Circuit Court for Baltimore City
Case Nos. 24-C-20-003065; 24-C-20-003670; 24-C-20-003671

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

CONSOLIDATED

Nos. 1209, 1229, 1230

September Term, 2020

MICHAEL HARRISON, ET AL.

v.

MARCUS JOHNSON

MICHAEL HARRISON, ET AL.

v.

DOMINIQUE WIGGINS

MICHAEL HARRISON, ET AL.

v.

WANDA JOHNSON

Fader, C.J.,
Nazarian,
Leahy,
JJ.

Opinion by Leahy, J.

Filed: October 18, 2021

The underlying Baltimore Police Department disciplinary proceedings arise out of a bar fight at a bachelorette party that occurred shortly after midnight at Norma Jean's nightclub in Baltimore City on August 26, 2018. Disciplinary charges arising out of the events of that early morning were filed against three Baltimore Police Department employees: Officer Wanda Johnson, Detective Dominique Wiggins, and Officer Marcus Johnson (collectively, "Appellees"). According to the charges, Wanda,[1] who was off-duty at the time, was involved in one or more physical altercations with other patrons; and Marcus (Wanda's then fiancé) was accused of several policy violations relating to his appearance at Norma Jean's while on duty. Wanda and Dominique were accused of making false statements in their interviews on August 26, 2018, and all three Appellees were accused of making false statements in their interviews on June 4, 2020.

The disciplinary charges were not brought until June 11, 2020, a few days short of one year after the Office of the State's Attorney for Baltimore City ("SAO") sent a letter to the Baltimore Police Department announcing that the office was declining to prosecute Wanda and Dominique.[2] Before their administrative disciplinary hearings began, the

[1] Wanda Johnson and Marcus Johnson are married and share the same surname. Accordingly, we will refer to the Appellees by their first names for clarity and mean no disrespect thereby.

[2] Another Baltimore Police Officer, Marlon Koushall, was prosecuted for his part in the events that took place that night. After Officer Koushall arrived on the scene at Norma Jean's in response to a request for backup, he struck an off-duty police officer, Henrietta Middleton, in the head. *Koushall v. State*, 249 Md. App. 717, 724, *cert. granted*, 474 Md. 718 (2021). Koushall was convicted by a judge sitting in the Circuit Court for Baltimore City of second-degree assault and misconduct in office. *Id.* at 723.

Appellees each filed a complaint and petition for a show cause order in the Circuit Court for Baltimore City seeking to enjoin the Baltimore Police Department and its Commissioner, Michael Harrison, (collectively, the "BPD") from pursuing the charges. The Appellees argued that all of the charges were time-barred by the one year limitations period in section 3-106 of the Law Enforcement Officer's Bill of Rights ("LEOBR") codified at Maryland Code (2003, 2018 Repl. Vol.), Public Safety Article ("PS"), §§ 3-101 *et. seq.*[3] The BPD responded with motions to dismiss or, in the alternative, for summary judgment, to which they attached an affidavit and a series of other exhibits.

The circuit court issued nearly identical memorandum opinions in each of the Appellees' cases on November 9, 2020. The court granted the Appellees their requested relief and enjoined the BPD from pursuing administrative disciplinary hearings against them after the court determined that the BPD failed to bring the underlying disciplinary charges within LEOBR's one-year statute of limitations. The court denied the BPD's motions on the ground that, with the exception of an affidavit by Sergeant Raymond Lloyd, the exhibits appended to the motions were inadmissible as hearsay, and that without those exhibits, the motions lacked the requisite evidentiary support.

The BPD filed timely appeals from the circuit court's decisions, and present three questions for our review, which we have reordered and reframed as follows:[4]

[3] The LEOBR has since been repealed, but the repeal does not go into effect until July 1, 2022. 2021 Md. Laws ch. 59 (H.B. 670).

[4] The BPD presents the following questions in their brief:

(Continued)

I. Did the circuit court err by holding that the disciplinary charges for false statements made on June 4, 2020 were time barred by the applicable one-year statute of limitations when the charges were brought only seven days later on June 11, 2020?

II. Did the circuit court err by holding that, with respect to the disciplinary charges for violations committed on August 26, 2018, the criminal activity exception to the one-year statute of limitations ceased applying on February 19, 2019, and that the charges were therefore also time-barred?

"Did the circuit court err when it found that all the disciplinary charges that BPD brought against Appellees on June 11, 2020, violated the one-year deadline in PS § 3-106[?]

A. Did the circuit 'court leave[] its role as an arbiter and assume[] another role as a party to the proceeding,' when it 'ma[de] a ruling as to the admissibility of evidence on its own without a prior objection by any of the parties,' in contravention of the Court of Appeals' dictate in *Kelly v. State*, 392 Md. 511, 541 (2006)?

B. Did the circuit court err by holding that charges based on false statements made on **June 4, 2020**, were barred by a **one-year** deadline from being brought on **June 11, 2020**, even though the Court of Appeals explained in *Robinson v. Baltimore Police Department*, 424 Md. 41, 43 (2011), that this 'limitations period begins when the officer makes the false statement, not when the earlier misconduct that underlies the investigation was alleged to have occurred'?

C. Did the circuit court misapply the Court of Appeals' holding in *Baltimore Police Department v. Etting*, 326 Md. 132, 141 (1992), that this 'one-year period of limitations beg[ins] to run when the [BPD has] knowledge that criminal charges w[ill] not be filed' when the court counterfactually assumed that BPD knew about Appellees' alleged misdeeds that occurred on the night of the bar fight when the State's Attorney's Office charged *a different* officer with a crime arising from that bar fight?"

(Emphasis in original).

III. Did the circuit court abuse its discretion by excluding relevant evidence without a prior objection by any of the parties, and subsequently denying the BPD's motion to dismiss?

We answer the first question by holding that the false statement charges brought against Appellees only seven days after the false statements were allegedly made on June 4, 2020 are not time-barred. In addressing the second question concerning violations committed on August 26, 2018, we reach two separate holdings. First, we hold that the remaining charges brought against Wanda and Dominique on June 11, 2020 for their conduct on August 26, 2018 are also not time-barred because the applicable limitations period did not begin running until June 14, 2019 when the SAO sent its first declination letter. Second, we hold that the charges brought against Marcus on June 11, 2020 for his conduct on August 26, 2018 were barred because more than one year elapsed between the alleged misconduct and the bringing of charges, and the record reflects no suspicion of criminal behavior existed to toll the statute of limitations as to him. Accordingly, we affirm the circuit court's decision dismissing the charges against Marcus for his conduct on August 26, 2018 and reverse the circuit court's decisions regarding all other charges.

The first two questions concerning the statute of limitations are dispositive. And, because they are definitively resolved as a matter of law upon the facts contained in the complaints and the affidavit of Sergeant Raymond Lloyd, we do not reach the question of whether the circuit court erred by excluding, without prior objection,[5] the BPD's exhibits

[5] The BPD argues in its brief that the Court of Appeals forbade trial courts from ruling on the admissibility of evidence without a prior objection in *Kelly v. State*, 392 Md. (Continued)

to their motion to dismiss or, in the alternative, for summary judgment.

BACKGROUND[6]

Wanda's bachelorette party was held at Norma Jean's nightclub on August 25, 2018. That night, Wanda allegedly assaulted someone inside the nightclub, and Dominique was

511 (2006). We regard *Kelly* to have very limited application in the context of civil proceedings.

In *Kelly*, a criminal defendant sought to introduce testimony of three witnesses, and each time, the trial court demanded, *sua sponte*, a proffer of the witnesses' expected testimony. *Id.* at 520, 522, 527. After each proffer, the court ruled that the defense witnesses could not testify because the testimony would be inadmissible, even though the prosecution never formally objected. *Id.* at 526-27, 529. The court did not require any such proffers from the prosecution. *Id.* at 541. On appeal, the Court of Appeals held that this was an abuse of discretion because the trial court improperly "assume[d] the role of a party by ruling on the admissibility of evidence in the absence of appropriate objections[.]" *Id.* at 542-43. The Court's analysis was expressly based on the constitutional right to compulsory process afforded to criminal defendants under the Sixth Amendment to the United States Constitution and Article 21 of the Maryland Declaration of Rights. *Id.* at 532-35, 543. The Court cited Maryland Rule 4-323 (setting out the method of making objections in criminal cases) to illustrate the principle that "generally it is the parties that are charged with objecting to the propriety of the evidence presented at trial." *Kelly*, 392 Md. at 540. The Court explained that, although "[t]he conduct of the trial must of necessity rest largely in the control and discretion of the presiding judge," that control "must safeguard the defendant's constitutional rights." *Id.* at 543 (quoting *Kelly v. State*, 162 Md. App. 122, 141 (2005)). The Court concluded, therefore, that "the trial court denied petitioner his constitutional right to present a defense[.]" *Id.* We note that civil parties have no Sixth Amendment or Article 21 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[.]").

[6] The background is drawn from Sergeant Lloyd's affidavit and the common facts alleged by both parties in their pleadings. The other exhibits excluded by the circuit court contain nothing that would materially change our analysis.

at the club with her when the alleged assault occurred. Marcus came to the nightclub sometime later, allegedly while he was on duty.

Sergeant Marlon Koushall, another Baltimore Police Department officer who is not a party to this case, was also accused of committing an assault after midnight. The assault committed by Sergeant Koushall happened outside the nightclub, sometime after the alleged assault committed by Wanda happened inside the nightclub. Wanda, Marcus, and Dominique were all interviewed during the early morning hours of August 26, 2018, about the incident involving Sergeant Koushall. Sergeant Raymond Lloyd, the officer who interviewed them, stated in an affidavit that he had no knowledge of any misconduct by Wanda, Marcus, or Dominique at the time of these interviews.

In February 2019, Sergeant Koushall was indicted for assault and misconduct in office. *Koushall*, 249 Md. App. at 723. On June 14, 2019, the Baltimore City State's Attorney's Office issued a letter declining to prosecute Wanda and Dominique for their conduct at the nightclub. An additional declination letter regarding Wanda's conduct was issued on August 23, 2019. No declination letters were issued regarding Marcus's conduct, and it does not appear that he was ever suspected of criminal activity.

Sergeant Koushall was found guilty of assault following his bench trial in the Baltimore City Circuit Court in September-October 2019. *Id.* at 24.

On June 4, 2020, the BPD interviewed all three Appellees as part of a disciplinary investigation against them.

On June 11, 2020, the BPD brought disciplinary charges against Appellees. Wanda was accused of committing an assault on August 26, 2018, failing to notify her supervisors of the assault on August 26, 2018, making false statements in her interview on August 26, 2018, and making false statements during her interview on June 4, 2020. Dominique was accused of making false statements in her interview on August 26, 2018 and making false statements in her interview on June 4, 2020. Marcus was accused of misconduct relating to being at the nightclub on August 26, 2018 while on duty and of making false statements in his interview on June 4, 2020.

Marcus filed a complaint and petition for show cause order in the circuit court on July 21, 2020. Wanda and Dominique each followed suit[7] on August 26, 2020. Appellees asked the circuit court to require the BPD to show cause why: (1) the Appellees were not denied their right to notice of rights under LEOBR prior to taking their recorded statements on August 26, 2018; and (2) the disciplinary charges against them were not barred by the statute of limitations codified in PS § 3-106. Appellees requested that the Court enjoin the BPD from pursuing the charges filed against them.

On September 3, 2020, the circuit court issued the requested Show Cause Orders.[8] The BPD responded by filing a nearly identical "Motion to Dismiss or in the Alternative,

[7] Double entendre intended.

[8] The Show Cause Orders in this case are governed by § 3-105 of LEOBR, which reads as follows:

(Continued)

for Summary Judgment, in Response to Complaint and Petition for Show Cause Order" in each case. Alongside the motions, the BPD also submitted the following evidence: exhibit A, the affidavit of Sergeant Raymond Lloyd;[9] exhibit B, BPD internal computer records noting developments in the disciplinary investigation; exhibits C-D, the SAO's two declination letters; and exhibits E-G, a series of three forms, each signed by one of the Appellees, acknowledging that they received notice of the investigation.

> (a) *In general.*—A law enforcement officer who is denied a right granted by this subtitle may apply to the circuit court of the county where the law enforcement officer is regularly employed for an order that directs the law enforcement agency to show cause why the right should not be granted.
>
> (b) *Conditions.*—The law enforcement officer may apply for the show cause order:
>
> (1) either individually or through the law enforcement officer's certified or recognized employee organization; and
>
> (2) at any time prior to the beginning of a hearing by the hearing board.
>
> (c) *Relief on finding agency obtained evidence in violation of officer's rights.*—On a finding that a law enforcement agency obtained evidence against a law enforcement officer in violation of a right granted by this subtitle, the court shall grant appropriate relief.

[9] In his affidavit, signed on October 2, 2020, Sergeant Lloyd recounts his observations from the night of August 26, 2018. He reports that he was the "on-call supervisor for" the Baltimore Police Department's Public Integrity Bureau that night, and that at 2:09 AM he received a call "advising that Sergeant Henrietta Middleton was involved in an altercation [at Norma Jean's nightclub] which led to her arrest." Upon arriving at the scene, he learned of Sergeant Koushall's use of force against Sergeant Middleton in her arrest, and he began interviewing witnesses. He interviewed thirteen witnesses, all of them Baltimore Police Department officers, including the three Appellees in this case. He states that he "was not made aware of any allegations of any wrongdoing on the part of Detective Wanda Johnson, Officer Marcus Johnson, or Detective Dominique Wiggins before or during their interviews."

On November 2, the court held a hearing during which the parties presented arguments on the BPD's motions. At this hearing, the court questioned the admissibility of the BPD's exhibits on the grounds that no affidavits were provided to authenticate them or to establish the requisite foundations that they were not hearsay. The BPD responded to the court's questions by noting that the parties did not dispute the authenticity of the records. No objection was made by Appellees' counsel to this evidence either before or after the court's questions, and Appellees' counsel cited to the same internal BPD records during his argument.

On November 9, 2020, the circuit court issued substantively identical memorandum opinions in each case. Pursuant to Maryland Rule 2-322(c), the court treated the motions to dismiss as motions for summary judgment because by "append[ing] an Affidavit and other documents to their motion, [the BPD went] outside the four corners of the Petition."[10]

In each opinion, the court ruled that exhibits B-G—all the evidence attached to the BPD's motions apart from Sgt. Lloyd's affidavit—were inadmissible and concluded that, as a result, "the [BPD's] response to the Show Cause Order neither rebuts the assertions in the Petition, which [Appellees] verified under oath, nor shows cause why the requested

[10] Rule 2-322(c) states in relevant part:

> If, on a motion to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 2-501, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 2-501.

relief of [Appellees] should not be granted."[11] The circuit court denied the BPD's motions for summary judgment, determining that once the computer records were ruled inadmissible, the BPD could not meet their burden to support their motions. From there, the circuit court granted Appellees their requested relief and enjoined the BPD from pursuing disciplinary charges against each of them. The court's stated reason for granting the Appellees' requested relief was that as of February 19, 2019, it became objectively reasonable to believe that the Appellees would not be criminally charged, and therefore, the BPD failed to comply with LEOBR because it brought disciplinary charges more than one year from that date. The BPD filed a timely notice of appeal to this Court on December 9, 2020 in each case.

DISCUSSION

I.

False Statements on June 4, 2020

The BPD's deductive argument is premised on the following undisputed facts: each Appellee is accused of making false statements on June 4, 2020; the charges for those allegedly false statements were brought seven days later on June 11, 2020; the applicable statute of limitations in PS § 3-106 is one year; and, seven days is less than one year. Therefore, the BPD asserts, LEOBR's statute of limitations does not apply to the charges based on allegedly false statements made on June 4, 2020. Appellees respond that the

[11] The court proceeded in its ruling, however, to assert that "[e]ven [c]onsidering the [i]nadmissible [m]aterials," the BPD failed to show cause why the Appellees' requested relief should not be granted.

General Assembly intended for the limitations period in PS § 3-106 to not only bar *charges* brought more than a year after the offense but also to bar *investigations* that continue past one year.

Questions of statutory interpretation are reviewed without deference to the court below. *Brown v. State*, 454 Md. 546, 550 (2017). The same is true for questions of how the law applies to particular facts. *Cunningham v. Feinberg*, 441 Md. 310, 322 (2015).

Section 3-106 of LEOBR limits the time within which enforcement agencies can bring disciplinary charges against law enforcement officers. It reads as follows:

> (a) *In general.* —Subject to subsection (b) of this section, a law enforcement agency may not bring administrative charges against a law enforcement officer *unless the agency files the charges within 1 year after the act that gives rise to the charges comes to the attention of the appropriate law enforcement agency official.*
> (b) *Exception.* —The 1-year limitation of subsection (a) of this section does not apply to charges that relate to criminal activity or excessive force.

(Emphasis added).

In *Robinson v. Baltimore Police Department*, the Court of Appeals determined when the statute of limitations begins running on disciplinary charges for false statements. 424 Md. 41, 53 (2011). In that case, Robinson, a Baltimore Police Department officer, was suspected of engaging in intercourse with a sex worker while on duty. *Id.* at 44-45. Suspicion arose when the sex worker provided details of the encounter during an arrest. *Id.* at 44. Specifically, she alleged that she had approached Robinson on February 19, 2007 when he was sitting in a silver sports utility vehicle. *Id.* She was able to identify him by name because he had shown her his ID card and identified himself as a police officer. *Id.*

As part of the Department's investigation of these allegations, Robinson was interviewed on July 11, 2007 and August 1, 2007. *Id.* at 45. In those interviews, he denied all the allegations and claimed that he had been driving a different car at a different location on the day in question. *Id.* When the initial allegations were corroborated by surveillance camera footage, the Department concluded that Robinson had made false statements in his two interviews. *Id.* at 45-46.

On June 26, 2008, the Baltimore Police Department brought disciplinary charges against Robinson for making these allegedly false statements. *Id.* at 46. Robinson argued that the false statements charges arose from the underlying encounter with the sex worker, and that they were therefore barred by PS § 3-106 because they were brought more than one year after the alleged encounter with the sex worker. *Id.* at 47-48.

The Court of Appeals rejected Robinson's interpretation and clarified that "[t]here is no room in the plain language of § 3-106 for Petitioner's interpretation of it. Put simply, § 3-106 is a statute of limitations, nothing more or less." *Id.* at 51. The Court reasoned:

> Section 3-106 does not even hint at establishing a framework for an investigative process, much less does it address, even implicitly, a relation back of subsequent, chargeable acts of misconduct by the subject officer that are made in response to, or connection with, an investigation of alleged prior misconduct.

Id. The Court made clear that the act giving rise to a false statement charge is the utterance of the allegedly false statements. *Id.* at 53.

Robinson controls our analysis here. Despite Appellees' arguments to the contrary, section 3-106 "does not even hint at" time limitations on the investigative process. *Id.* at

51. The *Robinson* Court explained that the existence and timing of underlying misconduct are irrelevant to false statement charges because the false statements are an independent wrong. *See id.* at 52-53 ("Subsection 3-113(a) [of LEOBR] expressly prohibits an individual from 'knowingly mak[ing] a false statement, report, or complaint during an investigation or proceeding conducted under this subtitle[.]'") (second alteration in original).

The allegedly false statements in the underlying cases were made on June 4, 2020. These statements are the acts that gave rise to the false statement charges brought on June 11, 2020. These charges were brought only seven days after the acts that gave rise to them, and seven days is less than one year. Consequently, we hold that the false statement charges are not time-barred by PS § 3-106, and that the circuit court erred by enjoining the BPD from pursuing these charges against all three Appellees.

II.

Alleged Misconduct on August 26, 2018

The BPD argues that, with respect to the Appellees' alleged misconduct on August 26, 2018, the one-year statute of limitations could not have begun running before May 2019, because that is when they assert the misconduct came to the BPD's attention. Regardless, relying on *Baltimore Police Department v. Etting*, 326 Md. 132, 141 (1992), the BPD avers that the limitations period was tolled until June 14, 2019. *Etting* held that the limitations period is tolled against an officer as long as there exists an objectively reasonable basis to believe that they would be criminally investigated, and the BPD

contends that such a basis existed from the time the misconduct was discovered until the SAO issued its declination letter on June 14, 2019.

The BPD concedes that the SAO did not issue a declination letter for Marcus. Instead, the BPD posits that the limitations period for the charges brought against Marcus began running when the declination letter covering Wanda and Dominique was sent on June 14, 2019, because until then, there was a reasonable possibility that he could be charged for obstruction of justice for attempting to conceal his wife's alleged assault. The BPD relies on a passage in *Etting*, 326 Md. at 140, that the criminal activity exception applies to "all charges arising out of the incident in question." They contend that because Marcus's charges arose out of the same series of events, those charges are covered by the umbrella of the possible criminal investigation into Wanda and Dominique.

Appellees' multi-pronged response begins with the claim that the BPD actually discovered the basis for the alleged misconduct earlier than May 2019, or at least that it *should* have discovered it earlier. Second, Appellees appear to argue that it is inequitable to mark when the criminal activity exception to the limitations period ceases to apply with a declination letter because BPD has control over when the Department asks the SAO for a declination letter. Third, Appellees contend that the criminal activity exception ceased to apply in this case once Sergeant Koushall was indicted in February 2019 because that eliminated any reasonable possibility that the others would be charged as well. Finally, Appellees argue that the criminal activity exception never applied to Marcus at all because there is no evidence that he was ever being criminally investigated.

A.

PS § 3-106

We begin our analysis with the text of PS § 3-106, and we interpret the statute without deference to the trial court. *Cunningham*, 441 Md. at 322. The underlying findings of fact, however, we review for clear error. *Kusi v. State*, 438 Md. 362, 383 (2014). "The predominant goal of statutory construction is to 'ascertain and effectuate the intention of the legislature.'" *75-80 Props., L.L.C. v. Rale, Inc.*, 470 Md. 598, 623 (2020) (quoting *Md.-Nat'l Cap. Park & Planning Comm'n v. Anderson*, 395 Md. 172, 182 (2006)). We will "neither add nor delete words to a clear and unambiguous statute to give it a meaning not reflected in the words the Legislature used or engage in forced or subtle interpretation in an attempt to extend or limit the statute's meaning." *Id.* at 624 (quoting *Walzer v. Osborne*, 395 Md. 563, 572 (2006)). We will, however, "examine prior case law construing the statute in question." *Nationstar Mortg. LLC v. Kemp*, ___ Md. ___, ___, No. 43, September Term 2020, slip op. at 20 (filed Aug. 27, 2021).

Section 3-106(a)

Section 3-106(a) of LEOBR states that the one-year statute of limitations for disciplinary actions against law enforcement officers begins running when "the act that gives rise to the charges comes to the attention of the appropriate law enforcement agency official." The plain meaning of PS § 3-106(a) is unambiguous: the period starts when the agency actually becomes aware of the misconduct. *See Pruitt v. Howard Cnty. Sheriff's Dep't*, 96 Md. App. 60, 76 (1993) (requiring actual knowledge).

We reject Appellees' argument that PS § 3-106 delineates a "should have known" standard for determining when the statute of limitations begins to run. The plain language of the statute does not support this interpretation. If the General Assembly wanted the limitations period to begin when the agency *should* have been aware, then it could have placed such language in the statute. *Lillian C. Blentlinger, LLC v. Cleanwater Linganore, Inc.*, 456 Md. 272, 294 (2017) ("[T]he General Assembly is presumed to have meant what it said and said what it meant."). It could have said, for example, that the limitations period begins running when "the act that gives rise to the charges *reasonably should have* come to the attention of the appropriate law enforcement agency official." Because reaching any other meaning would require adding or changing words, PS § 3-106(a) is best interpreted as requiring actual knowledge on the part of the law enforcement agency. *75-80 Props.*, 470 Md. at 624.

Section 3-106(b)—the Criminal Activity Exception

Section 3-106(b) states that "[t]he 1-year limitation of subsection (a) of this section does not apply to charges that relate to criminal activity or excessive force." The Court of Appeals examined the criminal activity exception to the one-year limitation period in *Baltimore Police Department v. Etting*, and instructed that a charge relates to criminal activity "whenever there exists an objectively reasonable basis to believe that [the] officer's conduct involved criminal activity and that an investigation to determine whether criminal charges will be filed is either under way or is likely to be initiated within a reasonable time." 326 Md. at 139.

In *Etting*, the petitioner was accused of illegally "enter[ing] a residence in Baltimore County without permission and with his gun drawn, and there conduct[ing] a search of persons and of the premises, and arrest[ing] certain persons, all without a warrant or probable cause." *Id.* at 135. Etting committed his misconduct on October 19, 1988, and the Baltimore Police Department filed disciplinary charges in March 1990, more than one year later. *Id.* at 135-36 Before the disciplinary charges were filed, state prosecutors began a criminal investigation. *Id.* Several months after the initial incident, the criminal investigation ended when the state prosecutors announced that they were declining to prosecute Etting and that they would rather have the matter resolved through civil disciplinary proceedings. *Id.*

Much like in the present case, Etting filed a petition for an injunction to prevent the Department from pursuing disciplinary action against him, arguing that the charges were barred by the one-year statute of limitations. *Id.* The circuit court granted his petition, and the Department appealed. *Id.* at 137. The Court of Appeals issued a writ of certiorari on its own motion before the case was considered by this Court. *Id.*

The Court of Appeals held that, as a general rule, the criminal activity exception begins applying once it becomes objectively reasonable to believe that the officer in question would be criminally investigated, and the exception ceases applying once that belief is no longer reasonable. 326 Md. at 139-40. For example, if the State announces that it is declining to prosecute the officer for the officer's activity—then the one-year

limitations period begins running from the time that the basis ceased to exist. *Id.* at 139-41. The Court expounded:

> We think it clear the legislature intended to exclude from the operation of the one-year limitation all administrative charges arising from an event whenever there exists an objectively reasonable basis to believe that an officer's conduct involved criminal activity and that an investigation to determine whether criminal charges will be filed is either under way or is likely to be initiated within a reasonable time. Until such time as that reasonable basis ceases to exist, whether through the absence of an investigation within a reasonable time, or through an investigation establishing no criminal activity, or through an official indication that any criminal activity will not be prosecuted, all charges arising out of the incident in question are exempt from the one-year limitation.

Id. As applied to Etting, the Court held that it was objectively reasonable to believe that Etting would be criminally prosecuted for his armed entry into a home and unlawful arrest of the people within. *Id.* at 141. As a result, the statute of limitations did not begin running until a declination letter was issued. *Id.* at 140-41.

B.

Analysis

There are four relevant dates in our statute of limitations analysis in the consolidated cases on appeal. The first is when the alleged misconduct came to the BPD's attention, because that is when the limitations period would begin running absent the criminal activity exception. The second is when there came to be a reasonable basis to believe that the Appellees would be criminally investigated, because that is when the criminal activity exception began to apply. The third is when that reasonable basis ceased to exist, because that is when the criminal activity exception ceased to apply. The fourth is when the

disciplinary charges were brought, because the charges are time-barred if they were brought after more than one year had passed without reasonable basis to believe the Appellees would be criminally investigated. The parties agree that the charges were brought on June 11, 2020.

At the threshold of our limitations analysis, we reject, as a matter of law, Appellees' argument that the BPD has exploited the criminal activity exception by controlling when the Department asks the SAO for declination letters. Appellees assert in their brief that the declination letter process "is used by the BPD to extend the statute of limitations at their pleasure and whim." To support this claim, they note that "[i]t is solely in the BPD's control when they ask for this letter."[12] Given the Court of Appeals's indication in *Etting* that declination letters are a valid marker of the end of a criminal investigation, we will not accept the Appellees' unsubstantiated assertions to the contrary.

Discovery of the alleged misconduct

The parties agree that the alleged misconduct was discovered at some date between August 26, 2018 and May 21, 2019. The BPD asserts that it was discovered near the end of that period, in May 2019, while Appellees assert that it was discovered sometime earlier than that. We note that at a minimum, Sargent Lloyd's affidavit establishes that the BPD

[12] Appellees claim that the BPD suggested a third declination letter (which was never sent) on April 30, 2020, three weeks short of a year after the disciplinary investigation was opened. They imply that the letter was requested to try to prevent the limitations period from ending. It is unclear how that plan would work, because the record and the briefs say nothing about what that third letter would have added beyond what was established in the first two.

was not aware of the alleged misconduct on August 26, 2018. Beyond that, both parties rely on the exhibits that were excluded by the circuit court to support their arguments. We conclude that at this stage, the record remains unclear when "the act[s] that g[ave] rise to the charges c[ame] to the attention of the appropriate law enforcement agency official." PS § 3-106(a). Accordingly, we turn to the criminal activity exception.

Beginning and end of the criminal activity exception

With respect to Wanda and Dominique, a reasonable basis to believe they would be criminally investigated existed as soon as the BPD discovered their alleged involvement in the altercation inside the club, regardless of when the discovery happened. Because the BPD suspected Wanda of committing an assault, it was reasonable to think that the SAO might take up their suspicions in a criminal investigation to determine whether she could be criminally charged. Furthermore, because Dominique was attending Wanda's party and she was present with her in the nightclub at around the same time, we cannot say that it would be unreasonable to believe that state prosecutors might investigate Dominique to determine whether she played any role in the assault. So, the criminal activity exception began applying to their alleged misconduct as soon as the misconduct was discovered—between August 26, 2018 and May 21, 2019. *Etting*, 326 Md. at 139.

Once the SAO issued the letters on June 14, 2019 and August 23, 2019 declining to prosecute Wanda and Dominique, the reasonable basis to believe they might be criminally investigated no longer existed. *Id.* at 139-41. The Appellees, however, assert that the

reasonable basis ceased to exist four months earlier, when Sergeant Koushall was indicted on February 19, 2019. This argument is not persuasive and finds no support in the law.

The fact that Sergeant Koushall's misconduct happened on the same night as Wanda and Dominique's alleged misconduct provided no guarantee that all three would be investigated and prosecuted in parallel at the same time. The circumstances of Appellees' alleged misconduct were materially different from Sergeant Koushall's because the alleged misconduct by these parties occurred at different times during the night and against different victims. We cannot say that it would be unreasonable to suspect that the different circumstances would cause the alleged misconduct by Appellees to be investigated separately from Sergeant Koushall's.

The circuit court agreed with the Appellees that the limitations period began running on February 19, 2019. The court concluded that the limitations period began running when Sergeant Koushall was indicted because that was the point at which it became "objectively reasonable to conclude that criminal charges would not be filed." The court's articulation of the rule reveals how it applied it incorrectly. The Court of Appeals's interpretation of the statute in *Etting* requires more certainty: it requires that a "reasonable basis to believe that . . . an investigation to determine whether criminal charges will be filed is either under way or is likely to be initiated . . . *ceases to exist*[.]" *Etting*, 326 Md. at 139 (emphasis added). This can be determined "through the absence of an investigation within a reasonable time, or through an investigation establishing no criminal activity, or through an official indication that any criminal activity will not be prosecuted[.]" *Id.* at 139-140.

Here, until the declination letters were issued, there was no definitive "absence of an investigation" or "official indication that any criminal activity" would "not be prosecuted" against Appellees. And, for the reasons stated above, Sergeant Koushall's indictment did not eliminate the reasonable basis to believe that the Appellees would be prosecuted. As a result, the indictment did not cause the criminal activity exception to cease applying. *Id.*

For the foregoing reasons, we hold that the criminal activity exception ceased applying to Wanda and Dominique no earlier than June 14, 2019,[13] and therefore, the circuit court erred in applying PS § 3-106 to dismiss the charges brought against them less than one year later.

Marcus

With respect to Marcus, the record does not suggest that a reasonable basis ever existed to believe that he would be criminally investigated for his actions at the club. It does not appear that he was ever suspected of directly participating in any of the physical altercations in and around the club. Instead, the only misconduct he was suspected of committing on August 26, 2018 was leaving his post, entering a bar while on duty, and failing to activate his body camera when entering the bar. While these acts might be grounds for discipline, they are not criminal.

[13] It might be argued that the criminal activity exception continued applying to Wanda until the SAO sent its second declination letter on August 23, 2019. We do not need to decide which letter was operative because the charges were brought within one year even if the clock started running on the earlier date of June 14, 2019.

Furthermore, there is no evidence in the record to support the BPD's argument that Marcus's acts on August 26 could be criminally investigated as obstruction of justice. There is no indication that the State ever investigated him for that conduct, as evidenced by the lack of a declination letter and the absence of any criminal charges. Unlike Wanda and Dominique, he was not interviewed on August 26, 2018.

The BPD argues that the statute of limitations against Marcus is tolled because he is covered under the umbrella of the potential criminal investigation of his wife. They assign to the following line from *Etting*, support for their contention:

> Until such time as that reasonable basis ceases to exist, whether through the absence of an investigation within a reasonable time, or through an investigation establishing no criminal activity, or through an official indication that any criminal activity will not be prosecuted, **all** charges arising out of the incident in question are exempt from the one-year limitation.

Etting, 326 Md. at 139-40 (emphasis added). We do not construe the Court's use of the word "all" in this sentence as intending to extend the criminal activity exception from the officers suspected of committing crimes to *other* officers suspected of committing loosely related non-criminal misconduct at the same time. Such a question was not before the Court of Appeals in *Etting* because in that case, only one officer was suspected of misconduct. *Id.* at 135-37. And such an interpretation would be inimical to the Court's role to determine the plain meaning of the statute, "neither add[ing] nor delet[ing] words." *75-80 Props., L.L.C. v. Rale, Inc.*, 470 Md. 598, 624 (2020) (quoting *Walzer v. Osborne*, 395 Md. 563, 572 (2006)).

Because the record does not reveal that there ever was a reasonable basis to believe that Marcus would be criminally investigated, the one-year statute of limitations period began on August 26, 2018—well over a year prior to the filing of charges on June 11, 2020. Even if we accept the BPD's contention that it discovered the misconduct on May 21, 2019, that is still more than one year prior to June 11, 2020.

In sum, we hold that the trial court correctly determined that the criminal activity exception did not apply to the charges brought against Marcus on June 11, 2020 for his conduct on August 26, 2018, and that the charges were therefore barred by the one-year limitation contained in PS § 3-106.

JUDGMENT OF THE CIRCUIT COURT FOR MARCUS JOHNSON AFFIRMED IN PART AND REVERSED IN PART; JUDGMENTS OF THE CIRCUIT COURT FOR DOMINIQUE WIGGINS AND WANDA JOHNSON REVERSED.

COSTS IN CASE NO. 1209 TO BE SPLIT EVENLY BETWEEN THE PARTIES. COSTS IN CASE NO. 1229 TO BE PAID BY DOMINIQUE WIGGINS. COSTS IN CASE NO. 1230 TO BE PAID BY WANDA JOHNSON.