Circuit Court for Wicomico County
Case No. C-22-CV-17-000326

UNREPORTED*

IN THE APPELLATE COURT

OF

MARYLAND**

No. 198

September Term, 2022

VALERIE ROVIN

v.

STATE OF MARYLAND

Nazarian,
Tang,
Albright,

JJ.

Opinion by Albright, J.

Filed: July 31, 2023

* 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).

** At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

After she was acquitted on criminal charges of juror intimidation and second-degree assault, Valerie Rovin, Appellant, sued the State of Maryland, Appellee, and certain state officials in the Circuit Court for Wicomico County. Her suit alleged, among other things, violations of her constitutional rights and various torts stemming from her arrest and charges, and from statements made about her by law enforcement officials after her arrest.[1]

The circuit court granted summary judgment in favor of the State. This Court reversed in an unreported decision,[2] but the Supreme Court of Maryland (at the time the Court of Appeals of Maryland)[3] reversed our decision in part.[4] In so doing, our Supreme Court concluded that Ms. Rovin's claims against individual state officials were barred

[1] Her original complaint contained counts of false arrest (Count I), false imprisonment (Count II), malicious prosecution (Count III), Violation of Article 24 of the Maryland Declaration of Rights (Count IV), False Light Invasion of Privacy (Count V), Defamation (Count VI), and Intentional Infliction of Emotional Distress (Count VII).

[2] *See Rovin v. State*, No. 233 Sept. Term, 2018, 2020 WL 3265119 (Md. App. June 17, 2020).

[3] At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Appeals of Maryland to the Supreme Court of Maryland. The name change took effect on December 14, 2022. *See also* Md. Rule 1-101.1(a) ("From and after December 14, 2022, any reference in these Rules or, in any proceedings before any court of the Maryland Judiciary, any reference in any statute, ordinance, or regulation applicable in Maryland to the Court of Appeals of Maryland shall be deemed to refer to the Supreme Court of Maryland….").

[4] Ms. Rovin's counts of false light invasion of privacy and defamation were not before our Supreme Court. As a result, the portion of our decision concerning those counts was affirmed, meaning that the circuit court's grant of summary judgment as to those counts was ultimately reversed. *See Rovin v. State*, No. 233 Sept. Term, 2018, 2020 WL 3265119 (Md. App. June 17, 2020).

either by common law prosecutorial immunity or by statutory state personnel immunity. As such, the circuit court's grant of summary judgment in favor of the State was left largely intact, with only Ms. Rovin's claims against the State itself remaining. Our Supreme Court then remanded the case with instructions to the circuit court to assess an argument that the State had presented for the first time on appeal: whether, in light of case law from the U.S. Supreme Court,[5] an officer's objectively reasonable interpretation of a criminal statute can support probable cause, even if mistaken.

On remand, Ms. Rovin amended her complaint,[6] and the State moved for summary judgment on several of her counts.[7] The circuit court granted summary judgment in the State's favor and, because its order did not dispose of every claim in the case, certified the order for immediate appeal under Maryland Rule 2-602(b). Ms. Rovin now presents one question for our review that we have rephrased:[8]

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[5] *See Heien v. North Carolina*, 574 U.S. 54 (2014).

[6] The 2021 Amended Complaint included false arrest (Count I), false imprisonment (Count II), malicious prosecution (Count III), Violation of Article 24 of the Maryland Declaration of Rights (Count IV), Violation of Article 40 of the Maryland Declaration of Rights (Count V), Violation of Article 26 of the Maryland Declaration of Rights (Count VI), False Light Invasion of Privacy (Count VII), and Defamation (Count VIII).

[7] The State moved for summary judgment on Counts I through VI of Ms. Rovin's amended complaint. It answered Counts VII and VIII, false light invasion of privacy and defamation.

[8] Ms. Rovin's Question Presented appears in its original form as:

Whether the circuit court erred in granting summary judgment in favor of the State and against Ms. Rovin, including by improperly interpreting [*Heien v. North Carolina*, 574 U.S. 54 (2014)] and improperly applying it to the facts of this case?

> Whether the circuit court erred in granting summary judgment in the State's favor.

We shall answer Ms. Rovin's question in the negative and affirm the circuit court's grant of summary judgment. As we will explain, officers here had probable cause to arrest Ms. Rovin based upon an objectively reasonable interpretation of the law, and they had a facially valid warrant for Ms. Rovin's arrest. There is no allegation that officers acted with malice or in bad faith, and the statute that they enforced was not unconstitutional, either facially or as it was applied here.

I. BACKGROUND

A. The Criminal Conviction of Ms. Rovin's Daughter

The proceedings here arose after Ms. Rovin's daughter was convicted of several offenses in 2015, including driving under the influence of alcohol, and received a sentence that included jail time.[9] Ms. Rovin attended a portion of her daughter's trial.[10] After her daughter was convicted, and on the same day, Ms. Rovin located the jury's foreperson at his workplace to confront him about the verdict. The record indicates that the jury foreperson had previously met Ms. Rovin and a different child of Ms. Rovin's, but the record does not suggest that the foreperson knew Ms. Rovin's daughter who was convicted.[11] After Ms. Rovin left his workplace, the foreperson reported the incident to

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[9] *State v. Bailey*, No. 22-K-15-000171 (Md. Cir. Ct. Wicomico Cnty. June 16, 2015).

[10] At some point, it appears that Ms. Rovin had to be escorted out of the courtroom for disruptive conduct.

[11] Ms. Rovin's daughter who was convicted has a different surname from Ms. Rovin.

the police.

Ms. Rovin disputes what she said during her conversation with the foreperson. She does not, however, appear to dispute what the foreperson told police. The foreperson met with a detective and stated that Ms. Rovin entered his workplace and was escorted to his office so that patrons would not be disturbed. As noted by the detective, the foreperson reported that Ms. Rovin behaved erratically and aggressively, caused a commotion, and appeared to be incensed at the foreperson's decision to convict Ms. Rovin's daughter. The foreperson said that Ms. Rovin entered his personal space such that he felt "uncomfortable and threatened." He also stated that Ms. Rovin told him that she would have "Bill Rovin" "take care of him[.]" The foreperson did not know Bill Rovin. Ms. Rovin told him that Bill Rovin worked in Nicaragua and had people who could "take care of" the foreperson. The foreperson interpreted this as a threat and alerted the police.

B. The Criminal Case Against Ms. Rovin

Officers of the Wicomico County Sheriff's Office consulted with two attorneys at the State's Attorney's Office, who advised that Ms. Rovin's conduct constituted juror intimidation under Section 9-305(a) of the Criminal Law Article and should be charged accordingly.

At around the same time, the foreperson applied for a peace order against Ms. Rovin and gave sworn testimony in the District Court for Wicomico County. He testified

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Coincidentally, the jury foreperson has the same surname as Ms. Rovin, but the record indicates that there is no known familial relation between Ms. Rovin and the foreperson.

that he was a member of a jury that convicted Ms. Rovin's daughter, and that Ms. Rovin then came to his workplace to threaten to harm him. Specifically, he stated that Ms. Rovin threatened that she would have "somebody come in from out of town" to harm him, and that "she told me she was going to contact somebody who was going to send people . . . to take care of me. . . . People from Nicaragua where Bill Rovin lives." The foreperson was unable to obtain a peace order against Ms. Rovin because the statutory requirements were not met.[12] But, the peace order court informed the foreperson that "there's a statute, it's a criminal offense to intimidate a juror" and "if she has done what you say she has done, that may very well be a criminal offense."

After that hearing, officers applied for a statement of charges against Ms. Rovin. Among other things, that application recited the information provided by the foreperson and noted the opinion of the State's attorneys that this was a case of juror intimidation. The District Court Commissioner agreed that there was probable cause that Ms. Rovin violated Section 9-305, and a warrant issued for her arrest. Ms. Rovin was then arrested pursuant to the warrant and held for approximately one day, after which she was placed

[12] Section 3-1503 of the Courts and Judicial Proceedings Article lists the limited grounds on which a peace order may be sought and obtained. Although violations of certain criminal laws can also serve as grounds for a peace order, *see, e.g.*, Md. Code, Cts. & Jud. Proc. § 3-1503(a)(1) (listing, among other things, violations of the criminal prohibitions against harassment and stalking), a violation of the prohibitions against certain retaliation for testimony and juror intimidation, *see* Md. Code, Crim. Law §§ 9-303, 9-305, are not grounds for a peace order unless such violations also meet one of the enumerated grounds in Section 3-1503.

under house arrest for approximately four months until her criminal trial.[13]

Ms. Rovin was tried on two charges: second-degree assault and a violation of Section 9-305 of the Criminal Law Article by juror intimidation. After the close of the State's case, Ms. Rovin moved for an acquittal, arguing that, on both the evidence at trial and the law, she did not commit either offense. Specifically, Ms. Rovin argued that the evidence showed that any threat she made against the foreperson was not for imminent harm, and that at most she only had the intent to retaliate against the foreperson for a prior verdict, not to influence an ongoing proceeding or affect the verdict. In support, she asserted that it would not have been possible to cause the foreperson to affect the verdict:

> [Ms. Rovin's Counsel]: [T]he thrust of my argument [on the second-degree assault charge] is that there was, number one, no act by [Ms.] Rovin that threatened an imminent battery. . . . She was merely in his office at his invitation, yes, yelling, yes, being rude, yes, it was distasteful, but . . . the so-called threat was that a Bill Rovin from Nicaragua will send someone to take care of [the foreperson].
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> * * *
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> What the [juror intimidation] statute says is a person may not by threat, force or corrupt means try to influence, intimidate or impede a juror in the performance of the person's official duties. . . . they had already found [Ms. Rovin's daughter] guilty. There was not a pending judicial proceeding, no pending trial. [The foreperson] had already completed his official duty . . . . and there is no way that she could have influenced that verdict, which was over.

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[13] After Ms. Rovin's arrest, law enforcement officials made statements about Ms. Rovin's arrest and her conduct. These statements are not directly relevant to the issues in this appeal. Instead, they relate to Ms. Rovin's other counts of invasion of privacy and defamation. Those counts remain pending in the circuit court.

* * *

> She had to attempt to influence a juror in the performance of his official duties. She did not have that intent because she couldn't have any influence on his official duties. . . . She went there to criticize him for finding her daughter guilty, and according to [the foreperson] to threaten that somebody else would come and do harm. But she wasn't trying to [affect] the outcome of the trial[.]

* * *

> [A]t best you could consider her conduct was a threat of retaliation against [the foreperson] for a prior verdict. . . . She was just voicing her opinion, granted in a way she shouldn't have, everybody knows that. But it did not amount to a crime. I think she understands better than anybody she shouldn't have done this, but the bottom line is she didn't commit a crime[.]

Later, during the State's argument, the trial court asked the State to explain its theory based upon the admissible evidence. Specifically, the trial court focused its inquiry on the element of influencing, intimidating, or impeding a juror in the juror's official duties, asking the State to articulate how Ms. Rovin was "trying to get this particular juror to take any action?" In response, the State did not articulate a theory, instead appearing to concede its belief, after the close of the evidence, that Ms. Rovin was not attempting to prompt the foreperson to act.

After this exchange, the trial court agreed with Ms. Rovin that the evidence indicated that she merely sought to retaliate against the foreperson for the prior verdict, rather than convince him to take some action to affect the verdict: "the evidence here is of a retaliation for something that was already done, which is improper, but not in violation

of [Section 9-305]."[14] The circuit court then granted Ms. Rovin's motion:

> Well, I think this is a very difficult case. I think [Ms. Rovin's] actions were very improper.
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> As far as the violation of [Section] 9-305, I think this should be a violation of the law to intimidate or threaten a juror for something they have already done, but that's not what this statute does. It's to prevent somebody from impeding an ongoing judicial process, to [affect] the outcome of the case, or something of that nature. It's not to retaliate for something that a juror has done in the past.
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> [I] think the actions that have been testified to as to the Defendant if they are true and wrong and should not have been performed, but I don't think they violate [Section 9-305], and the Court's going to grant the Defendant's motion.

C. Ms. Rovin's Civil Case Against The State

Following her acquittal, Ms. Rovin sued the State and certain of the prosecutors and law enforcement officials who were involved in her criminal charges, alleging, among other things, that the defendants violated her rights under the Maryland Declaration of Rights and committed several torts in connection with her arrest and charges, and with statements made concerning her conduct. The circuit court granted summary judgment in favor of the State. This Court then reversed in an unreported opinion, holding that summary judgment was not appropriate because, among other

[14] The circuit court also granted Ms. Rovin's motion as to the second-degree assault count because, based upon the evidence introduced at trial, "[t]here was no evidence of an apparent ability to carry out an assault on the [foreperson]."

things, Ms. Rovin's claims against some of the individual defendants required a showing of malice or gross negligence to proceed, pursuant to State personnel immunity under the Maryland Tort Claims Act ("MTCA"), and Ms. Rovin may need discovery to prove those elements.[15]

Our Supreme Court, however, granted *certiorari* and reversed our opinion in part,[16] holding that summary judgment was proper on the claims against the individual defendants. This was because the prosecutors were entitled to absolute common law prosecutorial immunity, and the law enforcement officials were entitled to state personnel immunity under the MTCA. *State v. Rovin*, 472 Md. 317, 330-31 (2021). In so holding, the Court explained that Ms. Rovin did not contend that the officers acted with either malice or gross negligence. *Id.* at 363-64.

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[15] The MTCA provides statutory immunity for certain "State personnel" from suit in Maryland's courts and from suit for any tortious act or omission committed, so long as the individual in question was acting within the scope of his or her "public duties" without malice or gross negligence. Md. Code, Cts. & Jud. Proc. § 5-522(b). Section 12-101(a) of the State Government Article lists the various officials that qualify as State personnel, including sheriffs and deputy sheriffs. Md. Code, State Gov't § 12-101(a)(6).

Under the MTCA, the State waives its liability for the immunized acts of State personnel, subject to certain monetary and other limits. This creates a framework whereby the State may be liable (up to a point) when State personnel immunity applies, but will retain its immunity when State personnel could be liable in their individual capacities because they acted with malice or negligence, or because they acted outside the scope of their public duties. *See* Md. Code, State Gov't § 12-104; Md. Code, Cts. & Jud. Proc. § 5-522.

[16] The State did not raise any issue in its petition for a writ of *certiorari* concerning Ms. Rovin's counts of false light invasion of privacy and defamation. As such, those counts were not before the Court and its reversal of our opinion did not extend to those counts. *Rovin*, 472 Md. at 331, 374.

Turning to the State's liability, the Court noted that the parties had debated a new issue on appeal: whether an officer who applies for and obtains an arrest warrant on an objectively reasonable interpretation of the law is nonetheless civilly liable if that interpretation is mistaken (and thus, whether the State is ultimately liable under the MTCA). *Id.* at 371-72. In arguing that an officer should not be liable, the State relied upon a case from the United States Supreme Court, *Heien v. North Carolina*, 574 U.S. 54 (2014), holding that reasonable suspicion may be based upon an objectively reasonable mistake of law. *Id.* This was the first time that *Heien* had been discussed in Ms. Rovin's case. *Id.*

Our Supreme Court summarized *Heien* in brief. The Court also cited provisions of and comments to the Restatement (Second) of Torts and Restatement (Third) of Torts, noting that probable cause typically exists when a layperson relies upon the advice of an attorney, including a prosecutor, that conduct constitutes a crime—even if that advice is mistaken. *Id.* at 368 & nn. 15-16. Ultimately, however, the Court declined to decide the issue because it was raised for the first time on appeal, instead remanding the case to the circuit court "for a determination as to whether [*Heien*] is applicable to the circumstances of this case." *Id.* at 373.

After remand, Ms. Rovin amended her complaint. She did not modify her allegations with respect to gross negligence or malice, but she did add additional counts

against the State,[17] thus alleging eight counts in total: (I) false arrest, (II) false imprisonment, (III) malicious prosecution, (IV) violation of Article 24 of the Maryland Declaration of Rights, [18] (V) violation of Article 40,[19] (VI) violation of Article 26,[20] (VII) false light invasion of privacy, and (VIII) defamation. The State moved for summary judgment on the first six counts.[21] After considering the State's motion and the instructions from our Supreme Court, the circuit court granted summary judgment in favor of the State, reasoning that *Heien*'s mistake of law analysis applied.[22] The circuit

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[17] The new counts in Ms. Rovin's amended complaint were Counts V and VI. Separately, Ms. Rovin omitted her original count of intentional infliction of emotional distress.

[18] Article 24 states "That no 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."

[19] Article 40 states "That the liberty of the press ought to be inviolably preserved; that every citizen of the State ought to be allowed to speak, write and publish his sentiments on all subjects, being responsible for the abuse of that privilege."

[20] Article 26 states "That all warrants, without oath or affirmation, to search suspected places, or to seize any person or property, are grievous and oppressive; and all general warrants to search suspected places, or to apprehend suspected persons, without naming or describing the place, or the person in special, are illegal, and ought not to be granted."

[21] The State answered Counts VII and VIII, false light invasion of privacy and defamation.

[22] Specifically, the circuit court's order read in relevant part as follows:

Having read the opinion in *State v. Rovin*, 472 Md. 317 (2021), as well as the written and oral arguments of counsel, this Court is of the opinion that the decision of the U.S. Supreme Court in *Heien v. North Carolina*, 574 U.S. 54 (2014) applies to the facts presented in this case. Accordingly, neither [the deputy nor the sheriff] can be civilly liable for Plaintiff's arrest pursuant to a warrant based on a judicial officer's

court then certified its order as an appealable final judgment under Maryland Rule 2-602(b).[23] This appeal followed.

II. FINAL JUDGMENT UNDER MARYLAND RULE 2-602

We first address the State's preliminary argument that this appeal should be dismissed because the circuit court improperly certified its order as a final judgment under Maryland Rule 2-602. Among other things, the State argues that Counts VII and VIII, which concern public statements made by law enforcement officials about Ms. Rovin, compose "functionally the same claim" as Counts I through VI at issue here, which concern Ms. Rovin's arrest, imprisonment, and charges. The State does not make any specific argument that there is no "just reason" for certification under Maryland Rule 2-602(b), nor does it address the alleged economic hardship that Ms. Rovin would suffer if certification were not granted or explain how certification presents a judicially inefficient path forward. Instead, the State contends, more generally, that the circuit court's certification decision would allow "an unauthorized interlocutory appeal to obtain an advisory appellate opinion[.]"

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determination that probable cause existed for said arrest even though that determination was later held by a trial court judge to be based on an error of law.

Because the State moved for summary judgment on Counts I through VI of the amended complaint, and because the circuit court did not note any qualification or caveat in granting the State's motion, we interpret the circuit court's order as granting summary judgment on all six counts.

[23] In relevant part, Rule 2-602(b) provides as follows: "If the court expressly determines in a written order that there is no just reason for delay, it may direct in the order the entry of a final judgment: (1) as to one or more but fewer than all of the claims or parties . . . .

A. Relevant Background

As mentioned above, when this case was last before us, it came on Ms. Rovin's appeal of summary judgment (in the State's favor) as to all the counts in her original complaint. We reversed as to all counts, a decision that would have allowed Ms. Rovin to proceed to discovery. *Rovin*, No. 233 Sept. Term, 2018, 2020 WL 3265119, at *9 (Md. App. June 17, 2020). The State then petitioned for a writ of *certiorari*, raising for the first time the issue of an objectively reasonable mistake of law and the U.S. Supreme Court's decision in *Heien*, but including no argument on Ms. Rovin's false light or defamation counts.[24] *See Rovin*, 472 Md. at 372, 374.

As a result, once our Supreme Court granted *certiorari*, the State's omission of argument on the false light and defamation counts effectively divided Ms. Rovin's case into two parts. This is because the Court did not consider our prior reversal of summary judgment as to false light and defamation (which concerned statements made about Ms. Rovin after her arrest), reasoning that the State did not include those counts in its petition for *certiorari*. *Rovin*, 472 Md. at 374. As such, our reversal stood as to those counts, clearing the path to discovery in the circuit court.

Separately, as to Ms. Rovin's other counts (concerning Ms. Rovin's arrest, imprisonment, and charges), our Supreme Court reversed our judgment in part on immunity grounds, reinstating the circuit court's grant of summary judgment as to the

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[24] In its conditional opposition to certification under Rule 2-602(b), the State explained that the failure to include argument on false light and defamation was because of "inadvertence[.]"

individual defendants. Further, the Court left open the possibility that a broader grant of summary judgment was appropriate—*i.e.*, summary judgment on counts against the State for the conduct of officers in arresting, imprisoning, and seeking charges against Ms. Rovin—based upon the State's *Heien* argument. The Court discussed that argument, but it ultimately declined to decide the issue, reasoning instead that *Heien* had not been mentioned in prior proceedings and was not relied upon by the circuit court in granting summary judgment. As such, our Supreme Court indicated that it would "return the case to the circuit court for a determination as to whether *Heien* is applicable":

> Without having mentioned [*Heien*] in the circuit court or the [Appellate Court of Maryland], [the State] ask[s] us to interpret the Supreme Court's holding in *Heien* to give the officers an exemption from civil liability. We decline to do so and shall return the case to the circuit court for a determination as to whether *Heien* is applicable to the circumstances of this case.

Rovin, 472 Md. at 373. After the case was returned, Ms. Rovin amended her complaint. The State then answered the false light and defamation counts (Counts VII and VIII) and, pursuant to our Supreme Court's opinion, moved for summary judgment on Counts I through VI based upon its *Heien* argument.

At the hearing on the State's motion, the circuit court noted that "the cost of all of the discovery lying ahead is immense. . . . it's going to be very expensive." The circuit court also addressed the State's *Heien* argument and judicial efficiency concerns, reasoning that "whatever the [circuit court] does, [this case] is probably going to go back" to our Supreme Court. Ultimately, the circuit court granted summary judgment in the State's favor as to Counts I through VI.

Ms. Rovin then moved to certify that order as a final judgment under Maryland Rule 2-602(b) and to stay her remaining Counts VII and VIII. In so doing, she asserted that she would suffer financial hardship if forced to proceed on Counts VII and VIII before an appellate court considered the State's *Heien* argument. She also pointed to her limited financial resources, particularly when considered against the resources of the State, and the potential cost savings to her and judicial efficiency of an appeal. The State responded that it was willing not to oppose her motion, if Ms. Rovin agreed either to dismiss her remaining counts or stipulate that any appellate decision would "be binding as to the viability of Counts VII and VIII."

Ms. Rovin refused, and the circuit court granted her motion. In so doing, the circuit court found that there was "no just reason to delay" an appeal of its summary judgment order and provided multiple supporting reasons:

> [A] failure to allow immediate appeal would result in significant adverse economic impact and hardship to Plaintiff . . . [and] because the remaining defamation and false light counts in Counts VII and VIII of the Amended Complaint are separate and independent from Counts I-VI . . . certifying the Order for appeal is the most judicially expeditious path forward.

B. Analysis

"As a general rule, a party may appeal only from a 'final judgment.'" *Impac Mortg. Holdings v. Timm*, 474 Md. 495, 530 & n.29 (2021); *see also* Md. Code, Cts. & Jud. Proc. § 12-301 (providing for appeals from final judgments, subject to certain exceptions). Typically, "[a] final judgment exists only when the trial court intends an 'unqualified, final disposition of the matter of the controversy' that completely

adjudicates all claims against all parties in the suit, and only when the trial court has followed certain procedural steps when entering a judgment in the record." *URS Corp. v. Fort Meyer Constr. Corp.*, 452 Md. 48, 65 (2017) (quoting *Waterkeeper All., Inc. v. Md. Dep't of Agric.*, 439 Md. 262, 278-79 (2014)).

Nevertheless, there are exceptions. Relevant here, if a court "expressly determines in a written order that there is no just reason for delay," it may certify and enter a final judgment as to, among other things, "fewer than all of the claims or parties" in the action. Md. Rule 2-602(b)(1).[25] If certification occurs, we must then "examine [the] circuit court's certification decision under Maryland Rule 2-602." *See Shofer v. Stuart Hack Co.*, 107 Md. App. 585, 591 (1996). In so doing, we employ one of two potential standards of review, depending upon whether the certifying court "articulate[s] in the order or on the record the findings or reasoning in support[.]" *Miller Metal Fabrication, Inc. v. Wall*, 415 Md. 210, 227 (2010) (quotations omitted).

First, if the court articulates its supporting findings or reasoning, we review its certification decision for an abuse of discretion. *See USA Cartage Leasing, LLC v. Baer*, 202 Md. App. 138, 169 (2011). In this context, however, "the discretionary range" is narrower than the discretion usually afforded to a judge's trial rulings. *Tharp v. Disabled*

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[25] There are also other exceptions not pertinent here. *See* Md. Code, Cts. & Jud. Proc. § 12-303 (listing appealable interlocutory orders); *Shoemaker v. Smith*, 353 Md. 143, 165 (1999) (discussing common law collateral order doctrine, which allows appeals from other interlocutory rulings in certain circumstances); *see also Pattison v. Pattison*, 254 Md. App. 294, 307 (2022) ("[T]here are several exceptions to the final judgment rule: (1) appeals from interlocutory orders allowed by statute; (2) immediate appeals allowed under Md. Rule 2-602; and (3) appeals allowed under the collateral order doctrine.").

American Veterans Dept. of Md., Inc., 121 Md. App. 548, 563-64 (1998). This is because Maryland Rule 2-602(b) embodies a "strong policy against piecemeal review" and, in considering judicial economy, focuses on economy at the appellate level, rather than the trial level. *USA Cartage Leasing*, 202 Md. App. at 171. As such, though the circuit court is still afforded "very wide discretion[,] . . . the discretion to *deny* a request for the entry of judgment under Rule 2-602(b) is far greater than the discretion to *grant* one." *Silbersack v. ACandS, Inc.*, 402 Md. 673, 684 (2008) (emphasis in original).

Second, "where . . . the circuit court does not provide its reasons for certifying its judgment as final. . . . we can afford no deference to the trial court's decision[.]" *USA Cartage Leasing*, 202 Md. App. at 169-70. Under this *de novo* standard, although a court's failure to explain its reasoning does not "automatically invalidate an appeal taken from a certification order[,]" we will dismiss the appeal unless "the record clearly demonstrates the existence of any hardship or unfairness sufficient to justify discretionary departure from the usual rule establishing the time for appeal." *Miller Metal Fabrication*, 415 Md. at 227-28 (quotations omitted).

1. The Certified Judgment Does Not Fail To Dispose Of An Entire Claim

Certification under Rule 2-602 is "limited to orders which, by their nature, have a characteristic of finality[,]" meaning that such orders typically must "completely dispos[e] of an entire claim or party." *Len Stoler, Inc. v. Wisner*, 223 Md. App. 218, 226 (2015) (quotations omitted). For these purposes, a "claim" may encompass multiple counts when those "counts are based upon the same facts, and merely represent different legal theories upon which the plaintiff can recover the same damages[.]" *Medical Mut.*

Liability Ins. Soc. of Md. v. Dixon Evander and Assocs., 331 Md. 301, 310 (1993); *see also East v. Gilchrist*, 293 Md. 453, 459 (1982) ("[I]f two purportedly separate 'claims' are actually the same cause of action, then only one claim is presented. . . . Different legal theories for the same recovery, based on the same facts or transaction, do not create separate 'claims' for purposes of the rule.") (cleaned up). Thus, "Rule 2-602(b) may not be used to certify as final only part of a claim." *G-C Partnership v. Schaefer*, 358 Md. 485, 488 (2000).

These principles are illustrated by the facts of *Medical Mut. Liability Ins. Soc. of Md.* There, an insurance provider sent a letter to its shareholders, informing them that it would no longer do business with certain insurance agencies because they were "no longer representing [the provider] in a way that many of you feel to be adequate." 331 Md. at 304. One of those agencies brought a four-count suit against the provider, alleging that the letter (and particularly the above-quoted statement in the letter) created causes of action for (I) defamation, tortious interference with (II) business relationships and (III) prospective advantage, and (IV) injurious falsehood. A jury returned a verdict in favor of the insurance agency on the tortious interference count, and the circuit court then attempted to certify a judgment on that count as final under Maryland Rule 2-602. The other counts were either not submitted to the jury or resulted in a mistrial because the jury failed to reach a verdict. *Id.* at 304-05. Ultimately, our Supreme Court held that the judgment could not be certified because all of the counts in the complaint composed the same "claim[,]" and thus the judgment did not dispose of an entire claim. In support, the Court reasoned that the other counts were based upon the "same acts" and "identical

facts"—*i.e.*, the same sentence in the same letter sent to insureds—meaning that, at most, the separate counts might "compensate a plaintiff for a different harm" for the same act. *Id.* at 310-13

Here, however, Counts VII and VIII appear to center on published statements that the Wicomico County Sheriff made *after* Ms. Rovin's arrest, including to the news media, characterizing Ms. Rovin's conduct.[26] In contrast, Counts I through VI, which were included in the circuit court's certified judgment, embody several different legal theories upon which Ms. Rovin seeks to recover for her arrest itself, as well as her imprisonment and officers' decision to seek charges against her.

Put another way, a separate factual occurrence—not "the same facts or transaction"—formed the basis of Counts VII and VIII. From the record, it appears that the statements at issue were made at a different time from Ms. Rovin's arrest and imprisonment, in a different place, and by a different State official who did not take part in the arrest or sign the application for charges against Ms. Rovin. Additionally, the statements themselves support that Counts VII and VIII are a separate claim. Although the statements mention the alleged threat that formed the basis for Ms. Rovin's arrest and

[26] The record contains a news article that purports to quote the sheriff and describe some of his statements. Among other things, this article reports that "[the sheriff] said this week's case of juror intimidation is probably the 'most egregious' incident of that type he's seen during his time in office"; "Valerie Rovin found out where the foreman of the jury . . . worked, and she went there and threatened him"; and "[the sheriff] said he briefly expressed his feelings about the unacceptable behavior to [Ms.] Rovin . . ., but to him, she did not seem remorseful. 'She looked me right square in the eye and glared at me[.]'"

imprisonment, they also reach further, discussing whether Ms. Rovin appeared remorseful during a separate conversation with the sheriff (after he confronted her with her "unacceptable behavior"), and contrasting the sheriff's understanding of Ms. Rovin's conduct with other incidents he had seen. That is, the statements were not made during the course of the arrest, nor do they simply recount the fact of an arrest and provide basic information about what happened before and during that arrest: they appear to provide broader commentary from an official (who did not directly participate in the arrest) that reaches beyond the arrest itself.[27] As such, Counts VII and VIII seek recovery different from (and in addition to) any recovery for the counts related to Ms. Rovin's arrest, imprisonment, and charges.[28] The circuit court's certified judgment does not fail to

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[27] Likewise, in other contexts, certain statements made at press conferences have been treated as separate from, rather than ancillary to, officials' efforts in enforcing the criminal laws. *See, e.g.*, *Buckley v. Fitzsimmons*, 509 U.S. 259, 276-78 (1993) (considering, among other things, a press conference announcing an arrest and indictment and holding that prosecutors do not have absolute immunity for statements to the media, because "[c]omments to the media have no functional tie to the judicial process just because they are made by a prosecutor" and, in making those comments, a prosecutor might not be acting "in his role as advocate for the State.") (quotations omitted).

[28] The State appeared to acknowledge as much during its summary judgment argument in the circuit court, dividing Ms. Rovin's "claims" into two categories as follows:

> The [] claims against the State fall into two categories. The first category is claims for false light[] invasion of privacy, and defamation against the State arising from [the sheriff's] public statements. Those are counts VII and VIII respectively.
>
> The State has answered those . . . and the State is prepared to move forward into discovery on those two counts.
>
> The second set . . . were claims that relate to whether probable cause existed for the prosecution of Ms. Rovin and

dispose of an entire claim.[29]

> whether [a different law enforcement officer] was at fault for . . . applying for an arrest warrant based on a supposed error of law. And on that question [our Supreme Court] remanded the case with instructions to this Court to make a decision as to whether [*Heien*] . . . is applicable to the circumstances of this case.

[29] We further note that, in other analogous contexts, multiple federal decisions have considered whether defamatory statements were based upon separate transactions or occurrences. As is the case here, these decisions considered allegedly defamatory statements that occurred after the facts giving rise to a different claim, and concluded that the defamation arose from a *separate* transaction or occurrence—even though the defamation concerned the same subject:

In *English Boiler & Tube v. W.C. Rouse and Son*, 172 F.3d 862 (Table), 1999 WL 89125 (4th Feb. 23, 1999), a boiler supplier sued one of its competitors for defamation during a bidding process. The defamation was contained in a letter sent to the company conducting the bidding. A few months later, the competitor sent two other letters "essentially reiterating" earlier comments and adding new, similar comments about the boiler supplier's performance on other projects. *Id.* at *2. The supplier did not include the second and third letters in its original complaint, instead adding them when it amended the complaint. Considering a statute of limitations issue, a panel of the Fourth Circuit held that that the later defamation claims did not relate back to the prior claim and so were time-barred. The court reasoned that the later defamatory letters—even though, in large part, they substantially reiterated earlier statements—did not "arise out of the same conduct, transaction, or occurrence"; they were "separate instance[s] of defamation" that necessarily arose "from facts other than those originally pleaded[.]" *Id.* at *3 (quotations omitted).

Similarly, in *Osorio v. 5 Star Cleaning Service, LLC*, No. 20-676, 2021 WL 6139414 (D. Md. May 24, 2021), a plaintiff sued her former employer for unpaid wages, and the employer later sought to file a counterclaim (that was not included in its answer) for defamation and other causes of action. *Id.* at *1. The employer disputed that the former employee was entitled to back wages, and it alleged that employee had falsely represented to customers that, among other things, she had been fired without full payment of her wages. *Id.* The court held that the counterclaim could not be filed after the defendant's answer because the counterclaim was not compulsory. The court explained that the counterclaim did not arise out of "the same transaction or occurrence[,]" and would not be barred by *res judicata*, even though the alleged defamation concerned the

2. *The Circuit Court Did Not Abuse Its Discretion In Certifying Its Judgment Under Maryland Rule 2-602*

Rule 2-602(b) further requires that the circuit court issue a written order determining "that there is no just reason for delay[.]" Md. Rule 2-602(b). Because the circuit court did so and set forth its supporting reasons, our review is for an abuse of discretion.

To assess whether there was no just reason for delay, we have at times considered, among other things, whether delay would (1) "create a harsh impact on the litigants, including an economic impact;" (2) "create a risk that the same issues would be raised in subsequent appeals;" (3) "whether disposition of the remaining claims might moot the need for an immediate appeal;" and (4) "if an appeal would result in the appellate court deciding questions still before the trial court." *Len Stoler*, 223 Md. App. at 226 (cleaned up); *see also Miller Metal Fabrication*, 415 Md. at 228 (noting that certain "hardship or unfairness" can "justify [a] discretionary departure from the usual rule establishing the time for appeal").

Here, with regard to economic impact, the circuit court found that "failure to allow immediate appeal would result in significant adverse economic impact and hardship to Plaintiff that is avoided" by certification. The State did not dispute that finding in its motion to dismiss this appeal, and that finding also appears to be supported by the record.

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same subject as the plaintiff's complaint: whether the plaintiff was owed for back wages. *Id.* at *2-3. This is because, among other things, the counterclaim required some "development of facts that are factually distinct from and irrelevant to . . . whether the Plaintiff was paid wages owed[.]" *Id.* at *2.

Specifically, after defending against the State in a criminal prosecution that proceeded to trial, Ms. Rovin has been in civil litigation against the State for approximately six years. Her case has reached our Supreme Court once already, and it appears that it could do so again. This amount of litigation necessarily comes at a cost, particularly considering that discovery has not yet commenced. And indeed, the circuit court has noted that the cost of discovery in a case like this may be "immense[.]"[30] An appellate ruling on the State's *Heien* argument would reduce this cost by assisting the parties in planning and streamlining the discovery process, rather than requiring discovery to proceed in two separate but potentially-overlapping stages in the event that Ms. Rovin's claims at issue here ultimately proceed. *Cf. Barclay v. Briscoe*, 427 Md. 270, 278 n.6 (2012) (refusing to dismiss appeal of judgments certified under Rule 2-602 that disposed of only certain parties on summary judgment, when the claims remaining in the circuit court arose "from the same incident" but "would not involve the same legal questions").

Separately, the circuit court's certification order also stated that "the remaining defamation and false light counts . . . are separate and independent from Counts I-VI[.]" As we have already discussed, the defamation and false light counts are based upon statements made about Ms. Rovin after her arrest, apparently including statements about

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[30] We further note that there is some suggestion in the record that Ms. Rovin's resources are not unlimited. Specifically, as alleged by Ms. Rovin, her bond in her 2015 criminal case was reduced from $200,000 to $30,000, based upon her inability to pay, and she was "unable to maintain gainful employment" in the years following her criminal case. The State makes no counterargument as to Ms. Rovin's economic circumstances or the effect of this litigation on her finances.

whether she seemed remorseful, and how her conduct compared to other incidents that the sheriff had seen. From our review of the record at this stage of the case, those counts do not appear to be based upon whether there was probable cause to seize Ms. Rovin or whether her arrest, imprisonment, and charges otherwise violated her constitutional rights.[31] This suggests that the same issues will not be raised again in a later appeal.[32]

But regardless, we need not conclude that there is no conceivable overlap between Ms. Rovin's claims here because other unusual aspects of this case support that there is no just reason for delay. Ms. Rovin's claims were only divided in the first instance because of the State's inadvertence in its prior petition for *certiorari*. Additionally, the *Heien* argument now under consideration was raised by the State for the first time in that same petition. Had the State raised this argument earlier and included Ms. Rovin's false light and defamation counts in its petition, there might have been no reason for Ms. Rovin to seek Rule 2-602(b) certification in this case. Thus, principles of fairness counsel in favor of the circuit court's exercise of discretion.

Moreover, when our Supreme Court last considered this case, the Court noted that

[31] For the same reasons, the State's only argument that the claims were not separate, *i.e.*, that "Ms. Rovin's entire case likely turns on the application of *Heien* to her claims[,]" is insufficient to show that the circuit court abused its discretion under Rule 2-602(b).

[32] As to judicial efficiency, the circuit court stated that "certifying the [Summary Judgment] Order for appeal is the most judicially expeditious path forward." To be sure, the circuit court did not draw a distinction in that conclusion between appellate and trial-level efficiencies, but in any event the State did not provide specific argument in its motion to dismiss this appeal that certification would not be more expeditious (other than the bare assertion that certification would result in piecemeal appeals).

Heien had not been argued previously, indicated that it would "return the case to the circuit court for a determination as to whether *Heien* is applicable[,]" and affirmed our prior reversal of summary judgment as to the false light and defamation counts. As such, in context, one interpretation of our Supreme Court's opinion is that the circuit court was to decide the *Heien* issue so that the Court could expeditiously take it up again, while Ms. Rovin's other counts of false light and defamation remained in the circuit court. This appears to be how the circuit court understood the Court's instructions, and attempting to follow such an understanding is not an abuse of discretion here.

In sum, on this record and given the unusual aspects of this case, we cannot say that the circuit court abused its discretion in certifying its order on Counts I through VI as a final judgment under Rule 2-602(b).

III. STANDARD OF REVIEW

We review the decision to grant summary judgment *de novo* and construe "[a]ll facts and reasonable inferences . . . in the light most favorable to the non-moving party." *Zadnik v. Ambinder*, 258 Md. App. 1, 11 (2023). Summary judgment is appropriate where "there is no genuine dispute as to any material fact and [ ] the [moving] party is entitled to judgment as a matter of law." Md. Rule 2-501(a).

As a general rule, in affirming a grant of summary judgment, we typically consider only the grounds "'relied upon by the trial court.'" *Ragin v. Porter Hayden Co.*, 133 Md. App. 116, 133 (2000). But, if there is an alternative ground "'upon which the circuit court would have had no discretion to deny summary judgment, summary judgment may be granted for a reason not relied upon[.]'" *Id.* at 134. In determining

whether to affirm summary judgment on an alternative ground, we also consider whether the circuit court had an opportunity to consider that ground. *See Miller-Phoenix v. Baltimore City Bd. of Sch. Comm'rs*, 246 Md. App. 286, 305 & n.9 (2020) (refusing to affirm a grant of summary judgment on an alternative basis because "[t]he Board did not seek summary judgment on that basis" and the circuit court did not consider it).

VI. DISCUSSION

A. Statutory Background

Under Section 9-305 of the Criminal Law Article, "[a] person may not by threat, force, or corrupt means, try to influence, intimidate, or impede a juror, a witness, or an officer of a court . . . in the performance of the person's official duties." Md. Code, Crim. Law § 9-305(a).[33] Though Section 9-305 proscribes more than juror intimidation, we will refer to it as the "juror intimidation" statute to reflect the State's underlying allegations against Ms. Rovin.

For much of its history, the prohibition against juror intimidation was worded somewhat differently. Its predecessor, which was originally enacted in 1853, prohibited "corruptly, or by threats or force, endeavor[ing] to influence, intimidate or impede any

[33] This language has not changed between the time of Ms. Rovin's arrest and today. Indeed, there have been only two amendments to § 9-305 since it was enacted in 2002 as part of the recodification of former Article 27 (Crimes and Punishments), neither of which is relevant here. In 2005, soliciting a violation of § 9-305 was criminalized in a separate subsection, *see* Md. Code, Crim. Law § 9-305(b), and several provisions regarding penalties and sentencing were added or modified. *See* Acts 2005, c. 461, § 1, eff. Oct. 1, 2005. Later, in 2018, the maximum term of imprisonment for a misdemeanor violation was increased from five to ten years and the section was renamed. *See* Acts 2018, c. 145, § 1, eff. June 1, 2018

juror, witness or officer in any court of this State, in the discharge of his duty, or . . . [to] obstruct or impede, or endeavor to obstruct or impede the due administration of justice therein[.]" *See Tracy v. State*, 423 Md. 1, 13 & n.1 (2011). Over the years, though the prohibition has been codified at different locations, its language has changed little. *See Tracy*, 423 Md. at 1 (noting that the prohibition "has often been recodified without any substantial changes"). In the mid-1990s, for instance, the statute still contained substantially the same prohibition as it did in 1853:

> "If any person by corrupt means or by threats or force endeavors to influence, intimidate, or impede any juror, witness, or court officer of any court of this State in the discharge of his duty, or by corrupt means or by threats or force obstructs, impedes, or endeavors, to obstruct or impede the due administration of justice therein, he is liable to be prosecuted[.]"

Md. Code, Art. 27, § 26 (1957, 1992 Repl. Vol., 1995 Supp.).[34]

As it reads today, and at the time of Ms. Rovin's arrest in 2015, we consider Section 9-305(a) to have two prongs relevant to our analysis. *First*, a violation must involve an attempt to "influence, intimidate, or impede" a juror "in the performance of the [juror's] official duties[.]" *Second*, the attempt must be "by threat, force, or corrupt means[.]" Md. Code, Crim. Law § 9-305(a).

Section 9-305 does not criminalize simple retaliation against a juror, such as retaliation for a prior verdict that is unrelated to influencing, intimidating, or impeding

[34] The language did not change until 2002, when Article 27 was recodified. *See* Md. Code, Art. 27, § 26 (1957, 1996 Repl. Vol., 2001 Supp.).

the juror in his or her official duties. Instead, such retaliation is criminalized in Section 9-303.[35]

B. Ms. Rovin's Constitutional Claims

In her amended complaint, Ms. Rovin alleged that her arrest and imprisonment by officers violated her rights under the due process and search and seizure provisions of, respectively, Articles 24 and 26 of the Maryland Declaration of Rights. She further alleged that her free speech rights were violated pursuant to Article 40 because, among other things, she was arrested and imprisoned for protected speech. She also argues that, because she violated no law, there necessarily could not have been probable cause to arrest her, the warrant for her arrest must have been "facially invalid[,]" and the officers should not have sought an arrest warrant in the first instance.[36]

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[35] In relevant part, the prohibition against retaliation provides as follows:

(a) A person may not intentionally harm another, threaten to harm another, or damage or destroy property with the intent of retaliating against:

* * *

(2) a juror for any reason relating to the performance of the juror's official duties in a pending or completed case in a court of the State or the United States[.]

Md. Code, Crim. Law § 9-303(a)(2). Solicitation of the same is separately criminalized. *See* Md. Code, Crim. Law § 9-303(b). Until 2016, the prohibition against retaliation did not include retaliation against "a juror[,]" but the General Assembly broadened the prohibition after learning of Ms. Rovin's charges and acquittal in her criminal case.

[36] Ms. Rovin also alleged that her rights under the Maryland Declaration of Rights were violated because she was prosecuted by the State. But as our Supreme Court has already held, the prosecutors' decisions are entitled to absolute common law prosecutorial immunity and "the State cannot be held civilly liable for their actions in this case." *Rovin*, 472 Md. at 349.

1. *Article 26 Of The Maryland Declaration Of Rights Tolerates Objectively Reasonable Mistakes Of Law By Police*

In the prior appeal in this case, our Supreme Court instructed the circuit court to determine whether an objectively reasonable—albeit mistaken—interpretation of Section 9-305 of the Criminal Law Article could protect officers (and therefore the State under the MTCA) from liability. On summary judgment, the circuit court held that an objectively reasonable mistake of law under *Heien* could support probable cause under Article 26. We agree.

In the federal constitutional context, the Fourth Amendment tolerates objectively reasonable mistakes of law by police. *See Heien*, 574 U.S. at 66-67. This is because, "'the ultimate touchstone of the Fourth Amendment is 'reasonableness' . . . . [t]o be reasonable is not to be perfect, and so the Fourth Amendment allows for some mistakes on the part of government officials, giving them 'fair leeway for enforcing the law in the community's protection.'" *Heien*, 574 U.S. at 60-61 (quoting *Riley v. California*, 573 U.S. 134 (2014) and *Brinegar v. United States*, 338 U.S. 160 (1949)). As such, a search and seizure by law enforcement on probable cause resulting from an objectively reasonable interpretation of a criminal statute does not violate an individual's Fourth Amendment rights.

To be sure, the *Heien* decision arose after a traffic stop, and thus the U.S. Supreme Court specifically considered "whether reasonable suspicion can rest on a mistaken understanding of the scope of a legal prohibition"—not probable cause. *See* 574 U.S. at 60. But the Court's reasoning was not limited to the context of traffic stops or reasonable

suspicion. Instead, the Court drew heavily upon probable cause jurisprudence in reaching its conclusion, distilling several prior decisions to note that "reasonable mistakes of law, like those of fact, would justify certificates of probable cause[.]" 574 U.S. at 62. The Court also looked to cases holding that probable cause exists to arrest for a statutory violation even when the statute in question is later declared unconstitutional. *See* 574 U.S. at 64 (citing *Michigan v. DeFillippo*, 443 U.S. 31, 37 (1979)). As a result, since the U.S. Supreme Court decided *Heien*, several U.S. Courts of Appeals have applied its reasonable mistake of law analysis to cases involving probable cause. *See, e.g.*, *United States v. Stevenson*, 43 F.4th 641, 645 (6th Cir. 2022); *United States v. Diaz*, 854 F.3d 197, 203-05 (2d Cir. 2017) (holding that an objectively reasonable mistake of law supported probable cause); *Cahaly v. Larosa*, 796 F.3d 399, 408 (4th Cir. 2015) ("[O]fficers may have probable cause to arrest based on 'reasonable mistakes of law.'") (quoting *Heien*, 574 U.S. at 62).

Nonetheless, because Ms. Rovin bases her claim in Article 26 of the Maryland Declaration of Rights, not the Fourth Amendment, we must assess whether Article 26 requires a more restrictive result here. Of course, Maryland's constitutional provisions are often construed in accord with their federal counterparts (if such counterparts exist), but this is not always so:

> Many provisions of the Maryland Constitution. . . do have counterparts in the United States Constitution. We have often commented that such state constitutional provisions are *in pari materia* with their federal counterparts or are the equivalent of federal constitutional provisions or generally should be interpreted in the same manner as federal provisions. Nevertheless, we have also emphasized that,

> simply because a Maryland constitutional provision is *in pari materia* with a federal one or has a federal counterpart, does *not* mean that the provision will *always* be interpreted or applied in the same manner as its federal counterpart. Furthermore, cases interpreting and applying a federal constitutional provision are only persuasive authority with respect to the similar Maryland provision.

Leidig v. State, 475 Md. 181, 236 (2021) (quoting *Dua v. Comcast Cable*, 370 Md. 604, 621 (2002)). Specifically with regard to Article 26, "[a]lthough we have asserted that Article 26 may have a meaning independent of the Fourth Amendment, we have not held, to date, that it provides greater protection against state searches than its federal kin. Rather, we rejected uniformly such assertions." *King v. State*, 434 Md. 472, 483 (2013) (citing cases).[37]

Ms. Rovin asserts that, here, we should depart from our prior approach under Article 26 by rejecting the Supreme Court's Fourth Amendment analysis for mistakes of law. In support, she notes that other states have done so, pointing us to appellate decisions from New Jersey, Oregon, and Idaho. Our research has also identified additional states that have taken similar approaches, including Iowa and Indiana. Upon closer review, however, it appears that these states' approaches developed from constitutional contexts and precedent that do not exist in Maryland. As such, the decisions cited by Ms. Rovin are inappropriate guideposts for our analysis, and instead demonstrate why Article 26 remains coextensive with the Fourth Amendment. These

[37] The parties have cited no case to the contrary since *King* was decided, and our research has not identified one. But that is not to say that we would never reach a different conclusion with respect to Article 26 on a novel set of facts.

decisions can be grouped into three categories.

First, several courts that departed from *Heien* did so because, before *Heien* was decided, they had interpreted their relevant constitutional analogs to the Fourth Amendment not to tolerate reasonable mistakes of law. In light of the reasoning in those prior opinions and their weight as precedent, these courts specifically opted not to revisit those rulings after *Heien*. *See, e.g.*, *Mercado v. State*, 200 N.E.3d 463, 471 (Ind. App. 2022) ("*Heien* did not and could not vitiate our analyses under the Indiana Constitution. Thus, our precedent remains clear[.]"); *State v. Sutherland*, 176 A.3d 775, 780 (N.J. 2018) (noting that, before *Heien*, "the jurisprudence of our state appellate courts had not held that reasonable mistakes of law would pass constitutional muster. In fact, courts had reached the opposite conclusion"); *State v. Jones*, 401 P.3d 271, 273 n.1 (Or. 2017) ("[T]he state argues that we should abandon our rule of law in favor of the Fourth Amendment rule adopted by the U.S. Supreme Court in *Heien* . . . . We decline the state's invitation to revisit our prior holdings."); *State v. Scheffert*, 910 N.W.2d 577, 585 n.2 (Iowa 2018) ("After our decision in *Tyler*, . . . the mistake-of-law doctrine is broader under the United States Constitution than it is under the Iowa Constitution.") (emphasis omitted) (citing *State v. Tyler*, 830 N.W.2d 288, 294 (Iowa 2013)). In contrast, there is no Maryland case predating *Heien* that contains such a holding with respect to Article 26.[38]

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[38] Ms. Rovin cites to our decision in *Gilmore v. State*, 204 Md. App. 556 (2012) to argue otherwise. There, we held that "[a]n officer cannot have a reasonable belief that a violation of the law occurred when the acts to which an officer points as supporting probable cause are not prohibited by law." 204 Md. App. at 572, *overruled by Heien North Carolina*, 574 U.S. 54 (2012) (quoting *United States v. McDonald*, 453 F.3d 958,

Second, more generally, several of the jurisdictions that departed from *Heien* have historically interpreted their analogs to the Fourth Amendment to provide greater protections than the Federal Constitution. *See State v. Sutherland*, 176 A.3d 775, 779 (N.J. 2018) ("New Jersey precedent . . . has traditionally provided greater protections under our state analog to the Fourth Amendment than those provided by the Federal Constitution."); *State v. Koivu*, 272 P.3d 483, 491 (Idaho 2012) (noting that courts have construed Idaho's constitution "to provide greater protection than is provided by . . . the Fourth Amendment" and that the departure began over 80 years prior) (citing *State v. Arregui*, 254 P. 788 (Idaho 1927)). When a state constitutional analog to the Fourth Amendment traditionally has been interpreted to provide greater protection, that necessarily can provide a basis for departing from *Heien*. Maryland, however, has not interpreted Article 26 to provide greater protection than the Fourth Amendment in any context that has been presented to date.

Third, several state courts departed from *Heien* because their state constitutions contained independent exclusionary rules for illegally-obtained evidence, those rules did not allow any exception for an officer's "good faith[,]"and *Heien*'s tolerance of an objectively reasonable mistake is difficult to reconcile with such a strict approach to

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961-62 (7th Cir. 2006)). In *Gilmore*, however, we considered a denial of a suppression motion, so we were concerned only with the Fourth Amendment and the federal exclusionary rule—not Article 26. Moreover, that portion of our decision does not survive *Heien*, and the language that Ms. Rovin quotes was not our own: it came from a pre-*Heien* decision of the U.S. Court of Appeals for the Seventh Circuit that also considered only the Fourth Amendment.

exclusion.[39] *See State v. Coleman*, 890 N.W. 2d 284, 298 n.2 (Iowa 2017) ("[T]he approach in *Heien* would be very difficult to square with our rejection of the good-faith exception to the exclusionary rule under . . . the Iowa constitution[.]"); *State v. Pettit*, 406 P.3d 370, 376 (Idaho Ct. App. 2017) ("*Heien* . . . [has] no bearing on whether Idaho's independent exclusionary rule is operable, allowing courts to suppress evidence even as to a reasonable mistake of law. Therefore, the Court declines to follow *Heien*[.]").[40]

Maryland, however, does not have an "independent exclusionary rule for physical evidence." *Ford v. State*, 184 Md. App. 535, 570 (2009). Instead, "[t]he only extant exclusionary rule . . . is that imposed upon Maryland in 1961 by *Mapp v. Ohio*, 367 U.S. 643 (1961)[.]" *Id.* (quoting *Fitzgerald v. State*, 153 Md. App. 601, 682 n.4 (2003)).[41]

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[39] "Under the good faith exception, evidence will not be suppressed under the exclusionary rule if the officers who obtained it acted in objectively reasonable reliance on a search warrant." *Richardson v. State*, 481 Md. 423, 446 (2022) (citing *United States v. Leon*, 468 U.S. 897 (1984)). An approach that rejects an officer's objectively reasonable reliance on an invalid search warrant in the exclusion context would be difficult to reconcile with an approach that *tolerates* an objectively reasonable (but mistaken) interpretation of a criminal law in determining whether a state constitutional analog to the Fourth Amendment was violated.

[40] New Jersey likewise does not recognize a good-faith exception to its exclusionary rule, *see State v. Novembrino*, 519 A.2d 820, 845-50 (N.J. 1987), and the state's intermediate appellate court has distinguished *Heien* in part on that basis, *see State v. Scriven*, No. A-5680-13T3, 2015 WL 773824, at *4 (N.J. App. Feb. 25, 2015), *aff'd*, 140 A.3d 535 (N.J. 2016) (distinguishing *Heien* in part because "in New Jersey, there is no good faith exception to the exclusionary rule").

[41] Although it does not affect our analysis here, we note that at least one commentator has suggested that Maryland did have an independent exclusionary rule, at least for part of its history. *See* Carrie Leonetti, *Independent and Adequate: Maryland's State Exclusionary Rule for Illegally Obtained Evidence*, 38 U. Balt. L. Rev. 231 (2009).

Thus, unlike several of the jurisdictions that have departed from *Heien*, Maryland recognizes and routinely applies the good-faith exception to the exclusionary rule. *See, e.g.*, *Richardson v. State*, 481 Md. 423, 468-69 (2022); *Agurs v. State*, 415 Md. 62, 77-78 (1999). Indeed, Maryland's appellate courts have gone a step further by seeking to ensure that the good-faith exception is not *undermined*. Specifically, in an express effort to prevent the exception from being eroded, Maryland's courts have discussed the exception even when unnecessary. *See, e.g.*, *Whittington v. State*, 474 Md. 1, 37 (2021) (reaching and applying the good-faith exception in the alternative, "'in an effort to stem the tide of what we perceive to be a recent . . . overuse of [the] rare exemptions from the good faith exception'") (quoting *State v. Jenkins*, 178 Md. App. 156, 194 (2008)).

We conclude that like the Fourth Amendment, Article 26 tolerates an officer's objectively reasonable mistake of law. To date, we have not interpreted Article 26 to provide greater individual protections than the Fourth Amendment. Indeed, we have consistently embraced the Fourth Amendment's good-faith exception, which focuses on an officer's "objectively reasonable" reliance on a warrant—even if the warrant is later held invalid. Nor does Article 26 contain an independent exclusionary rule from which to source a different answer. In sum, under Article 26, if officers had probable cause, it does not matter that such probable cause derived from the officers' mistake of law, so long as that mistake was objectively reasonable.

2. *If Law Enforcement's Interpretation Of Section 9-305 Was Mistaken, The Mistake Was Objectively Reasonable*

Ms. Rovin next argues that the officers here made an unreasonable mistake in

interpreting the juror intimidation statute, Md. Code, Crim. Law § 9-305, and so did not have probable cause. In relevant part, the statute states that, "[a] person may not, by threat, force, or corrupt means, try to influence, intimidate, or impede a juror . . . in the performance of the person's official duties." Md. Code, Crim. Law § 9-305(a). Ms. Rovin asserts that the foreperson was no longer a "juror" within the meaning of the statute once the jury's verdict was rendered. She also contends that her interaction with the foreperson could not have been an attempt to influence, intimidate, or impede his performance of his official duties, because those duties ended (as a matter of law) as soon as the verdict was rendered. As her argument goes, "[a] discussion about an already concluded trial cannot impact a person's performance of their duties as a juror in that already-concluded trial[,]" and thus there cannot have been probable cause.

In support, Ms. Rovin points to the trial court's grant of her motion for acquittal in her criminal case. She asserts that the trial court held that she did not violate the juror intimidation statute as a matter of law because the statute does not proscribe conduct after a verdict has been rendered. But this is reading a lot into the trial court's decision. A judgment of acquittal must be granted when "no rational trier of fact could find the essential elements of the crime charged beyond a reasonable doubt." *Neal v. State*, 191 Md. App. 297, 306 (2010). And the trial court's decision on Ms. Rovin's motion for acquittal appeared to focus more on the State's failure to present admissible evidence than on the legal reach of Section 9-305(a).

Specifically, shortly before granting Ms. Rovin's motion, the trial court asked the State whether Ms. Rovin was "attempting to get the juror to do anything" and to

articulate, based upon the admitted evidence, how she was "trying to get this particular juror to take any action[.]" The State responded that it believed, after trial, that Ms. Rovin was not trying to do so. As such, although one interpretation of the trial court's decision is that Section 9-305 *cannot* apply after a verdict is rendered, another is that the State simply failed to introduce evidence on a necessary component of its case under Section 9-305: Ms. Rovin's threat was an attempt to impede, influence, or intimidate the foreperson in performing some official duty.

Regardless, we do not directly reach the issue of the correct interpretation of Section 9-305 after a verdict is rendered. That was not the basis for the circuit court's grant of summary judgment in favor of the State here, nor was it the issue that our Supreme Court instructed the circuit court to consider. Accordingly, we focus our analysis on whether the officers' interpretation of Section 9-305 was objectively reasonable.

As the concurring justices in *Heien* pointed out,[42] *Heien*'s focus on objective reasonableness necessarily leads to a restrictive test. A mistake of law will not satisfy that standard unless "a reasonable judge could agree with the officer's view" and "overturning the officer's judgment requires hard interpretive work[.]" *Heien*, 574 U.S. at 69 (Kagan, J. concurring). Further, in making this determination, "the subjective understanding of the

[42] The *Heien* opinion was decided by an 8-1 vote, with only Justice Sotomayor dissenting. Justice Kagan, joined by Justice Ginsburg, authored the sole concurrence, endorsing the majority's analysis in full and elaborating on the implications of that analysis.

particular officer involved" is irrelevant. *Id.* at 66 (majority opinion) (emphasis in original). The State cannot "defend an officer's mistaken legal interpretation on the ground that the officer was unaware of or untrained in the law." *Id.* at 69 (Kagan, J. concurring). Nor can the State point to police department training materials or legal memoranda to assert that an officer's mistake was objectively reasonable. *Id.* In essence, "an officer can gain no . . . advantage through a sloppy study of the laws[.]" *Id.* at 67 (majority opinion). And because the analysis is objective, a relevant decision from a state's appellate courts will normally leave no room for an objectively reasonable mistake. *See, e.g.*, *United States v. Romero*, 935 F.3d 1124, 1131 (10th Cir. 2019) (concluding that a mistake of law was not objectively reasonable because New Mexico's appellate courts had already clarified the statutory language at issue).

Conversely, although a lack of relevant authority from the state's appellate courts could support the reasonableness of an officer's view of the law, more analysis is required to determine that a mistake is objectively reasonable. In deciding *Heien*, for instance, the U.S. Supreme Court held that a mistaken interpretation of a North Carolina statute was objectively reasonable, in part because the provision at issue "had never been previously construed by North Carolina's appellate courts." *Heien*, 574 U.S. at 68 (majority opinion). Nonetheless, the Court discussed the statute in detail to determine whether the officer's interpretation was truly objectively reasonable. *Id.* at 67-68. Likewise, several U.S. Courts of Appeals applying *Heien* have looked in part to whether statutory provisions had been previously construed by state appellate courts, but they also examined the subject statutes to critically assess the officers' interpretations. *See, e.g.*,

United States v. Coleman, 18 F.4th 131, 140 n.4 (4th Cir. 2021) (concluding that a mistake of law was objectively reasonable in part because, although Virginia's appellate courts had interpreted the statutory phrase at issue, they had provided "a lack of direction" on the "specific inquiry" at issue, leaving it "unsettled"); *United States v. Bams*, 858 F.3d 937, 942 (5th Cir. 2017) (concluding that a mistake of law was objectively reasonable and noting that "[n]o Arkansas court has construed the meaning" of the statutory language at issue).[43]

We now turn to Section 9-305, and the officers' interpretation of that statute here. Although the prohibition against juror intimidation has existed in Maryland, in one form or another, since before the American Civil War, there is scant Maryland case law interpreting its prohibitions with respect to jurors. The parties have only cited two cases that are arguably relevant—and neither considered intimidation of a juror or intimidation after a verdict had been rendered. *See State v. Pagano*, 341 Md. 129 (1996); *Romans v. State*, 178 Md. 588 (1940).[44] Instead, both *Romans* and *Pagano* involved efforts to

[43] Similarly, though a mistake of law is not necessarily objectively reasonable simply because the officer held a warrant, a warrant can support that a mistake was objectively reasonable. *See Mahone v. Georgia*, No. 20-14752, 2022 WL 2388426, at *4 (11th Cir. July 1, 2022), *cert. denied*, 143 S. Ct. 435 (2022) (noting that an officer's "mistake of law is all the more reasonable because a judge reviewed the facts and law and reached the same conclusion that probable cause existed for an arrest").

[44] Both cases were cited by Ms. Rovin. In its brief, the State did not directly respond to either case, nor did it cite other authority interpreting the juror intimidation statute. Our own research has likewise returned no on-point authority that existed at the time of Ms. Rovin's arrest in 2015. We note that, in *Tracy v. State*, 423 Md. 1 (2011), a plurality of our Supreme Court briefly discussed the history of Section 9-305, but in the context of a

influence *witnesses* at earlier points in time. Specifically, *Romans* affirmed convictions for attempting to influence a witness into leaving the jurisdiction before trial began. *See Romans*, 178 Md. at 592-93, 595. *Pagano* reached the opposite result, affirming dismissal of charges for attempting to influence witnesses to lie to investigating officers. *Pagano*, 341 Md. at 132.

The difference was that, in *Pagano*, a criminal case had not yet been opened at the time of the attempt, and investigatory efforts were still ongoing. In *Romans*, a case had been opened and a criminal trial was approaching. The predecessor statute to Section 9-305(a) "only proscribe[d] acts committed after there [had] been some judicial action[,]"[45] and in light of then-existing statutory language, the *Pagano* Court determined that attempts to influence witnesses *before* a case was opened did not fall within the meaning

purported effort to intimidate a witness, not a juror. And the plurality ultimately disposed of the issue on preservation grounds. *See id.* at 13-15.

Separately, earlier this year, we had occasion to discuss Section 9-305 in a different context. *See Matter of McCloy*, 257 Md. App. 668 (2023). But that case involved the implications of a conviction for witness tampering in violation of a federal statute, not a conviction for juror intimidation under § 9-305. It also did not interpret the provisions of § 9-305 that are relevant here. Moreover, as that case was decided years after the seizure of Ms. Rovin, it was unavailable to officers and would not affect our analysis of whether any mistake of law was objectively reasonable.

[45] In relevant part, the predecessor statute to § 9-305 read as follows:

If any person by corrupt means or by threats or force endeavors to influence, intimidate, or impede any juror, witness, or court officer of any court of this State in the discharge of his duty, or by corrupt means or by threats or force obstructs, impedes, *or endeavors to obstruct or impede the due administration of justice therein*, he is liable to be prosecuted[.]

Md. Code, Art. 27, § 26 (1957, 1992 Repl. Vol., 1995 Supp.) (emphasis added).

of the statute. *See Pagano*, 341 Md. at 131-32, 134-35 (specifically construing, among other things, the meaning of the term "therein" in the statutory language to conclude that a pending judicial proceeding was required). When the statutory language changed in 2002, the Revisor's Note indicated that the new language was "derived without substantive change from former Art. 27, § 26[.]" Revisor's Note, Md. Code, § 9-305. Nonetheless, the specific language relied upon by the *Pagano* Court no longer exists. In its place, Section 9-305 now prohibits, among other things, attempts to "influence, intimidate, or impede" a juror "by threat, force, or corrupt means . . . *in the performance of the person's official duties.*" Md. Code, § 9-305(a) (emphasis added).

Section 9-305 does not operate in a vacuum, though. Our court rules and cases establish that after a verdict, a litigant may, at least for a limited time, and in limited circumstances, seek relief for juror misconduct that occurred before the verdict. Indeed, after a verdict, a juror in a criminal case may be called back to court to testify about what occurred during the trial itself, *i.e.*, while the juror was "in the performance of [juror's] official duties." Given this possibility, reasonable judges could conclude that Section 9-305 reaches certain post-verdict threats to a juror that are made within a limited time after a verdict.

In criminal cases, a motion for a new trial can be filed "within ten days after a verdict[,]" *See* Md. Rule 4-331(a); *Campbell v. State*, 373 Md. 637, 655-56 (2003). And after sentencing, the circuit court still retains "revisory power and control over the judgment" on a motion for a new trial filed within 90 days of sentencing. As such, the

court has the power "to set aside an unjust or improper verdict and grant a new trial[.]"[46] Md. Rule 4-331(b)(2).

This limited revisory power can mean that a juror must testify after the verdict is rendered. If, for instance, it comes to light that a juror might have engaged in misconduct or had improper contact during the trial, it can cast doubt on whether the verdict was just and proper and require a hearing in which the juror gives testimony. Indeed, "some such juror contacts with third parties and/or misconduct can reach a level of being presumptively prejudicial to a defendant, thus placing the burden of harmlessness on the State." *Jenkins v. State*, 375 Md. 284, 301 (2003); *see also Johnson v. State*, 423 Md. 137, 149 (2011) (in certain circumstances, "the juror misconduct is such that prejudice to the defendant must be presumed. In those situations, a mistrial (or the post-trial remedy of a new trial) is the proper remedy unless the State overcomes the presumption").[47] A convicted criminal defendant who discovers such misconduct or improper contact—or who credibly alleges to have discovered it—can move for a new trial. The court then

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[46] Once the 90-day period after sentencing has elapsed, the circuit court does not have revisory power except in cases of "fraud, mistake, or irregularity." Md. Rule 4-331(b)(2).

[47] Juror misconduct can take many forms. For instance, jurors who conduct their own research during a criminal trial and share it with fellow jurors may commit "egregious misconduct[.]" *Wardlaw v. State*, 185 Md. App. 440, 452 (2009). Juror misconduct can occur in the civil context as well. *See Wernsing v. General Motors Corp.*, 298 Md. 406, 408 (1984) (reversing denial of new trial motion in part because juror brought and referred to a dictionary during deliberations); *cf. Cooch v. S & D River Island, LLC*, 216 Md. App. 275, 302-03, 305 (2014) (discussing juror's statements that the juror conducted online research during deliberations, but ultimately affirming the denial of a new trial motion because the moving party failed to make a sufficient showing of prejudice).

must hold a hearing to safeguard the defendant's constitutional rights.[48] *See Jenkins*, 375 Md. at 301-02 (quoting *Remmer v. United States*, 347 U.S. 227, 229 (1954)); *cf. Barnes v. Joyner*, 751 F.3d 229, 242 (4th Cir. 2014) (an evidentiary hearing is required "when the defendant presents a credible allegation of communications or contact between a third party and a juror concerning the matter pending before the jury").

The *Jenkins* case illustrates how these principles apply in post-trial proceedings. There, a juror attended a weekend religious retreat during a twelve-day criminal trial, where he recognized and spoke with a detective from the trial who had already testified. The two talked extensively, and the juror attended the remainder of the trial without reporting their conversations. Ultimately, the jury found the defendant guilty of all charges except one. The defendant then received a total executed sentence of 60 years. After the verdict, however, the improper conversations between the juror and deputy came to light.[49] The court discussed the matter with counsel at an emergency hearing, and a motion for a new trial was then filed under Maryland Rule 4-311(a) ten days after the

[48] Specifically, the defendant's rights under the Sixth Amendment and Article 21 of the Maryland Declaration of Rights. *Cf. Johnson*, 423 Md. at 149 ("Serious juror misconduct raises fundamental concerns regarding whether the jury would reach their verdict based solely upon the evidence presented at trial or whether it would be improperly influenced, and thereby run afoul of the protections afforded by the Sixth Amendment and Article 21.") (cleaned up).

[49] This occurred when, after the verdict was rendered, the deputy in *Jenkins* visited the State's Attorney's Office for an unrelated matter and mentioned the conversation with the juror. The State's attorney then promptly informed the court and defense counsel. *Jenkins*, 375 Md. at 291-92.

verdict.[50] This prompted an evidentiary hearing in which both the detective and the juror were called to testify.

At that evidentiary hearing, the juror in *Jenkins* and the detective testified to their improper conversations during the trial. The juror's testimony, however, was limited by Maryland Rule 5-606, which prevents "[a] member of a jury" from testifying as a witness at trial and also imposes strict limits on the ability of a "sworn juror" to discuss the jury's deliberations and decision-making processes, including after trial.[51] The motion for a new

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[50] Because the motion for a new trial was filed within ten days of the verdict, it was treated as "a motion for a new trial pursuant to Md. Rule 4-311(a)," even though sentencing had already occurred. *See Jenkins*, 375 Md. at 287-88; *see also* Md. Rule 4-311(a). The new trial motion alternatively could have been treated as a post-sentencing motion, *see* Md. Rule 4-311(b) (new trial motions made "within 90 days after [] imposition of sentence"), but that would have meant that "the recognized grounds" for granting the motion would "become narrower[.]" *See Campbell*, 373 Md. at 655-56. A Rule 4-311(a) motion may be granted simply when it is "in the interest of justice[,]" while a Rule 4-311(b) motion requires concluding that the verdict was "unjust or improper[.]" *See Campbell*, 373 Md. at 656.

[51] In relevant part, Maryland Rule 5-606 reads as follows:

(a) At the Trial. A member of a jury may not testify as a witness before that jury in the trial of the case in which the sworn juror is sitting. . . .

(b) Inquiry Into Validity of Verdict.

(1) In any inquiry into the validity of a verdict, a sworn juror may not testify as to (A) any matter or statement occurring during the course of the jury's deliberations, (B) the effect of anything upon that or any other sworn juror's mind or emotions as influencing the sworn juror to assent or dissent from the verdict, or (C) the sworn juror's mental processes in connection with the verdict.

Rule 5-606 is considered a "no-impeachment" rule because it "prevents inquiring into a jury's verdict by consider[ing] information concerning deliberations obtained from jurors after the verdict." *Williams v. State*, 478 Md. 99, 128 (2022). This prohibition, however, typically does not extend to jurors' conduct during trial outside of deliberations. *See, e.g.*,

trial was initially denied in *Jenkins*, but our Supreme Court reversed, reasoning that the trial court abused its discretion in denying the motion without "meaningfully investigat[ing] the matter of juror motives and impartiality[,]" which had not been done in part because of the restrictions in Rule 5-606 on juror testimony. *Jenkins*, 375 Md. at 308-09.

Thus, as *Jenkins* teaches, there is a limited period after a verdict in which a juror may be required to return to court and testify as part of an evidentiary hearing when a verdict is challenged. In the post-trial context, such a hearing is not a separate proceeding—it is part of the same underlying case in which the juror served. *See* Md. Rule 4-311. The hearing requirement is grounded in constitutional protections, and it can be triggered simply by a "credible allegation" of certain improper communications or other misconduct. *See Barnes*, 751 F.3d at 242; *see also United States. v. Sandalis*, 14 Fed. Appx. 287, 289 (4th Cir. 2001) ("[W]hen a party makes a threshold showing that improper external influences came to bear on the decision-making process of a juror, an evidentiary hearing on juror bias not only is allowed . . . but is required."). In such a

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Cooch v. S & D River Island, 216 Md. App. at 302-03 (contrasting possible online research by a juror at trial that occurred "at home during an overnight break" with research that occurred "in the jury room in the middle of the jury's deliberations").

Additionally, in certain circumstances, jurors can give evidence (and be required to give evidence) about their deliberations, notwithstanding the no-impeachment rule. *See, e.g.*, *Williams*, 478 Md. at 135 (quoting *Peña-Rodriguez v. Colorado*, 580 U.S. 206, 225 (2017) ("'[W]here a juror makes a clear statement that indicates that he or she relied on racial stereotypes or animus to convict a criminal defendant, the Sixth Amendment requires that the no-impeachment rule give way[.]'").

hearing, even jurors who are not the focus of any allegations may nonetheless be recalled to court to testify about what they observed. *See Sandalis*, 14 Fed. Appx. at 291 n.5.

As such, we conclude that police here had probable cause to arrest Ms. Rovin, based upon an objectively reasonable interpretation of the juror intimidation statute. *See* Md. Code, Crim. Law § 9-305(a). Officers received a report from the jury foreperson that Ms. Rovin visited him a few hours after he and his fellow jurors found her daughter guilty, expressed outrage at the verdict, and threatened him. The foreperson then restated his allegations against Ms. Rovin (under oath) at a peace order hearing. At the time of the alleged threat, there was ample time for Ms. Rovin's daughter to file a motion for a new trial, both within the ten-day time under Rule 4-311(a), and the ninety-day time period under Rule 4-311(b)(2). Such a motion would prompt a hearing in the same criminal proceeding in which Ms. Rovin's daughter was convicted.[52] At this hearing, jurors (including the foreperson) could be recalled to testify, and they would do so as "sworn jurors" within the meaning of, and subject to, Maryland Rule 5-606(b). *See Jenkins*, 375 Md. at 319. Thus, threatening a juror shortly after a verdict could serve part of a larger effort to undermine the verdict and secure a new trial, by causing the juror to carry out future duties while intimidated, influenced, or impeded by the threat.[53]

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[52] Thus, a hearing on a new trial motion would occur in the same judicial proceeding in which the foreperson served as a juror, seemingly meeting the "pending judicial proceeding" requirement of *Pagano*. *See* 341 Md. at 134.

[53] To be sure, here, the alleged threat by Ms. Rovin occurred before any new trial motion was filed in her daughter's case. And during her criminal prosecution, it appears that the State failed to introduce admissible evidence to show that Ms. Rovin sought to have the

Moreover, when officers presented the known facts to the District Court Commissioner, the commissioner agreed that Section 9-305 reached the alleged conduct and issued an arrest warrant. Although not dispositive, the issued warrant supports that any mistake on the part of officers was objectively reasonable. *See Mahone v. Georgia*, No. 20-14752, 2022 WL 2388426, at *4 (11th Cir. July 1, 2022), *cert. denied*, 143 S. Ct. 435 (2022). The same is true of the concurring opinion issued in the prior appeal of this case, which stated that interpreting the reach of Section 9-305 to end at a jury's verdict was "questionable"—or, put differently, suggesting that hard interpretive work may be needed to overturn the officers' judgment. *See Rovin*, 472 Md. at 375 (McDonald, J.

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foreperson take (or refrain from taking) any action. That, however, is beside the point. Section 9-305(a), through the word "try[,]" criminalizes an *attempt*—not a robust plan, much less a successful or completed effort. *See* Md. Code, Crim. Law § 9-305(a). Moreover, probable cause does not consider facts that later develop, nor what admissible evidence is ultimately introduced at trial. *See Barrett v. State*, 234 Md. App. 653, 666 (2017) (probable cause focuses upon the facts known to officers "at the time of the arrest"); *DiPino v. Davis*, 354 Md. 18, 32 (1999) ("To determine whether an officer had probable cause . . . the reviewing court necessarily must relate the information known to the officer to the elements of the offense that the officer believed was being or had been committed."); *Banks v. Montgomery Ward & Co.*, 212 Md. 31, 40 (1957) ("[A]n acquittal after trial is no[t] evidence of lack of probable cause [because] it amounts only to a decision that the fact of guilt has not been proved beyond a reasonable doubt."). Probable cause can exist based upon "a permissible inference" in the circumstances, even if there might have been "other possible inferences" at the relevant time that could point to purely legal conduct. *See Freeman v. State*, 249 Md. App. 269, 306 (2021).

In sum, probable cause here does not depend on whether a motion for a new trial was ultimately filed, or more broadly, on what the State proved and did not prove at trial. Probable cause likewise tolerates the existence of other permissible inferences at the time of arrest—even if those inferences could point to non-criminal conduct, including that the reported threat was merely retaliatory (which it seems was not criminalized at the time), or that the threat did not occur at all.

concurring). The opinions of the State's attorneys who were consulted before Ms. Rovin's arrest provide further support. *See Rovin*, 472 Md. at 367-68 & nn.15-16; *cf.* Restatement (Second) of Torts, § 662, cmt. i (1977) (noting that "a mistaken belief as to the legal consequences of the conduct in question may afford probable cause" and that "a layman" may act on probable cause when "advised to do so by an attorney . . . [and] [t]his includes advice from a prosecuting attorney").[54]

Thus, in the circumstances here, officers had probable cause to believe that Ms. Rovin violated Section 9-305(a) of the Criminal Law Article, based upon an objectively reasonable interpretation of that statute. At the relevant time, there was ample opportunity for further post-trial proceedings in the criminal case against Ms. Rovin's daughter that could impose further duties upon jurors, and at least a fair probability that the reported threat against the foreperson was an attempt to intimidate, influence, or impede him in performing future duties, even if there might have been other permissible inferences for officers to draw.[55] The circuit court correctly granted summary judgment in favor of the

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[54] And as our Supreme Court has noted, in the context of malicious prosecution allegations, the approach to probable cause contained in most recent restatement is in accord. *Cf. Rovin*, 472 Md. at 368 n.16 (quoting Restatement (Third) of Torts: Liability for Economic Harm §22, cmt. c (2020)) ("A mistake of law may be considered reasonable, however, if the accuser relied on the advice of a lawyer, including a prosecutor.").

[55] Our conclusion is necessarily grounded in the requirements of probable cause itself. Probable cause is a lower bar than a preponderance of the evidence, requiring only "a fair probability on which a reasonably prudent person would act." *See Pacheco v. State*, 465 Md. 311, 324 (2019) (quotations omitted).

State on Ms. Rovin's Article 26 claim.[56]

3. Articles 24 And 40 Of The Maryland Declaration Of Rights

As to her other constitutional claims, Ms. Rovin argues that even an objectively reasonable mistake of law, under *Heien*, cannot defeat her due process claim under Article 24 of the Maryland Declaration of Rights or her free speech claim under Article 40. Specifically, Ms. Rovin argues that, if Section 9-305 is susceptible of multiple reasonable interpretations, then it must be unconstitutionally vague. And an arrest under

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[56] Of course, we acknowledge that officers may not have performed the above legal analysis in interpreting Section 9-305(a), particularly considering that it appears that the State has not yet discussed that analysis. Indeed, at least at one point, the State relied upon the foreperson's inclusion in a juror pool, *see generally* Md. Code, Cts. & Jud. Proc. § 8-201, *et seq*. (statutes governing jurors and jury pools), to argue that the foreperson's "official duties" might continue within the meaning of Section 9-305 after a verdict, even though the foreperson could not have been called again to serve on a jury for a statutorily-defined period of time. *See* Md. Code, Cts. & Jud. Proc. §§ 8-216, 8-310. But regardless, even if officers actually performed a different or incorrect legal analysis in interpreting Section 9-305, it does not change our conclusion because *Heien*'s test is one of *objective* reasonableness—that is, "the *subjective* understanding of the particular officer involved" is irrelevant. *Heien*, 574 U.S. at 66 (emphasis added).

Article 19 of the Maryland Declaration of Rights also does not affect our analysis. That constitutional provision has no federal counterpart, *see Serio v. Baltimore Cnty.*, 384 Md. 373, 383 n.8 (2004), and provides "That every man, for any injury done to him in his person or property, ought to have remedy by the course of the Law of the Land, and ought to have justice and right, freely without sale, fully without any denial, and speedily without delay, according to the Law of the Land." Our Supreme Court has interpreted Article 19 such "that a plaintiff injured by unconstitutional state action should have a remedy to redress the wrong"—thus, the General Assembly cannot "immuniz[e] from suit both the government and the governmental official involved" in violating a state constitutional right. *Jackson v. Dackman Co.*, 422 Md. 357, 377-78 (2011) (quotations omitted). But as we have explained, there was no violation of Article 26 here, so Article 19 is not germane. *Cf. Okwa v. Harper*, 360 Md. 161, 201 (2000) ("This Court has recognized that a common law action for damages lies when an individual is deprived of his or her liberty in *violation* of the Maryland Constitution.") (emphasis added).

an unconstitutionally vague statute infringes her rights under Article 24, regardless of whether officers had probable cause. Additionally, Ms. Rovin argues that Section 9-305, at least as enforced by the State, attempted to criminalize her protected speech. We agree with Ms. Rovin that a *Heien* analysis does not dispose of these other constitutional claims. Nonetheless, we will affirm the circuit court's grant of summary judgment as to these claims on a different ground: on the undisputed facts here, Section 9-305 of the Criminal Law Article, both on its face and as enforced here, is not unconstitutional.

As we discussed above, a *Heien* analysis focuses upon an individual's rights under the Fourth Amendment and Article 26 of the Maryland Declaration of Rights. This analysis stems from the idea that the touchstone of the Fourth Amendment and Article 26 is "reasonableness[.]" *Heien*, 574 U.S. at 60-61 (quotations omitted); *Richardson v. McGriff*, 361 Md. 437, 452-53 (2000) (quotations omitted). Thus, both the Fourth Amendment and Article 26 allow police to act on imperfect understandings. For instance, there is no Fourth Amendment violation, even when police mistakenly arrest an innocent individual, where the arrest was based upon probable cause. *See Hill v. California*, 401 U.S. 797, 802-05 (1971) (probable cause where arrestee matched description of suspect). Likewise, there is no Fourth Amendment violation when police arrest an individual on probable cause pursuant to a presumptively valid ordinance, even when that ordinance is later declared unconstitutional. *See DeFillippo*, 443 U.S. at 40; *cf. Illinois v. Krull*, 480 U.S. 340, 359-60 (1987) (applying good faith exception to exclusionary rule after an officer reasonably relied upon a statute authorizing a warrantless search, even though that statute was later declared unconstitutional).

Nonetheless, when a criminal statute is unconstitutional (either on its face or as it is applied), seizing an individual under that statute could infringe other constitutional rights—regardless of how apparent it was to officers that the individual violated the statute. The potential constitutional violation does not stem from whether there was enough indication of criminal activity for officers to act; it stems from protections against unconstitutional laws and application of the laws. Decades before the U.S. Supreme Court's decision in *Heien*, our Supreme Court noted as much, holding that a seizure could violate an individual's due process rights under Article 24, even if there was probable cause for an arrest under Article 26. *Ashton v. Brown*, 339 Md. 70, 97-98 (1995). That is,

> [A]n arrest may be constitutionally improper because it violates other constitutional rights. Even though a police officer may have probable cause to believe that a person has violated a penal statute, and thus makes an arrest, if the statute itself is unconstitutional or has been unconstitutionally applied, the arrestee's constitutional rights have been violated.

Ashton, 339 Md. at 98.

As noted in *Ashton*, there are several scenarios in which a criminal statute may be unconstitutional, either facially or as applied. For instance, if a statute is unconstitutionally vague, a seizure under the statute could violate the arrestee's due process rights under Article 24. *See Ashton*, 339 Md. at 97-98.[57] The same is true if the

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[57] Such was the situation in *Ashton*, which involved a curfew ordinance that broadly prohibited minors from remaining in public places after certain hours, subject to several general exceptions, including for minors attending "a cultural, scholastic, athletic or recreational activity supervised by a bona fide organization[.]" *Ashton*, 339 Md. at 89. The ordinance was held unconstitutional, in part because the curfew's nonspecific

statute violates (or is applied in violation of) the equal protection rights implicit in Article 24,[58] or the right to freedom of expression in Article 40. *Id.* at 98 (citing cases). As such, we must look beyond *Heien*, assessing whether summary judgment was appropriate on Ms. Rovin's Article 24 and Article 40 claims by examining whether Section 9-305(a) or the enforcement of it here violated Ms. Rovin's due process and free speech rights.

"In addressing a claim involving the constitutionality of a statute, we begin with a presumption that the statute is constitutional." *Myers v. State*, 248 Md. App. 422, 437 (2020) (quotations omitted). Ms. Rovin makes two arguments that the juror intimidation statute is unconstitutional: (1) the statute is void-for-vagueness, and (2) officers violated Ms. Rovin's free speech rights in enforcing the statute.

To assess whether a statute is void-for-vagueness, the courts have developed a two-prong framework that looks to whether the statute "(1) 'fails to give ordinary people fair notice of the conduct it punishes,' or (2) is 'so standardless that it invites arbitrary enforcement.'" *Myers*, 248 Md. App. at 437 (quoting *Johnson v. United States*, 576 U.S. 591, 595 (2015)). "A statute will not fail for vagueness 'if the meaning of the words in controversy can be fairly ascertained by reference to judicial determinations, the common

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language left it difficult to predict whether a given activity would qualify for one of the curfew's exceptions. *Id*. at 89-90. As such, plaintiffs who were detained pursuant to the curfew were able to sue for violations of their constitutional rights, irrespective of whether there was probable cause for their seizures. *Id.* at 97-98.

[58] Maryland's Declaration of Rights contains no express equal protection mandate, but equal protection principles are implicit in the due process protections of Article 24. *Edmonds v. Murphy*, 83 Md. App. 133, 152 n.13 (1990) (quotations omitted).

law, dictionaries, treatises or even the words themselves, if they possess a common and generally accepted meaning.'" *Id.* at 438 (quoting *State v. Phillips*, 210 Md. App. 239, 266 (2013)) (emphasis omitted); *see also Eanes v. State*, 318 Md. 436, 461 (1990) ("[W]e . . . apply normal meanings to words of common understanding[.]"). Likewise, "'[a] statute does not become unconstitutionally vague merely because it may not be perfectly clear at the margins.'" *McCree v. State*, 441 Md. 4, 20 (2014) (quoting *Galloway v. State*, 365 Md. 599, 634 (2001)).

Applying those standards, we hold that the juror intimidation statute is not unconstitutionally vague, either on its face or as it was applied here. In relevant part, the statute criminalizes attempting "to influence, intimidate, or impede a juror . . . in the performance of the person's official duties" "by threat, force, or corrupt means[.]" Md. Code, Crim. Law § 9-305(a). Ms. Rovin does not identify any of those words as being unascertainable, or as lacking "a common and generally accepted meaning[.]"[59] Nor does she explain how the statute is so standardless that it invites arbitrary enforcement. And to the contrary, as we explained above in analyzing the statute, multiple sources are available to ascertain the meaning and extent of the official duties of jurors (including case law and the Maryland Rules).

We also do not agree with Ms. Rovin that a criminal statute must be

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[59] Indeed, in arguing that the officers made an unreasonable mistake of law, Ms. Rovin makes the opposite point: she asserts that "[u]nlike the vague and seemingly contradictory statute at issue in *Heien*, the juror intimidation statute uses language that is straightforward and should be relatively easy to understand. A reasonably trained police officer should have understood what the juror intimidation statute prohibited."

unconstitutionally vague whenever there may be more than one objectively reasonable interpretation under *Heien*. As the U.S. Supreme Court has explained with an example, *Heien*'s analysis typically applies only the first time that a law is enforced in a new scenario. Determining how the law applies to that scenario (if at all) might require hard interpretive work, and reasonable judges could differ on the correct interpretation. That does not necessarily mean that the statute is unconstitutionally vague and unenforceable—it is simply a basis to afford officers leeway for an objectively reasonable interpretation in a novel context:

> In Heien's view, no [] margin [of error] is appropriate for questions of law: The statute here either requires one working brake light or two, and the answer does not turn on anything 'an officer might suddenly confront in the field.' . . . . But Heien's point does not consider the reality that *an officer may 'suddenly confront' a situation in the field as to which the application of a statute is unclear—however clear it may later become*. A law prohibiting 'vehicles' in the park either covers Segways or not, *see* A. Scalia & B. Garner, Reading Law: The Interpretation of Legal Texts 36–38 (2012), but an officer will nevertheless have to make a quick decision on the law the first time one whizzes by.

Heien, 574 U.S. at 66 (emphasis added).

Turning to Ms. Rovin's Article 40 argument, we note that an "overbroad" statute may offend free speech protections if it (1) criminalizes protected expression, or (2) is so broadly written that it creates "a realistic danger" of "significantly compromis[ing] third parties' speech."[60] *See McCree*, 441 Md. at 10. Nevertheless, "'[a]s speech strays further

[60] Article 40 is typically read to be coextensive with the First Amendment. *See, e.g.*, *Clear Channel Outdoor, Inc. v. Dir., Dep't of Fin. of Baltimore City*, 472 Md. 444, 457

from the values of persuasion, dialogue and free exchange of ideas, and moves toward willful threats to perform illegal acts, the State has greater latitude to regulate expression.'" *Galloway v. State*, 365 Md. at 599, 646-47 (2001) (quoting *State v. Whitesell*, 13 P.3d 887, 901 (Kan. 2000)). Thus, we have held that a "true threat"—as opposed to "mere political argument, talk, or jest" — "is not constitutionally protected speech." *Abbott v. State*, 190 Md. App. 595, 619 (2010) (cleaned up).

We conclude that the juror intimidation statute does not infringe Ms. Rovin's rights under Article 40. Attempts to "influence, intimidate, or impede" jurors in their duties by threats, force, or corrupt means have been criminalized in Maryland for well over 150 years. In that time, no appellate court has ruled that the prohibition infringes protected speech. And this is unsurprising because attempts to undermine the jury process through threats or other means are far removed from values of persuasion, dialogue, and free exchange of ideas that would support protecting speech. Indeed, Ms. Rovin does not

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(2021) ("[T]his Court has sometimes held out the possibility that Article 40 could be construed differently from the First Amendment in some circumstances, [but] the Court has generally regarded the protections afforded by Article 40 as 'coextensive' with those under the First Amendment."); *Nefedro v. Montgomery Cnty.*, 414 Md. 585, 593 n.5 (2010) ("We need not consider Article 40 and the First Amendment separately[.]"). *But see* Anthony W. Kraus, *Beyond the First Amendment: What the Evolution of Maryland's Constitutional Free-Speech Guarantee Shows About Its Intended Breadth*, 47 U. Balt. L.F. 83, 98 (2017) (analyzing the history and text of Article 40 to argue that "there are several possible ways that free-speech protection under Article 40 *could* be found to be broader than under the First Amendment.) (emphasis in original). Ms. Rovin does not argue that Article 40 provides greater protections than the First Amendment in the circumstances of this case.

appear to argue that Section 9-305(a) infringes her Article 40 rights *per se*. As we understand her argument, Ms. Rovin disputes the content of her conversation with the jury foreperson, asserting that she engaged only in protected speech, without making any threat, and thus that she was arrested for protected speech. Nevertheless, Ms. Rovin does not dispute that officers acted on the foreperson's *report* that she made a specific threat against the foreperson, out of displeasure with the jury's verdict. Because the officers' arrest was based upon probable cause as to conduct that was not protected speech, officers did not enforce the juror intimidation statute in violation of Article 40.

In sum, we are not persuaded by Ms. Rovin's arguments that the juror intimidation statute is unconstitutional, either facially or as applied here. Although the circuit court based its grant of summary judgment on a *Heien* analysis, Ms. Rovin also presented her unconstitutionality arguments in opposing the State's motion for summary judgment, and those arguments were before the circuit court. We will affirm the circuit court's grant of summary judgment on Ms. Rovin's Article 24 and 40 claims.

4. ***False Arrest, False Imprisonment, And Malicious Prosecution***

Ms. Rovin also brought common law tort claims against the State for false arrest, false imprisonment, and malicious prosecution. She argues that these claims should proceed because the police did not have probable cause to seize her or apply for a warrant. She also asserts that the State may still be civilly liable even though a warrant issued for her arrest.

"For a plaintiff to succeed on a false arrest or false imprisonment claim, the plaintiff must show that the defendant deprived the plaintiff of his or her liberty without

consent and [] legal justification." *State v. Roshchin*, 446 Md. 128, 138 (2016) (quotations omitted); *see also Heron v. Strader*, 361 Md. 258, 264 (2000) ("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."). "[L]egal justification . . . is judged by the principles applicable to the law of arrest." *Heron*, 361 Md. at 264 (quotation omitted). As such, "the liability of the police officer . . . will ordinarily depend upon whether or not the officer acted within his legal authority," *Montgomery Ward v. Wilson*, 339 Md. 701, 721 (1995), and there will typically be legal authority where "a law enforcement officer [] detains a person based on an arrest warrant that is valid on its face . . . even though the warrant was improperly issued by the court[,]"[61] *Dett v. State*, 161 Md. App. 429, 443 (2005); *see also Ashton*, 339 Md. at 120 ("[A]n arrest made under a warrant which appears on its face to be legal is legally justified in Maryland, even if unbeknownst to the arresting police officer, the

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[61] Nonetheless, this court has also noted the possibility that an officer's lack of "good faith and reasonable belief in his authority to arrest" could undermine the authority otherwise conveyed by a facially valid warrant. *Dett*, 161 Md. App. at 443; *see also Green v. Brooks*, 125 Md. App. 349, 373-376 (1999) (officer had legal authority to arrest pursuant to a facially valid but improperly issued warrant, where there was no evidence that the arresting officer knew the warrant had been issued for the wrong person). This is in accord with the cases that Ms. Rovin cited that considered a different context: applying the exclusionary rule. *See Greenstreet v. State*, 392 Md. 652, 683 (2006) (when a lack of probable cause was "apparent on the face of the affidavit" because the evidence was "a year old and does not indicate continuing criminal activity" a reasonable officer would not rely on the warrant); *Minor v. State*, 334 Md. 707, 715 (1993) ("[T]he officer has no duty to second guess the judge; the officer's duty is to withhold from presentation an application for a warrant that a well-trained officer would know failed to establish probable cause[.]").

warrant is in fact improper.”). As we have discussed, an arrest warrant issued for Ms. Rovin based upon an objectively reasonable read of Section 9-305(a). Ms. Rovin also does not assert, nor does any evidence suggest, “that the officers made material omissions or misstatements of fact in the arrest warrant application[.]” *Rovin*, 472 Md. at 366. Thus, the warrant provided legal justification for Ms. Rovin’s arrest and imprisonment, and the State was entitled to summary judgment.

Separately, a claim of malicious prosecution requires four elements: “1) a criminal proceeding instituted or continued by the defendant against the plaintiff; 2) without probable cause; 3) with malice, or with a motive other than to bring the offender to justice; and 4) termination of the proceeding in favor of the plaintiff.” *Bailey v. Annapolis*, 252 Md. App. 83, 94 (2021) (quotation omitted). Or, more succinctly, “malicious prosecution is the unlawful use of a legal procedure to bring about a legal confinement.” *Id.* (cleaned up); *see also Montgomery Ward*, 339 Md. at 723-24. The parties do not dispute the first and fourth elements because Ms. Rovin was criminally prosecuted and acquitted.

As to the second element, however, probable cause in the malicious prosecution context typically exists where officers “correctly or reasonably” believe, on advice from an attorney (including a prosecutor), that a person committed an offense. *See Rovin*, 472 Md. at 367-368 & nn. 15-16 (quoting Restatement (Second) of Torts (1977), § 662). We have already explained that the officers’ construction of Section 9-305(a) was objectively reasonable. Additionally, Ms. Rovin does not dispute that officers proceeded on the advice of two State’s attorneys in prosecuting Ms. Rovin.

Moreover, as to the third element, Ms. Rovin did not allege that officers had malice such that they had a wrongful or improper motive in seeking her arrest. *See Exxon Corp. v. Kelly*, 281 Md. 689, 700-01 (1978) (a wrongful motive must be something "other than that of bringing an offender to justice"); *cf. Zablonsky v. Perkins*, 230 Md. 365, 370 (1963) (recognizing the wrongful motive of using "the State's criminal process as a private collection agency") (quotations omitted). To be sure, Ms. Rovin does contend that officers procured an arrest warrant based upon "one or more objectively unreasonable mistakes[,]" but that is not malice. At most, it would suggest negligence. Negligence could, in certain circumstances, be a separate basis for relief in a *negligence* claim, but "[m]ere negligence in instituting unjustified criminal proceedings against the plaintiff cannot satisfy the 'malice' element" of malicious prosecution. *Montgomery Ward*, 339 Md. at 719.

As such, based upon an objectively reasonable interpretation of the law, a facially valid arrest warrant issued, and officers here had probable cause to arrest Ms. Rovin. There is no suggestion that officers acted maliciously or in bad faith in relying upon the warrant. The circuit court was correct to grant summary judgment in favor of the State on Ms. Rovin's claims of false arrest, false imprisonment, and malicious prosecution.[62]

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[62] Although no Maryland case has previously discussed the interplay between an objectively reasonable mistake of law under *Heien* and the common law torts here, we note that at least one federal court has, reaching the same conclusion as we do here. Specifically, a panel of the U.S. Court of Appeals for the Eleventh Circuit recently considered a case in which an arrest warrant was applied for and issued (and the subject individual was arrested), but where it was later held that the warrant was based upon a

APPELLEE'S MOTION TO DISMISS DENIED; JUDGMENT OF THE CIRCUIT COURT FOR WICOMICO COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.

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mistake of law—in actuality, the suspected crime had not been committed. *See Mahone*, 2022 WL 2388426, at *1. The panel concluded that the officer had legal authority to make the arrest, reasoning that the officer was entitled to rely upon the magistrate's probable cause determination, in part because the mistake of law was objectively reasonable under *Heien*. That is, the officer "did not have the luxury, as did the state appellate court of being able to fully consider the statute in the calm of their judicial chambers." *Id.* at *3 (cleaned up). Instead, "[i]n making probable cause decisions, law enforcement officers are not charged with knowing legal technicalities and nuances, but with the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act." *Id.* The panel concluded that "it is understandable that the officer failed to discern, as the appellate court later did, that [the defendant] committed burglary instead of home invasion." *Id.* (cleaned up).