Circuit Court for Harford County
Case No. 12-C-17-002805

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1104

September Term, 2018

MATTHEW MONIODIS

v.

HARFORD COUNTY SHERIFF'S OFFICE

Reed,
Gould,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zarnoch, J.

Filed: July 15, 2020

In 2017, the Harford County Sheriff's Office (the "Sheriff's Office" or the "Department") terminated former Deputy Matthew Moniodis's employment after an administrative hearing board (the "Board") concluded that he was untruthful about a minor accident in his patrol vehicle. Moniodis challenges the Board's decision as fatally marred by procedural shortcuts that violated the Law Enforcement Officers' Bill of Rights ("LEOBR"). Md. Code (2011 Repl. Vol.), Public Safety Article, § 3-101, *et seq*.[1] The Circuit Court for Harford County affirmed the Board.

Moniodis presents six questions for our review, which we have rephrased as follows:

1. Did it violate the LEOBR and procedural due process principles for the Sheriff's Office to enter into evidence at the Board hearing an affidavit from auto mechanic Paul Leroy doubting Moniodis's claims about the accident, given that Moniodis was (a) not provided advance notice of the affidavit prior to the hearing, and (b) unable to subject the absent Mr. Leroy's expert opinion to cross-examination?
2. Was there substantial evidence in the administrative record to support the Board's findings of fact and conclusions of law?
3. Was it error to allow Sergeant Kenneth Perry to testify as a rebuttal witness?
4. Was Moniodis denied evidence favorable to him due to the Sheriff's Office's retirement of the patrol vehicle?

Because we find no reversible error with respect to any of Moniodis's claims, we affirm.

BACKGROUND & PROCEDURAL HISTORY

Moniodis was a Deputy with the Harford County Sheriff's Office at the time of the incident from which his administrative charges, and this appeal, stem. On the evening of

[1] All statutory references in this opinion are to the LEOBR, as codified in the Public Safety Article.

August 9, 2016, Moniodis was talking with fellow Deputy Garrett Stefan at a County-owned vehicle repair shop on N. Fountain Green Road in Bel Air (where officers would take their patrol vehicles for refueling and other maintenance, etc.) when it began to rain. Moniodis and Deputy Stefan decided to move their respective patrol cars a short distance to be underneath the canopy of the site's fuel pumps, to better continue talking while shielding from the rain. In the course of attempting to relocate his 2011 Ford Crown Victoria to beneath the canopy, however, Moniodis struck a curb as well as a bolt on the fuel pumps' emergency shutoff valve, flattening two tires and causing exterior panel damage to the vehicle.

Moniodis reported the crash to a supervisor, Sergeant Alistair Dais, who responded to the scene; Sergeant Dais later completed a Supervisor's Incident Report. Deputy Stefan also completed an accident report documenting what he observed; his report was in line with Moniodis's account of the accident. (Sergeant Dais and Deputy Stefan would both go on to testify at the subsequent LEOBR hearing). From the time of the accident through this appeal, Moniodis has maintained that the accident resulted from the simultaneous failure of his vehicle's power steering, brakes, and headlights. That is to say: Moniodis has claimed ever since the incident occurred that an electrical failure rendered the power steering and brakes (and headlights) momentarily inoperative, which caused the vehicle to inexorably crash into the curb and the fuel pumps' shutoff valve.

The Sheriff's Office came to disbelieve Moniodis's version of events. In September 2016, the Office of Personal Responsibility within the Sheriff's Office began

investigating the accident pursuant to the LEOBR. The Sheriff's Office concluded, based on its internal investigation, that Moniodis was not being truthful about the purported "electrical failure," but rather sought to mask any carelessness on his part that was responsible for the crash.[2] The Sheriff's Office eventually charged Moniodis with 12 violations of the Department's Rules and Regulations, all related to the accident, and in May 2017 Moniodis was suspended from duty with pay.[3]

On September 30, 2017, a three-person LEOBR Hearing Board, comprised of officers from the Anne Arundel County Police Department, the Maryland Transportation Authority Police, and the Carroll County Sheriff's Office, met to consider the charges against Moniodis. Testifying for the Department were Sergeant Dais (the supervisor whom Moniodis first notified about the accident); Sergeant Warren Brooks (who had conducted the Department's internal investigation); Captain Daniel Galbraith (the Department's head of fleet management, who filed the internal complaint against Moniodis); Sergeant Kenneth Perry; and Deputy Thomas Jackson (who had been assigned the same vehicle prior to Moniodis). For Moniodis, the Board heard Deputy Stefan testify that he believed Moniodis was being truthful in providing his version of the

[2] Though not relevant to the Board's ultimate decision, Moniodis acknowledged at the hearing that he had been responsible for two prior crashes in his patrol vehicle.

[3] Moniodis was charged with two counts of conduct unbecoming of an officer; two counts of intentionally making a false statement; two counts of making a false report; one count of an inaccurate report; one count of reckless operation of an agency vehicle; one count of causing damage to an agency vehicle (under $1,000); one count of causing damage to an agency vehicle (over $1,000); one count of failure to inspect a vehicle; and one count of preventable accident.

accident. Additional character witnesses spoke to Moniodis's general trustworthiness and good character. Moniodis also testified on his own behalf, maintaining his position that an electrical failure caused the accident.[4]

Among the other testimony and exhibits[5] entered into evidence at the hearing was the Department's successful introduction of an affidavit affirmed, under penalty of perjury, by auto mechanic Paul Leroy, the Service Director of Plaza Ford in Bel Air. Pursuant to the LEOBR, Mr. Leroy had been included on the list of potential witnesses provided by the Sheriff's Office to Moniodis a month before the hearing. *See* § 3-104(n)(1) ("On completion of an investigation and at least 10 days before a hearing, the law enforcement officer under investigation shall be . . . notified of the name of each witness . . ."). However, Mr. Leroy did not ultimately appear in person to testify at the hearing. (The Department stated during the hearing that Mr. Leroy was with his grandchildren in Assateague Island). Thus, instead of having Mr. Leroy provide in-person testimony that could be subjected to cross-examination, the Sheriff's Office entered into evidence the affidavit (dated five days before the hearing) wherein Mr. Leroy expressed

[4] Moniodis also contended that he believed Captain Galbraith had initiated the investigation due to his personal dislike for Moniodis. (Moniodis testified that he had once communicated certain automotive knowledge in public that undercut Captain Galbraith. Moniodis further claimed that Captain Galbraith had twice attempted to film him while in public, presumably in an attempt to catch misconduct).

[5] The Sheriff's Office introduced ten exhibits, and Moniodis six. The exhibits included photos of the accident scene; transcripts of Moniodis's LEOBR interrogation; the in-car videos of the incident; as well as service histories and work orders for the vehicle.

his skepticism, based on over 35 years of working on Ford motor vehicles, that Moniodis's patrol vehicle would suffer an electrical failure that would simultaneously—and briefly[6]—render the car's power steering, brakes, and headlights inoperative. After acknowledging that Mr. Leroy had not inspected or examined the vehicle in question, the affidavit stated: "In my experience, I have never seen a spontaneous and simultaneous failure of unrelated vehicle systems occurring in this manner. [This scenario, as described] is so unlikely to have occurred as to be impossible. The three systems allegedly affected in this scenario function separately, are not interdependent and are not interrelated." The affidavit added that the car's steering would not be dependent on electrical power, and that auto brakes are mechanical and not related to steering function.

Moniodis's counsel objected to the introduction of Mr. Leroy's affidavit, on the basis that he had not been given advance notice of the affidavit (or of Mr. Leroy's expected absence from the hearing), and that he would not have the opportunity to subject Mr. Leroy's expert opinion to cross-examination. In short, Moniodis's counsel argued that Moniodis was being "sandbagged" with a last-minute affidavit from an expert witness, violating the LEOBR as well as the fairness principles of procedural due process. Nonetheless, at no point during the hearing (or prior to the hearing) did

[6] Sergeant Dais testified that upon arriving at the scene and being told about the accident, he suggested to Moniodis that the vehicle be turned off for a few minutes, to see if any problem might fix itself. Minutes later, the car was successfully restarted and moved a short distance onsite to await repair. To this end, Mr. Leroy's affidavit claimed that even *if* the steering, brakes, and headlights had all simultaneously failed, "it [would be] extremely unlikely that they would all suddenly restore themselves."

Moniodis's counsel invoke the LEOBR provision that explicitly affords officers the statutory power to subpoena relevant or necessary witnesses. *See* § 3-107(d) ("In connection with a disciplinary hearing, the chief or hearing board may issue subpoenas to compel the attendance and testimony of witnesses . . . as relevant or necessary . . . [e]ach party may request the chief or hearing board to issue a subpoena or order under this subtitle.").

Ultimately, the Board found Moniodis guilty of all 11 counts before it. (The Department dropped one count). The Board issued a unanimous written opinion in which it found that the videotape of the accident from the vehicle's camera system cut against Moniodis's explanation for the crash:

- "If in fact, the steering wheel had locked up as the vehicle was 'in mid turn,' as stated by DFC Moniodis, then the vehicle would have continued to turn in a circular motion and wouldn't have hit the curb. The vehicle was clearly driving straight when it hit the curb and the bolt on the pole."

- "The vehicle reached 15 mph, if the brakes were not working, the vehicle would not have come to a complete stop the way it did when it hit the curb, as seen on the video."

- The Board found that the audio and video from the in-car system indicated that Moniodis turned the headlights on after hitting the curb, but before he "hit" the dashboard in frustration over the headlights not working (as Moniodis had claimed he did).

- "In reference to the brakes not working, it is shown on the video camera (indicated by the letter 'B') of the brakes being applied several times, including when the vehicle comes to a stop after hitting the curb. This would suggest the brakes were working."

The Board also found, based on the vehicle's work orders and testimony from Sergeant Perry, that the only work done to the vehicle because of the accident was to the

tires, alignment, and external side body damage. As such, the Board inferred that there had not been electrical damage affecting the headlights, brakes, and/or steering.

The Board concluded, based on the vehicle's service history, that "there has never been any work done for a brake failure, steering problem or an electrical issue, with the exception of corrective maintenance being done to the headlights, spotlight and the overhead lights." The Board added that although Moniodis had taken the vehicle, months after the crash, to the shop for electrical issues, the shop mechanic who checked the car stated that there were no issues with its electrical or mechanical systems. The Board concluded that "this would indicate there were no issues with this vehicle's brakes, steering or electrical system. It would appear that DFC Moniodis tried to find similar things wrong with his vehicle after the crash to corroborate what happened on August 9, 2016."

The Board credited the opinions expressed in Mr. Leroy's affidavit, as described above. Additionally, the Board noted that although Moniodis testified about a certain conversation he claimed to have had with a mechanic named "Nick,"[7] rebuttal testimony by the Department suggested that nobody named Nick worked at the shop in question.[8] Lastly, the Board credited Captain Galbraith's testimony that not only are brakes mechanical (and not electrical), but that if the brakes had truly not functioned in the

[7] Moniodis testified that "Nick" told him the car should not be driven due to electrical issues.

[8] We note that although the Board's written opinion stated Captain Galbraith was asked about "Nick" on rebuttal, it was actually Sergeant Perry who addressed the issue on rebuttal.

manner Moniodis described, "[it] would indicate there not being any brake fluid [and] turning off and on the vehicle again [as was done at the time], the brakes would still not work[.]" The Board then concluded: "This would suggest the brakes were in fact working [at] the time of the collision. The board does not believe that by turning the vehicle off and on, would fix the brakes."

After the Board announced its findings of guilt, and after Moniodis's counsel declined to make any argument with respect to punishment, the Board recommended termination of Moniodis's employment as the consequence for each guilty count. Notably, the Board's report stated that "if [Moniodis] can no longer perform the duties of a police officer, i.e. make arrests and testify in court, he should not be able to continue his employment." Citing *Brady v. Maryland*, 373 U.S. 83 (1963), the Board wrote: "When an officer lies, not only does the officer risk losing his or her job, but the officer jeopardizes the mission and the work and dedication of others within the Department." The Board added, "[i]t would be to the detriment of the Department to set a precedent to allow officers to keep their job even after they have been caught lying."

Acting upon the Board's recommendation, Harford County Sheriff Jeffrey Gahler terminated Moniodis's employment.

Following a hearing in July 2018, the Circuit Court for Harford County affirmed the Board's decision. This appeal followed.

DISCUSSION

I. THE STANDARD OF REVIEW

"The standard of review in a LEOBR case is that generally applicable to administrative appeals." *Balt. Police Dept. v. Antonin*, 237 Md. App. 348, 359 (2018) (Quotation marks omitted). That is to say, we "bypass the judgment of the circuit court and look directly at the administrative decision." *Balt. Police Dept. v. Ellsworth*, 211 Md. App. 198, 207 (2013). We "will not disturb an administrative decision on appeal if substantial evidence supports factual findings and no error of law exists." *Long Green Valley Ass'n v. Prigel Family Creamery*, 206 Md. App. 264, 274 (2012) (Citations and quotations omitted). Substantial evidence is defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *McClure v. Montgomery County Planning Bd.*, 220 Md. App. 369, 380 (2014) (Citation omitted). We must "defer to the agency's fact-finding and drawing of inferences if they are supported by the record" and "review the agency's decision in the light most favorable to it." *Motor Vehicle Admin. v. Carpenter*, 424 Md. 401, 413 (2012); *see Catonsville Nursing Home, Inc. v. Loveman*, 349 Md. 560, 569 (1998) (agency decisions "are *prima facie* correct and carry with them the presumption of validity") (Citations omitted). Nevertheless, we give "no deference to agency conclusions based upon errors of law." *Coleman v. Anne Arundel County Police Dept.*, 369 Md. 108, 121 (2002) (Citation omitted).

Because the Board's decision hinged on whether Moniodis was intentionally untruthful, we note that "[t]he heart of the fact finding process often is the drawing of

inferences from the facts. The administrative agency is the one to whom is committed the drawing of whatever inferences reasonably are to be drawn from the factual evidence." *Tippery v. Montgomery County Police Dept.*, 112 Md. App. 332, 339 (1996) (quoting *Snowden v. Mayor of Balt.*, 224 Md. 443, 448 (1961)). Not only should we "accord deference" to the agency's drawing of inferences when the record supports them, *Md. Dept. of Env't v. Anacostia Riverkeeper*, 447 Md. 88, 120 (2016), but it is for the agency to "resolve conflicting evidence" and draw appropriate conclusions from "inconsistent inferences from the same evidence." *Tippery*, 112 Md. App. at 348 (quoting *Younkers v. Prince George's County*, 333 Md. 14, 19 (1993)). Under the substantial evidence standard, what matters is not "whether the inference drawn [by the Board] is the right one or whether a different inference would be better supported. The test is reasonableness, not rightness." *Anacostia Riverkeeper*, 447 Md. at 120 (quoting *Mayor & Alderman of City of Annapolis v. Annapolis Waterfront Co.*, 284 Md. 383, 399 (1979)). In other words: if the agency's decision is supported by substantial evidence, it does not matter whether we ourselves would have reached the precise same conclusion.

II. MONIODIS FORFEITED HIS CLAIM THAT ENTERING MR. LEROY'S AFFIDAVIT INTO EVIDENCE VIOLATED THE LEOBR AND DUE PROCESS PRINCIPLES.

Moniodis's primary claim on appeal is that Mr. Leroy's affidavit was improperly entered into evidence at the hearing, given that (1) the Sheriff's Office did not provide advance notice that the affidavit would be offered as evidence in lieu of Mr. Leroy providing in-person testimony, and (2) the affidavit constituted expert opinion that could not be properly subjected to cross-examination. Accordingly, Moniodis contends that

accepting the affidavit into evidence violated the LEOBR as well as due process principles—in short, an improper "sandbagging." *See, e.g., Travers v. Balt. Police Dept.*, 115 Md. App. 395, 411 (1997) ("[W]hile administrative agencies are not constrained by technical rules of evidence, they must observe basic rules of fairness as to the parties appearing before them so as to comport with the requirements of procedural due process afforded by the Fourteenth Amendment."); *Am. Radio-Tel. Serv., Inc. v. Pub. Serv. Comm'n*, 33 Md. App. 423, 435 (1976) ("One of these basic rules of fairness is that in an adversary proceeding before an administrative board, the opportunity for reasonable cross-examination must be allowed.").

However, regardless of whether it constituted error to introduce the affidavit at the hearing without prior notice and/or by precluding the ability to cross-examine Mr. Leroy, we do not believe that it constituted *reversible* error in this particular circumstance, for two reasons. First, despite Moniodis's claim that the last-minute affidavit violated the LEOBR's timing requirements concerning advance notice,[9] and made it impossible to

[9] Section 3-104(n)(1) sets forth that "[o]n completion of an investigation and at least 10 days before a hearing, the law enforcement officer under investigation shall be . . . notified of the name of each witness . . . and . . . provided with a copy of the investigatory file and any exculpatory information," so long as the officer signs a confidentiality agreement. As such, Moniodis's argument (that the Sheriff's Office categorically violated the LEOBR by not providing him with Mr. Leroy's affidavit at least ten days before the hearing) depends upon whether the affidavit would be considered part of the "investigatory file." To be sure, it might seem intuitive that a witness's affidavit would be part of the investigatory file. *See Montgomery County, Maryland v. Shropshir*e, 420 Md. 362, 381 (2011) ("[R]ecords of internal investigations contain significant personal information, such as the investigated officer's name, date of birth, address, social security number, level of education, as well as the complaint, *transcripts of witness interviews*,

(Continued…)

subject Mr. Leroy to cross-examination, the fact is that it still remained within Moniodis's power to remedy any such deficiency by invoking the LEOBR's express statutory authority to subpoena Mr. Leroy, or any relevant witness. *See* § 3-107(d) ("In

and the investigator's notes . . .") (Emphasis added); *id*. at 374 n. 11 (noting that the Montgomery County Police Department's internal guidelines specified that "[r]eports of internal investigations, including witness statements, are confidential."); *Md. Dept. of State Police v. Dasheill*, 443 Md. 435, 451 n. 14 (2015) (Citing *Shropshire*, then noting that the Maryland State Police Administrative Manual sets forth that "[a] completed investigation case file will contain[,]" among other information, witness statements as well as "[o]ther statements or detailed reports."); *Mayor & City Council of Balt. v. Md. Comm. Against the Gun Ban*, 329 Md. 78, 85 (1993) ("In the Baltimore City Police Department, an [internal affairs] investigation report consists of descriptions of all steps in the investigation, all statements taken, a summary and conclusion, and comments by persons in the chain of command."). Nonetheless, the LEOBR does not expressly define the term "investigatory file" as a matter of statewide policy for all police departments or Sheriff's Offices across every jurisdiction. Nor does the Harford County Sheriff's Office's own personnel policy define the term. (Included in the record; *also available at*: https://harfordsheriff.org/about/policies/).

Given our conclusion regarding waiver, we do not have to explore the separate issue of whether obtaining an affidavit from a witness might constitute part of the "investigation" phase that, according to the text of § 3-104(n)(1), ought to be "complet[ed]" more than ten days before the hearing. *See, e.g.*, 78 Md. Op. Att'y Gen. 257, 257 (1993) ("If those who conduct the investigation believe that disciplinary action against the officer is warranted, the matter proceeds *to a second stage*, a hearing before a board of fellow officers[.]") (Emphasis added).

Additionally, we note here that we are not persuaded by Moniodis's separate, yet similar, argument that the Sheriff's Office failed to provide him with an "accurate witness list" on the basis that (1) after providing him with a witness list ahead of time, the Sheriff's Office (2) then failed to notify him that Mr. Leroy would actually be unavailable to testify. Surely, Moniodis cannot be suggesting that it constitutes categorical error for a prosecuting department to end up, at the end of the day, with *fewer prosecution witnesses* than was originally anticipated. Moreover, by making this argument, Moniodis appears to be suggesting that it ought to be expected that a defendant facing administrative charges will simply wait until the hearing itself to begin any initial contact with, or investigation into, a witness. Nothing was stopping Moniodis from reaching out to the list of witnesses, including Mr. Leroy, ahead of the hearing. We imagine that such advance work by defense counsel would generally be advisable.

connection with a disciplinary hearing, the chief or hearing board may issue subpoenas to compel the attendance and testimony of witnesses . . . as relevant or necessary . . . [e]ach party may request the chief or hearing board to issue a subpoena or order under this subtitle."). By failing to seek or insist upon this statutory power to subpoena Mr. Leroy, or to seek a continuance, Moniodis can be deemed to have waived his affidavit claim in this appeal. *Travers*, 115 Md. App. at 418-19 (concluding that the appellant waived his claim regarding the inability to cross-examine a witness because he "failed to exercise his right to subpoena" the witness); *id.* (discussing cases in which "the error in admitting affidavits, without subjecting the affiant to cross-examination, was harmless because the opponents made no request for . . . an opportunity to bring the affiant in for cross-examination[,]" and then stating, "[w]e read [*Richardson v. Perales*, 402 U.S. 389 (1971)] as standing for the proposition that claimants who forgo their right to subpoena known, material witnesses effectively waive any objections to denial of an opportunity to cross-examine."); *Para v. 1691 Ltd. P'ship*, 211 Md. App. 335, 384 (2013) (The due process conception of fairness "requires the complaining party to avail itself of the opportunity to cross-examine . . . [a]s a consequence, the complaining party must subpoena testimony or a witness . . . when the administrative proceeding permits.") (Citations omitted); *Rosov v. Md. State Bd. of Dental Exam'rs*, 163 Md. App. 98, 116-17 (2005) (Even though the defendant was "not informed that [a witness] would not be testifying until the start of the hearing[,]" his assertion was without merit because he did not issue a subpoena to compel the witness to attend the administrative hearing: "Rosov

was not deprived of the opportunity to cross-examine [the witness] by the State or the ALJ, but by his own failure to subpoena the witness."); *Am. Radio-Tel. Serv.*, 33 Md. App. at 435 (Although affidavits should not have been admitted unless the witnesses were made available for cross-examination, the error was harmless, in part, because "[even though] [a]ppellant objected to the admissibility of the affidavits, it made no request *for a postponement* or for an opportunity to bring the affiants in for cross-examination.") (Emphasis added).

Second, even were we to still consider it error to have admitted the affidavit, despite not subpoenaing Mr. Leroy, the error would be harmless, as sufficient other findings in the Board's decision would still remain to meet the substantial evidence standard. *See Wash. Suburban Sanitary Comm'n v. Lafarge N. Am., Inc*., 443 Md. 265, 289 (2015) ("[I]t is the policy of [Maryland appellate courts] not to reverse for harmless error and the burden is on the appellant in all cases to show prejudice as well as error.") (quoting *Crane v. Dunn*, 382 Md. 83, 91 (2004)); *State Bd. of Physicians v. Bernstein*, 167 Md. App. 714, 764 (2006) ("In Maryland, the harmless error doctrine has been applied in judicial review of agency decisions."); *id*. at 765 (concluding that a harmless error analysis was appropriate when an ultimate finding rested, "at least in part, on invalid expert opinion testimony"). Leaving aside the Board's reliance on Mr. Leroy's affidavit for the proposition that it would be highly unlikely for a car's power steering, brakes, and headlights to all fail at the same exact moment (and then revert to normal working condition a few minutes later), the Board made abundant other findings that

would allow a reasonable mind to believe it more likely than not that Moniodis was untruthful.[10]

For example: the Board concluded, among other findings, that based on the vehicle's work orders and service history, "there has never been any work done for a brake failure, steering problem or an electrical issue, with the exception of corrective maintenance being done to the headlights, spotlight and the overhead lights." Additionally, even had Mr. Leroy's affidavit not been admitted, the Board separately credited Captain Galbraith's opinion testimony that the vehicle's brakes are mechanical, and that if the brakes truly had not worked at the time of the accident, they would not then have worked as soon as the car was restarted.[11] Most notably, perhaps, the Board relied upon its own viewing of the in-car video of the accident. Based on our own review of the video, we believe that a reasoning mind could certainly conclude, as the Board did, that the video did not comport with Moniodis's explanation for the accident. That is to

[10] For this same reason, we need not resolve whether the Board carefully considered the reliability and probative value of Mr. Leroy's affidavit before considering it as hearsay evidence. *See Travers*, 115 Md. App. at 413 ("It is improper for an agency to consider hearsay evidence without first carefully considering its reliability and probative value."). Nor are we persuaded by Moniodis's attempts to characterize the other officers' testimony as not sufficiently credible to support the Board's findings. "The weighing of the evidence and the assessment of witness credibility is for the finder of fact, not the reviewing court." *Tippery*, 112 Md. App. at 340-41 (quoting *Terranova v. Bd. of Trustees of Fire & Police Employees Ret. Sys. of Balt. City*, 81 Md. App. 1, 13 (1989)).

[11] Notwithstanding Moniodis's argument that Captain Galbraith was not qualified to offer such an opinion, we note that not only was Captain Galbraith the head of fleet maintenance for the Sheriff's Office, but he testified that he had longstanding personal experience performing mechanical repairs on his own vehicles.

say, a reasoning mind could conclude that, given that the car was going 15 m.p.h. at the time of the crash, it would not have appeared to immediately stop once it hit the curb if the brakes had not, in fact, been applied. Moreover, a reasoning mind could also believe that the vehicle would have continued making a wider turning arc than it appeared to be making at the time of the crash if the steering had truly locked in mid-turn, as Moniodis suggested. In short, the Board's conclusions from watching the video were certainly reasonable.

Furthermore, we credit the Board's finding that the "B" that appeared on the in-camera video in fact indicated that the brakes were being applied. Though Moniodis suggests the Department failed to introduce sufficient maintenance information to buttress this technical point, we believe that the three law enforcement officers who comprised the Board would be sufficiently familiar with matters related to a patrol vehicle to make such an inference, and to rely upon the Department's testimony as to this point. *See* § 3-107(g)(3) ("The hearing board may utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented."); *see also Travers*, 115 Md. App. at 409 ("In drafting the aforementioned provisions of the . . . LEOBR, the General Assembly implicitly recognized that the formal rules of evidence possess far greater utility in jury trials than an agency hearing before a presumably expert hearing officer.").[12]

[12] In a similar vein, Moniodis argues that the work orders and service history that showed no repair work to the brakes or steering do not definitively prove that the vehicle

(Continued…)

In short, the substantial evidence standard does not necessarily require that we would reach the same exact conclusion as the Board; it only requires that there be sufficient evidence in the record as a whole to support the reasons given by the Board for its conclusions. Even leaving aside Mr. Leroy's affidavit, this standard was met here.

III. SUBSTANTIAL EVIDENCE IN THE ADMINISTRATIVE RECORD SUPPORTED THE BOARD'S FINDINGS AND CONCLUSIONS.

Beyond his core argument concerning Mr. Leroy's affidavit, Moniodis makes separate claims that the administrative record was insufficient to support the Board's findings and conclusions. We address them in turn.

A. Whether Moniodis Intended to Deceive the Department.

Moniodis contends that the administrative record does not contain substantial evidence that he intended to deceive the Department about the crash. *See* Harford County Sheriff's Office Personnel Policy, PER 0101 ("Code of Conduct"), § C.6 ("To prove by a preponderance of evidence that one has submitted a false report, evidence must be presented for consideration that such report is purposely untrue, deceitful, or made with the intent to deceive the person to whom it was directed."); *see also Md. State Police v. Zeigler*, 330 Md. 540, 546 n. 3 (1993) (quoting the Maryland State Police Manual, which used language almost identical to Harford County's Personnel Policy). On this note,

worked properly at the moment of the accident. We believe that this argument attempts to prove too much. The substantial evidence standard is not so exacting a standard that every inference must be definitively proven to an ironclad degree. Indeed, under this argument, Moniodis would seem to require the existence of a work order that was contemporaneous with the exact moment of impact.

Moniodis adds that the Board's report does not contain an explicit finding of fact that he intended to deceive, and therefore he cannot be found guilty of intentionally making a false statement or report. We are not persuaded by either claim.

To begin, the entire thrust of the Board's report was that Moniodis was intentionally untruthful about the accident. Indeed, there is no other way to read the Board's decision: Moniodis claimed that the accident resulted from a freak electric failure that caused the brakes, steering, and headlights to simultaneously fail; based on the evidence, the Board concluded that simply could not be the case. The report's "conclusions of law" repeated five times that "DFC Moniodis's sworn testimony was found to be false, untruthful, and in violation of departmental rule and regulations." And in recommending termination, the Board emphasized that "[i]t would be to the detriment of the Department to set a precedent to allow officers to keep their job even after they have been caught lying."

To the extent that Moniodis might be suggesting that an intent to deceive can only be gleaned from direct evidence such as a firsthand confession or other "smoking gun" proof, that is not the case. *See, e.g.*, *Bible v. State*, 411 Md. 138, 157 (2009) ("Because intent is subjective and, without the cooperation of the accused, cannot be directly and objectively proven, its presence must be shown by established facts which permit a proper inference of its existence.") (Citation and quotation marks omitted); *Titus v. State*, 423 Md. 548, 564 (2011) ("[T]he trier of fact can infer from a defendant's actions and the surrounding circumstances whether the defendant had the requisite intent to obstruct or

hinder an officer in the performance of his or her duties."); *Anderson v. Watson*, 141 Md. 217, 229 (1922) ("It seldom happens that a person, natural or corporate, overtly admits or declares, either orally or in writing, an intention to perpetrate a fraud . . . [i]t is not necessary, in establishing the knowledge and intent essential to a charge of fraud, to show such knowledge and intent by direct evidence, but they may be inferred from the conduct of the parties . . .") (Citation omitted). Here, the Board was permitted to make reasonable inferences based upon the evidence presented. In our view, the Board did not make too great a leap in concluding, based on the video, service records, and testimony, that Moniodis must have known his account was not truthful.

Moreover, we are not persuaded by Moniodis's attempt to deflect blame by pointing to the fact that neither Sergeant Dais nor Deputy Stefan were charged with making a false report after they made similar accounts of the accident. On the one hand, it is irrelevant to the question of a defendant's guilt whether or not other individuals who theoretically *could* be similarly charged are, in fact, charged. Moreover, it is nonsensical here for Moniodis to attempt to deflect blame on the basis that Sergeant Dais and Deputy Stefan may have made similar false reports: after all, *he* was their original source of information about the accident. If they were mistaken about what caused the accident, it is only because Moniodis told them an incorrect story at the outset of the entire saga. Moniodis cannot exonerate himself on the basis that others—for whom *he* was the source of information—passed his own misinformation around the horn. Nor do we believe that certain other comments made by Sergeant Dais or Deputy Stefan—such as that Moniodis

put his weight into the wheel after the accident, and it was locked; or that the vehicle had had previous issues losing power—materially undermine the Board's essential finding that Moniodis's account of the accident was untruthful.

B. Whether Moniodis's Conduct Adversely Affected the Department.

Moniodis contends that because the record does not sufficiently support the conclusion that his conduct adversely affected the Department, he cannot be found guilty of conduct unbecoming an officer. We disagree.

The crux of the Hearing Board's decision was that it believed Moniodis lied about the events surrounding the accident. Accordingly, it would strain credulity for us to conclude that lying about one's official duty is not "conduct unbecoming of an officer," or that an officer with credibility issues does not inherently affect the efficiency within a Department. *See Brady v. Maryland*, 373 U.S. 83 (1963). Indeed, the Board specifically referenced these *Brady* considerations in recommending termination: "[I]f [Moniodis] can no longer perform the duties of a police officer, i.e. make arrests and testify in court, he should not be able to continue his employment . . .[w]hen an officer lies, not only does the officer risk losing his or her job, but the officer jeopardizes the mission and the work and dedication of others within the Department." This view is reinforced by the LEOBR itself: § 3-106.1(a) states that a law enforcement agency tasked with *Brady* requirements (to disclose impeachment or exculpatory evidence in criminal cases) "may maintain a list of law enforcement officers who have been found or alleged to have committed acts which bear on credibility, integrity, honesty, or other characteristics that would constitute

exculpatory or impeachment evidence."[13] Moreover, the Department's posture just makes good public sense. *See, e.g.*, *Meyers v. Montgomery County Police Dept*., 96 Md. App. 668, 705 (1993) ("Without internal discipline the Police Department would be unable to carry out [its] functions . . . [c]ooperation between the community and the police department is imperative for effective police work. The County and the Police Department, thus, have a strong interest in a credible and professional police force."); Morgan Cloud, *Judges, 'Testilying,' and the Constitution*, 69 S. CAL. L. REV. 1341, 1352 (1996) (Quoting New York's Mollen Commission) ("A police officer's word is a pillar of our criminal justice system. On the word of a police officer alone a grand jury may indict, a trial jury may convict, and a judge pass sentence. The challenge we face in combatting police falsifications, is not only to prevent the underlying wrongdoing that spawns police falsifications but to eliminate the tolerance the Department and the criminal justice system exhibit about police who fail to tell the truth."); I. Bennett Capers, *Crime, Legitimacy, and Testilying*, 83 IND. L. J. 835, 870 (2008) (noting, for example, how after an officer involved in the O.J. Simpson trial was exposed as having lied under oath, "a study of prospective jurors in New York found across-the-board skepticism about police testimony."). Simply put, an officer with credibility issues inherently affects his Department.

[13] Section 3-106.1(b) then goes on to state that a law enforcement agency may not take punitive action against an officer (including dismissal or suspension without pay) "based solely on the fact that a law enforcement officer is included" on such a list.

C. Damage to the Vehicle.

We can summarily dismiss Moniodis's contention that there was insufficient evidence to support the finding that he recklessly operated an agency vehicle and caused damage (either over or under $1,000)[14] to the vehicle. Relying on the testimony of Captain Galbraith, *i.e.*, the head of fleet management for the Sheriff's Office, about the cost of repairing the two flat tires and the exterior body damage is plainly sufficient to support such conclusions. Also, as discussed above, given that the Board rejected Moniodis's theory of the case—that electrical failure simultaneously caused the brakes, power steering, and headlights to fail—the unmistakable takeaway from the record evidence is that the Board believed Moniodis's reckless operation of the vehicle was responsible for the crash. (As the video suggests, Moniodis made the turn in the dark without turning on his headlights, which led to accidentally hitting the curb and shutoff valve). Indeed, the Board explicitly stated in every guilty finding that Moniodis carelessly or recklessly operated the vehicle. His claim on this point is without merit.

[14] Moniodis has not raised whether there is a certain tension in the fact that he was found guilty, in two separate counts, of causing damage both over *and* under $1,000 for the same accident. As such, and given the other counts that sufficiently supported a termination, we need not resolve whether these counts should be construed as effectively merging. (Indeed, we imagine that these two counts concerning the sticker price of the auto repairs were not the decisive counts that led the Sheriff to terminate Moniodis's employment).

IV. SERGEANT PERRY'S REBUTTAL TESTIMONY DID NOT CONSTITUTE REVERSIBLE ERROR.

Moniodis contends that it was error to permit Sergeant Perry to testify over objection, given that he was not included as a potential witness on the list provided to Moniodis ahead of the hearing, and because his testimony did not constitute rebuttal evidence.

On the one hand, we could decline to address this argument because Moniodis framed the issue in a wholly conclusory manner in his brief, in a few cursory paragraphs, without any legal citation or support. *See* Md. Rule 8-504(a)(6) (Briefs must contain "[a]rgument in support of the party's position on each issue."); *see also, e.g.*, *Mills v. Galyn Manor Homeowner's Ass'n*, 239 Md. App. 663, 684 (2018) (declining "to address the merits of this perceived error on appeal" when the defendants did not "provide any argument explaining how the circuit court erred."), *aff'd sub nom. Andrews & Lawrence Prof'l Servs. v. Mills*, ___ Md. ___, 2020 WL 427876 (Jan. 28, 2020); *Catler v. Arent Fox, LLP*, 212 Md. App. 685, 712 (2013) ("Because they have failed to brief us appropriately, . . . appellants have waived their right to appeal from this portion of the court's order."); *Honeycutt v. Honeycutt*, 150 Md. App. 604, 618 (2003) ("The Estate argues that the circuit court was legally incorrect when it granted the Bank's Motion for Summary Judgment; however, the Estate failed to adequately brief this argument, and thus, we decline to address it on appeal." (Footnote omitted)); *Fed. Land Bank of Balt., Inc. v. Esham*, 43 Md. App. 446, 457-58 (1979) ("In prior cases where a party initially

raised an issue but then failed to provide supporting argument, this Court has declined to consider the merits of the question so presented but not argued.").

However, even if it *were* error to let Sergeant Perry testify after he had not been included on the advance witness list, there remained abundant other evidence supporting the Board's decision (as discussed above), making any error harmless.

Moreover, the premise of Moniodis's claim strikes us as misplaced. Even if the Department should have listed Sergeant Perry as a potential witness in advance of the hearing, and even if it might have been preferable for Sergeant Perry to testify about the summary he prepared of the vehicle's maintenance history during the Department's case in chief,[15] ultimately, Sergeant Perry's testimony only rebutted claims that Moniodis had already made during his own, earlier testimony (*i.e.*, that the car suffered subsequent electrical damage in January 2017, and that Moniodis thought he spoke to someone named "Nick" about the damage).[16] As a result, we do not believe that Moniodis suffered

[15] Sergeant Perry's summary showed that although Moniodis put the vehicle in for service for an electrical issue in January 2017, no electrical issues were detected, and the brakes and steering were deemed to be ok. The summary also showed that no repairs were made to the car's steering or brakes when it was serviced after the accident in August 2016.

[16] The second thrust of Sergeant Perry's testimony—whether someone named "Nick" actually worked at the shop—was unquestionably proper rebuttal testimony, as it responded to Moniodis's assertion that he thought he had spoken to someone named Nick. *Wright v. State*, 349 Md. 334, 342-43 (1998) ("[W]e [have] defined rebuttal evidence as any competent evidence which explains, or is a direct reply to, or a contradiction of any new matter that has been brought into the case by the defense . . . [and] as competent evidence which explains, or is a direct reply to, or a contradiction of, material evidence introduced by the accused . . . .") (Citations and quotation marks omitted, emphasis removed); *id.* at 343-44 ("[E]vidence offered to impeach the

(Continued…)

reversibly prejudicial "surprise" simply due to the fact that Sergeant Perry was called upon to respond to points that Moniodis had already made. *See Hoey v. State*, 311 Md. 473, 489 (1988) ("[I]t must be remembered that the function of a rebuttal witness is to respond to evidence presented during the opposing party's case in chief. Accordingly, until a defendant has actually completed his case in chief, the State cannot determine what evidence will need to be rebutted. Therefore, forcing the State's Attorney to disclose all possible rebuttal witnesses before trial would be a difficult if not impossible task.")[17]; *State v. Booze*, 334 Md. 64, 68 (1994) ("In the usual case, what constitutes rebuttal testimony rests within the sound discretion of the trial court, whose ruling may be reversed only when it constitutes an abuse of discretion, *i.e.*, it has been shown to be both manifestly and substantially injurious.") (Citations and quotation marks omitted). Ultimately, the LEOBR is intended to provide an officer with fair procedures; it is not meant to shield an officer with hyper-technical timing requirements that work to keep the truth at bay.

opponent's witnesses by way of moral character, bias, self-contradiction, or the like[]" is a matter of "true rebuttal") (quoting 6 John Henry Wigmore, Evidence in Trials at Common Law, § 1873 at 678-79 (Chadbourn ed. 1976)) (Emphasis removed); *see also Ellsworth*, 211 Md. App. at 211, *aff'd*, 438 Md. 69 (2014) ("[T]he LEOBR, unlike the Maryland Rules for criminal cases, does not require disclosure of impeachment evidence.").

[17] In this vein, during the hearing the Department countered defense counsel's objection to Sergeant Perry's testimony by suggesting that it could not have been expected to anticipate the full universe of potentially necessary rebuttal witnesses. Though we agree with the general point, in the context of a LEOBR hearing it might be reasonably foreseeable that a Department officer who had been involved with the investigation, like Sergeant Perry was here, would be potentially necessary as a witness.

V. WE NEED NOT ADDRESS MONIODIS'S CLAIM ABOUT THE VEHICLE'S RETIREMENT.

Finally, Moniodis contends that he was denied evidence favorable to him because the Department retired his police vehicle without conducting an examination to prove or disprove his allegations of systems failure. As an initial matter, we can simply decline to address the point: Moniodis presented this issue in a single paragraph in his brief, and without providing any legal support for his wholly conclusory claim. *See* Md. Rule 8-504(a)(6) (Briefs must contain "[a]rgument in support of the party's position on each issue."); *see also*, Part IV, *supra* (citing cases that declined to address a perceived error on appeal when the argument was insufficiently briefed, or contained no legal argument).

Additionally, because Moniodis did not raise this argument before the Hearing Board, the claim is not preserved and we need not consider it here. *Bray v. Aberdeen Police Dept.*, 190 Md. App. 414, 434 (2010) ("[N]o formal objection was ever entered regarding the admission of evidence that should have been produced during discovery. Therefore, we conclude that this issue was not properly preserved for our review."); *see Cicala v. Disability Rev. Bd. for Prince George's County*, 288 Md. 254, 261-62 (1980) ("A party who knows or should have known that an administrative agency has committed an error and who, despite an opportunity to do so, fails to object in any way or at any time during the course of the administrative proceeding, may not raise an objection for the first time in a judicial review proceeding.").

CONCLUSION

We hold: (1) Moniodis effectively waived his argument regarding Mr. Leroy's affidavit; (2) in any event, substantial evidence supported the Board's findings and conclusions; (3) Sergeant Perry's testimony did not constitute reversible error; and (4) any claim regarding the vehicle's retirement was not preserved.

JUDGMENT OF THE CIRCUIT COURT FOR HARFORD COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.