

Circuit Court for Baltimore City  
Case No. 24-C-21-000573

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 1024

September Term, 2021

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IN THE MATTER OF THE PETITION OF  
DOMINICK WATTERS

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Nazarian,  
Leahy,  
Battaglia, Lynne, A.  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Battaglia, J.

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Filed: November 18, 2022

\*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.

We are called upon to review an administrative decision made by a hearing board of the Maryland Transit Administration Police that sustained various misconduct charges against then-Sergeant Dominick Watters of the MTA Police, Appellant, and the subsequent decision by the Chief of the MTA Police, John E. Gavrilis, to terminate Mr. Watters's employment. The initial decision by the MTA Police hearing board to sustain the various violations was based, in part, on statements given by an Officer B<sup>1</sup> to an MTA Police internal affairs investigator, which were admitted into evidence.

On appeal, Mr. Watters presents this Court with three questions for review:

- 1) Whether the Board erred in admitting the hearsay statements of Officer B, where Officer B was terminated from his position for lying about the issues involved in the instant case, and where Officer B was subpoenaed but refused to appear at the hearing before the Board?
- 2) Whether there is substantial evidence in the record to support the factual findings of the Board?
- 3) Whether the Chief relied on facts not found by the Board in his decision to increase the Board's recommended penalty?

We shall hold that, although Mr. Watters waived his objection to the admission of Officer B's statements, the Board did properly admit Officer B's statements; that the Board relied on substantial evidence in the record to support its findings; and that the Chief of Police appropriately exercised his discretion to increase the Board's recommended penalty from demotion and suspension to termination.

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<sup>1</sup> The name of the subordinate officer whose misconduct was at the center of the controversy was redacted by the MTA Police in the record submitted to this Court and referenced as "Officer B" by the parties herein; we will continue that appellation.

### **FACTS AND PROCEDURAL HISTORY**

On December 3, 2018, Officer B of the Maryland Transit Administration (“MTA”) Police had occasion to arrest Coreen Jamal Mussa on an open warrant at the Linthicum Light Rail Station in Maryland and to conduct a search incident to arrest. Mr. Mussa was transported for booking, and Officer B filed an arrest report, which failed to account for drugs and a stun gun that had been seized from Mr. Mussa.

Later that same day, Anne Arundel County Police recovered the drugs and the stun gun in a trash area at the rail station. After reviewing surveillance video of the area for that day, in which the officers saw an MTA Police officer arrest an individual and throw away contraband, Anne Arundel County Police Corporal Christopher Brown contacted the MTA Police and discovered that Officer B had made an arrest earlier that night at the same light rail station. Corporal Brown then contacted Officer B to find out whether the drugs and the stun gun were discovered by him. Officer B acknowledged to Corporal Brown that he had seized the drugs and the stun gun from Mr. Mussa and requested their return from the Anne Arundel County Police; Corporal Brown declined.

Thereafter, Anne Arundel County Police Lieutenant Michael Brothers contacted Lieutenant Angela McBride of the MTA Police Internal Affairs Unit about the drugs and stun gun that Officer B had discarded. Lieutenant McBride then interviewed Officer B about what he had done with the drugs and stun gun, and Officer B acknowledged that he had discarded the drugs and stun gun. Officer B also acknowledged he had reported what he had done with the drugs and stun gun, as well as his contact by the Anne Arundel County

Police, to Sergeant Dominick Watters. Officer B's recorded and transcribed admissions to Lieutenant McBride included the following:

[Lt. McBride]: So did you advise any supervisor that you had thrown away possible contraband?

[Officer B]: No, not—I didn't see a supervisor that day.

[Lt. McBride]: What?

[Officer B]: Not that day.

[Lt. McBride]: When did you advise them?

[Officer B]: A couple days. I talked to Sergeant Williams<sup>[2]</sup> about it.

[Lt. McBride]: What was his response?

[Officer B]: He said he was going to make note of it. He said—I can't remember what else he said. He said he was going to make note of it. Just keep everything alive. I told him I did contact Anne Arundel County. He told me he would get back in contact with me once he got a report number that day and when I see quote/unquote I guess submitted it for drug analysis.

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[Lt. McBride]: Did you contact Sergeant Watters after, you said you contacted Sergeant Watters[,] after a couple days later?

[Officer B]: Yeah.

[Lt. McBride]: Do you know how many days later?

[Officer B]: It was probably like Monday, probably this Monday.

Lieutenant McBride, thereafter, recorded an interview with Sergeant Watters and during the course of the interview, Sergeant Watters admitted he had not done anything with the information given to him by Officer B regarding the discarded drugs and stun gun.

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<sup>2</sup> During her testimony, Lieutenant McBride said she heard him say "Watters" in the audio recording, not "Williams" (as written in the transcript). She also stated that there is no Sergeant Williams employed at the MTA Police, and that Officer B confirmed it was "Watters" at the end of the interview.

At one juncture, Sergeant Watters stated that he “just didn’t think it was a big deal” to report Officer B’s misconduct:

[Lt. McBride]: And [Officer B] advised that he told you that, of the situation that the drugs were thrown away by accident. That’s what he told you that—

[Sgt. Watters]: Hold on. Hold on. Is this the, are we saying AA County? Is this the incident that happened at Linthicum?

[Lt. McBride]: Yes.

[Sgt. Watters]: All right. Okay. I do recall him mentioning something to that effect, yes.

[Lt. McBride]: And when he mentioned it what did you do with the information?

[Sgt. Watters]: Honestly, I didn’t know what to do. So I honestly didn’t do anything because the way he explained it, it was like it was an honest error, like he arrested the guy and was transporting him and totally forgot about his property. So I’m like well, it’s nothing we can do at this point, especially given the time lapse from when the incident occurred to when he told me. So I was like I don’t know what the hell we can do at this point anyway. I guess we’ll —so he said something like AA County police had contacted him—

[Lt. McBride]: Um-hmm.

[Sgt. Watters]: --in reference to the property and I’m like well, where is it. Like I say, he told me, it was a nice little lapse from when the incident occurred to when he told me and it was like well, you know, it happens, you know, sometimes we forget things in the midst of trying to get other things accomplished. And so I didn’t do anything with it.

[Lt. McBride]: You didn’t tell your supervisor?

[Sgt. Watters]: I didn’t think it was, honestly seriously when you talk as far as like as far as something that was significant I was like all right, you know, like was he moving weight, like I didn’t know how much, with the quantity of anything I just know he said he forgot it and it probably got thrown in the trash. So no, I didn’t tell anybody because I didn’t think it was something significant to where it needed to be brought to somebody’s attention, like I just didn’t think it was a big deal, I guess.

Within less than a month, Lieutenant McBride reinterviewed Officer B, who, again, confirmed that he had reported the discarded drugs and stun gun to Sergeant Watters, in another recorded and transcribed interview:

[Lt. McBride]: What supervisor was it that, who was your supervisor that night?

[Officer B]: I think it was Sergeant Watters and Sergeant Pikowski,<sup>[3]</sup> I would think.

[Lt. McBride]: So you reported to Sergeant Watters?

[Officer B]: Correct.

[Lt. McBride]: And you said you reported it to Sergeant Watters at night from the arrest?

[Officer B]: No.

[Lt. McBride]: Okay.

[Officer B]: A couple days later when I next—

[Lt. McBride]: So 7 days later, right? That be going back to your, what your last statement was.

[Officer B]: Was that my last statement?

[Lt. McBride]: Okay. So nowhere in between the first day, is that correct? 3<sup>rd</sup> day, 4<sup>th</sup> day, 5<sup>th</sup> day, 6<sup>th</sup> day you felt that you needed to bring this to any supervisor's attention?

[Officer B]: That is a question you're asking me?

[Lt. McBride]: Yes.

[Officer B]: I don't know. I didn't think about it. Once I thought about it and met with Sergeant Watters I told him he said he'd make note of it.

[Lt. McBride]: And what did you tell Sergeant Watters?

[Officer B]: I was—I had a guy at Linthicum, I arrested him, I believe he had some kind of, I don't know, capsules going on, it was road by Anne Arundel County Officers and the Officer told me he would process it. I asked then the

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<sup>3</sup> The transcript captured an incorrect spelling. "Piaskowski" is the correct spelling, according to the MTA Police Incident Report Audit Summary.

Anne Arundel County Officer can I take the drugs and can I take them back to the District and process it. He told me under their procedures that he couldn't allow me to do that, he had to do it and he never contact me back.

[Lt. McBride]: What did Officer Watters tell you he was going to do with the information?

[Officer B]: He told me he was going to take note of it and in case anything ever come up so he would be able to say the same thing he was aware we even notified him.

[Lt. McBride]: He didn't tell you that he would write a report for lost property, destroyed property, found property, anything like that?

[Officer B]: No.

[Lt. McBride]: Did you ever tell him about the taser?

[Officer B]: Yeah. I told him about everything he had a taser, cash on him, trash on him. Two cell phones.

Officer B was ultimately fired for “discarding the contraband and also not properly reporting the incident.”

Lieutenant McBride's investigation resulted in a finding that Sergeant Watters “failed to notify his supervisor of pertinent information and further failed to properly direct Officer B after learning of the information.” Sergeant Watters was charged, thereafter, with fourteen violations of the MTA Police Standard Operating Procedures (“SOP”), related to his failure to act when confronted by Officer B:

**Charges 1, 4, and 7 alleged violations of the MTA Police SOP Section 2.3.4.3:**

Reporting Violations of Laws, Ordinances, Rules, or Orders. All members and employees knowing of other members or employees violating laws, ordinances, or rules of the Police Force, or disobeying orders, shall report same in writing to the Chief of Police through official channels. If the member or employee believes the information is of such gravity that it must be brought to the immediate personal attention of the Chief of Police, the official channels may be bypassed.

Charge 1: On or about December 10, 2018, Officer B reported to Sergeant Watters that he failed to maintain custody of suspected controlled dangerous substances located during the search of an arrestee, Coreen Jamal Mussa. Sergeant Watters failed to notify his supervisor and/or his commander.

Charge 4: On or about December 10, 2018, Officer B reported to Sergeant Watters that he failed to maintain custody of a stun gun located during the search of an arrestee, Coreen Jamal Mussa. Sergeant Watters failed to notify his supervisor and/or his commander.

Charge 7: On or about December 10, 2018 Officer B reported to Sergeant Watters that Anne Arundel County Police contacted Officer B regarding his arrest of Coreen Jamal Mussa, suspected controlled dangerous substance the department located in connection with Officer B's arrest of Mr. Mussa, and related matters. Sergeant Watters failed to notify his supervisor and/or his commander.

**Charges 2, 5, and 8 alleged violations of the MTA Police SOP Section 1.7.2.3:**

Direction. The Sergeant must exercise direct command in a manner that assures the good order, conduct, discipline, and efficiency of subordinates. Exercise of command may extend to subordinates outside his/her usual sphere of supervision if the transit police objective or the reputation of the police force so requires; or if no other provision is made for personnel temporarily unsupervised. This authority shall not be exercised unnecessarily. If a Sergeant requires a subordinate other than his/her own to leave a regular assignment, the Sergeant so directing will inform the subordinate's own superior as soon as possible.

Charge 2: On or about December 10, 2018, Officer B reported to Sergeant Watters that he failed to maintain custody of suspected controlled dangerous substances located during the search of an arrestee, Coreen Jamal Mussa. Sergeant Watters failed to direct Officer B to notify supervisor and/or correct official reports.

Charge 5: On or about December 10, 2018, Officer B reported to Sergeant Watters that he failed to maintain custody of a stun gun located during the search of an arrestee, Coreen Jamal Mussa. Sergeant Watters failed to direct Officer B to notify supervisor and/or correct official reports.

Charge 8: On or about December 10, 2018 Officer B reported to Sergeant Watters that Anne Arundel County Police contacted Officer B regarding his arrest of Coreen Jamal Mussa, suspected controlled dangerous substance the department located in connection with Officer B's arrest of Mr. Mussa, and



related matters. Sergeant Watters failed to direct Officer B to notify supervisor and/or correct official reports.

**Charges 3, 6, and 9 alleged violations of the MTA Police SOP Section 3.2.3:**

No member of the Police Force shall feign illness, avoid responsibility, or attempt to shirk his/her duties. To do so shall be deemed “neglect of duty.”

Charge 3: On or about December 10, 2018, Officer B reported to Sergeant Watters that he failed to maintain custody of suspected controlled dangerous substances located during the search of an arrestee, Coreen Jamal Mussa. Sergeant Watters failed to (1) notify his supervisor and/or his commander; and/or (2) direct Officer B to notify his supervisor and/or correct official reports.

Charge 6: On or about December 10, 2018, Officer B reported to Sergeant Watters that he failed to maintain custody of a stun gun located during the search of an arrestee, Coreen Jamal Mussa. Sergeant Watters failed to (1) notify his supervisor and/or his commander; and/or (2) direct Officer B to notify his supervisor and/or correct official reports.

Charge 9: On or about December 10, 2018, Officer B reported to Sergeant Watters that Anne Arundel County Police contacted Officer B regarding his arrest of Coreen Jamal Mussa, suspected controlled dangerous substance the department located in connection with Officer B’s arrest of Mr. Mussa, and related matters. Sergeant Watters failed to (1) notify his supervisor and/or his commander; and/or (2) direct Officer B to notify his supervisor and/or correct official reports.

**Charge 10 alleged a violation of the MTA Police SOP Section 2.3.4:**

Laws, Regulations and Orders. Every member is required to establish and maintain a working knowledge of all applicable federal statutes, state laws, local city and county laws and ordinances, and Administration and Police Force policies, procedures, rules and regulations. In the event of improper action or breach of discipline, it will be presumed that the member was familiar with the law, ordinance, policy, etc., in question.

Charge 10: On or about December 10, 2018, Officer B reported to Sergeant Watters that he failed to maintain custody of suspected controlled dangerous substances located during the search of an arrestee, Coreen Jamal Mussa. Officer B also reported to Sergeant Watters that Anne Arundel County Police contacted Officer B regarding his arrest of Mr. Mussa, suspected controlled substances the department located in connection with Officer B’s arrest of Mr. Mussa, and related matters. Sergeant Watters did not know that he should

(1) notify his supervisor and/or commander; and/or (2) direct Officer B to report the incident to his supervisor and/or correct official reports.

**Charge 11 alleged a violation of the MTA Police SOP Section 2.3.3.1:**

Standard of Conduct. All members and employees shall conduct their private and professional lives in such a manner as to avoid bringing the Police Force into disrepute.

**Charge 12 alleged a violation of the MTA Police SOP Section 2.3.3.5:**

General Behavior. All members and employees shall not act or behave privately or officially in such a manner as to bring discredit upon themselves, the Police Force, or the Administration.

**Charge 13 alleged a violation of the MTA Police SOP Section 3.1:**

Conduct. Any breach of the peace, neglect of duty, misconduct, or any conduct on the part of any Police Force personnel which tends to undermine the good order, efficiency, or discipline of the Police Force, or which reflects discredit upon the Police Force or any member thereof, or which is prejudicial to the efficiency and discipline of the Police Force, even though these offenses may not be specifically enumerated or laid down, shall be considered conduct unbecoming as a member of the MTA Police Force, and subject to disciplinary action by the Chief of Police.

**Charge 14 alleged a violation of the MTA Police SOP Section 6.3.1.10:**

Incompetence. Evidence of incompetence may include, but need not be limited to, a history of poor performance; an aggregate of infractions of Agency rules, regulations, procedures, directives, or orders; a demonstrated lack of knowledge.

Charges 11, 12, 13, and 14: On or about December 10, 2018, Officer B reported to Sergeant Watters that he failed to maintain custody of suspected controlled dangerous substances located during the search of an arrestee, Coreen Jamal Mussa. Officer B also reported to Sergeant Watters that Anne Arundel County Police contacted Officer B regarding his arrest of Mr. Mussa, suspected controlled substances the department located in connection with Officer B's arrest of Mr. Mussa, and related matters. Sergeant Watters failed to (1) notify his supervisor and/or commander; and/or (2) direct Officer B to report the incident to his supervisor and/or correct official reports.

Sergeant Watters requested a hearing under the Law Enforcement Officers’ Bill of Rights (“LEOBR”), which, at the time of the circumstances in issue, was codified as Sections 3-101 to 3-113 of the Public Safety Article, Maryland Code (2003, 2018 Repl. Vol.).<sup>4</sup> Section 3-107(a)(1) of the LEOBR entitled a law enforcement officer to an administrative hearing, if an investigation of the officer “results in a recommendation of demotion, dismissal, transfer, loss of pay, reassignment, or similar action that is considered punitive[.]”<sup>5</sup>

The hearing was held by a duly constituted board (“Board”) at the end of 2019. Lieutenant McBride testified, and the recorded and transcribed interviews of Officer B and Sergeant Watters were admitted in evidence. Counsel for Sergeant Watters objected to the admission of any of Officer B’s statements, arguing that the statements were inadmissible hearsay because Officer B was not present, although subject to the State’s subpoena, and was not subject to cross-examination, as well as because Officer B was incredible and unreliable as a result of his termination by the MTA Police. Counsel for Sergeant Watters acknowledged that she had access to the recordings and transcripts of all the interviews

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<sup>4</sup> Unless otherwise noted, all references to Sections 3-101 to 3-113 of the Public Safety Article (“LEOBR”) are to Maryland Code (2003, 2018 Repl. Vol.).

The Legislature subsequently repealed and replaced the LEOBR with the “Maryland Police Accountability Act,” effective as of July 1, 2022. *See* 2021 Md. Laws, ch. 59.

<sup>5</sup> Under the MTA Police Standard Operating Procedures, the disciplinary violations against then-Sergeant Watters could have resulted in a recommendation of a fine, suspension, or termination of service.

and Lieutenant McBride's report prior to the hearing and admitted that she had not subpoenaed Officer B to testify at the hearing.

In reaching its decision, the Board summarized various factual findings:

1. On December 3, 2018, MTA Police Officer B arrested [Coreen Jamal Mussa] on an open warrant at the Linthicum Light Rail Station in Anne Arundel County. Search incident to arrest of this suspect revealed 33 capsules of suspected CDS and a stun gun. Officer B discarded the CDS and stun gun in and near a trashcan. Officer B admitted this during the interrogation conducted by Detective Lieutenant McBride. Additionally, the Anne Arundel County Police report noted that the CCTV (video) showed the CDS and stun gun being discarded by Officer B at a trash can near the light rail.
2. Upon recovery of the drugs, Officer B should have maintained possession of the contraband, submitted the contraband into evidence, charged the suspect with possession of CDS and/or possession with intent to distribute CDS and documented all of this on an official MTA police report.
3. The Anne Arundel County Police later located the contraband and viewed video from a store at the location. The video showed that the contraband was from the arrest made at the location by MTA police officers. They contacted MTA Police communications who identified Officer B as the arresting officer and provided them with Officer B's departmental cellphone number. Anne Arundel County Police contacted Officer B and advised him that they recovered the contraband.
4. In his official reporting of the arrest, Officer B failed to document that anything had been recovered from Mr. Mussa when he was searched.
5. Officer B did not immediately notify his immediate supervisor or anyone in his chain of command that he failed to maintain possession of the contraband and submit it as required. He also failed to make immediate notification that Anne Arundel County Police had recovered the contraband and had contacted him.
6. Several days after he was contacted by Anne Arundel County Police, Officer B told Sergeant Dominick Watters that he had found CDS pursuant to an arrest, had left CDS at the location and that the Anne Arundel County Police has contacted him about the CDS they recovered.

7. Sergeant Watters admitted to Lt. McBride that Officer B told him about the incident and that he, Sergeant Watters, advised Officer B that he would note it.
8. Sergeant Watters never advised anyone up his chain of command about the matter, nor did he advise Officer B that he needed to tell any other supervisors or to correct the report. Sergeant Watters admitted these facts during his interview with Detective Lieutenant McBride.
9. Sergeant Watters told Detective Lieutenant McBride that he did not know what to do with the information he received from Officer B.

The Board rendered its opinion and determined that Sergeant Watters was guilty of the violations identified in Charges 1-3 and 7-13, but not guilty of Charges 4, 5, and 6, and also dismissed Charge 14, based upon a lengthy discussion of the charges and the facts that supported each violation.<sup>6</sup>

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<sup>6</sup> After considering the evidence presented at the hearing, the Board concluded the following:

Sergeant Watters should have immediately reported the information through his chain of command. [Charges 1 and 7]. In addition to reporting the information given to him by Officer B through his own chain of command, as a supervisor, Sergeant Watters should have instructed Officer B to document through the chain of command that CDS had been left at the location of the arrest and that Anne Arundel County Police had contacted him about the incident. [Charges 2 and 8]. By failing to take proper action in this matter, Sergeant Watters ignored his responsibility as a supervisor and, as a result, was neglectful in his duties. [Charges 3 and 9]. He also should have known that it was his immediate responsibility to report the information through his own chain of command. [Charge 10].

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As another agency had discovered the discarded CDS and had become involved, it was crucial for Sergeant Watters to ensure that upper level superior officers were aware of the situation and that another agency was involved. Instead, Anne Arundel County Police had to contact IID on their own to notify upper level command of Officer B's actions. Officer B's

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After the Board announced its verdict for each charge, counsel for Sergeant Watters and the MTA Police made penalty recommendations. Counsel for Sergeant Watters presented four character witnesses, and Sergeant Watters testified. The Board ultimately recommended that Sergeant Watters be demoted to officer rank and serve a 30-day suspension.

Within thirty days of receipt of the Board’s recommendation, Chief John E. Gavrilis of the MTA Police held a hearing on the record with Sergeant Watters and his counsel to determine the appropriate penalty. Chief Gavrilis stated that he had reviewed the entire record of the Board’s hearing, and in addition, reviewed information about Sergeant Watters’s past performance and a letter submitted by Sergeant Watters. During the hearing, counsel for Sergeant Watters argued that the Board erred in admitting Officer B’s statements because Officer B was untruthful and that his statements had very little indicia of reliability. Sergeant Watters’s counsel also argued that the Board’s recommended penalty should not be increased.

Chief Gavrilis ultimately decided to terminate Sergeant Watters’s employment, because he found the violations “egregious” and adverse to public safety. He noted that the drugs discarded at the train station “could have harmed any child or adult person, or

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actions and Sergeant Watters’s failure to take proper action regarding the information he received, brought the MTA Police Force into disrepute, [Charge 11] brought discredit to the MTA Police Force, [Charge 12] and undermined the good order of the MTA Police Force [Charge 13].

animal.” He also stated Sergeant Watters’s failure to disclose the “critical information” about the discarded drugs and the subsequent Anne Arundel County Police investigation “reflects poorly on [his] integrity and attention to duty.”

Chief Gavrilis also noted Sergeant Watters had a prior disciplinary violation, in which he placed his “own personal interests...over the safety of others,” when he had ordered a subordinate officer to leave his post during inclement weather and drive Sergeant Watters to lunch. An accident ensued. Chief Gavrilis concluded that he had “lost confidence in [Sergeant Watters’s] ability to be a police officer with the Maryland Transit Administration Police Force.”

Mr. Watters, thereafter, filed a Petition for Judicial Review of the MTA Police Board’s decision and the ensuing sanction, in the Circuit Court for Baltimore City. Mr. Watters argued there, as well as here, that the Board erred in admitting Officer B’s statements as hearsay, that the Board’s findings were not supported by substantial evidence, and that Chief Gavrilis unlawfully increased the penalty.

Judge John S. Nugent of the Circuit Court for Baltimore City affirmed the MTA Police Board’s decision. Judge Nugent ruled that Mr. Watters waived any challenges to the admission of Officer B’s statements because he had failed to subpoena Officer B. He also determined, nevertheless, that Officer B’s statements were properly admitted because they were recorded, transcribed, and corroborated by Mr. Watters’s own statements. He further decided that there was substantial evidence to support the Board’s findings of liability based upon Mr. Watters’s interview with Lieutenant McBride. Judge Nugent also resolved

that Chief Gavrilis appropriately increased Mr. Watters’s penalty to termination, because the Chief had reviewed the record, held a hearing, and appropriately concluded that Mr. Watters’s conduct warranted termination.

Mr. Watters timely filed his notice of appeal.

### DISCUSSION

The LEOBR, at the time of the circumstances in issue, was codified as Sections 3-101 to 3-113 of the Public Safety Article, Maryland Code (2003, 2018 Repl. Vol.).<sup>7</sup> The purpose of the LEOBR was to “provid[e] all law enforcement officers [with] certain rights” and “specify[] the procedure to be followed at an interrogation or investigation of a law enforcement officer[.]” 1974 Md. Laws, ch. 722, 2472.<sup>8</sup> Those “certain rights” included

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<sup>7</sup> Mr. Watters, as a Sergeant in the MTA Police, a unit within the Department of Transportation, confronted with disciplinary proceedings, was able to involve the protections under the LEOBR.

Section 3-101(e)(1) of the Public Safety Article provided, in pertinent part:

(e) *Law enforcement officer.* – (1) “Law enforcement officer” means an individual who:

- (i) in an official capacity is authorized by law to make arrests; and
- (ii) is a member of one of the following law enforcement agencies:

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10. the police forces of the Department of Transportation[.]

<sup>8</sup> 1974 Md. Laws, ch. 722, 2472 identified the purpose of the Law Enforcement Officers’ Bill of Rights as:

For the purpose of providing that all law enforcement officers have certain rights; defining terms; specifying the procedure to be followed at an interrogation or investigation of a law enforcement officer; providing that records shall be kept; providing for representation of the office; providing a

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“the right to a hearing following a recommendation for disciplinary action, and standards governing the conduct of such a hearing and the decision of a hearing board.” *Cochran v. Anderson*, 73 Md. App. 604, 612 (1998). During the hearing, the board could “issue subpoenas, take judicial notice of facts, administer oaths, and provide the law enforcement agency and the officer ample opportunity to present evidence and argument about the issues involved.” Sections 3-107(d), (e), (g), (h) of the Public Safety Article. The board would make findings as to officer’s culpability, and if it were to find the officer guilty, it could “recommend the penalty it considers appropriate under the circumstances.” Section 3-108(b)(1) of the Public Safety Article. The recommendation would then be reviewed by the chief of police, who had discretion to adopt the recommendation or not. Section 3-108(d)(3) of the Public Safety Article.

In his first question, Mr. Watters urges that the Board erred by admitting Officer B’s statements to Lieutenant McBride, in which Officer B acknowledged that he had discarded drugs and a stun gun and reported his actions to then-Sergeant Watters. Mr. Watters urges that the Board erred by admitting Officer B’s recorded and transcribed statements, because Officer B was not present and subject to cross-examination and

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procedure for a hearing on the issues if the investigation or interrogation results in the recommendation of certain types of action against the officer; providing for the evidentiary nature of the hearing; providing for an appeal from a decision resulting from the hearing; prohibiting certain retaliatory actions against law enforcement officers; and providing a procedure to apply for a court order if a right guaranteed by this subtitle is denied to any law enforcement officer.

because Officer B was unreliable, in light of his termination by the MTA Police. The State urges that Mr. Watters had waived this objection because he failed to subpoena Officer B to attend the hearing, and that, even if not waived, Officer B's recorded, transcribed, and corroborated hearsay statements were appropriately admitted.

Under the LEOBR, the parties possessed the ability to subpoena witnesses. Section 3-107(d)(3) of the Public Safety Article ("Each party may request the chief or hearing board to issue a subpoena or order under this subtitle."). Each party also possessed the statutory right to cross-examine witnesses. Section 3-107(e)(4) of the Public Safety Article ("Each party has the right to cross-examine witnesses who testify and each party may submit rebuttal evidence.")<sup>9</sup> Under our jurisprudence in administrative proceedings, "claimants who forgo their right to subpoena known, material witnesses effectively waive any objections to the denial of an opportunity to cross-examine." *Travers v. Balt. Police Dep't*, 115 Md. App. 395, 418 (1997) (holding that Travers waived his claim regarding the inability to cross-examine a witness because he failed to exercise his right to subpoena the witness). *See also Rosov v. Md. State Bd. of Dental Exam'rs*, 163 Md. App. 98, 116-17 (2005) (concluding that Rosov's own failure to subpoena the witness deprived him of the opportunity to cross-examine the witness).

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<sup>9</sup> It goes without saying that the statutory right to cross-examine witnesses in a civil proceeding under the LEOBR does not amount to a Constitutional right under the Sixth Amendment or under Article 21 of the Maryland Declaration of Rights. *See Turner v. Rogers*, 564 U.S. 431, 441 (2011) ("[T]he Sixth Amendment does not govern civil cases."); *Porterfield v. Mascari II, Inc.*, 374 Md. 402, 432 (2003) ("Article 21 of the Maryland Declaration of Rights applies solely to criminal prosecutions.").

In the present case, Mr. Watters failed to subpoena Officer B to attend the hearing, although he knew of the importance of his testimony, because he had been presented with Officer B’s recorded and transcribed statements, and as a result, he has waived his objection to the admission of Officer B’s statements.

Mr. Watters, nevertheless, argues he was not obligated to subpoena Officer B, because the MTA Police had subpoenaed him. Initially, Mr. Watters relies on *Hyson v. Montgomery County Council*, 242 Md. 55 (1965), to argue that, ““the circumstances of this particular case, the nature of the proceedings, and the character of the rights’ at issue demand a conclusion that Sergeant Watters was [] entitled to rely on the Agency’s over representation that Officer B was to be subpoenaed as a witness[.]”

In *Hyson*, the Court of Appeals rejected an argument that the opponents of a zoning reclassification were denied due process because they were unable to engage in cross-examination of a witness, when there was no statutory provision requiring cross-examination. 242 Md. at 68. The applicant’s experts were present and testified at the hearing, but they were not cross-examined by the opponents when given the opportunity. *Id.* at 60. Nonetheless, when the applicants rested and the opponents began their argument, counsel for the opponents requested “the right of cross-examination on the material that has already been presented.” *Id.* The Council stated, “it hasn’t been the practice,” and the opponents proceeded with their case. *Id.* On appeal, the opponents argued that they had been denied due process because the Council refused to allow cross-examination. *Id.* at 59. The Court of Appeals disagreed and held that the opponents waived their right to cross-

examine by failing to request cross-examination at the appropriate time during the hearing. *Id.* at 68.

The primary issue in *Hyson*, however, was whether cross-examination was required in hearings on zoning matters; as a result, the Court identified various indicia to measure whether cross-examination was required, which included “the circumstances of each particular case, the nature of the proceedings, and the character of the rights at issue.” *Id.* at 67. Accordingly, the Court concluded that “when an administrative board or agency is required to hold a public hearing and to decide disputed adjudicative facts based upon evidence...a reasonable right of cross-examination must be allowed.” *Id.* Whether cross-examination was required or not, however, is not the issue in the present case, because the ability to cross-examine was provided for under the LEOBR. *Hyson*, as a result, does not inform as to whether Mr. Watters waived his right of cross-examination or is excluded from the subpoena requirement.

Mr. Watters, nevertheless, argues that he was not required to subpoena Officer B, after the MTA Police had already disclosed their witness list naming Officer B and issued a subpoena for his appearance. Our jurisprudence does not address the basis for the requirement of subpoenaing a witness who had been subpoenaed by the other party in an administrative case, *see Rosov*, 163 Md. App. at 116-17, but an Arizona intermediate appellate case does.

In *Employers Mutual Liability Insurance Co. of Wisconsin v. Industrial Commission*, 490 P.2d 35 (Ariz. Ct. App. 1971), the Arizona Court of Appeals reviewed a

compensation award to an employee after he sustained a work-related injury. Before the administrative hearing, the employee subpoenaed a doctor he consulted and a custodian of records, but the insurer did not. 490 P.2d at 38. When the doctor and custodian failed to appear, the custodian sent a copy of the employee’s medical record directly to the hearing officer, and the insurer objected to the admission of the record because of the lack of an opportunity to cross-examine the doctor who authored the record. *Id.*

The Arizona intermediate appellate court denied the insurer’s claim and held that, “[t]o assure the preservation of the record and the right to examine a specified witness, the witness whom a party desires to examine must be subpoenaed by that party in order to preserve the record based upon the inability to examine the potential witness whom he desires to examine.” *Id.* As a result, a “party may not rely upon the fact that a subpoena has been issued by the opposition.” *Id.*

The acknowledgement by the court that a party subpoenaing a witness is vital to present the claim that cross-examination is important, is persuasive in the present case. Ergo, failing to subpoena a witness in an administrative proceeding, in which hearsay is more readily admitted than in a judicial setting, supports a party’s contention that live testimony is necessary.

The fact that Mr. Watters only found out that Officer B was not going to appear on the morning of the hearing also does not act as a justification of Mr. Watters’s failure to subpoena Officer B. This argument has no merit, based on the case of *Rosov v. Maryland Board of Dental Examiners*, 163 Md. App. 98 (2005). In *Rosov*, Dr. Rosov argued that the

hearing board erred by admitting an investigative report because the report’s author, Ms. Bartrem, was not subject to cross-examination. 163 Md. App. at 116. Dr. Rosov also argued that he was not informed of Ms. Bartrem’s failure to appear until the start of the hearing. *Id.* We concluded that Dr. Rosov’s argument was meritless because he did not subpoena Ms. Bartrem at any point before the hearing, even though the State disclosed the report with Ms. Bartrem’s name to Dr. Rosov. *Id.* As a result, this Court held that Dr. Rosov “was not deprived of the opportunity to cross examine Ms. Bartrem by the State or the ALJ, but by his own failure to subpoena the witness.” *Id.* at 117. Similarly, Mr. Watters’s discovery of Officer B’s absence the morning of the hearing does not justify Mr. Watters’s failure to subpoena Officer B any time before the hearing.

Even assuming, *arguendo*, that Mr. Watters did not waive his right to cross-examine Officer B by failing to subpoena him, Officer B’s hearsay statements were appropriately admitted.

Sections 10-222(h)(3)(iii) and (iv) of the State Government Article, Maryland Code (1984, 2014 Repl. Vol., 2020 Supp.), permit a court on judicial review to reverse an agency’s decision “if such decision results from unlawful procedure or some other error of law.” However, “the procedure followed in administrative agencies usually is not as formal and strict as that of courts,” *Travers*, 115 Md. App. at 408, and “administrative agencies generally are not bound by the technical common law rules of evidence.” *Dep’t of Pub. Safety & Corr. Servs. v. Cole*, 342 Md. 12, 31 (1996).

Under Section 10-213(c) of the State Government Article, evidence in an administrative proceeding “may not be excluded solely on the basis that it is hearsay.” Any admission of hearsay evidence, however, must still “observe basic rules of fairness as to the parties appearing before them,” *Cole*, 342 Md. at 32, such that the hearsay evidence “demonstrate[s] sufficient reliability and probative value to satisfy the requirements of procedural due process.” *Travers*, 115 Md. App. at 411.

Mr. Watters argues that Officer B’s hearsay statements were inadmissible because Officer B was unreliable and claims that unreliability relates to the credibility of Officer B, who he asserts was a liar.

Mr. Watters asks us to make an independent credibility assessment of Officer B’s statements, but his argument is without merit. *Terranova v. Bd. of Trs. of Fire & Police Emps. Ret. Sys. of Balt. Cty.*, 81 Md. App. 1, 13 (1989) (“The weighing of the evidence and the assessment of witness credibility is for the finder of fact, not the reviewing court.”). This Court has “no power to substitute [the] assessment of credibility for that of the agency if there was evidence to support the findings of fact in the record before the agency.” *Fire & Police Emps.’ Ret. Sys. of Balt. v. Middleton*, 192 Md. App. 354, 359 (2010).

Although we cannot assess credibility, we do have the ability to review the admission of hearsay statements by an administrative body for reliability and probativity by evaluating “the nature of the hearsay evidence.” *Travers*, 115 Md. App. at 413. Salient aspects of such an assessment include, among others, whether the statements were “made close in time to the incident” or “corroborated.” *Id.*

Officer B’s statements to Lieutenant McBride were made only eleven days after the incident. The short period of time between the incident and the hearsay statement “is a factor that enhances the reliability of [the] statement.” *Travers*, 115 Md. App. at 414. *See B.H. v. Anne Arundel Cnty. Dep’t of Soc. Servs.*, 209 Md. App. 206, 224 (2012) (finding the hearsay statements reliable, in part, because they “followed in close temporal proximity from the alleged events”).

Officer B’s statements also possessed other indicia of reliability. Officer B’s statements were audio recorded, transcribed, and given during an internal affairs investigation.

Mr. Watters also corroborated Officer B’s statements, when he acknowledged that Officer B told him about the discarded drugs taken from Mr. Mussa and the subsequent investigation by the Anne Arundel County Police. Mr. Watters also admitted he had done nothing with the information. Corroborative statements made by the objecting party obviously boost the reliability and probative value of Officer B’s statements.

The Board properly admitted Officer B’s statements.

In his second question, Mr. Watters urges that the Board did not have substantial evidence to find him guilty of the ten disciplinary charges. Mr. Watters argues that the record lacked substantial evidence to support the Board’s findings that Mr. Watters failed to notify his supervisor and failed to direct Officer B, his subordinate, to notify his supervisor and/or correct official reports. The State disagrees.



When reviewing an administrative appeal, “we bypass the judgment of the circuit court and look directly at the administrative decision.” *Balt. Police Dep’t v. Ellsworth*, 211 Md. App. 198, 207 (2013) (quoting *Salisbury Univ. v. Joseph M. Zimmer, Inc.*, 199 Md. App. 163, 166 (2011)). Judicial review of an administrative agency’s factual findings is narrow. *Coleman v. Anne Arundel Cnty. Police Dep’t*, 369 Md. 108, 121 (2002). “It is ‘limited to determining if there is substantial evidence in the administrative record as a whole to support the agency’s findings and conclusions.’” *Id.* (quoting *Montgomery Cnty. v. Stevens*, 337 Md. 471, 482 (1995)). Under the substantial evidence test, “a reviewing court decides whether a reasoning mind reasonably could have reached the factual conclusion the agency reached.” *Md. Aviation Admin. v. Noland*, 386 Md. 556, 571-72 (2005) (quoting *Bd. of Physicians Quality Assurance v. Banks*, 354 Md. 59, 67-68 (1999)).

A reviewing court “must review the agency’s decision in the light most favorable to it.” *Id.* As the agency’s decision is “prima facie correct and presumed valid,” we must “defer to the agency’s fact-finding and drawing of inferences if they are supported by the record.” *Id.* We “may not substitute our judgment for that of the agency concerning the appropriate inferences to be drawn from the evidence.” *Travers*, 115 Md. App. at 420. *See Bulluck v. Pelham Wood Apartments*, 283 Md. 505, 513 (1978) (“[W]here inconsistent inferences from the same evidence can be drawn, it is for the agency to draw the inferences.”). Under substantial evidence review, the question is not “whether the inference drawn [by the administrative agency] is the right one or whether a different inference could be better supported. The test is reasonableness, not rightness.” *Md. Dep’t of Env’t v.*

*Anacostia Riverkeeper*, 447 Md. 88, 120 (2016) (quoting *Mayor of Annapolis v. Annapolis Waterfront Co.*, 284 Md. 383, 399 (1979)).

In the present case, the Board concluded that Sergeant Watters was guilty of ten of the fourteen disciplinary violations, which included:

**Charges 1 and 7: Violations of the MTA Police SOP Section 2.3.4.3**

Reporting Violations of Laws, Ordinances, Rules, or Orders. All members and employees knowing of other members or employees violating laws, ordinances, or rules of the Police Force, or disobeying orders, shall report same in writing to the Chief of Police through official channels. If the member or employee believes the information is of such gravity that it must be brought to the immediate personal attention of the Chief of Police, the official channels may be bypassed.

**Charges 2 and 8: Violations of the MTA Police SOP Section 1.7.2.3**

Direction. The Sergeant must exercise direct command in a manner that assures the good order, conduct, discipline, and efficiency of subordinates. Exercise of command may extend to subordinates outside his/her usual sphere of supervision if the transit police objective or the reputation of the police force so requires; or if no other provision is made for personnel temporarily unsupervised. This authority shall not be exercised unnecessarily. If a Sergeant requires a subordinate other than his/her own to leave a regular assignment, the Sergeant so directing will inform the subordinate's own supervisor as soon as possible.

**Charges 3 and 9: Violations of the MTA Police SOP Section 3.2.3**

No member of the Police Force shall feign illness, avoid responsibility, or attempt to shrink his/her duties. To do so shall be deemed "neglect of duty."

**Charge 10: Violation of the MTA Police SOP Section 2.3.4**

Laws, Regulations and Orders. Every member is required to establish and maintain a working knowledge of all applicable federal statutes, state laws, local city and county laws and ordinances, and Administration and Police Force policies, procedures, rules and regulations. In the event of improper action or breach of discipline, it will be presumed that the member was familiar with the law, ordinance, policy, etc., in question.

**Charge 11: Violation of the MTA Police SOP Section 2.3.3.1**

Standard of Conduct. All members and employees shall conduct their private and professional lives in such a manner as to avoid bringing the Police Force into disrepute.

**Charge 12: Violation of the MTA Police SOP Section 2.3.3.5**

General Behavior. All members and employees shall not act or behave privately or officially in such a manner as to bring discredit upon themselves, the Police Force, or the Administration.

**Charge 13: Violation of the MTA Police SOP Section 3.1**

Conduct. Any breach of the peace, neglect of duty, misconduct, or any conduct on the part of any Police Force personnel which tends to undermine the good order, efficiency, or discipline of the Police Force, or which reflects discredit upon the Police Force or any member thereof, or which is prejudicial to the efficiency and discipline of the Police Force, even though these offenses may not be specifically enumerated or laid down, shall be considered conduct unbecoming as a member of the MTA Police Force, and subject to disciplinary action by the Chief of Police.

In its written decision, the Board found:

During the investigation into the incident, Officer B told Detective Lieutenant McBride that on a day subsequent to the arrest, he told Sergeant Watters that he had made an arrest, had left suspected CDS at the location of the arrest, that Anne Arundel County Police had contacted him about it after they recovered it and that Sergeant Watters did not direct him to report it to anybody else in the MTA Police Force. Although Officer B was terminated in part for dishonesty, the Board found that his statements about his conversation with Sergeant Watters were corroborated by Sergeant Watters's own admission that Officer B told him about the arrest, that the CDS that had been left there and that Anne Arundel County had recovered the CDS and contacted Officer B. Sergeant Watters admitted that he made no notification to any supervisors. Sergeant Watters also admitted that he did not instruct Officer B that he needed to make any other notification or take other action.

The bases for the Board's determination of violations included Officer B's and Sergeant Watters's interviews, which were recorded, transcribed, and admitted in evidence.

The Board relied on Officer B’s recorded interview to establish his subordinate status to Sergeant Watters, and the fact that Officer B reported his misconduct to Sergeant Watters:

[Lt. McBride]: What supervisor was it that, who was your supervisor that night?

[Officer B]: I think it was Sergeant Watters and Sergeant Pikowski, I would think.

[Lt. McBride]: So you reported to Sergeant Watters?

[Officer B]: Correct.

Mr. Watters argues that the record does not reflect his knowledge regarding what was left behind or discarded by Officer B. In Officer B’s recorded and transcribed interviews, which are in the record, however, he admitted to Lieutenant McBride that he reported the discarded drugs and subsequent Anne Arundel County Police investigation to Sergeant Watters:

[Lt. McBride]: And what did you tell Sergeant Watters?

[Officer B]: I was—I had a guy at Linthicum, I arrested him, I believe he had some kind of, I don’t know, capsules going on, it was road by Anne Arundel County Officers and the Officer told me he would process it. I asked then the Anne Arundel County Officer can I take the drugs and can I take them back to the District and process it. He told me under their procedures that he couldn’t allow me to do that, he had to do it and he never contact me back.

In Mr. Watters’s interview with Lieutenant McBride, he also acknowledged that Officer B had reported the discarded drugs to him. Initially, Sergeant Watters did not recall the circumstances under which “Officer B had an arrest on December 3, 2018.” Lieutenant McBride then described Officer B’s arrest as “the situation that the drugs were thrown away by accident,” and Sergeant Watters thereupon recognized what she was referring to, by asking if that was “the incident that happened at Linthicum,” which Lieutenant McBride

confirmed. Sergeant Watters responded, “I do recall [Officer B] mentioning something to that effect, yes.”

With respect to Charges 1 and 7, the Board found that Sergeant Watters did not report Officer B’s misconduct to a supervisor, in violation of Section 2.3.4.3 of the MTA Police SOP, which requires that an MTA Police member report another member’s violation of MTA Police rules to the Chief of Police. When Lieutenant McBride asked, “you didn’t tell your supervisor,” Sergeant Watters unequivocally admitted, “[s]o no, I didn’t tell anybody because I didn’t think it was significant to where it needed to be brought to somebody’s attention, like I just didn’t think it was a big deal, I guess.”

With respect to Charges 2 and 8, the Board also found that Sergeant Watters did not direct Officer B, his subordinate, to report his misconduct and/or correct official reports, in violation of Section 1.7.2.3 of the MTA Police SOP, which mandates a Sergeant to exercise direct command of subordinates, including those outside his usual sphere of supervision. During his interview with Lieutenant McBride, she asked, “and when [Officer B] mentioned it what did you do with the information,” Sergeant Watters admitted, “[s]o I honestly didn’t do anything because the way he explained it, it was like it was an honest error[.]” Sergeant Watters explained, “it was a nice little lapse from when the incident occurred to when he told me and it was like well, you know, it happens, you know, sometimes we forget things in the midst of trying to get other things accomplished. And so I didn’t do anything with it.” Sergeant Watters, then, obviously, failed to direct Officer B to report his misconduct if he did not do anything with the information.

Similarly, with respect to Charges 3 and 9, the Board found that Sergeant Watters neglected his duty, in violation of Section 3.2.3 of the MTA Police SOP, which prohibits MTA Police members from avoiding or shrinking their responsibilities. The Board found that Mr. Watters, as a then-Sergeant, had a responsibility to take proper action upon learning of a subordinate's misconduct. By failing to direct Officer B, Sergeant Watters avoided his responsibility to direct subordinates, and as a result, neglected his duty.

The Board also found that, with respect to Charge 10, Sergeant Watters stated that he did not know what to do upon receiving Officer B's information, in violation of Section 2.3.4 of the MTA Police SOP, which requires all MTA Police members to maintain knowledge of all MTA Police policies and procedures. When Lieutenant McBride asked him what he did with Officer B's information, Sergeant Watters admitted, "[h]onestly, I didn't know what to do," and "I was like I don't know what the hell we can do at this point anyway." Section 2.3.4.3 of the MTA Police SOP requires members of the MTA Police to report another officer's misconduct. Sergeant Watters obviously did not adhere to Section 2.3.4.3 and lacked any knowledge of it.

Based upon the evidence that Sergeant Watters failed to take appropriate action when he was told that Officer B discarded drugs and when advised of the Anne Arundel County Police investigation, the Board found that Sergeant Watters's inaction brought the MTA Police into disrepute, discredited the MTA Police, and undermined the good order of the MTA Police.

The Board clearly stated the record evidence it relied upon when making its factual findings, and we determine that the evidence in the record was substantial in support of each charge sustained against Mr. Watters.<sup>10</sup> The Board did not err.<sup>11</sup>

Mr. Watters then challenges Chief Gavrilis’s decision to terminate him, after the Board had recommended a demotion and suspension. Mr. Watters argues that the Chief did not rely upon evidence within the record to support his decision. The State argues that Chief Gavrilis appropriately exercised his discretion to increase the Board’s recommendation, pursuant to the LEOBR.

Under the LEOBR, the recommendations of the hearing board are not binding upon the chief of police. Pursuant to Section 3-108(d) of the Public Safety Article:

(5) The chief may increase the recommended penalty of the hearing board only if the chief personally:

- (i) reviews the entire record of the proceedings of the hearing board;
- (ii) meets with the law enforcement officer and allows the law enforcement officer to be heard on the record;

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<sup>10</sup> Counsel for Mr. Watters urged before us that the violations for which he was charged required that Mr. Watters knew that Officer B did not report his misconduct to another officer, without reference to any specific provision in the MTA Police SOP, nor did she present this argument to the Board. We will not address this issue.

<sup>11</sup> During oral arguments, counsel for Mr. Watters urged that others of his supervisory rank should also have been prosecuted but were not, alluding to the concept of “selective” or “discriminatory prosecution.” *See McNeil v. State*, 112 Md. App. 434, 463 n.10 (1996) (“Selective prosecution occurs when the State seeks out persons for prosecution based on impermissible factors...or the exercise of constitutional rights. Vindictive prosecution occurs when the State seeks to impose a harsher penalty upon a defendant in retaliation for the defendant’s decision to exercise a constitutional right.”). The argument was not pursued during the hearing before the Board, nor was evidence of such adduced; we find no merit in the argument.

(iii) discloses and provides in writing to the law enforcement officer, at least 10 days before the meeting, any oral or written communication not included in the record of the hearing board on which the decision to consider increasing the penalty is wholly or partly based; and

(iv) states on the record the substantial evidence relied on to support the increase of the recommended penalty.

A chief of police has discretion to increase a hearing board’s recommended sanction, “as long as he based his decision on violations for which appellant was found guilty.” *Rivieri v. Balt. Police Dep’t*, 204 Md. App. 663, 670 (2012) (citing *Coleman v. Anne Arundel Cnty. Police Dep’t*, 369 Md. 108, 147 (2002)). The chief of police, however, is “entitled to consider the guilty findings in the context of the totality of the circumstances.” *Rivieri*, 204 Md. App. at 670.

Chief Gavrilis, in the instant situation, appropriately increased Mr. Watters’s sanction. After having reviewed the entire record and having heard from Mr. Watters, Chief Gavrilis ultimately decided to terminate Mr. Watters.

Mr. Watters, however, argues that Chief Gavrilis’s decision was inappropriate because the Chief improperly concluded that Mr. Watters engaged in “*conspiring to cover up* the improper disposal of drugs and *a stun gun*,” although he was not charged with conspiracy nor found culpable relative to a stun gun. The State argues that Chief Gavrilis was entitled to infer the existence of a cover up, and that any mention of the stun gun was ancillary to the Chief’s rationale for the penalty increase, and therefore does not render his decision improper.



Chief Gavrilis used the terms “conspiring to cover up” to characterize Mr. Watters’s complicity in Officer B’s misconduct. “Conspire” is defined as “to join in a secret agreement to do an unlawful or wrongful act.” *Conspire*, Merriam-Webster’s Dictionary Online (2022), <https://www.merriam-webster.com/dictionary/conspire> [<https://perma.cc/8N32-YQDN>]. “Conspire” has also been defined as “to plan secretly with other people to do something bad, illegal, or against someone’s wishes.” *Conspire*, Cambridge Dictionary Online (2022), <https://dictionary.cambridge.org/us/dictionary/english/conspire> [<https://perma.cc/9ZNB-PREH>].

A “cover-up” is defined as “a usually concerted effort to keep an illegal or unethical act or situation from being made public.” *Cover-up*, Merriam-Webster’s Dictionary Online (2022), <https://www.merriam-webster.com/dictionary/cover-up> [<https://perma.cc/KYJ-2RC3M>]. Similarly, Black’s Law Dictionary defines “cover-up” as “an attempt to prevent authorities or the public from discovering the truth about something.” *Cover-up*, Black’s Law Dictionary (11th ed. 2019).

Chief Gavrilis reasonably concluded that Mr. Watters’s failure to act, and failure to report any misconduct until questioned by Lieutenant McBride, was a “cover up by [Mr. Watters] of information received from a subordinate of disposing of CDS/evidence.” Chief Gavrilis recognized that Mr. Watters was complicit “in this egregious act,” by failing to report Officer B’s misconduct, which was tantamount to “conspiring to cover up” Officer B’s misconduct.

Mr. Watters also argues that Chief Gavrilis’s mention of “a stun gun” was inappropriate in support of the heightened sanction. Chief Gavrilis, though, “was entitled to consider the guilty findings in the context of the totality of the circumstances,” *Rivieri*, 204 Md. App. at 670, which, in fact, included the Board’s finding of Officer B’s improperly discarded stun gun.

Mr. Watters also argues that there was no evidence to support Chief Gavrilis’s characterization of Mr. Watters’s testimony as “sarcastic.” As the Chief referenced, however, the Board noted that Mr. Watters expressed that the only reason his prior sanctionable conduct was reprehensible was because the subordinate officer had gotten into an accident. Chief Gavrilis could infer that, had the accident not occurred, Mr. Watters would not have acknowledged any misconduct on his part. *See Rivieri*, 204 Md. App. at 673-74.

Mr. Watters also challenges the Chief’s finding that he “betrayed subordinate officers by misguiding *them*,” because Officer B was the only subordinate officer involved in the instant situation. Chief Gavrilis, however, was entitled to consider Mr. Watters’s first disciplinary action where he misdirected a different subordinate officer. Section 3-108(d)(4) of the Public Safety Article (“The chief shall consider the law enforcement officer’s past job performance as a factor before imposing a penalty.”).

Mr. Watters then argues Chief Gavrilis’s conclusion that Mr. Watters violated his “oath of office” was unsupported by the record because “no such oath appears at any place

in the record.” Chief Gavrilis explained, however, that the oath that Mr. Watters had already taken was “to uphold the law and the rules and regulations of your department.”

Therefore, Chief Gavrilis appropriately increased the Board’s recommended penalty pursuant to the LEOBR based upon the Board’s findings of guilt and the evidence within the record.

### CONCLUSION

As a result, though Mr. Watters waived any objection to the admission of the hearsay evidence, we hold Officer B’s hearsay statements were sufficiently reliable, probative, and appropriately admitted into evidence by the Board; that the Board’s decision was supported by substantial evidence within the record; and that Chief Gavrilis appropriately increased the Board’s recommended sanction to termination, pursuant to Section 3-108(d)(5) of the Public Safety Article. For these reasons, we affirm the judgment of the Circuit Court for Baltimore City.

**JUDGMENT OF THE CIRCUIT COURT  
FOR BALTIMORE CITY AFFIRMED.  
COSTS TO BE PAID BY APPELLANT.**