

Circuit Court for Anne Arundel County
Case No. C-02-CV-22-000461

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2267

September Term, 2022

IN THE MATTER OF KASHEF KHAN

Tang,
Albright,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Tang, J.

Filed: January 16, 2024

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

The Circuit Court for Anne Arundel County affirmed the decision of an administrative hearing board that found appellant Kashef Khan, a trooper with the Maryland Department of State Police (“MSP”), guilty of three misconduct charges and recommended termination of his employment. On appeal, appellant presents the following question:

[D]id the Hearing Board act as a neutral arbiter, consider the totality of the evidence, and return verdicts based on substantial evidence or were the Hearing Board’s guilty verdicts an error of law, unsupported by competent, material, and substantial evidence or arbitrary and capricious?

For the reasons below, we shall affirm the circuit court’s judgment.

FACTUAL AND PROCEDURAL BACKGROUND

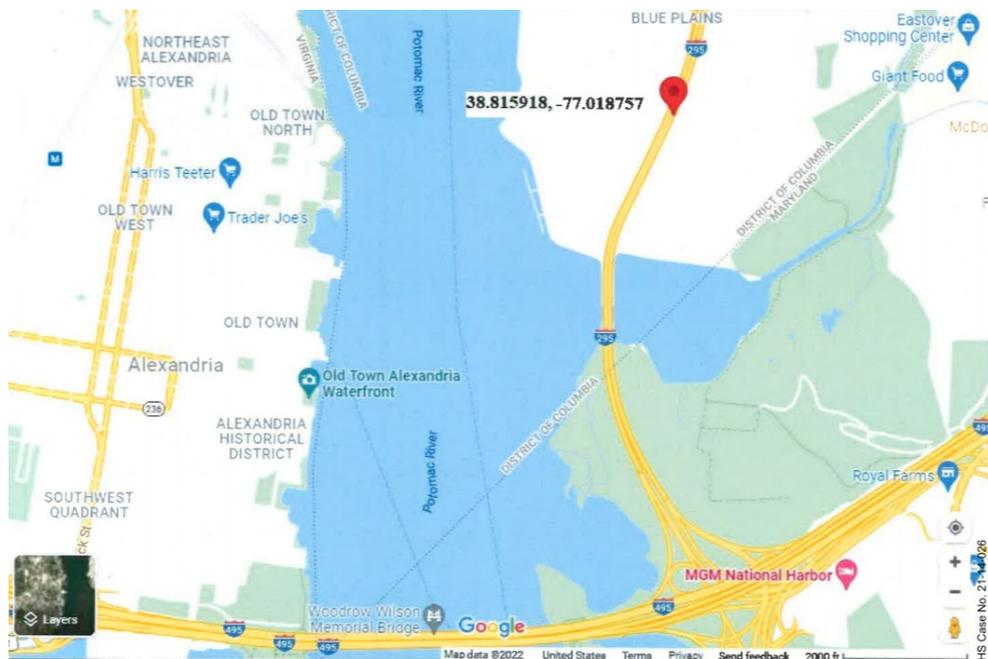
Appellant was born in Pakistan and raised in Afghanistan. He can speak five languages, with English being his fourth. He immigrated to the United States and joined the U.S. Army, serving in combat zones for fifteen years. Following his military service, he worked as an intelligence language analyst with government agencies. After that, he became a Maryland State Trooper, completing his field training at the age of 49 in the summer of 2017. Upon graduating from the academy, he was assigned to work at the Forestville Barrack in Prince George’s County. During his time with MSP, appellant was recognized for his work and was awarded several accolades. These include three awards for Trooper of the Year, twice at the barrack level and once at the State level.

The Traffic Stop in the District of Columbia

The case against appellant stems from a traffic stop he conducted on June 14, 2020, outside of MSP’s jurisdictional limits. The stop occurred about 0.7 miles inside the

boundary of Washington, D.C. (“D.C.”) at the coordinates of latitude 38.815918 and longitude -77.018757.¹ As we later explain, a contested issue was whether appellant knew that he had conducted the traffic stop in D.C. at that time.

Before we proceed further, we describe the specific geographic location in question. The area is separated by a 45-degree diagonal line that divides Maryland from southeast D.C. Interstate 295 (“I-295”), also known as the Anacostia Freeway, begins at the Interstate 495 (“I-495”) interchange near the MGM National Harbor Hotel & Casino in Prince George’s County, Maryland. Interstate 295 runs north into D.C., crossing a bridge over a body of water where Oxon Creek meets the Potomac River. The boundary line is just south of this bridge. There are no signs northbound on I-295 that indicate entry into D.C. The location of the traffic stop is depicted by the red balloon in the Google map below:



¹ The coordinates are latitude of 38.8159183166667 and longitude of -77.0187574333333. For convenience, we use abbreviated coordinates.

On June 14, 2020, appellant was assigned to work a DUI saturation patrol in Prince George’s County. Around 2:10 a.m., while driving northbound on I-295, appellant noticed a vehicle speeding. He paced the vehicle for about a third of a mile and confirmed that the driver exceeded the speed limit. Appellant then activated his emergency equipment and pulled over the car.

Appellant spoke to the driver of the vehicle that had four children inside. The driver admitted to consuming two glasses of wine at her aunt’s house. Appellant asked if that was all she had consumed, to which the driver replied yes. Appellant then turned southward and pointed in that direction, asking, “And that was like in Maryland?” The driver said yes.

Appellant broadcasted his location via radio, stating that he was on I-295, “approximately a mile north of the Beltway.” At the time, there was no police communication officer (“PCO”) available at the Forestville Barrack to acknowledge appellant’s location. But Corporal Matthew Atkinson, the acting sergeant at the time, acknowledged it. Corporal Atkinson did not advise appellant that he was outside MSP’s jurisdictional limits.

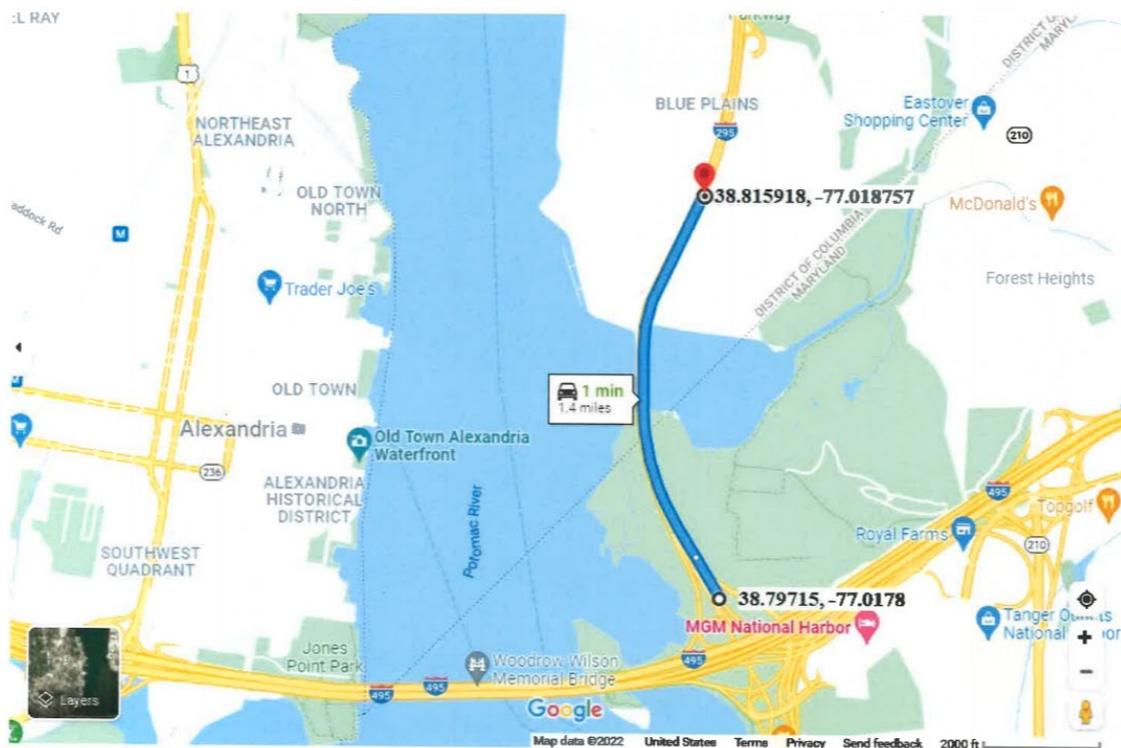
In addition, appellant used MSP’s messaging system to send a message to Trooper Brandon White, directing him to “take 295 towards DC” and informing him that appellant was “a mile past [the] Beltway.” Trooper White arrived on the scene to assist appellant, thinking that the stop was in Maryland.

Appellant conducted field sobriety tests and believed the driver to be under the influence of alcohol. He arrested the driver and arranged for someone to pick up her

children. Afterward, appellant transported the driver to the Forestville Barrack, where she was charged with various alcohol-related traffic offenses.²

The Charges Against Appellant

After the arrest, the driver filed a complaint against appellant for conducting the traffic stop outside the jurisdictional limits of MSP. During the internal investigation, MSP discovered that after ending his patrol shift, appellant accessed the computer-aided dispatch system (“CAD”) and changed the recorded location of the traffic stop in D.C. to “ANACOSTIA FWY, OXON HILL” (latitude 38.79715 and longitude -77.0178). This placed the stop in Prince George’s County, Maryland, about a mile and a half south of its actual location, as depicted by the white dot in the Google map below:



² The charges against the driver were eventually dropped.

Appellant completed an incident report in the record management system (“RMS”). He indicated that the incident occurred on “I-295 North I-495,” Oxon Hill in Prince George’s County, Maryland (latitude 38.799079 and longitude -77.019193).

In December 2020, Sergeant Kristopher Phillips interrogated appellant.³ Appellant told Sergeant Phillips that he was unaware that he conducted the traffic stop in D.C. until he was served with the notice of the driver’s complaint (“Notification of Complaint”). But MSP found this statement to be false.

In June 2021, MSP charged appellant with four violations of its rules, policy, and procedures. In Count 1 (False Report), MSP alleged that, after he arrested the driver, appellant “changed the traffic stop location to show the incident took place on Anacostia Freeway at I-295/I-495 in Prince George’s County, Maryland. That location was approximately 1.3 miles south of the actual stop location and was found to be a false report.”

In Count 2 (False Report), MSP alleged that during his interrogation in December 2020, appellant “stated that he did not know the stop of [the driver] was in Washington, D.C. until he was served with the Notification of Complaint, MSP 178. [Appellant’s] report was found to be [] false.”

In Count 3 (Unbecoming Conduct), MSP alleged that appellant arrested the driver “for DUI outside of the jurisdictional boundaries of the State of Maryland” and

³ Appellant was also interrogated in March 2021, but the interrogation recording could not be located.

“subsequently altered the GPS location of the stop to indicate that it occurred within Prince George’s County, Maryland. [Appellant’s] conduct brought himself and the Department into disrepute.”

In Count 4 (Failure to Follow Traffic Stop Procedure), MSP alleged that “[p]rior to the stop and before contact with [the driver], [appellant] failed to call out the location, description of the vehicle and number of occupants in violation of MSP traffic stop policy and procedures.”

The Board Hearing

The Board held a three-day hearing beginning on January 25, 2022.⁴ Appellant pleaded guilty to Count 4 and not guilty to the remaining counts. As to the two counts of false report (Counts 1 and 2), the MSP Personnel Directive 17.03.04(N)(5) provided that:

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 was designedly untrue, deceitful or made with the intent to deceive the person to whom it was directed.

As to the third count for unbecoming conduct, the MSP Personnel Directive 17.03.04(C)(1) provided that:

Every employee will conduct himself, both on and off-duty, in a manner which reflects most favorably on the MSP. The phrase “reflect most favorably” pertains to the perceptions of both citizens and other MSP

⁴ The Board convened in accordance with Maryland’s Law Enforcement Officers’ Bill of Rights (“LEOBR”). The LEOBR was repealed, effective July 1, 2022, but was in effect at the time of the hearing.

employees. Conduct unbecoming of an employee will include that which tends to bring the MSP into disrepute, discredits the employee as a representative of the MSP or tends to impair the operation or efficiency of the MSP or employee.

During the hearing, the Board listened to appellant’s testimony and that of other witnesses. It also admitted several items of evidence such as Google maps of the relevant area, the incident report, CAD detail reports, appellant’s in-car video of the traffic stop, and an audio recording of appellant’s interrogation. We summarize the evidence presented at the hearing that pertains to resolving the issues on appeal.

Maryland–D.C. Boundary Line

During the interrogation, Sergeant Phillips asked appellant about his familiarity with the D.C. boundary line. As for major venues around I-495 and I-295, appellant stated, “[T]here’s MGM Casino, there’s National Harbor. On the other side is Virginia, on the other side is DC[.]”

Appellant explained that during training, he was not given “strict guidance” on where the patrol area ends in relation to I-495. He was only trained to use the D.C. Water Plant as a landmark.⁵ “[I]f you reach by that wall, you are into DC.” He was told that “if you reach by DC Water, that’s the DC area, and a little past that is Exit 1, which you always take your turnaround” to return to Maryland. He had set an earlier landmark for himself “a good distance before the DC Water point,” and about a half mile before Exit 1. This earlier

⁵ From the interchange of I-495, the D.C. Water Plant is located north, beyond the bridge and west of I-295.

landmark was a dead-end ramp with concrete barriers. He stated that he did not even reach that point when he stopped the car, leading him to believe he was still in his patrol area.

During the hearing, appellant testified that he knew the D.C. Water Plant was in D.C. He explained that there was a “big building with a big wall” that he believed marked the boundary line. He stated that the traffic stop occurred “way before that.” He recounted what his field training officer, Trooper Brian Key, told him about the boundary line:

[APPELLANT]: By the DC Water building there’s a big building, there’s a big wall that you can see. When I’m traveling that way, I know that that building is not even in my sight and I’m way before that. So, I established that I’m in my patrol area because I was told, if you hit that big building—when I was trained by DC Water, my trainer did not say DC Water means this bridge, Oxon Creek, this little water body. By DC Water we meant the big building with the big wall of the DC Water Plant.

* * *

[PROSECUTOR]: And Trooper [Key] told you that it was the DC Water building that was the line?

[APPELLANT]: The DC Water Plant. . . . It’s a big building with a big wall that you can see from this side. Yes, this is what I remember from my training. I will never doubt my trainer for anything. He’s a very experienced guy, very thorough guy. But from my training and knowledge, I believe that he told me that once you hit that DC Water building, then when you go passed that, then you are in DC.

Trooper Key also trained Trooper Jonathan Louderback. Trooper Louderback testified that Trooper Key had told him that the boundary line was “just before” the ramp to Exit 1 at the D.C. Water Plant.

Trooper Key provided testimony that contradicted that of appellant and Trooper Louderback. He recalled an incident that occurred before he trained appellant. He had

responded to a crash on the bridge and had to wait for the Metropolitan Police Department to handle it. Based on the incident, he understood that the boundary line fell “roughly” over the water on I-295. He testified that he would never have instructed any of his trainees that the boundary line was elsewhere. He was also confident that he had taken appellant on a tour of I-495 and I-295 as part of appellant’s field training, although he did not have a specific recollection of it. He described “a water treatment plant which is a large fixture to the west of 295 immediately inside D.C. or inside D.C.” Regarding the significance of the plant, he was confident that he had explained to appellant that “this is where we turn around to get back to Maryland.”

In-Car Video

Appellant was shown a part of the in-car video of the traffic stop. The video displayed a “large amount of light” on the left side of appellant’s patrol vehicle. Appellant said the lights came from smaller buildings “that are part of the bigger structure” of the D.C. Water Plant.

When asked about appellant’s remark, “And that was like in Maryland?” and his pointing south toward Maryland, appellant explained that English is not his first language. Although he understands English well, sometimes he does not use the “proper words”:

I’m saying, “like in Maryland,” because [the driver] told me that—she gave me a DC license. She is coming from DC. I’m just asking a question whether DC, drink in DC before she left out to Maryland, or whatever she drank in Maryland. She said she drank in her aunt’s house. And later on, she told me it’s in Upper Marlboro. So, I’m just telling—it’s just extra talk that I’m asking. Why I said that, not because I think that we are not in Maryland anymore.

Appellant also denied “pointing anywhere. I’m grabbing my Stetson.” “If you look at the video, I’m still holding my Stetson, so it’s a coincidence that I’m grabbing my Stetson and you can see in the video that a car is going to pass. So every time there’s wind, or if I see traffic coming from [the] other side, it’s a natural thing that I hold my Stetson” as it had fallen off before.

Two Systems: Computer-Aided Dispatch (CAD) and Record Management System (RMS)

CAD logs the activities and actions related to an incident. For instance, when a trooper initiates a traffic stop, he would press the “traffic stop” button on his mobile data terminal (“MDT”). Upon pressing the button, CAD captures the trooper’s location using the GPS device in the patrol vehicle.

CAD can display the street or address of the trooper’s location, provided the location exists in the master street address guide (“MSAG”), a database containing known streets and addresses in Maryland. If the location matches a Maryland street or address in MSAG, CAD will record and display the corresponding street or address in the CAD detail. But if the location does not match a Maryland street or address in MSAG, CAD will leave a blank entry in the CAD detail, only recording and displaying the GPS coordinates.

The location displayed in CAD may differ from the location that a trooper communicates over the radio. To ensure the accuracy of the trooper’s location, a PCO is responsible for double-checking or “validating” the location displayed in CAD. The validation process serves two purposes: first, it ensures that additional emergency personnel are dispatched to the trooper’s location, and second, it supports the collection of

crime statistics and data. If the location displayed in CAD differs from the trooper’s broadcasted location, the PCO can change the location in CAD by selecting the closest Maryland street or address to the trooper’s broadcasted location.

When a trooper presses the “traffic stop” button, the information recorded is transferred or “spilled” into the RMS system, which automatically populates certain fields of an incident report. The incident report contains information about the incident, including its location and other relevant details.⁶ But if CAD cannot match the trooper’s location with a Maryland street or address in MSAG, the location information will not be transferred to the incident report. As a result, the “Incident Location” field in the report will remain blank.

When completing an incident report, a trooper must provide an incident location in the “Incident Location” field. If the field is empty or contains an incorrect location, the trooper can use the “change location” button to search for the corresponding street or address in a master location index (different from MSAG). If a trooper cannot find the location in the index, he can add it to the index.

Corporal Sabatino De Santis, the information technology instructor at MSP, explained how troopers should handle incidents on interstates that do not have fixed addresses. He trains troopers to use the integrated Google map to pinpoint the location of

⁶ The incident report also includes details about any officers or troopers who were present during the incident or otherwise involved; the category of the report; the types of relevant offenses; and information about vehicles, property, and individuals involved. Additionally, the report has a narrative section for the trooper to complete.

the incident. To accomplish this, he instructs troopers to click a button to add an address and enter the intersection nearest to the actual location. The map will then suggest addresses or locations that are approximate to it, usually within a couple hundred feet. The trooper can then select the desired location, and the application will generate GPS coordinates. The application will prefill the written part of the record with the location information. Troopers are instructed to ensure the GPS coordinates are as close to the actual location as possible. Once the trooper is done, they can save the information.

In CAD, only Maryland streets and addresses indexed in MSAG can be recorded and validated. But when it comes to validating a location in the incident report in RMS, there are no limitations on Maryland addresses. The trooper can open a map in RMS, pinpoint any location, including outside Maryland, and insert that location into the incident report. For instance, a trooper can select a location in D.C. to validate the location of the incident.

Appellant received training for using RMS. He also received training as a PCO, which permitted him to modify information recorded by CAD.

Changing the Location of the Traffic Stop

On June 14, 2020, after completing his patrol shift, appellant began his overtime shift as a PCO at the Forestville Barrack. At 4:25 a.m., appellant closed the service call for the DUI incident in CAD. At 4:52 a.m., appellant opened the CAD incident to validate the location of the traffic stop. The CAD detail showed the coordinates first recorded when appellant activated the traffic stop button. Because the coordinates were outside Maryland,

the detail did not display a corresponding street or address. Appellant changed the location of the stop to Anacostia Freeway in Oxon Hill as it was the closest Maryland location indexed in MSAG to where the traffic stop occurred. CAD displayed the modification performed by appellant as follows:

2020-00265515 location changed from 38.8159183166667 -77.0187574333333 on area to ANACOSTIA FWY, OXON HILL 38.79715 -77.0178 on area 610,61-0.

Appellant indicated that he could have left the location unvalidated in CAD. Indeed, the prosecution presented CAD reports from unrelated traffic stops made by appellant on June 12 and 15, 2020. These reports recorded locations that were not valid in MSAG and remained unvalidated in CAD.

The location information for the traffic stop was not transferred from CAD to RMS because the original coordinates were not in Maryland. Appellant later filled in the incident report with a location on Anacostia Freeway (I-295) in Oxon Hill, Prince George's County, Maryland, as follows:

Incident Location				
Address	City	State	ZIP	Country
I-295 North I-495 Highway	Oxon Hill	Maryland	20748	United States of America
County:	Township of Occurrence	Clery Location		
Prince Georges				
Latitude	Longitude	Beat	Sub-Beat	
38.799079	-77.019193			
Additional Locations				
Supp #	Address			
0	I-95 Oxon Hill, MD 20745			
Type	Date of Info	Comments		
Arrest Location	06/14/2020			

Appellant admitted being the only one who prepared the report but could not remember how he selected the Maryland coordinates when filling in the field. The following exchange ensued:

[CHAIRPERSON]: The question was how did you choose [the location in] RMS. The [selected location in] CAD has already been established.

[APPELLANT]: CAD has already been established. You find RMS. Like I said, my main concern is all attachment and the narrative. All these other things, quick, quick, quick. You click on—I never did it like this, the way we did it in this motion. I don't know. I've done it several ways though. I will usually type the area. And then just like in CAD, you have several options in RMS. Everybody has typed something in it. Southbound 295, 495. Either (indiscernible) whichever way description (indiscernible), whatever. One way of that. Second way, manually doing it. Then we're clicking on the map and then clicking on thinking where you are. And then once you click on it, it will pick up GPS. There are several ways. Which way we did it, no one told us is as much importance. I don't know which one I did it. (indiscernible) two prosecutors here.

[PROSECUTOR]: You never clicked on the map to choose the location?

[APPELLANT]: I don't remember. I'm telling you there are several different ways. Do not put words in my mouth.

[PROSECUTOR]: I'm asking you.

[APPELLANT]: I'm telling you that a year-and-a-half, two years ago when this happened, when at that time I am PCO, I am running the busiest barrack in the entire State of Maryland, you think I am writing a book on this and I have all the freedom to do all this?

[PROSECUTOR]: I'm just asking you, did—

[APPELLANT]: You—I don't even know where you're going with this, sir.

[PROSECUTOR]: I am—

[APPELLANT]: You have been very disrespectful.

[PROSECUTOR]: I'm just asking you, did you tap the screen?

[APPELLANT]: I don't remember how I did it. And it was never a big deal. In RMS when people write reports, this is not the main concern, where you click it, how you do it.

The Board's Decision

During his closing argument, appellant provided several reasons to support his belief that he was in Maryland during the traffic stop. He emphasized his impeccable record as a trooper and argued that it should count for something and afford him the benefit of the doubt. He also explained that the evidence demonstrated that he did not know he was in D.C. at the time of the traffic stop. No sign indicated that he was entering D.C., and he had activated the traffic stop button on his MDT, which created a geolocation record. He also broadcasted his location via radio and sent a message to his backup trooper to head toward D.C. Neither Trooper White nor Corporal Atkinson had advised him that he was in D.C. Moreover, both he and Trooper Louderback testified that Trooper Key had trained them that the big building of the D.C. Water Plant was the boundary between D.C. and Maryland. He argued that validating the incident location in CAD did not demonstrate an intent to deceive; he was trained to select the nearest location for where the stop occurred.

The Board found appellant guilty of all three charges after the hearing. In March 2022, the Board issued a report documenting its findings and discussions. The report listed 56 "Findings of Fact" and summarized the arguments presented by both parties. For each charge, the Board presented its conclusions as follows:

The Board unanimously found [appellant] guilty of Charge #1-False Report. The Board found, by a preponderance of the evidence, that [appellant] knew

he was outside of the jurisdiction of the State of Maryland when he initiated a traffic stop of a vehicle operated by [the driver]. [Appellant] falsely reported his location in the CAD software system to show the traffic stop location took place on Anacostia Freeway at Interstate 295 and Interstate 495 in Prince George’s County, Maryland. This location was approximately 1.3 miles south of the actual stop location.

The Board unanimously found [appellant] guilty of Charge #2-False Report. The Board found, by a preponderance of the evidence, that [appellant] knew prior to being served with the Notification of Complaint, MSP 178, that his traffic stop of [the driver] took place inside the jurisdiction of the District of Columbia. On December 4, 2020, [appellant] falsely reported, during his interrogation, he did not know until served with the Notification of Complaint, MSP 178.

The Board unanimously found [appellant] guilty of Charge #3-Unbecoming Conduct on Duty. The Board found, by a preponderance of evidence, that [appellant] knew he was outside of the jurisdiction of the State of Maryland when he initiated a traffic stop of a vehicle operated by [the driver]. [Appellant] took enforcement action outside the boundaries of the State of Maryland when not authorized to which brought himself and the Department into disrepute.

The Board recommended that appellant be terminated from employment, and the Superintendent agreed. Following this, appellant petitioned for judicial review, and the circuit court affirmed the Board’s decision. Appellant noted a timely appeal.

STANDARD OF REVIEW

“The standard of review in a LEOBR case ‘is that generally applicable to administrative appeals.’” *Baltimore Police Dep’t v. Antonin*, 237 Md. App. 348, 359 (2018) (citations omitted). “We are tasked with determining whether the administrative agency, as opposed to the circuit court, erred.” *Id.* (citations omitted). Accordingly, “we bypass the judgment of the circuit court and look directly at the administrative decision.” *Id.* (citations omitted).

Our role in reviewing an agency decision is narrow. *Bd. of Physician Quality Assurance v. Banks*, 354 Md. 59, 67 (1999). “[W]e are limited to determining if there is substantial evidence in the record as a whole to support the agency’s finding and conclusions, and to determine if the administrative decision is premised upon an erroneous conclusion of law.” *Antonin*, 237 Md. App. at 359 (citations omitted). We “must be able to discern from the record the facts found, the law applied and the relationship between the two.” *Mombee TLC, Inc. v. Mayor and City Council of Baltimore*, 165 Md. App. 42, 55 (2005) (citations omitted). Therefore, the agency must “resolve all significant conflicts in the evidence and then chronicle, in the record, full, complete and detailed findings of fact and conclusions of law.” *Id.* (citation omitted). We “may not uphold the agency order unless it is sustainable on the agency’s findings and for the reason stated by the agency.” *Blackburn v. Bd. of Liquor License Comm’rs for Baltimore City*, 130 Md. App. 614, 624 (2000) (citation omitted).

When reviewing findings of fact, we apply the “substantial evidence test” and decide whether a “reasoning mind reasonably could have reached the factual conclusion the agency reached.” *Baltimore Police Dep’t v. Ellsworth*, 211 Md. App. 198, 207 (2013) (citations omitted). We defer to the agency’s “fact-finding and drawing of inferences if they are supported by the record.” *Id.* (citations omitted). “When reviewing factual issues, we must review the agency’s decision in the light most favorable to the agency since its decision is prima facie correct and carries with it the presumption of validity.” *Bd. of*

License Comm'rs for Prince George's Cnty. v. Global Exp. Money Ords., Inc., 168 Md. App. 339, 345 (2006).

The Supreme Court of Maryland in *Commissioner, Baltimore City Police Department v. Cason*, 34 Md. App. 487 (1977) summarized the scope of judicial review of an agency's decision as follows:

A reviewing court may, and should, examine any inference, drawn by an agency, of the existence of a fact not shown by direct proof, to see if that inference reasonably follows from other facts which are shown by direct proof. If it does, even though the agency might reasonably have drawn a different inference, the court has no power to disagree with the fact so inferred.

A reviewing court may, and should, examine any conclusion reached by an agency, to see whether reasoning minds could reasonably reach that conclusion from facts in the record before the agency, by direct proof, or by permissible inference. If the conclusion could be so reached, then it is based upon substantial evidence, and the court has no power to reject that conclusion.

A reviewing court may, and should, examine facts found by an agency, to see if there was evidence to support each fact found. If there was evidence of the fact in the record before the agency, no matter how conflicting, or how questionable the credibility of the source of the evidence, the court has no power to substitute its assessment of credibility for that made by the agency, and by doing so, reject the fact.

Id. at 508.

DISCUSSION

To reach its conclusion, the Board had to determine two things: (a) whether appellant knew he was in D.C. at the time of the traffic stop, and (b) whether his reports about it were intentionally false, deceitful, or made to deceive. Appellant claims that the

Board disregarded ample evidence of his innocence, drew irrational conclusions, and acted arbitrarily in reaching its conclusions.⁷

MSP responds that substantial evidence supports the Board’s conclusion that appellant was aware he was in D.C. during the traffic stop. Trooper Key had informed him about the boundary line’s location, and appellant indicated that the D.C. Plant was in D.C. The in-car video showed appellant pointing south toward Maryland while asking the driver if she had consumed alcohol in Maryland. MSP further asserts that substantial evidence supported the Board’s conclusion that appellant falsely reported the stop’s location when he changed it in CAD and told the interrogator that he did not know that the stop had occurred in D.C. until he was served with the Notification of Complaint.

⁷ The arguments section of appellant’s brief is divided into two main parts. One part challenges specific findings in the Board’s report. The other part consists of two tables. In one of the tables, appellant compares the “overwhelming evidence” of his “consciousness of innocence, documented public conduct, and provable integrity” against the Board’s findings of his deceit. The points in this table overlap with those made in the other part of the arguments section that we address in the discussion.

In the other table, appellant claims that he acted appropriately while MSP brought itself into disrepute. Among other things, he claims that MSP “likely deleted” the recording of his second interrogation, “which was exculpatory”; the investigators wrote “a provable false and misleading report” about the interrogation; MSP suspended him before the hearing, which resulted in the entry of a *nolle prosequi* of about 140 DUI cases. However, appellant does not explain how MSP’s alleged conduct rendered insubstantial the evidence supporting the Board’s conclusions about *his* conduct. Thus, we decline to address these points on appeal. *See* Md. Rule 8-504(a)(6) (a brief shall include “[a]rgument in support of the party’s position on each issue.”); *Honeycutt v. Honeycutt*, 150 Md. App. 604, 618 (2003) (declining to address argument where party failed adequately to brief it); *Elecs. Store, Inc. v. Cellco P’ship*, 127 Md. App. 385, 405 (1999) (explaining that it is not this Court’s responsibility to attempt to fashion legal theories to support an appellant’s sweeping claims).

A. There Was Substantial Evidence That Appellant Knew He Was in D.C. at the Time of the Stop.

We have reviewed the evidence presented at the hearing, and we determine that there was substantial evidence to support the Board’s conclusion that appellant was aware of being in D.C. at the time of the traffic stop. For clarity, we have divided this section of the discussion into three subsections based on (i) Trooper Key’s testimony, (ii) the in-car video, and (iii) the interrogation.

i. Trooper Key’s Testimony

A reasoning mind could conclude that Trooper Key instructed appellant during field training that the D.C. boundary line fell approximately on I-295 on the bridge over the water. Trooper Key testified that he based his knowledge of the boundary line on his experience responding to a call on the bridge, where the Metropolitan Police Department took over the investigation. He also stated that he would not have told his trainees that the boundary line was elsewhere. The Board found Trooper Key’s testimony “reliable and credible.”

Appellant argues that Trooper Key’s testimony lacks reliability and credibility. According to appellant and Trooper Louderback, Trooper Key trained them that the boundary line was elsewhere. And Trooper Key indicated that he had no reason to think that appellant would misrepresent his training. He also points out that Trooper Key could not recall giving appellant a tour of the interstates during training, nor could he accurately identify the boundary line, even after being shown a Google map during the hearing. Appellant recognizes that the Board makes credibility determinations but maintains that

the Board ignored this evidence in assessing Trooper Key’s credibility. Thus, the Board arbitrarily determined that Trooper Key’s testimony was reliable and credible.

Even if we accept that other evidence in the record might cause a fact-finder to doubt the reliability and credibility of Trooper Key’s testimony, appellant would not be entitled to reversal on this basis. The Supreme Court of Maryland explained that a reviewing court cannot substitute its assessment of credibility for that of the agency:

(A)ssume that in an agency hearing five witnesses testify on one side of a proposition, and one witness testifies on the other. In its findings, the agency states that it does not doubt the credibility of any of the witnesses, but that it is relying on the testimony of the one witness and disregarding that of the five. Under the substantial evidence rule, a court would be required to uphold such findings.

Annapolis v. Annapolis Waterfront Co., 284 Md. 383, 399 (1979) (quoting Leonard E. Cohen, *Some Aspects of Maryland Administrative Law*, 24 Md. L. Rev. 1, 38 (1964)); *see, e.g., Terranova v. Bd. of Trs. of Fire and Police Emps. Ret. Sys. of Baltimore City*, 81 Md. App. 1, 11–12 (1989) (“The fact that the opinions of three doctors go one way and the opinion of a fourth doctor another does not make the report of that fourth insubstantial, especially when, as here, credibility of the respective physicians has played an important role in the Panel’s decision.”).

Our decision in *Commissioner, Baltimore City Police Department v. Cason*, 34 Md. App. 487 (1977) is instructive. There, Sergeant Cason was charged with violations of the department’s rules and regulations for accepting bribe money from two individuals, Milton Roye and Sergeant Spangler. *Id.* at 488–89. Roye and Spangler essentially testified that they had given bribe money to Cason, but Cason denied receiving any money from them.

Id. at 493–94. There was evidence that cast doubt on Roye’s and Spangler’s credibility. Roye “was an admitted bribe-giver, a law violator, and a convicted criminal.” *Id.* at 493. Spangler “was an admitted bribe-taker, and an admitted liar.” *Id.* The hearing board considered Roye and Spangler credible witnesses and concluded that Cason was guilty. *See id.* at 491. The police department terminated Cason’s employment based on the board’s recommendation, which the police commissioner approved. *Id.* Cason then brought the matter up to the circuit court. *Id.*

The circuit court evaluated whether the findings of fact of the hearing board were supported by substantial evidence. *Id.* at 496. The court believed that the only evidence against Cason was Spangler’s uncorroborated testimony. *Id.* at 497. The court raised doubts about the credibility of Spangler’s testimony, as he had previously given false statements to the police. *Id.* Spangler’s testimony was also vague and lacked specific dates and important details. *Id.* The court questioned whether Spangler’s testimony was enough to discredit Sergeant Cason’s denial, a police officer with 19 years of unblemished service, who had received 29 commendations and was highly respected by his colleagues. *Id.* It concluded that the evidence was less than substantial and reversed the police commissioner’s order. *Id.* at 494, 497.

We reversed the court’s judgment, explaining that it was “quite apparent that the trial judge found Spangler’s evidence to be ‘less than substantial’ because he believed Sgt. Cason’s denial, and did not believe Spangler.” *Id.* at 497–98, 509. In summarizing the scope of judicial review, *supra*, we quoted from other cases by our Supreme Court

explaining that a reviewing court “may not substitute its judgment on the question whether the inference drawn is the right one or whether a different inference would be better supported. The test is reasonableness, not rightness.” *Id.* at 503 (quoting *Snowden v. Mayor & City Council of Baltimore*, 224 Md. 443, 448 (1961)). In reversing the court’s judgment, we explained:

To believe Roye and Spangler was to disbelieve Sgt. Cason. To believe Sgt. Cason was to disbelieve Roye and Spangler. The issue was credibility, and nothing more. Direct evidence of an ultimate fact may be true, or it may be untrue, but it surely cannot be called insubstantial.

It was the responsibility of the Trial Board, and solely of the Trial Board, to find the true facts by assessing the credibility of the conflicting evidence on those facts.

Id. at 509.

We apply the principles and reasoning in *Cason* to this case. Trooper Key testified, in effect, that he trained appellant and Trooper Louderback that the boundary line was approximately on I-295 over the water. In contrast, appellant and Trooper Louderback testified that Trooper Key told them that the boundary line was farther north at the large building of the D.C. Water Plant near the ramp to Exit 1. This created a conflict in their testimonies, where to believe Trooper Key would mean disbelieving appellant and Trooper Louderback, and vice versa. The issue of Trooper Key’s credibility was solely the Board’s responsibility, and the conflicting evidence did not render his testimony insubstantial. A reasoning mind could conclude that Trooper Key trained appellant that the boundary line was approximately on I-295 over the water.

ii. In-Car Video

Based on the in-car video evidence, a reasoning mind could also conclude that appellant was aware of being in D.C. during the traffic stop. The Board reviewed the video several times and described certain aspects in its report:

The Board observed a large and well illuminated complex directly to the left of [appellant’s] vehicle prior to him activating his emergency equipment. There were numerous buildings and parking lots that were illuminated by large lights illuminating the area. This complex was large and continued to be on the left side of the roadway as [appellant] initiated a pace on the vehicle in front of him. *The Board was made aware the complex was the District of Columbia Water Plant.* [Appellant] activated his emergency equipment and initiated a traffic stop on the vehicle, who pulled to the right shoulder of the roadway. The traffic stop occurred approximately seven tenths of a mile inside the boundaries of the District of Columbia. *[Appellant] testified in front of the Board that he knew the District of Columbia Water Plant was located in the District of Columbia.*

[Appellant] was conversing with the operator of the vehicle as he was attempting to determine if she had consumed alcoholic beverages prior to operating the vehicle. During the conversation, [appellant] asked the operator, if she had consumed the alcoholic beverages, *“like in Maryland?”* [Appellant] turned his body to face south, raised his right hand, and pointed south toward Maryland when he asked this question of the operator. [Appellant] was asked in his interrogation by Sergeant Phillips . . . why did he point toward Maryland? [Appellant] denied pointing toward Maryland while conversing with the operator of the vehicle and responded he was reaching for his Stetson to ensure it didn’t blow off of his head. [Appellant] was asked again this question when he testified in front of the Board. [Appellant] gave the same response as before. The Board felt [appellant] clearly turned his body to face south, raised his right hand and pointed toward the State of Maryland. The Board did observe other instances during the traffic stop when [appellant] would place his hand on his Stetson or the strap of the Stetson to secure it.

(Emphasis added). We address appellant’s concerns about the highlighted portions of the report in the subsections below.

a. The Complex of the D.C. Water Plant

Appellant claims that the Board’s statement, “The Board was made aware the complex was the District of Columbia Water Plant,” must have been based on information it received outside the record. This is because no witness had established where the D.C. Water Plant begins parallel to I-295. As far as we understand, appellant is arguing that there was insubstantial evidence to support the finding that the complex shown in the video was the D.C. Water Plant.

During the hearing, Trooper Key testified that the plant was located west of I-295, immediately inside D.C. Appellant confirmed that the D.C. Water Plant is “a whole set of buildings.” When shown the in-car video, appellant described the structure as having lights and smaller buildings that are part of the larger D.C. Water Plant. And the prosecution presented a Google map that identified the D.C. Water Plant in the general location described by Trooper Key and appellant. There was substantial evidence for the Board to conclude that the complex seen on the video was, in fact, the D.C. Water Plant.

b. The D.C. Water Plant Was in D.C.

Appellant acknowledges that he testified knowing that the D.C. Water Plant was in D.C. But he was referring to the “big building with the big wall of the DC Water Plant” located northwest of the traffic stop, where he thought the boundary was. Appellant claims that the Board conflated the distinction between the “D.C. Water Plant” and the “big building with the big wall of the D.C. Water Plant.”

The Board’s fact findings, however, revealed that it recognized the distinction. It recounted appellant’s explanation as follows:

- “[A]t the time of the traffic stop on June 14, 2020, [appellant] knew the District of Columbia Water Plant was located in the District of Columbia.”
- During the interrogation, appellant said that he “was trained that once you passed a certain landmark was when you entered into the District of Columbia. [He] stated he was told a wall, which is part of *one of the big buildings* of the District of Columbia Plant, was the boundary between Maryland and the District of Columbia.”
- “[Appellant] stated he was informed by TFC Key the patrol area boundary . . . was a *large* District of Columbia Water Plant *building* that had a large wall visible from the roadway. [Appellant] stated other District of Columbia water buildings were at this location but he was told that the *large building was where the patrol area ended*. [Appellant] stated if you passed that *large building* and wall then you were then inside the District of Columbia.”

(Emphasis added). Recognizing the distinction, the Board accepted the testimony that appellant knew the plant was in D.C. *See Ellsworth*, 211 Md. App. at 207 (we defer to the agency’s “fact-finding and drawing of inferences if they are supported by the record”); *Cason*, 34 Md. App. at 508.

c. “And that was like in Maryland?”

Appellant contends that the Board gave too much weight to his using the phrase “like in Maryland” and ignored that he had asked his backup to drive “towards DC.” He explains that English is not his first language, and his remark proves nothing about his intentions or whether he knew he was in D.C. at the time of the stop.

The Board did not consider the remark “like in Maryland” in isolation; it also considered his pointing toward Maryland. The Board recognized that appellant explained that he tried to keep the driver engaged and sometimes used incorrect words in English as

English is not his first language. The Board also recognized that appellant sent a message to troopers in the area, informing them that he was on a traffic stop at northbound Anacostia Freeway, one mile from I-495. As the fact-finder, the Board assessed the evidence and weighed it appropriately with other pertinent evidence. *See Terranova*, 81 Md. App. at 13 (explaining that the weighing of evidence is for the finder of fact); *Cason*, 34 Md. App. at 508.

iii. Interrogation: “On the Other Side is D.C.”

During the interrogation, Sergeant Phillips asked appellant about the major venues around I-295 and I-495. In response, appellant mentioned the MGM Casino and National Harbor. “On the other side is Virginia, *on the other side is DC[.]*” (Emphasis added). Upon reviewing the Google map, the Board concluded that appellant was referring to the bridge when he said, “on the other side is DC[.]”

Appellant says the Board’s interpretation makes no sense; it “makes the most sense” that appellant was “talking about his patrol area. In one direction, his patrol area is bordered by Virginia. In another direction his patrol area is bordered by D.C.” In any event, appellant doubts the relevance of the interrogation question and response. Simply knowing that the MGM Casino and National Harbor are near I-495 and I-295 does not prove that appellant knew about the unmarked boundary between Maryland and D.C. on I-295. According to appellant, the Board’s use of his response only highlights how weak the evidence against him was.

The Board did not explicitly find that appellant knew the boundary line fell just before the bridge, based on his statement, “on the other side is DC[.]” The Board inferred that he understood that D.C. was on the other side of the bridge. This inference was based on the Board’s review of the Google map. But, as MSP acknowledged at oral argument, the map was not shown to appellant when he answered the interrogator’s question. This makes it unclear how the Board deduced that appellant was referring to the bridge when he said, “on the other side is DC[.]” Despite this, we are not convinced that the Board’s error, if any, warrants reversal. *See Dep’t of Econ. & Emp. Dev. v. Propper*, 108 Md. App. 595, 607 (1996) (“[T]he existence of an unsupported or otherwise erroneous finding of fact does not automatically warrant a reversal.”). This is because appellant testified that he thought D.C. was northwards from where the traffic stop occurred and that he knew the D.C. Water Plant was in D.C.; those locations were beyond the bridge over a body of water. Furthermore, the finding was one of others relied on by the Board in reaching its overall conclusion that appellant knew he was in D.C. at the time of the stop. As discussed *supra*, those other findings were based on substantial evidence to support the Board’s conclusion.

B. There Was Substantial Evidence That Appellant Made False Reports.

According to the report, appellant closed the incident in CAD at 4:25 a.m. Later, at 4:52 a.m., while serving as PCO, appellant reopened CAD and validated the traffic stop location approximately 1.3 miles south of the actual location. The Board found it questionable as to why appellant would remember to open the incident when he was occupied with his PCO duties:

[Appellant] testified he is usually very busy with telephone calls from citizens, assisting troopers that are working and handling any citizen concerns that arrive at the Barrack. [Appellant] began the narrative for the [incident report], which was his second arrest during the prior shift, on June 14, 2020, at 0551 hours. [Appellant] was very busy handling PCO duties and completing his reports from his prior shift. The Prosecution entered into evidence CAD incident reports where the address had not been validated by the PCO. The Board questioned why [appellant] would remember to reopen the incident card in CAD twenty-seven minutes after closing it. [He] was trained incident cards in CAD needed to be validated but the card had already been closed and [he] was very busy.

[Appellant] was asked how the latitude and longitude coordinates were entered on his incident report in the RMS software. [Appellant] stated he could not remember how it was entered. The latitude and longitude entered into the RMS was [a] different latitude and longitude that was entered into [the] CAD software. The RMS software allows the user to pick a more exact location than the CAD software. The latitude and longitude selected by [appellant] was approximately 1.3 miles south of the original location of the traffic stop and placed the traffic stop in Maryland and not in the District of Columbia where it actually occurred. The Board believed [appellant] should have selected a more accurate location.

Appellant claims that the Board used his compliance with training against him, and it speculated about appellant's compliance as evidence of scienter. He suggests that he chose the best location suggested by RMS, and even if he could have chosen a more accurate location, the error amounted to negligence, not a false report. Appellant adds that the Board's reference to other unvalidated CAD reports is a "red herring" because there was no evidence that he was working as the PCO on any occasion of an unvalidated report. MSP responds that the Board did not find appellant's explanations credible, and the Board reasonably concluded that appellant changed the traffic stop location to make it appear as if it took place in Maryland.

Based on the evidence, a reasoning mind could conclude that appellant had changed the location of the traffic stop from D.C. to Prince George’s County, Maryland, intending to deceive. The Board did not find appellant’s explanation for changing the location in CAD credible, given its underlying determination that he knew he was in D.C. at the time of the stop. *See Propper*, 108 Md. App. at 605 (explaining that credibility determinations are the sole province of the agency; thus, the hearing examiner’s credibility determination is conclusive); *Cason*, 34 Md. App. at 508–09. The Board’s comment that appellant should have chosen a more accurate location in RMS is supported by Corporal De Santis’s explanation that a trooper can pinpoint the stop’s location using the system’s integrated map, even in areas outside Maryland. It was reasonable for the Board to consider appellant’s selection of the location in RMS and other unvalidated CAD reports as evidence that he changed the first recorded location in CAD with the intent to deceive.

For the reasons stated, substantial evidence supported the Board’s conclusions that appellant knew the traffic stop occurred outside Maryland and made false reports about it.

**JUDGMENT OF THE CIRCUIT COURT
FOR ANNE ARUNDEL COUNTY
AFFIRMED; COSTS TO BE PAID BY
APPELLANT.**