NELLIE OWEN GRAY, et ux.,	*	**IN THE**
Plaintiffs	*	**CIRCUIT COURT**
v.	*	**FOR**
STATE OF MARYLAND, et al.,	*	**CECIL COUNTY**
Defendants.	*	**Case No.: 07-C-10-000167 OT**

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MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

I. INTRODUCTION.

In the instant action Nellie Gray & Edward Gray (deceased), by and through their guardian and personal representative, Resa Laird ("Plaintiffs"), have filed this instant complaint ("Complaint") against the State of Maryland, and its Trooper, J.A. Edwards, in his "individual and . . . official capacity." The Complaint alleges that Trooper Edwards's acts were within "his the scope of his public duties as a police officer, and . . . under color of law." (Comp. ¶¶4, 5.)

The Complaint alleges Mrs. Gray was injured during an interlude with the Maryland State Police on August 27, 2009, in the area of Theodore Road in Cecil County, Maryland. (Comp. ¶8.) The Plaintiffs claim that Trooper Edwards violently pulled Mrs. Gray from her vehicle, assaulted her, threw her to the ground, and willfully caused her significant injuries. The Plaintiffs bring counts of Assault; Battery; False Arrest; False Imprisonment; Intentional Infliction of Emotional Distress; Gross Negligence; Malicious Prosecution; Invasion of Privacy – Intrusion upon Seclusion; and Violation of Article 24 of the Maryland Declaration of Rights. (Comp. ¶¶15-58.) Plaintiffs seek compensatory damages in the amount of ten million dollars, and punitive damages in the amount of twenty-five million dollars, plus costs.

Plaintiffs offer no support for their contentions. Summary Judgment should be granted

for the Defendants as a matter of law.

II. UNDISPUTED MATERIAL FACTS.

Mrs. Gray was diagnosed with dementia in 2003, and recalls none of the events of August 27, 2009. (O'Donnell Medical Records, 4/17/03); (Donohue Report, p.3). Dr. Donohue deemed Mrs. Gray incompetent to testify due to her "profoundly impaired cognitive abilities associated with a long steady progression of Alzheimer's type dementia." (Donohue Report, p.3.) MD. CODE ANN., CTS & JUD PROC §9-116.

On August 27, 2009, at approximately 12:58 pm, Mrs. Nellie Gray, 82 years of age, was alone, unsupervised, and operating a motor vehicle in the areas of Belvedere Road, Route 40, Route 7, Jackson Station Road and Theodore Road. (Edwards Depo. p.19). At that same time, Trooper Edwards of the Maryland State Police was operating a marked patrol unit, and running radar in the same area. Mrs. Gray drove her vehicle through the radar's zone of influence. Her rate of speed registered at 52 mph; 17 miles per hour above the posted speed limit of 35 mph.[1]

Trooper Edwards activated his emergency equipment, including, lights, siren, air horn, and car horn in an attempt to get Mrs. Gray to stop her vehicle. (Edwards Depo.p.20; Def. Ans. to Int. n.11.) Despite the Trooper's direction to bring her car to a lawful stop, Mrs. Gray evaded Trooper Edwards's, and failed to obey his lawful order to bring her car to a full and complete stop.[2] (Edwards Depo.pp.19–22; 24-28.) At one point during Mrs. Gray's attempted flight, she proceeded through a steady red signal[3] without stopping (Edwards Depo. pp. 21-22).

Also during the pursuit, with his emergency equipment activated, Trooper Edwards

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[1] MD. CODE ANN., TRANSP. II §21-102 "Required Obedience to Traffic Laws"; MD. CODE ANN., TRANSP. II §§21-801, 21-801.1 "Basic Rule"; "Maximum Limits."

[2] MD. CODE ANN., TRANSP. II §21-405 "Operation of vehicles on approach of emergency vehicles."

[3] MD. CODE ANN., TRANSP. II §21-202. "Traffic lights with steady indication."

pulled his car alongside Mrs. Gray's to gain her visual attention and give her a hand-signal to stop. (Edwards Depo. pp.24-25.) Mrs. Gray looked directly at Trooper Edwards and waived him off by "rais[ing] her arm and hand and, like pushed off like she was pushing me away." (Edwards Depo. pp.24-25.) Mrs. Gray then sped up, again, and passed Trooper Edwards.[4] (Edwards Depo. p.25.) Mrs. Gray then turned onto Jackson Station Road towards Route 7. At the T-intersection, Trooper Edwards drove around Mrs. Gray's vehicle, and positioned his vehicle in front of hers. While Trooper Edwards made a left turn onto Route 7, she drove off the travel portion of the roadway, onto the grassy shoulder. [5] (Edwards Depo. p.26.) Driving her vehicle back onto the roadway, she struck the right side of the Trooper Edwards's vehicle with the front of her vehicle. (Edwards Depo. pp.26-27, 28.)

Trooper Edwards exited his police cruiser and approached Mrs. Gray's driver's side door, opened it, and ordered her out of the vehicle. (Edwards Depo. p.30.) Mrs. Gray refused to get out of her car, and told him "to get away" while she was swinging and flailing her arms, striking Trooper Edwards in the face.[6] (Edwards Depo. p.30.) Assisted by other officers at the scene, Trooper Edwards "leaned into the vehicle, placed [his] … left hand onto her upper right arm and [his] right hand on her left wrist and attempted to remove her from the vehicle" despite her continued, active resistance. (Edwards Depo. p.31.) "Deputy Wallace then took a hold of her left arm and her wrist, and [they] then pulled her up out of the vehicle [,] turned her to face the

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[4] MD. CODE ANN., TRANSP. II §21-904 "Fleeing or eluding police"; MD. CODE ANN., TRANSP. II §21-904 (d)(1) "Fleeing or eluding police resulting in bodily injury to another"; MD. CODE ANN., TRANSP. II §27-101(p); Violation of MD. CODE ANN., TRANSP. II §21-904(b) 1 year imprisonment/$1,000 fine, or both; Violation of MD. CODE ANN., TRANSP. II §21-904(d)(1) 3 years imprisonment/$5,000.00 fine, or both; MD. CODE ANN., TRANSP. II §21-901.1 "Reckless and negligent driving"; MD. CODE ANN., TRANSP. II §21-901.2 "Aggressive driving".

[5] During the pursuit, Trooper Edwards was joined by Deputy Sheriffs Wallace & Pruett. (Edwards Depo. pp.51-52.)

[6] MD. CODE ANN., CRIMINAL PROCEDURE §3-203(c), Second Degree (Felony) Assault on a Law Enforcement Officer.

vehicle, and [] immediately handcuffed her." (Edwards Depo. p.32.) Throughout this period, Mrs. Gray continued to actively resist by pulling away and pulling her arms apart.[7] (Edwards Depo. pp.36-37.) As per his training, Trooper Edwards went to place the cuffs on Mrs. Gray. In doing so, he turned her hands so that her palms faced outward. While conducting this movement, his fingers went across the back of her hand and unintentionally tore the skin. (Edwards Depo. pp.37, 40). "I was in the process of putting the handcuffs on her when the tear occurred. Then I immediately called EMS." (Edwards Depo. p.40.) Trooper Edwards used only enough force to control Mrs. Gray and secure the handcuffs. (Edwards Depo. p.37.) The handcuffs were immediately removed. (Edwards Depo. p.43.)

While waiting for EMS to arrive, Trooper Lynn, Officer Zago, and Officer Lindsay took Mrs. Gray across the street, sat her under a shade tree, and Trooper Lynn[8] attended her wound. (Edwards Depo. pp.41-43.) Shortly thereafter, EMS arrived and Mrs. Gray was taken to the hospital.

Despite the allegations in her Complaint, at no time was Mrs. Gray forcefully taken to the ground. (Edwards Depo. p.41.) Likewise, there were not any weapons, or shotguns, brandished at Mrs. Gray. (Edwards Depo. p.45); (Stone Depo. p.37).

Other than themselves, the Plaintiffs have identified only one other "eyewitness" to support the allegations contained in their Complaint, Ms. Victoria Stone.[9] According to Ms.

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[7] M MD. CODE ANN., CRIMINAL PROCEDURE §9-408 Resisting Arrest.

[8] Tpr. Lynn is a former fire department volunteer with emergency medical training and had a medical kit in his patrol vehicle. (Edwards Depo. p.52.) Ofcs. Zago & Lindsay are members of the Perryville Police Department.

[9] While the Plaintiffs Complaint states that two of Mrs. Gray's adult children were present at the scene and were eyewitnesses to the event, their depositions have revealed that they were, in fact, not witnesses to the event. By happenstance, they did arrive at the scene, but it was not until after EMS was departing, en route to the hospital. Mrs. Silver nor Mr. Gray knew their mother was in the ambulance. (Edward Gray Depo. pp.39-40); (Silver Depo. pp. 21-22.)

Stone, she recalls driving up the hill and seeing "quite a few police vehicles, police cruisers, and they were just coming at a rest and there were sirens, so [she] immediately stopped." (Stone Depo. p.18.) She estimates that she was "30 yards away from a Trooper's vehicle," (Stone Depo. p.12) and had to "look up the hill to see any activity." (Stone Depo. pp.12-13.) Her observations did not begin until *after* Mrs. Gray's vehicle had made contact with Trooper Edward's vehicle. "The cars were stopped but they were still kind of rocking back and people were getting out of the vehicles when I pulled up . . . So they were not moving. They were getting out." (Stone Depo. pp.23-24.)

"The only thing I could see were the vehicles." (Stone Depo. p.16). "I didn't -- I didn't even see their -- their cars pull up. I'm guessing because they don't have sirens. They were just . . . unmarked." (Stone Depo. p.51.) She is also unable to testify to what happened because "all [she] saw was feet." However, she did observe as they approached the front of the vehicle, . . . [that] the lady was obviously handcuffed." (Stone Depo. p.30.) At no point did she observe an assault of Mrs. Gray. (Stone Depo. p.34.

III. SUMMARY JUDGMENT STANDARD.

Pursuant to Maryland Rule 2-501(a), summary judgment is appropriate when the pleadings, depositions, admissions, and affidavits show that there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law. *Delia v. Berkey*, 41 Md. App. 47 (1978), aff'd, 287 Md. 302 (1980); *King v. Bankerd*, 303 Md. 98 (1985); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). The burden is on the moving party to demonstrate the absence of any genuine issue of material fact. *Adickes v. S. H. Kress & Co.*, 398 U.S. 144, 157 (1990). Thus, to defeat a motion for summary judgment, the non-moving party must produce "material facts which would be admissible in evidence" that demonstrate a genuine need

for a trial. *Seaboard Surety v. Kline*, Inc., 91 Md. App. 236, 243 (1992). The moving party is entitled to judgment as a matter of law where the non-moving party "fails to make a sufficient showing to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex*, 477 U.S. at 322.

IV. ARGUMENT.

A. THERE ARE NO MATERIAL FACTS IN DISPUTE.

The undisputed material facts demonstrate that there are no facts which support any of the Plaintiffs' claims for relief. The Plaintiffs are unable to "make a sufficient showing to establish the existence of an element essential to [their] case." *Id.* at 322. Plaintiffs have no witnesses that observed first hand the events of Mrs. Gray's interactions with Trooper Edwards on August 27, 2009. Any testimony which they provide are the statements of belief, and not of fact, personal knowledge, or first hand observation.

Statements of belief are not based on first-hand knowledge, and are inadmissible. MD. CODE ANN, EVIDENCE §5-802; MD. CODE ANN., COURTS & JUDICIAL PROCEEDINGS §9-116. "Such beliefs are not facts based on personal knowledge, and are not sufficient to raise a genuine dispute as to a material fact." *Lowman v. Consolidated Rail Corporation,* 68 Md. App. 64, 73 (1986); (quoting, *Hoffman Chevrolet Inc. v. Washington County National Savings Bank,* 297 Md. 691, 712 (1983) (plaintiff was required to produce facts under oath, based on personal knowledge of the affiant to defeat the motion; bald, unsupported statements, or conclusions of law are insufficient); *Brown v. Suburban Cadillac,* 260 Md. 251, 257 (1971) ("It is never sufficient to defeat a motion for summary judgment that the opposing party alleges in a general way that there is a dispute as to a material fact."); *Shatzer v. Kenilworth,* 261 Md. 88, 95 (1971) ("To oppose a motion for summary judgment, the party must show with some precision that

there is a genuine dispute as to a material fact . . . And the opposing party must make such a showing by evidence which would be admissible in evidence."); *Evans v. Johns Hopkins University,* 224 Md. 234, 238 (1961) ("Mere formal denials or general allegations which do not show the facts in detail and with precision are insufficient to prevent the award of summary judgment.").

Even in a light most favorable to the Plaintiffs, their claims are wholly unsupported, and fail as a matter of law. Summary judgment in favor of the Defendants is appropriate.

B. IMMUNITIES; SOVEREIGN, QUALIFIED, PUBLIC OFFICIAL, AND STATUTORY, BAR THIS SUIT IN ITS ENTIRETY.

1. THE STATE'S SOVEREIGN IMMUNITY.

The Plaintiffs request relief for which the State of Maryland has not waived its Sovereign Immunity, and therefore, they are not entitled to such relief. Namely, their request for punitive damages, pre-judgment interest, malice and gross negligence are all inapplicable to the State as a Defendant. MD. CODE ANN., STATE GOV'T §§12-101-10.

a. THE STATE HAS NOT WAIVED ITS IMMUNITY TO CLAIMS FOR PUNITIVE DAMAGES.

The State of Maryland has not waived its Sovereign Immunity as to punitive damages. Therefore, the Complaint seeks remedy to which the Plaintiffs are not legally entitled. MD. CODE ANN., STATE GOV'T § 12-104(b).

b. THE STATE HAS NOT WAIVED ITS IMMUNITY TO CLAIMS FOR PRE-JUDGMENT INTEREST.

The State of Maryland has not waived its Sovereign Immunity as to pre-judgment interest. Therefore, the Complaint seeks remedy to which the Plaintiffs are not legally entitled.

MD. CODE ANN., STATE GOV'T § 12-104(b); MD. CODE ANN., CTS & JUD PROC §5-522(a)(2).

c. THE STATE HAS NOT WAIVED ITS IMMUNITY TO CLAIMS OF MALICE OR GROSS NEGLIGENCE.

Despite their being no indicia of evidence to support the Plaintiffs' bald allegations of malice or gross negligence, the State of Maryland has not waived its Sovereign Immunity as to malice or gross negligence. Therefore, as a matter of law, the Plaintiffs may not prevail against the State for grievances which arise from malice or gross negligence. MD. CODE ANN., STATE GOV'T §12-104(b); MD. CODE ANN., CTS & JUD PROC §5-522(a)(4).

2. STATE EMPLOYEES HAVE STATUTORY IMMUNITY.

The Plaintiffs have filed suit against Trooper Edwards in his personal capacity. However, as a State of Maryland employee, he is immune from suit. *See,* MD. CODE, STATE GOV'T §§12-101, 12-105; MD CODE, CTS & JUD PROC §§5-522, 5-511. This statutory immunity applies so long as the employees were acting within the scope of their employment without malice or gross negligence. *Ford v. Baltimore City Sheriff's Office,* 149 Md. App. 107, 141-43 (2002) ("[T]he MTCA permits suits against the State for a negligent violation of the State Constitution by State personnel, but State personnel shall be immune from such suits.") The statutory immunity provided for in MD. CODE, CTS & JUD PROC §5-522 applies to intentional and constitutional torts. *Lee v. Cline,* 348 Md. 245 (2004) (immunity applicable to State employees encompasses constitutional and intentional torts); *Hines v. French,* 157 Md. App. 536, 576-77 (2004) ("When police officers perform discretionary functions, the rationale in insulating officers against all but flagrant abuses of their position, is the necessity to permit police officers . . . to make the appropriate decisions in an atmosphere of great uncertainty.").

Although Plaintiffs have alleged in their Complaint that Trooper Edwards acted with

malice and gross negligence, (Comp.¶¶9, 10, 11, 12, 16, 21, 25, 31, 35, 38-40, 43) they are unable to provide any evidence in support of their allegations. As such, the bald allegations remain wholly unsubstantiated, and as there is no dispute of material fact. Summary judgment must be entered in favor of Trooper Edwards.

3. TROOPER EDWARDS ENJOYS PUBLIC OFFICIAL IMMUNITY.

As a public official, Trooper Edwards is immune by virtue of his Public Official Immunity. Police officers, acting in the scope of their employment, are public officials for purposes of the public official immunity doctrine. *Lovelace v. Anderson,* 366 Md. 690, 704 (2001) (citing *Williams v. Baltimore*, 359 Md. 101, 138-139 (2000)). The common law public official immunity doctrine provides that: "public officials (as opposed to mere employees) who perform negligent acts during the course of their discretionary (as opposed to ministerial) duties" are immune as a matter of law. *Houghton v. Forrest*, 412 Md. 578, 585 (1997). An officer's arrest of an individual is a discretionary act, and not a ministerial one. *Houghton,* 412 Md. at 585.

> Even though public official immunity is not applicable to intentional acts, it is important to bear in mind that a public official, such as a policeman or a fireman, in performing his or her discretionary duties within the scope of employment, in the absence of actual malice and without actual knowledge of wrongdoing, generally will not have committed actionable conduct. This is because the individual will not be guilty of an intentional tort in the first instance because the conduct is legally justified or alternatively, depending on the court's conceptual analysis, be subject to some qualified or conditional privilege other than public official immunity.

Thomas v. City of Annapolis, 113 Md. App. 440, 456 (1997).

Because the Plaintiffs are unable to offer any evidence that supports the proposition that Trooper Edwards was acting outside of the scope of his employment, with malice, or is not immune, their Complaint amounts to naught but bare allegations unsupported by even a mere

scintilla of evidence. Therefore, on the basis of public official immunity, Trooper Edwards is entitled to summary judgment.

4. TROOPER EDWARDS ENJOYS QUALIFIED IMMUNITY.

Trooper Edwards also enjoys common law qualified immunity.[10] Qualified immunity "protects government officials 'from liability for civil damages insofar as their conduct does not violate[] clearly established statutory or constitutional rights'." *Pearson v. Callahan,* 555 U.S. 223 (2009). "We recognize that police officers, when arresting a suspect, have the right to make the arrest in a manner that protects both the public and themselves. In doing so, they may use some degree of force." *Tavakoli-Nouri v. State of Maryland, et al.,* 139 Md. App. 716, 731 (2001). To that end, qualified immunity is not a mere defense to liability; it is an immunity from suit. *Pearson,* 555 U.S. 223 (quoting *Mitchell v. Forsyth,* 472 U.S. 511 (1985)); *Hunter v. Bryant,* 502 U.S. 224 (1991); *Anderson v. Creighton,* 483 U.S. 635 (1987).

"The principles of qualified immunity shield an officer from personal liability when an officer reasonably believes that his or her conduct complies with the law." *Pearson,* 555 U.S. at 244; *see also Bradshaw v. Prince George's County*, 284 Md. 294 (1979) (police officers are protected by qualified immunity against civil liability for non-malicious acts performed within the scope of their authority). "The protection of qualified immunity applies regardless of whether the government official's error is a 'mistake of law, a mistake of fact, or a mistake based on mixed question of law and fact'." *Pearson,* 555 U.S. at 231 (quoting *Groh v. Ramirez,* 540 U.S. 551 (2004)). Qualified immunity serves to balance accountability for the irresponsible exercise of authority and the need to shield officials from harassment, distraction, and liability

[10] Qualified Immunity does not apply to claims arising under the Maryland Declaration of Rights, Art. 24. *Okwa v. Harper,* 360 Md. 161 (2000); *Tavakoli-Nouri,* 139 Md. App. 716, 734 (2001).

when they perform their duties in a reasonable manner. *Id.*

While the Defendants do not agree that any tort or wrong occurred, if an actionable tort did occur, there is no evidence of malice or ill will. Plaintiffs have no evidence in support of their claims. Trooper Edwards is immune as a matter of law, and summary judgment is appropriate in his favor.

C. THE COUNTS FOR ASSAULT AND BATTERY FAIL AS A MATTER OF LAW.

The elements of common law assault are 1) an intentional threat; 2) by one with the apparent present ability to carry out the threat; and 3) fear of imminent offensive contact. *Lee v. Pfeifer,* 916 F.Supp. 401 (D.Md. 1996). Likewise, the elements of common law battery are: 1) an intentional and unpermitted touching of another; 2) that is offensive to the person that was touched. *Doe v. Archdiocese,* 114 Md. App. 169 (1997).

Whether analyzing in terms of a fear of imminent offensive contact, or an offensive contact, there still is not a viable claim for assault or battery here. "If an officer has probable cause to believe that an individual has committed even a very minor criminal offense, in his presence, he may, without violating the Fourth Amendment, arrest the offender." *Atwater v. City of Lago Vista,* 532 U.S. 318 (2001). The "Fourth Amendment does not prohibit a police officer's use of reasonable force during an arrest." *Graham v. O'Connor,* 490 U.S. 386 (1989). *See also, Terry v. Ohio,* 392 U.S. 1, 22-27 (1968) ("[T]he right to make an arrest carries with it the right to use some degree of physical coercion or threat thereof to effect it."); *Atwater v. City of Lago Vista,* 532 U.S. 318 (2001). A law enforcement officer is not liable for assault or battery when the arrest is made within the scope of his employment. *Goehring v. United States,* 870 F. Supp. 107 (D.Md. 1994); *Curtis v. Pracht,* 202 F. Supp.2d 406 (D.Md. 2002); *Tinch v. United States,*

189 F. Supp.2d 313 (D.Md. 2002); *Rich v. United States,* 189 F. Supp.2d 619 (D.Md. 2001); *Barbre v. Pope,* 402 Md. 157, 182 (2007); *Muthukumarana v. Montgomery County,* 370 Md. 447 (2002); *Lovelace v. Anderson,* 366 Md. 690 (2001).

It is immaterial that at the moment of arrest Mrs. Gray was placed in fear of imminent bodily contact, or that physical contact was made. The torts of assault and battery are errantly applied because Mrs. Gray was validly and lawfully arrested.

So too the claims fail against the State as well. Pursuant to the Maryland Tort Claims Act ("MTCA"), the Sovereign substitutes its liability for that of its employee. Where there is no tortious conduct, there is no liability. See, MD. CODE ANN., STATE GOV'T §§12-101-10. For these reasons, there can be no sustainable claims for assault or battery. The Defendants are entitled to summary judgment.

D. THE CLAIMS OF FALSE ARREST AND FALSE IMPRISONMENT FAIL AS A MATTER OF LAW.

"The elements of false arrest and false imprisonment are identical. Those elements are: 1) the deprivation of the liberty of another; 2) without consent; and 3) without legal justification." *Heron v. Strader,* 351 Md. 258, 264 (2000). However, a police officer carrying out a valid warrantless arrest is not liable for false arrest/imprisonment because the officer had the legal authority to conduct the arrest. *Terry v. Ohio,* 392 U.S. 1 (1968); *Okwa v. Harper,* 360 Md. 161 (2000); *Montgomery Ward v. Wilson,* 339 Md. 701 (1995); *Ashton v. Brown,* 339 Md. 70 (1995).

For these reasons, the torts of false arrest and false imprisonment are not applicable to our case. Mrs. Gray's detention and arrest were valid, lawful, and reasonable, because she had committed a series of misdemeanor and felonious acts. Summary judgment is appropriate as to both Defendants.

E. THE CLAIM FOR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS FAILS AS A MATTER OF LAW.

A cause of action for intentional infliction of emotional distress may not lie unless a plaintiff has established the following elements: 1) intentional or reckless conduct; 2) the conduct must be extreme and outrageous; 3) a causal connection between the wrongful conduct and the emotional distress; and 4) the emotional distress is severe. *Carter v. Aramark Sports and Entertainment Services, Inc.,* 153 Md. App. 210 (2003). These elements must be "alleged and proved" with specificity. *Carter*, 153 Md. App. at 246. The "standard for actionable conduct under this tort is exacting and stringent" *Id.* at 284; *Hines v. French,* 157 Md. App. 536, 558 (2004) (citing *Kentucky Fried Chicken Nat'l Mgmt. Co., v. Weathersby,* 326 Md. 663, 670-71 (1992)). "'[N]ot . . . every emotional upset should constitute the basis of an action. Indiscriminate allowance of actions for mental anguish would encourage neurotic overreactions to trivial hurts, and the law should aim to toughen the psyche of the citizen rather than pamper it." *Harris v. Jones,* 281 Md. 560, 571, 617 (1977) (quoting *Knierim v. Izzo,* 174 N.E.2d 157 (1961)).

To that end, an allegation of intentional infliction of emotional distress is an uncommonly difficult count to allege and prove, and Plaintiffs have failed to supply us any facts that would present even a bare foundation for their claim. There is no evidence which reflects "conduct which is 'so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized society.'" *Khalifa v. Shannon,* 404 Md. 107, 124 (2008) (quoting RESTATEMENT (SECOND) OF TORTS § 46 cmt. d (1965)) (internal quotations omitted); *see also, Harris,* 281 Md. at 567; *Mitchell v. Baltimore Sun Company,* 164 Md. App. 497 (2005).

Instead, the Plaintiffs have a glaring lack of specificity in their count alleging intentional infliction of emotional distress. The Plaintiffs Complaint contains only conclusory allegations; and they have no evidence to support their allegations; and Mrs. Gray does not recollect the event. (Donohue Report, p.3) The Defendants are entitled to summary judgment.

F. THERE ARE NO FACTS TO SUPPORT A CLAIM FOR GROSS NEGLIGENCE.

Gross negligence is defined as

> an intentional failure to perform a manifest duty in reckless disregard of the consequences as affecting the life or property of another, and [it] also implies a thoughtless disregard of the consequences without an exertion of any effort to avoid them. Stated conversely, a wrongdoer is guilty of gross negligence when he inflicts injury intentionally or is so utterly indifferent to the rights of others that he acts as if such rights did not exist.

Barbre, 402 Md. at 187. In count six, the Plaintiffs state that "Defendants' negligence in Count V [Intentional Infliction of Emotional Distress] was gross and reckless conduct. Defendants' conduct was wanton, extraordinary and outrageous and in disregard for Plaintiff's health, safety, and welfare." (Comp.¶39.)

Again, the State of Maryland has not waived its Sovereign Immunity to allegations of gross negligence. There are no facts which support Plaintiffs' contentions that Trooper Edwards acted in a manner which was grossly negligent, reckless, wanton, extraordinary, outrageous, or in disregard for Mrs. Gray's health, safety, and welfare. To the contrary, Trooper Edwards made a lawful stop of a driver whom he personally observed commit several serious traffic violations. He was then assaulted by the driver of the car who was actively resisting arrest.

Any injury sustained, including the injury to her hand, was unintentional. There is no evidence to support that Mrs. Gray suffered extreme distress as a result of any extreme and outrageous, or that such conduct was done in a grossly negligent manner. *See, Thomas v. City of*

Annapolis, 113 Md. App. 440, 456 (1997). To the contrary, her own medical experts indicate that she does not recollect the event. For these additional reasons, both Defendants are entitled to summary judgment.

G. THERE ARE NO FACTS TO SUPPORT A CLAIM FOR MALICIOUS PROSECUTION.

Malicious prosecution requires four elements: 1) the institution of a criminal proceeding by the defendant against the plaintiff; 2) termination of the proceeding in favor of the plaintiff (the accused); 3) the absence of probable cause for the proceeding; and 4) that the prosecution was instituted with malice or a purpose other than bringing the plaintiff to justice. *Heron,* 361 Md. at 264.

Plaintiffs have failed to properly plead properly the elements of the tort. The State's Attorney for Cecil County instituted criminal proceedings against Nellie Gray in the matter of *State v. Gray,* 6K00049692, together with the companion traffic charges of SC15552-54. There was no termination of the case against her in her favor, as the matter is held *sub curia* due to Mrs. Gray's incompetency to stand trial. Incompetency does not qualify as termination in one's favor as there has been no adjudication of the charges. See, RESTATEMENT (SECOND) OF TORTS §§ 658-661 "Impossibility of Bringing the Accused to Trial".

Likewise, the charges brought against Mrs. Gray were made with probable cause and without malice. Mrs. Gray committed a series of misdemeanor and felony violations of the law in the officers' presence, and for which the officer is authorized to place the offender under arrest. MD. CODE ANN., CRIMINAL PROCEDURE §2-202(a) "Warrantless arrests – In general."

The existence of probable cause is not based on the arrestee's perspective, but arises from the perspective of a reasonable police officer. *Massey v. State,* 173 Md. App. 94 104 (2007).

"[T]he probable-cause standard is a 'practical, non-technical conception' that deals with 'the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians act." *Massey,* 173 Md. App. at 103 (quoting *Maryland v. Pringle,* 540 U.S. 366 (2003)). "A law enforcement officer 'may draw inferences based on his own experience in deciding whether probable cause exists'." *Id.*at 104 (quoting *Ornelas v. United States,* 517 U.S. 690 (1996)).

Probable cause existed to support the charges filed against Mrs. Gray. There is no factual basis to support a claim of malicious prosecution. The Defendants are entitled to Summary judgment.

H. THE CLAIM FOR INVASION OF PRIVACY – INTRUSION UPON SECLUSION FAILS AS A MATTER OF LAW.

Plaintiffs next assert that the State, and its Officer, committed the tort of Invasion of Privacy by Intrusion Upon Seclusion. The elements of intrusion upon seclusion are: 1) intentional intrusion; 2) into a private place, or affairs of another; and 3) such intrusion would be highly offensive to a reasonable person. *Bailer v. Erie Ins. Co.,* 344 Md. 51 (1997); RESTATEMENT (SECOND) OF TORTS § 652B. The Plaintiffs misapply this tort.

The true purpose of this cause of action is to offer redress for unreasonable intrusion into private places or private seclusion. *Pemberton v. Bethlehem Steel Corp.,* 66 Md. App. 133 (1986). However, it is well settled that there is a reduced expectation of privacy while in an automobile. *Carroll v. United States,* 267 U.S. 132 (1925). A traffic stop and resultant arrest are not contemplated as unreasonable intrusions into private places. *Carroll,* 267 U.S. 132 (1925). A stop, detention, and arrest for multiple criminal and traffic violations does not amount to an "intentional intrusion" that is "highly offensive to a reasonable person." *Bailer v. Erie Ins.*

Exch., 344 Md. 515 (1997); *Beane v. McMullen,* 265 Md. 585 (1972); *Klipa v. Board of Education,* 54 Md. App. 644 (1983). This claim, too, is wholly without merit. Defendants are entitled to Summary judgment.

I. THE CLAIM FOR VIOLATION OF ARTICLE 24 OF THE MARYLAND DECLARATION OF RIGHTS FAILS AS A MATTER OF LAW.

The Plaintiffs allege a violation of Mrs. Gray's Maryland Declaration of Rights by asserting that the "acts, omissions and misconduct . . . violated her constitutional rights . . . including but not limited to the right not to be taken or imprisoned, or disseized of her life, liberty, or property without due process of law." (Comp. ¶56.)

Article 24 of the Maryland Declaration of Rights provides that:

> [N]o man ought to be taken or imprisoned or disseized of his freehold liberties or privileges, or outlawed, or exiled, or, in any manner, destroyed, or deprived of his life, liberty or property, but by the judgment of his peers, or by the Law of the land.

Md. Decl. Rights Art. 24. As it relates to the interpretation and application of Article 24, Maryland Courts "may look to federal opinions interpreting the Fourteenth Amendments for guidance when a citizen claims to have been subjected to unreasonable or arbitrary discrimination by a government official." *Okwa v. Harper,* 360 Md. 161, 203 (2000) (citing *Kirsch v. Prince George's County,* 331 Md. 89, 97 (1993)); *Graham v. Connor,* 490 U.S. 386 (1989).

Graham provides that when arresting a suspect, police officers have the right to take necessary measures and use some degree of force. *Graham,* 490 U.S. at 396; *Okwa,* 360 Md. at 199-200. The proper perspective from which to view the alleged offense is that of a reasonable officer's view, not that of an arrestee's. *Graham,* 490 U.S. at 396; *Okwa,* 360 Md. at 200. "Not every push or shove, even if it may later seem unnecessary in the peace of a judge's chambers

violates the Fourth Amendment." *Graham,* 490 U.S. at 396-97; *Saucier v. Katz,* 533 U.S. 194 (2001); *Okwa,* 360 Md. at 200 "The calculus of reasonableness must embody the allowance for the fact that police officers are often forced to make split-second judgments-in circumstances that are tense, uncertain, and rapidly evolving-about the amount of force that is necessary in a particular situation." *Graham,* 490 U.S. at 396-97; *Okwa,* 360 Md. at 200.

Here, we have the Officer's perspective, reflected in the transcript from his deposition. (Edwards Depo. pp. 29-33; 47-49.) The uncontroverted evidence reflects that Mrs. Gray posed an immediate danger to herself, Trooper Edwards, and the other drivers on the roadway. She refused to comply with the traffic laws, the lawful orders of the Trooper, and attempted to flee and elude the Trooper. After driving off the paved roadway, she struck the marked patrol unit with her vehicle, physically assaulted Trooper Edwards, and actively resisted arrest.

Based on all the circumstances, her arrest was reasonable, valid, and lawful. Therefore, there is no basis, facts, or evidence that support that Mrs. Gray's Article 24 rights were violated. Defendants are entitled to Summary Judgment.

V. CONCLUSION.

For the reasons stated herein, there are no material disputes of fact, and the Defendants are entitled to summary judgment as a matter of law on all claims.

Respectfully Submitted,

_____
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[11] Appended material has been excluded from this writing sample.