IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

PATRICIA CLEARY, :
:
v. : CIVIL NO. CCB-07-1202
:
CPL. J. L. GREEN, *et al.* :

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MEMORANDUM

Now pending before the court is a motion for summary judgment filed by defendants State of Maryland ("State") and Cpl. J.L. Green ("Cpl. Green") against plaintiff Patricia Cleary ("Cleary"). Cleary asserts numerous constitutional, both federal and state, and common law claims against Cpl. Green stemming from her arrest on March 20, 2004. Cpl. Green, an officer of the Maryland State Police ("MSP"), defends by asserting he did not violate Cleary's rights and is otherwise immune from civil liability for his actions.[1] The issues in this motion have been fully briefed and no hearing is necessary. For the reasons stated below, the defendants' motion will be granted.[2]

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[1]Cpl. Green also contends that Cleary could not identify him as the offending officer in her deposition (*see* Def.'s Mot. for Summ. J., Ex. 1 at 14-15), and thus he is entitled to summary judgment on all counts. For the purposes of this ruling, however, the court will assume Cpl. Green is the officer alleged to have caused Cleary's injuries.

[2]Also pending before the court is defendants' motion to strike exhibits contained in plaintiff's memorandum opposing summary judgment, including her answers to interrogatories. Because the court will grant defendants' motion for summary judgment on all counts, it is not necessary to strike the exhibits in question. The court notes, however, that Cleary's interrogatory answers that differ from her sworn deposition testimony do not create an issue of fact. *See Barwick v. Celotex Corp.*, 736 F.2d 946, 960 (4th Cir. 1984) (concluding that a plaintiff could not create a genuine issue of material fact by submitting an affidavit contradicting his prior deposition testimony).

Background

On March 20, 2004, Cleary was sleeping in the front passenger seat of a vehicle operated by her companion, Ronald Rada, when the vehicle was pulled over by Cpl. Green for having a partially obstructed temporary tag. As Cleary continued to sleep, Rada was ordered to exit the vehicle and perform field sobriety tests. Rada was eventually arrested for driving under the influence of alcohol. During the traffic stop, other officers arrived on the scene, and a drug-sniffing dog alerted officers to the possibility that the vehicle contained drugs. Cpl. Green then approached the vehicle and "vehemently instructed" Cleary to exit the vehicle in order for him to conduct a search. (Def's. Mot. for Summ. J., Ex. 1 at 8.) Cleary, having just awoken, did not understand what was happening and "wanted to know why [she] was being told to get out of the vehicle." (*Id.*) According to Cleary, "when [she] didn't get out of the vehicle without a good explanation ...[Cpl. Green and other officers] unlocked the seatbelt" and "physically removed [her] from the vehicle." (*Id.*) Cleary further alleges that during her arrest, she was spun around and slammed against the vehicle several times, that her head was pushed against the vehicle, and that her legs were kicked. (*Id.* at ¶ 12, 14.) As a result of the incident, Cleary sustained bruising to various parts of her body, including her torso, chest, arms, legs, eye, and ribs. Cleary sought medical treatment on March 23, 2004 asking for a "total body count of her bruises." (Pl.'s Opp. to Summ. J., Ex. 2 at 4.) She has also suffered from psychological trauma following the arrest. After removing Cleary from the vehicle, the police conducted a search of the interior passenger compartment and did not find any drugs.

Cleary was charged with failure to obey an officer's order. Her trial, scheduled for June 30, 2004, was postponed and the charge was stetted upon motion of the State's Attorney. On

May 7, 2007, Cleary filed her complaint in this court against the State, MSP, and Cpl. Green. The defendants filed a motion to dismiss, and the court granted the motion as to all direct constitutional and tort claims against the State and MSP. The court denied the motion as to Cpl. Green and as to any vicarious liability claims pursuant to the Maryland Tort Claims Act ("MTCA") against the State. The surviving claims allege that Cpl. Green violated Cleary's constitutional free speech rights and her rights to be free of unlawful arrest and excessive force.[3] She also alleges several state law tort claims. Cpl. Green defends by claiming he had probable cause to arrest Cleary, that he did not use excessive force, and that he otherwise is immune from civil liability for his actions.

Analysis

Rule 56(c) of the Federal Rules of Civil Procedure provides that summary judgment "should be rendered if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). The Supreme Court has clarified

[3] In her complaint, Cleary alleges that Cpl. Green violated her Fifth Amendment due process and equal protection rights. Because the defendant is a state actor and the Fifth Amendment applies only to the conduct of the United States or a federal actor, Cpl. Green is entitled to summary judgment on all claims of Fifth Amendment violations. While Cleary did not allege violations of her Fourteenth Amendment rights, the court notes that such claims would have been futile. Courts apply the Fourth Amendment objective reasonableness standard to unlawful arrest and excessive force claims, not a more generalized due process analysis. *See Gray-Hopkins v. Prince George's County, Md.,* 309 F.3d 224, 231 n. 1 (4th Cir. 2002) (excessive force); *Brown v. Gilmore*, 278 F.3d 362, 367 (4th Cir. 2002) (unlawful arrest). Moreover, Cleary does not allege that Cpl. Green acted with any discriminatory purpose or motive, and thus she could not have established a violation of her equal protection rights. *See Middlebrooks v. Univ. of Md. at College Park*, 980 F.Supp. 824, 831 (D. Md. 1997) ("In order to establish a violation of the Equal Protection Clause, Plaintiff must prove discriminatory purpose or motive.").

this does not mean that any factual dispute will defeat the motion: "By its very terms, this standard provides that the mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986) (emphasis in original).

"A party opposing a properly supported motion for summary judgment 'may not rest upon the mere allegations or denials of [his] pleadings,' but rather must 'set forth specific facts showing that there is a genuine issue for trial.'" *Bouchat v. Baltimore Ravens Football Club, Inc.*, 346 F.3d 514, 525 (4th Cir. 2003) (alteration in original) (quoting Fed. R. Civ. P. 56(e)). The court must "view the evidence in the light most favorable to . . . the nonmovant, and draw all reasonable inferences in her favor without weighing the evidence or assessing the witness' credibility," *Dennis v. Columbia Colleton Med. Ctr., Inc.*, 290 F.3d 639, 645 (4th Cir. 2002), but the court also must abide by the "affirmative obligation of the trial judge to prevent factually unsupported claims and defenses from proceeding to trial." *Bouchat*, 346 F.3d at 526 (internal quotation marks omitted) (quoting *Drewitt v. Pratt*, 999 F.2d 774, 778-79 (4th Cir. 1993), and citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-24 (1986)).

A. Federal § 1983 Claims and Qualified Immunity

Law enforcement officers performing discretionary functions are entitled to qualified immunity from suit to the extent that their conduct does not "violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). This protection is extended to "all but the plainly incompetent or

those who knowingly violate the law." *Malley v. Briggs*, 475 U.S. 335, 341 (1986). When evaluating a claim of qualified immunity, the court must first consider the threshold question of whether the facts alleged, taken in the light most favorable to the plaintiff, show that the officer's conduct violated a constitutional right. *See Saucier v. Katz*, 533 U.S. 194, 200-201 (2001). If the court finds no constitutional violation, then there is no need to inquire further into qualified immunity. *Id.* at 201. If, however, the court finds a constitutional violation, then it must determine whether the right was "clearly established" at the time of the violation. *Id.* This second step in the qualified immunity analysis asks "whether it would have been clear to a reasonable officer that his conduct was unlawful in the situation he confronted." *Id.* at 202. Because qualified immunity is an affirmative defense, Cpl. Green must establish that it would not be clear to a reasonable officer that his conduct was unlawful in the situation presented.

i. Unlawful Arrest

Cleary claims that her arrest constituted a violation of the Fourth Amendment because Cpl. Green lacked probable cause to arrest her. "For probable cause to exist, there need only be enough evidence to warrant the belief of a reasonable officer that an offense has been or is being committed; evidence sufficient to convict is not required." *Brown,* 278 F.3d at 367. Even if probable cause did not exist, Cpl. Green would be entitled to qualified immunity if it were objectively reasonable for him to believe that probable cause existed. *Rowland v. Perry,* 41 F.3d 167, 174 (4th Cir. 1994) (citing *Torchinsky v. Siwinski,* 942 F.2d 257, 260-61 (4th Cir. 1991)).

The parties do not dispute that Cpl. Green made a lawful stop of the vehicle in which Cleary was a passenger. He was thus well within his authority to order Cleary to exit the vehicle.

See Maryland v. Wilson, 519 U.S. 408, 415 (1997) (holding police officers can order a passenger to step out of the vehicle during a lawful traffic stop). Moreover, upon lawfully arresting the driver, he had the authority to search the vehicle's interior passenger compartment. *See New York v. Belton*, 453 U.S. 454, 460 (1981) (holding that when an officer makes a lawful arrest of the occupant of a vehicle, the officer may then search the passenger compartment of that vehicle). It is also undisputed that Cleary willfully failed to obey Cpl. Green's lawful order.[4] This fact alone would warrant a reasonable officer to believe that she was violating Maryland law. *See* Md. Code Ann., Transp. § 21-103(a) (making it an offense under the Maryland transportation article to disobey willfully any lawful order or direction of any police officer); *see also Carter v. Jess*, 179 F.Supp.2d 534, 546 (D. Md. 2001) (finding probable cause to arrest where plaintiff failed to obey lawful order to exit crime scene); *Coffey v. Morris*, 401 F.Supp.2d 542, 547 (W.D. Va. 2005) (finding probable cause to arrest under Virginia law where arrestee failed to obey officer's lawful order to remain in vehicle during traffic stop). Thus, Cpl. Green had probable cause to arrest Cleary when she failed to obey his lawful order, and the court will grant the defendant's motion for summary judgment on the unlawful arrest claim.

Even if probable cause did not exist, Cpl. Green would still be entitled to qualified immunity. In the context of lawful traffic stops, courts recognize that police officers are "authorized to take such steps as [are] reasonably necessary to protect their personal safety."

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[4]In her deposition, Cleary suggests that she refused to exit the vehicle based, in part, on the "impatient" nature of Cpl. Green's order. (Def.'s Mot. for Summ. J., Ex. 1 at 14.) Any alleged lack of civility on the part of Cpl. Green, however, does not justify Cleary's failure to comply with his lawful order. *See Carter v. Jess*, 179 F.Supp.2d 534, 546 (D. Md. 2001) (noting that plaintiff's failure to obey lawful order was not justified by allegation that officer issued order in a rude, unprofessional, and overly aggressive manner).

United States v. Hensley, 469 U.S. 221, 235 (1985). The Fourth Circuit has noted that "[t]his safety interest attaches to officers' interactions with passengers as well as with drivers, because passengers may likewise present to officers who interrupt their journey a risk of personal harm." *United States v. Soriano-Jarquin*, 492 F.3d 495, 500 (4th Cir. 2007) (noting the Supreme Court's rationale in *Wilson*, 519 U.S. at 414, that "danger to an officer from a traffic stop is likely to be greater when there are passengers in addition to the driver in the stopped car"). Given Cleary's willful disobedience and the recognized dangers posed by uncooperative passengers, it was objectively reasonable for Cpl. Green to believe he had probable cause to take her into custody.

ii. Free Speech

Cleary claims that when Cpl. Green pulled her from the vehicle and arrested her, he was retaliating against her for questioning his order to exit the vehicle, and thus he violated her free speech rights. Arresting an individual based solely on speech that challenges or opposes police action violates the First Amendment. *City of Houston v. Hill,* 482 U.S. 451, 462-63 (1987). Considering, however, that Cpl. Green had probable cause to arrest Cleary, the facts do not suggest that his actions were based on anything other than her failure to comply with the lawful order. Thus, the court will grant the defendant's motion for summary judgment on the First Amendment freedom of speech claim.

iii. Excessive Force

The conclusion that Cpl. Green had probable cause to arrest Cleary does not permit him to use excessive force in making that arrest. The Fourth Amendment's freedom from unreasonable searches and seizures unquestionably encompasses the right to be free of excessive force during an arrest. *See Jones v. Buchanan,* 325 F.3d 520, 527 (4th Cir. 2003). Cleary alleges that upon forcibly removing her from the vehicle, Cpl. Green and the other officers spun her around several times, slammed her body and pushed her head against the vehicle, and kicked her legs.

To determine whether an officer's conduct constitutes excessive force in violation of the Constitution, courts apply the Fourth Amendment's "objective reasonableness" standard. *See Graham v. Connor*, 490 U.S. 386, 395 (1989). According to this standard, an officer's actions are not excessive if they are "objectively reasonable in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation." *Id.* at 397 (internal quotations omitted); *see also Carr v. Deeds*, 453 F.3d 593, 600 (4th Cir. 2006). Application of this standard "requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether [s]he is actively resisting arrest or attempting to evade arrest by flight." *Graham*, 490 U.S. at 396. Moreover, because "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," *Id.* at 397, the reasonableness of the force used is assessed from the perspective of a reasonable officer on the scene, rather than the perspective of one with the benefit of hindsight. *Id.* at 396; *see also Carr*, 453 F.3d at 600. Finally, because many of the situations officers face in the course of their

duties are ambiguous, the court must allow for reasonable mistakes. *See Schultz v. Braga*, 455 F.3d 470, 478 (4th Cir. 2006).

The first *Graham* factor – the severity of the crime at issue – weighs in favor of Cpl. Green. As discussed above, police officers face significant dangers during lawful traffic stops, particularly those involving passengers, and courts have recognized their heightened authority to issue orders to passengers in order to protect themselves. *See Wilson*, 519 U.S. at 413-15; *Coffey*, 401 F.Supp.2d at 546 (concluding that police officers can order a passenger to remain in an automobile "due to the generalized concerns for officer safety ... and the need for officers to exercise control during a traffic stop"). In this context then, failing to respond to an officer's lawful order is a serious infraction. *See Coffey*, 401 F.Supp.2d at 548 (weighing first *Graham* factor in favor of officer because he had "reasonable suspicion that criminal activity was afoot" when arrestee failed to obey lawful order during traffic stop).

The court turns to the second *Graham* factor, whether Cleary posed an immediate threat to Cpl. Green's safety. Here again, the fact that Cleary willfully failed to obey a police order, evidenced by her questioning of Cpl. Green's order to exit the vehicle, weighs this factor in favor of the officer. A drug-sniffing dog had given a positive alert to the possibility that the vehicle contained drugs, and Cpl. Green had no way of knowing whether Cleary had access to any weapons also potentially stashed in the vehicle. While Cleary claims that she failed to obey because she had just recently awoken and was confused, her subjective state of mind is not relevant to whether Cpl. Green could have reasonably assessed her as a threat. Courts analyze excessive force claims from the perspective of a reasonable officer on the scene, and officers, in their split-second decision making, cannot be expected to assess a passenger's subjective

rationale for failing to obey their orders. A more reasonable expectation is that police officers treat uncooperative vehicle passengers as though they pose some immediate threat to their safety. *Coffey*, 401 F.Supp.2d at 548.

The third *Graham* factor involves whether the arrestee attempted to resist or evade arrest. Cleary maintains that she did not physically resist Cpl. Green once she was removed from the vehicle, yet he "slammed" her into the vehicle several times in the process of handcuffing her, resulting in significant bruising. In light of Cleary's initial refusal to cooperate, Cpl. Green could have reasonably assumed that she would resist further. In retrospect, he may have used more force than was necessary to arrest her. *See Brown*, 278 F.3d at 369 (concluding it was "not unreasonable for officers to believe that a suspect who had already disobeyed one direct order would balk at being arrested"); *see also Saucier*, 533 U.S. at 205 ("If an officer reasonably, but mistakenly, believed that a suspect was likely to fight back, for instance, the officer would be justified in using more force than in fact was needed."). But it is well established that using more force than necessary is not equivalent to using excessive force. *See Graham*, at 396 ("Not every push or shove, even if it may later seem unnecessary in the peace of a judge's chambers, violates the Fourth Amendment.") (internal quotations and citation omitted). Fourth Amendment law "has long recognized that the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it." *Id.* Importantly, Cpl. Green ceased the use of force once Cleary was in handcuffs. *See Wilson v. Flynn,* 429 F.3d 465, 468-69 (4th Cir. 2005) (finding no excessive force violation where police stopped using force after handcuffs were placed on plaintiff). Moreover, he did not punch or slap Cleary or throw her to the ground. The type of force employed and the physical injuries

sustained, while obviously traumatic for Cleary, fall short of what the Fourth Circuit has found to constitute excessive force in similar situations. *See, e.g.*, *Jones*, 325 F.3d at 531 (denying summary judgment where officer knocked handcuffed individual to floor and jumped on him, crushing his nose, lacerating his nose and lips, and bruising his ribs); *Young v. Prince George's County, Md.*, 355 F.3d 751, 757-58 (4th Cir. 2004) (denying summary judgment where officer placed handcuffed plaintiff in a headlock, threw him head-first to the ground, and then beat him); *Kane v. Hargis*, 987 F.2d 1005, 1008 (4th Cir. 1993) (denying summary judgment where plaintiff posed no threat to officer and officer repeatedly pushed plaintiff's face into the pavement, cracking three of her teeth, cutting her nose, and bruising her face).

In light of the seriousness of the situation, the potential danger Cleary posed to Cpl. Green and the other officers, and the degree of force used to restrain her, the court concludes that Cpl. Green did not use excessive force during the arrest. The court will grant the motion for summary judgment on the Fourth Amendment excessive force claim.

However, even if the officer's actions could be described as an unconstitutionally excessive exercise of force, the undisputed facts show that it would not have been clear to a reasonable officer that these actions were unlawful in this situation. As noted above, the second step of the qualified immunity analysis in excessive force cases requires the court to consider whether it was "clearly established" that the plaintiff had a right not to have force used against her in the way alleged. *See Saucier*, 533 U.S. at 202. At this stage, the court must not look simply to the general clarity of the right, but rather to the specific understanding of the officer accused of violating it; "[t]he contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right." *Anderson v. Creighton*, 483

U.S. 635, 640 (1987); *see also Iko v. Shreve*, 535 F.3d 225, 237-38 (4th Cir. 2008).

The facts reveal that during the course of a lawful traffic stop, Cpl. Green ordered Cleary to exit the vehicle so that he could search it. She refused to comply with the lawful order. Cpl. Green had no way of knowing whether Cleary possessed a weapon or had easy access to one stashed in the vehicle. Under these circumstances, particularly considering the dangers associated with even routine traffic stops, Cpl. Green's use of force in facilitating the arrest – removing her from the van and "slamming" her against the vehicle while handcuffs were applied – was warranted, and thus not violative of any right held by the plaintiff. Moreover, existing law would have given officers no indication that Cleary enjoyed a clear right not to have some degree of force used against her in this context. The Supreme Court and the Fourth Circuit have made clear the risks posed to police officers during traffic stops and their right to secure their safety by issuing orders to drivers and passengers. The court is not aware of any cases concluding that when these orders are willfully disobeyed, police officers cannot use some degree of force to secure their own and others' safety.

Because the uncontested facts show that Cpl. Green's choice to exercise a moderate amount of force against Cleary would not have been understood by a reasonable officer to be in violation of any clearly established right, he would be entitled to qualified immunity from suit. *See Carr*, 453 F.3d at 601. As already concluded, however, qualified immunity need not be applied here since no constitutional violation occurred.

B. State Law Claims

i. Maryland Declaration of Rights

Maryland recognizes common law actions for damages when an individual is deprived of her liberty in violation of the Declaration of Rights. *See, e.g.*, *Ford v. Baltimore City Sheriff's Office,* 814 A.2d 127, 143 (Md. App. 2002). Cleary alleges that Cpl. Green violated her free speech rights in violation of Article 40 of the Declaration of Rights and her rights to be free of unlawful arrest and excessive force under Article 26.[5] She bases her claims on the same factual allegations used to support her § 1983 First and Fourth Amendment claims.

Article 26 of the Maryland Constitution is in *pari materia* with the prohibitions against unreasonable searches and seizures embodied in the Fourth Amendment, *Ford*, 814 A.2d at 136, and Article 40 is in *pari materia* with the First Amendment, *see WBAL-TV Div., Hearst Corp. v. State,* 477 A.2d 776, 781 n.4 (Md. 1984). As concluded above, Cleary has not shown as a matter of law that the defendant exceeded the bounds of the Fourth and First Amendments, and by extension the bounds of Articles 26 and 40, during the course of her arrest. Thus, Cpl. Green is entitled to summary judgment on all of the alleged state constitutional claims.

ii. State Law Tort Claims

In addition to constitutional violations, Cleary alleges several common law tort claims in

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[5]Cleary also alleges Cpl. Green violated her right to be free of unlawful arrest and excessive force under Article 24 of the Maryland Declaration of Rights. Article 24 protects substantive due process rights, while Article 26 protects the right to be free from unreasonable searches and seizures. As noted above, courts analyze § 1983 unlawful arrest and excessive force claims under the Fourth Amendment, and not the more generalized notion of due process. The court, therefore, will consider Cleary's state constitutional claims under the more specific protections of Article 26.

her complaint: battery in count three,[6] false imprisonment and false arrest in count four,[7] and intentional infliction of emotional distress in count five.[8] Cpl. Green argues that he is entitled to summary judgment on these counts because he is immune from liability under the MTCA. The MTCA immunizes individual state employees from tort liability "for a tortious act or omission that is within the scope of [their] public duties... and is made without malice or gross negligence, and for which the State or its units have waived immunity under [the MTCA]." Md. Code Ann., Cts. & Jud. Proc. § 5-522(b). Thus, Cpl. Green, acting within the scope of his employment as an MSP officer, is entitled to statutory immunity under the MTCA unless he acted with malice.[9]

To survive a motion for summary judgment asserting immunity under the MTCA, "the plaintiff must point to specific evidence that raises an inference that the defendant's actions were improperly motivated." *Thacker v. City of Hyattsville*, 762 A.2d 172, 189-90 (Md. App. 2000). To overcome statutory immunity under the MTCA based on a state employee's malice, the plaintiff must show that the employee acted with "actual malice." *See Shoemaker v. Smith*, 725

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[6]Count three names "physical injury/invasion of rights of person," which most closely resembles a claim of battery. The elements of battery consist of the unpermitted application of trauma by one person upon any part of the body of another person. *Johnson v. Valu Food, Inc.*, 751 A.2d 19, 21 (Md. App. 2000).

[7]For a successful cause of action based on false arrest or false imprisonment, the plaintiff must establish that "the defendant deprived him or her of his or her liberty without consent and without legal justification." *Okwa v. Harper*, 757 A.2d 118, 133 (Md. 2000).

[8]To establish a claim of intentional infliction of emotional distress, the plaintiff must demonstrate: (1) the conduct is intentional or reckless; (2) the conduct is extreme and outrageous; (3) there is a causal connection between the wrongful conduct and the emotional distress; (4) the emotional distress is severe. *Tavakoli-Nouri v. State*, 779 A.2d 992, 999 (Md. App. 2001).

[9]Cleary does not allege that Cpl. Green acted with gross negligence.

A.2d 549, 560 (Md. 1999). This requires showing that the employee "intentionally performed an act without legal justification or excuse, but with an evil or rancorous motive influenced by hate, the purpose being to deliberately and willfully injure the plaintiff." *Thacker*, 762 A.2d at 189 (*quoting Shoemaker*, 725 A.2d at 560).

Cleary attempts to raise an inference that Cpl. Green's actions were improperly motivated by suggesting that he used excessive force against her in retaliation for questioning him, and that her injuries evidence that he acted with malice. (Pl.'s Opp. to Mot. for Summ. J. at 6, 7.) For both contentions, Cleary fails to provide specific evidence of wrongdoing, and thus she fails to adequately demonstrate malice. As concluded above, Cpl. Green had probable cause to arrest Cleary and did not use excessive force during the arrest. Although Cleary may have questioned Cpl. Green's authority during the incident, there is no evidence in the record to suggest that he acted out of retaliation for her speech. To the contrary, the evidence suggests Cpl. Green reacted lawfully, albeit forcefully, to Cleary's willful disobedience of his order. The second contention also fails because merely sustaining injuries during a lawful arrest does not raise an inference of malice. Cleary has offered no evidence that Cpl. Green's conduct was borne of ill will or hatred, and the evidence does not suggest that his actions rise to the level of conduct from which Maryland courts have inferred malice.[10] *See, e.g.*, *Okwa v. Harper*, 757 A.2d 118, 129 (Md. 2000) (finding sufficient evidence of malice where police officer "roughly dragged" the plaintiff, struck the plaintiff "in the head and neck," and twisted plaintiff's handcuffed hands in retaliation for not following immediately the officer's instructions); *Sawyer v. Humphries,* 587

[10]The court notes that Cleary failed to depose Cpl. Green or any of the officers on the scene or offer any other evidence to support her allegation that he acted with malice.

A.2d 467, 474 (Md. 1991) (finding that a police officer "wrestling another to the ground, pulling his hair, and hitting him on the face, ... without cause or provocation, is certainly malicious conduct"). In light of Cleary's failure to raise an inference that Cpl. Green acted with malice, he is entitled to immunity under the MTCA, and the court will grant summary judgment on the common law tort claims.

A separate Order follows.

November 6, 2008
Date

/s/
Catherine C. Blake
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

PATRICIA CLEARY	:	
	:	
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	:	
CPL. J. L. GREEN, *et al.*	:	

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ORDER

For the reasons stated in the accompanying Memorandum, it is hereby **ORDERED** that:

1. The defendants' motion for summary judgment (docket entry no. 26) is **GRANTED**; and

2. The Clerk shall **CLOSE** this case.

November 6, 2008
Date

/s/
Catherine C. Blake
United States District Judge