

In the Circuit Court for Charles County
Case No.: 08-C-16-001734

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 682

September Term, 2017

MICHAEL SOKOLOFF

v.

CHARLES COUNTY SHERIFF'S OFFICE

Meredith,
Graeff,
Nazarian,

JJ.

Opinion by Meredith, J.

Filed: July 3, 2019

*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.

Michael Sokoloff, appellant, was terminated from his position as a Corporal in the Office of the Charles County Sheriff, appellee, after an administrative hearing board (the “Hearing Board”) found that he had improperly arrested a person he suspected of urinating late at night in the parking lot of a library. At the conclusion of a hearing conducted pursuant to the Law Enforcement Officers’ Bill of Rights (“LEOBR”), codified at Maryland Code (2003, 2011 Repl. Vol.), Public Safety Article (“PS”), § 3-101 *et seq.*, the Hearing Board found that Sokoloff lacked probable cause to support the arrest, and had failed, before making the arrest, to sufficiently investigate the facts in order for him to properly determine whether there was probable cause for the arrest. The Hearing Board recommended termination, and the Sheriff accepted that recommendation.

Sokoloff then filed a petition for judicial review in the Circuit Court for Charles County, and, after that court affirmed the decision of the Sheriff, Sokoloff appealed to this Court. He presents one issue on appeal:

As a matter of law, did the [Hearing Board] err in concluding that Sokoloff “failed to secure probable cause for the arrest of Charles Beale for indecent exposure” as related to its guilty findings for Charges 10 (Arrests), 11 (Violation of Federal, State and Local Laws) and 13 (Performance of Duty)?

Because we find that the Hearing Board’s decision was supported by substantial evidence and was legally correct, we answer Sokoloff’s question “no,” and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On the evening of May 30, 2015, Sokoloff was on patrol on the midnight shift (2100-700 hrs), when a vehicle caught his attention exiting a service road near the rear of

the Smallwood Village Center in Waldorf, Maryland. At approximately 11:25 p.m., Sokoloff watched the Buick Enclave SUV enter the parking lot of the nearby public library. The library was closed at the time, although there were two cars in the parking lot, and a crew was doing some work inside the library. Sokoloff watched the Buick SUV drive to the corner of the parking lot farthest away from the library building, near the edge of the surrounding woods. From a distance that Sokoloff estimated as 250 yards away from the Buick, Sokoloff watched the vehicle for 43 seconds. He did not see anyone exit the vehicle, and did not see the interior lights of the vehicle come on. He never saw anyone else near the vehicle. But, as the Buick SUV began to exit the parking lot, Sokoloff activated the lights on his cruiser to conduct an investigatory stop. Within minutes, Sokoloff was joined by another member of the Sheriff's Office: Pfc. Paul Morgan, a Crime Scene Processor.

Upon approaching the vehicle, Sokoloff learned that the Buick SUV was being driven by Sharon Beale, age 62, and the front seat passenger was her husband, Charles Beale, Jr., age 67. In the rear seat was their grandson ["Grandson"], age 16, who was wearing the uniform of an employee of a Wendy's fast food restaurant. When Sokoloff asked them why they were in the parking lot of the library, which was closed, the Beales explained that they had just picked up their grandson from his job at Wendy's, and they had pulled off the highway into the parking lot so that Sharon Beale could use her cell phone.

Either Sokoloff or the crime scene processor discovered a small puddle near the area where the Beales' car had previously parked, and Sokoloff then began questioning the Beales as to which one of them had urinated in the parking lot. Sokoloff described the encounter as follows in an application for statement of charges he filed with the District Court on May 31. The application alleged that Charles Beale "was indecently exposed while urinating in the parking lot of the public library," and Sokoloff further affirmed:

In the rear passenger seat was [the Beales' Grandson]. I asked [Grandson] to step out of the car and spoke to him near the front of my cruiser. [Grandson] originally told me that he did not know if anyone got out of the car, despite the fact that they were all within arms reach of each other. [Grandson] said that he was on his phone and that's why he didn't know.

I then went over to where the car was positioned in the parking lot when I first saw it stopped in the lot. I saw that a large wet spot that was in a position that would have been on the passenger side while the car was there. I then returned to talk to [Grandson]. I explained that I knew that his grandfather, Charles Beale, had gotten out of the car and urinated and that I knew that they were lying. I told them that if they kept lying, I was going to charge his grandfather. [Grandson] then told me that his grandfather "is old" and they tried to stop to use the bathroom but the store was closed.

I then went back to the vehicle and told Sharon and Charles Beale that they had one last chance to tell me the truth as to who got out of the vehicle and urinated. Both continued to deny that anyone got out of the car.

Several times during this incident, I saw people from the library work crew coming out to the parking lot to clean out their buckets or get tools. In addition, the parking lot is clearly an area that is open and accessible to the public.

While enroute [sic] to the detention center, [Charles] Beale began complaining of chest pains. I immediately called for an ambulance. After being checked out on the scene, Beale was transported to Charles Regional Medical Center. Because the evaluation at the hospital was going to be for

an extended period of time, I released Beale and instead completed an application for statement of charges.

The commissioner who reviewed Sokoloff's application checked the block on the form indicating: "I declined to issue a charging document because of lack of probable cause." The commissioner also wrote on the form: "Who did the defendant expose[] himself to? Victim?"

Before Sokoloff's shift ended on May 31, he realized that he still had Charles Beale's driver's license. Instead of trying to deliver the license to Charles Beale, Sokoloff simply dropped the license in a mailbox, without putting it in an envelope.

On June 3, 2015, Charles Beale filed a complaint with the Sheriff's Office regarding his treatment by Sokoloff. That complaint led to an investigation that resulted in the charges that are the subject of this appeal being filed against the corporal.

On June 6, Sokoloff filed a second application for statement of charges with the District Court. The text of the application was substantially the same as set forth in the application that had been denied on May 31. This application was reviewed by a different commissioner who also came to the conclusion that there was no probable cause for a charge of indecent exposure, but nevertheless issued a citation for the charge of littering. The State's Attorney for Charles County entered that charge nolle prosequi on June 9.

The Sheriff's Office investigated the complaint made by Charles Beale, and Sokoloff was charged with thirteen violations of the rules, regulations, policies, and procedures of the Charles County Sheriff's Office. The Sheriff convened a three-member Hearing Board, pursuant to PS § 3-107, which heard the case against Sokoloff. Sokoloff

was found guilty of eight charges. The recommended discipline as to Charges 10 and 11 was termination. The Sheriff accepted that recommendation, and terminated Sokoloff's employment effective June 24, 2016.

Sokoloff's appeal does not challenge any factual finding made by the Hearing Board, but focuses instead on the legal conclusions as to probable cause. Pertinent findings of fact made by the Hearing Board are the following:

Findings of Fact

Based upon the testimony and evidence presented at the hearing, the Hearing Board made the following Findings of Fact:

1. On May 30, 2015, Cpl. Sokoloff was working the District III midnight shift, 2100-0700 hrs. At approximately 2325 hrs., he observed a suspicious vehicle exit a service road that led to the rear of commercial businesses in the Smallwood Village Center. Cpl. Sokoloff had personal knowledge/prior experience with handling investigations in the area and testified at the hearing that the center and surrounding area is a high activity sector known for property/persons crimes such as burglaries, robberies, assaults, and drug activity.
2. Cpl. Sokoloff conducted an investigatory stop on a silver Buick Enclave SUV after watching the vehicle exit the Smallwood Village Center and enter the P.D. Brown Library parking lot in Waldorf, MD. The vehicle was driven by Sharon Beale (62 yoa) and occupied by her husband, Charles Beale, Jr., (67 yoa), in the passenger seat and their step-grandson, ["Grandson"] (16 yoa), in the rear driver's side backseat. The vehicle stopped in the parking lot for approximately 43 seconds prior to being detained by Cpl. Sokoloff.
3. Cpl. Sokoloff questioned the occupants of the vehicle regarding their reasoning for entering the P.D. Brown Library parking lot after hours while the library was closed. The occupants explained they picked up [Grandson] from his job at a local Wendy's only a few minutes ago, had stopped at Safeway but it was closed, and stopped in the lot so Sharon Beale could safely use her cellular phone to

contact [Grandson]'s mother in order to pick-up some clothing from her home. Within a few minutes of the stop, Pfc. Morgan, a Crime Scene Processor, arrived on scene and located a small puddle of unidentified liquid in the vicinity of where the Beale[s]' vehicle had stopped. Cpl. Sokoloff then questioned the occupants of the vehicle for suspicion of urinating in public with no admissions. After a few minutes, Cpl. Sokoloff removed [Grandson] from the car, who was still wearing his Wendy's uniform, and questioned him separately as to who urinated in the parking lot. [Grandson] initially denied knowledge of anyone exiting the vehicle declaring he was on the phone. However, he did make a debatable coerced admission that his grandfather was old and they'd tried to stop at the Safeway but it was closed, after Cpl. Sokoloff threatened to arrest his grandfather. In his testimony, [Grandson] stated he may have said his grandfather exited the vehicle to take a "piss" after Cpl. Sokoloff told him his grandfather is about to get locked up. However, he only said this because if he did not, he feared Cpl. Sokoloff would arrest his grandfather.

4. At the hearing, all parties advised that although stern and authoritative, Cpl. Sokoloff's line of questioning and demeanor was not abusive, nor did he use profanity or conduct himself in an unprofessional manner during the investigatory stop and subsequent arrest of Charles Beale.
5. After speaking with [Grandson], Cpl. Sokoloff returned to the Beale[s] and informed them [that Grandson had] admitted Charles Beale exited the car and urinated. According [to] Cpl. Sokoloff's ICOP camera system, approximately 14 minutes after the stop, Cpl. Sokoloff arrested Charles Beale for indecent exposure and began transporting him to the detention center for processing without securing his seatbelt. **At no time did Cpl. Sokoloff attempt to recover, package, or determine if the suspected liquid was urine. Nor did he interview the cleaning crew, Ryan Corley or Larry Corley, when they exited the library to determine if they had any knowledge of the incident[,] failing to obtain verification that Charles Beale exposed himself. Additionally, he did not attempt to obtain security footage from the library to confirm his suspicion that Charles Beale exposed his genitals and urinated in the parking lot. Nor did Cpl. Sokoloff request Pfc. Morgan to recover any evidence from the scene, request him to interview witnesses, or take photographs of the scene and/or evidence.**

Furthermore, Cpl. Sokoloff did not check the surrounding businesses for signs of forced entry, as his original reason for the stop was that he witnessed the Beale's vehicle exit a service lane from the rear of businesses.

6. During the hearing, Charles Beale and Sharon Beale testified [that] Sharon recently received a traffic citation for talking on her cellular phone while driving and did not want to repeat the behavior. Additionally, both testified observing Cpl. Sokoloff's vehicle sitting in the parking lot of the Smallwood Village Center and believed they were being stopped because there may have been an incident in the area and were under the belief [that] Cpl. Sokoloff had mistaken them for the suspects.
7. At the hearing, Lt. Holter, the internal investigatory assigned to review the incident, testified he was able to secure and review the security tape from the P.D. Brown library and although it did not capture much of the incident, it did not show anyone had entered or exited the parking lot other than the Beales. The video footage from Cpl. Sokoloff's ICOP in-car camera confirmed the Beale's vehicle entered and attempted to exit the vacant lot within 43 seconds of entry. Additionally, Lt. Holter identified and spoke to Ryan and Larry Corley, who stated they never saw anything happen in the parking lot until after Sokoloff's traffic stop was initiated. During the hearing, Larry Corley testified he and his son were inside the library and were shielded from seeing outside the building, only exiting the library because they noticed police lights flashing into the building through the front door windows.
8. **At the hearing, Cpl. Sokoloff stated he observed the [Beales'] vehicle from a distance of 250 yards or more and never saw anyone exit the vehicle, never saw interior lights in the vehicle turn on, never saw anyone urinate, never saw Charles Beale expose his genitals, never saw anyone dump anything out of the vehicle, and never saw anyone in or around the P.D. Brown Library parking lot or adjacent areas other than the cleaning crew. He did conduct a cursory inspection of the liquid in the parking lot but did not detect the smell of urine, was unable to discern the contents of the liquid, and was unable to determine if the liquid was, in fact, urine.**

9. Shortly after his arrest and during transport, Charles Beale informed Cpl. Sokoloff he was experiencing chest pain and shortness of breath. Cpl. Sokoloff immediately stopped and had Charles Beale exit the cruiser while he called for EMS. Sharon Beale came to the location and informed Cpl. Sokoloff that Charles Beale had a bad heart, a pacemaker, was diabetic, and suffered from COPD. EMS arrived shortly thereafter and examined Charles Beale, finding he was not in immediate danger but needed to be evaluated at a hospital according to their policy. EMS advised Cpl. Sokoloff that policy dictated, if they transported a prisoner, [Cpl. Sokoloff] would have to ride in the ambulance. Cpl. Sokoloff chose to remove Charles Beale from the ambulance, and drove him to the hospital signing an EMS release form refusing medical transport. Again, Cpl. Sokoloff failed to restrain Charles Beale in a seatbelt during transport to the hospital.

10. * * *

11. Once at the hospital, Cpl. Sokoloff learned Charles Beale's treatment might take an extended period of time and released Beale from custody, informing him he was no longer under arrest. Cpl. Sokoloff then left the hospital, forgetting to return Beale's driver's license. At the time of this incident, Beale was working as a bus driver for Prince George's County Public Schools and was unable to return to work and drive a bus without his license. Because of this, Beale was prevented from working at his job for 2 days until he was able to purchase a new license to replace the one Cpl. Sokoloff failed to properly return. At the hearing, Cpl. Sokoloff testified he placed the driver's license in a post office box prior to the end of his shift on May 31, 2015. However, he failed to contact or receive confirmation the license was received by Charles Beale; Beale never received his original license in the mail or by any other means. At no time during this incident did Cpl. Sokoloff consult with or notify his supervisor of Charles Beale's arrest, medical condition, or hospitalization, in an attempt to obtain clarification as to how to handle the situation. Nor, did he attempt to check on Charles Beale's arrest, medical condition, or hospitalization, in an attempt to obtain clarification as to how to handle the situation. Nor, did he attempt to check on Charles Beale's medical status throughout his shift or anytime thereafter.

12. On May 31, 2015, after the release of Charles Beale at the hospital, Cpl. Sokoloff submitted an Application for Statement of Charges for the incident to the Charles County Commissioner's Office, requesting indecent exposure charges. Commissioner Blain denied the application for the absence of probable cause, noting the lack of a victim. On June 6, 2015, Cpl. Sokoloff again submitted the same Application for Statement of Charges for the incident to the Charles County Commissioner's Office, requesting indecent exposure charges only changing the date of affirmation and correcting a minor clerical error. Commissioner Pederson issued a charge of Littering, finding no probable cause for the indecent exposure. After reviewing the Statement of Charges, State's Attorney Anthony Covington of the Charles County State's Attorney's Office entered the Littering charge Nolle Prosequi determining there was no probable cause for the charge or the initial arrest for indecent exposure. Prior to submitting the second application for charges, Cpl. Sokoloff did not attempt to confer with his supervisor, the State's Attorney's Office, or the denying Commissioner in an attempt to ascertain clarification of his ability to obtain charges against Charles Beale for indecent exposure. In fact, on June 02, 2016, Sgt. Strafella rejected Cpl. Sokoloff's incident report stating ". . . I can see why this got no probable cause. Victim? Nobody claimed to be a victim? Check with SAO. Not sure they would even prosecute this. . ." However, Cpl. Sokoloff testified he did not receive the rejection message until after he submitted the second Application for Charges of June 06, 2015.

(Emphasis added.)

Based on the foregoing findings of fact, the Hearing Board concluded that Sokoloff committed eight violations of various rules and regulations of the Charles County Sheriff's Office. As he did in the circuit court, Sokoloff focuses his arguments in this Court upon the Hearing Board's conclusion that Sokoloff had committed the violations charged in Charges 10, 11, and 13. The Hearing Board explained its rulings on those charges as follows:

Charge 10: Based on a preponderance of the evidence, the Board finds Cpl. Sokoloff **GUILTY** of violating Chapter 4-600 of the Charles County Sheriff's Office Administrative and Operational Manual, to wit: *Arrests*.

Testimony and evidence presented to the Board identified Cpl. Sokoloff had reasonable articulable suspicion to stop, detain, and interview the Beales on May 30, 2015. **Cpl. Sokoloff's preliminary investigation revealed he had no evidence Charles Beale urinated and exposed his genitals in a public place other than an unidentified puddle of liquid that was never recovered or analyzed and a debatable coerced admission from [Grandson]. Although Cpl. Sokoloff observed workers in the P.D. [Brown] Library after he detained and questioned the Beales, he failed to question and/or identify the workers in an effort to corroborate his suspicion and justify the arrest of Beale. Furthermore, Cpl. Sokoloff never observed anyone exit the Beale[s'] vehicle, never observed anyone urinate in the library parking lot, never observed Charles Beale expose his genitals, and never observed anyone in the parking lot or adjacent trail surrounding the library at the time of the incident.** The Board determined Cpl. Sokoloff made an unlawful warrantless arrest outside the scope of authority granted by the Criminal Procedure Article of the Annotated Code of Maryland when he failed to secure probable cause for the arrest of Charles Beale for indecent exposure. The Board further determined probable cause is a reasonable belief that a person has committed or will commit a crime. **For probable cause to exist, a police officer must have sufficient knowledge of facts to warrant a belief that a suspect is committing a crime. The belief must be based on factual evidence, not just on suspicion. Therefore, Cpl. Sokoloff violated department policy when he failed to fully investigate, take proper action to collect, secure, and identify potential evidence in the performance of his duties as a patrol officer to prove the existence or non-existence of fact in an effort to secure sufficient probable cause to arrest Charles Beale for indecent exposure.**

Charge 11: Based on a preponderance of the evidence, the Board finds Cpl. Sokoloff **GUILTY** of violating Chapter 1-135 of the

Charles County Sheriff's Office Administrative and Operational Manual, to wit: *Violation of Federal, State and Local Laws/Ordinances*.

Testimony and evidence presented to the Board identified Cpl. Sokoloff had reasonable articulable suspicion to stop, detain, and interview the Beales on May 30, 2015. However, **Cpl. Sokoloff's preliminary investigation revealed he had no evidence Charles Beale urinated and exposed his genitals in a public place other than an unidentified puddle of liquid that was never recovered or analyzed and a debatable coerced admission from [Grandson]. Although Cpl. Sokoloff observed workers in the P.D. [Brown] Library after he detained and questioned the Beales, he failed to question and/or identify the workers in an effort to corroborate his suspicion and justify the arrest of Beale. Furthermore, Cpl. Sokoloff never observed anyone exit the Beale[s'] vehicle, never observed anyone urinate in the library parking lot, never observed Charles Beale expose his genitals, and never observed anyone in the parking lot or adjacent trail surrounding the library at the time of the incident.** The Board further determined probable cause is a reasonable belief that a person has committed or will commit a crime. **For probable cause to exist, a police officer must have sufficient knowledge of facts to warrant a belief that a suspect is committing a crime. The belief must be based on factual evidence, not just on suspicion.** The Board determined **Cpl. Sokoloff made an unlawful warrantless arrest outside the scope of authority granted by the Annotated Code of Maryland when he failed to secure probable cause for the arrest of Charles Beale for indecent exposure.** Regardless of the scope of authority granted under the Criminal Procedure Article of the Annotated Code of Maryland, § 2-203, concerning a warrantless arrest for specified misdemeanors not committed in the officer's presence, **Cpl. Sokoloff failed to secure sufficient probable cause to believe Charles Beale exposed his genitals in public by urinating in a public place.** In that regard, the provisions granted under § 2-203, regarding the warrantless arrest of specified misdemeanors not committed in the officer[']s view or presence are inconsequential because **Cpl. Sokoloff failed to**

secure the basis for any warrantless arrest, which is probable cause. Therefore, Cpl. Sokoloff violated department policy when he failed to fully investigate, take proper action to collect, secure, and identify potential evidence in the performance of his duties as a patrol officer to prove the existence or non-existence of fact in an effort to secure sufficient probable cause to arrest Charles Beale for indecent exposure. Conversely, although the Board determined Cpl. Sokoloff's actions violated department policy by a preponderance of the evidence, the Board does NOT believe his actions rise to the level of criminal misconduct.

* * *

Charge 13: Based on a preponderance of the evidence, the Board finds Cpl. Sokoloff GUILTY of violating Chapter 1-136 of the Charles County Sheriff's Office Administrative and Operational Manual, to wit: *Performance of Duty*.

Testimony and evidence presented to the Board determined Cpl. Sokoloff arrested Charles Beale on May 30, 2015, for indecent exposure. After [Charles Beale began] experiencing chest pains and a shortness of breath, Cpl. Sokoloff transported Charles Beale to the hospital for a medical evaluation and released him from custody. On May 31, 2015, after the release of Charles Beale at the hospital, Cpl. Sokoloff submitted an Application for Statement of Charges for the incident to the Charles County Commissioner's Office, requesting indecent exposure charges. Commissioner Blain denied the Application for the absence of probable cause, noting the lack of a victim. On June 6, 2015, Cpl. Sokoloff again submitted the same Application for Statement of Charges to the Charles County Commissioner's Office, requesting indecent exposure charges only changing the date of affirmation and correcting a minor clerical error. Commissioner Pederson issued a charge of Littering, finding no probable cause for the indecent exposure charge. After reviewing the statement of charges, State's Attorney Anthony Covington of the Charles County State's Attorney's Office entered the Littering charge Nolle Prosequi determining there was no probable cause for the charge or the initial arrest for

indecent exposure. Prior to submitting the second application for charges, Cpl. Sokoloff did not attempt to confer with his supervisor, the State's Attorney's Office, or the denying Commissioner in an attempt to ascertain clarification of his ability to obtain charges against Charles Beale for indecent exposure. In fact, on June 02, 2016, Sgt. Strafella rejected Cpl. Sokoloff's incident report stating, "...I can see why this got no probable cause. Victim? Nobody claimed to be a victim? Check with SAO. Not sure they would even prosecute this." Therefore, Cpl. Sokoloff violated department policy when he attempted to disregard, circumvent, or carelessly attend to the duty required by the nature of his assignment when he attempted to bring criminal charges against Charles Beale that he knew or should have known were not supported by sufficient probable cause.

(Bold emphasis added.)

The Hearing Board recommended termination based upon Charges 10 and 11. Because the recommendation for termination was adopted by the Sheriff, we shall focus on those two charges.

STANDARD OF REVIEW

As we said in *Baltimore Police Dep't v. Ellsworth*, 211 Md. App. 198, 207–08 (2013), *aff'd*, 438 Md. 69, 89 A.3d 1183 (2014):

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[s] of law, which are reviewed *de novo*. See *Coleman*, 369 Md. at 122, 797 A.2d 770; *Salisbury Univ.*, *supra*, 199 Md. App. at 166, 20 A.3d 838 (citing *Mayer v. Montgomery Cnty.*, 143 Md. App. 261, 794 A.2d 704 (2002)); *State Dep’t of Assessments & Taxation v. N. Balt. Ctr., Inc.*, 129 Md. App. 588, 595, 743 A.2d 759 (2000). However, “the agency’s interpretations and applications of statutory or regulatory provisions ‘which the agency administers should ordinarily be given considerable weight by reviewing courts [and] the expertise of the agency in its own field should be respected.’” *Noland*, 386 Md. at 573 n. 3, 873 A.2d 1145 (quoting *Bd. of Physician Quality Assurance v. Banks*, 354 Md. 59, 69, 729 A.2d 376 (1999)). Where an administrative decision is premised upon a pure question of law, “we must ‘determine if the administrative decision is premised upon an erroneous conclusion of law.’” *Bray v. Aberdeen Police Dep’t*, 190 Md. App. 414, 424, 988 A.2d 1106 (2010) (quoting *Noland*, 386 Md. at 573 n. 3, 873 A.2d 1145).

DISCUSSION

The Hearing Board's findings on the two charges for which the Hearing Board recommended termination focused on the lack of probable cause to arrest Charles Beale for the crime of indecent exposure. As noted above, with respect to Charge 10, the Hearing Board concluded:

Cpl. Sokoloff violated department policy when he failed to fully investigate, take proper action to collect, secure, and identify potential evidence . . . to prove the existence or non-existence of fact in an effort to secure sufficient probable cause to arrest Charles Beale for indecent exposure.

Similarly, with respect to Charge 11, the Hearing Board concluded:

Cpl. Sokoloff made an unlawful warrantless arrest outside the scope of authority granted by the Annotated Code of Maryland when he failed to secure probable cause for the arrest of Charles Beale for indecent exposure. . . . Cpl. Sokoloff failed to secure sufficient probable cause to believe Charles Beale exposed his genitals in public by urinating in a public place. . . . Cpl. Sokoloff violated department policy when he failed to fully investigate, take proper action to collect, secure, and identify potential evidence in the performance of his duties as a patrol officer to prove the existence or non-existence of fact in an effort to secure sufficient probable cause to arrest Charles Beale for indecent exposure.

Sokoloff points out in his brief in this Court that we are "not bound by the [Hearing Board's] rulings with respect to matters of law" Therefore, he asserts, we need "not grant any deference to the legal decisions rendered by the [Hearing Board] in connection with the determination that Appellant Sokoloff lacked probable cause to arrest and subsequently charge Charles Beale" with indecent exposure. The Sheriff's Office responds: "[A]s a matter of law, Mr. Sokoloff lacked probable cause to arrest Mr. Beale for indecent exposure." And the Sheriff's Office points out that termination was

warranted in this case because there was not merely a mistake on the part of an officer, but here, the arrest was made before the officer undertook sufficient investigation to collect and identify sufficient facts that would support probable cause to arrest Charles Beale for indecent exposure. We agree with both points made by the Sheriff's Office.

In order to properly effectuate a warrantless arrest, a police officer must have probable cause to believe the individual arrested has committed a felony or has committed a misdemeanor in the officer's presence. *Donaldson v. State*, 416 Md. 467, 480 (2010). Judge Irma S. Raker, writing for the Court of Appeals in *Johnson v. State*, 356 Md. 498 (1999), explained:

The legality of a warrantless arrest is determined by the existence of probable cause at the time of the arrest. The rule of probable cause is a non-technical conception of **a reasonable ground for belief of guilt, requiring less evidence for such belief than would justify conviction but more evidence than that which would arouse a mere suspicion. Probable cause exists where the facts and circumstances within the officer's knowledge and of which he had reasonably trustworthy information would justify the belief of a reasonable person that a crime has been or is being committed.**

Id. at 504 (emphasis added; citations and internal quotation marks omitted).

Although Sokoloff had a suspicion that one of the occupants of the Beales' vehicle had exited the SUV and urinated in the library parking lot, "the facts and circumstances within [Sokoloff's] knowledge and of which he had reasonably trustworthy information" at the time he arrested Charles Beale were woefully inadequate to "justify the belief of a reasonable person that" Charles Beale had committed the crime of indecent exposure. *See id.*

“In Maryland, the crime of indecent exposure is a common law offense,” and was a misdemeanor under English common law. *Wisneski v. State*, 398 Md. 578, 589 (2007).

As the Court of Appeals explained in *Wisneski*,

our jurisprudence clearly sets forth the three elements of indecent exposure: [1] a public exposure, [2] made wilfully and intentionally, as opposed to an inadvertent or accidental one; [3] which was observed, or was likely to have been observed, by one or more persons, as opposed to performed in secret, or hidden from the view of others. By their very nature, the three elements are inextricably entwined, and our analysis of each one element enlightens our inquiry into the others.

Id. at 593. The element of intent can be “inferred from the circumstances and the environment of the exposure.” *Id.* “[T]he common law offense of indecent exposure requires wilfulness and observation by one or more casual observers who did not expect, plan or foresee the exposure and who were offended by it,” *id.* at 602, although the “it is obvious that the defendant must have ‘published’ his indecent exposure at such a time and place that anyone who happened to have been nearby could have seen it, had he looked.” *Id.* at 595.

The facts and circumstances within Sokoloff’s knowledge were that he had observed the Beales’ vehicle pull into the parking lot behind the library after hours. Sokoloff watched the SUV for 43 seconds after it stopped in a remote corner of the parking lot, and he saw nothing noteworthy. He saw no one exit the vehicle. He saw no movement around the vehicle. He saw no interior lights go on, nor any doors open. After he effected a stop of the Beales’ vehicle, Sokoloff observed a puddle of liquid near the location where the Beales’ vehicle had parked for 43 seconds. But Sokoloff took no

steps to ascertain whether the puddle was urine. And, even if Sokoloff's hunch was correct that someone in the vehicle had urinated in the parking lot, there was no basis whatsoever to believe that the person had publicly exposed his genitals.

In short, the facts and circumstances within Sokoloff's knowledge at the time he took Charles Beale into custody on a charge of indecent exposure did not include evidence of any of the three elements listed in *Wisneski, supra*, 398 Md. at 593. The facts within Sokoloff's knowledge would not support a reasonable person believing that Charles Beale had displayed a "[1] a public exposure [of his genitals], [2] made wilfully and intentionally, as opposed to an inadvertent or accidental one; [3] which was observed, or was likely to have been observed, by one or more persons." *Id.* Sokoloff had no reason to believe--even if his suspicion was correct that Charles Beale had urinated in that parking lot--that there had been a "public" exposure "as opposed to [an act] performed in secret, or hidden from the view of others." *Id.*

Consequently, we conclude that there was substantial evidence in the record to support the Hearing Board's conclusion that Sokoloff was guilty of Charges 10 and 11.

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