STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

South Carolina Department of Revenue, Petitioner, v. Agua Pina, LLC, d/b/a Hookah on the River, Respondent.	Docket No. 21-ALJ-17-0143-CC[1] **ORDER ON RECONSIDERATION**

This matter is before the South Carolina Administrative Law Court (the ALC or the Court) pursuant to a Motion for Reconsideration (Motion) filed by Agua Pina, LLC, d/b/a Hookah on the River (Respondent or Hookah on the River). On June 28, 2021, after a hearing on the merits, the Court issued a Final Order revoking Respondent's on-premises beer and wine permit and liquor-by-the-drink license for its location at 2700 Broad River Road, Suite B, Columbia, South Carolina. Respondent now moves this Court to reconsider its order pursuant to Rule 29(D) of the Rules of Procedure for the Administrative Law Court (SCALC Rules) and Rule 59(e) of the South Carolina Rules of Civil Procedure (SCRCP). The South Carolina Department of Revenue (the Department) filed a Response in opposition to the Motion. Having thoroughly reviewed the parties' filings, I do not find the Court misunderstood, failed to fully consider, or misapprehended any facts or arguments before it. Accordingly, the Court denies Respondent's Motion.

DISCUSSION

SCALC Rule 29(D) provides that "[a]ny party may move for reconsideration of a final decision of an administrative law judge in a contested case to alter or amend the final decision, subject to the grounds for relief set forth in Rule 59, SCRCP." Although Rule 59(e), SCRCP, does not use the words "motion for reconsideration," it has long been viewed as providing for motions for reconsideration. *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 21, 602 S.E.2d 772, 778 (2004). Typically, a motion for reconsideration is filed in two circumstances. First, it must be filed if a

[1] The Court notes the caption has been amended to reflect the correct docket number. Furthermore, the caption was changed from an "IJ" designation (injunction type proceeding) to a "CC" designation (contested case). This change reflects the transition of the case from a determination of whether to temporarily suspend Respondent's permit and license to a determination of whether to revoke its permit and license.

party seeks to preserve an issue for appellate review where an issue was raised to the trial court but not ruled upon. *Id.* at 24, 602 S.E.2d at 780. Second, a party may file a motion for reconsideration when the party "believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it." *Id.*; *see also Arnold v. State*, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992) ("The purpose of Rule 59(e), SCRCP, to alter or amend the judgment is to request the trial judge to 'reconsider matters properly encompassed in a decision on the merits.'"). Here, Respondent has filed its Motion based on the second circumstance and argues the Court made several errors in its Final Order. Citing to *Rouse v. Neilson*, 851 F. Supp. 717, 734 (D.S.C. 1994), the Department argues Respondent is improperly using its Motion to rehash the testimony and evidence that was previously presented. While the Court agrees that many of the issues raised by Respondent in its Motion simply reiterate the evidence presented at the hearing, Respondent has also taken issue with the burden of proof applied in this case, which is appropriate to argue in a motion for reconsideration. Each of Respondent's issues raised in its Motion will be addressed in turn below.

Failure of Proof

Respondent argues the Department failed to meet its burden of proof to show Respondent's permit and license should have be revoked. Respondent contends that when the "moving party" fails to support its case through testimony from its own witnesses, the case should be dismissed.[2] More specifically, Respondent argues the Court should reconsider its order because the Department "failed to put up a single witness from the Department to prove its case." Respondent dismisses the fact the Department subpoenaed four witnesses from the Richland County Sheriff's Department and instead, insists that the Department has the responsibility to call a witness from its Alcohol and Beverage Licensing (ABL) section.

Upon a thorough review, the Court finds nothing it misunderstood or failed to consider in determining the Department met its burden of proof to show Respondent's permit and license should be revoked. Indeed, nothing in our statutes or laws governing the burden of proof requires

[2] Curiously, Respondent repeatedly refers to the Department's "Motion" when making its argument. The Court presumes Respondent is referring to the Department's case on the merits presented at the hearing and not the Department's Motion for Emergency Suspension and Expedited Hearing that was previously resolved in this case. Furthermore, at the beginning of the hearing in this matter, the Court clearly questioned the procedural posture of this case, and the Department indicated the injunction was in response to the Motion for Emergency Suspension and that in this merits hearing, they were seeking revocation of the permit in relation to their determination issued on May 13, 2021. Respondent did not object to that purpose of the hearing.

the Department to put up a witness from their ABL section. The Department is only required, regardless of the source of its witnesses or evidence, to meet its burden of proof—a preponderance of the evidence. *Anonymous (M-156-90) v. State Bd. of Med. Exam'rs*, 329 S.C. 371, 375-78, 496 S.E.2d 17, 19-20 (1998) ("Absent an allegation of fraud or a statu[t]e or a court rule requiring a higher standard, the standard of proof in administrative hearings is generally a preponderance of the evidence."). In this case, the Department subpoenaed four witnesses from the Richland County Sheriff's Department and elicited testimony from each of them. Based upon the Court's review of this testimony and the testimony from the two witnesses presented by Respondent, the Court determined the Department showed by a preponderance of the evidence that Respondent's permit and license should be revoked. *See MRI at Belfair, LLC v. S.C. Dep't of Health & Env't Control*, 392 S.C. 314, 324, 709 S.E.2d 626, 631 (2011) (holding that "as the fact-finder, the ALC was free to make factual findings based on its view of the credibility and weight of the evidence"); *see also S.C. Dep't of Revenue v. Sandalwood Soc. Club*, 399 S.C. 267, 279, 731 S.E.2d 330, 337 (Ct. App. 2012) ("In reaching a decision in a contested violation matter, the ALC serves as the sole finder of fact in the de novo contested case proceeding."). This is not a case in which the Department failed to produce any witnesses or present any evidence.

Similarly, Respondent contends it "appears unprecedented" for revocation to be ordered when "no witness from the Department of Revenue requested revocation or testified in support of it and the Sheriff's Office did not request it." It is unclear to the Court what purpose would be gained by a witness from the Department testifying that the Department is actually seeking revocation of Respondent's permit and license. In fact, there simply is no dispute that the Department issued a final determination that Respondent's permit and license should be revoked. Moreover, the Department's legal counsel clearly made that argument throughout the hearing in this matter. If Respondent is seeking to aver that the Department is not the author of this enforcement action and, therefore, is here pursuing an enforcement action at the bidding of an invisible hand (presumably the Sheriff's Department), Respondent failed to establish such nefarious conduct at the hearing. Finally, the Sheriff's Department does not have the authority to revoke Respondent's permit or license and, thus, it is not surprising witnesses from the Sheriff's Department did not testify that they initiated the revocation proceedings. *See* S.C. Code Ann. § 61-4-590(A) ("The department has jurisdiction to revoke or suspend permits authorizing the sale of beer or wine."); S.C. Code Ann.§ 61-6-1830(1) (2009) ("The department may suspend, revoke, or

refuse to renew a license issued pursuant to subarticle 1 of this article upon finding that: (1) the applicant no longer meets the requirements of Section 61-6-1820.").

Citing to *Gadson ex rel. Gadson v. ECO Services of South Carolina, Inc.*, Respondent argues South Carolina law has long held that a party's failure to call a witness within his control creates a presumption that the testimony would be harmful. 648 S.E.2d 585, 374 S.C. 171 (2007). First, I do not find this presumption applies here. The principle cited by *Gadson* relates to the presumption that a *defendant* who fails to testify raises an inference that his testimony would have been unfavorable to his position. *Id.* at 178, 648 S.E.2d at 589 citing *Crocker v. Weathers*, 240 S.C. 412, 126 S.E.2d 335 (1962)). The Department is not in the position of the defendant in this case. Moreover, as discussed by the South Carolina Supreme Court in another case cited by Respondent:

> A litigant is not required to produce as a witness every person who may give evidence in his favor; and his failure to do so does not necessarily imply a design on his part to suppress the truth. Inference from the unexplained failure of a party to call an available witness that the testimony of such witness would have been unfavorable may be drawn only where, under all of the circumstances of the case, the failure to produce such witness creates suspicion of a wilful attempt to withhold competent testimony.

Davis v. Sparks, 235 S.C. 326, 334, 111 S.E.2d 545, 549 (1959). In this case, Respondent has presented no credible testimony tending to show, after a review of all the circumstances of the case, that the Department has willfully attempted to conceal the truth.

Respondent further asserts the Department's witnesses from the Sheriff's Department refused to testify whether the incidents at Respondent's business warranted revocation of Respondent's permit and license and, therefore, the Department's case was deficient. First, whether revocation is warranted is a legal determination for this Court, not any particular witness. *See Walker v. S.C. ABC Comm'n*, 305 S.C. 209, 407 S.E.2d 633 (1991) (holding that where the General Assembly authorizes a range of alternatives for an administratively imposed penalty, the administrative fact-finder may set the amount of the penalty after a hearing on the dispute). Next, Respondent's assertion that witnesses from the Sheriff's Department would not comment on their opinion of the appropriateness of revocation is simply incorrect. Investigator Short specifically testified that he thought revocation of Respondent's permit and license was appropriate based upon "the numerous calls and reports combined with the two shootings." Tr. 38:1-6. Sergeant Torres similarly testified she supported revocation of Respondent's permit and license based upon the

problems with alcohol, shooting, fights, and car break-ins at the location, just as she would support revocation at any location with a similar magnitude of problems. Tr. 80:25-82:10. In discussing her support of revocation, she also cited more than 102 times the Sheriff's Department had responded to Respondent's business since January of this year and the resources Respondent's business pulled from other areas. Tr. 87:13-19; 91:6-11. Corporal Hawkes similarly testified that he supported revocation. Tr. 176:6-12. Moreover, Corporal Hawkes clarified it is not a single incident that informs his support for revocation but rather "the totality of the circumstances." Tr. 179:19-180:10.

Respondent next argues none of the Department's witnesses testified Respondent's business (1) was a threat to public safety, (2) did not have a reputation for peace and good order, or (3) that revocation was an appropriate penalty. Again, these three conclusions are not simply factually conclusions, but legal determinations within the province of the Court based on the Court's analysis of the facts presented. A witness can testify to factual elements of these determinations, but ultimately it is up to the Court whether the facts show that a business is a threat to public safety or does not have a reputation for peace and good order. *See MRI at Belfair, supra.* For example, Sergeant Torres testified she would classify Respondent's business as a nuisance and a problem for the community and the Sheriff's Department. Tr. 64:2-7. Additionally, Sergeant Torres later stated Respondent's business was an imminent danger to the community. Tr. 113:12-24. It was unnecessary for Sergeant Torres to specifically testify "Respondent's business is a threat to public safety" for the Court to make such a conclusion based upon the totality of the facts presented.

Furthermore, although the Court recognizes Respondent had SLED-certified security guards who policed the exterior, made an effort to secure the interior of its location by frisking patrons and using metal detector wands, and had surveillance cameras, these security measures were ineffective. As a result, its business became a burden upon law-enforcement and the business did not have a reputation for peace and good order. The Court is unpersuaded by Respondent's argument that it misunderstood or failed to fully consider the Department's burden of proof in this matter. *See Elam*, 361 S.C. at 21, 602 S.E.2d at 780.

Revocation Standard

Respondent poses the question, "What is the Standard for Revocation?" Respondent fails to assert the Court erred in interpreting or applying the standard for revocation. Instead,

Respondent cites to a litany of offenses committed at another bar that was not the subject of revocation in this case presumably to suggest that this other bar's permit and license should have been revoked if Respondent's permit and license were revoked. In merely referencing offenses committed at another bar, Respondent has failed to present a cogent argument supported by legal authority regarding how this Court misunderstood or failed to fully consider the standard for revocation. *See Elam*, 361 S.C. at 21, 602 S.E.2d at 780.

Nevertheless, in the Conclusion of its Motion, Respondent argues "[t]he ALC Order sets a precedent whereby a bar with SLED certified security guards policing the exterior, frisking and using metal detector wands, bouncers on the inside, and numerous surveillance cameras is subject to revocation – for the simple reason it was situated next to a rap club." The Court never concluded in its Order that Respondent's license should be revoked because it was located next to a rap club. Rather, the Court concluded Respondent's permit and license should be revoked because Respondent was in violation of § 61-4-580(B) and § 61-6-1820 and, based on the severity of the violations, revocation was the correct penalty under § 61-4-580(B) and § 61-6-1830(1). Thus, the standard for revocation was clearly cited to and applied in the Court's Order.

Burden on Law Enforcement

Respondent argues this Court's order heavily relied on law enforcement testimony that the Richland County Sheriff's Department has been called to Respondent's location over one-hundred times since January 2021 when only five incident reports were entered into evidence. Respondent asks "Why?" these other ninety-five reports[3] were not entered into evidence. Respondent then poses several more questions ("Could the other 95 incident reports – which were in the Courtroom – have reflected calls regarding the rap concerts?") to suggest the Department did not introduce the other ninety-five reports because they (1) did not originate from calls to Respondent's business, but rather originated from other businesses in the area, or (2) would have validated Respondent's claims that the Sheriff's Department was targeting Respondent's business. Essentially,

[3] The Court notes that Respondent incorrectly interchanges the phrase "calls for service" for "incident reports." Although the Sheriff's Department typically fills out incident reports for calls they receive, not every 911 call has a corresponding incident report. In fact, when Respondent's counsel questioned Sergeant Torres about them not receiving 102 "incident reports," Sergeant Torres responded saying, "I'm testifying that as calls for service, there was 102 times that I have personal knowledge, because I work for the Sheriff's Department—and I know that 102 times we've responded to your business for calls for service." Respondent's counsel then asked, "Okay. So it'd be 102 911 calls?" in which Sergeant Torres replied, "For service, yes." Tr. 87.24-88.9. Sergeant Torres later testified "[t]here's many incidents—there's over 50 incident reports that we have at your business . . . ." Tr. 119.4-119.5.

Respondent argues the Department is covering up evidence that would have exposed their unequal, targeted treatment of Respondent's business. And, similar to its previous argument, Respondent contends South Carolina law clearly holds that a party's failure to introduce evidence creates a presumption that the evidence would be harmful. Respondent cites to *Davis v. Sparks*, in which the South Carolina Supreme Court considered whether to apply the following presumption and ultimately determined not to because there was no evidence to support its application:

> In the absence of explanation, the failure or refusal of a party to produce evidence may create an adverse inference where such evidence is within his knowledge, and within his power to produce, it not equally accessible to his opponent, and is such as he would naturally produce if it were favorable to him.

235 S.C. 326, S.E.2d 545, 547 (1959).

Like the South Carolina Supreme Court, I find no reason to apply this presumption here. I do not find the evidence was not equally accessible to Respondent. *See id.* The incident records were available to be subpoenaed, and it appears that they were subpoenaed by Respondent. At the hearing, Respondent indicated they did not receive the reports for Respondent's business testified to by Sergeant Torres but, when Sergeant Torres offered them to Respondent during the hearing, Respondent's counsel stated they "certainly would" want them but then continued to question Sergeant Torres and never followed up on the reports. Tr. 119:1-120:3. Interestingly, Respondent admits in the quoted parenthetical question above that these other reports were present and available in the courtroom, but Respondent did not elicit testimony about these reports although they were available. Moreover, as the South Carolina Supreme Court also noted in *Sparks*, the presumption should not be applied unless there is something in the circumstances of the case as a whole that would suggest the failure to produce evidence was a willful attempt to conceal the truth. *Id.* at 334, 111 S.E.2d at 549. Respondent has presented no credible evidence to make this Court suspicious of the Department's failure to introduce the evidence of the other ninety-five calls for service.

In sum, Respondent's argument, which merely attempts to raise doubt as to the true nature of the other ninety-five calls for service, appears to again challenge whether the Department met its burden of proof. However, Segreant Torres, who testified that over one-hundred calls for service came in from Respondent's location since January 2021, had personal knowledge of the

number of calls.[4] The Department elicited testimony from three officers about five specific incidents out of those 102 calls for service, including two shootings within a two-week period. This testimony established, by a preponderance of the evidence, that Respondent's location has a pattern of requiring assistance from law enforcement on a frequent basis for increasingly violent incidents. In light of this evidence, it was unnecessary for the Department to elicit specific testimony for each of the 102 calls for service. Once the Department met its burden, Respondent had the burden to show the officers' testimonies were incorrect. Simply casting doubt on the officers' testimonies in this Motion with suppositions and unsupported hypotheticals does not meet this burden.

Incidents at Licensed Premises

Respondent disputes the Court's findings regarding the two shootings at Respondent's business. First, Respondent contests the Court's finding that whether the shooter on May 2, 2021, was a patron of Respondent's business was "unclear," citing to the absence of testimony indicating the shooter ever stepped inside Respondent's place of business. Although the police officers who testified at the hearing stated they were unaware of a rap concert occurring the night of the shooting, Respondent contends a rap concert had ended at the event center next to Respondent's business earlier that night. However, at the time the shooting occurred, the event center was closed and Respondent's business was open. Moreover, the shooting occurred just outside of the entrance to Respondent's business. Based on this testimony, it is reasonable to conclude the shooter was a potential patron of Respondent's business, which was the only business open and which had drawn an large, unruly crowd.[5] However, since it was not clear if this shooter ever entered Respondent's business or not, the Court determined that whether the shooter was a patron of Respondent was unclear. Furthermore, whether the shooter actually entered Respondent's business was not a finding that was significant to the Court's determination. The shooting at the door of Respondent's

---

[4] Respondent argues that oral testimony of the number of incident reports without the accompanying admission of the incidents reports constitutes inadmissible hearsay under rule 803(6) of the South Carolina Rules of Evidence. However, Respondent did not contemporaneously object to this testimony at trial and this issue cannot be raised for the first time in a motion for reconsideration. *See Johnson v. Sonoco Prod. Co.*, 381 S.C. 172, 177, 672 S.E.2d 567, 570 (2009) ("An issue may not be raised for the first time in a motion to reconsider.").

[5] Notably, Respondent's witness, Mr. Sullivan, who was at Respondent's business the night of the shooting testified that he was not aware if the shooter was a patron. Mr. Oliver, who was not at the location and night of the shooting, testified the shooter was not a patron. I simply did not find Mr. Oliver's testimony convincing.

business was a reflection of the violent activity that surrounded the operation of Respondent's business. The Court thus finds no reason to change this finding.

Respondent further contests this Court's finding that the shooter from the May 2nd incident was never identified. Respondent asserts it identified the shooter. Indeed, one of Respondent's employees, Sullivan, testified that after reviewing the video footage with the staff, one of Respondent's other employees identified the shooter from Facebook but Sullivan did not know who it was. Tr. 319-320:5. Whether an employee of Respondent ultimately identified the shooter does not inherently establish his identification was ignored by, or helpful to, the Sheriff's Department. At the time testimony was elicited in this case, the Sheriff's Department's case was ongoing, and no charges had been filed. Therefore, the Court finds no reason to change its finding that the shooter was not identified.

Respondent also contends the Sheriff's Department never interviewed Respondent's employees the night of the shootings on May 2, 2021, or on May 8, 2021. Indeed, Respondent's employee, Sullivan, testified that to his knowledge, the officers did not interview staff or the security guard regarding the shooting on May 2, 2021. Nevertheless, Sullivan also testified that "[t]hey briefly interviewed me the night of the incident. Asked me if I saw anything. At that time I didn't know anything, so." Tr. 322:12-18.

Interestingly, as to shooting incident on May 8, 2021, Respondent contends the Sheriff's Department did not interview staff the night of the shooting incident, while at the same time arguing no shooting occurred in its establishment that night. Nevertheless, Sullivan specifically testified that although "[he] wouldn't call it an interview[,] we were having dialogue when I was downloading the video." Tr. 328:14-16. Moreover, since Investigator Short was not asked about whether he interviewed Respondent's employees about the incident, the Sheriff's Department was never given an opportunity to explain that aspect of its investigation. However, what is clear is that an investigation took place. And that investigation was instigated by the statement of the victim in an emergency room that the shooting occurred inside Respondent's location In fact, Richland County Sheriff's Department did not receive a call from Respondent's premises on May 8, 2021, which suggests Respondent failed to report the incident to law enforcement. Thus, the Sheriff's Department was not aware of the shooting until the hospital reported it to them the next day. In conclusion, Respondent's contention that the Sheriff's Department's did not conduct interviews with any of the staff regarding the shootings contradicts some of their own witnesses'

testimony and does not change this Court's analysis of the evidence. *See MRI at Belfair*, 392 S.C. at 324, 709 S.E.2d at 631.

Finally, Respondent disputes the Court's finding that a shooting occurred at Respondent's business on May 8, 2021. Respondent complains that only one video from outside the establishment was shown at the hearing, and the Department did not introduce or show the video from inside the establishment at the time of the shooting. Respondent argues the inside footage may have supported its contention that the commotion that night was the result of a large hookah falling over. However, as a witness from the Sheriff's Department testified, the cameras inside the club were focused on the cash registers and the bars, not the common areas of the club where people were using hookahs or the dance floor where most people were congregating. Tr. 37:17-23. Furthermore, the very videos Respondent is questioning are Respondent's own videos and, if Respondent believes these videos show a hookah falling, Respondent presumably could have introduced them.

Respondent similarly complains the Sheriff's Department did not introduce a video from their van parked outside Respondent's business the night of the shooting on May 8, 2021. Respondent claims the Sheriff's Department's testimony is suspect because, despite their contention that Jack Oliver was parked in front of the van obscuring its view, Jack Oliver was not there that night. However, the Sheriff's Department did not testify that Jack Oliver was present with his vehicle. Rather, the Sheriff's Department testified a Jack Oliver Pool & Spa truck was blocking the van's view. Tr. 58:11-22. No evidence was offered to dispute that testimony.

Overall, Respondent's complaints about the Department failure to show other videos from the night of the shooting do not change this Court's analysis of the evidence. *See MRI at Belfair*, 392 S.C. at 324, 709 S.E.2d at 631. The Department and Sheriff's Department acknowledged the other videos and explained why they were not useful to the investigation. The video that was entered into evidence shows the victim running out of the club clutching his stomach and supports the victim's statement that he was shot in the club. Finally, Respondent has failed to show the other video evidence disproves the evidence presented at trial.

Interactions Between Law Enforcement and Respondent's Staff

Respondent acknowledges the relationship between Respondent and law enforcement was not cordial but argues this fact does not support revocation. At the outset, this Court did not revoke Respondent's permit and license because its relationship with law enforcement was not cordial.

Nevertheless, although Respondent does not openly state it, Respondent suggests law enforcement was targeting Respondent's business by showing up at the premises unnecessarily and interfering with Respondent's business.[6] However, Respondent does not address testimony offered by the Sheriff's Department regarding the interactions between law enforcement and Respondent's staff. As this Court found in its Order, Corporal Hawkes has been denied access to Respondent's business numerous times, including one time when there was an injured patron inside the premises. Sergeant Torres and Corporal Hawkes also explained Respondent's staff and patrons are hostile towards law enforcement. The Court also found, after reviewing and weighing all the evidence produced at trial, that the evidence simply did not support Respondent's theory that it was being targeted by the Sheriff's Department. Employees of the Sheriff's Department also specifically denied that they were targeting Respondent's business, and the Court found their testimony credible. Furthermore, law enforcement's presence at the location was primarily a response to the criminal activity taking place at Respondent's location. Accordingly, none of the factual statements offered by Respondent in its Motion lead this Court to conclude it misunderstood or failed to fully consider the testimony in this matter; rather, the Court simply weighed the testimony differently than Respondent would have. *See Elam*, 361 S.C. at 28, 602 S.E.2d 780.

Miscellaneous

Respondent contends this Court's order incorrectly notes that SLED-certified security no longer worked at the club the night of the disputed shooting. Respondent contends SLED-certified security was still employed but was not on duty that night. Respondent's representation of the Court's Order is erroneous. The Court found SC Security Protection was not present to secure the entrance of the business the date this shooting occurred and noted security was being provided by some other company. This finding is clearly supported by the record. Mr. Higgins of SC Security Protection specifically testified the last night his company worked for Respondent was May 2nd, the night of the first shooting. Tr. 343:16-344:7. Furthermore, this factual finding was only made to provide background and was not a determinative factor in the Court's decision.

Respondent also claims that "[c]learly crowds from rap concerts have caused problems for both Respondent and law enforcement." However, the evidence introduced at trial shows, at most,

---

[6] As part of this contention, Respondent claims the Sheriff's Department directed Respondent's landlord that Respondent's should be evicted. This is not supported by the testimony, which shows the Sheriff's Department specifically declined to comment on whether Respondent should be evicted. Tr. 211:11-212:24.

that a rap concert took place at the event center next to Respondent's business earlier in the night before the first shooting. There was no testimony from law enforcement that a rap concert was taking place when they responded to any of the calls for service to Respondent's establishment. In fact, Corporal Hawkes is aware of only one concert being held at the event center. More importantly, the law enforcement officers who testified at the hearing explained that rap concerts at the event center next door have not caused problems for them or have been a source of calls for service.

Conclusion

Overall, Respondent succinctly sums up its argument in its Conclusion in which it contends the "evidence that **was not** introduced . . . outweighs the evidence that **was** introduced." (emphasis added). At the outset, evidence that was not introduced obviously carries no probative weight and thus cannot outweigh evidence that was introduced, which may carry probative weight. Furthermore, as addressed above, the Department's choice not to call certain witnesses or enter certain reports or videos into evidence did not create a presumption that this evidence would have been adverse in the absence of any circumstances raising such a suspicion. *See Davis*, 235 S.C. at 334, 111 S.E.2d at 549. Here, after weighing the evidence as a whole and taking into consideration the credibility of the witnesses, the Court concluded the Department met its burden to show by a preponderance of the evidence that Respondent's permit and license should be revoked. Furthermore, simply because the Department had the initial burden of proof does not mean Respondent could sit back and contend that other evidence existed to support its case without any burden to mount its own defense. Respondent had the burden to undermine the Department's evidence or show its falsehood with competent evidence and this requires more than merely casting doubt based upon unsubmitted evidence. *Cf. Browning v. Browning*, 366 S.C. 255, 262, 621 S.E.2d 389, 392 (Ct. App. 2005) ("Once the moving party has made out a prima facie case, the burden then shifts to the respondent to establish his or her defense and inability to comply with the order."); *Daisy Outdoor Advert. Co. v. S.C. Dep't of Transp.*, 352 S.C. 113, 118, 572 S.E.2d 462, 465 (Ct. App. 2002) ("Once a party establishes a prima facie case, the burden of proof shifts to the opposing party."); 35B C.J.S. Federal Civil Procedure § 1417 ("In general, the burden of proof is on the party seeking the sanction. Once a defendant seeking sanctions puts forth a prima facie showing that the facts as known to the plaintiff prior to filing are not consistent with allegations in the complaint, the burden shifts to the plaintiff to explain that either the facts are not as they have

been presented or that, in spite of the facts, the circumstances at the time the pleading was filed justified making the allegations."). Overall, nothing raised by Respondent in this Motion leads this Court to believe it misunderstood or failed to fully consider the evidence or law before it in this case. *See Elam*, 361 S.C. at 24, 602 S.E.2d at 780. The numerous calls for law enforcement combined with the escalating violence as reflected, in part, by two shootings justify the revocation of Respondent's permit and license. Accordingly, Respondent's Motion must be denied.

ORDER

Based upon the above,

IT IS HEREBY ORDERED that Respondent's Motion for Reconsideration is **DENIED.**

AND IT IS SO ORDERED.

Ralph King Anderson, III
Chief Administrative Law Judge

July 22, 2021
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Stephanie 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 Perez
Judicial Law Clerk

July 22, 2021
Columbia, South Carolina