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STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

CRIMINAL JUSTICE STANDARDS AND
TRAINING COMMISSION,

Petitioner,

CJSTC CASE NO. 16869 CCA
DOAH CASE NO: 03-0897-PL

vs.

KENNETH R. MANDERVILLE,

Respondent.

**RESPONDENT'S MOTION IN LIMINE
AND/OR MOTION TO SUPPRESS**

The Respondent, by and through the undersigned counsel, respectfully moves to limit testimony at the scheduled hearing in the above-styled case regarding matters involving any statements or evidence provided by Kenneth R. Manderville during the course of the Putnam County Sheriff's Office Internal Affairs Investigation. As grounds for the motion, Respondent states:

1. The above styled matter is scheduled for hearing on May 27, 2003.
2. Respondent believes that Petitioner may attempt to present evidence at the hearing which was derived from Respondent's statements and submissions to investigators of the Putnam County Sheriff's Office during its internal affairs investigation of the Respondent.
3. Prior to questioning by the Putnam County Sheriff's Office, Respondent was informed in a document entitled "INTERNAL INVESTIGATION "GARRITY WARNING" that "[b]y departmental policy, you are required to cooperate fully with the administrative investigation and answer all questions specific to the matter under investigation." [Exhibit A]. The same document stated that Respondent was being questioned "concerning an administrative matter relating to the official business of the Putnam County Sheriff's Office." Id.
4. In a document entitled "Internal Administrative Investigation" signed by Respondent and a representative of the Putnam County Sheriff's Office before any testimony or submission by Respondent, the following statements were made, after which the question "[d]o you understand?" was posed after each [Exhibit B]:

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- #5 This investigation concerns Administrative matters only and cannot be used as evidence in any criminal proceeding against you.
- #7 You will be asked questions specifically, directly, and narrowly related to the performance of your official duties or fitness for office.
- #8 You are required to answer my questions and be completely truthful.
- #9 If you refuse to answer my questions, this in itself is a violation of Departmental policy.

5. Respondent has a right against self incrimination in an administrative proceeding governing his professional license or certification. State ex rel. Vining v. Florida Real Estate Commission, 281 So.2d 487 (Fla. 1973). The admission of statements obtained as coerced testimony pursuant to a law enforcement internal affairs interview would violate a "Respondent's Fifth Amendment privilege against self-incrimination, as set forth by Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602 (1966)" Criminal Justice Standards and Training Commission v. Blendsoe, Case No. 97-1922 (DOAH, ALJ Robert E. Meale, December 29, 1997).

6. As a Deputy Sheriff, Defendant was obligated, as a condition of further employment, to answer questions posed to him by other members of the Putnam County Sheriff's Office.

7. Respondent provided answers and submissions to the Putnam County Sheriff's Office pursuant to that agency's order to Respondent to provide testimony which was privileged under the principle enunciated in Garrity v New Jersey, 385 US 493,500 (1967).

8. Any statements which Defendant may have provided to the Putnam County Sheriff's Office during such questioning therefore constitute coerced or compelled testimony and thus are not admissible in this proceeding.

9. Since any statements which Defendant provided to the Putnam County Sheriff's Office were coerced and not voluntary, such statements may not be used as impeachment evidence. Nowlin v State, 346 So.2d 1020 (Fla. 1977); Mincey v Arizona, 437 U.S. 385, 398 (1978); New Jersey v Portash, 440 US 450 (1979).

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10. Any mention at trial of Defendant's statements provided to the Putnam County Sheriff's Office would deprive Respondent of his right to remain silent under the United States and Florida Constitutions.

WHEREFORE, Respondent respectfully requests that the coerced evidence not be presented at the scheduled hearing in this case.

Respectfully submitted this 19th day of May, 2003.



T. A. "Tad" Delegal, III
FL Bar No. 892701
424 E. Monroe Street
Jacksonville, FL 32202
(904) 633-5000

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by facsimile and U.S. mail to:

LAURIE B. WOODHAM BINDER
Assistant General Counsel
Florida Department of Law Enforcement
Post Office Box 1489
Tallahassee, FL 32302
Facsimile No. 850 410 7691

this 19th day of May, 2003.



T. A. Delegal, III

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PUTNAM COUNTY SHERIFF'S OFFICE
TAYLOR DOUGLAS, SHERIFF
HIGHWAY 19 NORTH
P.O. DRAWER 1578
PALATKA, FLORIDA 32178-1578

TELEPHONE
904-329-0800

INTERNAL INVESTIGATION
"GARRITY WARNING"

At this time I am going to question you concerning an administrative matter relating to the official business of the Putnam County Sheriff's Office. I am not questioning you for the purposes of instituting a criminal prosecution against you. During the course of this questioning, even if you do disclose information which indicates that you may be guilty of criminal conduct, neither your self-incriminating statements nor the fruits of any self-incriminating statements you make will be used against you in any criminal legal proceeding.

By departmental policy, you are required to cooperate fully with the administrative investigation and answer all questions specific to the matter under investigation.

Do you understand what has just been explained to you? Yes ☒ No ☐

Question: NONE

I, SGT. KENNETH MANDERVILLE, by my signature below, affirm that I have been advised of the "Garrity Warning" and have had its meaning explained to me. All questions I have about its meaning or application have been satisfactorily answered.

Employees signature: [Signature]

Date: OCT 2, 2000

Witness: Walters R. [Signature]

Walters R. [Signature]

DATE: 10-5-00

Form A-4080

[Signature] 10-5-00

WIT: [Signature] 10-5-00

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INTERNAL ADMINISTRATIVE INVESTIGATION

I am LT. ROGER W. SASSAMAN of the Putnam County Sheriff's Office Internal Affairs Division.

I will be conducting an interview of SGT. KENNETH MANDERVILLE, who is a member of this agency as a DEPUTY SHERIFF.

This interview is being held at 185 PCSO AND OFFICE AT COLLEGE.
Others present during the interview are: D/S PERKINS I.A. INVESTIGATOR

The date is 10/2/00. The time is 9:51 AM & 10/5/00 9:16 AM.
SGT. MANDERVILLE, are you on duty at this time? & NO SIR

There are certain things that you should be aware of prior to this interview.

1. The interview is being recorded.
2. The complaining party in this inquiry is BETTY PREVAT.
3. This inquiry concerns the following allegations:
a. OFFICER ON JUN 25TH 2000 SGT MANDERVILLE HAD SEX WITH HER WHILE ON DUTY AT HIS HOME. DADS NAME APPAR TOTTING HERE DURING IN JAIL. INSIGHT APT ONE WEEK LATER AND HE HAD ME MEET AGAIN AT HIMP DADS FOR SEX & HE WAS ON DUTY.
c. THAT ON JULY 12, 2000 SHE CHECKED OUT OF THE SHELTER SHE CAME TO THE S.D. & HAD SEX WITH HER IN THE OFFICE WHILE HE WAS ON DUTY.
d. ABOUT TWO MONTHS LATER HE CALLED HAD ME MEET HIM AT POLATKA POST OFFICE.
THAT HE WOULD BE SAFE AND HE HAD SEX AND MORE SEX WITH HER WHILE ON DUTY.
 4. Has anyone, at anytime, threatened, coerced, or promised you anything in order to induce you to make a statement at this time? NO
 5. This investigation concerns Administrative matters only and cannot be used as evidence in any criminal proceeding against you. Do you understand?
 6. You have the right to counsel and/or representative of your choice during the investigation. Do you understand?
 7. You will be asked questions specifically, directly and narrowly related to the performance of your official duties or fitness for office. Do you understand?
 8. You are required to answer my questions and be completely truthful. Do you understand?
 9. If you refuse to answer my questions, this in itself is a violation of Departmental policy? Do you understand?
 10. Please read the internal investigation warning that I am placing in front of you. Do you understand the warning?
 11. You are required to answer my questions as I present them to you in the following interview. Do you understand?
 12. Do you swear that the statement that you are about to give will be the truth, the whole truth and nothing but the truth so help you God?

Signature of Member
Form A-1081-

OCT 2, 2000
Date

OCT 5, 2000

Signature of Interviewer

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1 of 6 DOCUMENTS

CRIMINAL JUSTICE STANDARDS AND TRAINING COMMISSION, Petitioner, vs.
HERMAN BLEENDSOE, JR., Respondent.

Case No. 97-1922

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

1997 Fla. Div. Adm. Hear. LEXIS 5583

December 29, 1997, Recommended Order

JUDGES: ROBERT E. MEALE, Administrative Law Judge

OPINION: [*1]

RECOMMENDED ORDER

Robert E. Meale, Administrative Law Judge of the Division of Administrative Hearings, conducted the final hearing in Arcadia, Florida, on August 27, 1997.

APPEARANCES

For Petitioner: Paul D. Johnston
Assistant General Counsel
Florida Department of Law Enforcement
Post Office Box 1489
Tallahassee, Florida 32302-1489

For Respondent: Robert M. Bader
Robert M. Bader Law Office
Post Office Box 3551
Port Charlotte, Florida 33949

STATEMENT OF THE ISSUE

The issue is whether Respondent, a law enforcement officer, is guilty of failing to maintain good moral character and, if so, what penalty should be imposed.

PRELIMINARY STATEMENT

By Administrative Complaint dated March 26, 1996, Petitioner alleged that Respondent, over a five-year period, unlawfully solicited another person to commit prostitution with himself. By a more definite statement, Petitioner clarified that the five-year period was from July 1, 1990, through July 19, 1995. The Administrative Complaint alleges that Respondent thus violated Section 943.1395(6) and (7), Florida Statutes, and Rule 11B-27.0011(4)(b) and (c), Florida Administrative Code, because he failed to maintain [*2] good moral character, as required by Section 943.13(7), Florida Statutes.

Respondent timely demanded a formal hearing.

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At the hearing, Petitioner called two witnesses and offered into evidence five exhibits. Respondent called three witnesses and offered into evidence one exhibit. All exhibits were admitted except Petitioner Exhibit 5, which was proffered, and Petitioner Exhibits 1 and 2, as to which ruling was reserved. These two exhibits are a transcript and audiotape of an interview of Respondent in which he made arguably inculpatory statements.

A major evidentiary issue developed at the hearing as to whether Respondent's statements were admissible. Petitioner conceded that this was its entire case, and, if the statements were excluded from evidence, Petitioner would not be able to prove the charges against Respondent.

After hearing argument on the admissibility of the confession, the administrative law judge, stating that he could not rule without more authority, effectively transformed the evidentiary hearing into a suppression hearing. The administrative law judge advised the parties that they could file post-hearing briefs on the evidentiary issue, and, if the administrative [*3] law judge admitted the interview, Respondent, who did not wish to testify if the statements were excluded, could testify by deposition. In the intervening four months, the parties have filed nothing, so the administrative law judge is issuing this recommended order.

As discussed below, the administrative law judge has ruled that any inculpatory statements are inadmissible. This order discusses the contents of these statements strictly for the purpose of explaining the evidentiary ruling. As a result of the ruling, these statements are not a part of the factual record on which Petitioner may predicate discipline.

FINDINGS OF FACT

1. Respondent is a certified law enforcement officer, holding certificate number 92165. At all material times, the DeSoto County Sheriff's Office employed Respondent until Respondent resigned shortly after giving the statement described below.

2. In June 1995, a female narcotics informant alleged that she had traded sex for money with Respondent. The DeSoto County Sheriff's Office commenced an investigation.

3. According to the female informant, who did not testify in this case, there were no witnesses to the alleged incidents. [*4] After interviewing the female informant, the DeSoto County Sheriff's Office or the female informant filed a criminal complaint with the State Attorney's Office.

4. On July 18, 1995, the State Attorney's Office filed a memorandum declining to prosecute Respondent because the "[o]nly evidence is the word of an admitted prostitute and drug-user. Under these circumstances, [we] cannot prove the allegations beyond a reasonable doubt."

5. After receiving a copy of this memorandum, the DeSoto County Sheriff's Office scheduled an interview of Respondent concerning the allegations of the female informant. A lieutenant who had not previously conducted an internal affairs investigation assumed responsibility for conducting the interview. The lieutenant contacted Respondent on the afternoon of July 18, told him that he was conducting an internal affairs investigation, and directed him to give an interview the following afternoon. The lieutenant, who had a superior rank over Respondent, did not inform Respondent of the nature of the investigation or of the identity of the complainant.

6. The interview of Respondent took place on July 19, 1995, starting at 1:00 p.m. In addition [*5] to Respondent and the lieutenant, a major and captain of the DeSoto County Sheriff's Office were present, as was a sergeant, who was present at the request of Respondent as an additional witness, but not an advisor.

7. The lieutenant had a package of information at the start of the interview, but did not give it to Respondent until after the interview was completed. The package included a Notification of Charges/Allegations, stating that from January 1991 through June 1995 Respondent allegedly engaged the named female informant in prostitution at least ten times at Respondent's residence. The form advised that, if sustained, these allegations constituted conduct unbecoming a deputy.

8. The package also included an Admonition Form. This form, which is prepared by the DeSoto County Sheriff's Office, states that "prior to questioning an accused member . . . , [any member of the DeSoto County Sheriff's Office shall] present the following admonition to said accused . . . for the member to read." The Admonition states in its entirety:

I wish to advise you that you are being questioned as part of an official investigation of the DeSoto County Sheriff's Office. You will be asked [*6] questions specifically directed and narrowly related to the performance of your official

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duties and/or your continued fitness for office. You are entitled to all the rights and privileges guaranteed by the laws and Constitution of the State and the Constitution of the United States, including the right not to be compelled to incriminate yourself. I further wish to advise you that if you refuse to testify or to answer questions relating to the performance of your official duties or fitness for duty, you will be subject to departmental charges which, if sustained, could result in your dismissal from the DeSoto County Sheriff's Office. If you answer questions, as required, neither your statements nor any information or evidence which is gained by reason of such statements can be used against you in any subsequent criminal proceeding. However, these statements may be used against you in relation to subsequent department charges.

9. The lieutenant commenced the interview by stating that the purpose of the interview was an allegation of some misconduct and then reading the Admonition. After reading the Admonition, the lieutenant asked Respondent if he understood the Admonition, and [*7] Respondent replied that he did.

10. Without letting Respondent read the Admonition, the lieutenant then asked Respondent about the allegation that he had engaged in sex for money at least ten times with the named female informant. Respondent admitted to a single incident of sexual intercourse four or five years ago, without any mention of any payment, but denied any other sexual relations. He explained that he had given her some money for information and for personal matters—as Respondent had known her socially for over 20 years and each was a friend of the other's family.

11. At the conclusion of his questions, the lieutenant asked the major if he had any questions. The major asked if Respondent would take a polygraph test and if Respondent knew that the female informant had taken and passed one. The major asked a few more questions, largely repeating the questions asked by the lieutenant.

12. After the major was finished, the lieutenant asked Respondent to sign the Notification and Admonition forms. He then asked Respondent to raise his right hand and swear that the statement that he had given was the "truth, so help you God."

13. After obtaining an affirmative [*8] answer from Respondent, the lieutenant proceeded to go over some of the forms when Respondent interrupted him, saying:
Wait, wait, wait, wait. I . . . I . . . I can't do this here. I won't be able to live with myself. There was more than one time. I . . . I . . . I just can't do this now. I'm not going to lie. It was more than one time. I'll take the polygraph. Um . . . I think it was like . . . four times. I . . . I . . . I just can't do that.

14. The lieutenant asked Respondent if he had exchanged money for sex, and Respondent answered in the affirmative. He said that on two occasions he gave her about \$ 15 or \$ 20 and the rest of the time the money was for information. Respondent said that the sex acts took place only when he was off-duty and out of uniform. The lieutenant asked, "I guess you realize that that's considered prostitution, right?" Respondent answered, "Yeh. That's about it."

15. The interview continued, although no material information emerged. Respondent apologized for lying the first time during the interview and stated: "Jap [Respondent]. You sitting here lying to these people. You done worked for these people for eight years. You ain't [*9] never lied to them. So why are you going to sit here and lie? . . . I just couldn't walk out of here knowing that I had told you a lie." Respondent also mentioned that a mutual acquaintance of his and the female informant had told him of the allegations and that Respondent had told his attorney the truth.

16. Respondent's statements do not detail the two occasions on which Respondent paid money to the female informant, had sex with her, and did not obtain any information. They were friends for over 20 years and knew each other's families; the possible explanations are numerous. During the interview, Respondent expressed considerable remorse for lying initially and having sex with a known prostitute and drug abuser. Without more, given the background between the parties, Respondent's admission of this moral lapse does not constitute an admission of the crime of prostitution or a failure of good moral character. Advice of already-retained counsel might have clarified Respondent's testimony by differentiating between the shame that Respondent felt and possible commission of a crime or failure to maintain good moral character. Certainly, contemporaneous legal advice might have lent [*10] meaning to Respondent's dubious admission to the legal conclusion that he committed the crime of prostitution; the record provides no reason to believe that Respondent was aware of the legal elements of the crime, which another deputy testified had been prosecuted only once in the many years in DeSoto County.

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17. Another source of confusion is the Admonition itself. In general, the Admonition addresses the possibility of criminal and employment sanctions, but not professional discipline against Respondent's law enforcement certificate.

18. Most misleading is the second-to-last sentence, advising, "If you answer questions, as required, neither your statement nor any information or evidence which is gained by reason of such statements can be used against you in any subsequent criminal proceeding." This statement tells Respondent that he is required to answer questions, although clearly he is not. Following the statement concerning employment with the DeSoto County Sheriff's Office, this statement mentions criminal proceedings, but nowhere is there any statement of Respondent's due-process rights regarding a disciplinary proceeding against his certificate.

19. Respondent [*11] was confused in the interview due to the inadequate and untimely disclosure of the nature of the charges; the misleading statements contained in the Admonition; the reading of the Admonition by the lieutenant, rather than Respondent's being allowed to read the Admonition itself, as the Admonition allows Respondent to do; the belated administration of the oath; the alternative interrogations by the lieutenant, then the major, and then the lieutenant; the failure to explain all of Respondent's rights; and the failure to provide Miranda rights. These serious deficiencies undermined the reliability of Respondent's arguably inculpatory statements to the point that they are inherently unreliable and not even, on their face, inculpatory.

CONCLUSIONS OF LAW

20. The Division of Administrative Hearings has jurisdiction over the subject matter. Section 120.57(1), Florida Statutes. (All references to Sections are to Florida Statutes.)

21. Section 943.13(7) requires that law enforcement officers maintain "good moral character." Section 943.1395(7) authorizes Petitioner to discipline a law enforcement officer for failing to maintain good moral character.

22. Petitioner [*12] must prove the material allegations by clear and convincing evidence. Department of Banking and Finance v. Osborne Stern and Company, Inc., 670 So. 2d 932 (Fla. 1996) and Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

23. Respondent's statements are inadmissible because the interview violated the Police Officer's Bill of Rights, as set forth in Section 112.532, which now applies to deputies appointed by sheriffs, as well as other law enforcement officers employed by various agencies.

24. Section 112.532(1) provides, in relevant part:
Whenever a law enforcement officer . . . is under investigation and subject to interrogation by members of his or her agency for any reason which could lead to disciplinary action, demotion, or dismissal, such interrogation shall be conducted under the following conditions:

(c) . . . All questions directed to the officer under interrogation shall be asked by and through one interrogator at any one time.

(d) The law enforcement officer . . . under investigation shall be informed of the nature of the investigation prior to any interrogation, and he or she shall be informed of the name [*13] of all complainants.

(h) If the law enforcement officer . . . under interrogation is under arrest, or is likely to be placed under arrest as a result of the interrogation, he or she shall be completely informed of all his or her rights prior to the commencement of the interrogation.

(i) At the request of any law enforcement officer . . . under investigation, he or she shall have the right to be represented by counsel or any other representative of his or her choice, who shall be present at all times during such interrogation whenever the interrogation relates to the officer's continued fitness for law enforcement . . . service.

25. The interrogation of Respondent violated each of the cited rights accorded law enforcement officers. The lieutenant and major alternated asking Respondent questions, and the lieutenant failed to inform Respondent, until the interrogation had begun, of the nature of the charges. Most importantly, no one completely informed Respondent of his rights. The State Attorney's Office had declined to prosecute at that time, but this decision was not irreversible and was based on the problem of relying exclusively on the word of the female informant, [*14] so Respondent still risked

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criminal prosecution, as well as a disciplinary proceeding. Also, the interrogation took place outside the presence of Respondent's already-retained attorney.

26. Section 112.532(3) authorizes private civil actions for violations of the Police Officer's Bill of Rights. Neither the statutes nor judicial decisions imply that a private cause of action is the sole remedy for a violation. The officer who does not avail himself of such a civil remedy should at least be able to suppress in a disciplinary proceeding the evidence obtained in violation of these rights. In this case, the representatives of the DeSoto County Sheriff's Office unwittingly violated several of Respondent's statutory rights, and the ensuing loss of reliability of the statements justifies their exclusion from evidence.

27. Respondent has a constitutional right against self-incrimination in disciplinary proceedings. *State ex rel. Vining v. Florida Real Estate Commission*, 281 So. 2d 487 (Fla. 1973). The interview violates Respondent's Fifth Amendment privilege against self-incrimination, as set forth by *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602 (1966). [*15] One of the subsidiary purposes of the requirement of giving Miranda rights is to ensure the reliability of the information obtained in the confession. Thus, a waiver of Miranda rights must be knowing and intelligent.

28. Miranda issues require a two-part inquiry. In the first part, the court determines as a matter of law whether "serious police misconduct" requires suppression of the confession. In the second part, the trier of fact determines whether the "reliability or fairness" of the confession requires discrediting of the statement. *Johnson v. State*, 660 So. 2d 637, 642 (Fla. 1995). In discharging its responsibilities in this regard, the court may conduct an evidentiary suppression hearing. See, e.g., *State v. Crosby*, 599 So. 2d 138, 139 (Fla. 5th DCA 1992).

29. In this case, the administrative law judge determines as a matter of law and fact that the circumstances surrounding any inculpatory statements sufficiently undermine the reliability of the statements as to preclude the admission of the statements under Miranda. As to the legal issue, this is not a question of intentional police misconduct, but the seriously [*16] flawed interrogation sufficiently tainted the interview as to require, as a matter of law, that Respondent's statements be excluded from evidence. For the same reasons, as a factual issue, the statements are inherently unreliable and must be excluded from evidence.

30. Respondent was entitled to a Miranda warning at the time of a custodial interrogation. Analogizing the criminal and disciplinary proceedings, the order of a superior to attend an interview satisfies the custodial requirement. In the alternative, Respondent was entitled to a Miranda warning no later than the point at which he was read the Admonition. At that point, a full Miranda warning was required to correct the misstatements in the Admonition.

31. In addition, simple due process considerations effectively require that, as an evidentiary matter, the hearsay statements of Respondent be excluded from evidence. See, e.g., *Black v. State*, 630 So. 2d 609, 615, and 615 n.8 (Fla. 1st DCA 1993). The hearsay exception for admissions at Section 90.803(18) requires that the out-of-court statement be reliable. See, e.g., *Lightbourne v. State*, 644 So. 2d 54, 57 (Fla. 1994) [*17] (stating that an "admission" of perjury was not a qualifying exception because the statute of limitations had run, the Court added: "In any event, the hearsay evidence . . . lacks the necessary indicia of reliability.") In the present case, Respondent clearly admitted a sense of shame and guilt for his behavior, but not, more relevantly, either the specific elements required for the crime of prostitution or for a categorical finding of failed moral character. For the reasons already stated, Respondent made statements that, for the purpose intended by Petitioner, are inherently unreliable and must be excluded from evidence.

RECOMMENDATION

It is
RECOMMENDED that the Criminal Justice Standards and Training Commission enter a final order dismissing the Administrative Complaint.
DONE AND ENTERED this 29th day of December, 1997, in Tallahassee, Leon County, Florida.

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