Circuit Court for St. Mary's County
Case No. C-18-CV-20-000100

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 205

September Term, 2021

IN THE MATTER OF STEVEN M. VAN BENNEKUM

Berger,
Shaw Geter,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Sharer, J.

Filed: October 22, 2021

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This appeal arises out of an administrative action in which a Maryland State Police administrative hearing board (the "Board") found Maryland State Police Sergeant Steven Van Bennekum guilty of making a false report, making a false statement to a law enforcement officer, and conduct unbecoming a Maryland State Police officer. Sgt. Van Bennekum appealed the Board's decision to the Circuit Court for St. Mary's County. The court subsequently reversed the Board's decision as to the charges of making a false report and making a false statement to a law enforcement officer but affirmed the Board's decision as to the charge of conduct unbecoming. The Maryland State Police ("MSP") thereafter noted this appeal, presenting two questions which we rephrased as follows:

1. Was the Board's finding of guilt as to the charge of making a false report supported by substantial evidence and free of legal error?

2. Was the Board's finding of guilt as to the charge of making a false statement to a law enforcement officer supported by substantial evidence and free of legal error?

For reasons to follow, we hold that both of the Board's findings were legally erroneous. We therefore affirm the circuit court's judgment.[1]

BACKGROUND

In December 2016, Trooper First Class ("TFC") Christopher Snell of the Maryland State Police was assigned to the Annapolis Barracks in Anne Arundel County under the supervision of Sgt. Van Bennekum. Shortly after the assignment, TFC Snell met with First Sergeant Michael Sekscinski, Sgt. Van Bennekum's supervisor, and reported that

[1] Neither the MSP nor Sgt. Van Bennekum disputes the circuit court's judgment regarding the charge of conduct unbecoming.

communications between he and Sgt. Van Bennekum had become "uncomfortable." TFC Snell requested a transfer. First Sergeant Sekscinski then met with Sgt. Van Bennekum regarding TFC Snell's allegations and transfer request. First Sergeant Sekscinski told Sgt. Van Bennekum that TFC Snell would be transferred and that, in the meantime, Sgt. Van Bennekum should not retaliate against TFC Snell.

On December 27, 2016, Sgt. Van Bennekum was on duty in the Police Communications Office of the Glen Burnie Barracks with two other officers, Police Communications Officer ("PCO") Schapeal Floyd and TFC Zachary Adams. Also on duty was TFC Snell, who was working patrol out of the Annapolis Barracks. At 5:35 that morning, Sgt. Van Bennekum discovered that TFC Snell's patrol vehicle was heading north on Ritchie Highway in the Glen Burnie area, which was outside of TFC Snell's patrol area and near his home. At the time, TFC Snell was assigned to work until approximately 7:00 a.m. TFC Snell later testified that it was common practice for troopers to head in the direction of their homes prior to the end of a night shift.

Upon observing TFC Snell's movements, Sgt. Van Bennekum stated, "No, not today, you're not going to be able to sneak north." Sgt. Van Bennekum then directed PCO Floyd to dispatch TFC Snell to the intersection of Route 50 and Route 424 for a "10-50," which was the code for a traffic accident. After PCO Floyd refused, Sgt. Van Bennekum contacted TFC Snell by radio and told him: "Check the area of 50 and 424 for a 10-50." TFC Snell responded to that area but did not locate any accident. It was later revealed that Sgt. Van Bennekum had no reason to believe that an accident had occurred at the reported

location. Sgt. Van Bennekum ultimately admitted that he "dispatched TFC Snell to Route 50 and Route 424 because he was outside of his patrol area without permission."

In November 2017, the MSP filed eight charges against Sgt. Van Bennekum related to the incident involving TFC Snell. Five of those charges were later dismissed. The remaining charges were: making a false report, making a false statement to a law enforcement officer, and engaging in unbecoming conduct on duty. The first charge, titled "MSP Communications – False Report," alleged that Sgt. Van Bennekum had violated MSP's policies and procedures by making "a false report of an accident" to TFC Snell "with the intent to deceive and to cause an action to be taken as a result of the report." That allegation was based on MSP Personnel Directive 17.03.04 (N) 5, which states:

> All reports submitted by MSP employees will be truthful; no employee will knowingly report or cause to be reported any false information. A clear distinction must be made between reports which contain false information and those which contain inaccurate or improper information. To prove by a preponderance of evidence that one has submitted a false report, evidence must be presented for consideration that such report is designedly untrue, deceitful or made with the intent to deceive the person to whom it was directed.

The second charge, titled "Conformance to Laws – False Statement to Law Enforcement Officer," alleged that Sgt. Van Bennekum had violated MSP's policies and procedures by violating § 9-501(a) of the Criminal Law Article ("CL") of the Maryland Code, which prohibits a person from intentionally making a false statement, report, or complaint to a law enforcement officer. That allegation was based on MSP Personnel Directive 17.03.04 (I), which prohibits MSP employees from violating the law.

The third charge, titled "Unbecoming Conduct," alleged that Sgt. Van Bennekum had engaged in "unbecoming conduct" when he "intentionally dispatched T[FC] Christopher Snell to an accident knowing that the information provided to T[FC] Snell [was] false." That allegation was based on MSP Personnel Directive 17.03.04 (C) 1, which states that "[e]very employee will conduct himself, both on and off-duty, in a manner which reflects most favorably on the MSP."

Administrative Hearing

A hearing before the Board was held to address the administrative charges lodged against Sgt. Van Bennekum, and the aforementioned facts were admitted into evidence. In his defense, Sgt. Van Bennekum argued that his statement to TFC Snell regarding the fictitious accident was an "order" and not a "report" and that, as a result, MSP Personnel Directive 17.03.04 (N) 5 did not apply. He also argued that he could not be guilty of contravening MSP Personnel Directive 17.03.04 (I) because the law he purportedly violated, CL § 5-901(a), was intended only for civilians reporting false incidents to law enforcement officers and did not apply to individuals in his situation, *i.e.*, police officers giving commands to subordinate officers in the course of their duties.

The Board ultimately disagreed with Sgt. Van Bennekum's arguments and found him guilty of all three charges. As to the charges of making a false report and making a false statement to a law enforcement officer, the Board found as follows:

> The Board examined the facts surrounding MSP Communications – False Report violation outlined under Charge #2, and found Sergeant Van Bennekum guilty. … Sergeant Van Bennekum, via a verbal order, sent TFC Snell to, "Check the area of 50 and 424 for a 10-50," which was a false report

> of an accident. Sergeant Van Bennekum broadcasted the order over a public airway which could have affected many other Maryland State Police personnel monitoring the Annapolis Barrack radio channel. [The MSP] argued that Sergeant Van Bennekum's fictitious call was an act of aggression and retaliation for TFC Snell's prior transfer request. The Board found Sergeant Van Bennekum's accident call to TFC Snell made up and clearly revenge.
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> The Board examined the facts surrounding the Conformance to Laws – False Statement to Law Enforcement Officer violation outlined under Charge #3, and found Sergeant Van Bennekum guilty. The evidence presented showed that Sergeant Van Bennekum reported to a law enforcement officer and further caused the false report of a 10-50 to be processed in accordance to established procedures. … Sergeant Van Bennekum initiated the call of a 10-50 that he knew was false, and deceived TFC Snell.

The Board recommended a penalty of termination of employment as to the charges of making a false report and making a false statement to a law enforcement officer, and recommended a penalty of a written reprimand as to the charge of unbecoming conduct.

Appeal in the Circuit Court

Sgt. Van Bennekum thereafter noted an appeal of the Board's decision in the circuit court, raising the same arguments. After reviewing the record and Sgt. Van Bennekum's arguments, the court reversed the Board's decisions as to the charges of making a false report and making a false statement to a law enforcement officer. The court affirmed the Board's decision as to the charge of unbecoming conduct. MSP appealed.

STANDARD OF REVIEW

"The overarching goal of judicial review of agency decisions is to determine whether the agency's decision was made in accordance with the law or whether it is

arbitrary, illegal, and capricious." *Sugarloaf Citizens Ass'n v. Frederick Cty. Bd. Of Appeals*, 227 Md. App. 536, 546 (2016) (citations and quotations omitted). During that review, "we [assume] the same posture as the circuit court…and limit our review to the agency's decision." *Anderson v. Gen. Cas. Ins. Co.*, 402 Md. 236, 244 (2007) (citations omitted). In so doing, we "accord deference to the agency's fact-finding and drawing of inferences when the record supports them," *Md. Dep't of Env't v. Anacostia Riverkeeper*, 447 Md. 88, 120 (2016) (citations and quotations omitted), and "we do not disturb the agency's decision if those findings are supported by substantial evidence." *Sugarloaf*, 227 Md. App. at 546. In addition, "we afford great weight to the agency's legal conclusions when they are premised upon an interpretation of the statutes that the agency administers and the regulations promulgated for that purpose." *Frey v. Comptroller of the Treasury*, 422 Md. 111, 138 (2011).

Despite that deference, "it is always within our prerogative to determine whether an agency's conclusions of law are correct." *Carven v. State Ret. & Pension Sys. of Md.*, 416 Md. 389, 407 (2010) (citations and quotations omitted). "Accordingly, we determine whether the [agency]'s conclusions are plainly erroneous or inconsistent with the regulation." *Hranicka v. Chesapeake Surgical, Ltd.*, 443 Md. 289, 298 (2015) (citations and quotations omitted). That determination is governed by the principles of statutory construction, which are designed to "ascertain and effectuate the intent of the Legislature." *Carven*, 416 Md. at 407 (citations and quotations omitted). "Statutory construction begins with the plain language of the statute, and ordinary, popular understanding of the English

language dictates interpretation of its terminology." *Id.* (citations and quotations omitted). "When a statute's plain language is unambiguous, we need only to apply the statute as written, and our efforts to ascertain the legislature's intent end there." *Id.* at 407-08 (citations omitted). If, however, "the meaning of the plain language is ambiguous or unclear, … we look to the legislative history, prior case law, the purposes upon which the statutory framework was based, and the statute as a whole." *Id.* at 408 (citations and quotations omitted).

DISCUSSION

I.

MSP first contends that the circuit court erred in reversing the Board's finding of guilt as to the charge of making "a false report of an accident" in violation of MSP Personnel Directive 17.03.04 (N) 5. MSP argues that the Board's finding should have been affirmed because it was legally correct and supported by substantial evidence. Sgt. Van Bennekum argues that the Board did not have substantial evidence to support its decision and, even if it did, MSP Personnel Directive 17.03.04 (N) 5 did not apply because his statement to TFC Snell was not a "report."

We hold that Sgt. Van Bennekum's statement to TFC Snell was not a report. The rule at issue, MSP Personnel Directive ("MSP PER") 17.03.04 (N) 5, is set forth in Index 17.03 of the Maryland State Police's Personnel Directives, a document distributed to all MSP employees. MSP PER 17.03; *see also* https://public.powerdms.com/MSP1/tree (last

visited October 7, 2021).[2] Index 17.03, titled "Rules of Conduct," describes the rules of conduct for all MSP employees. *Id.* Those rules are arranged by topic, beginning with MSP PER 17.03.04 (A), titled "Disciplinary Guidelines," and ending with MSP PER 17.03.04 (JJ), titled "Race-Based Profiles." *Id.* MSP PER 17.03.04 (N), titled "MSP Communications," sets forth a total of ten rules, six of which discuss "reports:"

> 1. An employee will submit all reports, both verbal and written, required by the MSP, on time and in accordance with established procedures.
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> 3. Whenever a MSP employee is ordered to submit a detailed report or oral statement concerning an incident in which he is alleged to have been involved and if the authority order the report knows or should have known that the report is likely to contain information which may be used as evidence against the employee in a disciplinary hearing, then the authority ordering the report will, at the time of such order, provide the member with a copy of Form 178, Notification of Complaint-Waiver of Rights. The form will clearly state that the recipient is the subject of an investigation and briefly describe the nature of the investigation. These criteria do not apply to the submission of procedural reports required by MSP standard operating procedure, rule or policy.
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> 4. A trooper will report, without delay, to his superior all information that comes to his attention concerning criminal activity.
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> 5. All reports submitted by MSP employees will be truthful; no employee will knowingly report or cause to be reported any false information. A clear distinction must be made between reports which contain false information and those which contain inaccurate or improper information. To prove by a preponderance of evidence that one has submitted a false report, evidence must be presented for consideration that such report is designedly untrue, deceitful or made with the intent to deceive the person to whom it was directed.

[2] A link to the website can be found on the "Documents, Forms & Publications" page of MSP's website. https://mdsp.maryland.gov/Pages/Downloads.aspx (last visited October 7, 2021).

6. All reports submitted by MSP employees will be complete and will not contain improper or inaccurate information. Inaccurate or improper information may be characterized as that which is untrue by mistake or accident or made in good faith, after the exercise of reasonable care.

7. An employee will treat the official business of the MSP as confidential. Information regarding official business will be disseminated only to those for whom it is intended in accordance with established MSP procedures. An employee may remove or copy official records or reports from a police installation only in accordance with established MSP procedures. An employee will not divulge the identity of a person giving confidential information, except as authorized by proper authority in the performance of police duties.

Id.

When viewing the plain language of MSP PER 17.03.04 (N) 5 in the above context, we conclude that Sgt. Van Bennekum's statement to TFC Snell to "check the area of 50 and 424 for a 10-50" was not a "report" within the meaning of the rule. The "submission" of "reports" discussed in the rule clearly pertains to official reports submitted by MSP employees in the course of their duties, and the rule clearly bars employees from including false information in those reports. Given that context, Sgt. Van Bennekum's statement could not be considered the "submission" of a "report." To be sure, Sgt. Van Bennekum's statement falsely implied that an accident had occurred. But Sgt. Van Bennekum, in making that statement, was not "reporting" an accident. Rather, he was ordering TFC Snell, a subordinate, to go to a particular location, albeit under false pretenses. That other MSP employees may have heard the statement did not transform it into a report, as any reasonable person would have understood the statement as a direct order by a superior

officer. Accordingly, the Board plainly erred in finding that the statement violated MSP PER 17.03.04 (N) 5.

II.

MSP next contends that the circuit court erred in reversing the Board's finding of guilt as to the charge of making a false statement to a law enforcement officer in violation of CL § 9-501(a). MSP argues that the Board's finding should have been affirmed because it was legally correct and supported by substantial evidence. Sgt. Van Bennekum argues that the statute did not apply to him because the statute prohibits "a person" from making a false statement and he was not "a person" within the meaning of the statute.[3] He also argues that the statute does not apply to police supervisors issuing orders to their subordinate officers.

CL § 9-501(a) states, in relevant part, that "[a] person may not make, or cause to be made, a statement, report, or complaint that the person knows to be false as a whole or in material part, to a law enforcement officer of the State … with intent to deceive and to cause an investigation or other action to be taken as a result of the statement, report, or complaint." The statute, formerly codified under § 150 of Article 27 of the Maryland Code, was first enacted in 1957 and was derived from a British criminal case, *The King v. Manley*, 1 K.B. 529 (C.C.A. 1932). *Johnson v. State*, 75 Md. App. 621, 631-34 (1988). In that case, the defendant, Elizabeth Manley, was charged with "public mischief," a common law misdemeanor, after she falsely reported to the police that she had been robbed by an

[3] We are not convinced that this argument has merit. Because we affirm on other grounds, however, we need not address it.

individual bearing a particular description. *Id.* at 631-32. Manley was charged because "her false report caused police officers to devote their time and services to the investigation of false allegations which deprived the public of the services of the police and rendered subjects of the king liable to suspicion, accusation, and arrest." *Id.* at 631-32. The Court of Criminal Appeals later affirmed the conviction, holding that "Manley's act constituted the misdemeanor of public mischief because the police were led to devote their time and services to the investigation of an idle charge, and … that members of the public or at any rate those of them who answered a certain description, were put in peril of suspicion." *Id.* at 632 (citations and quotations omitted).

In 1957, the drafters of the Model Penal Code, citing *Manley*, drafted a provision that would make it a misdemeanor for an individual to either falsely implicate another person in a crime or make a false report to the police. *Id.* at 632-33. That same year, the Maryland General Assembly enacted Art. 27 § 150, which made "it a crime for an individual to lie to a police officer only if that individual has an intent to deceive coupled with an intent to cause an investigation or other similar action to be taken as a result of the lie." *Id.* at 634. The statute, although somewhat at odds with the Model Penal Code, was generally considered to be in accord with the *Manley* case. *Id.* at 633-34.

Later, in *Johnson v. State*, this Court considered the question of whether "the General Assembly, in enacting § 150, intended to criminalize conduct other than that which was declared in *Manley* to constitute a punishable public mischief." *Id.* at 634. In that case, the defendant provided false information to the police during an investigation that

was already underway. *Id.* at 639. The defendant was subsequently charged and convicted of violating Art. 27 § 150. *Id.* at 629. On appeal, he argued that the evidence was insufficient to sustain the conviction because the statute was "not directed at his conduct – giving false answers to questions propounded by the police – but [was] aimed at the making of false reports of crimes, causing the police to act upon those reports and thereby waste the time and money of the public." *Id.* at 630. This Court ultimately agreed and held that the defendant's lies to the police were not punishable under the statute. In so doing, we explained that the term "false statement" was to be strictly construed in light of the statute's legislative history:

> It is, of course, arguable that the plain language of § 150 takes it beyond *Manley*, in that [] *Manley* dealt only with a false *report* or *complaint* of crime whereas this statute also proscribes a *false statement*[.] … But when we read the words "false statement" in the context of false "report or complaint," we question whether "false statement" was intended to mean any untrue verbal communication made under any circumstances or was intended to refer only to false statements of the same general type and made under the same general circumstances as a false report or complaint of crime. … Do we give this statutory language its broadest meaning or a more restricted interpretation? We choose the latter because … where a statute is susceptible of more than one meaning, we are to consider not only the literal or usual meaning of its words, but their meaning and effect in light of the setting, the objectives, and the purposes of the enactment.

Id. at 637-38 (emphasis in original).

We explained further that, based on the legislative history of Art. 27 § 150, it was clear that the General Assembly, in adopting the statute, "had no intent to criminalize conduct other than the mischief which was the subject of the *Manley* decision, the making of false reports to the police which cause the police to conduct investigations that divert

them from their proper duties of preventing crime and investigating actual incidents of crime." *Id.* at 638. We concluded, therefore, that we should apply the statute "only to that type of mischief, the 'false alarm' to the police that is analogous to the false fire alarm." *Id.*

Against that backdrop, we hold that the Board plainly erred in finding that Sgt. Van Bennekum had violated CL § 9-501(a). We do not construe the statute as being applicable to Sgt. Van Bennekum's statement to TFC Snell to "check the area of 50 and 424 for a 10-50." In making the statement, Sgt. Van Bennekum was not making a "false report or complaint of crime," nor was he engaging in the sort of "public mischief" designed to deprive the public of services and render innocent individuals liable to suspicion and arrest. As discussed above, Sgt. Van Bennekum was not "reporting" a crime; he was ordering a subordinate officer to go to a particular location under false pretenses. That the order may have contained false information did not elevate it to the sort of "public mischief" punishable by CL § 9-501(a).

JUDGMENT OF THE CIRCUIT COURT FOR ST. MARY'S COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.