

**STATE OF SOUTH CAROLINA**

**Before the South Carolina Law Enforcement Training Council**

In the Matter of the Law Enforcement )  
Certification of Adam Raynor )  
)  
)  
[Florence Police Department] )  
)  
\_\_\_\_\_ )

Docket Number 2016-CJA-11-02

**FINDINGS AND RECOMMENDATIONS  
OF HEARING OFFICER  
(Contested Case)**

Hearing Officer: William C. Smith  
Hearing Date: February 20, 2019  
Hearing Reporter: Sandra J. Ayers, Southern Reporting, Inc.

**Appearances**

For Officer: John A. O’Leary, Esquire  
For Department: Marsh A. Julian, 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).

Adam Raynor (“Officer”), in response to allegations of certification misconduct reported by the Florence Police Department (“Department”) to the South Carolina Criminal Justice Academy (“Academy”), pursuant to the requirements of S.C. Code Ann. Regs. 37-023, timely requested a contested case hearing to address the allegations of misconduct filed against him. 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 February 20, 2019.

**II. ALLEGATIONS OF MISCONDUCT**

The Department’s Personnel Change in Status Report (Notification of Separation Due to Misconduct), dated November 30, 2016, alleged that Adam Raynor had committed misconduct, as

defined in S.C. Code Ann. Regs. 37-025, through “[d]ishonesty/untruthfulness with respect to his/her employer.” The Department’s description of the alleged misconduct stated as follows:

A recent internal investigation revealed the following: Adam Raynor improperly used his Taser to arrest an individual. In this incident, Raynor not only violated department policy (use of Taser), but also misrepresented the events as they occurred in his Incident Report when compared to what is shown on his Body Worn Camera (BWC) video. (Sic)

### **III. DOCUMENTARY AND TESTIMONIAL EVIDENCE**

#### **A. Documentary Evidence**

The following documentation was accepted into evidence at the February 20<sup>th</sup> hearing and made a part of the record:

Council Exhibit Number 1: Letter to Adam Raynor from Lewis J. Swindler, Jr., including documents in reference to “Personal Change in Status Report Notification of Separation Due to Misconduct.”

State’s Exhibit Number 1: Video captured from Raynor Body-worn Camera

State’s Exhibit Number 2: Florence Police Department Special Order 2016-003

State’s Exhibit Number 3: City of Florence Incident Report

State’s Exhibit Number 4: Employee Action Report Form AR-D (Disciplinary Action Report)

Respondent’s Exhibit Number 1: “TASER Cartridge Probe Spread for 15-, 21- and 25-Foot Cartridges”

Respondent’s Exhibit Number 2: Multiple still images captured from Raynor Body-worn Camera

#### **B. Testimonial Evidence**

The following testimony was accepted into evidence at the February 20<sup>th</sup> hearing and made a part of the record:

1. Testimony of Captain David McClure, Florence Police Department
2. Testimony of Adam Raynor
3. Testimony of Robert Lee Pridgen
4. Testimony of Sergeant David Lee Pritchard, Lexington County Sheriff’s Office
5. Testimony of Lieutenant Mark Mims, Florence Police Department

#### **Testimony of David McClure:**

McClure testified that he is a Captain in the Florence Police Department, that he was made aware of an incident involving the use of a TASER<sup>1</sup> by Adam Raynor that occurred on October 2, 2016, that he

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<sup>1</sup> TASER is a registered trademark currently owned by Axon Enterprise, Inc. The name TASER is an acronym for “Thomas A. Swift’s Electric Rifle.” TASER, sometimes also referred to as “Taser” or “taser,” is currently classified as an Electronic Control

reviewed video footage of the incident recorded by Raynor's body-worn camera, and that his viewing of the body-worn camera footage caused him concern due to the Department's revisions to its policy on the "Use of Electronic Control Devices" that became effective on February 10, 2016 in response to the January 11, 2016 Fourth Circuit Court of Appeals opinion in "Armstrong v. the Village of Pinehurst."<sup>2</sup> (Transcript, pp. 28-33)

McClure testified further that after reviewing Raynor's body-worn camera footage he noted discrepancies between what he viewed and what Raynor had described in his initial report for the October 2<sup>nd</sup> incident, that while Raynor's report stated that the suspect in the incident had engaged in threatening behavior and had been in possession of a knife McClure's review of the body-worn camera footage did not support those statements, that he met with Raynor on October 27<sup>th</sup>, provided Raynor a Garrity warning, and spoke with him about the October 2<sup>nd</sup> incident, that Raynor remained consistent in his description of what had happened during the incident throughout their discussion, that mentioned to him upon departing from the October 27<sup>th</sup> interview that he suffered from PTSD, and that Raynor's employment with the Department was terminated on November 4<sup>th</sup> based on the Department's conclusion that Raynor had violated Florence Police Department Special Order 2016-003 by improperly discharging his TASER on October 2<sup>nd</sup> and also violated Florence Police Department General Order 300.04 III, Line E-5 (truthfulness) in that he "misrepresented the incident that he documented" and that "the report he had filed with the Department did not match up with the body-worn camera video [of the incident]." (Transcript, pp. 36-46, passim)

McClure testified on cross-examination that on October 2<sup>nd</sup> Raynor had received a phone call from an Investigator regarding the suspect with whom he would be later involved, that Raynor was provided information by the Investigator that there was an outstanding warrant for the suspect who was considered to be violent, that Raynor responded to the scene where the suspect was believed to be

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Weapon (ECW), having been formerly classified as a Conducted Energy Device (CED). TASER is recognized in the law enforcement "use of force" context as an intermediate force weapon placed on a standardized use-of-force continuum "either equal to or just below chemical incapacitants, chemical/kinetic hybrids, and strikes/batons." [See, *Electronic Control Weapons Guidelines* (2011) Police Executive Research Forum and Community Oriented Policing Services (U.S. Department of Justice), at p. 26.]

<sup>2</sup> See, *Estate of Armstrong ex rel. Armstrong v. Village of Pinehurst*, 810 F.3d 892 (4<sup>th</sup> Cir. 2016), holding, in the context of a qualified immunity analysis in an action brought pursuant to 42 U.S.C. § 1983, that "[a taser] may only be deployed when a police officer is confronted with an exigency that creates an immediate safety risk and that is reasonably likely to be cured by using the taser. The subject of a seizure does not create such a risk simply because he is doing something that can be characterized as resistance-even when that resistance includes physically preventing an officer's manipulations of his body."

located unassisted by any other officer at that time, that based on McClure's viewing of Raynor's body-worn camera footage of the October 2<sup>nd</sup> incident it appeared that Raynor attempted to handcuff the suspect after speaking with him but was unable to do so and that the suspect "ran forward," and that an off-duty officer appeared at the scene and assisted Raynor in the apprehension of the suspect. (Transcript, pp. 49-51, passim)

McClure acknowledged on cross-examination that an officer's body-worn camera may not record everything the officer actually sees, that what is actually being recorded by the body-worn camera may appear otherwise to the officer, that based on McClure's viewing of the body-worn camera footage when Raynor attempted to restrain the suspect he was facing away from Raynor but then turned back towards Raynor, that at the time Raynor discharged his TASER the suspect was attempting to flee and appeared to be approximately "[f]our to five feet" away from Raynor, that at that distance the suspect could still have been considered a possible threat to Raynor, that when McClure interviewed Raynor he remained consistent with the facts stated in his original incident report but that McClure did not keep a recording of his interview with Raynor, that when Raynor filed a supplement to the incident report McClure perceived that he did so in an attempt to "add something that wasn't right or was made up," that McClure believed Raynor had been untruthful because "[t]he incident report did not match up with what was going on with the video," but acknowledged that when Raynor wrote his original incident report he had not yet seen the body-worn camera video and that he wrote what he "in his mind" believed had actually happened." (Transcript, pp. 51-70, passim)

On cross-examination McClure acknowledged that when the suspect with whom Raynor was involved turned back towards him it was possible that Raynor could have perceived his behavior as threatening but that Raynor should have also considered that the suspect was "trying to run away," but agreed that if Raynor knew the suspect had a knife in his pocket and pulled away and then turned towards him Raynor could have perceived that the suspect posed a threat to his life, that on the day after the incident Raynor had had an opportunity to review the body-worn camera footage and "to make the necessary changes" in his supplemental report, and agreed that his belief that Raynor was lying was based on the fact that "[Raynor's report] didn't correspond with how [McClure] saw the video." (Transcript, pp. 71-81, passim)

### Testimony of Adam Raynor:

Raynor testified that on the day of the incident in question he responded to the Walmart where he had been advised by an Investigator that the suspect was present, that he had never had dealings with the suspect before but was advised by the Investigator that he was “a violent person,” that he activated his body-worn camera when he exited his patrol vehicle at the Walmart, that the Walmart “security officer” pointed the suspect out to him, that the suspect was larger than he and appeared to be “rough,” that he saw an off-duty officer, Officer Hart, at the scene after his arrival, that he called the suspect to come outside the Walmart and attempted to handcuff him but the suspect pulled away from him, that he saw a knife in the suspect’s pocket, that the suspect first ran away from him but then turned and came back towards him, that he saw Officer Hart was present, that he saw the suspect raise his elbow and perceived that he might be going to elbow him as he ran towards him, that knowing that the suspect had a knife on his person and was in his reactionary gap caused him to perceive the suspect as a threat to himself and other persons who were present, that he stepped back and discharged the TASER as the suspect passed him, that subsequent to the incident he typed up his initial report as he remembered the incident occurring, and that the following day after viewing the body-worn camera footage he typed a supplemental report to the initial report to address the number of times that the suspect had approached him. (Transcript, pp. 95-116, passim)

Raynor further testified that approximately a month after the incident he was interviewed by Captain McClure, that he stated to the Captain only what he believed to be “accurate or true,” that he has been consistent in what he has stated all along, that he believed that the suspect was running towards him, and that he “did not lie or put anything that's not truthful” in the reports he wrote. (Transcript, pp. 119-125, passim)

On cross-examination Raynor testified that he did not attempt to engage the suspect in hand-to-hand combat in that he was aware that he had a knife on his person, that pursuing the suspect on foot was also not an option given the known presence of the knife, and that he felt the suspect “was going to tackle [him] to the ground and possibly hurt [him]” and accordingly he discharged his TASER. (Transcript, pp. 127-131)

### **Testimony of Robert Lee Pridgen:**

Pridgen testified that he teaches mathematics at Florence Christian School, that he taught Raynor at Wilson High School and helped facilitate his entry to the military after his graduation, that he also served with Raynor in Afghanistan as his platoon sergeant, that he has known Raynor for more than twenty (20) years and that his reputation for truth and veracity is impeccable, and that subsequent to his service in Afghanistan Raynor was diagnosed with PTSD. (Transcript, pp. 141-143)

### **Testimony of David Lee Pritchard:**

Pritchard testified that he is a Training Sergeant employed by the Lexington County Sheriff's Office, that he has been certified and trained in the use of the TASER, that he has taught classes on TASER in Lexington, across the state, and in other states, and that he has been certified by Axon International "since 2002 as an instructor and since around 2010, as a master instructor."<sup>3</sup> (Transcript, pp. 145-148)

### **Testimony of Mark Mims**

Mims testified that he is employed as a Lieutenant with the Florence Police Department, that he has known Raynor since he began employment with the Florence Police Department, that he served as Raynor's supervisor in 2016 and was working the day of the incident at issue but had no first hand of the incident itself, and that he has "never known [Raynor] to be untruthful." (Transcript, p. 150)

## **IV. ANALYSIS**

The essence of the Florence Police Department's allegation of misconduct against Raynor is that he was dishonest or untruthful with respect to statements he made in incident reports he filed with the Department regarding an incident that occurred on October 2, 2016 during which Raynor discharged his TASER against a suspect he had attempted to arrest. More specifically, the description provided in the Department's "Personal Change in Status Report Notification of Separation Due to Misconduct" and bolstered by the testimony of the Department's sole witness during the hearing alleged that that that Raynor had violated Florence Police Department Special Order 2016-003 by improperly discharging his TASER on October 2<sup>nd</sup> and also violated Florence Police Department General Order 300.04 III, Line E-5

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<sup>3</sup> Counsel for Mr. Raynor proposed to offer Sergeant Pritchard as an expert witness on the issue of whether "[Raynor] used excessive force in this case." The hearing officer refused to permit Pritchard to testify as an expert on the proposed issue given the specific nature of the allegation of misconduct reported against Raynor by the Department.

(truthfulness) in that he “misrepresented the events as they occurred in his Incident Report when compared to what is shown on his Body Worn Camera (BWC).”<sup>4</sup>

To prevail on the misconduct allegations brought against Raynor, the Florence Police Department was required to establish by “substantial evidence” that his representations to the Department in the course of its investigation of the October 2<sup>nd</sup> incident were dishonest and/or untruthful as contemplated by S.C. Code Ann. Regs. 37-025.

“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 its allegations against Raynor, 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 Raynor’s representations to the Department in this matter were dishonest and/or untruthful.

“Dishonesty” is defined as “behavior that deceives or cheats people; untruthfulness; untrustworthiness.” [See, Black's Law Dictionary (10th ed. 2014)] To “deceive” is to “[d]eliberately cause (someone) to believe something that is not true.” (See, “deceive”, *Oxford Living Dictionaries* at <https://en.oxforddictionaries.com/definition/deceive>) Thus, dishonest behavior is untruthful behavior and to engage in dishonest behavior requires that a person represent to another something as true that the person making the representation knows not to be true.

There are fundamental problems underlying the Department’s allegation that Raynor committed misconduct with regards to his conduct in the incident of October 2<sup>nd</sup> and his description of the factual aspects of that incident as noted in his initial incident report and in his supplement to the initial report.

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<sup>4</sup> The Department did not offer into evidence Florence Police Department General Order 300.04 III and it is not considered in this analysis.

As an initial matter, the Department's sole witness, Captain McClure testified that he concluded that Raynor had been untruthful based upon his review and comparison of Raynor's body-worn camera footage to the initial report Raynor filed for the October 2<sup>nd</sup> incident, noting specifically that Raynor's report stated that the suspect in the incident had engaged in threatening behavior towards him and had been in possession of a knife, facts which, according to McClure's testimony, were not supported by the body-worn camera footage.

A review of the footage of Raynor's body-worn camera for the October 2<sup>nd</sup> incident (State's Exhibit Number 1), however, shows at time stamp 4:05 a metallic object that appears to be a knife in the right rear jeans pocket of the suspect Raynor is attempting to handcuff. The footage further shows that subsequent to Raynor's discharge of his TASER and the suspect's falling to the ground, between time stamp 4:24 and 4:29, the suspect's right rear jeans pocket is seen to be empty. At time stamp 5:22 the knife appears to be immediately adjacent to the suspect lying on the ground and at time stamp 5:24 a person in civilian clothing, presumptively off-duty Officer Hart, can be seen retrieving the knife from the ground adjacent to the suspect.

Further review of the body-worn camera footage between time stamp 4:06 and 4:07 shows the suspect to be in a stance facing toward Raynor in which the suspect's left hand appears to be balled in a fist and his left elbow is "cocked" with his right arm outstretched with the right hand also apparently balled, a position that in the heat of the moment could have easily been interpreted by Raynor, or any other officer in the same situation, as threatening. The footage, between time stamp 4:09 and 4:10, shows a person, presumptively Officer Hart, apparently attempting to apprehend the suspect and the suspect appears to either strike or "stiff-arm" that person immediately before Raynor discharges his TASER.

Beyond the fact that the version of events reported by Raynor in his incident report and supplement is objectively supported by the body-worn camera footage, the Department's allegation that Raynor's discharge of the TASER was in violation of Florence Police Department Special Order 2016-003 is wholly unsupported based on the testimony of its own witness.

Special Order 2016-003, the Department's revised policy on "Use of Electronic Control Devices (TASER)", implemented pursuant the 2016 decision of the Fourth Circuit Court of Appeals in *Estate of Armstrong ex rel. Armstrong v. Village of Pinehurst*, provides in pertinent part as follows:

All Officer's of the Florence Police Department SHALL:

- Only use a TASER **when an objectively reasonable officer would conclude that the circumstances present a risk of immediate danger** that could be mitigated by the use of force.

...

All Officers are reminded that any use of force must be reasonable and necessary **given the circumstances that are known to the officer at that time.** (Emphasis supplied) (Sic)

Captain McClure acknowledged on cross-examination in response to questioning by Raynor's counsel that when the suspect turned back towards him Raynor could have perceived the suspect's behavior as threatening and further agreed that if Raynor knew the suspect had a knife in his pocket and pulled away but then turned back towards him Raynor could have perceived that the suspect posed a threat to his life. By any objective analysis, McClure's testimony supports that, given the circumstances of which Raynor was aware at the time he discharged his TASER, he could have concluded that those circumstances presented a "risk of immediate danger."

Although the immediate concern upon which the allegation of misconduct in this matter was based was not whether Raynor's application of force through usage of his TASER was "objectively reasonable,"<sup>5</sup> the basis upon which McClure, and hence the Department, alleged that Raynor committed misconduct is concerning. Current commentary addressing the use of body-worn cameras (BWCs) supports the proposition that what the camera records does not necessarily reflect what the officer sees or experiences in the course of the incident being recorded and to make a determination that because the BWC footage does not fully capture what an officer later describes as having been observed the officer must have been untruthful is particularly problematic, especially in the situation in which the officer must produce an incident report without being afforded the opportunity to first review the BWC footage.<sup>6</sup>

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<sup>5</sup> See *Graham v. Connor*, 490 U.S. 386, 109 S.Ct. 1865, (1989). Accord *Heyward v. Christmas*, 357 S.C. 202, 593 S.E.2d 141 (2004), our Supreme Court noting that "[t]he calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation," quoting *Graham* at 396-97 (internal quotations and citations omitted).

<sup>6</sup> See, e.g., "Should Cops See Body Cam Video Before Giving Use Of Force Statements?" (December 29, 2016) noting, *inter alia*, that "video images can be significantly deceptive because there literally is more to them than meets the eye" and "that officers can easily 'misinterpret' video of force events they've been involved in [as] '[t]hey don't want to be perceived as lying,' so if the video seems to contradict what they remember, 'they'll change their memory to accommodate the video.'" (See <https://www.forcescience.org/2016/12/should-cops-see-body-cam-video-before-giving-use-of-force-statements/> Retrieved May 1, 2019)

The evidence adduced at the hearing in this matter does not support by substantial evidence that Adam Raynor was untruthful or that he was dishonest in the information he provided to representatives of the Florence Police Department either in drafting his initial incident report and the supplemental report for the October 2<sup>nd</sup> incident or in the statements he made to Captain McClure during the Department's internal affairs investigation.

#### **RECOMMENDED FINDINGS OF FACT**

I recommend the following findings of fact:

1. The allegations of misconduct against Adam Raynor, as reported in the Personnel Change in Status Report (Notification of Separation Due to Misconduct) provided to the Criminal Justice Academy (Academy) by the Florence Police Department (Department), are not supported by the evidence adduced at the contested case hearing on February 20, 2019;
2. The Department has failed to meet its burden of proof of "substantial evidence" that Raynor engaged in misconduct by engaging in "[d]ishonesty /untruthfulness with respect to his/her employer" as was charged in the Personnel Change in Status Report (Notification of Separation Due to Misconduct) forwarded by the Department to the Academy; and
3. The allegations of misconduct against Adam Raynor set forth in the Personnel Change in Status Report (Notification of Separation Due to Misconduct) by the Department must be deemed to be unsubstantiated by the evidence produced and of no effect.

#### **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";
3. A review of the record in this matter discloses that there exists no substantial evidence that Adam Raynor committed misconduct, pursuant to S.C. Code Ann. Regs. 37-025, by engaging in dishonesty or untruthfulness with respect to his employer, as alleged and reported to the Academy by the Department; and

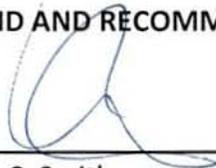
4. The misconduct allegations against Adam Raynor reported by the Florence Police Department must be dismissed and, pursuant to the requirements of S.C. Code Ann. § 23-23-150 (M), all evidence related to the same must be expunged by Council within thirty (30) days its issuance of the final agency decision in this matter.

#### **RECOMMENDED DISPOSITION**

Based on the evidence adduced at the contested case hearing of December 21, 2018, 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 filed against Adam Raynor by the Florence Police Department have not been proven by substantial evidence; and
- B) Approve, pursuant to the authority of Council set forth at S.C. Code Ann. § 23-23-150 (G) (1), Adam Raynor's eligibility for certification as a law enforcement officer in the State of South Carolina; and
- C) Expunge within thirty (30) days of the final agency decision in this matter, pursuant to the requirements of S.C. Code Ann. § 23-23-150 (M), all evidence related to the allegations of misconduct filed against Adam Raynor by the Florence Police Department.

**I SO FIND AND RECOMMEND:**



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William C. Smith  
Contested Case Hearing Officer

Date: May 3, 2019