Circuit Court for Baltimore County
Case No. C-03-CV-19-002063

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2021

September Term, 2019

ERROL CRUZ

v.

MARYLAND STATE POLICE

Fader, C.J.,
Shaw Geter,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Fader, C.J.

Filed: February 8, 2021

We examine whether the Circuit Court for Baltimore County erred when it denied Errol Cruz, the appellant and a former Maryland State Trooper, an order to show cause based on his contention that the Maryland State Police, the appellee, violated his rights under the Law Enforcement Officers' Bill of Rights ("LEOBR"). Mr. Cruz contends that his rights were violated when State Police officers asked him questions that they were aware could result in disciplinary action against him without first notifying him in writing of the existence of a complaint into his conduct and of his right to obtain counsel. The State Police respond that Mr. Cruz's rights were not violated because no formal complaint had been lodged against him, the questions at issue pertained to a subject about which Mr. Cruz had asked to meet, and the questions were not asked in furtherance of any investigation into his conduct.

The circuit court concluded that the State Police did not deny Mr. Cruz's rights under the LEOBR, and so it denied his petition for an order to show cause. We discern no error in the circuit court's ruling. Accordingly, we will affirm.

BACKGROUND

Statutory Background: Law Enforcement Officers' Bill of Rights

The backdrop for Mr. Cruz's complaints is provided by the LEOBR, §§ 3-101 – 3-113 of the Public Safety Article (2011 Repl.; 2020 Supp.),[1] which is a "comprehensive statutory scheme intended to provide certain procedural protections to 'law enforcement officers,' . . . during any investigation, charging, and subsequent hearing that could lead to

[1] All statutory references in this opinion are to the Public Safety Article.

disciplinary sanctions." *Mohan v. Norris*, 386 Md. 63, 67 (2005). The General Assembly enacted the LEOBR for "the purpose of providing that all law enforcement officers have certain rights," *Cave v. Elliott*, 190 Md. App. 65, 85 (2010) (quoting 1974 Md. Laws, ch. 722), including "substantial procedural safeguards during any inquiry into [the officer's] conduct which could lead to the imposition of a disciplinary sanction," *Cave*, 190 Md. App. at 85-86 (emphasis omitted) (quoting *Md.-Nat'l Capital & Park & Planning Comm'n v. Anderson*, 395 Md. 172, 183-84 (2006)). The LEOBR is the "exclusive remedy" for officers "in matters of departmental discipline," *Montgomery County v. Fraternal Order of Police, Montgomery County Lodge 35*, 427 Md. 561, 573-74 (2012) (quoting *Coleman v. Anne Arundel County Police Dep't*, 369 Md. 108, 122 (2002)), and it affords law enforcement officers "extensive rights . . . that are not available to the general public," *Baltimore City Police Dep't v. Robinson*, 247 Md. App. 652, 671 (2020), *cert. denied*, ___ Md. ___, No. 337, Sept. Term 2020, 2020 WL 8182228 (Dec. 21, 2020) (quoting *Coleman*, 369 Md. at 122).

The LEOBR enumerates specific procedural requirements for "the investigation of charges against a law enforcement officer" and, if applicable, "a resultant hearing" and other subsequent proceedings. *Ellsworth v. Baltimore Police Dep't*, 438 Md. 69, 89-91 (2014). Specifically, § 3-104 of the Public Safety Article provides elaborate requirements for the conduct of any "investigation or interrogation by a law enforcement agency of a law enforcement officer for a reason that may lead to disciplinary action, demotion, or dismissal[.]" § 3-104(a). Among other requirements:

- The "investigating officer or interrogating officer" must be either a sworn law enforcement officer or, at the request of the Governor, the "Attorney General or Attorney General's designee," § 3-104(b);

- Before any interrogation is commenced, the officer under investigation must be "informed in writing of the nature of the investigation," and must also be informed of the name, rank, and command of the officer in charge of the investigation, the interrogating officer, and "each individual present during an interrogation," § 3-104(d);[2]

- Interrogations must "be conducted at a reasonable hour, preferably when the law enforcement officer is on duty"; shall occur at the office of the command of the investigating officer or at the office of the precinct where the incident allegedly occurred; and must last "a reasonable period of time" and "allow for personal necessities and rest periods," § 3-104(f), (g), (h)(2);

- All questions "shall be asked by and through one interrogating officer during any one session of interrogation," § 3-104(h)(1);

- During the interrogation, the officer "may not be threatened with transfer, dismissal, or disciplinary action," § 3-104(i);

- An "officer under interrogation has the right to be represented by counsel or another responsible representative of the . . . officer's choice who shall be present and available for consultation at all times during the interrogation"; upon request, the interrogation must be suspended for up to five days until the officer obtains representation; and the counsel or representative may object to questions and request a recess at any time to consult with the officer, § 3-104(j);

- A "complete record" must be kept of the interrogation and made available to the officer or the officer's counsel or representative "at least 10 days before a hearing," § 3-104(k);[3] and

- At least ten days before any hearing, the officer must be notified of the names of all witnesses and provided "a copy of the investigatory file and any exculpatory information," § 3-104(n).

[2] Special rules apply to a complaint alleging brutality. *See* § 3-104(c).

[3] Section 3-104 also provides protections relating to tests, including blood alcohol, blood, breath, and urine tests, and polygraph examinations. *See* § 3-104(l), (m).

Section 3-105 "guarantees a law enforcement officer the right, when a right under the LEOBR is denied, to apply to the circuit court for a show cause order directing the law enforcement agency to show cause why the officer should not be afforded that right." *Cave*, 190 Md. App. at 87. If the court finds that the agency violated a right granted by LEOBR, it must "grant appropriate relief." § 3-105. "[Section] 3-105 was designed 'to enforce the accused officer's rights under the [LEOBR], not to restrict the [law enforcement] agency's legitimate right to discipline errant officers.'"[4] *Cave*, 190 Md. App. at 87-88 (quoting *Sewell v. Norris*, 148 Md. App. 122, 131 (2002)).

Factual Background

At all times relevant to this appeal, Mr. Cruz was a senior state trooper with the State Police and Sergeant Torres[5] was his supervisor. In February 2018, Sergeant Torres noticed that "he could not verify [Mr. Cruz's] location" using a GPS device installed in Mr. Cruz's patrol car and discovered that he was not able to log into the GPS device throughout Mr. Cruz's shifts. Such GPS devices are installed in all police vehicles to enable the State Police to identify the location of its vehicles and promote officer safety. Mr. Cruz, like other state troopers, was required to log into the GPS device upon beginning his shift and to remain logged in throughout the entire shift. Disabling any part of the GPS

[4] Other provisions of LEOBR that are not at issue here afford protections concerning the timing of filing administrative charges, § 3-106; maintenance of a list of officers found to have committed acts bearing on credibility, § 3-106.1; hearings on administrative charges, § 3-107; disposition of administrative charges, § 3-108; judicial review, § 3-109; expungement of formal complaints, § 3-110; summary punishment, § 3-111; emergency suspension, § 3-112; and false statements, reports, or complaints, § 3-113.

[5] Sergeant Torres's first name is not identified in the record.

device in a police vehicle is a violation of departmental policy that could lead to disciplinary action.

Sergeant Torres took several actions to attempt to discover whether the GPS device in Mr. Cruz's vehicle was faulty, including sending the vehicle's hard drive for technical support, driving Mr. Cruz's vehicle to test the GPS himself, and asking Mr. Cruz directly about his use of the GPS. On March 24, 2018, after determining that no problem existed with the GPS device, Sergeant Torres sent an email to First Sergeant Ronald Stevens stating a concern that Mr. Cruz had been disabling his GPS.

Separately, Mr. Cruz, who had become disenchanted with what he viewed as Sergeant Torres's overly intrusive supervision, requested a meeting with First Sergeant Stevens to request a reassignment from Sergeant Torres's workgroup. On March 26, 2018, pursuant to Mr. Cruz's request, First Sergeant Stevens, Detective Sergeant William McFarland, and Corporal Victor Taylor met with Mr. Cruz. At the circuit court hearing, Sergeant Stevens and Sergeant McFarland both testified that although each was aware of Sergeant Torres's concerns regarding the GPS device in advance of the meeting with Mr. Cruz, the sole purpose of the meeting was to discuss Mr. Cruz's reassignment request.

During the meeting, Mr. Cruz stated that the reason he wanted to be reassigned was "that he was being . . . micromanaged and being treated like a child" by Sergeant Torres. According to Sergeant McFarland, Mr. Cruz complained that "he and Sergeant Torres were going back and forth in reference to his GPS always being turned off," and that "Sergeant Torres was accusing him of intentionally turning his GPS off in his in-car computer and

. . . TFC Cruz . . . was disputing that he was doing that." Sergeant Stevens informed Mr. Cruz that the supervisory conduct Mr. Cruz perceived as micromanagement arose from Sergeant Torres's concerns related to the GPS device. In response to questions from the Sergeants, Mr. Cruz stated at least twice during the meeting that he did not know how to disable the GPS device.

Following the meeting, Sergeant Stevens denied Mr. Cruz's request for a reassignment. Sergeant Stevens did not take any other action with respect to Mr. Cruz at that time, and the record contains no indication that any of the participants in the meeting reported Mr. Cruz's comments to Sergeant Torres contemporaneous with the meeting. However, sometime thereafter, Sergeant McFarland "happened to have" a conversation with Sergeant Torres in which he mentioned that Mr. Cruz had stated that he did not know how to turn off the GPS device. Sergeant Torres then told Sergeant McFarland that two other troopers had reported that Mr. Cruz had shown them how to turn the GPS devices off. Based on that information, Sergeant McFarland concluded that Mr. Cruz had made a false statement during the earlier meeting and initiated an internal complaint.

On April 24, the State Police lodged a disciplinary complaint against Mr. Cruz. Following an internal investigation, Mr. Cruz was charged administratively with six violations of State Police policy, including four counts of false report, one count of neglect of duty, and one count of failure to log into the GPS device while on duty.

Procedural Background

In June 2019, with the administrative charges pending, Mr. Cruz filed an application for an order to show cause in the Circuit Court for Baltimore County. Mr. Cruz claimed

that in violation of the LEOBR, "he was unlawfully interrogated" at the March 26 meeting "without written notice that he would be questioned and without the opportunity to seek counsel." In opposition, the State Police asserted that Mr. Cruz was not entitled to LEOBR protections because the meeting did not constitute an interrogation, no investigation had been commenced, and no complaint had been filed at the time of the meeting.

The circuit court held a hearing on the application in November 2019, during which it heard testimony from Mr. Cruz, Sergeant Stevens, and Sergeant McFarland. In a ruling from the bench at the conclusion of the hearing, the court denied the application for a show cause order.[6] Mr. Cruz filed this appeal.

DISCUSSION

"When an action has been tried without a jury, the appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous[.]" Md. Rule 8-131(c). "We defer to the circuit court's findings of fact, except where 'the judgment of the trial court on the evidence [is] clearly erroneous.'" *Baltimore Police Dep't v. Brooks*, 247 Md. App. 193, 205 (2020) (quoting Md. Rule 8-131(c)); *see also Anderson v. Great Bay Solar I, LLC*, 243 Md. App. 557, 581 (2019) ("We give due regard to the trial court's role as fact-finder[,] and will not set aside factual findings unless they are clearly erroneous." (quoting *Estate of Zimmerman*

[6] The circuit court did not initially enter a written order, but did so on February 4, 2021. We therefore will treat this appeal as having been timely filed on the same day as, but after, entry of the judgment. *See* Md. Rule 8-602(f) ("A notice of appeal filed after the announcement or signing by the trial court of a ruling, decision, order, or judgment but before entry of the ruling, decision, order, or judgment on the docket shall be treated as filed on the same day as, but after, the entry on the docket.").

v. Blatter, 458 Md. 698, 717 (2018))). "[L]egal analysis by a trial court receives no deference." *Brooks*, 247 Md. App. at 205. Thus, "[w]here an order involves an interpretation and application of Maryland constitutional, statutory or case law," we review without deference "whether the trial court's conclusions are 'legally correct[.]'" *Cave*, 190 Md. App. at 85 (quoting *Schisler v. State*, 394 Md. 519, 535 (2006)).

THE CIRCUIT COURT DID NOT ERR IN DENYING THE APPLICATION FOR A SHOW CAUSE ORDER BECAUSE MR. CRUZ WAS NOT ENTITLED TO LEOBR PROTECTIONS DURING THE MARCH 26, 2018 MEETING.

Mr. Cruz contends that the circuit court erred in denying his application for a show cause order because the March 26, 2018 meeting "constituted an interrogation" and "investigation into his conduct relating to his vehicle's GPS" that triggered procedural protections under the LEOBR, including advance written notice of the nature of the investigation and the right to counsel. The State Police counters that the meeting did not constitute an interrogation or investigation because no formal complaint had been lodged against Mr. Cruz and the purpose of the meeting was to discuss Mr. Cruz's request for reassignment. Although we do not agree with the State Police's contention that LEOBR protections are triggered only by the initiation of a formal complaint, we ultimately agree that such protections did not attach here.

The facts material to this appeal are largely undisputed. Before the March 26 meeting, Sergeant Torres doubted the veracity of Mr. Cruz's statements that he had not disabled the GPS device in his vehicle, and both Sergeant Stevens and Sergeant McFarland were aware of those doubts. But it was Mr. Cruz who instigated the March 26 meeting, for the purpose of addressing his reassignment request, and the subject of the GPS device arose

because it was a source of the tension between Mr. Cruz and Sergeant Torres that prompted that reassignment request. Sergeant Stevens and Sergeant McFarland both testified, without contradiction, that their purpose in discussing the GPS device that day related solely to the reassignment request and was not to investigate Sergeant Torres's concerns. And no disciplinary complaint was lodged against Mr. Cruz until April 24, after Sergeant Stevens learned information suggesting that Mr. Cruz's statements during the meeting were false.

Upon these essentially undisputed facts, Mr. Cruz and the State Police offer starkly different views regarding whether LEOBR protections should have been afforded during the March 26 meeting. The State Police contends that LEOBR protections attach only when a formal complaint is filed against a law enforcement officer. Because no complaint had been filed before March 26, the State Police contends, the LEOBR was not triggered. By contrast, Mr. Cruz contends that LEOBR protections are triggered whenever an officer is questioned on a topic that relates to an issue that the questioner has reason to know could result in a disciplinary action. Regardless of whether a formal complaint had been filed, and even regardless of whether the participants in the March 26 meeting had intended to interrogate him or to further Sergeant Torres's investigation, Mr. Cruz contends that their questions about his use of the GPS device triggered LEOBR protections.

LEOBR protections attach when an "investigation or interrogation by a law enforcement agency of a law enforcement officer for a reason that may lead to disciplinary action, demotion, or dismissal[.]" § 3-104(a). Determining whether the circumstances of

the March 26 meeting met that threshold requires us to examine what constitutes an "investigation or interrogation" for purposes of § 3-104.

"The cardinal rule of statutory construction is to ascertain and effectuate the intent of the General Assembly." *Robinson*, 247 Md. App. at 676 (quoting *Bellard v. State*, 452 Md. 467, 481 (2017)). To determine legislative "purpose or policy, we look first to the language of the statute, giving it its natural and ordinary meaning." *Id.* "When the statutory language is clear, we need not look beyond the statutory language to determine the General Assembly's intent . . . [and] we will give effect to the statute as it is written." *Id.* at 676-77; *Breck v. Maryland State Police*, 452 Md. 229, 244-45 (2017) ("If the language . . . is clear and unambiguous, . . . 'the inquiry as to legislative intent ends . . . for the Legislature is presumed to have meant what it said and said what it meant.'" (quoting *The Arundel Corp. v. Marie*, 383 Md. 489, 502 (2004) (internal quotation marks omitted))). "If, however, the meaning of the plain language is ambiguous or unclear, we seek to discern legislative intent from surrounding circumstances, such as legislative history, prior case law, and the purposes upon which the statutory framework was based." *Breck*, 452 Md. at 244-45 (quoting *Lewis v. State*, 348 Md. 648, 653 (1998)).

The LEOBR establishes "standards governing the investigation of complaints against an officer." *Prince George's County Police Dep't v. Zarragoitia*, 139 Md. App. 168, 171-72 (2001) (quoting *Cochran v. Anderson*, 73 Md. App. 604, 612 (1988)). In interpreting § 3-104, we have consistently concluded that the procedural safeguards of the LEOBR are implicated only in cases involving "a threshold investigation or interrogation

resulting in a recommendation of punitive action," *Fraternal Order of Police Montgomery County Lodge 35 v. Manger*, 175 Md. App. 476, 501 (2007), and attach "only when an officer is 'investigated and/or interrogated as a result of a disciplinary-type complaint lodged against the officer,'" *id.* at 502 (quoting *Calhoun v. Comm'r*, 103 Md. App. 660, 672 (1995)). Thus, "an investigation must precede the application of the [officer's LEOBR] rights[.]" *Manger*, 175 Md. App. at 497.

Although officers may invoke LEOBR protections during internal investigations that could result in discipline, demotion, or dismissal, *see Coleman*, 369 Md. at 122, not every scenario under which an officer might be questioned constitutes an "investigation" or "interrogation" under the meaning of the statute, *see Liebe v. Police Dep't of Annapolis*, 57 Md. App. 317, 323 (1984) (defining an investigation as "something more than counseling sessions, but . . . less than formal complaints"). We have therefore held that routine assessments or inquiries that are not based on individual suspicions do not trigger LEOBR protections. *See, e.g.*, *Cancelose v. City of Greenbelt*, 75 Md. App. 662, 668 (1988) (holding that job performance evaluations "using departmental competency standards which are applied consistently to all police officers" do not constitute investigations under the LEOBR); *Calhoun*, 103 Md. App. at 672 (holding that the administration of routine polygraph tests do not constitute investigations under the LEOBR even though the results could have led to disciplinary action at the time administered); *Liebe*, 57 Md. App. at 320 (holding that review of an officer's sick leave records, which led to his demotion, did not amount to an investigation under the LEOBR);

Widomski v. Chief of Police of Baltimore County, 41 Md. App. 361, 369-70 (1979) (holding that a polygraph test administered to an officer who was not suspected of misconduct did not constitute an investigation or interrogation under the LEOBR, even though he was later dismissed based in part on his answers to the test). "Every inquiry does not necessarily implicate the LEOBR." *Manger*, 175 Md. App. at 497.

On the other hand, the Court of Appeals has inferred the existence of an investigation even in the absence of a formal complaint. In *DiGrazia v. County Executive for Montgomery County*, the Chief Executive of Montgomery County removed the Director of the County's police department based on statements he understood the Director had made disparaging the County's police force. 288 Md. 437, 441-42 (1980). The Director argued that his summary dismissal was a disciplinary action undertaken without affording him the procedural protections guaranteed by LEOBR. *Id.* at 445. The County Executive argued that LEOBR did not apply because, among other reasons, there had been no investigation or interrogation resulting in a disciplinary sanction. *Id.* at 443. Instead, the County Executive argued, he had simply exercised his removal authority. *Id.* After first determining that the LEOBR applies to non-tenured law enforcement personnel like the Director, the Court concluded that the County Executive's actions triggered the statute's procedural safeguards notwithstanding the absence of a formal complaint or investigation. *Id.* at 452-53. Essentially, the Court inferred the existence of an investigation from the fact that the County Executive had determined that the Director had made the statements at

issue, and it inferred the existence of a "disciplinary-type complaint" from the existence of the investigation.[7] *Id.*

Turning back to the present appeal, we decline to adopt the State Police's position that LEOBR protections are not triggered in the absence of a formal complaint. The statutory language does not include any explicit or implicit reference to the filing of a formal complaint or the commencement of a formal investigation as the triggering event for LEOBR protections, and the State Police's interpretation is inconsistent with the Court of Appeals' willingness in *DiGrazia* to infer the existence of an investigation and a "disciplinary-type complaint" from the imposition of discipline. *See id.* Moreover, such an interpretation would gut many of the protections of the LEOBR by allowing a law enforcement agency to sidestep them entirely by choosing to delay the filing of a formal complaint. That would be inconsistent with the legislative intent underlying the LEOBR to provide protections for law enforcement officers who are subject to an "investigation or interrogation . . . for a reason that may lead to disciplinary action, demotion, or dismissal[.]" § 3-104(a).

However, we also cannot find any support in the LEOBR or the case law interpreting it for Mr. Cruz's contention that LEOBR protections are triggered by the circumstances present here. Based on the facts before the circuit court, the March 26 meeting was not part of any investigation into Mr. Cruz's conduct, none of the participants in the meeting

[7] In *DiGrazia*, the Court was interpreting the predecessor statute to the current LEOBR. *See* 288 Md. at 452-53. Any differences in the statutory language are immaterial to this discussion.

were involved in any investigation into Mr. Cruz's conduct, the questions about the GPS device during the meeting related directly to Mr. Cruz's request for a reassignment, and the participants did not intend those questions to advance any investigation into Mr. Cruz's conduct. If the circuit court had found that any of the other participants had used the meeting requested by Mr. Cruz to attempt to elicit information that they believed might be useful in investigating his conduct—even if that were only a secondary purpose of the meeting—we would have little problem concluding that it qualified as an "interrogation . . . for a reason that may lead to disciplinary action[.]" § 3-104(a). But the circuit court made no such finding, and the evidence presented at the hearing was to the contrary.

Mr. Cruz asks us in effect to extend the protections of the LEOBR beyond interrogations "for a reason that may lead to disciplinary action," to questions asked for other reasons, if the questioner has cause to believe that the responses might potentially have relevance to concerns that may ripen into an investigation. We decline to do so. The LEOBR's protections are broad, but they are not that broad. Any further expansion of those protections should come from the General Assembly, not this Court.

Of course, it eventually came to pass that statements Mr. Cruz made during the March 26 meeting later formed the basis for an investigation and, ultimately, disciplinary charges. But that bit of hindsight does not convert the meeting into an investigation or the questions into an interrogation "for a reason that may lead to disciplinary action" when that was not the reason for the meeting or the questions. Mr. Cruz's request for a transfer was based on clashes with Sergeant Torres, particularly ones involving Mr. Cruz's "GPS

always being turned off[.]" It was thus natural for the discussion regarding his request for reassignment to touch upon his interactions with Sergeant Torres concerning the GPS. In the absence of any indication that the participants in the meeting were using it as subterfuge to investigate potential misconduct, we discern no error in the circuit court's determination that the questions did not trigger LEOBR protections. *See Manger*, 175 Md. App. at 501.

We offer one final observation. Although Sergeant Torres harbored doubts about Mr. Cruz's veracity regarding his use of the GPS device, he had not reached the point of initiating a complaint and it was not apparent that he was near to doing so. Nonetheless, under Mr. Cruz's interpretation of § 3-104, his own request for reassignment created a conundrum for the State Police whereby its only alternatives were: (1) not fully exploring his reassignment request and the reasons underlying it, during the meeting he had requested for that purpose; or (2) effectively expediting the initiation of an investigation that it might never have initiated otherwise, by announcing the existence of an investigation, advising Mr. Cruz of his right to counsel, and adhering to the other procedural requirements of a LEOBR interrogation. In other words, Mr. Cruz interprets § 3-104 to have required that the State Police treat what was otherwise a routine administrative meeting as an interrogation. But the LEOBR was intended to provide procedural protections to law enforcement officers during investigations, not to force law enforcement agencies to initiate investigations before they can carry out routine administrative functions. On this record, we see no basis to reject the circuit court's implicit determination that the March

26 meeting was not an interrogation or investigation for purposes of § 3-104. We will affirm.

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