

**UNREPORTED**  
**IN THE COURT OF SPECIAL APPEALS**  
**OF MARYLAND**

No. 2139

September Term, 2013

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SHELLEY WHITE

v.

ANNAPOLIS POLICE DEPARTMENT, et al.

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Meredith,  
Leahy,  
Sonner, Andrew L.  
(Retired, Specially Assigned),

JJ.

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Opinion by Meredith, J.

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Filed: June 30, 2015

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

In February 2013, Shelley White, appellant, was terminated from his employment as an officer with the Annapolis Police Department, appellee, as a consequence of a complaint that was filed by an Annapolis resident. In response to the complaint filed by the resident, the Annapolis Police Department conducted an investigation and eventually filed disciplinary charges against Ofc. White. The charges accused him, in part, of filing a false statement regarding the incident, and improperly responding to the complaint by preparing to file criminal charges against the resident and also by conspiring to have another officer provide untrue statements regarding the incident. An administrative hearing board held a hearing on the charges, and recommended to the Police Chief that appellant's employment with the Annapolis Police Department be terminated. After his termination, Ofc. White filed a petition for judicial review in the Circuit Court for Anne Arundel County, and the circuit court affirmed the appellee's decision. In this appeal from the circuit court's ruling upholding the decision of the police department, appellant challenges evidentiary issues that arose during the hearing before the administrative hearing board.

### **QUESTIONS PRESENTED**

Appellant submitted the following questions for our review:

1. Did the administrative hearing board err as a matter of law by admitting video surveillance and a key card access report without a showing of sufficient indicia of reliability, which is the required foundation for administrative hearings?
2. Did the administrative board err as a matter of law by admitting a business record certification of the video surveillance, without any prior disclosure of the certifier, or the certification itself, to the Petitioner?
3. Without the video surveillance or key card data, is the record sufficient to sustain the verdict?

We answer the first two questions in the negative, and we answer the third question in the affirmative. We will affirm the judgment of the Circuit Court for Anne Arundel County.

### **FACTS & PROCEDURAL HISTORY**

On the morning of July 9, 2012, appellant, a police officer with the Annapolis Police Department, was on duty as the receptionist at the police station. Matt Sakalas, a local resident, came to the station that day to pick up a copy of an accident report. According to Sakalas, he was treated poorly by appellant. There were several witnesses to the incident, including local resident Michelle King, Corporal Duane Daniels of the Annapolis Police Department, and Annapolis Police Department Records Specialist Michelle Galloway.

Sakalas had gone to the Annapolis Police Department that day to obtain a copy of an accident report relative to an incident in which his boat trailer had been damaged by a city trash truck. The evidence showed that Sakalas entered the building and encountered appellant at the reception station in the lobby. Sakalas testified that, without provocation or justification, appellant was hostile, shoved his badge into Sakalas's face, and threatened to arrest him.

After the encounter on July 9, Sakalas filed a complaint with the Annapolis Police Department regarding appellant's conduct. An investigation was conducted by Sergeant Pam Johnson. As part of the investigation, Johnson and appellant exchanged a series of e-mails about the incident. In the e-mails, appellant provided a brief account of his version of the incident. During this exchange, Johnson became concerned that appellant might be planning

to retaliate against Sakalas by filing criminal charges against him. On July 23, 2012, appellant submitted a five-page report to Johnson about the incident, and he identified Corporal Daniels and Michelle Galloway as witnesses. At some point during Johnson's investigation, she determined that the matter was more serious than she had initially appreciated, and the case was reassigned to Sergeant Beth Nelson of the Internal Affairs Unit.

On July 31, 2013, Sgt. Nelson interviewed appellant. During the interview, appellant stated for the first time during the investigation that Officer Carl Bouie had also witnessed the encounter and would corroborate his version of events. When Sgt. Nelson interviewed Ofc. Bouie the following day, Ofc. Bouie informed her that he was present during the incident, but he was initially unable to remember the details or give a statement about what he saw. But Ofc. Bouie later told Sgt. Nelson that Sakalas was hostile and aggressive, and that appellant had not acted inappropriately.

After the interview with Ofc. Bouie, Sgt. Nelson interviewed Galloway, Daniels, Sakalas, and King, and all of those witnesses denied seeing Ofc. Bouie at the scene of the encounter. In order to follow up on this discrepancy, Sgt. Nelson obtained copies of video surveillance footage of the lobby area, as well as video recordings of each entrance to the building. The video from the lobby showed much of the altercation between Sakalas and appellant, and allowed Sgt. Nelson to confirm that King, Galloway, and Daniels were present during the incident. The video footage from elsewhere in the police station revealed that Ofc. Bouie had left the station well before the incident began and did not return until well

after the altercation had ended. Sgt. Nelson followed up on her suspicion that Ofc. Bouie did not witness the incident by reviewing a copy of the keycard access logs for the police station for July 2012. These logs indicated that Ofc. Bouie's keycard had not been swiped for entering the station as of the time of the incident. Sgt. Nelson also obtained dispatch records indicating that Ofc. Bouie had been responding to a traffic accident less than ten minutes before the incident at the Annapolis Police Department involving Sakalas and appellant began.

As a result of the investigation, six administrative disciplinary charges were filed against appellant. The charges were based on the altercation with Sakalas, appellant's apparent plan to retaliate against Sakalas, and appellant's suspicious statement to Sgt. Nelson that Ofc. Bouie had witnessed the incident. The three charges which are the focus of this appeal charged him with the following misconduct:

**Charge #3**

**Violation of General Order M.1, Section 1, Subsection H to wit:**

False Reports: Members shall not submit any type of false, inaccurate, or misleading reports/statements.

**Specifications:** On July 31, 2012, you were interviewed by Sergeant Beth Nelson who was charged with investigating the allegation involving your conduct and interaction with a private citizen, Mr. Matt Sakalas, which occurred at the Annapolis Police Department Headquarters building on July 9, 2012. During the interview, you stated to Sergeant Nelson that Mr. Sakalas was "very arrogant and very upset." This information was contradicted by Mr. Sakalas, private citizen Chandra King, Corporal Duane Daniels, and Annapolis Police Department civilian Michelle Galloway, none of who described Mr. Sakalas as arrogant or his behavior as improper. Furthermore, in the interview, you stated that the interaction between you and Mr. Sakalas was observed by Officer Carl Bouie, an officer with the Annapolis Police Department. You

stated that Officer Bouie “sat there in amazement and watched the entire event.” The investigation determined that Officer Bouie was not present during your exchange with Mr. Sakalas and was not a witness to the incident or an involved party. The investigation determined that you provided false information to Sergeant Nelson in that 1) your statement describing Mr. Sakalas as being arrogant in behavior was false; and/or 2) Officer Bouie was not present and did not witness the interaction between you and Mr. Sakalas.

\* \* \*

#### **Charge #4**

##### **Violation of General Order M.1, Section 1, Subsection B to wit:**

Conduct Unbecoming an Officer: Any breach of the peace, neglect of duty, misconduct or any conduct on the part of any member of the Department, either within or without the City of Annapolis, which tends to undermine the good order, efficiency or discipline of the Department, or which reflects discredit upon the Department or any member thereof, or which is prejudicial to the efficiency and discipline of the Department, even though these offenses may not be specifically enumerated or laid down shall be considered conduct unbecoming a member of the Police Department of the City of Annapolis and subject to disciplinary act by the Chief of Police.

**Specifications:** On July 9, 2012, at approximately 9:50 a.m. a citizen, later identified as Matt Sakalas, contacted the Annapolis Police Department by telephone and spoke to you about obtaining a copy of an accident report. At approximately 10:10 that same day, upon arriving at the Annapolis Police Department Headquarters, Mr. Sakalas spoke with you and requested to speak to Corporal Duane Daniels. You became discourteous and hostile to Mr. Sakalas. You began yelling at him and you raised your police credentials from around your neck into the face of Mr. Sakalas while threatening to arrest Mr. Sakalas. These actions on your part occurred in the presence of Ms. Chandra King, a citizen who was at the Headquarters Building on another unrelated police matter and was witnessed by Corporal Duane Daniels of the Annapolis Police Department and Ms. Michelle Galloway, a civilian employee of the Annapolis Police Department. You failed to write a report or in anyway [sic], memorialize your interaction with Mr. Sakalas. Subsequently, you learned that Mr. Sakalas had filed a formal complaint with the Police Department referencing your interaction with him. On July 13, 2012, you authored an e-mail to Sergeant Johnson attempting to gather Mr. Sakalas’ personal information, allegedly to file criminal charges against him. Your behavior, by

attempting to gather personal information on Mr. Sakalas in order to file criminal charges against him, only after becoming aware that Mr. Sakalas had filed a formal complaint against you, is improper, retaliatory, and conduct unbecoming a police officer with the Annapolis Police Department.

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**Charge #6**

**Violation of General Order M.1, Section III, Subsection D (3) (g) to wit:**

Performance of Duty - Dereliction of Duty: The following incidents, whether due to an affirmative action, omission, or otherwise grossly negligent conduct, shall be considered prima facie dereliction of duty, and shall be subject to severe disciplinary action. (G) Participation in any other unreasonable act of malfeasance or nonfeasance.

**Specifications:** On July 9, 2012, there was an altercation in the Annapolis Police Department's Headquarters lobby area between a private citizen, Mr. Matt Sakalas, and you. Mr. Sakalas subsequently filed a formal administrative complaint [against] you. During the course of the investigation, you identified Officer Carl Bouie as having been present during the altercation, witnessed the interaction, and contemplated placing Mr. Sakalas under arrest for disorderly conduct. On July 31, 2012, you were interviewed by Sergeant Beth Nelson, the investigator assigned to the investigation. During the interview, you provided Sergeant Nelson with false information about Officer Bouie witnessing the altercation and Officer Bouie's role in the investigation. You identified Officer Bouie as a witness to the events. The investigation revealed you falsely reported Officer Bouie observing the altercation between Mr. Sakalas and yourself in an attempt to influence the outcome of the investigation. Your active participation in conspiracy to influence the outcome of the investigation is dereliction of your duty as a sworn police officer with the Annapolis Police Department.

An evidentiary hearing was held on July 29 and 30, 2013, before the Annapolis Police Department Administrative Hearing Board. The hearing was conducted pursuant to the Maryland Law Enforcement Officers' Bill of Rights ("LEOBR"), Maryland Code (2003,

2011 Repl. Vol.), Public Safety Article (“PS”), § 3-107, which provides hearing procedures for law enforcement officers facing disciplinary sanctions.

Sakalas, King, Galloway, and Corporal Daniels testified for the prosecution, and each supported Sakalas’s complaint that appellant had been hostile to Sakalas without justification. During the hearing, appellee presented video surveillance footage from the lobby, showing the altercation and confirming that King and Daniels were present during the incident. Appellee also introduced the police station’s keycard access logs, and Sgt. Nelson testified that, based upon the times recorded for Ofc. Bouie’s keycard swipes on July 9, 2012, these logs indicated that Ofc. Bouie was not present during the altercation. In addition, appellee presented surveillance footage from the Annapolis Police Department showing that Ofc. Bouie had left the station more than an hour before Sakalas arrived at the station and did not return until well after the altercation had ended. While cross-examining Sgt. Nelson, appellant played another copy of the surveillance footage from the lobby. This copy (which had been provided to his counsel during discovery) was apparently defective, and rather than depicting the events that occurred in the lobby of the Annapolis Police Department, the video alternated between a black screen and intermittent flashing.

At the close of the prosecution’s case, Ofc. White moved to dismiss the charges, and the hearing board dismissed charges 1, 2, and 5. But, after the close of all evidence, the hearing board unanimously concluded that there was sufficient evidence to support a guilty verdict “beyond a reasonable doubt” as to charges 3, 4, and 6. The hearing board issued a written report to Chief Michael Pristoop dated February 18, 2013, setting forth the following

findings of fact and the board's recommendation that Ofc. White's employment as a police officer be terminated:

During the hearing, the Prosecutor called six witnesses to testify, whom the Hearing Board found to be credible witnesses. They were: Mr. Matt Sakalas, Ms. Chandra King, Cpl. Duane Daniels, Ms. Michelle Galloway, Sgt. Pamela Johnson, and Sgt. Elizabeth Nelson. The defense did not have Officer White or any witnesses testify.

The Hearing Board found that on July 13, 2012 at 1155 hours, Officer White was properly notified that an investigation was being conducted on him in reference to an incident which occurred on July 9, 2012 in the receptionist area (lobby) of the Annapolis Police Department Headquarters. An allegation was made that Officer White displayed unprofessional behavior while dealing with a citizen.

Officer White received and signed the form for Notification of Investigation. Furthermore, the notification also advised Officer White that other issues may arise as the investigation proceeded, and that he (White) would be informed as to the nature of any additional issues. Officer White was ordered to submit an administrative report detailing the events of the incident, with the report to be submitted on or before July 23, 2012.

On July 13, 2012 at 1223 hours, Officer White sent an email to Capt. Cynthia Howard giving a brief summary of a man coming into the lobby on July 9, 2012 to get a police report and the man took issue with the fact he had to pay for the report when Cpl. Daniels said he could have a free report. Cpl. Daniels was summoned to the lobby, and then Officer White advised the man that if he continued to be disorderly, he could be arrested. The man left and returned with a check and obtained a police report from Ms. Galloway. At no time were any other names mentioned except Cpl. Daniels and Ms. Galloway.

The email also stated that Officer White received a note in a sealed envelope stating "a man came in and made a complaint on you from an incident in the lobby."

On July 17, 2012 at 0816 hours, Officer White sent an email to Sgt. Pamela Johnson requesting "suspect information on subject (complainant Sakalas) you are referring to for processing of charges in this incident."

Numerous emails were sent back and forth between Officer White and Sgt. Johnson on July 17, 2012 with Officer White being advised at 0942 hours to address each of the allegations in an administrative report, not by email. Furthermore, at 1358 hours, Officer White was ordered not to file an application for charges on the citizen (Sakalas) who filed the complaint against him.

On July 23, 2012, Officer White submitted an administrative report as directed. The report never mentions Officer Carl Bouie.

On July 31, 2012 at 1000 hours, Officer White was provided a copy of the Maryland Law Enforcement Officers Bill of Rights (LEOBR), which he signed for, stating “Yes” he understood the rights and stating “No”, he did not want a lawyer present at this time.

On July 31, 2012, Sgt. Elizabeth Nelson conducted a recorded interview of Officer White with Mrs. Delores Duncan-White present. During the interview, Officer White swore and affirmed under the penalties of perjury that the responses given would be the whole truth and nothing but the truth.

During this taped interview, Officer White mentions for the first time that Officer Carl Bouie was present and witnessed the entire event, and who was considering placing the gentleman (Sakalas) under arrest for being disorderly and failing to follow \_\_\_\_\_ (inaudible). [sic]

On August 1, 2012, Sgt. Nelson conducted a recorded interview of Officer Carl Bouie in reference to being a witness to the incident in the lobby on July 9, 2012 involving Officer White and Mr. Sakalas.

Officer Bouie swore and affirmed under the penalties of perjury that the responses given and statements made would be the whole truth and nothing but the truth. Officer Bouie was very evasive of answering questions and requested time to find out what the facts were. The follow-up interview this same date also resulted in evasive answers.

On August 20, 2012, Sgt. Nelson conducted a recorded interview of Officer Carl Bouie with Mr. James Shalleck, Esq. (attorney for Bouie) and Ms. Carol Wiszynski (Local 400 Union Representative) present. This interview was in reference to Officer Bouie being a co-defendant with Officer White involving a false report in the incident with Mr. Sakalas on July 9, 2012 in the APD HQ lobby.

During the interview, Officer Bouie swore and affirmed under the penalties of perjury that the responses given would be the whole truth and nothing but the truth. Officer Bouie was again very evasive answering questions and gave contradictory responses to the interviews conducted on August 1, 2012 and his written (typed) statement in reference to the incident on July 9, 2012.

On September 25, 2012, Mr. William D. Roessler, Deputy State's Attorney for Anne Arundel County sent an email to the Annapolis Police Department stating "I have reviewed the Internal Affairs investigation regarding the above members (Officers Shelley White and Carl Bouie) of the Annapolis City Police Department. In light of the finding that both officers made false statements of a material fact to an investigator from the Internal Affairs section, I believe the State is obligated to disclose this finding to the defense in any future trial. Further, it is my opinion that the credibility of the two officers has been compromised to the point where their testimony should not be relied upon in the future."

### **Conclusion**

After reviewing all the evidence presented, including the video tapes and witness testimony of Mr. Sakalas, Ms. King, Cpl. Daniels, Ms. Galloway, Sgt. Johnson, and Sg. Nelson, the Hearing Board finds that Officer Bouie was not present during the incident in the lobby involving Officer White and Mr. Sakalas. Furthermore, the Hearing Board finds the evidence presented was overwhelming and beyond a reasonable doubt for guilty verdicts of:

Charge 3 – Violation of General Order M.1, Section 1, Subsection H to wit: False Reports, Members shall not submit any type of false, inaccurate, or misleading reports/statements;

Charge 4 – Violation of General Order M.1, Section 1, Subsection B to wit: Conduct Unbecoming an Officer; and

Charge 6 – Violation of General Order M.1, Section III, Subsection D (3)(g) to wit: Performance of Duty – Dereliction of Duty.

The Hearing Board found Officer White not guilty of Charge 1, Charge 2, and Charge 5.

The Hearing Board recommends merging Charge 4 and Charge 6 with Charge 3, with a recommended penalty of **termination as a Police Officer**.

The Police Chief accepted the recommendation, and appellant’s employment with the Annapolis Police Department was terminated on February 26, 2013.

In March 2013, appellant filed a petition for judicial review in the Circuit Court for Anne Arundel County. The circuit court issued a judgment affirming the decision of the police department. Appellant filed a timely notice of appeal.

### STANDARD OF REVIEW

“[T]he scope of judicial review in a LEOBR case ‘is that generally applicable to administrative appeals.’” *Ocean City Police Dep’t v. Marshall*, 158 Md. App. 115, 120-21 (2004) (citation omitted).

As we explained in *Baltimore Police Department v. Ellsworth*, 211 Md. App. 198, 207-08 (2013):

The scope of judicial review of a LEOBR case is the same as for an administrative appeal. *Coleman v. Anne Arundel Cnty. Police Dep’t*, 369 Md. 108, 121, 797 A.2d 770 (2002). When this Court reviews administrative decisions, “we bypass the judgment of the circuit court and look directly at the administrative decision.” *Salisbury Univ. v. Joseph M. Zimmer, Inc.*, 199 Md. App. 163, 166, 20 A.3d 838 (2011) (citing *White v. Workers’ Comp. Comm’n*, 161 Md. App. 483, 487, 870 A.2d 1241 (2005)). Our inquiry is whether the administrative agency erred[,] not the circuit court acting in its capacity as an intermediate appellate court. *Bayly Crossing, LLC v. Consumer Prot. Div., Office of Atty. Gen.*, 417 Md. 128, 136, 9 A.3d 4 (2010). “In reviewing an administrative agency decision, we 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.” *Mehrling v. Nationwide Ins. Co.*, 371 Md. 40, 57, 806 A.2d 662 (2002) (internal citation omitted). The Court of Appeals explained:

In applying the substantial evidence test, a reviewing court decides whether a reasoning mind reasonably could have reached the factual conclusion the agency reached. A reviewing

court should defer to the agency’s fact-finding and drawing of inferences if they are supported by the record. A reviewing court must review the agency’s decision in the light most favorable to it; . . . the agency’s decision is prima facie correct and presumed valid, and . . . it is the agency’s province to resolve conflicting evidence and to draw inferences from that evidence.

*Motor Vehicle Admin. v. Carpenter*, 424 Md. 401, 412–13, 36 A.3d 439 (2012) (quoting *Md. Aviation Admin. v. Noland*, 386 Md. 556, 571, 873 A.2d 1145 (2005)) (internal citations and quotation marks omitted).

An agency’s factual findings are given deferential review, but this Court is not bound by the agency’s interpretation of law, which are reviewed *de novo*.

Because appellant’s first two questions ask us to determine whether the board erred in admitting evidence, we note that the Maryland Rules of Evidence (Title 5) are *not* applicable. Rather, the evidentiary rules applicable during a LEOBR hearing are substantially less rigid than those used during court proceedings. *Travers v. Baltimore Police Dep’t*, 115 Md. App. 395, 408 (1997). An administrative trier of fact is not bound by the technical rules of evidence. *Motor Vehicle Admin. v. Weller*, 390 Md. 115, 138 (2005). LEOBR provides in PS § 3-107(f): “Evidence with probative value that is commonly accepted by reasonable and prudent individuals in the conduct of their affairs is admissible and shall be given probative effect.” When determining whether evidence is admissible, “the evidence’s probative value, reliability, and fairness of its utilization are the principal factors considered in the competency analysis.” *Travers*, 115 Md. App. at 413. *See also Meyers v. Montgomery Cnty. Police Dep’t*, 96 Md. App. 668, 704 (1993) (noting that admission of evidence in a LEOBR hearing need only comport with procedural due process and “basic

rules of fairness”). We review rulings applying this standard for abuse of discretion. *Para v. 1691 Ltd. Partnership*, 211 Md. App. 335, 386 n.17 (2013).

## DISCUSSION

### I. Video Surveillance & Keycard Access Log Evidence

Appellant argues that the video surveillance footage of the lobby and entrances to the station, as well as the keycard access logs, were not properly authenticated before being admitted as evidence. He argues that, because Sgt. Nelson did not have knowledge of the software and hardware used to make the video recordings and keycard access logs, and because she did not know how the recording systems were maintained, her testimony was insufficient to authenticate this evidence. As a result, appellant contends, introduction of this evidence violated his due process rights.

Evidence offered at LEOBR hearings need not be authenticated according to the formal rules of evidence; LEOBR and due process are satisfied where the proponent provides “sufficient indicia of reliability so that the trier of fact can ‘reasonably infer that the subject matter is what its proponent claims.’” *Dep’t of Safety & Corr. Servs. v. Cole*, 342 Md. 12, 26–27 (1996) (quoting *Fisher v. State*, 643 S.W.2d 571, 575 (Ark. 1982)).

We conclude that appellee satisfied this standard. With respect to the video surveillance footage, Sgt. Nelson testified that every point of ingress and egress from the Annapolis police station is monitored by a video camera. She stated that she obtained the footage directly from Detective Truitt, who maintained the video recordings as part of his responsibilities working in the intelligence section of the Annapolis Police Department. She

noted that the time stamps on the recordings corresponded to the dates and times relevant to the charges. She also testified that she had personally observed the cameras in the lobby and exterior of the building and understood that they were constantly recording. Sgt. Nelson's testimony makes apparent that the recordings were regularly made as part of the normal operations of the Annapolis Police Department, that she obtained them directly from the officer responsible for maintaining the recordings, and that she took reasonable precautions to ensure that the footage corresponded to the relevant date and time. Regardless of whether this testimony would have been sufficient to authenticate video for use at a civil or criminal trial, Sgt. Nelson's testimony was sufficient to allow the board to conclude that the video was an accurate depiction of what happened at the station on July 9, 2012. *See Cole*, 342 Md. at 27 (holding that testimony that videos were kept in ordinary course of business, labeled with date and time of footage, and securely stored was sufficient to authenticate footage for use in an administrative hearing). Further, PS § 3-107(g)(3) provides that a LEOBR hearing board "may utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented." As a result, we conclude that the board did not err by allowing the introduction of the video surveillance footage.

Similarly, we conclude that Sgt. Nelson's testimony was sufficient to authenticate the keycard access logs. At the hearing, she stated that each employee was assigned a unique card identification number and that every exterior door to the building had a card reader device upon which employees were required to swipe their identification cards to enter the building. She also noted that a computer system located within the Annapolis Police

Department kept a record of when and where each employee swiped his keycard. Sgt. Nelson testified that Detective Truitt was tasked with overseeing the system, and that he had provided her a computerized printout of the logs for the pertinent dates. She stated that Detective Truitt had prepared the printout while in her presence and that he handed the document to her directly. During her testimony, at least one member of the board commented that the members of the board were familiar with keycard reader systems and understood how they worked. Sgt. Nelson's testimony was sufficient to allow the board to reasonably conclude that the access logs were an accurate representation of the Annapolis Police Department's records regarding use of Ofc. Bouie's keycard on July 9, 2012. Accordingly, we perceive no error in allowing the introduction of these logs at the hearing.

Appellant argues that, because Sgt. Nelson did not know how the surveillance and keycard systems worked, and because she could not explain how the data was stored and maintained, the video recordings and access logs were not sufficiently authenticated. We are not persuaded. Appellant cites no legal authority to suggest that, in a LEOBR hearing, the proponent of evidence must present foundation testimony of this kind in order to adequately authenticate evidence. As mentioned previously, in the context of a LEOBR hearing, the proponent of evidence need only provide sufficient foundation testimony for the board to reasonably conclude that the evidence is what the proponent says it is. *Cole*, 342 Md. at 26–27. As discussed above, we conclude that Sgt. Nelson's testimony regarding the video recordings and keycard access logs was sufficient to enable the board to conclude that the evidence was what appellee claimed.

Appellant further asserts that the copy of the video recording from the lobby that he received during discovery was defective, and therefore, he argues, all of the video evidence presented at trial is unreliable and inadmissible. He contends that this “discrepancy” demonstrates that the footage presented at the hearing was unreliable because there are “two videotapes . . . purporting to have recorded the same event, but that were completely different.” Appellee responds that there was simply a glitch in the copying process, and that does not invalidate the admissibility of the non-defective video recording which was presented by the prosecution at the hearing. We agree with appellee. The existence of a defective copy of the video recording does not disprove what is shown on the non-defective copy of the recording, and therefore, does not support appellant’s argument that the board had insufficient evidence to believe that the video presented by appellee at the hearing accurately reflected events that occurred at the Annapolis Police Department on July 9, 2012.

## **II. Business Records Certification**

Appellant contends that the board erred in allowing appellee to present a certification prepared by Detective Truitt stating that the surveillance videos were made in the ordinary course of business. He claims that admission of the certification violated the section of LEOBR which requires that an officer must be notified of the names of the witnesses against him at least 10 days before the hearing. *See* PSA § 3-104(n)(1)(i) (“On completion of an investigation and at least 10 days before a hearing, the law enforcement officer under investigation shall be: (i) notified of the name of each witness and of each charge and specification against the law enforcement officer; . . .”). Appellee responds that the fact that

Detective Truitt signed a business records certification stating that the document was kept in the ordinary course of business did not make him a “witness” against appellant whose name needed to be disclosed prior to the hearing.

As discussed previously, the rules of evidence that apply during a court proceeding are not applicable during a LEOBR hearing. *Travers*, 115 Md. App. at 411. Unlike a typical civil proceeding, where hearsay is inadmissible unless it falls within one of a limited number of hearsay exceptions, hearsay evidence is admissible in LEOBR proceedings provided that it “demonstrate[s] sufficient reliability and probative value to satisfy the requirements of procedural due process.” *Id.* at 411–12. The proponent of hearsay evidence need not demonstrate that the evidence fits within a hearsay exception as a prerequisite to admissibility. *Id.* at 412–13 (holding that hearsay statement was admissible because it was “probative and credible,” without considering whether the statement fell within a hearsay exception).

As a result, appellee was not required to demonstrate that the surveillance footage from the Annapolis Police Department met the requirements of the business records exception before the video could be admitted as evidence. Consequently, because LEOBR did not require appellee to produce the business records certification in the first place, appellee was not required to name Detective Truitt — who was a non-testifying custodian of records — as a witness. When appellee proffered the certification attesting that the videos were kept in the ordinary course of business, appellee was going the extra mile, and the board did not commit reversible error in accepting the certification and allowing appellee to

introduce the video despite the fact that appellee had not given appellant 10 days' notice that Detective Truitt certified the records as produced in the ordinary course of business.

### **III. Evidentiary Sufficiency**

Appellant argues that, if the video surveillance footage and keycard activity report were excluded, the record would contain insufficient evidence to sustain the board's verdict. Because we conclude that the board did not err in considering the evidence, this argument is moot.

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