record. I guess just some housekeeping.

THE COURT REPORTER: Are we off?

HEARING OFFICER SMITH: Oh, wait. Hold on a second. Do you want to go off the record?

MS. WRIGHT: For just a moment, sir.
HEARING OFFICER SMITH: Yeah. Let's go off the record, please.
(Off the record from 12:35 p.m. until 12:37 p.m.)
HEARING OFFICER SMITH: And you have Lieutenant Jones' identification?
THE COURT REPORTER: Thank you.
LIEUTENANT JONES: There you go. The address is wrong, but I didn't know if you needed that.
THE COURT REPORTER: That's okay.
LIEUTENANT JONES: All right. Thanks.
THE COURT REPORTER: Can you attach that microphone?
HEARING OFFICER SMITH: That lavalier, if you'll just put it on.
LIEUTENANT JONES: Okay.
HEARING OFFICER SMITH: All right. We're ready to swear the witness, please.
(The witness is sworn.)

DIRECT EXAMINATION OF BRYAN JONES

BY MS. WRIGHT:
Q Please state your name for the record.
A Bryan Jones.
Q Okay. And -- and what is your profession?
A I'm the lieutenant over the SLED polygraph unit.

I'm also the chief examiner for the State.
Q Okay. And how long have you been employed at SLED?
A About 12 1/2 years.
Q Okay.
A Oh, wait. I'm sorry. Almost 12 years so 11 1/2.
Q Okay. And could you please describe any trainings or certifications you've received in polygraph examination?
A Sure. I graduated from the Department of Defense Polygraph Institute in 2006, got the basic Psychophysiological Detection of Deception Certificate there. And since then, I've attended numerous training topics including elicitation or interrogation, test data analysis, test question construction, utilizing different formats with polygraph, identifying countermeasures, several different topics related to polygraph.
Q Okay. And so, in regards to today's matter, how did you become involved with this case?
A My assistant chief called me and asked if I would do a polygraph for probation on a -- on -- on this case, and I got in touch with Jeff Harmon. And he briefed me on the case, we scheduled the test, and it went from there.
Q Okay. So can you tell us about your -- your

methodology as you began the --

HEARING OFFICER SMITH: Let me interject here.

MS. WRIGHT: Okay.

HEARING OFFICER SMITH: Are we going to get into how he conducts a polygraph? galvanic skin response? all that kind of stuff?

MS. WRIGHT: Okay.

HEARING OFFICER SMITH: Or are you just --

MS. WRIGHT: I can --

HEARING OFFICER SMITH: -- asking him whether he's certified and if he came over that day?

MS. WRIGHT: Okay. I can -- I can -- I can move forward --

HEARING OFFICER SMITH: Okay. Please do.

MS. WRIGHT: -- with a different question.

Okay.

Q At this point, I would like to -- I'm going to show this to her first.

MS. ATKINSON: Sure. No problem.

MS. WRIGHT: Okay. (To Mr. Smith) I'm going to ask that he identify --

HEARING OFFICER SMITH: Okay.

MS. WRIGHT: -- what that is.

HEARING OFFICER SMITH: Sure.

A Okay.

Q Okay.
A This document is our consent form for the use of the polygraph.
Q Okay. And so that -- that is a form that is a SLED form; is that right?
A Yes. That's correct.
Q Okay. And so -- so is this something that you -- you gave to or that you went over with Ms. -- I mean, with Ms. Cosby prior to the polygraph?
A Yes. Yes. I did.
Q Okay. And could you tell us those -- those two subheadings right there and there on the -- on -- that are underlined portion there and there --
A Okay.
Q -- what it states on it?
A So the first -- the first section here is -- basically says your rights. "You have the right to refuse to take the polygraph test. If you agree to take the polygraph test, you have the right to stop the test at any time. If you agree to the polygraph test, you have the right to refuse to answer any additional questions."

And then the -- the second section says, "I've read the statement of rights and understand what my rights are. I voluntarily agree to be examined by

means of polygraph during this interview. I understand and know what I'm doing. Neither threats nor promises have been made to me to obtain my consent for use to -- for the use of the polygraph. I understand the examination room does contain observation devices and the examination may be monitored or recorded."

Q Okay. And those look like initials along the -- the side of the form there. Can you tell us whose initials those are?

A Sure. Those are Kristin's initials. I witnessed her initial those, saying that she understood them as we -- after we went over them.

Q Okay. And could you tell us the date that on --

A Sure.

Q -- of that, when that was signed?

A December 17th of 2018.

Q Okay.

MS. WRIGHT: I would ask that this be moved into evidence and marked, please --

HEARING OFFICER SMITH: Okay. Any objections?

MS. ATKINSON: No objections.

HEARING OFFICER SMITH: All right.

MS. WRIGHT: -- as State's exhibit.

HEARING OFFICER SMITH: That'll be -- is that

State 6?

THE COURT REPORTER: Six.

HEARING OFFICER SMITH: Okay. Without objection. Okay. I see that.

State Exhibit Number 6, "Consent To Interview with Polygraph."

Q Do you recall if Jeff Harmon was present on the day of the exam?

A He was.

Q Okay. Prior to the exam, did you ask Ms. Cosby if she engaged in sexual activity with a subordinate?

A Yes. I did.

Q And what was her response?

A No.

Q After the exam, did you ask her again whether she had engaged in sex with Ms. Cosby?

A Yes. Or with Ms. Albany?

Q Yes.

A Yes.

Q And what was her response?

A She changed it to admitting to engaging in sexual activity with her.

Q Okay. All right. At this part -- point, I would like to show you what's already been marked into evidence, I believe as State's Exhibit 2.

A Thank you.
Q Okay. Can you -- can you identify that statement for us again, please?
A Yes. This is a statement that she provided, "she" being Kristin, after the polygraph had been completed.
Q Okay. And, within the context of that statement, can you just kind of summarize it for us?
A Sure. She was at a barbeque and -- at a friend's house and -- oh, I'm sorry, at -- at Nicole's house, Nicole Albany. And there's an interaction that occurred in a room near the kitchen, said that Nicole came in and starting -- coming onto her, trying to pull at her pants and unzip her pants, and she was able to get the zipper down, pulled her pants down slightly and then performed oral sex on Ms. Cosby. And then a male subject came in and basically told her to -- to chill out and stop being so aggressive and then, at some point, he pulled out his penis and put it in Ms. Cosby's hand.
Q Okay.
A And then somebody came in -- inside the house and they all left out, and she said the interaction was consensual.

Q Okay. All right. Thank you.
A Uh-huh.
MS. WRIGHT: (To court reporter) Put that back into evidence.
I have no further questions at this time.
HEARING OFFICER SMITH: (To Witness Jones) All right. Please answer any questions Ms. Atkinson has.
WITNESS JONES: Sure.

CROSS-EXAMINATION OF BRYAN JONES

BY MS. ATKINSON:
Q Thank you. Lieutenant Jones, I just have a few follow-up questions for you.
A Sure.
Q Prior to -- do you recall -- do you recall, prior to conducting the polygraph examination of Kristin Cosby, what her demeanor was in your pre-interview of her?
A Not specifically. Most people that come in there are pretty nervous. I'd expect that she probably was nervous, but I cannot recall for sure.
Q Okay. Do you recall if she was crying or seemed more upset than a usual individual?
A No. I cannot -- cannot recall.
Q Okay. Do you recall asking her any questions about why she would be nervous or upset, if she was?

A Typically, I'll explain that the polygraph doesn't work off of nervousness and it's normal to be nervous and offer an opportunity to discuss anything that -- that the person is nervous about. But no. I don't -- I don't recall.

Q Okay. At this time, Lieutenant Jones, I'm handing you a document that appears to be a pre-polygraph --

A Yes.

Q -- examination sheet.

A Sure.

Q Could you take a look at that and tell me if that looks familiar?

A Yes. It is.

Q Okay. And did you fill that document out prior to conducting the polygraph examination of Kristin Cosby?

A Yes. I did.

Q Okay. And on that sheet, did you note that she had a history of any past psychiatric care?

A Sure. She says that she suffers from PTSD, depression, and anxiety.

Q Okay. And from that form can you tell whether or not she reported to you if she was on any medication on the date of the polygraph?

A Yes. She was taking some medicine for PTSD, some antidepressants, and also for ADHD.
Q Okay. Thank you. All right. Lieutenant Jones, I believe Ms. Wright was asking you some questions about questions that you asked to Kristin Cosby, both before and following the polygraph. Do you recall those questions?
A Yes.
Q Okay. And I believe Ms. Wright specifically asked whether or not you asked Kristin Cosby if she engaged in a sexual relationship with Nicole Albany; was that correct?
A That's right.
Q Okay. At any time, did those questions -- did -- did you question Kristin Cosby as to whether or not Nicole Albany had attempted to engage in sexual conduct with Kristin Cosby?
A Yes. I asked if there was any sexual activity either performed on Ms. Cosby or Ms. Cosby performing on Ms. Albany.
Q Okay. And where would those questions be specifically noted in your records?
A When -- when I go through the polygraph with -- with anybody to make sure that we get the right testing issue, I -- it's verbal.

Q Well, and now is probably a good time -- and I'm sorry to interrupt. I know we've --
A Sure.
Q -- had some previous discussion that we don't want to get into anything that happened during the polygraph.
A Okay.
Q So my question to you is: Did you ask her those questions before and after?
A Yes. And I do that the test questions. They're noted on the report and I also have a question list document, if that would better answer your -- your question to -- to verify --
Q All right.
A -- before the test.
Q Does this appear to be the same document --
A Yes.
Q -- you're looking at there?

All right. Lieutenant Jones, can you please identify what that document is that you're looking at in front of you?

A Sure. It's the test question list that I used for Ms. Cosby that day.
Q Okay. And so these would be the questions that you asked Ms. Cosby prior to conducting her polygraph?

A That's right.
Q Okay. And I believe one of the questions you asked was, "Regarding whether or not you engaged in any sexual activity with Nicole Albany, do you intend to answer truthfully?" Did you ask her that?
A Yes. I did.
Q Okay. And you asked her, "Did you engage in any sexual activity with Nicole Albany?"
A Yes.
Q Okay. You asked her, "Did you engage in any sexual activity with Nicole Albany at her home?"
A Yes.
Q Okay. At anywhere in these test questions, is there a question asking whether or not Nicole Albany attempted to engage in sexual activity with Kristin Cosby?
A Not an "attempt," no. But sexual activity would be either with Nicole or Kristin engaging in sexual activity with -- with Ms. Albany is -- is the question, either party performing oral sex, anal sex, vaginal sex, digital penetration. All that's covered in the scope of the question.
Q All right. Was the scope of that question explained to Kristin Cosby?
A Yes. It was.

Q Okay. Is that noted on this form that all those things were included in that question?
A Not on this form, no.
Q All right. All right. Lieutenant Jones, I'd like to ask you to turn to the document that I believe was --

MS. ATKINSON: At this time, we'd like -- I'd like to go ahead and introduce both of those documents. I think one -- the first we would mark as Respondent's Number 2.

HEARING OFFICER SMITH: Okay. It's -- Ms. Wright, that's --

MS. WRIGHT: No objection.

HEARING OFFICER SMITH: All right.

MS. ATKINSON: Uh-huh. And we'd introduce that into evidence.

HEARING OFFICER SMITH: Okay.

MS. ATKINSON: We'd also --

HEARING OFFICER SMITH: Respondent's 2 is the pre-test worksheet?

MS. ATKINSON: That's correct.

HEARING OFFICER SMITH: Okay. All right. That's entered without objection.

Respondent Exhibit Number 2, "Polygraph Examination Pre-Test Worksheet."

MS. ATKINSON: All right. We'd also like to enter into evidence what we will mark as Respondent's Exhibit Number 3, which would be the pre-test questions that Lieutenant Jones just testified to.

HEARING OFFICER SMITH: Okay. Any objection to that, Ms. Wright?

MS. WRIGHT: No. No, sir. But could -- can I see, just to make sure I -- I'm -- I'm seeing what's being entered, Respondent's Exhibit Number 2? I -- I have that. But the first -- oh, okay. All right. Thank you.

HEARING OFFICER SMITH: Thank you.

Respondent Exhibit Number 3, Polygraph pre-test questions.

Q All right. Then, Lieutenant Jones, I'd like to turn your attention back to what I believe has been marked as State's Exhibit Number 5 -- or no, excuse me, I'm sorry. Was it State's Exhibit Number 6, the statement?

MS. ATKINSON: (To Ms. Wright) Did you --

A The consent form?

MS. ATKINSON: -- introduce that?

A Or --

Q No. I'm sorry. The voluntary -- the statement

that you testified.

MS. ATKINSON: (To Ms. Wright) Did you enter that as Exhibit Number 6?

MS. WRIGHT: It wasn't --

HEARING OFFICER SMITH: The --

MS. WRIGHT: -- Exhibit --

HEARING OFFICER SMITH: -- Exhibit Number 6 is "Consent to Interview."

MS. ATKINSON: Okay.

MS. WRIGHT: Is that -- that's what you're talking about?

MS. ATKINSON: Would it be No. 7?

HEARING OFFICER SMITH: We don't have a State's 7.

MS. ATKINSON: Okay. I -- I believe previously did you ask him some questions about a written --

MS. WRIGHT: Yes.

MS. ATKINSON: -- statement?

MS. WRIGHT: That -- that was -- I think that's State Exhibit 2.

MS. ATKINSON: Okay.

MS. WRIGHT: The voluntary statement.

MS. ATKINSON: I'm sorry.

HEARING OFFICER SMITH: Okay.

MS. WRIGHT: Okay.

MS. ATKINSON: I'm sorry. That was a previous exhibit.

MS. WRIGHT: Okay.

Q All right. My apologies. Lieutenant Jones --

HEARING OFFICER SMITH: Yeah.

Q -- in regard to --

HEARING OFFICER SMITH: Do you want --

Q -- State's Exhibit --

HEARING OFFICER SMITH: -- him to look at that?

MS. ATKINSON: Yes, please.

HEARING OFFICER SMITH: Okay.

Q -- asking you to look back again at State's Exhibit Number 2. And again, this is the statement that you testified Kristin Cosby provided following her polygraph exam; is that correct?

A That's right.

Q Okay. And at that time, I believe her words -- she said, "Regarding a consensual" -- let's see. She said, "At a barbeque at her house, there was a brief interaction with her"; is that correct?

A Yes.

Q All right. And then she goes on to describe that Nicole Albany started coming on to her and trying

to pull down her pants and unzip her pants; is that correct?

A "Started coming on to me and trying to pull at my pants and unzip my pants." Yes.

Q Okay. She also states in there, "She was able to get my zipper down and pull my pants down slightly," correct?

A Yes.

Q "Next thing I know, she's either on her knees or crouched down and started performing oral sex"; is that correct?

A Yes.

Q Okay. And is that the only statements in that statement concerning sexual activity with Nicole Albany?

A No.

Q Okay. What else is stated in there about Nicole Albany engaging in sexual activity?

A The first line, "Regarding consensual sexual relations with Nicole Albany at a barbeque at her house."

Q All right. But did any of that statement include any specifics about sexual activity beyond what was previously just questioned?

A Oh. Besides oral -- oral sex?

Q Besides Kristin Cosby's statement that, "She started coming on to me and trying to pull at my pants and unzip my pants. She was able to get my zipper down and pull my pants down slightly. Next thing I know, she's either on her knees or crouched down and started performing oral sex." Other than those specific statements, are there any other specific allegations of sexual activity in this statement?

A With Nicole?

Q Correct.

A No.

Q All right. All right. Lieutenant Jones, again, I'm not going to ask you any questions about what occurred during the polygraph, but during the -- or -- excuse me, following the polygraph -- or actually, let me -- let me -- sorry. Let me strike that and ask you another question.

Was the polygraph, as well as the post-interview and the pre-interview, was any of that recorded?

A Not to my knowledge.

Q Okay. So all we have today is just basically on the recollections of the parties who were there; would that be correct?

A Right. And the statements --
Q And --
A -- and documents.
Q Okay. Following the polygraph that was conducted on Kristin Cosby, did you have further discussion with her -- and, again, I'm not going to ask you about what the results of that were --
A Sure.
Q -- or what you said to her about the results, but did you have any conversation with her about creating a statement or providing further information?
A Yes. We did have a conversation.
Q Okay. And did you encourage her to provide additional information to help?
A I encouraged her to tell what she was leaving out, and I -- I don't know what my -- my exact wording was but did not make any promises or coerce her --
Q Okay.
A -- in any way.
Q Do you recall her demeanor at that time, follow -- when you had that conversation after the polygraph?
A I believe she -- I -- I can't say for sure. Sorry. Okay?
Q Okay. So you wouldn't recall if she was crying or

appeared to be --

A She -- she may --

Q -- overly upset?

A She may have been crying.

Q Okay.

A But I can't remember for certain.

Q Okay. All right.

MS. ATKINSON: No further questions at this time, Lieutenant Jones.

WITNESS JONES: Okay.

HEARING OFFICER SMITH: All right. (To Ms. Wright) Any redirect?

MS. WRIGHT: Just -- just a few questions --

HEARING OFFICER SMITH: Sure.

MS. WRIGHT: -- on redirect.

HEARING OFFICER SMITH: Okay.

REDIRECT EXAMINATION OF BRYAN JONES

BY MS. WRIGHT:

Q In regards to, I believe what the Respondent had admitted as the Respondent's Exhibit Number 2, this is the polygraph exam pre-test where --

HEARING OFFICER SMITH: Does he need to look at that again?

MS. WRIGHT: He -- he can. Yes, sir.

HEARING OFFICER SMITH: All right. Do you

want him to look at Respondent's 2?

MS. WRIGHT: Just -- yes, sir. Briefly.

HEARING OFFICER SMITH: Thank you.

Q So as you testified to earlier about the fact that Ms. Cosby disclosed her conditions, is it -- is it known that -- within your expertise as a polygraph examiner, those conditions, do they typically affect the outcome of it -- of --

MS. ATKINSON: I'm going to object to that question. I think we're getting into --

HEARING OFFICER SMITH: And you're --

MS. ATKINSON: -- the polygraph at this point.

HEARING OFFICER SMITH: And you're also asking him to speculate.

MS. WRIGHT: Okay.

HEARING OFFICER SMITH: So I'll sustain the objection.

MS. WRIGHT: All right.

Q So in essence, what was your understanding about -- from -- from why you were being asked to -- to do this polygraph exam for Ms. Cosby?

A Jeff Harmon had told me that they had an allegation --

MS. ATKINSON: I'm going to object to it. I think we're getting -- getting ready to get

into hearsay testimony here.
HEARING OFFICER SMITH: Well, he's already --
MS. WRIGHT: Mr. Harmon --
HEARING OFFICER SMITH: He's already testified.
MS. WRIGHT: -- did testify earlier.
MS. ATKINSON: Okay.
HEARING OFFICER SMITH: So I'm going to allow her to continue. Overrule the objection.
MS. WRIGHT: (To Witness Jones) Go ahead.
A And they're looking into an allegation that Ms. Cosby had gotten involved in a sexual relationship with a subordinate at the time and wanted to verify whether or not they had engaged in sexual activity because Nicole Albany was saying they had, and Kristin Cosby was saying that there was never any sexual activity that took place.
Q Okay.
MS. WRIGHT: All right. I have no further questions at this time.
HEARING OFFICER SMITH: All right. Any recross?
MS. ATKINSON: Just one question.
HEARING OFFICER SMITH: Okay.

RECROSS-EXAMINATION OF BRYAN JONES

BY MS. ATKINSON:

Q At any time during the written statement, again, you were just asked about what -- what was provided, at any time during the statement that Kristin Cosby provided to you following the polygraph, did she identify any specific actions she took in regard to Nicole Albany?
A I'm -- I'm not sure what you mean by -- what action?
Q By that, I mean did she describe any action that Kristin Cosby took towards Nicole Albany during the brief interaction she described during her statement?
A Coming on to her and attempting to pull down her pants and that sort of thing?
Q Well, again, those would be --
A Or --
Q -- statements she made about what Nicole Albany did to her, correct?
A Uh-huh.
Q Okay. In that statement, did Kristin Cosby state that she affirmatively took any action --
A Oh, that --
Q -- towards Nicole Albany?
A No. They were -- I believe some people came into the house and they got nervous and -- and left the

room or didn't want to be seen in that room.

MS. WRIGHT: I -- I would object --

WITNESS JONES: But I'm not sure.

MS. WRIGHT: -- to this question being outside the scope of -- of the context of what -- what -- why we're here today.

HEARING OFFICER SMITH: Well, I think you opened the door when you asked him about the questions. I'm going to allow the question. Overrule the objection.

Q So again, my question is: Did she describe that she took any action on that date, beyond describing what Nicole Albany did to her?

A Other than having the man's penis in her hand, no.

Q And, I think, in the regard to that, she said that, "He pulled out his penis and put it in my hand"; is that correct?

A Right.

Q Okay. But she doesn't say anything in the statement that she took any of these actions or encouraged any of these actions, did she?

A Not in the statement, no.

Q All right.

A I don't believe so.

MS. ATKINSON: No further questions.

HEARING OFFICER SMITH: Okay. Let me just ask a follow-up question, Lieutenant Jones.

WITNESS JONES: Yes, sir.

EXAMINATION OF BRYAN JONES

BY HEARING OFFICER SMITH:

Q When you were asked to conduct the polygraph exam, when the -- the assistant chief contacted you or whomever requested you to do that, was there any mention made to you that the polygraph was related to alleged sexual encounters outside the workplace that had occurred in a private setting?

A The assistant chief didn't give me any other information other than --

Q Okay.

A -- to contact Jeff Harmon.

Q Okay.

A And then Jeff Harmon told me all the ins and outs of it.

Q And did Harmon state to you that it was something that had occurred outside the workplace or in the workplace?

A No. Out -- outside. He said --

Q It occurred outside?

A -- it was at a barbeque.

Q So the sole incident regarding which you conducted

the polygraph exam in which you questioned about pre- and post-polygraph was related to an incident that occurred outside the workplace?

A As -- as far as I know.

Q All right. Thank you.

HEARING OFFICER SMITH: All right. May this witness be excused?

MS. WRIGHT: Yes.

HEARING OFFICER SMITH: All right. Thank you so much.

WITNESS JONES: All right. Thank you.

HEARING OFFICER SMITH: All right. (To Ms. Wright) How many more witnesses do you have?

MS. WRIGHT: Three.

HEARING OFFICER SMITH: Okay. Do you want a break, or do you want to continue? I'm fine either way.

MS. WRIGHT: I -- I -- I would like a short break.

HEARING OFFICER SMITH: Okay.

MS. WRIGHT: At least a short break, please.

HEARING OFFICER SMITH: Right. Well, if we're going to take a -- a break, let's make it long enough so that you can get something to eat or -- or whatever. Is that fine or --

MS. WRIGHT: Yeah.

HEARING OFFICER SMITH: -- your preference?

MS. WRIGHT: That would be -- that would be preferable.

MS. ATKINSON: Yeah. My -- that's fine. My preference would be that we -- again, we not take too long of a break. Again that we've been through two witnesses and it's --

HEARING OFFICER SMITH: Yeah.

MS. ATKINSON: -- taken us --

HEARING OFFICER SMITH: Yeah. And I'm going to have -- Ms. Wright, I am not telling you how to try your case. I know you've been an attorney for a while. But I'm going to ask you to speed this up. I mean, this is dragging, and I'm, you know, sorry that's on the record, but we have got to speed this up.

MS. WRIGHT: Okay.

HEARING OFFICER SMITH: Okay? And again, I'm not telling you how to try your case, but we're revisiting a lot of territory, on both sides, by the way. All right. Let's -- it's one o'clock. When do you want to come back?

MS. WRIGHT: Two?

HEARING OFFICER SMITH: At two? Does that give you time?

MS. ATKINSON: That's fine.

HEARING OFFICER SMITH: All right. We'll reconvene at two o'clock.

(Off the record from 1:00 p.m. until

2:09 p.m.)

HEARING OFFICER SMITH: (To the court reporter) And get you to swear the witness, please.

(The witness is sworn.)

DIRECT EXAMINATION OF NICOLE ALBANY

BY MS. WRIGHT:

Q Can you please state your name for the record?

A Nicole Julia Albany.

Q And what is your profession?

A I am a law enforcement officer with the Probation, Parole, and Pardon Services.

Q Okay. And how long have you been with the Department of Probation, Parole, and Pardon?

A Seven years.

Q And -- and your current role is -- is in what particular position?

A I'm a agent.

Q Okay.

A A field agent.

Q Okay. And you work in which -- in which location?

A The Greenville County office.

Q Okay. While -- while working in the Greenville County office, was -- was Kristin Cosby ever your supervisor?

A Yes.

Q Okay. Did you ever have a sexual relationship with Kristin Cosby?
A Yes.
Q Okay. Did you ever tell anyone employed with the Department that you had this relationship with Kristin?
A My AIC and Jeff Harmon.
Q Okay.
A The OPR investigator.
Q Okay. And who was your AIC that you told?
A Chad Gambrell.
Q Okay. So you never denied having a relationship -- sexual relationship with Kristin; is --
A No.
Q -- that correct? Okay.
A That's correct.
Q Within this relationship, were you the sole instigator of it -- of the -- the formation of the relationship?
A No. It was mutual.
Q Okay. Did anything ever happen between you and Kristin that was not consensual?
A No.
Q Okay.
MS. WRIGHT: At this point I would like to

have the -- the witness look at -- I believe it's State's Exhibit B -- I mean, sorry -- State's Exhibit 2, which is the -- the voluntary statement.

HEARING OFFICER SMITH: Okay. All right. I'm handing State's 2 to Ms. Albany.

Q Okay. I just want to give you a -- a quick moment to kind of take a look at that.

A Okay.

Q Okay. All right. So on -- on Line -- I'm going down to line -- from the top, there, Line 7 of that statement where Ms. Cosby wrote -- and I quote: "She started coming on to me and trying to pull my pants down." "She" is referring to you in that -- in that statement.

Do you recall whether -- whether or not that happened?

A I don't recall coming on to her. I recall us going into the laundry room, which is the area where she said "near my kitchen." We both went in there and were kissing, and one of my friends came in, and she performed oral sex on him, also, with holding his penis, as she stated in the -- in the statement, here. But, me coming on to her, no. It was mutual. We were kissing and touching on each

other.
Q Do you recall about when that -- when that incident occurred?
A It was in May. It was either on my birthday or the weekend approaching my birthday. I'm not sure the exact day, but it was May. I think May 2015.
Q Okay. Prior to this particular incident in May of 2015, was -- were there any other incidents of sexual relations between you and Kristin?
A Yes. At the spring conference that our Agency held in Greenville, we were all out drinking -- coworkers, it was a Agency function -- and we had kissed at that time.
Q Okay. Throughout this relationship, do you ever recall Kristin telling you to stop any form of contact or . . .
A No.
Q Okay. After this particular incident that's noted on -- on the exhibit, what -- what happened then with -- with the -- between -- within the relationship?
A There was some distance that was created between the both of us. At that point in time, my friends didn't want me to associate with her because they didn't feel that she was a good person after what

had occurred at our -- at the barbeque that night, and just the general vibe that they got from her that she wasn't a good person. And then that spilled over to the work force.

I started to feel like she was trying to sabotage my job by correcting or changing a lot of documents that I would hand in to her. At one point in time, she -- I was on light duty due to a car injury that I was in -- work-related injury, and she intentionally went to the supervisor, which was the AIC at that time, to complain on me that I wasn't able to do my job functions, which I was unable to do my job function at that time because I was on light duty, so I couldn't actually go on GPS calls -- that's what I'm referring to -- as a GPS responder.

So she was trying to intimidate and use her authority over me to make me feel like I am less than a person or less than a agent, when I was an experienced agent when I came to Greenville. She would correct a lot of my warrants, and when I would ask her questions about it, she would say that she was my supervisor and I just needed to do what was told --

Q Okay.

A -- in the matter.
Q Okay. Is there anything that -- that you did in response to -- to that type of treatment that you were receiving?
A Yes. I went to my -- well, at first, when I -- she knew the issue that was going on, and I told her that I wanted to get off of her team; she told me that I wouldn't tell anybody because I didn't want anyone to know what had occurred between me and her sexually. So, at that point, I kind of backed down because I was embarrassed a little, didn't want my coworkers to know what was going on.

So I backed down, you know, played my part, just did what I needed to do: come to work, do my job. But then it still got to the point to where I was just being stressed and just felt the intimidation coming from her, and I went to Mr. Stewart and --

Q Okay.
A -- Greg Stewart, my former AIC, and asked him could I be removed from her team. He told me no because she was an asset to the Agency and all of the things that she was doing, that would look bad on her if I was to be removed from her team due to the complaint that I had against her.

Q Okay. So did the relationship change any, particularly after AIC Chad Gambrell became the AIC of Greenville County? Was there -- was there any change in the relationship with Kristin?
A Well, before he came to Greenville, Mr. Stewart was still the AIC, and they had transitioned and changed around some of the teams --
Q Uh-huh.
A -- at the office. So, at that point, I was changed to another team, so I didn't have to interact with her. She was at the main 6500 office, and I was at the upper level of 4000. So I didn't have to have interaction with her at all.
Q Okay.
A So when they changed me to a different office, we really didn't really see each other.
Q Okay.
MS. WRIGHT: All right. I have no further questions at this time.
HEARING OFFICER SMITH: Okay. Would you please answer Ms. Atkinsons questions on cross?
WITNESS ALBANY: Okay.

CROSS-EXAMINATION OF NICOLE ALBANY

BY MS. ATKINSON:
Q Ms. Albany, the voluntary statement that -- I

believe, that the State's attorney provided you with that you looked at, I believe you indicated the incident described in that statement occurred in or around May of 2015; is that correct?

A Uh-huh.

Q All right. And I believe you indicated that was around your birthday, correct?

A Yes.

Q Okay. And was this incident actually at a birthday party at your house?

A Yes.

Q Okay. Would it be fair to say that this incident occurred later in the evening?

A Uh-huh.

Q Okay. Had you been drinking that evening?

A Yes.

Q Okay. And you previously identified to the Agency that you had been drinking that evening?

A Uh-huh.

Q All right. Is -- let me ask you: You -- you indicated that you provided some complaints to the Agency about Kristin Cosby.

A Uh-huh.

Q Do you recall that?

A Uh-huh.

Q All right. And you -- you indicated that you indicated such complaints to Mr. Stewart; was that --
A Uh-huh.
Q -- correct?
A Yes.
Q All right. When did you make those complaints to Mr. Stewart?
A I don't have a date and time of it.
Q Okay.
A But it --
Q You don't recall, at all, when you made that complaint?
A No.
Q Okay. Would it be -- would you be surprised to know that there is absolute zero documentation in Kristin's file about any such complaint?
A I would not be surprised at all, being that Mr. Stewart didn't document a lot of stuff in reference to her.
Q All right. Is it your understanding that we're here today because an investigation was launched for -- into Kristin Cosby in November of 2018?
A Yes.
Q Okay. And are you aware that it has been claimed

by the Agency that that investigation was launched due to a complaint that you made --

A Yes.

Q -- against Kristin Cosby?

Okay. Did you, in fact, make that complaint against Kristin Cosby in November of 2018?

A Yes. It was --

Q Okay.

A Yeah.

Q And, again, a lot of the impetus for that was this incident that occurred in May of 2015, correct?

A Uh-huh.

Q Okay. But 3 1/2 years had passed since that incident, correct?

A Yes.

Q Okay. And the only previous complaint you indicated -- or that you claimed you made was to Mr. Stewart, correct?

A Yes.

Q And that's the complaint that's not documented anywhere, correct?

A Correct.

Q All right. Are you aware that Kristin Cosby denies that she had a sexual relationship with you?

A I -- I would assume she would deny it.

Q Okay. I believe that, in your testimony and in regard to that sexual relationship, you -- you identified two independent dates as comprising that sexual relationship; is that --
A Uh-huh.
Q -- correct? And that would be the one on May -- the -- the alleged incident on May of 2015?
A Uh-huh.
Q And then one other incident where you claim the two of you kissed?
A Uh-huh.
Q Okay. Those are the only two claims of sexual contact between the two of you that you are reporting here today, correct?
A Yes.
Q All right. In regard to the incident that you are claiming occurred on May of 2015, you testified a short time ago that Kristin Cosby performed oral sex on a male in a closet; is that correct?
A Yes.
Q All right. Are you aware that that detail doesn't appear in any documents that have been produced in this case by the Agency?
A No. I haven't seen the --
Q Okay.

A -- documents.
Q All right. Did you previously report that detail to the Agency?
A Yes.
Q Okay. Do you have any reason to know why that detail would not be included in any of the Agency's documents?
A It may not be included because he was a friend, and I was hesitant about getting them involved in this process. But I did give the information to Mr. Harmon for him to do a phone interview with him.
Q Okay. But, again, are you aware that there is nothing in these documents in any way describing any phone interview or even referencing that male and that allegation happening?
A No.
Q All right. Ms. Albany, it seems like you had some hard feelings with Kristin Cosby and what happened when you were both employed by the Agency. Would that be accurate to say?
A That is incorrect.
Q All right. Have you not testified here today that you feel like she treated you unfairly?
A She did, but --

Q Okay.
A -- there's no hard feelings.
Q All right. So you're not angry about that, at all?
A God, no.
Q Okay. So then why would you even report that incident to the Agency if you weren't upset about that?
A Because I felt that it needed to come forward about her character and what she was doing, and I had witnessed other incidents with her relationship with other people within the office, and it just needed to come to a head. I wanted to report the incident for a long time.

When I did approach someone about it, it was very evident that he wasn't going to do anything about it, so -- one thing you have to understand: With our former AIC that we had, he pushed a lot of things under the rug. So if you reported something, he either tried to handle it in-house by counseling her, one-on-one. So a lot of times, within that office, no one would want to actually formally complain because nothing was going to be done about it.

Q All right. So I understand your concern is that there was a previous agent in charge who you felt

wasn't going to do anything.
A Uh-huh.
Q But the former -- or the subsequent agent in charge, Chad Gambrell, he came to work at the Agency in 2017, did he --
A Uh-huh.
Q -- not?
A Yes.
Q Okay. And you didn't make any complaint to Agent Gambrell in 2017 about this, did you?
A No. I did not.
Q Okay. Again, the first complaint you made about it to him that -- or the first complaint, really, that's even noted in the records from the Agency was in November of 2018, correct?
A Uh-huh.
Q All right. Ms. Albany, I believe you also testified that you requested to be removed from Kristin Cosby's team, and were you subsequently removed from Kristin Cosby's team?
A That was after I had already asked. It was months later down the road.
Q Okay. Are you aware that you were actually reassigned from her team because she requested you be reassigned from her team?

A No. I wasn't.
Q All right.
MS. ATKINSON: I don't think we have any further questions for this witness.
HEARING OFFICER SMITH: Any redirect?
MS. WRIGHT: Yes. Just a few questions.

REDIRECT EXAMINATION OF NICOLE ALBANY

BY MS. WRIGHT:
Q In regards to your -- your statement to -- or your admission to AIC Gambrell about this relationship with Kristin, in -- in actuality, he -- he asked you about that, didn't he?
A Yes.
Q Okay. Were you aware that AIC Gambrell was -- was conducting his own investigation to what was going on?
A I was not. Unh-unh.
Q Okay.
MS. WRIGHT: I have no further questions.
MS. ATKINSON: I do have one follow-up question.

RECROSS-EXAMINATION OF NICOLE ALBANY

BY MS. ATKINSON:
Q So your testimony today is that you didn't report this in 2018; it came to light because Agent Gambrell, the agent in charge, actually came to you

and asked for information about it to make a report; is that correct?

A Yes. He did approach me, and he asked me -- I could state something if I wanted to because he knew that I never reported it officially in the beginning because of the -- the environment of the office. So I didn't have to speak on it then, but I chose to, to bring light to the situation when he asked me.

Q Okay. And did he ask you that in November of 2018?

A Yes.

Q Okay. And that was a year -- almost a year after he came to work in that office, correct?

A I believe so, yes.

Q Do you recall the exact date he came and talked to you?

A No. I'm not . . .

Q If I represented to you that he has notes that he spoke with you on November the 8th of 2018, would that be accurate?

A It probably is, yes.

Q Okay. Thank you.

MS. ATKINSON: No further questions.

HEARING OFFICER SMITH: All right. (To Ms. Wright) Anything else?

REDIRECT EXAMINATION OF NICOLE ALBANY

BY MS. WRIGHT:

Q So -- so when AIC Gambrell asked you about this relationship on November the 8th, were -- did he also make you aware of the larger context of what was going on? why he was asking you about that?

A That he had had other complaints that he was looking into in reference to her.

Q Okay.

MS. WRIGHT: I have no further questions.

HEARING OFFICER SMITH: All right. At this opportunity, I have a couple of quick questions.

WITNESS ALBANY: Okay.

EXAMINATION OF NICOLE ALBANY

BY HEARING OFFICER SMITH:

Q Ms. Albany, is it your testimony here today that, after the incident in May of 2015 in which you were involved with Ms. Cosby, that you felt threatened in the workplace or harassed or . . .

A No. I didn't feel threatened or --

Q Okay.

A -- harassed. Just a -- a little intimidating and feeling like I was not capable of doing my job as a seasoned agent.

Q Okay.

HEARING OFFICER SMITH: That's all I have. Thank you.
All right. May this witness be excused?
MS. WRIGHT: Yes, sir.
WITNESS ALBANY: All right. Thank you.
HEARING OFFICER SMITH: Thank you so much for coming in.
WITNESS ALBANY: Thank you.
HEARING OFFICER SMITH: (To Ms. Wright) And who's your next witness?
MS. WRIGHT: Chad Gambrell.
HEARING OFFICER SMITH: Okay. (To Witness Albany) Thanks. I'll take that.
WITNESS ALBANY: Thank you. Thank you.
HEARING OFFICER SMITH: Thank you again.
THE COURT REPORTER: (To Hearing Officer Smith) Are you going to make reference -- are you going to make reference that that one was withdrawn?
HEARING OFFICER SMITH: I'm sorry?
THE COURT REPORTER: Are you going to make reference that Number 5 was withdrawn?
HEARING OFFICER SMITH: I will in my --
THE COURT REPORTER: Okay. That's fine.
HEARING OFFICER SMITH: Yeah. You don't need to do anything.
THE COURT REPORTER: Thank you.
HEARING OFFICER SMITH: I think that's probably the

easier way to handle it.
MR. GAMBRELL: Morning. Or afternoon.
HEARING OFFICER SMITH: Good afternoon.
MS. WRIGHT: Good afternoon.
HEARING OFFICER SMITH: Been here a while.
MR. GAMBRELL: Yeah.
HEARING OFFICER SMITH: Could you provide the court reporter -- do you have a driver's license or ID, please?
MR. GAMBRELL: Oh, yeah.
THE COURT REPORTER: Thank you. I'll give it right back. Thank you, sir, and if you'll just put that microphone on. Do you see it? Here on the table. Yeah. Thank you.
MR. GAMBRELL: Uh-oh.
THE COURT REPORTER: It'll clip -- it'll stick right back on there. Thank you. All right. (To Hearing Officer Smith) Ready?
HEARING OFFICER SMITH: Uh-huh. Swear the witness.
(The witness is sworn.)

DIRECT EXAMINATION OF CHADWICK GAMBRELL

BY MS. WRIGHT:
Q Okay. Could you please state your name for the record?
A It's Chadwick Austin Gambrell.

Q And -- and what is your profession that do you do?
A I work for the South Carolina Department of Probation, Parole, and Pardon Services, and I'm currently an agent in charge, and I'm stationed in Greenville County.
Q Okay. And how long have you been the agent in charge in Greenville County?
A Since December of 2017.
Q Okay. So in regards to today's matter, how did you become involved in -- in -- in the initiation investigation into Kristin Cosby?
A Well, initially, I guess you should -- I should say that, when I first came to Greenville in -- as I mentioned -- in December of 2017, I was getting myself acclimated with the office, the people there, and so forth, and talking with people, getting historical backgrounds on folks there in the office. And I had my first meeting with all the team leaders, which are supervisory staff within the office, and I felt like I needed to make it quite clear at the very beginning -- and this was December the 20th of 2017, and I had only been there just a -- a short time -- I needed to make it very clear that -- of my -- of who I was, what I was bringing to the table to Greenville County,

what I liked and disliked, if you will. But I wanted to make it quite clear about a few things, which was how I wanted the supervisors within the office to react with their teams, with their subordinates.

In fact, I made it quite clear and made -- and -- and -- and, as I make -- always make notes of my -- of my -- of my meetings with -- with folks. And my notes are quite clear in that I explained that the supervisory positions are very difficult, "You guys are on the front line. You're the heartbeat of the office. Don't ever think that I don't appreciate you, but there is a line, and you are different. Be fair to everyone. Have no favorites. You support, you guide, you lead. Your teams are watching you. They're learning from you." So I made that quite clear, that -- making sure that everyone knew that I expected people -- supervisors to set themselves apart from their staff, from their subordinates. I went on to observe and watch and -- and -- and learn from the supervisory staff there.

In -- excuse me -- in March of -- of last year, March 15th, we had a -- an opening on our sex offender team, an agent. We had someone to leave,

so we had an opening, and we put out a notice to the folks in the office who would like to apply as a sex offender agent on the team. Afterwards, I talked with former Team Leader Cosby to come in and -- and speak to us about who she thought should be on the team, and she said Agent Christina Worthy. And I asked her if that was a good idea because she's -- it seemed that she had more than a professional relationship with her and -- and Cosby said, "No. I only have a working relationship with her."

At the time, Worthy was not on Ms. Cosby's team, so I wanted to make that quite clear, before we moved Worthy over to Cosby's team, that there wasn't any -- the relationship was purely professional, and she said -- she kept saying, "No. It's -- it's purely professional." I -- and I, again, went over my expectations and advised that this was very important, that only professional relationships are allowed between supervisors and subordinates, and she stated that she understood. However, I kept noticing, after that period of time, that --

Q Go ahead. Go ahead.

A I kept noticing, after that period of time, that

Worthy and Cosby were at the office together sometime in the evenings, and sometime, Worthy -- if Cosby was at --

Q Okay. Okay. I'm going to --

HEARING OFFICER SMITH: (To Ms. Wright) Yeah. Let's --

Q I'm going to --

HEARING OFFICER SMITH: -- shift gears and get to what --

MS. WRIGHT: Yeah.

HEARING OFFICER SMITH: -- we're here for.

MS. WRIGHT: Yes, sir.

HEARING OFFICER SMITH: Okay.

MS. WRIGHT: Okay.

Q So in essence, you became -- there were concerns that you had about what you felt were inappropriate relationships that Cosby was having?

A Yes. With --

Q Okay.

A -- people in the office under her supervision.

Q Okay. Did you begin to specifically launch an -- kind of an internal -- you know, within the office staff -- an investigation into those concerns? Did you . . .

A Yes.

Q Okay.
A In October of -- of -- of last year, there were, again, some issues that came up with another agent, and she moved on from Worthy --
Q Okay.
A -- and now was concentrating on somebody else.
Q Okay. All right. So let me just ask: Did -- did -- during this time, did -- did Kristin Cosby ever tell you that she felt she was being harassed by you or AAIC Honeycutt?
A No.
Q Okay.

MS. WRIGHT: At this point, I would like to show the witness State's Exhibit -- I believe it's State's Exhibit 4, the -- it -- it -- it is the complaint form that Ms. Cosby filed with OPR.

HEARING OFFICER SMITH: One second here. All right. You're showing the witness State's --

MS. WRIGHT: Yes. That's it.

HEARING OFFICER SMITH: -- 4?

MS. WRIGHT: Yes, sir.

Q Okay. I'm going to -- I'm going to give you a minute to just kind of skim that for a quick minute and just --

A Okay.
Q Okay. You ready? Okay.
A Yeah.
Q Prior to when that was filed, did -- did you and AAIC Honeycutt ever counsel Kristin in regards to the concerns that you had that were going on at that time?
A Absolutely.
Q Okay. In your opinion, why do you feel that she filed that complaint?

MS. ATKINSON: Objection.

HEARING OFFICER SMITH: Yeah. I -- yeah.

MS. WRIGHT: Okay.

MS. ATKINSON: Speculation.

HEARING OFFICER SMITH: I'm going to beat you to the punch here.

MS. WRIGHT: Okay.

HEARING OFFICER SMITH: We're talking about what was characterized earlier as an EOC type complaint.

MS. WRIGHT: Yes, sir.

HEARING OFFICER SMITH: What I want you to do is to get to the gist of what we're here for, which is --

MS. WRIGHT: Yes, sir.

HEARING OFFICER SMITH: -- false statement, so please --

MS. WRIGHT: Okay.

HEARING OFFICER SMITH: -- move on, with this witness, to that.

MS. WRIGHT: Okay.

HEARING OFFICER SMITH: Thank you.

Q At any point while you were conducting your -- your internal investigation into allegations regarding Kristin, did you ever specifically speak with Nicole Albany?

A Yes.

Q Okay. And, after speaking with -- with Nicole Albany, did -- did you -- you -- you had a concern that there may have been an inappropriate relationship with --

A Yes.

Q -- between her and Kristin?

And -- and, when you addressed that with Nicole Albany, what did she tell you?

A Specifically, she said that there was a sexual relationship, it was more than professional, and she felt like, after the relationship was over with, that she was treated badly by TO Cosby. She was taken off the GPS team. She was targeted and

treated unfairly. She asked if she could move upstairs -- she asked someone else at the time if she could move upstairs -- she told me all about that -- to get away from Cosby, and she did state that it was a sexual relationship.

Q Okay. And so after finding that out, what did you do with that information?

A Typed up my note from the conversation and forwarded it, that day, to my boss, which is our regional director, Gerald Black.

Q Okay. So what caused you to contact the director, Adger, directly about this?

A That conversation with Nicole was on November the 8th, and then Mr. Black said that they would get back to me on this. Did not hear anything back, so I guess it was late November, I called, actually, Mr. Harmon first and asked him about it, as well as this allegation on the -- on the -- the 19th, "What's -- what's going on? Why haven't they been in my office?"

HEARING OFFICER SMITH: (To Ms. Wright) Okay. I'm going to interject for the last time here. We have developed, through multiple witnesses, that there was an encounter between Ms. Cosby and the lady who testified earlier. What the

Agency has alleged as misconduct is false statements.

MS. WRIGHT: Correct.

HEARING OFFICER SMITH: Get to the core. We need to move on. We've been here since ten o'clock this morning. It's twenty till three. Move on.

MS. WRIGHT: Okay.

HEARING OFFICER SMITH: If this witness has no information about that, then I'd suggest you call your next witness, but I'm not trying to tell you how to try your case.

MS. WRIGHT: Uh-huh. Okay.

Q Okay. In regards to the allegation of misconduct, as -- as the agent in charge of the Greenville County office during the time that Kristin was there, do you feel that -- that the concerns, as -- as mentioned, were -- were, in fact, misconduct or defined -- can be defined as "misconduct"?

A Absolutely, yeah.

Q Okay.

HEARING OFFICER SMITH: (To Ms. Wright) What are you referring to? What concerns as mentioned in the -- in the personnel change of status report?

MS. WRIGHT: Okay. I will -- I will end my questioning at this point.

HEARING OFFICER SMITH: All right. Any cross-examination?

MS. ATKINSON: I do have some brief follow-up.

CROSS-EXAMINATION OF CHADWICK GAMBRELL

BY MS. ATKINSON:

Q Agent Gambrell, you were just questioned about whether or not you felt Kristin -- Kristin Cosby's conduct, in your observations, rose to the level of misconduct. At the time that you were expressing concerns about relationships between subordinates, was there any policy in the Agency that prohibited that?

A No.

Q Okay. So there -- there was no policy that prohibited what you believed to be misconduct?

A We have a professionalism policy, and -- and it goes into morals and ethics. And I would think that a sexual relationship between a supervisor and an employee would be immoral.

Q But nothing in that policy specifically defines a relationship of that type of being unethical and immoral?

A No, ma'am.

Q Okay. So there's nothing specific that prohibited a relationship, if one ever existed; is that correct?
A No. Actually, it would be a violation of our professionalism policy.
Q Okay. Does it specifically say that in your professionalism policy?
A As I mentioned, it's morally and ethically improper.
Q Okay. And does that policy say that a relationship between a supervisor and a subordinate is morally or unethical --
A No.
Q -- under that policy?

HEARING OFFICER SMITH: (To Witness Gambrell) So that's your opinion?

WITNESS GAMBRELL: Right.

HEARING OFFICER SMITH: Okay.

Q All right. Agent Gambrell, I believe you testified that you went to Nicole Albany on November the 8th, 2018, and asked her about her alleged relationship with Kristin Cosby; is that correct?
A Right.
Q And is that not the day after you were advised that Kristin Cosby had filed a complaint against you and

the assistant agent in charge?
A Uh-huh.
Q Okay. And that complaint actually followed an investigation that you conducted into Kristin in October of that year that the deputy director advised you to close and to not discipline Kristin Cosby for; is that correct?
A No. It was -- it was still an open and ongoing situation, and as I mention in my -- I guess you have a copy of a timeline that I submitted to, I think it was, Mr. Harmon, that this was an ongoing thing. And I even talked to Mr. Black, and we discussed that we were going to talk with her again, all of us together -- which I attached my outline that I was going to submit at that meeting -- but it was canceled because Mr. Black couldn't attend. So this was an ongoing situation. At the time, they said that, "No. We're not going to discipline her at the -- at the time."
Q Okay. I'm going to hand you a -- a copy of a document, which is, I believe, the same one that you're looking at.
MS. ATKINSON: If we can mark this as --
HEARING OFFICER SMITH: Let's get the --
MS. ATKINSON: Okay.

HEARING OFFICER SMITH: -- copy first.
MS. ATKINSON: All right.
HEARING OFFICER SMITH: And has Ms. Wright seen that, also?
MS. WRIGHT: Yes. Yes.
MS. ATKINSON: It was --
HEARING OFFICER SMITH: Okay. All right.
MS. ATKINSON: -- produced by her office.
HEARING OFFICER SMITH: All right. Thank you.

Q Agent Gambrell, if you can look at that document and tell me, are those the same notes that you're looking at in your file there?
A It's just on -- I think on -- it's on letterhead. It's more formal because it's -- this actually went to Mr. Harmon.
Q Okay. But did you type up that document and provide it --
A Yes.
Q -- to Mr. Harmon?
A Uh-huh.
Q Okay. So you're aware of this document?
A Yes.
Q Okay. And this document appears to be your notes and your timeline of all the events in -- through the fall of 2018 regarding Kristin Cosby?

A Right.
Q Okay. And on the second page of that document, "On October 30, 2018, Regional Director Black called and said that he discussed the situation, and that a disciplinary would not be initiated and that nothing will be placed in Cosby's county file or HR file." And then he instructed you to have a meeting with her just to go over the information to understand she instructs directions, but nothing in there said that he wanted you to continue any investigation, did it?
A No.
Q Okay.
A It did not.
Q This same document then indicates that, on November 7, 2018, you were advised about the complaint that was filed against you by Cosby, correct?
A Right.
Q And then the document also notes that, on November 8th, the very next day, that's when you spoke to Nicole Albany to obtain further information about Kristin Cosby, correct?
A Yeah. I also spoke to other people that she had had relationships to, as well, but she was the only

one that would admit to it.
Q Okay. And you took those actions after the Department had already determined that there was no disciplinary action that was going to be taken against Kristin Cosby?
A No. It was an ongoing thing.
Q All right. I believe you indicated that there were concerns, and you believe there was misconduct. At the time that you were investigating Kristin Cosby, had she not just been nominated for supervisor of the year?
A By -- yes. Uh-huh. By her team.
Q And this was, in fact, her third nomination for supervisor of the --
A I don't --
Q -- year?
A I don't know about that. She's never won it, but I don't know about how many times she's been nominated, no.
Q Okay. This time, I'm going to hand you a document that I'd ask you to look at. This was a document that was actually --
MS. WRIGHT: At this point, I'd -- can we go ahead and mark this document as --
HEARING OFFICER SMITH: And are you going to

offer that? (To Ms. Wright) Do you have any objection?

MS. WRIGHT: No, sir.

HEARING OFFICER SMITH: Okay. That will be --

MS. ATKINSON: -- Respondent's --

THE COURT REPORTER: -- 4.

MS. ATKINSON: -- 4, please.

HEARING OFFICER SMITH: All right. That's entered without objection, and that's just a timeline.

Respondent Exhibit Number 4, "Timeline of Events and Recommendations."

MS. ATKINSON: (To Ms. Wright) Okay. Here's a copy of what I've just handed your --

MS. WRIGHT: Oh, okay.

MS. ATKINSON: -- witness.

Q Agent Gambrell, I'm handing you a document which appears to be a letter written to you from Kristin Cosby. Does this appear to be familiar to you?

A It does.

Q And what is the date on this document?

A December 19th --

Q Okay.

A -- of '18.

Q Okay. And is this, in fact, a letter of

resignation that Kristin Cosby submitted to you?
A Yes.
Q Okay.
MS. ATKINSON: At this time, I would like to admit this document as Exhibit Number -- Number 5.
HEARING OFFICER SMITH: Okay. Any objection?
MS. WRIGHT: No objection.
HEARING OFFICER SMITH: Okay. Without objection, that's Respondent's 5.
Respondent Exhibit Number 5, Letter of resignation from Kristin Cosby.
Q All right. Agent Gambrell, I'm handing you another document that's previously been produced by the Agency in this matter. This appears to be a letter from you to Ms. Cosby, also dated December 19, 2018; is that correct?
A Yes.
Q All right. And what is the purpose of this letter from -- what is included on this document? What is this letter?
A That we're accepting her letter of resignation.
Q Okay. So this document is you, on behalf of the Agency, accepting Kristin Cosby's resignation?
A Right.

Q All right. And attached to that letter accepting the resignation, what is that second document there?
A It's just a -- a form that -- that the Agency has; When there's a separation, it needs to be completed.
Q Okay. And is this to accurately state what the terms of the separation are?
A Yes.
Q Okay. And does this document specifically check that Kristin Cosby resigned?
A Yes.
Q Okay. Is there anything on this document indicating that she was terminated from the Agency?
A Unh-unh.
Q Okay. And, in fact, Kristin Cosby's employment with the Agency was not terminated, was it?
A No. She resigned.
Q Okay. So if anybody stated that she was terminated from the Agency, that would be a false statement? Would you agree with that?
A Yes. Because she resigned, yeah.
Q Okay.
MS. ATKINSON: Thank you. No further questions for this witness.

HEARING OFFICER SMITH: (To Ms. Atkinson) Is this being offered or . . .

MS. ATKINSON: It is being offered. If we would mark this as Exhibit Number --

HEARING OFFICER SMITH: All right. No objection --

MS. ATKINSON: -- Respondent's Exhibit Number 6, please.

HEARING OFFICER SMITH: -- to that?

MS. WRIGHT: No objection to that.

HEARING OFFICER SMITH: Okay. All right. And that is Number 6, without objection.

Respondent Exhibit Number 6,
Acknowledgement of letter of resignation.

HEARING OFFICER SMITH: Okay. Any further questions?

MS. ATKINSON: No further questions at this --

HEARING OFFICER SMITH: All right.

MS. ATKINSON: -- time.

HEARING OFFICER SMITH: (To Ms. Wright) If there's any redirect, make it quick.

MS. WRIGHT: I have two questions.

HEARING OFFICER SMITH: Please.

MS. WRIGHT: Okay.

REDIRECT EXAMINATION OF CHADWICK GAMBRELL

BY MS. WRIGHT:

Q Question 1: On -- on November 8th when you had that conversation with Nicole Albany, did you --

did you have that conversation as a result of Kristin filing her complaint?

A No. From what I could tell about the complaint, it was that I was not giving her specific instructions and guidance, which was absurd. Through my -- my notes are quite clear. No. It was not because of that at all.

Q Okay. And -- and, secondly and finally: In regards to what was stated earlier about Kristin being nominated as supervisor of the year, isn't -- isn't it true that anyone can nominate anyone as the --

A Uh-huh.

Q -- supervisor of the year? Okay.

MS. WRIGHT: That's all.

HEARING OFFICER SMITH: Okay. Thank you. May this witness be excused?

MS. WRIGHT: Yes, sir.

HEARING OFFICER SMITH: (To Witness Gambrell) Thank you so much for coming.

WITNESS GAMBRELL: Yes, sir.

HEARING OFFICER SMITH: (To Ms. Wright) Who's your next witness?

THE COURT REPORTER: (To Witness Gambrell) Don't forget your microphone. Thank you.

WITNESS GAMBRELL: Oh. I'm glad you said something.
MS. WRIGHT: (To Hearing Officer Smith) Robert Honeycutt.
HEARING OFFICER SMITH: Okay. Robert Honeycutt. (To Mr. Honeycutt) Would you put that on the floor, please? And provide the court reporter with your identification.
THE COURT REPORTER: Thank you.
MR. HONEYCUTT: Uh-huh.
THE COURT REPORTER: And I'm going to get you to clip that microphone to your -- your lapel.
HEARING OFFICER SMITH: (To the court reporter) Swear the witness, please.
(The witness is sworn.)
HEARING OFFICER SMITH: Go ahead, Ms. Wright.
MS. WRIGHT: Yes, sir.

DIRECT EXAMINATION OF ROBERT HONEYCUTT

BY MS. WRIGHT:
Q Please state your name for the record.
A Robert Honeycutt.
Q And -- and what is your profession?
A Probation and parole agent.
Q Okay. And where do you work for probation?
A I'm an assistant agent in charge of the Greenville County office.

Q And how long have you been the assistant agent in charge of the Greenville County office?
A I was promoted in July of 2016, so a little over 2 1/2 years.
Q Okay. How did you become involved in the -- the investigation or the initiation of the investigation of allegations concerning Kristin Cosby's misconduct?
A Well, there was a lot of talk and discussion about -- in the office, and I was getting these radio logs -- because when you go out on home visits, you've got to report in to the GOC when you're out in the field, and there was a lot of discussion why she was spending so much time with some of her subordinates, and she spent a lot of time with a particular subordinate, Agent McKenzie, and so I started looking at the --
Q Okay.
A -- radio logs.
Q All right. Well, let me --
HEARING OFFICER SMITH: (To Witness Honeycutt) Stop.
Q Let me timeout. Okay. I'm going to move --
HEARING OFFICER SMITH: Focus on --
MS. WRIGHT: Yes, sir.

HEARING OFFICER SMITH: -- the misconduct here.
MS. WRIGHT: Okay.
HEARING OFFICER SMITH: Let's not get running off into the weeds.
MS. WRIGHT: Okay.
HEARING OFFICER SMITH: Focus your witness.
MS. WRIGHT: All right. At this point -- at this time, I would also like to show Mr. Honeycutt the State exhibit, which is the complaint form that Kristin Cosby filed.
HEARING OFFICER SMITH: Do you remember what number that is --
MS. WRIGHT: Well, I think it was --
HEARING OFFICER SMITH: -- Ms. Wright?
MS. WRIGHT: -- Number 2.
HEARING OFFICER SMITH: Number 2.
MS. WRIGHT: Two? No.
HEARING OFFICER SMITH: Two is a voluntary statement.
MS. WRIGHT: No, no. It's not the voluntary statement. It's --
HEARING OFFICER SMITH: Let me see. Oh, here.
MS. WRIGHT: It's the same --
HEARING OFFICER SMITH: State's 4?

MS. WRIGHT: Yes, sir.

HEARING OFFICER SMITH: Okay. All right.

Handing the witness State's 4.

Q Okay. I'm going to give you a moment to just kind of look that over. Okay. Are you -- you done, Mr. Honeycutt?

A Yeah.

Q Okay. You will note that that -- that complaint was filed in October, I believe, of 2018. Had -- had you and/or Mr. -- or AIC Gambrell counseled Kristin prior to that time?

A Yes. I had --

Q Okay.

A -- talked to her about communicating to me, you know, when she's going to be out in the field on home visits, you know, when she's going to be away from the office, her schedule. And part of what I was talking about the radio logs is that there was a lot of times that she was doing work --

Q Okay. I -- I got -- I've got to stop you.

HEARING OFFICER SMITH: (To Ms. Wright) Move it along.

MR. WRIGHT: Yes, sir.

Q I've got to stop you on that.

HEARING OFFICER SMITH: (To Witness Honeycutt)

That's not directed to you; that's directed to Counsel.

WITNESS HONEYCUTT: Oh, okay. Thank you.

Q Okay. All right. So in -- in regards to -- because you did supervise Kristin directly?

A That's correct.

Q Correct? Okay.

A Uh-huh.

Q As her supervisor, did you -- did you notice anything that you would specifically define as being misconduct by Kristin?

A Yeah. The fact that she wasn't communicating to me, you know, her work hours, when she was working and when she was out doing stuff.

Q Okay.

MS. WRIGHT: I'm going to stop there. Okay. I'm -- I'm going to hold off on questions at this point. (To Witness Honeycutt) Please answer any questions --

HEARING OFFICER SMITH: (To Ms. Atkinson) Cross-examine?

MS. ATKINSON: Just a few follow-up questions.

CROSS-EXAMINATION OF ROBERT HONEYCUTT

BY MS. ATKINSON:

Q Agent Honeycutt, you weren't ultimately involved in the final investigation by Agent Harmon that

resulted in us being here today, were you?
A No, ma'am.
Q Okay. You weren't part of any questioning of Kristin Cosby in regard to that investigation, were you?
A No, ma'am.
Q All right. However, you and -- you and Agent Gambrell did accompany Kristin Cosby to a polygraph that she provided in December of 2018, did you not?
A That is correct.
Q Okay. And, again, both of you accompanied her. Did you drive her to that polygraph?
A Yes. We was instructed we needed to drive her to the polygraph.
Q Okay. And she was rather upset that day, wasn't she?
A On the drive there, she was very quiet. I remember Mr. Gambrell asking her how she was doing and she didn't respond. I think -- if I understand -- I was in the passenger side, so I really couldn't see her -- she had earphones in her ears, I guess listening to music or something; I don't know. So there really wasn't any conversation other than, after the polygraph was over with, she asked -- we asked if she wanted anything to eat, and she said,

"No. Stop by a convenience store" and -- and -- you know, so she could get something to drink and something -- pack of crackers or something.

Q Okay. Prior to the date of the polygraph -- and I believe you were asked about a complaint Kristin filed against you and Agent Gambrell -- that was actually prior to the date of the polygraph, wasn't it?

A Well, I didn't even realize that she had filed a complaint against -- against me. I didn't realize till -- till later on, when I was looking at what I was looking at investigating -- when I was talking about the communication and not knowing, you know, where she was at and stuff. I didn't come to find out about -- about that later, so I can't -- I don't know, honestly, when I was told that a complaint was filed against me.

MS. ATKINSON: No further questions for this witness.

HEARING OFFICER SMITH: All right. Is there anything direct related to the misconduct that's been alleged on redirect?

MS. WRIGHT: No, sir.

HEARING OFFICER SMITH: All right. Can this witness be excused?

MS. WRIGHT: Yes, sir.

HEARING OFFICER SMITH: All right. (To Witness Honeycutt) Thank you so much.
THE COURT REPORTER: And don't forget the microphone.
WITNESS HONEYCUTT: Okay.
THE COURT REPORTER: Thank you.
HEARING OFFICER SMITH: Thanks for driving down. I know it's a long way.
Okay. Does the State have additional witnesses?
MS. WRIGHT: No, sir. (To Investigator Brumlow) Could you -- could you -- (To Hearing Officer Smith) I was going to tell --
HEARING OFFICER SMITH: Please.
MS. WRIGHT: (To Investigator Brumlow) Could you tell Jeff he can leave, too, please?
INVESTIGATOR BRUMLOW: Okay.
MS. WRIGHT: Okay.
HEARING OFFICER SMITH: Okay. The State rests at this point?
MS. WRIGHT: Yes, sir.
HEARING OFFICER SMITH: All right. Ms. Atkinson, are you ready to present on behalf of Ms. Cosby?
MS. ATKINSON: Yes, sir. I sure am.
HEARING OFFICER SMITH: All right.
MS. ATKINSON: At this time, I would present Kristin

Cosby as our sole witness.

HEARING OFFICER SMITH: Okay. All right. Ms. Cosby, I'm going to ask you to come around over here, please.

MS. COSBY: Okay.

THE COURT REPORTER: Do you have your ID?

MS. COSBY: I do. Thank you.

THE COURT REPORTER: There you go.

MS. COSBY: Thank you.

HEARING OFFICER SMITH: (To the court reporter) Swear Ms. Cosby.

(The witness is sworn.)

DIRECT EXAMINATION OF KRISTIN COSBY

BY MS. ATKINSON:

Q Can you please state your full name for the record?

A Kristin Marie Cosby.

Q Okay. And what's your date of birth?

A 11/2/76.

Q Okay. And where do you currently live?

A At 307 Marsh Creek Drive in Mauldin, South Carolina.

Q Okay. And what's your -- what's your educational background, Ms. Cosby?

A I have a bachelor's from the University of South Carolina in criminal justice, with a minor in

psychology.

Q Okay. And when did you graduate with that degree?

A December 2005.

Q Okay. Prior to attending the -- attending college, were you in the military?

A Yes. I served in the Air Force for five years.

Q Okay. And what was your position in the Air Force?

A Security forces.

Q Okay. So in law enforcement, as well --

A Yes.

Q -- there?

Okay. Following college, did you go into law enforcement work?

A Yes. I started with Probation in January of 2006, and I did a internship in 2005.

Q Okay. And so you began working there as an intern in 2005 and then became a full-time employee in 2006; is that --

A Yep.

Q -- correct?

A Yes.

Q All right. How long were you employed by the Department?

A Ten years and seven months.

Q Okay. Were there some breaks in that employment?

A Yes. I left -- I don't know the exact month -- in 2010 to go to the Greenville County Sheriff's Office.
Q Okay. And did you subsequently return to the Department?
A Yes. I applied back -- I believe it was 2011. I -- I don't remember the exact date I -- that I reapplied, but I did not -- I did not get picked for the position.
Q Okay. Do you have any idea why?
A I was told by the agent in charge that they wanted a male for the position and not a female, so I --
Q Okay. Did --
A -- did not get it.
Q Did you subsequently reapply?
A Yes. Well, from that -- from me not being hired in that year, the EEOC actually filed a lawsuit against the Agency for discrimination based off of my gender. And I won that lawsuit, and then I started back in -- I believe it was 2012.
Q Okay. And when you first started with the Department back in -- I believe, was it 2006? -- what position did you come in at?
A As an agent.
Q Okay. And what was the last position that you held

at the Department?
A I was a field supervisor, the supervisor of the sex offender program and the GPS program.
Q Okay. So rising from an agent to those positions, were those considered promotions?
A Yes.
Q Okay. Had you received various pay increases during your time there?
A Yes.
Q Had you received honors while you worked there?
A Yes.
Q What types can you tell us about?
A During my four years of a supervisor, I was nominated for the supervisor of the year three years, finalist two of the years, and then just several of the cases that we found in the field.
Q Okay. When did your employment with the Department end?
A December 19th of 2018.
Q Okay. And how -- how did that end? Did you resign, or were you terminated?
A Resigned.
Q Okay. Kristin, just for background, do you suffer and have you had any mental or -- mental health issues that you struggled with?

A PTSD, anxiety, and depression.
Q Okay. Are you currently treated for those issues?
A Yes. I receive treatment.
Q Okay. Do you take medication for those issues?
A Yes.
Q Okay. And do those issues relate back to your time in the military?
A Yes.
Q All right. Now, at some point in the fall of 2018, were you advised that some type of investigation was being conducted against you by the Agency?
A Yes. In December --
Q Okay.
A -- of 2018.
Q Okay. In December of 2018; is that what you said?
A Yes.
Q Okay. Prior to that time, had there been any other type of investigation conducted into you by the Agency?
A Just by AIC Gambrell and assistant AIC Honeycutt. There was two days that they spoke with me in October.
Q Okay. And do you have any knowledge of what was the outcome of that earlier investigation in September and October?

A Nothing.
Q Okay.
A I don't . . .
Q Well, did the -- do you know whether or not the Agency said there should be discipline or not?
A From reading through the notes, the deputy director advised the regional director to speak with Gambrell, that there was to be no action and that -- you know, and just speak with me on their concerns but nothing's to be documented and that there will be no reprimand.
Q Okay. But I believe you testified that, in December, did you become aware of another investigation?
A Yes. When Jeff Harmon contacted me and asked me to come in and speak with him.
Q Okay. And what, specifically, did he tell you the allegations were?
A A sexual incident with Nicole Albany.
Q All right. And do you know -- have knowledge about what date that incident allegedly occurred?
A May 2015.
Q Okay. And were you engaged in a sexual relationship with Nicole Albany?
A No.

Q Okay. All right. Even if you had been engaged in a romantic or sexual relationship with Nicole Albany, would it have been a violation of any policy of the Agency?
A No.
Q Okay. Did the Agency ever tell you that was a violation of any policy?
A No.
Q All right. At some point before you -- before this investigation you were advised of in December of 2018, had you filed a complaint against Agent Gambrell and Agent Honeycutt?
A Yes.
Q Okay. And when did you file that complaint?
A I believe it was October 19th.
Q Okay. And do you have any knowledge of when they were -- of when the Agency provided them with notice of that complaint?
A November 7th.
Q All right. Do you have any concerns that that complaint may have been part of what leads us here today?
A Yes.
Q All right. In regard to the investigation that you were notified of in December of 2018, were you

questioned by Agent Harmon?
A Yes.
Q Okay. Did you meet with him on multiple occasions?
A On two occasions.
Q Okay. Did you cooperate with Agent Harmon?
A Yes.
Q Were you honest with Agent Harmon?
A Yes.
Q Did you withhold any information?
A No.
Q All right. And, again, the incident they were asking you specifically about was 3 1/2 years prior?
A Yes.
Q Is that correct?
A Yes.
Q All right. And where did that alleged incident occur?
A At Nicole Albany's house.
Q Okay. What -- what time of night -- or what time of day did that incident occur?
A It's -- evening is when they're saying it . . .
Q Okay. Do you have any recollection of whether or not individuals, including yourself and Nicole Albany, were drinking on that occasion?

A I believe mostly everybody.
Q Okay. Were you having any -- was there any concern that you may not have remembered every single detail from 3 1/2 years prior?
A Yes. I don't have a very good memory.
Q Okay. But subsequent to the first meeting, I believe, were you here when Agent Harmon testified that he gave you the option to come back and provide him with more information following your first meeting?
A Yes.
Q And did you, in fact, come back and give him with -- further information?
A Yes.
Q Okay. And what, specifically, did you advise him during that meeting?
A That Nicole Albany attempted to provide oral sex to me, but that it did not happen.
Q Okay. Did you get into the specifics of what happened during that second meeting with Agent Harmon?
A No. I just told him that I was at her house, that she -- we'd been drinking, that she was intoxicated, that she tried to pull my pants to conduct oral sex. But there was no follow-up

questions.
Q Okay. So did Agent Harmon asking -- ask you any specific questions about what you did or what happened next or details of what had happened --
A No.
Q -- on that date?
Okay. Was that statement true?
A Yes.
Q Okay. Was this the first time you had disclosed to the Agency that Nicole Albany had made sexual advances to you?
A I discussed it with my agent in charge at the time, Greg Stewart, and I told him, you know, that she was making advances towards me, and that, you know, we needed to move her to another team because she was becoming angry and a little bit hostile because I was not accepting her advances. And so I told him that it would be in our best interest to have her moved to another team.
Q Okay. Was she upset about that -- or do you have any knowledge as to whether or not she was upset about that?
A I -- I don't.
Q Okay. And Mr. Stewart, was he your agent in charge at the time?

A Yes.
Q Okay. All right. So, Ms. Cosby, were -- how many times do you think you represented to the Agency or told the Agency that Nicole Albany had made sexual advances towards you prior to your giving a polygraph?
A As far as during this investigation?
Q Or at any time.
A Well, the one conversation with Jeff on the 12th, and then I probably had two conversations with my agent in charge at the time.
Q Okay. And that was Agent Stewart, again?
A Yes.
Q All right. All right. So following the question with Agent Harmon, after your first, meeting did he ask you to take a polygraph?
A Yes.
Q All right. And did you agree to submit to the polygraph?
A Yes.
Q Where was that held?
A At the SLED building in Columbia on Broad River.
Q Okay. And how did you get to the polygraph exam?
A I was driven by the agent in charge and assistant agent in charge.

MS. WRIGHT: She -- she testified to that earlier. I was just going to say asked and answered previously. That --

HEARING OFFICER SMITH: Wait a minute. I'm sorry? I --

MS. WRIGHT: She --

MS. ATKINSON: I just asked her how she got to the polygraph. I believe another witness testified to that. I don't believe I asked her that question.

HEARING OFFICER SMITH: Well, I think she can answer the question.

MS. WRIGHT: Right. I mean, she -- she actually answered it earlier in her testimony that AIC Gambrell and -- and AAIC Honeycutt drove her down to the polygraph.

HEARING OFFICER SMITH: You talking about Ms. Cosby in her testimony, or . . .

MS. WRIGHT: Yes.

MS. ATKINSON: This is the first time I've asked her the question.

HEARING OFFICER SMITH: Okay.

MS. ATKINSON: So I'm --

HEARING OFFICER SMITH: Let's --

MS. ATKINSON: -- just asking --

HEARING OFFICER SMITH: That's fine. Go ahead and ask the question.

THE EXAMINATION BY MS. ATKINSON CONTINUES.

Q All right. So how did you get to the polygraph in Columbia?

A I was driven by AIC Gambrell and Assistant AIC Honeycutt.

Q Okay. And were those the two agents you had previously filed a complaint about to the Agency?

A Yes.

Q Okay. And, in that complaint, had you identified that you felt afraid going into the office because of those two agents?

A Yes.

Q Okay. Were you upset on the day that you were going to take the polygraph?

A Very.

Q Okay. And what -- in what way were you upset? How were you feeling that day?

A I was crying the entire ride down to the SLED building. I was crying during the entire time in the SLED office, a little bit more hysterical once I actually got into the office because it's a trigger for me --

Q Okay.

A -- with my PTSD.
Q Okay. So when you say you were "upset," were you upset because of the trigger of PTSD, or were you upset because you were worried that you'd done something wrong?
A The -- the trigger of my PTSD.
Q Okay. And can you explain just a little bit about that for us? I know that's hard to talk about, too.
A I witnessed my husband shoot himself while we were in the military, and after the police agency completed their investigation and cleared me, the Air Force conducted their own separate investigation and had one of my supervisors drive me to a building where I was given a polygraph.
Q Okay. So, on the date -- in December of 2018, being driven to that polygraph, did that bring up those memories?
A Yes.
Q Okay. Were you taking additional medication on that date as a result of this trigger of PTSD?
A Yes. For my --
Q Okay.
A -- PTSD and anxiety.
Q Okay. Prior to the polygraph being conducted --

and we're not going to get into the substance of what happened during the polygraph, but I believe you heard Lieutenant Jones was here earlier and testified about the pre-polygraph meeting. At that time, do you recall whether or not he noticed your state of mind or what your appearance was?

A Yes.

Q Okay. And what -- what can you tell us about that?

A He just asked me why I was upset, and I told him that it -- the -- driving to the polygraph was a trigger for my post-traumatic stress disorder because of what had happened in the military.

Q Okay. And, again, we're not going to talk about the questions that were asked or what happened, but, following the conclusion of the polygraph, did you have further conversation with Lieutenant Jones?

A Yes.

Q Okay. And what further conversation did you have with Lieutenant Jones -- excluding any specifics about the polygraph and whether you failed or passed -- but what -- what, if any, further conversation, outside of that, did you have with Lieutenant Jones?

A He just said that Jeff Harmon was going to walk in,

and that he was, you know, looking out for my best interests and trying to help me and provided scenarios as to what could've taken place at Nicole Albany's house. And that, you know, he's just trying to make sure that he's looking out for my best interest by telling me what could've happened so that way, you know, the information to Jeff Harmon is accurate.

Q Okay. So your testimony is that Lieutenant Jones was -- or was he encouraging you to provide a further statement, or what was --

A Yes.

Q -- what was going --

A He --

Q -- on?

A He was encouraging me to provide a statement saying that, you know, the sexual activity took place at her house because I was interested in trying something new or because I wanted to feel young again or because I liked the attention. So he was giving me examples of -- to use why I would have done the act.

Q Okay. Did you specifically provide a statement?

A Yes.

Q Okay. And is that the same statement, I believe,

that the State presented earlier?
A Yes.
Q Okay. In regard to the contents of that statement, I believe you indicated, again, that a brief encounter occurred with Nicole Albany; is that right?
A Yes.
Q Okay. And what happened on that occasion with Nicole Albany?
A That she attempted to pull my pants down and conduct oral sex.
Q Okay. And is that the same issue that you were trying to relate to Agent Harmon previously?
A Yes.
Q Okay. And is that the same sexual advance you had related to Agent Stewart --
A Yes.
Q -- years prior?
A Yes.
Q Okay. Okay. In providing that statement and in providing any statements to the Agency, did you ever knowingly provide any false information?
A No.
Q Okay. Did you ever intentionally try to mislead the Agency?

A No.
Q Okay. Were you attempting to hide anything from the Agency?
A No.
Q All right. Ms. Cosby, in that statement you indicate that she was either on her knees or crouched down and started performing oral sex. Was that statement true, that Nicole Albany had starting performing oral sex on you on that date?
A She attempted to.
Q Okay. And, again, is that consistent with the same statement you were making with Agent Harmon previously?
A Yes.
Q Okay. And I believe you were present when we questioned Agent Harmon about the second statement you gave him about that, and did you hear him deny that you told him on that date Nicole Albany had attempted oral sex?
A Yes.
Q Okay. Did you, in fact, tell him on December 12th, 2018, that Nicole Albany had attempted oral sex on you?
A Yes.
Q All right. Again, so I believe you testified that

you resigned; is that correct?

A Yes.

Q How did you resign?

A I submitted a letter to AIC Gambrell.

Q Okay. And, I believe, Respondent's Exhibit Number 5 -- if I could show you --

HEARING OFFICER SMITH: Uh-huh. Hold on one second.

MS. ATKINSON: I think we'll need 5 and 6, please.

HEARING OFFICER SMITH: You want 5 and 6?

MS. ATKINSON: Yes, please.

HEARING OFFICER SMITH: All right. Do you want me to hand this to your witness or -- or you?

MS. ATKINSON: That would be just fine.

HEARING OFFICER SMITH: All right. Handing Respondent's 5 and 6 to the witness.

MS. ATKINSON: All right.

Q Ms. Cosby, looking at those documents, do you see a letter of resignation you submitted to the Agency?

A Yes.

Q Okay.

A Dated December 19th, 2018.

Q Okay. And to whom did you submit that letter?

A Agent Gambrell.
Q Okay. And did Agent Gambrell accept your resignation?
A Yes.
Q Okay. And, sitting next to you, do you have another document, I believe, that's marked as a -- Respondent's Exhibit Number 6?
A Yes.
Q And does that appear to be communication from Agent Gambrell accepting your resignation?
A Yes.
Q Okay. Prior to your resigning, did the Agency ever advise you that you were being terminated?
A No.
Q Okay. Did you ever hear from anyone at the Agency that you were going to be terminated?
A No.
Q Did you ever receive any paperwork from the Agency saying you were being terminated?
A No.
Q Okay. Now, subsequent to your resignation from the Agency, did you learn, by way of what I believe has been marked as Council's Exhibit Number 1 to this hearing, that the Agency had reported to the Academy here that you had been terminated for

misconduct?
A Yes.
Q Okay. Were you, in fact, terminated from the Agency?
A No.
Q Okay. So do you believe the statement that the Agency provided was true or false?
A False.
Q Okay. Sitting here today, do you believe you committed misconduct?
A No.
Q Okay. Did you ever provide willful -- or willfully provide false information to the Agency?
A No.
Q Okay. Did you ever attempt to conceal anything from the Agency or provide information that wasn't correct?
A No.
Q Okay. I believe Agent Harmon testified earlier that he told you that having a relationship with a subordinate wasn't a violation of any policy, correct?
A Correct.
Q Okay. So did you have any reason to believe that, even if you'd had a relationship with Nicole

Albany, that you would've been terminated for that?
A No.
Q Okay. Did you have any reason to lie to the Agency?
A No.
Q All right. Ms. Cosby, as a result of the Agency's actions in reporting that -- reporting to the Academy that you had been terminated for willful misconduct, what's been the result to you?
A I was terminated from my job at the solicitor's office, my part-time job for drug court. And I've not been able to apply at any agent -- law enforcement agencies, whether it's in a law enforcement position or not. Couldn't even get a job as a loss-prevention officer at Walmart because of the fact that I would have to testify, and showing willful misconduct in my record would keep me from testifying. So I cannot get a job in any capacity of law enforcement.
Q Okay. Are you concerned about your ability to find future work?
A Yes.
Q Okay. How long have you worked in law enforcement, Ms. Cosby?
A Roughly, 16 years.

Q Okay. Did you have any intent to move outside of the law enforcement world?
A No.
Q Okay. Ms. Cosby, in regard to the -- to the best of your knowledge, have there been other situations in which agents have, in fact, knowingly provided false information to the Agency and not been reported to the Academy?
A When --
MS. WRIGHT: I -- I -- we object to this.
HEARING OFFICER SMITH: Yeah. I --
MS. ATKINSON: Okay. All right. We'll move on.
HEARING OFFICER SMITH: Okay. Thanks.
MS. ATKINSON: I'd be happy to move on.
Q Kristin, is there any further information that you think is relevant that we need to know today?
A I just feel as though this was all brought up because of a promotion that I was trying to apply for and that it's just retaliation for my complaint that I made against the agent in charge and assistant agent in charge.
Q Okay. At -- at the time -- so when you say "the promotion," were you up for a promotion at that time?

A Yes. I had applied for a promotion in the Greenville office.
Q Okay. And when did you apply for that promotion?
A October.
Q Okay.
MS. WRIGHT: Object.
MS. ATKINSON: All right. I don't believe I have any further questions for Ms. Cosby at this time.
HEARING OFFICER SMITH: All right. Ms. Wright, cross-examination?
MS. WRIGHT: Yes.

CROSS-EXAMINATION OF KRISTIN COSBY

BY MS. WRIGHT:
Q So on December 7th, when you were first contacted by Jeff Harmon, his investigation, isn't it true he told you that although employees -- the director told him employees don't usually get terminated for actions regarding sexual conduct between employees, they do get terminated for lying?
A Yes.
Q He did say that, didn't he?
A Yes.
Q Okay. So you knew at the very beginning of his investigation that you could get terminated for lying?

A Yes.
Q As part of the investigation?
A Yes.
Q Okay. So when he asked you that first time about whether you had a sexual relationship with Nicole Albany, what did you tell him?
A No.
Q You told him no?
A Right.
Q And -- and so then after that, when he told you that he was going to schedule the exam -- the polygraph exam -- I believe on the 10th of December, he gave you the option to change your statement. Did you -- did you, in fact, change your statement?
A Yes. He gave me an option to change it at a later date.
Q Okay. And so when you met -- when you -- you did -- you did, in fact, contact Mr. Harmon at a later date to do that, didn't you?
A Yes.
Q Okay. And so, again, initially, on December the 7th, you denied ever having a sexual relationship, but then on the -- the -- the 10th, that's when you stated that -- you stated what again?

A That she attempted oral sex.
Q Okay. But that you had stopped it, right?
A Yes.
Q Okay. So -- okay. So you do admit that there was a change in the -- the content of your denials between the 7th and the 12th?
A Yes.
Q Okay.
A Because when he spoke to me the first time, this came completely out of the blue and, again, it was 3 1/2, and I have no recollection of what he was talking about. And he told me to take his -- take my time because, like critical incidents, the memories are not going to come back and that you would need to be questioned at a later time. And when I thought about that night and what was going on is when I said, "Okay. I think I remember some things from that day, and I'd be willing to talk to you again," because, again, my memory is not very good --
Q Okay.
A -- and it was 3 1/2 years ago.
Q Okay. But -- but still, ultimately in that second conversation when you changed your statement, you still denied having the relationship; is that

correct?

A Yes.

Q Okay. All right. I would like to show you again -- this is the consent to interview. I believe this has been moved into evidence as a State's exhibit.

HEARING OFFICER SMITH: All right. Let me just show her the exhibit, then. Which exhibit is this?

MS. WRIGHT: Okay. It's the --

HEARING OFFICER SMITH: Let me take these back here.

WITNESS COSBY: Okay.

HEARING OFFICER SMITH: Do you still need the Respondent's 5 and 6?

MS. ATKINSON: I don't. We can put those back in.

HEARING OFFICER SMITH: All right. Before I get everything up here. I'm sorry. Go ahead, Ms. Wright. What --

MS. WRIGHT: I believe it's either --

HEARING OFFICER SMITH: Is it the consent to interview?

MS. WRIGHT: Yes, sir.

HEARING OFFICER SMITH: That's State's 6?

MS. WRIGHT: Yes, sir.
HEARING OFFICER SMITH: Okay. I'll hand State's 6 to the witness.
WITNESS COSBY: Okay.
MS. WRIGHT: Okay.

Q All right. I'm going to give you a quick minute to look that over. Can you identify for us what that is?
A Consent to interview with polygraph.
Q Okay. And so isn't it true that Lieutenant Jones gave you this form in the -- in the pre-interview part of the exam?
A Yes.
Q Okay. And so you -- you do -- can -- can you read for us what it says is the reason for the polygraph that's handwritten at the top?
A "Whether or not you engaged in any sexual activity with Nicole Albany."
Q Okay. So from that, it was your understanding at the beginning of the polygraph that the whole purpose of it was to get to the truth of whether that occurred or not?

MS. ATKINSON: I object to that question. She asked her --
HEARING OFFICER SMITH: What's the objection?

MS. ATKINSON: -- if it was her understanding. She can testify what the document said, but --

HEARING OFFICER SMITH: Well, she can testify to her understanding, also. I'm going to overrule the objection.

MS. ATKINSON: Okay.

Q Could you answer the question, please?

A Yes.

Q Okay. So again, continuing to look at this form, where it states your rights and the waiver and consent, are these your -- are these, in fact, your initials along the side of the form?

A Yes.

Q Okay. So each initial you were essentially noting that you, in fact, had read those instructions; is that correct?

A Yes.

Q Okay. All right. I'd like to -- you can give that back to the hearing officer at this point.

HEARING OFFICER SMITH: Thank you. Do you -- do you want her to read --

MS. WRIGHT: Well, I'm -- I'm not quite finished. I have a few more questions. I'm sorry.

HEARING OFFICER SMITH: Okay. Well, I -- I --

I'm just asking: Do you want to leave it in front of her for her redirect?

MS. WRIGHT: Oh, I'm sorry.

HEARING OFFICER SMITH: That's all I'm asking, but if not, I'll take it back and then --

MS. ATKINSON: I don't intend to ask further questions on that.

MS. WRIGHT: Okay.

HEARING OFFICER SMITH: Okay. All right. Thanks. Go ahead, Ms. Wright.

Q Okay. So again -- so after -- again, that was before the polygraph. So after the polygraph, that is when you submitted this voluntary statement. I believe it's State's Exhibit 2, what -- what Ms. -- your -- your attorney, Ms. Atkinson, showed you earlier. This looks like it right here. I believe this --

HEARING OFFICER SMITH: Do you want me to show it to her again?

MS. WRIGHT. Yes, sir. Please. Thank you.

HEARING OFFICER SMITH: All right. I'm giving the witness State's 2.

MS. WRIGHT: Yes.

WITNESS COSBY: Okay.

MS. WRIGHT: Yes. Okay.

Q And you'll note this is in your handwriting, isn't it?
A Yes.
Q Okay. So again, this was a statement that you -- that you filled out at -- at the conclusion of the exam, correct?
A Yes.
Q Okay. So wouldn't you agree that what you wrote here was markedly different than what you told Lieutenant Jones, as well as Jeff Harmon, prior to the exam?
A No.
Q Okay. In what way is it the same?
A Because it was asked if I engaged in any sexual relationships with her, and I wrote in my statement that she is the one that engaged me in any sexual conduct.
Q Okay. But beyond that, the -- the -- the -- the clear question that -- that Lieutenant Jones asked you prior to the -- as -- as stated in the prior consent to interview, you know, again it says, as you read into the record earlier, whether or not you engaged in any sexual activity with Nicole Albany.
A Right.

Q That's -- that's the key of the question, isn't it?
A Yes.
Q Okay. So it doesn't ask whether or not -- who -- who started what. It just says whether there was sexual activity; isn't that correct?
A No.
HEARING OFFICER SMITH: Counsel, I -- I'm going to object. I think it's a matter of interpretation. We're getting to the point of splitting hairs here on what a word means --
MS. WRIGHT: Okay.
HEARING OFFICER SMITH: -- and I don't want to sound like Bill Clinton "what do you mean by 'is,'" so let's --
MS. WRIGHT: Okay.
HEARING OFFICER SMITH: -- wrap it up.
MS. WRIGHT: All right.
Q Well, so wouldn't you agree, in general, in summation, that the -- the statement that you provided does state that you did, in fact, have sexual relations with Nicole Albany?
A Would you -- would you like me to read it? I -- I stated that she engaged in a sexual encounter.
Q Okay. All right.
MS. WRIGHT: I have no further questions.

HEARING OFFICER SMITH: All right. Any redirect?
MS. ATKINSON: Just one or two.
HEARING OFFICER SMITH: Okay.

REDIRECT EXAMINATION OF MS. COSBY

BY MS. ATKINSON:

Q You were previously asked by the agents whether you engaged in a sexual relationship with Nicole Albany; is that correct?
A Yes.
Q Did you and Nicole Albany ever have a sexual relationship?
A No.
Q Okay. And what you related in this voluntary statement, do you term that a "brief incident" in that document?
A Yes.
Q Okay. Other than that brief incident, was there ever any other sexual contact from Nicole Albany towards you?
A No.
Q Okay. And did you previously report the sexual advance from Nicole Albany to you to the Agency?
A Yes.
Q All right. No further questions.
HEARING OFFICER SMITH: Okay. Do we have re-cross? No?

MS. WRIGHT: No, sir.
HEARING OFFICER SMITH: All right. Then, may this witness return to her seat?
MS. WRIGHT: Yes, sir.
HEARING OFFICER SMITH: Okay. Thank you. All right. Ms. Wright, you have, at this point in time the opportunity to close and Ms. Cosby has the last opportunity, so the State can make its closing argument.
MS. WRIGHT: Okay.
MS. ATKINSON: I -- I'm sorry. I --
MS. WRIGHT: Can -- oh, go ahead.
MS. ATKINSON: Oh, you wanted Ms. Wright to start or --
HEARING OFFICER SMITH: No.
MS. ATKINSON -- to me? I'm sorry.
HEARING OFFICER SMITH: No. The State closes first. Did you have something else that you wanted to bring up?
MS. ATKINSON: No. No.
HEARING OFFICER SMITH: I'm sorry. I didn't mean to -- I assumed you'd rested.
MS. ATKINSON: No. I -- no. I'm sorry. I -- I misunderstood your question.
HEARING OFFICER SMITH: No.
MS. ATKINSON: Please proceed.

HEARING OFFICER SMITH: You've -- you've rested?
MS. ATKINSON: I have rested. We have no further witnesses.
HEARING OFFICER SMITH: Yeah. So the -- the State gets first closing.
MS. WRIGHT: Okay.

STATE'S CLOSING STATEMENT

MS. WRIGHT: First off, I'd just like to thank everyone for their time today, and -- and I appreciate your patience. But again, as I stated in the opening, I believe that there has been enough substantial evidence throughout the context of this hearing to show that there was misconduct as noted in the PCS, I believe that's Council's Exhibit 1, that was submitted to the Agency -- I mean submitted to the Academy in regards to what happened as a result of the investigation that was conducted by Mr. Harmon in regards to whether or not a particular incident occurred.

And I would reiterate that the whole point of the initiation of that investigation was based upon trying to get to the truth of the matter as to whether or not the conduct occurred or not. I will remind the -- the folks here that at the beginning of the -- beginning of the investigation, there was

concern that AIC Gambrell testified to in terms of inappropriate relationships that Kristin Cosby was having with her subordinates and, further, that's what caused him to ask Nicole Albany, as being that she was one of her subordinates at the time, whether something had happened between them.

And at the initiation of it, Nicole Albany, as you heard her testify, did admit that there was a relationship between them, and that was consistent once Mr. Harmon began the investigation where she told him again that there was an -- there was a relationship between her and Ms. Cosby.

And so at that point, as Mr. Harmon moved into the investigation, of course, he had to ask Kristin Cosby whether or not that was true. Again, Ms. Cosby was advised at the beginning of the investigation that it would be problematic for her if she lied during the investigation. Not that -- not that the relationship itself would be problematic, but that the fact if she would lie during the investigation, that was problematic. And, unfortunately, Ms. Cosby began to deny that the relationship occurred, and that is what then sprung the Agency to have a -- an exam done. And again, Ms. Cosby continued to deny prior to that

exam to Lieutenant Jones, and it wasn't until after the exam when she admitted to the actual truth of what happened between her and Nicole. And that is the reason for the misconduct as stated in the PCS as -- as to why the director -- director of the Department did have this file because it still -- although it is true that Ms. Cosby did submit her resignation the next day, this investigation had already been ongoing.

And again, the -- the date of the exam, I believe, was February the 17th. And again, Mr. Harmon testified earlier, and as -- as is stated in the -- his summary of findings that the summary of findings was presented to the director on December the 18th, which, again -- and then immediately after that, that -- that concluded his investigation. And as noted in his -- in Mr. Harmon's prior testimony and as noted in the Department's policy, the -- you know, the -- regardless, the -- the investigation outcome still had to be -- be determined, and it -- and it was in accordance with these documents.

So although she did resign the next day, this was something that was already ongoing. It was already -- it had already occurred. It -- there

was a conclusion that was determined as a result of that, and it -- and it was, in fact, for the fact of her -- of the pattern that was established in the investigation of, you know, Ms. Cosby repeatedly being asked whether or not this in fact occurred, her continual denial, denial, denial, although changing of her statement, but still denying it, and then, after the exam, an admission. And so it's for that reason that the Department's position is that she committed misconduct as stated on the PCS form. Okay?

HEARING OFFICER SMITH: Okay. Thank you. Okay, Ms. Atkinson.

MS. ATKINSON: All right.

RESPONDENT'S CLOSING STATEMENT

MS. ATKINSON: We also thank you for your time today. We understand it's been a very long day, but for Ms. Cosby, it's been a very important day because this matter here today really affects her livelihood and what she's done for the last 16 years. So we do really appreciate all of the time and patience put into today.

It certainly is our position that the Agency has not met its burden of proving misconduct on the part of Kristin Cosby. Instead, what I hear is

that there were lots of different investigations into all kinds of things and splitting hairs about what terms mean and what did and didn't happen. But regardless, Kristin Cosby never provided any false statements to the Agency. She never did so with any intent to mislead. She knew that what she was being accused of wasn't a violation of any policy, and she had no reason to lie about it. But again, there's a lot of splitting hairs that's gone on in this case.

The Agency claims -- and the Agency had specifically admitted asking if she had a sexual relationship with Nicole Albany, which certainly Ms. Cosby denied and continues to deny, because she didn't have a relationship with Nicole Albany. What we've heard is that there was one brief incident having any sexual contact of any type that occurred 3 1/2 years prior to this investigation starting on November the 8th.

Again, Nicole Albany, as Kristin has testified, made sexual advances to her on that date, and Kristin Cosby was honest about that to the Agency on multiple occasions. She disclosed that to Agent Harmon on December the 12th. I -- he disputes that that's on that -- the recording, but

I think when the hearing officer listens to that recording, it will be very clear that she did say that, on that date, Nicole Albany tried to engage in oral sex, but she stopped her. And that's been consistent all along.

In fact, Kristin Cosby previously reported a sexual advance by Nicole Albany to her previous agent in charge, and in fact, requested that Nicole Albany be moved out from under Kristin because she didn't feel like it was a good situation. So again, to -- for the -- for the Agency to take the position that Kristin Cosby never reported this or lied about that is not only not factually accurate, it disgenuine.

Regardless, I think it has to be looked at the circumstances that arise -- you know, arising to the level of this and what brings us here today. Again, as we've heard, there was an investigation into Kristin in the fall of 2018 in which the deputy director told the agent in charge and the assistant agent in charge that there was no misconduct on the part of Kristin Cosby and that they were to stop investigation -- stop investigating and that there was not to be any further action taken.

Regardless, after that, Kristin Cosby filed a complaint against those two individuals on October the 19th indicating that she felt afraid coming into the office dealing with them and that she felt their continued investigations were harassment. And the very day after those two individuals were advised of that complaint is when Agent Gambrell acknowledges, and Nicole Albany acknowledges, that the agent in charge, who was the subject of that complaint, went to Nicole Albany and started asking questions again about this relationship that Nicole Albany hadn't sought to mention for 3 1/2 years to anyone. And again, although she testified that she had made a report about that to the Agency previously, absolutely nothing has been provided by the Agency or produced by the Agency that there was ever any such report. Instead, what we've got is the Agency bringing up an issue of a brief encounter that occurred 3 1/2 years prior that Kristin Cosby was consistently honest about, and that prior to all of this happening in November or December, the Agency had never previously inquired as to the details of what had happened.

You know -- and again, concerning is the specific report that was made to the Academy here

that Kristin Cosby was terminated. I heard the Agency's counsel state just now that they believe that position and that statement was justified given that there was an investigation and a recommendation was made for that, but that recommendation was never passed on to Ms. Cosby, and it was never communicated to Ms. Cosby. In fact, we heard from the agent in charge that Kristin Cosby submitted a letter of resignation and that the Agency accepted that letter of resignation. Had they intended to terminate her and did not want to accept her resignation, they could have said so at that time and indicated that her employment was being terminated, but they didn't do that. And so to come back and report that she was terminated, that's false information in and of itself, which is especially concerning given that they have alleged that Kristin Cosby provided false information to the Agency.

But regardless, Kristin has testified that she provided consistent statements, that she never willfully lied to the Agency. She had no reason to, and we just don't believe that the Agency has met the burden of proving that she engaged in any misconduct. At very worst, what they're talking

about is they're investigating an issue that had happened three years prior that the agent had never complained about and that wouldn't even have been a violation of Agency policy.

But again, this is a very serious matter to Kristin, because it affects her law enforcement certification and her ability to work in the field that she has for the last 16 years. So we do very much appreciate your time today.

HEARING OFFICER SMITH: Okay. Anything else then? No? Neither? Okay. We're concluded. Thank you so much.

MS. ATKINSON: Thank you.

MS. WRIGHT: Thank you.

(Whereupon the within hearing was concluded at 3:42 p.m.)

(*This transcript may contain quoted material. Such material is reproduced as read or quoted by the speaker.)

(**Certificate accompanies sealed original only.)

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

CERTIFICATE

Be it known that Susan A. Wyant took the foregoing proceeding and hereby attests:

that I was then and there a notary public in and for the State of South Carolina-at-large and that by virtue thereof I was duly authorized to administer an oath;

that the deponent/witness was first duly sworn to testify to the truth, the whole truth, and nothing but the truth, concerning the matter in the controversy aforesaid;

that the foregoing transcript represents a true, accurate, and complete transcription of the testimony so given at the time and place aforesaid to the best of my skill and ability;

that I am neither a relative nor an employee of any of the parties hereto, nor of any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action;

that, if a recording of an event was supplied by another party for purposes of transcription and I was not present during that event, the foregoing pages were transcribed to the best of my skill and ability; additionally, any identifications of speakers were provided to me by the party supplying the recording;

that, in the event of a nonappearance by the witness, the foregoing details for the nonappearance are accurate.

In witness thereof, I have hereunto affixed my signature and title.

Susan A. Wyant

Susan A. Wyant

Date: 5/29/2019

Notary public for South Carolina
My commission expires May 29, 2019.

South Carolina Criminal Justice Academy



January 7, 2019

Kristin Cosby
307 Marsh Creek Drive
Mauldin, SC 29662

2019-CJA-01-01

Hand Delivery Only

RE: Allegation of certification misconduct and right to contested case hearing

Dear Ms. Cosby:

The South Carolina Department of Probation, Parole, & Pardon Services has filed an allegation of certification misconduct against you. In particular, 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. You cannot be employed as a law enforcement officer or as a telecommunications operator; have the authority of a law enforcement officer; perform any duties of a law enforcement officer, including those duties involving the control and direction of member of the public, detainees, or prisoners; or exercise the power of arrest, while this allegation of misconduct is pending.

A person against whom an allegation of misconduct has been received by the academy may request a contested case hearing. The request must be made within three years after receipt of the allegation of misconduct and the service of the allegation on the officer, whichever is later. **A person who fails to request a contested case hearing within the time allowed shall be deemed to have waived his right to a contested case hearing. The Law Enforcement Training Council shall proceed to enter a final agency decision to deny the person his law enforcement certification or telecommunications certification for a specified time period, up to a permanent denial.** Hearings must be scheduled and conducted expeditiously and efficiently, consistent with the needs and rights of the parties to obtain a fair hearing and a complete record. The academy shall schedule a contested hearing within sixty days of receiving a request for a hearing, however, a continuance may be granted for cause. S.C. Code Section 23-23-150 (D) (emphasis added).

If you wish to dispute the allegations of certification misconduct, you must file the Request for Contested Case Hearing form, which is enclosed.

Please be advised that you are entitled to have an attorney represent you at this hearing. Should you hire an attorney to represent you, please have the attorney send a notice of appearance to James M. Fennell 5400 Broad River Road, Columbia, South Carolina 29212. If you have any questions or concerns, please do not hesitate to contact Mr. Fennell at 803-896-7722.

Sincerely,

Lewis J. Swindler, Jr.

Lewis J. Swindler, Jr.
Director

I have received the allegation of certification misconduct and my right to a contested case hearing. I acknowledge that I have three (3) years to request a contested case hearing. If I do not request the contested case hearing within three (3) years, I understand that I will have waived my right to having one. Additionally, the Law Enforcement Training Council will proceed to enter a final agency decision, against me, to deny me a law enforcement certification for specified time period, up to permanent denial. Finally, I acknowledge that I cannot be employed as a law enforcement officer or telecommunications operator until this allegation of misconduct is favorably resolved.

Kristin Cosby
Print Name

Signature

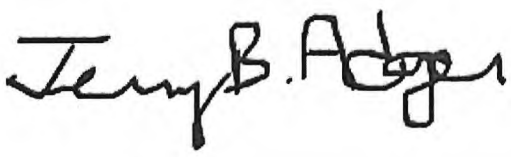
11/7/19
Date

Witness

Witness Signature

1-7-19
Date

PCS Separation Due to Misconduct

Submission Date	01-03-2019 11:38:33
Reporting Department	SC Probation, Parole & Pardon Services
Agency Email	barbara.bright@ppp.sc.gov
Agency Phone #	(803) 734-9047
Today's Date	01-03-2019
Officer's Name	Kristin Cosby
Academy ID #	0917-7486
Home Telephone #	(864) 320-2358
Officer's Current Home Address	307 Marsh Creek Drive Mauldin South Carolina 29662
Certification Type	Class 1 LE
Date of Separation	12-19-2018
Separation Action	Termination INVOLVING MISCONDUCT as defined in S.C. Code Section 23-23-150
Please indicate the nature of the misconduct by selecting the appropriate choice below:	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;
Employing Agency Head (Chief, Sheriff, Director)	
Date	01-03-2019
Name (Chief, Sheriff, Director)	Jerry B Adger
Official Title (Chief, Sheriff, Director)	Director
Officer's Name	Kristin Cosby

CJA ID	0917-7486
Employing Agency's Contact Person (for more information)	Ms. Barbara Bright
Contact Telephone Number	(803) 734-9047
Type description of the alleged misconduct	On 11/30/2018 AIC Chad Gambrell contacted Director Jerry Adger and informed him about a misconduct in the Greenville County Office involving Team Leader Kristen Cosby. Director Adger advised OPR Director Jeff Harmon to open an investigation regarding the misconduct allegations and to begin immediately. On 12/03/2018 a PPP employee, to remain anonymous, was interviewed by OPR Director Harmon and the employee admitted to having a consensual sexual relationship with Team Leader Kristen Cosby, who was the employee's supervisor at the time. On 12/07/2018 OPR Director and Risk Manager Supervisor interviewed Team Leader Kristin Cosby and asked if the allegation was true. Team Leader Cosby denied the allegation of any sexual activity. Team Leader Cosby was advised that a polygraph would be on 12/10/2018 and she could amend her statement prior to taking the polygraph. On 12/10/2018 Team Leader Cosby texted OPR Director Harmon that she would submit to the polygraph and she wanted to amend her original statement. On 12/12/2018 OPR Director and Risk Manager Supervisor interviewed Team Leader Cosby who stated that the PPP employee attempted to have a sexual encounter with her (Team Leader Cosby), but no encounter happened because the employee was interrupted in her attempt. On 12/17/2018 a polygraph was conducted by SLED Polygraph Examiner Lieutenant Bryan C. Jones. Lt. Jones asked Team Leader Cosby several times before the polygraph if she had engaged in sexual activity with PPP employee. Team Leader Cosby denied the allegation each time. During the polygraph Team Leader Cosby again was asked if she had engaged in sexual activity with PPP employee and again she denied. At the conclusion of the polygraph, Lt. Jones advised Team Leader Cosby that she was being deceptive and failed the polygraph. Team Leader Cosby then admitted that the allegation was true. After Lt. Jones completed his interview, OPR Director Harmon received a written statement from Cosby in which she admitted to having sexual relations with the PPP employee. Team Leader Kristen Cosby made false statements to OPR Director Jeff Harmon on 12/07/2018 and again on 12/12/2018 in the course of an internal investigation#20181130-23. Team Leader Cosby made false statements to Lt. Bryan C. Jones of the State Law Enforcement Division concerning matters related to this investigation before and during the polygraph.
Criminal Charges Filed	NO
Employing Agency Head (Chief, Sheriff, Director)	

Date	01-03-2019
Name (Chief, Sheriff, Director)	Jerry B Adger
Official Title (Chief, Sheriff, Director)	Director

EXHIBIT
Cosby
State 1
5/15/19 SW
PENGAD 800-631-6989

Division: Executive Division
Subject: Office of Professional Responsibility
Topic: Internal Investigations

Policy & Procedure No. 1802
Page 1 of 7

Related Forms and Templates: 1276, 1277, 1332, 1335, 1336, 1337, 1338, 1339, 1340, 1341, 1342, 1494, Miranda Warning, Investigation Status Log

NOTICE OF DISCLAIMER:
THE LANGUAGE USED IN THIS DOCUMENT DOES NOT CREATE AN EMPLOYMENT CONTRACT BETWEEN THE EMPLOYEE AND THE SOUTH CAROLINA DEPARTMENT OF PROBATION, PAROLE AND PARDON SERVICES (SCDPPPS). THIS DOCUMENT DOES NOT CREATE ANY CONTRACTUAL RIGHTS OR ENTITLEMENTS. SCDPPPS RESERVES THE RIGHT TO REVISE THE CONTENT OF THIS DOCUMENT, IN WHOLE OR IN PART. NO PROMISES OR ASSURANCES, WHETHER WRITTEN OR ORAL, WHICH ARE CONTRARY TO OR INCONSISTENT WITH THE TERMS OF THIS PARAGRAPH CREATE ANY CONTRACT OF EMPLOYMENT.

CALEA STANDARDS: 26.2.2, 26.2.3, 26.3.3, 35.1.9

POLICY:

The Director of the Office of Professional Responsibility (OPR) is designated by and will directly report to the Agency Director. The OPR Director shall conduct internal investigations of alleged misconduct by Department employees as authorized by the Director. The purpose of these investigations is to uncover, fully develop, and objectively report all facts and circumstances surrounding allegations or complaints of misconduct by Department employees involving violations of policy, codes of ethics, state or federal law, or other recognized standards of conduct. All investigations will be managed in accordance with Policy 205 (Progressive Discipline).

Investigations should not exceed 90 days from the receipt of the complaint or authorization to investigate. Extensions must be authorized by the Agency Director and will only be authorized in 30 day increments.

All records of complaints and internal investigations will be kept in a secure area in order to protect the confidentiality of those records.

PROCEDURE:

Investigative Authority

Upon request from the Department's Director, the Director of OPR has the authority to:

- Require an employee to respond orally and/or in writing to material and relevant questions related to the performance of their official duties or to any question related to the Department's recognized standards of conduct.
- Require an employee to produce and/or grant access to all official records and any other related

documents or material.

- Require an employee to produce and/or grant access to all official Department funds and transaction records.
- Require an employee to produce and/or grant access to all government property including communications and law enforcement equipment.
- Require an employee to appear at any reasonable location designated by the Director of OPR in connection with an official inquiry.
- Direct an employee to keep confidential any investigation-related conversation or information concerning an investigation learned through any contact with the OPR to the extent that such directive neither prohibits nor infringes upon the employee's right to legal counsel.
- Request an employee to submit to a polygraph test in connection with an official inquiry.

Reporting Incidents for Investigation

Internal investigations may be initiated by the following three methods:

- Supervisory staff: When a member of the supervisory chain of command recognizes that a personnel matter may result in a serious disciplinary action above a written warning, the matter must be referred to their respective Divisional Manager, Regional Director, or Supervisor. Based on the severity of the situation, the matter will be staffed with the Director and may become part of the Department's Personnel Early Warning System (See Policy 239 – Personnel Early Warning System). Activities discovered that may be violations of law must be referred to the Director through the appropriate chain of command. Based on the seriousness of the information, the Agency Director will staff the situation with the OPR Director, and upon the Agency Director's authorization, an internal investigation will be coordinated with the appropriate law enforcement agency.
- Complaint: If the complaint received is punishable by any suspension without pay up to termination (first offense), the Deputy Director/Divisional Manager will staff the situation with the Agency's Director, and upon the Director's authorization, an internal investigation will be initiated by OPR.
- Director's Request: The Director has the discretion to authorize/initiate any internal investigation.

Administrative Investigations

Investigations will be conducted as expeditiously as possible and will address all allegations against any Department employee. Each investigation has a direct bearing on any decision to impose disciplinary action or adverse action and will be carefully and completely documented. All investigations will be thoroughly planned to ensure objectivity. Planning will include exploring every reasonable facet of the allegations, all reasonable explanations, and minimization of unnecessary apprehension and injury to the employee's reputation.

The OPR's responsibility goes beyond presenting a preponderance of evidence and must establish that an allegation was found to be:

- Unfounded
- Not Sustained
- Exonerated
- Sustained - Internal Disciplinary
- Sustained - Criminal Charge

The Office of Professional Responsibility will avoid creating an inference of guilt on the part of the employee during the investigation. The OPR investigator will question witnesses and make other contacts as may be required in an objective, unbiased manner.

Where appropriate, the OPR investigator will address supervisory responsibility in relation to the lack of appropriate supervision and its impact upon the circumstances giving rise to the investigation. If deemed appropriate, the Director of OPR will staff the facts with the Director regarding the need for a separate investigation into supervisory responsibility. The original investigation which uncovers supervisory inadequacy will not be unduly delayed pending the investigation of the role of the supervisor.

Criminal Investigations

Whenever information, allegations, or complaints indicate that an employee may have committed a crime, the investigator will advise the Director as soon as possible. The Director will then instruct the Director of OPR to contact the appropriate investigating authority with jurisdiction over the violation and to provide all applicable Department information to that authority. Upon referral for criminal prosecution, the Department will suspend any further investigation and/or interviewing of the employee with respect to the area of suspected criminality or will coordinate with the prosecuting authority to ensure that the criminal investigation or prosecution is not jeopardized. To avoid prejudicing the criminal investigation or prosecution, any disciplinary or adverse action against the employee will be coordinated with the prosecuting authority.

Employee Responsibility

All employees are responsible for promoting public confidence in the Department's dependability and integrity through conduct that reflects favorably on themselves and the Department and that will not bring the employees or the Department into disrepute.

All employees must cooperate with the Office of Professional Responsibility during investigations. Failure on the part of an employee to cooperate with an OPR investigator during an official investigation or failure to keep confidential any investigative-related conversation or information concerning an investigation may subject the employee to disciplinary action up to and including termination from employment with the Department in accordance with Policy 205 (Progressive Discipline).

All employees are responsible for promptly reporting any activity or situation the employee believes to be improper, illegal, or otherwise in violation of any of the Department's rules, policies, or procedures directly to the Director of OPR.

The Director of OPR will hold in confidence all complaints or allegations reported except when essential to administrative or legal proceedings, to the extent that a substantive investigation or an integrity or security matter is not adversely affected or restricted.

However, the Director of OPR will provide the accused employee with information concerning the allegations against him unless it is determined by the Director of OPR that providing the information could compromise the investigation.

Any employee who gains knowledge of any investigation or complaint filed with the Department must hold the matter in strict confidence.

Interviews

The source of the allegation and other persons having knowledge of the alleged violation will be interviewed, and written statements will be obtained when appropriate. Such statements will be taken immediately after the interview. Audio and/or video recordings of interviews may occur.

In every investigation where it is appropriate, the employee who is the subject of the investigation will be interviewed, and a signed statement will be obtained. The purpose of the employee interview is to allow the employee the opportunity to explain or refute the allegations.

The OPR investigator will conduct employee interviews in an objective manner, allowing the employee to present any facts or other information which might have a bearing on the allegations. During the course of an employee interview, the OPR investigator will:

- State his/her identity and official position.
- Inform the employee of the purpose of the interview by setting forth the allegations against the employee and articulating the relationship between the allegations and his/her official duties.

When conducting an official inquiry, the OPR investigator must be able to establish the work-related basis for his/her questions. The general rule is that an employee's alleged misconduct must either involve his/her job performance or adversely impact the Department's operations and/or image.

Garrity Warnings

Because statements made during an interview can be admissible in criminal proceedings, the OPR investigator will give an employee warnings prior to questioning.

The OPR investigator must carefully consider the nature of the allegations, the existence of a criminal violation, and the effects of the interview on any possible subsequent criminal proceedings.

The OPR investigator will use the following procedures as a guideline when providing warnings to employees before the commencement of an interview:

- If there is no indication that the employee being interviewed is culpable in any criminal or administrative violation and is only considered a witness, it is not necessary to give any warnings to the employee. However, if the employee declines to respond, he/she must be reminded of the obligation as an employee to answer job-related questions, and it may be necessary to give the following warning:

    - The purpose of this interview is to obtain information which will assist in the determination of whether administrative action is warranted.
    - Employees will be asked a number of specific questions regarding the performance of their official duties.
    - Employees have a duty to respond to these questions truthfully and to the best of their ability.
    - Department disciplinary action, including dismissal, may be undertaken if an employee refuses to answer or fails to reply fully and truthfully.
    - The answers the employee furnishes and any resulting information or evidence may be used in the course of a Department disciplinary proceeding, which could result in a disciplinary action including dismissal.

- If sufficient facts have been developed prior to conducting the interview indicate a probable criminal violation, the matter should be presented to the appropriate prosecution authority before conducting an interview.

- A signed copy of the Garrity Warning will be placed into the investigation file after the warning is provided to the employee.

Criminal Warnings

If there is an indication that the employee being interviewed may be culpable in a criminal violation, but not enough facts are known to be certain prior to the interview, the OPR investigator should Mirandize the employee and give the following warning:

- You have the right to remain silent. If you do decide to answer questions or make a statement, you may stop answering at any time.

- Although you would normally be expected to answer questions regarding your official duties, in this instance, you are not required to do so. Your refusal to answer on the grounds that the answer may incriminate you will not subject you to disciplinary action by the Department.

- Any statement you furnish may be used as evidence against you in any future criminal proceedings or Department disciplinary proceedings or both.

If the employee refuses to make a statement on the basis of self-incrimination in a possible criminal violation, the interview must be terminated, and the advice of an appropriate prosecution authority must be sought.

If there is not an indication that an employee to be interviewed is culpable in any criminal violation, but there is an indication that he/she may be culpable in an administrative violation, the Garrity Warning should be provided to and signed by the employee.

If, at any time before or during the interview of the employee as it relates to a criminal investigation, the employee's freedom is restricted in any significant way or if the employee is taken into custody, full Miranda Warnings must be given to the employee.

An employee's right to counsel does not attach during the course of an interview, and an employee does not have a right to have counsel present during any stage of an interview. However, at their own expense, an employee may have an attorney/witness present during the interview as long as the witness does not interfere with the questioning or prolong the scheduling of the interview.

Employees accused of criminal wrongdoing are given all legal protections and are encouraged to exercise their legal rights to consult with and have counsel present during any interview or questioning regarding a violation of criminal law.

If information or circumstances not previously known or investigated are furnished during the course of an interview, the OPR investigator will continue the investigation toward the reasonable development of the new information or circumstances.

Investigative and Status Reports

Upon completion of the investigation, the investigative report will be forwarded to the Department's Director.

The investigative report will set forth in a standard format the specific allegation(s) and the results of the investigative effort in a concise, objective, and impartial manner. Statements which tend to indicate bias or prejudice will be avoided.

In addition to the completed investigative report, the Director may at any time request a status report on all active investigations. This report will convey the complaint or allegations, the name(s) of the employees involved, and the status of the investigation.

Disciplinary or Adverse Actions

Depending on the severity of a non-criminal case, the Director may elect to refer the matter back to the supervisory chain of command for their review and response prior to delivering any disciplinary or adverse action.

Continuing or Reopening an Investigation

If the Director determines that additional investigation of the original allegations is warranted, the Director shall return the report to the Office of Professional Responsibility with a memorandum ordering continued investigation. All investigations shall be officially closed by the Director, who may only delegate this authority under extreme circumstances (i.e. incapacitation). In order to properly close an investigation, the following should be completed:

- Reasonable facts and investigative leads have been thoroughly explored and reported.
- All requisite judicial, disciplinary, and adverse actions have been instituted and/or concluded.
- The employee has been officially informed of the disposition of the investigation.

If the employee voluntarily terminates his employment with the Department prior to the completion of the investigation, the Director will ensure prior to closure of the investigation that all available information has been gathered and that no further action such as criminal investigation referral is warranted.

In the event that allegations or evidence with a substantial bearing on a closed investigation surfaces, a new investigation may be conducted. Factual evidence developed during a prior investigation may be used to resolve the open inquiry. When an investigation has been officially closed, it will not be reopened without the written permission of the Director.

Investigative Report Files

After the completion of all disciplinary actions and appeals, a copy of the final investigative report shall be returned to the Director of OPR for retention. All closed files shall be maintained in a secure fashion under the control of OPR. Limited access to closed files shall be granted to those individuals who demonstrate a bona fide need-to-know as determined by the Director. All files will be maintained in accordance with State retention policies.

s/ Jerry B. Adger — October 3, 2018

Jerry B. Adger, Director — Issue Date

CASE #_____

VOLUNTARY STATEMENT

LEAD #_____

LAST NAME	FIRST NAME	MIDDLE NAME	AGE	D.O.B.
Cosby	Kristin	Marie		

NICKNAME/AKA	M ☐ F ☐	SSN	STREET ADDRESS

CITY	STATE	ZIP	MAILING ADDRESS IF DIFFERENT

HOME TELEPHONE	WORK TELEPHONE	CELL TELEPHONE	OCCUPATION

EMPLOYER	EMPLOYER ADDRESS

DRIVER'S LICENSE NUMBER/STATE	DATE AND TIME OF INTERVIEW

LOCATION OF INTERVIEW

INTERVIEWING AGENT	DEPARTMENT	INTERVIEWING AGENT	DEPARTMENT

I, _____ understand I do not have to say anything, and I volunteer the following information of my own free will, for whatever purposes it may serve. I can cannot read and write and completed the _____ grade in school.

Regarding consenual sexual relations w/ Nicole Albany, at a barbecue at her house, there was a brief interaction with her and a male friend of hers. I was at a barbecue at her house w/ her friends and we had been drinking most of the day. Later in the night I ended up inside her house near or inside her kitchen and she came inside. She started coming onto me and trying to pull at my pants and unzip my pants. She was able to get ~~my~~ my ~~pepper~~ down and pull my pants down slightly. Next thing I know, she's either on her knees or crouched down and started performing oral sex. Soon thereafter a male friend of hers came over to where we were and told her to chill out and stop being so aggressive. Not sure what he said after, but he pulled out his penis and put it in my hand. I don't recall what else was ~~said~~ said. We heard someone walk in the sliding glass door and then another male came over to us to see what we were doing. We then went outside and I left shortly thereafter. The interaction was consenual and never happened again.

I have read each page of this statement consisting of 1 page(s), each page of which bears my signature, and corrections, if any, bears my initials, and I certify that the facts contained herein are true and correct.

Date: 12/17/2018 Time: 4:30pm

_____
Signature of person giving voluntary statement

WITNESS: _____ WITNESS: _____

I certify that I have been given a copy of this statement consisting of 1 pages.

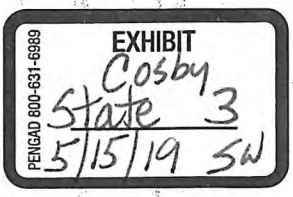
Form # CF-002 (Rev. 7-24-06)
CALEA 1.2.1/44.2.3

EXHIBIT
Cosby
State 2
5/15/19 SW
PENGAD 800-631-6989

Doc#13

South Carolina Department of Probation Parole and Pardon Services
Office of Professional Responsibility

SUMMARY OF FINDINGS



To: Jerry B. Adger, Director

From: Jeff Harmon, OPR Director

Date: 12/18/2018

Re: Internal Investigation #20181130-23

INTRODUCTION

On 11/30/2018 AIC Chad Grambrel contacted Director Jerry Adger and informed him about a misconduct in the Greenville County Office involving Team Leader Kristen Cosby. Director Adger advised OPR Director Jeff Harmon to open an investigation regarding the misconduct allegations and to begin immediately

SUMMARY

On 12/3/2018 Agent Nicole Albany was interview by OPR Director Harmon [redacted].

On 12/7/2018 OPR Director Harmon and Risk Manager Supervisor Allison Avinger interviewed Team Leader Kristen Cosby and asked if the allegation was true. Team Leader Cosby denied the allegation of any sexual activity. Team Leader Cosby was advised that a polygraph would be on 12/10/2018 and she could amend her statement prior to taking the polygraph.

On 12/10/2018 Team Leader Cosby texted OPR Director Harmon that she would submit to the polygraph and she wanted to amend her original statement.

On 12/12/2018 OPR Director Harmon and Risk Manager Supervisor Allison Avinger interviewed Team Leader Cosby who stated that Agent Nicole Albany attempted to have a sexual encounter with her, but no encounter happened because Agent Albany was interrupted in her attempt.

On 12/17/2018 a polygraph was conducted by SLED Polygraph Examiner Lieutenant (Lt.) Bryan C. Jones. Lt. Bryan C. Jones asked Team Leader Cosby several times before the polygraph if she had engaged in sexual activity with Nicole Albany. Team Leader Cosby denied the allegation each time. During the polygraph Team Leader Cosby again was asked if she had engaged in sexual activity with Nicole Albany and again she denied. At the conclusion of the polygraph, Lt. Jones advised Team Leader Cosby [redacted] Team Leader Cosby then admitted that the allegation was true. After Lt. Jones completed his interview, OPR Director Harmon received a written statement from Cosby in which she admitted to having oral sex with Agent Nicole Albany (see attached).

FINDINGS

Team Leader Kristen Cosby made false statements to OPR Director Jeff Harmon on 12/7/2018 and again on 12/12/2018 in the course of an Internal Investigation #20181130-23. Team Leader Cosby made false statements to Lt. Bryan C. Jones of the State Law Enforcement Division concerning matters related to this investigation before [redacted] the polygraph. This action is a direct violation of the recognized standards required of employees to respond to internal investigations, to promote public confidence in the Department's dependability and integrity noted in Policy and Procedure 1802 Internal Investigations. This is also a violation of Policy and Procedure 210 Professionalism "employees are expected to be honest and shall conduct themselves ethical at all times."

South Carolina Department of Probation Parole and Pardon Services
Office of Professional Responsibility

SUMMARY OF FINDINGS

ACTION
☐ No further action needed ☑ Action needed - Recommendation: Termination from the Department

APPROVAL SIGNATURES	DATE
[signature]	12/18/18
[signature]	12/18/18

Form OPR4 (Template)

South Carolina Department of Probation, Parole and Pardon Services

Citizen / Personnel Formal Complaint Form

		OPR Case Number:	
Date: 10/19/18	Time: 1102 am	Name of Employee Completing Form: Kristin Cosby	
Complainant's Name: Kristin Cosby		☐ CITIZEN ☒ EMPLOYEE	
Complainant's Mailing Address: 307 Marsh Creek Dr. Mauldin, SC 29662		Complainant's Phone No: 864-419-8930 Alternate Number for Complainant: 864-320-2358	
Date/Time Alleged Misconduct Occurred: Date: 10/11/18 Time: 1535		Location/Facility where Alleged Misconduct Occurred: 301 University Ridge, Suite 6500, Greenville, SC 29601	

Specific Nature of Complainant's Allegation:

AAIC Honeycutt and AIC Gambrell have created a hostile working environment for me and some members of my team, to the point where I have been afraid to come to work, not for physical reasons but psychological reasons. I feel as though I am being harassed and repeatedly counseled for things that I am not explained how to fix, or some things that I have not been trained. This harassment has extended to members of my team, to where one of them perceived a threat by AAIC Honeycutt on one occasion based off a statement that was made. My agents have been made to feel as though they are not trusted and do not know how to proceed with me, making my job extremely difficult to do. I have felt attacked how AAIC Honeycutt approached me with issues, working off of wrong information or a misunderstanding of the information without gathering the facts before addressing the situation with me. This is consistent behavior by AAIC Honeycutt and his approach with dealing with me. He berates and attacks me, and does not provide any coaching or development, making it difficult to interact with him as my immediate supervisor. AAIC Honeycutt and AIC Gambrell have created an environment to which I cannot succeed. I have consistently done certain things since AAIC Honeycutt became my supervisor and now for no reason has become an issue and repeated counseling sessions. I have made attempts to make changes, but I am still being told repeatedly to communicate, communicate, communicate, you're not communicating. I am confused as to why he keeps saying that I do not communicate, inferring a failure or noncompliance on my part. Despite my efforts to better the situation, he has failed to provide guidance as to how I can achieve this. Some of my agents have felt as though AAIC Honeycutt and AIC Gambrell have created an environment for which they cannot thrive. All of this seems to come our to nowhere for no reason, to which I have to question their motivation. After being told I am the hardest working one in the office, my work is being questioned.

Individuals who may have witnessed the alleged misconduct or may possess information relative to the alleged misconduct ---
Name(s) & Contact Information:

Agent Christina Worthy 864-918-3709
Agent Isaac McKenzie 864-421-4915
TL Allan Norfus 864-350-5288

This form must be forwarded to Office of Professional Responsibility

OPR Case Number:		Date Reviewed:	
Name of Manger Reviewing Form:			

Mailing Address:

Director of Office of Professional Responsibility
SCDPPPS
2221 Devine Street
P.O. Box 50666
Columbia, SC 29205

EXHIBIT
Cosby 4
State
5/15/19 SW

PENGAD 800-631-6989

OPR1332 Form (Template)

KRISTIN COSBY

2019-CJA-01-01

DECEMBER 12, 2018 INTERVIEW

RESPONDENT'S EXHIBIT 1

LEGAL EAGLE
Post Office Box 5682
Greenville, South Carolina 29606
864-467-1373
depos@legaleagleinc.com

JEFFREY HARMON:

All right, back on the record with team leader Cosby. And, I'm so rude; I did not make sure you knew who this was. So you want to introduce yourself (inaudible)?

ALLISON AVINGER:

Yes, Kristen knows who I am --

KRISTIN COSBY:

Yes.

ALLISON AVINGER:

-- but we were here last time Jeff did not explain that I had been directed to serve as a witness to assist and that I too am bound by a confidentiality and that anything that was spoken or is spoken is strictly -- I'm bound by confidentiality so wanted you to know that.

KRISTIN COSBY:

Okay.

JEFFREY HARMON:

And we got a good buffer zone today. The neighbor next door is not here.

KRISTIN COSBY:

Oh.

JEFFREY HARMON:

When -- when -- went to leave at lunch time. And

then next door here that is her office so we got a good buffer zone so. These walls are kind of thin but once I realized we had that buffer zone it's like ah, we don't need to have the big conference room and all that stuff.

KRISTIN COSBY:

Whoops.

JEFFREY HARMON:

All righty. So I'll let you go first and then I'll follow up, unless you want me --

KRISTIN COSBY:

Okay.

JEFFREY HARMON:

-- unless you want me to go first. I'll let you go first.

KRISTIN COSBY:

I just was curious about the date that you questioned me about though.

JEFFREY HARMON:

Okay.

KRISTIN COSBY:

Was it May?

JEFFREY HARMON:

May 12th.

KRISTIN COSBY:

Is that something that can be like verified?

JEFFREY HARMON:

I don’t know how to verify it. It’s -- it’s a statement, multiple statements of what the date was. So, I don’t know how any other way to verify it but --

KRISTIN COSBY:

Okay.

JEFFREY HARMON:

-- I mean --

KRISTIN COSBY:

I’m -- I’m just curious ‘cause I know it was a week day and I don’t recall ever being at her house for a social event during the week.

JEFFREY HARMON:

Yeah. I think the statement was it was her birthday, you know, it was a birthday event.

KRISTIN COSBY:

I don’t know. I can’t recall. But I just remember ‘cause I don’t -- I am not a drinker anyway so if I were to drink, I would not do it the night I have to work --

JEFFREY HARMON:

Oh, yeah.

KRISTIN COSBY:

-- the next day. So -- ‘cause I mean --

JEFFREY HARMON:

Well the whole point is trying to figure out and you know as one of the statements I asked last time was the whole goal is to get to the issue of has there been any inappropriate sexual --

KRISTIN COSBY:

Yeah.

JEFFREY HARMON:

-- relationship at all --

KRISTIN COSBY:

So --

JEFFREY HARMON:

-- regardless of if it’s a date or not a date.

KRISTIN COSBY:

Well I was just trying to figure out like what day ‘cause I’m like I don’t know --

JEFFREY HARMON:

Yeah. Well --

KRISTIN COSBY:

‘Cause I’ve been there twice during like a cookout she’s had so that’s why I’m trying to like differentiate ‘cause I don’t remember it being, like I said during the week because --

JEFFREY HARMON:

Gotcha.

KRISTIN COSBY:

-- we wouldn’t have done something like that by -- during the week. And I said no, like oral sex didn’t happen between us but she -- I mean, like I said she tried. She like tried to like make something happen with me and she tried something one of the nights I’m thinking of but, again, I don’t know what night it was. And so I don’t remember it being during the week. But --

JEFFREY HARMON:

But it was not reciprocal?

KRISTIN COSBY:

No, ‘cause I was telling her to stop because one of her friend's husbands, you know, was like telling her to like to calm down she was being a little aggressive.

JEFFREY HARMON:

Gotcha. All right. So let me go and do some clarifying for me too. And if you got some more clarification, we could do that too. We’ll get all our clarifications totally out of the way. So, there -- there possibly was a pre-event, did y’all go prior to the spring conference April the 2nd bar hopping? Was there a kiss that occurred during the

bar hopping between you two?

KRISTIN COSBY:

No.

JEFFREY HARMON:

No.

KRISTIN COSBY:

Not that I -- I don’t recall that ever happening.

JEFFREY HARMON:

Okay.

KRISTIN COSBY:

But yeah, we did -- we went -- that was the Greenville one --

JEFFREY HARMON:

Yeah.

KRISTIN COSBY:

-- and we had like the, what’s it called, like yeah, I guess a bar hop or bar crawl.

JEFFREY HARMON:

Or well mixer.

KRISTIN COSBY:

Yeah.

JEFFREY HARMON:

We’ll call it mixer, sounds better to call it a mixer.

KRISTIN COSBY:

But no, I do not recall a kiss ever happening between us.

JEFFREY HARMON:

All right, get that one out of the way. So, and, you know, I think I told you this last time, I don't try to fabricate any of these things, all I can do is what is spoken, and then ask a question based on what's spoken.

KRISTIN COSBY:

Right.

JEFFREY HARMON:

Okay, so I don't -- I don't try to dream up stuff. I just want to make -- clear that up. I don't -- I don't try to take liberty with what people say and then run with it. All I can do is ask exactly what happened and then let it roll -- you know, roll from there. So, at your home during Vandy's going away party.

KRISTIN COSBY:

Uh-huh.

JEFFREY HARMON:

Had a going away party at your house for him, right?

KRISTIN COSBY:

Yeah.

JEFFREY HARMON:

This was the statement that someone saw your hands in Isaac McKenzie's pants.

KRISTIN COSBY:

No.

JEFFREY HARMON:

Okay. No horsing around, goofing off, no -- no even -- even nowhere anybody can have any conjecture that something happened?

KRISTIN COSBY:

No.

JEFFREY HARMON:

Okay. All right, here's another one. I'm going, yeah, right. That's why last time it was of the bigger question and then once you stated you were okay with the polygraph and you wanted to go forward and clarify statements then I talked to the director and he said well, let her make her clarify statements and then you do some clarification too 'cause some of this is prep so you'll know where the polygraph will go but I don't know a whole lot about the polygraphs, that's not my business, that's somebody is going to conduct that and go from there. So, another party, this is Cornelius' going away party at Bar Louie.

KRISTIN COSBY:

Oh, okay.

JEFFREY HARMON:

A lot of people there on that one. Did you have your hands on the buttocks of Christina Worthy at that party?

KRISTIN COSBY:

No.

JEFFREY HARMON:

Okay. Would you be shocked if I told you that there's pictures circulating about that?

KRISTIN COSBY:

No, I mean, I -- I don't recall putting my hands on her butt.

JEFFREY HARMON:

So, you would or wouldn't be shocked if I told you there was photos?

KRISTIN COSBY:

I -- I mean if there is I don't -- I don't --

JEFFREY HARMON:

No horsing around?

KRISTIN COSBY:

No, I mean, not that we were --

JEFFREY HARMON:

Nothing anybody could be construeded?

KRISTIN COSBY:

-- she was a little bit intoxicated that night. I wasn't drinking 'cause I was on call. So I was completely sober. She was highly intoxicated.

JEFFREY HARMON:

No horsing around? 'Cause I know how horsing around is, people can mistrutment. Too -- what I want to try to clarify is where there's general horseplay and people misconstrued it --

KRISTIN COSBY:

Yeah.

JEFFREY HARMON:

-- because of rumors then -- 'cause I don't want that to be one of the questions that they ask and that one's really not, you know -- there's a difference of horsing around, gooching people, that kind of stuff --

KRISTIN COSBY:

Yeah.

JEFFREY HARMON:

-- when you're in that environment versus in a sexual way.

KRISTIN COSBY:

Oh.

JEFFREY HARMON:

So I'm trying to make sure it's --

KRISTIN COSBY:

Yeah.

JEFFREY HARMON:

-- differentiated. So no horsing --

KRISTIN COSBY:

No, I mean, she was --

JEFFREY HARMON:

-- around or --

KRISTIN COSBY:

I'm trying to remember. I mean even though I was sober I don't really remember everything. I mean --

JEFFREY HARMON:

There's a lot of stuff going on people were happy, celebrating.

KRISTIN COSBY:

Yeah, there was a lot of us out there. I don't know. She was just -- just intoxicated, jumping around, trying to get pictures with us and trying to hold her up.

JEFFREY HARMON:

Gotcha. All right, so last one then we'll be done with all my follow-up, of course as we talk there might be another one that follows up, that's all I got right here though. Now when I ask this, I'm not automatically insinuating sex, okay, I'm trying to

make -- make sure there's a connection with physical contact and non-physical contact and intimate situations and non-intimate situations, that's where I'm going with this, okay, so I'm kind of (inaudible) where this all is -- is going. Have you ever slept in the same bed as a subordinate? And I'll go ahead and name the subordinate, Katie Duncan. Now I note, and I'll say it again, I'm not automatically insinuating a sexual --

KRISTIN COSBY:

Right.

JEFFREY HARMON:

-- I'm insinuating --

KRISTIN COSBY:

Just in the same bed.

JEFFREY HARMON:

-- closeness.

KRISTIN COSBY:

Yeah.

JEFFREY HARMON:

In the same bed and a subordinate which a lot of people would say that's crossing a line too but I'm trying to make sure and I'm differentiating --

KRISTIN COSBY:

Yeah.

JEFFREY HARMON:
-- so that the connections can be totally made and what the questions may ask and how they're going to go forward with them. I know y'all are really close friends, y'all shared raising daughters and that play and that interaction and spending the night was occurred or did not occur on y'all's parts?
KRISTIN COSBY:
No, I'm trying to think. I cannot recall a night that either she --
JEFFREY HARMON:
Did either one of you ever sleep over not even in the same bed?
KRISTIN COSBY:
I've never slept over at her place. I don't recall. I don't recall her -- I know Willow has slept over.
JEFFREY HARMON:
Her daughter?
KRISTIN COSBY:
Yeah. But I don't -- I don't recall her ever sleeping over and if she did, I have guest bedrooms. But I honestly can't think of a night that she slept over.
JEFFREY HARMON:
So let's go back to the original conversation we was

talking about with that incident. So how did you resolve that incident when she was coming onto you and making all these physical contacts and trying to do those things? How did you resolve that and get yourself out of that --

KRISTIN COSBY:

I mean, I --

JEFFREY HARMON:

-- circumstance?

KRISTIN COSBY:

You know I told her I can't. Like that's not something I'm going to do. I can't do it. And, you know, she started to get angry and had attitudes with me because I would not accept her advances. And that, you know, I talked to my AIC about it, I was like look, you know, she's coming onto me, she's getting upset about the fact that I will not accept her advances, like we need to move her from my team.

JEFFREY HARMON:

And this spilled over into the living room and that's when the little altercation occurred?

KRISTIN COSBY:

Huh?

JEFFREY HARMON:

You said something about that someone's boyfriend

intervened to get her calmed down?

KRISTIN COSBY:

Oh, no, he just told her like --

JEFFREY HARMON:

Oh.

KRISTIN COSBY:

-- you know, stop.

JEFFREY HARMON:

Okay.

KRISTIN COSBY:

Like you’re being a little aggressive. But --

JEFFREY HARMON:

No -- no altercation though?

KRISTIN COSBY:

No. But, yeah, I mean, with her advances she just -- I mean, she just got angrier ‘cause I wouldn’t like respond to, you know, her picture she sent me or I wouldn’t respond that night --

JEFFREY HARMON:

So did the picture -- the picture come first and then the --

KRISTIN COSBY:

I have -- I don’t know. I honestly don’t know. I would assume -- I don’t know. I don’t want to assume ‘cause I don’t -- I can’t say for certainty.

JEFFREY HARMON:

If you remember ‘cause I know every time we talk it will jar memories and stuff --

KRISTIN COSBY:

Yeah.

JEFFREY HARMON:

-- if you remember which one come first that’s important for -- for me to know. So, text me, let me know if you remember if the photo came after that or if the photo was a prelude to this, that’s really important, okay.

KRISTIN COSBY:

Yeah, ‘cause I --

JEFFREY HARMON:

‘Cause when we -- I don’t know how -- I’m sure that the polygraph guy is going to want to know what we’ve talked about, what the allegations I have and then he’s going to generate questions based on that. Of course, you know, he gets his baseline to regular questions, you know.

KRISTIN COSBY:

Yeah.

JEFFREY HARMON:

Is your name Kristen Cosby? Yes. You know, do you work in Greenville? You know, those kind of things,

and then they start getting into the questions where they're trying to look for that response.

KRISTIN COSBY:

Uh-huh.

JEFFREY HARMON:

So I want to make sure that I get -- that I'm -- that I'm getting him the right question, 'cause I don't want the wrong question and generate a response based on just a wrong question.

KRISTIN COSBY:

Yeah.

JEFFREY HARMON:

You know.

KRISTIN COSBY:

Yeah, right now I -- I don't know.

JEFFREY HARMON:

Okay.

KRISTIN COSBY:

I can't say --

JEFFREY HARMON:

Okay.

KRISTIN COSBY:

-- with certainty.

JEFFREY HARMON:

Okay. I think that's all I got. Did you have

anything else to try and clarify and -- and go forward with? I'm -- there's one thing I thought about after we -- we had talked and you had clarified 'cause I thought man she's gonna ask about did she have right to counsel but I thought I talked about that.

KRISTIN COSBY:

No, you didn't.

JEFFREY HARMON:

Okay. Usually with the Fifth Amendment stuff just like that right against self-incrimination and lawyer, public employees because it's not a criminal nature they're not afforded counsel, unless our policy dictated that it does and our policy does not or if we had an association or a benevolence group that we were -- had a contract with and it said that they were required to provide counsel then they would but our case, of course, we don't have a -- we don't have a organization that, you know, lobbies for -- on our behalf so there is no right to counsel on any of that. So, it's straight up just administrative investigation like we talked about before.

KRISTIN COSBY:

Yeah.

JEFFREY HARMON:

The -- you don't have to worry about self-incrimination 'cause there's no criminal, it's all an administrative thing. And like I told you, you know, part of this is to clear the air of all that, that policy is coming out soon like I told you. I think I just saw the other day I think the director just signed it so it may be coming out within the next week or so. The -- the fraternization especially with supervisors and subordinates that's really the main goal with that policy, which there's not -- this was done -- this was in the works way before --

KRISTIN COSBY:

Yeah.

JEFFREY HARMON:

-- any of this came about so. But, now's the time to air that stuff out so it's like he said and like he told me to tell you was we have never terminated anybody for that type of offense, the whole goal is to address it and make sure that the department's not liable for any behavior that we know about that's with a subordinate. And I don't even know if we've even had a demotion. I could be wrong on that. The only time I think we've had a demotion in

regards to something like this is when the lying about it. So that's why he wanted to clarify with me and he also wanted me to make one last question so he said just ask this question and I said well I think I already did but I'm going to do what he says 'cause he's my boss and I'll do what he tells me to. So you have had no sexual conduct of any kind with a subordinate?

KRISTIN COSBY:

No.

JEFFREY HARMON:

Okay. I asked a question. I did what I was told to.

KRISTIN COSBY:

Is touching Christina's ass that, if there's -- if that's something I did, which I don't recall doing.

JEFFREY HARMON:

Well that's why I wanted to go there. I wanted to at least feel that out. I mean I know that what was projected was not just grabbing somebody 'cause they're falling down because they got silly --

KRISTIN COSBY:

Yeah.

JEFFREY HARMON:

-- silly drunk. It was more of no planned, more it

looked like it was a deliberate action.

KRISTIN COSBY:

Oh.

JEFFREY HARMON:

That’s why -- that’s why I needed to ask that and just filter through that, you know.

KRISTIN COSBY:

Yeah.

JEFFREY HARMON:

So that’s why I needed to filter through that. But so you say no.

KRISTIN COSBY:

No, nothing deliberate. Like I said she was very intoxicated and falling all over the place. So, I mean, I may have grabbed her from falling on the ground but not --

JEFFREY HARMON:

Gotcha.

KRISTIN COSBY:

-- you know, like hey I like your ass and then grab it. And, I mean, like at the time with Nicole, I mean, I even confided in, you know, other people to tell them like hey look this is what’s going on.

JEFFREY HARMON:

Who else did you confide in other than Greg?

KRISTIN COSBY:

My boyfriend at the time.

JEFFREY HARMON:

Boyfriend.

KRISTIN COSBY:

And then Katie.

JEFFREY HARMON:

Who was your assistant AIC then? Is that Jeremy?

KRISTIN COSBY:

What year was this?

JEFFREY HARMON:

That was 2015, I think he was there 2010 through 2016, I think. I think it was about six years. But you didn’t have any -- ever have any conversations with him, did you?

KRISTIN COSBY:

Greg -- I’m not trying to be funny but Greg really had him do nothing when Greg got there he just -- because of the environment of the office like he really wasn’t included --

JEFFREY HARMON:

Yeah, so you just had --

KRISTIN COSBY:

-- in anything.

JEFFREY HARMON:

-- you had direct relations?

KRISTIN COSBY:

Yeah.

JEFFREY HARMON:

Yeah.

KRISTIN COSBY:

And, you know, my relationship with Jeremy at the time was not -- you know, I didn't trust him. But, yeah, Greg really didn't include him in a lot of things so it was just Greg.

JEFFREY HARMON:

So mostly who you told about that was your boyfriend, Greg and Katie. Did you ever confide in Alan about it? I know out of all the supervisors he's probably your closest --

KRISTIN COSBY:

Yeah.

JEFFREY HARMON:

-- comrade.

KRISTIN COSBY:

Yeah.

JEFFREY HARMON:

You did?

KRISTIN COSBY:

'Cause he -- yeah, 'cause he was like well that

makes sense why she's angry or why she doesn't like you. 'Cause he made a comment about it a few months ago 'cause I don't know if she said something but he was like man she still does not like you. So, yeah, I did -- I tell Alan.

JEFFREY HARMON:

Okey-dokey. Anything else you can think of just from the conversations we just had or anything previous that I didn't -- maybe I cut you off and didn't let you talk or anything else you wanted to clarify or?

KRISTIN COSBY:

No, not that I can think of. It's just hard to try to put pieces back three and a half years ago.

JEFFREY HARMON:

It is -- it's been awhile.

KRISTIN COSBY:

I don't remember last month.

JEFFREY HARMON:

Yeah. And that's why I really wanted to make sure you had plenty of time to, you know, sit down and try to recall the hard files from way back when, they're a little harder to retrieve when you have probation proagent mind which our minds are not as good as they used to be after just doing this work a

few years but --

KRISTIN COSBY:

Yeah.

JEFFREY HARMON:

-- that’s why I wanted to give you time, have that weekend to really ponder those thoughts and get them together in your mind. ‘Cause I know when we first talked about them, I could tell your mind was racing with all the allegations that were coming at you. And it would be me too.

KRISTIN COSBY:

Yeah, I mean, I don’t -- and I don’t want to -- I mean there’s some things I can say no I did not do but I’m like some of the things I don’t recall ever doing that.

JEFFREY HARMON:

Yeah.

KRISTIN COSBY:

I don’t want to say no and then fail.

JEFFREY HARMON:

Yeah.

KRISTIN COSBY:

But I don’t know.

JEFFREY HARMON:

Well I’m sure they have a -- they know. Those

people are very professional. They know how to differentiate difference between false or ability -- or the, I don't know if they call it the trying to cover or mask, versus truly just not knowing.

KRISTIN COSBY:

Yeah.

JEFFREY HARMON:

I would think not knowing would be like a blank response like me trying to recall, you know, my anniversary date or something like that. So, I'm sure they can differentiate between the two so.

KRISTIN COSBY:

Yeah.

JEFFREY HARMON:

The whole goal was which I'm happy that you -- you agreed to the polygraph. I was -- I was really I was like well I hope she does, I hope she does, I hope she does.

KRISTIN COSBY:

I have no reason not to.

JEFFREY HARMON:

Good. 'Cause those -- you know, those things always are beneficial so. Like I said I'll -- I'll continue to say this, if you think of anything that is relevant, text it to me. If we need to talk

again, we can talk again. I don't know how long it'll be before the director sets up the polygraph. It -- it might not be until after Christmas or he may call over there and talk to somebody and they're like well for you Director, you know, we'll get one set up next week I don't know.

KRISTIN COSBY:

Well I'm gone the rest of the month -- the year.

JEFFREY HARMON:

Or you're gone? Where did you --

KRISTIN COSBY:

Uh-huh.

JEFFREY HARMON:

What's -- what's your -- what's your schedule?

KRISTIN COSBY:

I'll be back the second.

JEFFREY HARMON:

When's your last day?

KRISTIN COSBY:

Friday at the Academy.

JEFFREY HARMON:

That's just wrong.

KRISTIN COSBY:

Well Lashandra keeps yelling at me about taking this comp time.

JEFFREY HARMON:

2014?

KRISTIN COSBY:

So I have -- huh?

JEFFREY HARMON:

Twenty -- 12/14 is Friday? I don't even have -- I don't even have a December calendar over here.

ALLISON AVINGER:

No, it is.

KRISTIN COSBY:

Yeah. Yeah. Friday is the 14th.

JEFFREY HARMON:

12/14.

KRISTIN COSBY:

So I had to have been using my leave then, you know, with Christmas it fell --

JEFFREY HARMON:

You're scheduled not to return until when?

KRISTIN COSBY:

The second or third.

JEFFREY HARMON:

Third. Okay.

KRISTIN COSBY:

So I'm going to actually take time off for the holidays.

JEFFREY HARMON:

I just wrote 1/3/2017. I'm going backwards in time.

ALLISON AVINGER:

You are.

JEFFREY HARMON:

Twenty --

ALLISON AVINGER:

Nineteen.

JEFFREY HARMON:

-- nineteen.

KRISTIN COSBY:

If it was 2017 we would remember things better.

JEFFREY HARMON:

Yeah. Yeah, well that's always the case. That's always the case.

KRISTIN COSBY:

Yeah, so it won't be until next year.

JEFFREY HARMON:

Well like I said if you think of something else text me or email me whatever --

KRISTIN COSBY:

Uh-huh.

JEFFREY HARMON:

-- whatever.

KRISTIN COSBY:

I mean I'll try to think --

JEFFREY HARMON:

Well, I mean, don't --

KRISTIN COSBY:

-- about that whole (inaudible).

JEFFREY HARMON:

-- don't -- don't kill yourself trying to, you know, think of everything but if it -- if it comes back to mind just let me know. 'Cause really the goal is to get good questions so that they could do the polygraph well.

KRISTIN COSBY:

Yeah.

JEFFREY HARMON:

That's the whole goal. Well, that and, you know, really for us my investigation is just to try to get as much fact as possible but remember this, you know, OPR investigations and the standard of all of our investigations going all the way back to International Association of Chief of Police the standard is preponderance, just like administrative hearings.

KRISTIN COSBY:

Uh-huh.

JEFFREY HARMON:

Fifty-one percent believability versus 49, that's the standard. It's not a very high standard so, and that's -- that's -- it is what it is. That's the standard so we'll have to -- he'll -- the director will get all the facts, he'll weigh it, he'll get the polygraph, he'll weigh it and then he'll -- he'll make a decision and it's his to make, it's not mine and honestly I -- whatever decision he makes it doesn't matter to me. All I know is I tried to do a good job and give him all the facts possible.

KRISTIN COSBY:

Yeah.

JEFFREY HARMON:

Everything that people said that's relevant and then once I'm done with it, I'm done with it. He closes it out he closes it out and I go onto the next file so, you know, of course what the outcome is I have no say so they don't ask me any questions about it, recommendations or anything like that. My job is just to assemble all the facts I can and give it to him in a report that's usable for him, useable for him, possibly usable in a disciplinary or useable as far as legal, whatever format they have to use it in the future, that's the whole goal all -- all of it so.

KRISTIN COSBY:

Yeah, I just want the target off my back.

JEFFREY HARMON:

Don’t we all.

KRISTIN COSBY:

‘Cause it’s always something.

JEFFREY HARMON:

Yup. And that’s the thing when we complete this, of course, you know, it’ll be done and then any reference to it that anybody makes then it’s been cleared, it’s finished, regardless of outcome, regardless of which way it goes, we know it’s finished. It’s done. And that’s the goal of it all really so everybody moves forward. That’s what we want.

KRISTIN COSBY:

Yeah.

JEFFREY HARMON:

So I know what you want is -- well, it doesn’t matter to me I have another file to work on tomorrow so it’s no big deal for me. I’m just reporting the facts and I’m moving on with it, so. But for you it is like you said it removes that and it’s done. So that’s the great news. Okay?

KRISTIN COSBY:

Okay.

JEFFREY HARMON:

You got traffic to get into.

KRISTIN COSBY:

Yeah, I got to go to sex offender counseling.

JEFFREY HARMON:

If you go -- if you go now you'll be just ahead of it. This is from my own personal experience.

KRISTIN COSBY:

4:30.

ALLISON AVINGER:

I know.

KRISTIN COSBY:

So now I get to sit on sex offender counseling.

JEFFREY HARMON:

Yay. Well you be careful heading back 'cause there is gonna be a little bit of push until you get to about Chapin and then it clears up so.

KRISTIN COSBY:

Yeah.

JEFFREY HARMON:

Be careful and if you think of anything text me.

KRISTIN COSBY:

I will.

JEFFREY HARMON:

I'll be here -- I'm not going to be here tomorrow but I'll be here Friday all day so if anything just text me.

KRISTIN COSBY:

Okay, I will.

JEFFREY HARMON:

If we need to meet up again we can, there's one more day to meet up until you take your extended long winter nap, whatever it is.

KRISTIN COSBY:

I need it.

JEFFREY HARMON:

Yeah. Thank you. I appreciate it.

KRISTIN COSBY:

Okay.

JEFFREY HARMON:

I think you can figure out your way back out of here. I think (inaudible).

ALLISON AVINGER:

Right, left.

JEFFREY HARMON:

(Inaudible) left (inaudible).

KRISTIN COSBY:

Oh, okay.

JEFFREY HARMON:

Thank you, appreciate it.

KRISTIN COSBY:

All right.

JEFFREY HARMON:

Bye. We have to turn this thing off now.

CERTIFICATE

I, the undersigned, Jessica Antonucci, Notary Public in and for the State of South Carolina do hereby certify that:

That the foregoing tape was transcribed at the request of Amy Ruttgers;

A court reporter was not present at the proceedings and therefore cannot guarantee that every word of testimony could be heard or that the speaking parties are properly identified;

I further certify that I am neither counsel nor solicitor to any of the parties in said suit, nor interested in the event of the cause.

In witness whereof, I have hereunto set my hand and seal this 8th day of November, 2020.

_____

Jessica Antonucci
Notary Public for South Carolina
My Commission expires 7/06/2025

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

POLYGRAPH EXAMINATION PRE-TEST WORKSHEET

Time In: 13 : 33 AM/PM Time Out: 16 : 30 AM/PM

Name Cosby, Kristin Occupation SC PPT

Education Bachelors USC, Dover-Sherborn HS Place of Birth Framingham, MA

Previous Arrest(s) No

Previous Polygraph(s): No ____ Yes X Re: 1

Marital Status: Married____ Single ____ Divorced ____ Separated ____ Widow(er) ____

Children: No ____ Yes X Number 2 male 19, young 11

Medical
(If yes to any question, explanation required)

1—Any history of heart disease?	1—No X Yes____	Ex.____
2---Any neurological disorders?	2---No X Yes____	Ex.____
3---Any past psychiatric care?	3---No____ Yes X	Ex. PTSD, depression, anxiety
4---Are you now on any medication?	4---No____ Yes X	Ex. PTSD, antidep, ADHD
5---Any recent drug or alcohol use?	5---No X Yes____	Ex.____
6---Are you now pregnant?	6---No X Yes____	Ex.____
7---Are you aware of any physical or mental condition that would make it difficult to complete the polygraph examination?	7---No X Yes____	Ex.____

8---How many hours of sleep have you had in the last 24 hours? 3-4hrs How many hours of sleep is normal for you? 4hrs

Case #: P18-0264 Date: 12 / 17 / 18 Examiner: BCJ

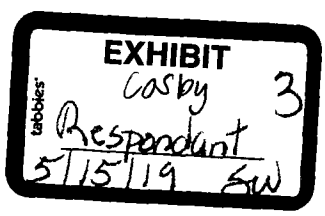
EXHIBIT Cosby 2 Respondant 5/15/19 Sal

Document 8

P-006
Revised 02/2002

X	Please remain still. The test is abut to begin.
F	Regarding today, is it Friday? –
SA	Is it Saturday? –
SU	Is it Sunday? –
M	Is it Monday? –
T	Is it Tuesday? –
W	Is it Wednesday? –
XX	This portion of the exam is now over. Please remain still.
XXX	EXAMINEE: Cosby, Kristin EXAMINER: BCJ DOC# 5 DATE: 12/17/18 CASE: P18-0264

X	Please remain still. The test is about to begin
1A	Were you born in the month of November? +
1B	Were you born in the year of 1976? +
1D	Before this year did you ever attend the University of South Carolina? +
2	Regarding whether or not you engaged in any sexual activity with Nicole Albany, do you intend to answer each question truthfully? +
E3	Do you believe that I will only ask you the questions that we reviewed? +
C4	Prior to 2014 did you ever lie to someone in a position of authority? –
R5	**Did you engage in any sexual activity with Nicole Albany?** –
C6	Before 2014, did you ever lie about anything you should have been honest about? –
R7	**Did you engage in any sexual activity with Nicole Albany at her home?** –
C8	Before you were 38, did you ever violate any agency policy or procedures? –
E9	Is there something else you are afraid I will ask you a question about? –
XX	This portion of the exam is now over. Please remain still.
XXX	EXAMINEE: Cosby, Kristin EXAMINER: BCJ DOC# 5 DATE: 12/17/18 CASE: P18-0264



State of South Carolina
Department of Probation, Parole and Pardon Services

HENRY McMASTER
Governor

JERRY B. ADGER
Director

2221 DEVINE STREET, SUITE 600
POST OFFICE BOX 50666
COLUMBIA, SOUTH CAROLINA 29250
Telephone: (803) 734-9220
Facsimile: (803) 734-9440
www.dppps.sc.gov

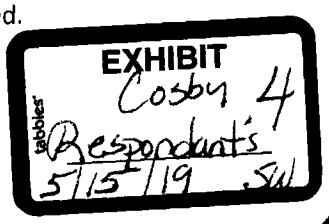
Timeline of Events and Recommendations

12-4-2018

On or about Sept 7th, during a RD visit at my office, TL Cosby's complete history was discussed as it relates to her continuing to have unprofessional relationships with Agents on her team. RD Black was advised that this behavior has been going on for a least 3-4 years and it continues today. I advised that I have had conversations with TL Cosby and made my instructions clear to the whole TL team on my arrival to the office (12-20-17). RD Black asked what did I want him to do and that he would be glad to talk to her even at a Clemson game during a security detail if needed. I advised that AAIC Honeycutt was completing an investigation as to GOC Logs and that as soon as that investigation is complete we can talk further about our response.

October 2st, 2018, attempted to call RD Black but he texted that he was busy on deployment and to call Mike Nichols. Spoke to Mike Nichols about several matters and before the call ended I advised about my continued problem with TL Cosby with her having inappropriate and unprofessional relationships with teammates/subordinates. I asked for guidance in this as I have already attempted to address her on this issue. Mr. Nichols said to continue speaking with and counseling her specifically on how to behave.

As my previously submitted documentation states, AAIC Honeycutt and I had a long conversation with TL Cosby on 10-11-2018. This conversation was needed due to the completion of AAIC Honeycutt's investigation of the GOC logs, Scheduler Documentation, and Body Cam footage. It appeared that TL Cosby was continuing her behavior by only doing HVs, Warrant investigations, GPS Calls with Agent McKenzie. Furthermore, that the GOC logs were indicating field work that the scheduler entries are not supporting; and, there was missing Body Cam footage from field work involving TL Cosby and Agent McKenzie. At the end of the conversation specific instructions were given to TL Cosby as to how to behave in the future. Documentation of this meeting was previously submitted.



On October 23rd, 2018 we had a lengthy meeting with RD Black where AAIC and I disclosed all information and documentation as to TL Cosby in detail. This included the following information from our conversation with TL Cosby:

***Employee Relationships** – concerns were addressed in reference to past and present relationships with subordinates. These relationships are and have interfered with the operations of the office. These relationships include TL Cosby spending enormous amounts of time with only one subordinate for long periods of time, and there have been indications of intimate relationships with subordinates to which TL Cosby denied. These relationships, regardless, still rise to a level to violate the Professionalism Policy.

Past conferences addressing this issue:

1-26-17 (AIC Stewart and AAIC Honeycutt) Professionalism Policy was read to Cosby
12-20-17 AIC Gambrell began in Greenville and all TLs were warned as to such behavior
3-15-18 AIC and AAIC warned TL Cosby against personal relationships with subordinates
8-14-18 While another complaint TL Cosby was warned against personal relationships with subordinates.

***Communication** – Concerns were addressed in reference to failures to communicate with her direct supervisor – AAIC Honeycutt as to working after hours, the flexing of her schedule, warrant service operations, HVs, and GPS problems or coverage changes. This also includes using annual leave and the accumulation of compensatory time. This a direct violation of SCDPPPS Policy 208 as well as Greenville County SOP.

Past conferences addressing this issue:

EPMS Reviews 2017 and 2018
8-14-2018 while addressing another complaint TL Cosby was advised to better communicate as to her whereabouts as stated above.

AIC asked for guidance in this matter and that the continued behavior needed to stop once and for all. RD Black stated that he would speak to Mike Nichols about the matter but he would probably recommend not initiating a disciplinary action at this time. He said he would advise further instructions after consulting Mr. Nichols.

On October 30, 2018 RD Black called and said that he had discussed the situation with Mr. Nichols and that a disciplinary would not initiated, and that nothing will be placed in TL Cosby's county file or HR file. RD Black said that Mr. Nichols wanted AAIC, AIC, and RD Black to conduct another meeting with TL Cosby to go over all information to make sure she understands our instructions, but she is not to sign anything. AIC advised that at least an outline needs to be prepared and given to TL Cosby with all information included so that there would be some type of record. RD Black agreed only to a prepared outline. (ATTACHED). RD Black said to arrange this meeting with TL Cosby for tomorrow at 10am.

On October 31, 2018 RD Black called and cancelled our meeting with TL Cosby due to a personal matter.

On November 7, 2018 RD Black called and stated that TL Cosby had filed a complaint on myself and AAIC Honeycutt. He stated that the complaint contained her objection to the conference on 10-11-2018 and that instructions to her from management was not clear. Furthermore, that this conference was to discredit her and her goals of a promotion to Unit Coordinator. AIC advised RD Black that these are

ongoing issues and problems with TL Cosby that span 2-3 years. I offered to send him the outline that was prepared for the canceled 10-31-2018 meeting to help him brief Mr. Nichols on this matter further. RD Black agreed and the outline was emailed.

On November 8th, 2018 AIC continued to obtain historical information on the past relationships of TL Cosby and subordinates. AIC had already spoken to TL Duncan and Agent Albany briefly but Agent Albany was again questioned as to the specifics to their relationship. Agent Albany was very open about the relationship and described it as intimate and sexual. She also describe specific situations of unfair treatment after the relationship ended. I then prepared notes from the conversation and sent them immediately to RD Black who indicated that he would forward the information up the chain.

To date, considering all of the above information and previously submitted documentation, we have an employee that is supervisor and is conducting herself in a very unprofessional manner with continuing her inappropriate relationships with subordinates, and also is failing follow the instructions of her AIC and AAIC by failing to refrain from this behavior after repeated counseling sessions. Even if a sexual relationship did not occur with subordinates, the relationships are still unprofessional and extremely disruptive to the office as they always entail an enormous of amount of time spent with the subordinate (on and off duty) which leads to a failure to be involved with the other team members, and then rumors and speculation from members of the office as a whole. TL Cosby's failure communicate with AAIC Honeycutt is also in and of itself another serious matter. Having been clearly warned about her failing to notify AAIC Honeycutt of her schedule flexing, annual leave, after hours field work, and the accumulation of compensatory time, this would be considered a violation of policy 208 and insubordination. Due to these violations, it would be my recommendation that TL Cosby be officially and formally reprimanded by the Department and this action placed in her permanent HR file. However, if the OPR investigation finds that the TL Cosby did in fact have a sexual relationship with a subordinate(s) and that intimidation and harassment was used at the end of the relationship(s), then termination would be recommended.

Respectfully,

Chadwick A. Gambrell
Agent in Charge
SCDPPPS

State of South Carolina

Department of Probation, Parole and Pardon Services

HENRY MCMASTER
Governor

JERRY B. ADGER
Director

2221 DEVINE STREET, SUITE 600
POST OFFICE BOX 50666
COLUMBIA, SOUTH CAROLINA 29250
Telephone: (803) 734-9220
Facsimile: (803) 734-9440
www.dppps.sc.gov/

December 19, 2018

Chad Gambrell
Agent in Charge
SC Department of Probation, Parole and Pardon Services
301 University Ridge, Suite 6500
Greenville, SC 29601

Dear AIC Gambrell,

Please accept my letter of resignation dated December 19, 2018 with an effective date of December 19, 2018. I appreciate the opportunities I have been provided during my 10 years with the agency and look forward to new beginnings and new challenges.

Sincerely,

Kristin Cosby
Supervisor
Greenville County



State of South Carolina

Department of Probation, Parole and Pardon Services

HENRY McMASTER
Governor

JERRY B. ADGER
Director

2221 DEVINE STREET, SUITE 600
POST OFFICE BOX 50666
COLUMBIA, SOUTH CAROLINA 29250
Telephone: (803) 734-9220
Facsimile: (803) 734-9440
www.dppps.sc.gov

12-19-2018

Kristin Cosby
Greenville, SC

Ms. Cosby,

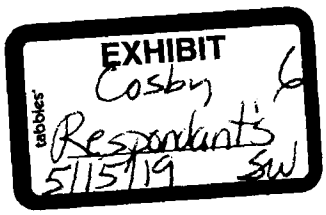
I am in receipt of your letter of resignation. As discussed, it is effective as of this date December 19, 2018. Any future correspondence will be mailed to:

307 Marsh Creek Drive
Mauldin, SC 29662

Good luck in your future endeavors.

Sincerely,

Chadwick A. Gambrell
Agent in Charge
SCDPPPS



Barbara
Rachel
Yolanda

Department of Probation, Parole and Pardon Services

Personnel Action Transmittal - Separation

Are you going to be employed by a South Carolina City, County, or State Entity?

☐ Yes ☒ No If yes, with what Agency:

EMPLOYEE

NAME (PLEASE PRINT)			SOCIAL SECURITY # (last 4 digits)
Kristin Cosby			4703
STREET ADDRESS	CITY	STATE	ZIP
307 Marsh Creek Dr.	Mauldin	SC	29662
TITLE	LOCATION		
Team Leader	Greenville - 23		

SEPARATION CHECKLIST

☒ LETTER OF RESIGNATION WITH FORWARDING ADDRESS

☒ LETTER OF RESIGNATION ACCEPTANCE

☒ LAST DAY ON PAYROLL 12/19/18

☒ ENDING TIME ON PAYROLL ~~12/19/18~~ 5:00p.m.

☒ EMPLOYEE WILL RETURN DEPARTMENT PROPERTY PER POLICY: Keys, Badge, ID Card, Phone Card, Weapon, Computer Equipment, Safety Equipment etc.

INITIALS (AIC/SUPERVISOR) CAB

☐ ANNUAL LEAVE TO BE TAKEN IN LIEU OF BEING IN THE

IF APPLICABLE, PLEASE INDICATE THE DATES OF LEAV

FROM:

1010
AL - 356.588
SL - 309.50
COMP - 82.416

SEPARATION CODES

CHOOSE APPROPRIATE CODE

- ☐ 01 Deceased
- ☐ 02 Disability Retirement
- ☐ 03 Retirement
- ☐ 04 Employment Outside State Government
- ☐ 05 Fail to Maintain Lic/Credentials
- ☐ 06 No Longer Meets Residency Requirements
- ☐ 07 Never Reported to Work
- ☐ 08 Never Returned from Leave
- ☐ 09 Patient Client or Inmate Abuse
- ☒ 10 Personal
- ☐ 11 Job Eliminated – No RIF Rights
- ☐ 12 Reduction in Force Separation
- ☐ 13 RIP Retirement
- ☐ 14 Dismissal – Unsatisfactory Performance
- ☐ 15 Termination – Change Agency Head
- ☐ 16 VSP Retirement
- ☐ 17 VSP Separation
- ☐ 18 Dismissal - Conduct
- ☐ 19 Full Retirement – End of TERI
- ☐ 20 Temporary Employment Ended
- ☐ 21 Temporary Grant Employment Ended
- ☐ 22 Time Limited Employment Ended
- ☐ 23 Job Abandonment
- ☐ 24 SAP Agency to Non-SAP Agency
- ☐ 25 JRIP – Judge Retire in Place
- ☐ 26 Non Reg-End Appointment/Term
- ☐ 27 Non Employee Separation
- ☐ 28 Violation of Agency Policy
- ☐ 29 Fail to Meet Cert. Requirement
- ☐ 30 Positive Drug Test
- ☐ 31 Refused Drug/Alcohol Test
- ☐ 32 Employee-Inmate Relation
- ☐ 33 Resign lieu-Correct. Act/Term
- ☐ 34 Resign While Under Investigation
- ☐ 35 Diff Job/Same State Agency
- ☐ 36 Diff Job/Diff State Agency
- ☐ 37 Probationary Employment Ended
- ☐ 38 Unable to Return to Work
- ☐ 39 Term No Grievance Rights

Form 1156 (Stock) Revision B Revision Date: 07/06/18

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

POLYGRAPH EXAMINATION PRE-TEST WORKSHEET

Time In: 13 : 33 AM/PM Time Out: 16 : 30 AM/PM

Name Cosby, Kristin Occupation SC PPT

Education Bachelors USC, Dover-Sherborn HS Place of Birth Framingham, MA

Previous Arrest(s) No

Previous Polygraph(s): No ____ Yes X Re: 1

Marital Status: Married____ Single ____ Divorced ____ Separated ____ Widow(er) ____

Children: No ____ Yes X Number 2 male 19, young 11

Medical
(If yes to any question, explanation required)

1—Any history of heart disease?	1—No X Yes____	Ex.____
2---Any neurological disorders?	2---No X Yes____	Ex.____
3---Any past psychiatric care?	3---No____ Yes X	Ex. PTSD, depression, anxiety
4---Are you now on any medication?	4---No____ Yes X	Ex. PTSD, antidep, ADHD
5---Any recent drug or alcohol use?	5---No X Yes____	Ex.____
6---Are you now pregnant?	6---No X Yes____	Ex.____
7---Are you aware of any physical or mental condition that would make it difficult to complete the polygraph examination?	7---No X Yes____	Ex.____

8---How many hours of sleep have you had in the last 24 hours? 3-4hrs How many hours of sleep is normal for you? 4hrs

Case #: P18-0264 Date: 12 / 17 / 18 Examiner: BCJ

EXHIBIT Cosby 2 Respondant 5/15/19 Sal

Document 8

P-006
Revised 02/2002