Circuit Court for Baltimore City
Case No. 24-C-19-002983

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1820

September Term, 2019

TANESHA TODD

v.

MICHAEL HARRISON, ET AL.

Fader, C.J.,
Beachley,
Woodward, Patrick L.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Fader, C.J.

Filed: October 9, 2020

Tanesha Todd, the appellant, was terminated from her position as a sergeant with the Baltimore City Police Department (the "Department") following an investigation for misconduct. Sgt. Todd contends that the charges against her were filed in violation of § 3-106 of the Public Safety Article (2011 Repl.; 2019 Supp.), a provision of the Law Enforcement Officers' Bill of Rights ("LEOBR"), because they were not "filed" within one year after the Department became aware of the conduct for which she was terminated. The Circuit Court for Baltimore City disagreed. Based on the reasoning in this Court's recent decision in *Baltimore Police Department v. Brooks*, 247 Md. App. 193, 199 (2020), we agree with the circuit court and, therefore, will affirm.

BACKGROUND

Section 3-106 of the LEOBR

The LEOBR is the "exclusive remedy" for law enforcement 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)). The LEOBR "guarantee[s] that certain procedural safeguards be offered to police officers during any investigation and subsequent hearing which could lead to disciplinary action, demotion, or dismissal." *Stone v. Cheverly Police Dep't*, 227 Md. App. 421, 423 (2016) (quoting *Blondell v. Baltimore City Police Dep't*, 341 Md. 680, 691 (1996)). "[T]hose safeguards include standards governing the investigation of complaints against an officer, the right to a hearing following a recommendation for disciplinary action, and standards governing the conduct of such a hearing and the decision

of the hearing board." *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 1988, to alleviate officers' "anxiety . . . from not knowing if or when [a] charge will be officially brought," *Zarragoitia*, 139 Md. App. at 173, the General Assembly established a one-year limitations period for a law enforcement agency to file charges, *see id.* at 172-73 (citing 1988 Md. Laws, ch. 330). Currently codified as § 3-106(a) of the Public Safety Article, the statute provides in relevant part:

> [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.[1]

This appeal concerns what it means to "file[] the charges." The statute itself provides no "explanation, elaboration, or definition" of the phrase, nor does legislative history shine any light on it. *Brooks*, 247 Md. App. at 199. As a result, the LEOBR "leave[s] to local police departments the task of putting in place their own policies and practices[.]" *Id.* at 197. We turn now to the Department's policies.

The Department's Administrative Disciplinary Process

In 2017, the Department implemented Policy 308, which establishes the following steps to be taken upon receiving a complaint of officer misconduct:

- The Department's Office of Professional Responsibility ("OPR") conducts an initial investigation into the allegations of misconduct to determine whether to sustain the allegations.

[1] Section 3-106(b) excepts from this limitations period "charges that relate to criminal activity or excessive force." No such charges are at issue here.

- If the allegations are sustained, the OPR submits its proposed charges to the Disciplinary Review Committee ("DRC"), which "review[s] the factual findings of any investigation . . . and make[s] a recommendation for discipline[.]"

- The police commissioner or police commissioner's designee reviews the DRC's recommendation and "will either accept or amend" the charges.

- Once approved by the commissioner or commissioner's designee, the charging documents, which include a statement of the charges and the disciplinary recommendation, are served upon the officer.

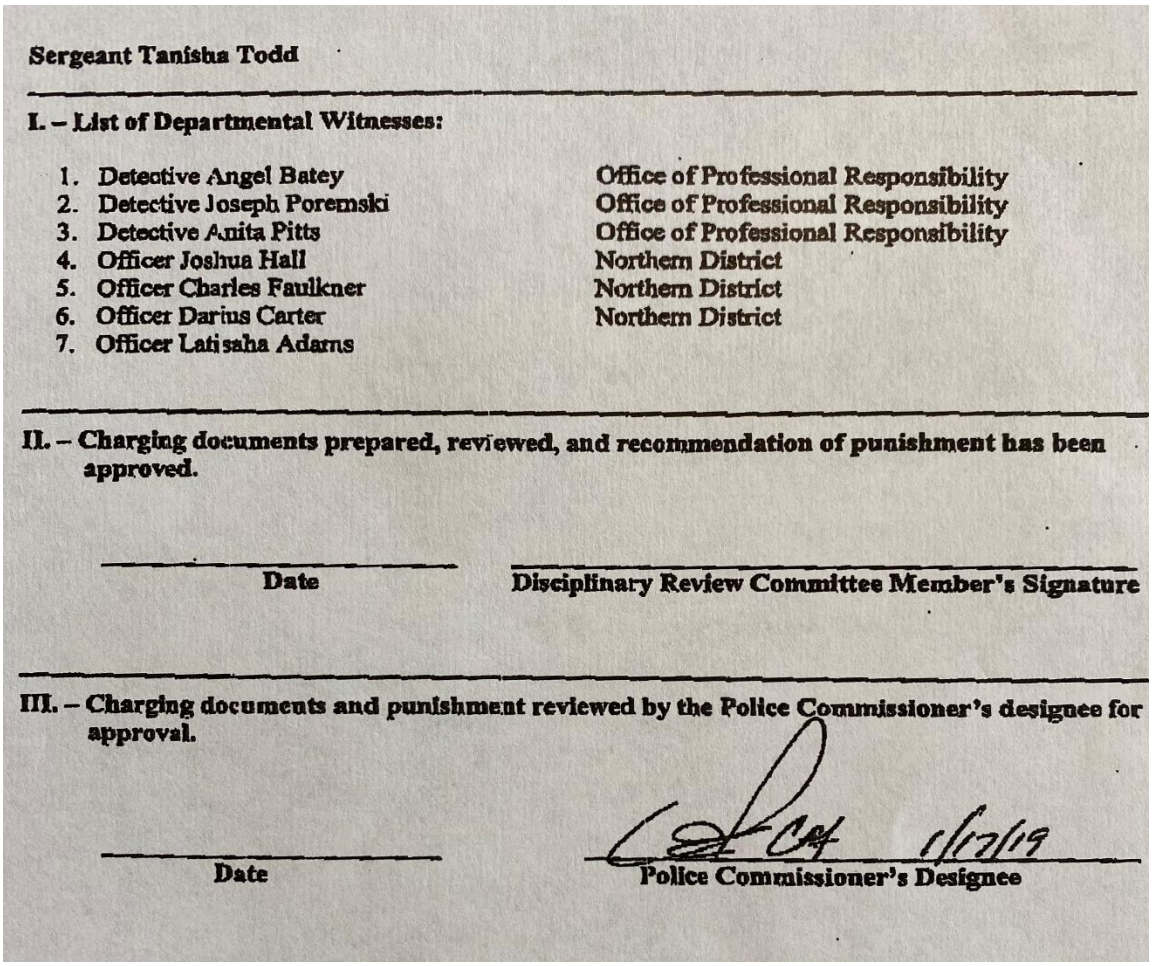
The Department uses a standard, written form for its charging documents, which, among other things, "lists the accused officer, the investigated allegations, whether the allegations were sustained, a summary of the facts, and a handwritten recommendation for discipline." *Brooks*, 247 Md. App. at 200. It is the Department's practice that "at some point following completion of a DRC meeting, a member of the DRC and the commissioner's designee, respectively, sign [the charging documents]." *Id.* The form thus contains separate signature and date lines for the DRC member and the commissioner's designee.

The Charges Against Sergeant Todd

On January 18, 2018, the Department received a complaint that Sgt. Todd had violated Department policies, the details of which are not relevant to this appeal. Pursuant to Policy 308, the OPR investigated and sustained the allegations, and then submitted the proposed charges to the DRC.

On January 17, 2019, the DRC held a meeting to review the charges against Sgt. Todd. Captain Donald Diehl of the Special Investigations Response Team Unit attended the meeting in person and "served as the Police Commissioner's Designee." At

the conclusion of the meeting, the DRC recommended that Sgt. Todd be terminated. "At that time, [Capt. Diehl] stated [his] approval to the recommended discipline" and affixed his signature to the charging documents along with the date. No member of the DRC signed the document, however. The signature page thus appears as follows:



Sergeant Tanisha Todd

I. – List of Departmental Witnesses:

1. Detective Angel Batey	Office of Professional Responsibility
2. Detective Joseph Poremski	Office of Professional Responsibility
3. Detective Anita Pitts	Office of Professional Responsibility
4. Officer Joshua Hall	Northern District
5. Officer Charles Faulkner	Northern District
6. Officer Darius Carter	Northern District
7. Officer Latisaha Adams	

II. – Charging documents prepared, reviewed, and recommendation of punishment has been approved.

Date — Disciplinary Review Committee Member's Signature

III. – Charging documents and punishment reviewed by the Police Commissioner's designee for approval.

Date — Police Commissioner's Designee 1/17/19

Sgt. Todd was subsequently served with, and acknowledged receipt of, the charging documents.

In May 2019, while the administrative proceedings were pending, Sgt. Todd filed a petition for a show cause order in the Circuit Court for Baltimore City, in which she alleged that the charging documents were not properly filed pursuant to § 3-106(a) because they

were not signed by a DRC member.[2] In response, the Department produced an affidavit sworn by Capt. Diehl, in which he averred that he had signed and approved the charges on January 17, 2019, and, as a result, the charges "were deemed formally filed."

Following a hearing, the circuit court issued a written decision in favor of the Department. Sgt. Todd timely appealed.

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); *see 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 v. Blatter*, 458 Md. 698, 717 (2018))). However, "[w]here an order involves an interpretation and application of Maryland constitutional, statutory or case law," we review de novo "whether the trial court's conclusions are 'legally correct[.]'" *Cave v. Elliott*, 190 Md. App. 65, 85 (2010) (quoting *Schisler v. State*, 394 Md. 519, 535 (2006)). Because this appeal "involves the interpretation and application of the LEOBR, we [ ] review the case . . . under a *de novo* standard of review." *Cave*, 190 Md. App. at 85.

[2] Under Public Safety § 3-105(a), an "officer who is denied a right granted by [LEOBR] may apply to the circuit court . . . for an order that directs the law enforcement agency to show cause why the right should not be granted."

THE CIRCUIT COURT DID NOT ERR IN DENYING SERGEANT TODD'S PETITION FOR A SHOW CAUSE ORDER.

The sole question presented by this appeal is whether the charging documents at issue had to be signed by a DRC member by January 17, 2019 to comply with Public Safety § 3-106(a), or whether Capt. Diehl's signature as the commissioner's designee was sufficient. Based on this Court's reasoning in our recent decision in *Baltimore Police Department v. Brooks*, 247 Md. App. 193 (2020), we conclude that Capt. Diehl's signature was sufficient. Because *Brooks* was decided after briefing in this appeal was completed,[3] we will briefly review the analysis employed in that decision.

In *Brooks*, the Department received complaints regarding 15 individual officers, each involving alleged violations of departmental policies. *Id.* at 201-04. The Department investigated each complaint pursuant to Policy 308. *Id.* In each case, the OPR sustained the charges and submitted them to the DRC, the DRC held a meeting within the one-year period to review and consider the discipline recommendation, and the police commissioner's designee provided "oral approval" of the DRC's recommendation within the one-year period. *Id.* at 197-98. In none of the cases, however, did the commissioner's designee sign the charging documents within the one-year deadline to "file[] the charges." *Id.* at 198.

The officers argued that the charges were not timely filed because they were not signed within the one-year limitations period provided by § 3-106(a). *Id.* The Department

[3] After *Brooks* was decided, the parties jointly submitted this appeal for consideration on the briefs. Neither party sought the opportunity to provide supplemental briefing.

responded that the designee's oral approval was sufficient. The circuit court agreed with the officers, *id.*, as did this Court, *id.* at 216. In doing so, we reviewed the statute's legislative history, which included a Senate Judiciary Report stating that "supervisory officials should be required either to file . . . or to drop the charge" after a certain period of time. *Id.* at 208 (citing Floor Report of the Senate Judiciary Committee for Senate Bill 623, at 1-2 (1988)). Thus, we concluded, the General Assembly's purpose in enacting the statute was to provide officers "some protection against the threat of . . . charges being dangled indefinitely over their heads." *Brooks*, 247 Md. App. at 208.

We also examined two of our prior decisions. In *Wilson v. Baltimore Police Department*, 91 Md. App. 436 (1992), we determined that filing of charges occurs "when charges against a police officer . . . are presented to and approved by one authorized to initiate formal proceedings against the officer." *Brooks*, 247 Md. App. at 209 (quoting *Wilson*, 91 Md. App. at 441). We concluded that the charges at issue in *Wilson* "were filed when the Deputy Commissioner of Police signed-off on the charges against the officer." *Brooks*, 247 Md. App. at 209. And in *Prince George's County Police Department v. Zarragoitia*, 139 Md. App. 168 (2001), we held that a signed investigative report that "did not provide exact language regarding" the basis for the charges was insufficient to satisfy § 3-106(a) because it was not "a formal accusation of misconduct that evidences a decision by the agency to proceed against the law enforcement officer," and it did not "mark[] the beginning of the adjudicatory phase of the proceeding." *Brooks*, 247 Md. App. at 210 (quoting *Zarragoitia*, 139 Md. App. at 184).

Drawing on these sources, we concluded "that a level of formality is required for the filing of charges." *Brooks*, 247 Md. App. at 213. Accordingly, we considered the Department's disciplinary process to determine whether the commissioner's designee's verbal approval was sufficiently formal to deem the charges filed. *Id.* We determined that it was not, because: (1) the Department's charging documents "give places for the signatures and the date on which signed, which suggests that the Department treats the approval as being when it is signed," *id.* at 211; (2) the Department's "actual practice" is to "requir[e] a signature by the designee," *id.* at 212; (3) administrative hearings have occurred only with "the signature on the charging document by the commissioner's designee," and not "based only on a charge approved at the DRC meeting," *id.* at 211; and (4) "the filing does not occur until the designee signs-off formally on the charging document form," *id.* at 213. We concluded that:

> The record establishes that the full procedural panoply employed by the [Department] in disciplinary cases is not to consider the charges filed and final until the signing and dating of the form document accompanying the final written statement of charges, regardless of whether the final charges are unchanged as allegedly approved verbally at the DRC meeting or have been revised or amended following the DRC meeting and before submittal to the commissioner's designee for his/her signature.
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> . . .
>
> We agree with the circuit court and hold that the [Department] observed a policy and practice that formal filing of charges comes upon the signature by the commissioner's designee on the form document accompanying the final version of the charging document and proposed discipline.

Id. at 211.

Notably, and dispositive for our purposes, the focus of our analysis in *Brooks* was on the signature of the commissioner's designee as providing the necessary formality to constitute filing of the charges. As we emphasized, under the Department's practice, it is the commissioner's designee's signature on the charging documents that constitutes the "formal filing of charges." *Id.* Once signed by the commissioner's designee, the charges are approved to proceed, thus providing the closure the General Assembly intended.

Here, Capt. Diehl, the commissioner's designee, signed and dated the charging documents against Sgt. Todd within the one-year limitations period provided by § 3-106(a). As a result, under the Department's policies, the charges were timely filed. Contrary to Sgt. Todd's argument that a DRC member's signature was required to provide "some indicia of approval," the signature line for the DRC member states explicitly that the signature confirms only the "recommendation of punishment." It is the signature of the commissioner's designee approving the charges that is the final step in the process. Here, it is undisputed that the commissioner's designee attended the DRC meeting, received the DRC's recommendation in person, and then signed and dated the charges within one year from when the Department received notice of the underlying conduct. Based on our reasoning in *Brooks*, these steps were sufficient to satisfy the Department's "actual practice" for formally filing charges against Sgt. Todd under § 3-106(a). *See Brooks*, 247 Md. App. at 216.

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