Circuit Court for Prince George's County
Case No. CAL21-11710

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 105

September Term, 2023

SIMON VANLEUVEN

v.

PRINCE GEORGE'S COUNTY POLICE DEPARTMENT

Ripken,
Albright,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Albright, J.

Filed: June 28, 2024

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

In this case, we review the decision of an Administrative Hearing Board ("Board") of Appellee Prince George's County Police Department ("PGPD"). The Board found Appellant Simon Vanleuven, then a police Corporal, guilty of three violations of PGPD general orders in connection with a post Mr. Vanleuven made to his personal Instagram page, and it recommended his termination. Following the Board's decision, Mr. Vanleuven submitted his resignation and then timely appealed the Board's decision to the Circuit Court for Prince George's County. The circuit court affirmed the Board's decision.

On appeal to this court, Mr. Vanleuven presents one question for our review, which we have rephrased:

> Did the Administrative Hearing Board err as a matter of law by considering evidence that was related to a dismissed charge?[1]

For the reasons stated below, we answer "no." Accordingly, we affirm the circuit court's judgment.

BACKGROUND

The facts of the case are not in dispute. Mr. Vanleuven admits that in May 2015, while employed by PGPD, he posted a meme to his personal Instagram page consisting

[1] Mr. Vanleuven phrased his question as follows:

> Did the Administrative Hearing Board err as a matter of law by considering evidence of the phrase "mein neger" after ruling that Charge Four ("Use of Language") was "null and void"?

of the phrase "Mein Neger" overlaid on an image of Adolf Hitler.[2] Mr. Vanleuven commented on the post: "Lmao! Why does everything sounds [sic] funnier in German? So wrong . . . Lol."[3] The parties agree that the German phrase "Mein Neger" is roughly cognate to the English phrases "my negro" or "my nigga."

PGPD learned of Mr. Vanleuven's post in January 2021 and assigned Internal Affairs Sergeant Landos Wallace to investigate. Sergeant Wallace interviewed several witnesses, including Mr. Vanleuven. Mr. Vanleuven admitted to Sergeant Wallace that he made the post and conceded that it was "very ill-advised[.]" Sergeant Wallace summarized the results of his investigation in a Report of Investigation (ROI).

PGPD's Interim Chief of Police issued a Disciplinary Action Recommendation (DAR) based on Sergeant Wallace's investigation that charged Mr. Vanleuven with violating four departmental general orders in connection with the post. In each charge, PGPD alleged a violation of the cited general order and provided a specification under

[2] We note at the outset how we use several terms related to social media in this opinion. First, we use "overlay" and "overlaid" to refer to text that is superimposed on an image. Thus, we refer to the words "Mein Neger" from Mr. Vanleuven's post as the "overlaid phrase." Second, in connection with the facts of the case, we use the word "meme" to refer to the combination of the background image of Hitler and the overlaid phrase. Third, we use the term "comment" to refer to language accompanying a posted image that often explains, describes, or comments on the image—here, Mr. Vanleuven's comment "Lmao! Why does everything sounds funnier in German? So wrong . . . Lol." The parties' terminology is often inconsistent with these usages, so we have attempted to clarify where necessary.

[3] "LMAO" and "LOL" are textual abbreviations commonly used to express amusement. "LMAO" stands for "laughing my ass off" and "LOL" stands for "laughing out loud."

the heading "To wit" notifying Mr. Vanleuven of the conduct that it alleged violated that general order. The DAR read as follows:

> [P]ursuant to General Order Manual, Volume I, Chapter 11, Section V, Subsections 1 and 3, I am charging you with the following violations:
>
> **Charge 1**: Prince George's County Police Department General Order Manual, Volume I, Chapter 34, Section V, Subsection 1, **Social Media-Prohibitions**, which reads:
>
> > "While employees are off-duty and using personal equipment, they have the right to speak as private citizens on matters of public concern. Matters of public concern may include, but are not limited to, political or social issues and certain conditions and government misconduct. However, this right is limited by the Department's interest in restricting certain speech, and employees may be disciplined for public statements and social media posts that have the following impact:
> >
> > - Make, share or comment in support of any posting that disparages, ridicules, maligns, or otherwise expresses bias toward any race, religion, sex, gender, sexual orientation, nationality, or any other protected group or class of individuals."
>
> **To wit**: That sometime between 2015 to present day, on his private social media page, at an unknown location, the Respondent, Cpl. Simon Vanleuven #3525 posted an inappropriate photo on his personal facebook page.
>
> **Charge 2**: Prince George's County Police Department General Order Manual, Volume I, Chapter 32A, Section V, Subsection 1, **Social Media-Prohibitions**, which states:
>
> > "Post, produce, or participate in the production, by electronic/wireless transmission, anything that would reflect poorly upon the Department."
>
> **To wit**: That sometime between 2015 to present day, on his private social media page, at an unknown location, the Respondent, Cpl. Simon Vanleuven #3525 posted an inappropriate photo on his personal facebook page.
>
> **Charge 3**: Prince George's County Police Department General Order

Manual, Volume I, Chapter 32, Section V, Subsection 3, **Unbecoming Conduct**, which reads:

> "As the most visible representative of government, employees must display unblemished professional conduct. To that end, employees are duty bound to avoid excessive, unwarranted, or unjustified behavior that would reflect poorly on themselves, the Department, or the County Government, regardless of duty status."

To wit: That sometime between 2015 to present day, on his private social media page, at an unknown location, the Respondent, Cpl. Simon Vanleuven #3525 posted an inappropriate photo of Adolf Hitler on his personal facebook page.

Charge 4: Prince George's County Police Department General Order Manual. Volume I, Chapter 32, Section V, Subsection 4, **Use of Language**, which reads:

> "Employees shall not use language that is discriminatory, abusive or inappropriate. This behavior diminishes public confidence, undermines the effectiveness and integrity of the Department, and will not be tolerated."

To wit: That sometime between 2015 to present day, on his private social media page, at an unknown location, the Respondent, Cpl. Simon Vanleuven #3525 posted an inappropriate photo of Adolf Hitler on his personal facebook page with a discriminatory caption that read "Mein Neger."

In light of the aforementioned, under the authority delegated to me by the Chief of Police, pursuant to the General Order Manual, Volume 1, Chapter 11, Section V, Subsection 1, you are hereby advised that I intend to take disciplinary action with regard to the aforementioned issues. The action I propose to take is:

Charges 1 and 3: That You Shall be Terminated.

Rather than accept the proposed discipline, Mr. Vanleuven chose to exercise his right to an administrative hearing pursuant to former Title 3 of the Public Safety Article of the Maryland Code, commonly known as the "Law Enforcement Officer's Bill of

Rights" (LEOBR).[4]

The Board held Mr. Vanleuven's hearing in July 2021.[5] At the beginning of the hearing, Mr. Vanleuven waived a full reading of the charges against him and confirmed to the Board that he understood "the nature of the charges[.]" Appellee PGPD then made two preliminary motions to amend the DAR. The first requested that erroneous references to Mr. Vanleuven's "facebook" be amended to read "Instagram." The second requested that language about the proposed sanction (termination) be modified to read "Charges 1 through 4" instead of "Charges 1 and 3." Appellee asserted that the language limiting the sanction to Charges 1 and 3 was the result of a "clerical error." Mr. Vanleuven opposed both motions.

The Board granted Appellee's first motion to amend "facebook" to "Instagram." It granted Appellee's second motion with respect to Charge 2, a violation of one of PGPD's general orders on Social Media Prohibitions, but denied the motion with respect to

[4] The Maryland General Assembly repealed the LEOBR effective July 1, 2022. Former Public Safety Section 3-107, which was part of the LEOBR, provided:

> [I]f the investigation or interrogation of a law enforcement officer results in a recommendation of demotion, dismissal, transfer, loss of pay, reassignment, or similar action that is considered punitive, the law enforcement officer is entitled to a hearing on the issues by a hearing board before the law enforcement agency takes that action.

[5] Volume 1, Chapter 2 of PGPD's General Order Manual provides procedural rules for administrative hearing board proceedings. It characterizes such proceedings as "quasi-judicial" and explains that the administrative hearing board presides over the proceedings, acts as factfinder, and makes recommendations of discipline to the Chief of Police. Additionally, it explains that the standard of proof in such proceedings is preponderance of the evidence.

Charge 4, a violation of the PGPD general order on Use of Language. It declared therefore that Charge 4 would not be heard and was "null and void." The Board did not explain these decisions.

The hearing proceeded on Charges 1–3. In his opening statement, Mr. Vanleuven argued as follows:

> I would note at this point in time that according to the DAR and the ruling . . . made by [the Board], the language in the photograph is no longer in question. Charge 4 dealt specifically with the foreign language phrase. Charges 1, 2, and 3 deal specifically with the photograph in question -- a inappropriate photograph or an inappropriate photograph of Adolf Hitler. . . . The only charges left before this Board, they have absolutely nothing to do with the language in question. These charges are based entirely on the photograph of Adolf Hitler.

Appellee PGPD then called Sergeant Wallace to testify and asked him to read the overlaid phrase. Mr. Vanleuven objected on the basis that the overlaid phrase was not relevant with respect to the remaining charges. Appellee responded:

> Just because the Department dismissed the use of language charge does not mean that the language that is on the photo that is part of the photo is not relevant. That's completely relevant and that's completely what the charges of social media prohibitions and unbecoming conduct because the language in conjunction with the photo is what makes it inappropriate. So just because the language is not being considered for the use of language violation charges does not mean the language is not part of the photo[.]

The Board overruled Mr. Vanleuven's relevance objection, explaining that it would "allow the evidence . . . based on the . . . social media . . . prohibition statute[.]" The Board permitted Sergeant Wallace to read and testify about the overlaid phrase. Appellee then offered the entire post into evidence. The Board admitted it, words and all, over Mr. Vanleuven's renewed relevance objection.

The Board ultimately found Mr. Vanleuven guilty of Charges 1–3 and issued written findings and a recommendation of termination. The Board found that Mr. Vanleuven posted "a meme to his personal Instagram page featuring a photograph of Adolph Hitler with the words 'Mein Neger' displayed below the photograph" along with his comment "Lmao! Why does everything sounds funnier in German? So wrong . . . Lol[.]" In support of its decision on Charges 2 and 3, the Board found that Mr. Vanleuven "demonstrated poor judgment in reposting and commenting on the meme which in turn reflected poorly on the [PGPD]." With respect to Charge 1, the Board found that "[Mr. Vanleuven's] reposting of the meme could be viewed as supporting a disparaging term (neger, negro, n[___]a) used to describe persons of African ancestry."

Mr. Vanleuven resigned from PGPD shortly after the Board issued its written findings and recommendation. He appealed the Board's decision to the circuit court, which affirmed. This timely appeal followed.

STANDARD OF REVIEW

"The scope of judicial review in a LEOBR case is that generally applicable to administrative appeals." *Coleman v. Anne Arundel Cnty. Police Dep't*, 369 Md. 108, 121 (2002) (cleaned up). When this Court reviews an administrative agency's decision, we determine "whether the administrative agency, as opposed to the circuit court, erred." *Baltimore Police Dep't v. Antonin*, 237 Md. App. 348, 359 (2018). Thus, we "bypass the judgment of the circuit court and look directly at the administrative decision." *Id.* (internal quotations omitted). "In reviewing an administrative agency decision, we are

limited to determining if there is substantial evidence in the record as a whole to support the agency's finding and conclusions, and to determine if the administrative decision is premised upon an erroneous conclusion of law." *Baltimore Police Dep't v. Ellsworth*, 211 Md. App. 198, 207 (2013) (internal quotations omitted). Although our review of an agency's findings of facts is narrow and deferential, "we owe no deference to agency conclusions based upon errors of law." *Coleman*, 369 Md. at 121 (internal quotations omitted). Whether a piece of evidence is relevant is a legal conclusion reviewed without deference. *Williams v. State*, 457 Md. 551, 563 (2018).

DISCUSSION

I. The Parties' Contentions

Mr. Vanleuven argues that the Board erred as a matter of law when it admitted the overlaid phrase "Mein Neger" in connection with its consideration of Charges 1–3 because the overlaid phrase was not relevant evidence and it related only to dismissed or "dead" counts. Mr. Vanleuven's core premise is that in drafting the DAR, PGPD split the post into separate elements—in particular, the background image of Hitler and the overlaid phrase—and charged those elements separately. He notes that the "To wit" phrases for Charges 1–3 stated that he "posted an inappropriate photo" but omitted any mention of the overlaid phrase. By contrast, Charge 4's "To wit" phrase stated that Mr. Vanleuven "posted an inappropriate photo . . . **with a discriminatory caption that read 'Mein Neger.'**" (emphasis added). According to Mr. Vanleuven, this difference means that PGPD did not intend for the overlaid phrase to be considered part of the "inappropriate photo" that he posted. He adds that the word "photo" should be construed

narrowly to exclude the overlaid text.

From this construction of Charges 1–3, Mr. Vanleuven argues that the admission of the overlaid phrase amounted to reversible error. Because the phrase "posted an inappropriate photo" in Charges 1–3 must have referred *only* to posting the background image of Hitler, Charges 1–3 were based on just one factual allegation: that he posted the background image of Hitler. Mr. Vanleuven accordingly argues that the overlaid phrase was irrelevant to Charges 1–3. He also argues that the overlaid phrase should not have been admitted in relation to Charges 1–3 because it related to a "dead count," Charge 4.[6]

[6] As we understand it, Mr. Vanleuven does *not* argue that the Board's decision should be reversed because of a material variance between proven and alleged facts. *See generally Crispino v. State*, 417 Md. 31, 51 (2010) (defining a variance as "a difference between the allegations in a charging instrument and the proof actually introduced at trial" (internal quotations omitted)); *Duck v. Quality Custom Homes, Inc.*, 242 Md. 609, 613 (1966) (explaining that a variance may be material, and thus merit reversal, if there is "disagreement in a matter essential to the claim"). In any event, we think that that argument would be unavailing. Minor differences between the facts alleged and the facts proven do not justify reversal. *Tshiani v. Tshiani*, 436 Md. 255, 270 (2013) ("[T]here need only be substantial agreement between what is pleaded and what is proved."). For example, in *Dotson v. State,* our Supreme Court affirmed a manslaughter conviction even though the charging document incorrectly named the victim, explaining that such a variance "is not fatal where it does not mislead the defendant so that he cannot make an intelligent defense, or expose him to double jeopardy." 234 Md. 333, 336 (1964). Here, even if we accept that posting the "inappropriate photo" and posting the overlaid phrase were two separate facts (and we do not) the variance between the mention of only the "inappropriate photo" in the "To wit" phrases and the proof consisting of the "inappropriate photo" *and* the overlaid phrase does not merit reversal because the substance of the conduct alleged in both cases—Mr. Vanleuven made an offensive social media post—is in "substantial agreement[.]" And as we discuss further *infra*, the DAR provided adequate notice to Mr. Vanleuven of the violative conduct underlying the charges. Therefore, we think there was likely no material variance between the alleged conduct and the proven conduct.

Appellee PGPD interprets the DAR, which it drafted, very differently. Appealing to common sense understandings of the word "photograph," it observes that "[t]he fact that [a] photograph is a photograph of words[] does not make it any less a photograph." Consequently, it argues that the phrase "inappropriate photo" used in the "To wit" sections of all four charges refers to the exact same piece of evidence: a photograph or meme that Mr. Vanleuven posted to his personal Instagram page that was made up of (1) a background image of Hitler and (2) the superimposed phrase "Mein Neger[.]" Those two elements of the photograph "were not and could not be separated" from each other. Appellee notes also that Mr. Vanleuven did not add the overlaid phrase to the image, but instead "reposted the photograph 'as is' with the words already being part of the photograph." Appellee concludes that the overlaid phrase was part of the "inappropriate photo" that PGPD alleged Mr. Vanleuven posted.

More broadly, Appellee observes that "[t]here is a distinction between a charge being dismissed and evidence being excluded." Here, the Board's decision to dismiss Charge 4 rendered that charge "null and void." Contrary to Mr. Vanleuven's assertions, though, the Board's decision did not entail the exclusion of any evidence. In other words, the dismissal of Charge 4 "[did] not mean that any evidence related [to] Charge 4[] could not also apply to Charges 1 through 3."

II. Analysis

We disagree that the Board erred as a matter of law in admitting the overlaid phrase. The Board's dismissal of Charge 4 did not render the overlaid phrase

inadmissible. Below, we unpack Mr. Vanleuven's arguments. *First*, we focus on the function of the "To wit" phrases in the DAR, as those phrases appear to be what Mr. Vanleuven's arguments are predicated on. *Second*, we discuss why the Board did not err in concluding that the overlaid phrase was admissible.

A. Despite Mr. Vanleuven's apparent misunderstanding, the "To wit" phrases in the DAR provided adequate notice of the conduct underlying the charges.

Mr. Vanleuven's first argument stems from a comparison of the "To wit" phrase in Charge 4, on the one hand, and those in Charges 1–3 on the other. Specifically, he contends that because Charge 4's "To wit" phrase mentioned the overlaid phrase, while Charges 1–3's "To wit" phrases did not, Charges 1–3 did not charge him with having posted the overlaid phrase. This argument fails.

The LEOBR entitled an officer to a variety of procedural and substantive rights, among them the right to notice of "the issues involved" in the administrative hearing. Pub. Safety § 3-107(b)(2) (repealed July 1, 2022). Indeed, the LEOBR required that an officer subject to disciplinary charges be notified "of each charge and specification against" him at least ten days before the hearing. Pub. Safety § 3-104(n)(1)(i) (repealed July 1, 2022). Thus, as we explained in *Prince George's County Police Department v. Zarragoitia*, 139 Md. App. 168, 183–84 (2001),

> [t]he charging document should detail the act or acts of misconduct the officer is accused of having committed, and the laws, rules, or regulations he is alleged to have violated, so that he has the necessary information to adequately defend himself and so that the Board can assess the sufficiency of the charge and of the evidence presented and, if necessary, decide an appropriate sanction.

Id. at 184.

In analyzing whether an LEOBR charging document provided an officer adequate notice of the specific misconduct at issue, or was otherwise vague, we are not limited to the language of the charging document itself. Instead, we examine the record as a whole to determine whether the officer was sufficiently notified of the specific misconduct at issue. *Reed v. Mayor and City Counsel of Baltimore*, 323 Md. 175, 184 (1991) (concluding that officer was not adequately notified of which conduct "reflected discredit upon" the police department where specific misconduct was not identified in charging document or the incorporated police incident report); *Bray v. Aberdeen Police Dep't*, 190 Md. App. 414, 432 (2010) (concluding that the officer was adequately notified of what conduct formed the basis of the charges against him from the discovery he had received).

Although an officer may assert that he misunderstood the specific allegation of misconduct against him, the charging document need not have "include[d] every known fact in support of the charges in order to correct [an officer's] misunderstanding." *Bray*, 190 Md. App. at 432. In *Bray*, an officer was accused of failing to appear as a summoned witness in three court cases and of making false statements about his nonappearances during the interrogation that followed. *Id.* at 421–22. When the officer challenged the false statement charges against him for failing to specify which of his statements was untrue, we declined appellate relief, noting that the officer had received a transcript of his interrogation, that it was a "scant" five pages, and contained "very few factual assertions" by the officer. *Id.* at 432. Instead, we held that "[b]ecause [the charged counts] include[d]

the charged offense, the relevant law, and a brief statement of facts in support of the charges, we find they were sufficient to allow [the officer] to prepare for his administrative hearing." *Id*.

To the extent that Mr. Vanleuven is claiming that he did not understand that Charges 1–3 reached the entirety of his post, the record shows otherwise. Before the Board, Mr. Vanleuven admitted that he understood the nature of the charges against him and waived a reading of them. Thus, Mr. Vanleuven understood Charges 1 and 2 (both of which charged social media violations) to broadly target certain "posts." Charge 1 targeted Mr. Vanleuven's post in that it allegedly "disparage[d], ridicule[d], malign[ed], or otherwise express[ed] bias toward any race[.]" Charge 2 targeted the post as "anything" posted "by electronic/wireless transmission . . . that would reflect poorly upon the Department." Charge 3, even broader, targeted "excessive, unwarranted, or unjustified behavior that would reflect poorly on [the officer], the Department, or the County Government[.]"

To the extent that Mr. Vanleuven is claiming that he misunderstood which specific post of his was at issue, or that discipline was being sought because of the entire post, i.e. the post's background image, overlaid phrase, and comment, Mr. Vanleuven's misunderstanding was not something the DAR had to correct. Here, as in *Bray*, what constituted the possible misconduct was "scant." There was never more than one 2015 post at issue here. From the outset, when he was interrogated by Sergeant Wallace, Mr.

Vanleuven admitted to being aware of that one post and what it contained.[7] Specifically, Mr. Vanleuven admitted to Sergeant Wallace that he made that post and that it was "ill-advised." The "To wit" phrases described the photo (and the post) as "inappropriate[.]" Accordingly, while the "To wit" phrases of Charges 1–3 may not have spelled out how various aspects of the post violated the policies identified (and repeated) in Charges 1–3, the identification of the post, along with the description of it being "inappropriate[,]" was enough to acquaint Mr. Vanleuven with the specific conduct at issue so that he could prepare for his administrative hearing.

B. Mr. Vanleuven does not establish that the Board erred as a matter of law in admitting the overlaid phrase.

Mr. Vanleuven next focuses on the relevance of the overlaid phrase, "Mein Neger[.]" As we interpret his argument, Mr. Vanleuven contends that because the conduct in Charges 1–3 did not include the posting of the overlaid phrase "Mein Neger[,]" his posting of that phrase was irrelevant and should not have been admitted. Put another way, Mr. Vanleuven argues that because all he was charged with was the posting of an inappropriate photo, the only evidence that could have been relevant to those charges was the background image of Hitler, not the overlaid phrase. This argument fails

[7] During the interrogation, Sergeant Wallace asked Mr. Vanleuven about a second item, which was a photo of him from 2018 wearing a Trump shirt and partially displaying his badge and gun. Mr. Vanleuven recognized himself in the photo but denied having posted the photograph to social media. Mr. Vanleuven was not charged in connection with this photo. Nor does he claim to have thought that the DAR's charges referred to the Trump shirt photo.

as well.

Evidentiary rules are relaxed in administrative proceedings under the LEOBR, *Travis v. Baltimore Police Dep't*, 115 Md. App. 395, 408 (1997),[8] but administrative hearing boards must still exclude irrelevant evidence. Md. Code Ann., Pub. Safety § 3-107(f)(2) (repealed July 1, 2022). Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Md. Rule 5-401. Our Supreme Court has opined that "[h]aving any tendency to make any fact more or less probable is a very low bar to meet." *Williams*, 451 Md. at 564 (cleaned up).

We see no error in the Board's decision that Mr. Vanleuven's entire post, including the background image, the overlaid phrase, and the comment, was relevant evidence. The Board admitted the post (in its entirety) because it was relevant to Charges 1 and 2, the social media violations.[9] As we have explained, these charges were broader

[8] Additionally, Volume 1, Chapter 2 of PGPD's General Orders Manual states that "[t]he rules of evidence used by the Courts need not be strictly followed" in proceedings before administrative hearing boards.

[9] The Board stated during the hearing that it would allow Sergeant Wallace's testimony about the overlaid phrase "based on the . . . social media . . . statute." We understand the Board's comment as a reference to the PGPD general orders on Social Media that formed the basis for Charges 1 and 2. Thus, the Board did not expressly state that it also found that evidence relevant as to Charge 3. Still, we think that conclusion reasonably follows from the Board's finding as to Charges 1 and 2. Indeed, in its written findings, the Board seems to have considered the overlaid phrase relevant as to Charge 3: it stated in support of its decision on Charge 3 that Mr. Vanleuven "demonstrated poor judgment in reposting and commenting on the meme." In any event, Mr. Vanleuven did not request any limiting instruction with respect to Charge 3 following Sergeant Wallace's testimony and the admission of the entire post.

than the background image of Hitler. Instead, Mr. Vanleuven was charged with making a social media post that "disparage[d], ridicule[d], malign[ed], or otherwise expresse[d] bias [toward any race or nationality, among other protected groups]" and reflected poorly on the PGPD. The entire post, not merely the background image, was relevant to Charge 1 because the entire post—background image, overlaid phrase, and comment—had the tendency to make the existence of a disparaging social media post (disparaging to those of African ancestry, according to the Board's findings) by one of its employees more likely than not. And as to Charge 2, the entire post was relevant because a disparaging electronic post from an employee is something that would tend to reflect poorly on the PGPD.

Mr. Vanleuven's final argument is based on "dead counts." Because Mr. Vanleuven did not advance this theory to the Board, it is not preserved for our review. Md. Rule 8-131(a).[10] Even if it is preserved, though, it plainly misses the mark. Mr. Vanleuven cites Rule 4-326(b), which specifies that, in criminal cases, "[o]n request of a party or on the court's own initiative, the charging documents shall reflect only those charges on which the jury is to deliberate." He also refers to *Sherman v. State*, in which our Supreme Court held that failure to remove dismissed or "dead" counts from a charging document that was submitted to the jury was reversible error. 288 Md. 636,

[10] Rule 8-131(a) reads, in relevant part: "Ordinarily, an appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]"

640–42 (1980). He asserts that the Board similarly erred here in considering allegations related to Charge 4 after it had been dismissed. This argument fails as well.

Mr. Vanleuven does not cite any rule analogous to Rule 4-326(b) that would require that dismissed counts be deleted from the DAR prior to the Board's deliberation. Even if there were such a rule, though, Mr. Vanleuven's argument far exceeds the scope of *Sherman*. The dispute in *Sherman* was limited to whether the jury's having taken a charging document that listed dismissed charges into the deliberation room was reversible error; the Court did not address whether evidence relevant to the dismissed charges was also relevant to the charges that remained.[11] Here, unlike in *Sherman*, there is no indication that the Board considered Charge 4 after it was dismissed. Instead, in deliberating on Charges 1–3, the Board merely considered evidence (the overlaid phrase) that would have been relevant to Charge 4 had Charge 4 not been dismissed at the outset of the hearing. We have already explained why the overlaid phrase was admissible with respect to Charges 1–3, and neither *Sherman* nor any other case that Mr. Vanleuven identifies requires the exclusion of otherwise admissible evidence solely because it may

[11] Similarly, the pattern jury instruction that Mr. Vanleuven refers to only indicates that the jury should not consider the language of dismissed charges or the reasons for their dismissal. It does not indicate that the jury may not consider evidence that would have been relevant to the dismissed charges. MPJI-Cr 3:05 ("Dismissal of Some Charges Against Defendant"). Likewise, Rule 4-326(b) provides that "charging documents shall reflect only those charges on which the jury is to deliberate[,]" but makes no provision about the jury's consideration of facts and evidence related to dismissed charges.

also have been admissible for a dismissed charge.[12]

CONCLUSION

We see no error in the Board's admission of Mr. Vanleuven's post. Mr. Vanleuven's misunderstanding of the "To wit" phrases does not change this result, particularly as there was only one post at issue and Mr. Vanleuven admitted to having understood the nature of the charges when his administrative hearing began. Accordingly, we affirm the judgment of the circuit court upholding the Board's decision.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.

[12] Indeed, Mr. Vanleuven's reasoning would lead to absurd results: dismissal of one charge arising out of a particular incident would likely exclude the evidentiary basis for any other charges arising out of that incident, thus requiring their dismissal as well.